

E-FILED 06-30-2010

1 MICHAEL M. CARLSON (CSBN 88048)
 E-Mail: MCarlson@Schnader.com
 2 SCHNADER HARRISON SEGAL & LEWIS LLP
 3 One Montgomery Street, Suite 2200
 San Francisco, California 94104-5501
 4 Telephone: 415-364-6700
 5 Facsimile: 415-364-6785
 6 Attorneys for Plaintiff
 REFLEX PACKAGING, INC.

8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 RUSSELL B. HILL, Cal. Bar No. 190070
 9 MARK L. BLAKE, Cal. Bar No. 253511
 650 Town Center Drive, 4th Floor
 10 Costa Mesa, California 92626-1993
 Telephone: 714-513-5100
 11 Facsimile: 714-513-5130
 rhill@sheppardmullin.com
 12 mblake@sheppardmullin.com

13 Attorneys for Defendant
 LENOVO (UNITED STATES) INC.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

18 REFLEX PACKAGING, INC.,
 19 Plaintiff,
 20 v.
 21 LENOVO (UNITED STATES) INC.
 22 Defendant.

Case No. 5:10-cv-01002-JW

**STIPULATION AND ~~PROPOSED~~
 PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION
 AND/OR TRADE SECRETS**

The Hon. James Ware

[Complaint Filed: March 9, 2010]
(MODIFIED BY THE COURT)

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited information
9 or items that are entitled to confidential treatment under the applicable legal principles.
10 The parties further acknowledge that this Stipulated Protective Order does not entitle them
11 to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
12 that must be followed and the standards that will be applied when a party seeks permission
13 from the Court to file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for protection
19 under Federal Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House
21 Counsel (as well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information
23 or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL"
24 or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY".

25 2.5 Disclosure or Discovery Material: all items or information, regardless
26 of the medium or manner in which it is generated, stored, or maintained (including, among
27

1 public domain at the time of disclosure to a Receiving Party or becomes part of the public
2 domain after its disclosure to a Receiving Party as a result of publication not involving a
3 violation of this Order, including becoming part of the public record through trial or
4 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
5 obtained by the Receiving Party after the disclosure from a source who obtained the
6 information lawfully and under no obligation of confidentiality to the Designating Party.
7 Any use of Protected Material at trial shall be governed by a separate agreement or order.

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
11 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
12 of (1) dismissal of all claims and defenses in this action, with or without prejudice; and
13 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
14 remands, trials, or reviews of this action, including the time limits for filing any motions or
15 applications for extension of time pursuant to applicable law. **For a period of six months after
16 the final disposition of this action, this court will retain jurisdiction to enforce the terms of this
17 order.**

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under this
19 Order must take reasonable care to limit any such designation to specific material that
20 qualifies under the appropriate standards. To the extent it is practical to do so, the
21 Designating Party must designate for protection only those parts of material, documents,
22 items, or oral or written communications that qualify — so that other portions of the
23 material, documents, items, or communications for which protection is not warranted are
24 not swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited.

26 Designations that are shown to be clearly unjustified or that have been made for an
27 improper purpose (e.g., to unnecessarily encumber or retard the case development process

1 (e) court reporters and their staff, professional jury or trial
2 consultants, and Professional Vendors to whom disclosure is reasonably necessary for this
3 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
4 (Exhibit A);

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the "Acknowledgment and
7 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
8 ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions
9 that reveal Protected Material must be separately bound by the court reporter and may not
10 be disclosed to anyone except as permitted under this Stipulated Protective Order.

11 (g) the author or recipient of a document containing the
12 information or a custodian or other person who otherwise possessed or knew the
13 information.

14 7.3 Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES
15 ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in
16 writing by the Designating Party, a Receiving Party may disclose any information or item
17 designated "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action.
19 as well as employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this litigation and who have signed the
21 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

22 (b) Experts of the Receiving Party (1) to whom disclosure is
23 reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and
24 Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in
25 paragraph 7.4(a)(2), below, have been followed;

26 (c) the Court and its personnel;

1 (d) court reporters and their staff, professional jury or trial
2 consultants, and Professional Vendors to whom disclosure is reasonably necessary for this
3 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
4 (Exhibit A); and

5 (e) the author or recipient of a document containing the
6 information or a custodian or other person who otherwise possessed or knew the
7 information.

8 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
9 CONFIDENTIAL — ATTORNEYS' EYES ONLY" Information or Items to Experts.

10 (a) Unless otherwise ordered by the Court or agreed to in writing
11 by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
12 Order) any information or item that has been designated "HIGHLY CONFIDENTIAL --
13 ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c) first must make a written
14 request to the Designating Party that (1) identifies the general categories of "HIGHLY
15 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information that the Receiving Party
16 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the
17 city and state of his or her primary residence, (3) attaches a copy of the Expert's current
18 resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity
19 from whom the Expert has received compensation or funding for work in his or her areas
20 of expertise or to whom the expert has provided professional services, including in
21 connection with a litigation, at any time during the preceding five years and (6) identifies
22 (by name and number of the case, filing date, and location of court) any litigation in
23 connection with which the Expert has offered expert testimony, including through a
24 declaration, report, or testimony at a deposition or trial, during the preceding five years.

25 (b) A Party that makes a request and provides the information
26 specified in the preceding respective paragraphs may disclose the subject Protected
27 Material to the identified Expert unless, within 10 days of delivering the request, the Party

1 receives a written objection from the Designating Party. Any such objection must set forth
2 in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and
4 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve
5 the matter by agreement within seven days of the written objection. If no agreement is
6 reached, the Party seeking to make the disclosure to the Expert may file a motion as
7 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
8 applicable) seeking permission from the Court to do so. Any such motion must describe
9 the circumstances with specificity, set forth in detail the reasons why the disclosure to the
10 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
11 suggest any additional means that could be used to reduce that risk. In addition, any such
12 motion must be accompanied by a competent declaration describing the parties' efforts to
13 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
14 discussions) and setting forth the reasons advanced by the Designating Party for its refusal
15 to approve the disclosure.

16 In any such proceeding, the Party opposing disclosure to the
17 Expert shall bear the burden of proving that the risk of harm that the disclosure would
18 entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
19 Protected Material to its Expert.

20 7.5 "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY"
21 information may be disclosed to a specifically designated House Counsel of a Party *only if*
22 such disclosure is first agreed to in writing by the Designating Party or upon further order
23 of the Court. Nothing in this Order will preclude such agreement or further order. Any
24 House Counsel allowed to see such information after an agreement or order must sign the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A) and will be bound by this
26 Order.

1 (b) In the event that a Party is required, by a valid discovery
2 request, to produce a Non-Party's confidential information in its possession and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
4 information, then the Party shall:

5 1. promptly notify in writing the Requesting Party and the
6 Non-Party that some or all of the information requested is subject to a confidentiality
7 agreement with a Non- Party;

8 2. promptly provide the Non-Party with a copy of the
9 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a
10 reasonably specific description of the information requested; and

11 3. make the information requested available for inspection
12 by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from
14 this Court within 14 days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information responsive to the
16 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party
17 shall not produce any information in its possession or control that is subject to the
18 confidentiality agreement with the Non-Party before a determination by the Court. Absent
19 a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
20 protection in this court of its Protected Material.

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has
23 disclosed Protected Material to any person or in any circumstance not authorized under
24 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
26 retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons
27 to whom unauthorized disclosures were made of all the terms of this Order, and (d) cause

1 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
2 that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 If information is produced in discovery that is subject to a claim of privilege
6 or of protection as trial-preparation material, the party making the claim may notify any
7 party that received the information of the claim and the basis for it. After being notified, a
8 party must promptly return or destroy the specified information and any copies it has and
9 may not sequester, use or disclose the information until the claim is resolved. This includes
10 a restriction against presenting the information to the court for a determination of the
11 claim. This provision is not intended to modify whatever procedure may be established in
12 an e-discovery order that provides for production without prior privilege review. Pursuant
13 to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on
14 the effect of disclosure of a communication or information covered by the attorney-client
15 privilege or work product protection, the parties may incorporate their agreement in the
16 stipulated protective order submitted to the Court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of
19 any person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to disclosing
22 or producing any information or item on any ground not addressed in this Stipulated
23 Protective Order. Similarly, no Party waives any right to object on any ground to use in
24 evidence of any of the material covered by this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the
26 Designating Party or a court order secured after appropriate notice to all interested persons,
27 a Party may not file in the public record in this action any Protected Material. A Party that

1 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.
2 Protected Material may only be filed under seal pursuant to a court order authorizing the
3 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
4 sealing order will issue only upon a request establishing that the Protected Material at issue
5 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.
6 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
7 Rule 79-5(d) is denied by the Court, then the Receiving Party may file the Protected
8 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
9 instructed by the Court.

10 13. FINAL DISPOSITION

11 Within 60 days after the Final Disposition of this action, as defined in
12 paragraph 4, each Receiving Party must return all Protected Material to the Producing
13 Party or destroy such material. As used in this subdivision, "all Protected Material"
14 includes all copies, abstracts, compilations, summaries, and any other format reproducing
15 or capturing any of the Protected Material. Whether the Protected Material is returned or
16 destroyed, the Receiving Party must submit a written certification to the Producing Party
17 (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that
18 (1) identifies (by category, where appropriate) all the Protected Material that was returned
19 or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
20 compilations, summaries or any other format reproducing or capturing any of the Protected
21 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
22 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
23 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
24
25
26
27

1 consultant and expert work product, even if such materials contain Protected Material.
2 Any such archival copies that contain or constitute Protected Material remain subject to
3 this Protective Order as set forth in Section 4 (DURATION).
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
6

7 Dated: June 29, 2010 SCHNADER HARRISON SEGAL & LEWIS LLP

8
9

10 By: /s/ Michael M. Carlson
11 MICHAEL M. CARLSON
12 Attorneys for Plaintiff
REFLEX PACKAGING, INC.

13 Dated: June 29, 2010 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

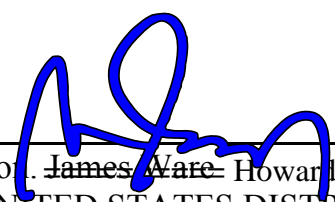
14
15

16 By: /s/ Russell B. Hill
17 RUSSELL B. HILL
18 Attorneys for Defendant
LENOVO (UNITED STATES) INC.

19 **AS MODIFIED BY THE COURT,**
PURSUANT TO STIPULATION, IT IS SO ORDERED.
20

21

22 Date: June 30, 2010


23 Howard R. Lloyd
24 UNITED STATES DISTRICT JUDGE
25 MAGISTRATE

26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Northern District of California on
7 _____ in the case of Reflex Packaging, Inc., v. Lenovo (United States) Inc.,
8 Case No. 5:10-cv-01002-JW. I agree to comply with and to be bound by all the terms of
9 this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Northern District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after termination
17 of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone number] as my
20 California agent for service of process in connection with this action or any proceedings
21 related to enforcement of this Stipulated Protective Order.

22 Date: _____

23

24 City and State where sworn and signed: _____

25 Printed name: _____

26 [printed name]

27 Signature: _____

28 [signature]