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10 Attorneys for Plaintiff,
 Aerielle Technologies, Inc.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13

14 SAN JOSE DIVISION

15 AERIELLE TECHNOLOGIES, INC.,

CASE NO. C 10-01301 LHK (HRL)

16 Plaintiff and Counterclaim
 17 Defendant,

~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER
 (MODIFIED BY THE COURT)

18 v.

19 BELKIN INTERNATIONAL, INC., BEST
 BUY CO., INC., BESTBUY.COM, LLC,
 20 BEST BUY STORES, L.P. and RADIO
 SHACK CORPORATION,
 21

22 Defendants and
 Counterclaimants.
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1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
2 SOURCE CODE.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless of
4 the medium or manner in which it is generated, stored, or maintained (including, among other
5 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
6 or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
9 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
10 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a
11 Party or of a Party’s competitor.

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of
14 which to another Party or Non-Party would create a substantial risk of serious harm that could not
15 be avoided by less restrictive means.

16 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
17 extremely sensitive “Confidential Information or Items” representing computer code and
18 associated comments and revision histories, formulas, engineering specifications, or schematics
19 that define or otherwise describe in detail the algorithms or structure of software or hardware
20 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
21 serious harm that could not be avoided by less restrictive means.

22 2.10 House Counsel: attorneys who are employees of a party to this action.
23 House Counsel does not include Outside Counsel of Record or any other outside counsel except,
24 with respect to Aerielle, House Counsel may include one attorney that is engaged by Aerielle to
25 provide general corporate counseling.

26 2.11 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

1 public record through trial or otherwise; and (b) any information known to the Receiving Party
2 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
3 obtained the information lawfully and under no obligation of confidentiality to the Designating
4 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by
7 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
8 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
9 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
including the time limits for filing any motions or applications for extension of time pursuant to
applicable law. ↑

5. DESIGNATING PROTECTED MATERIAL

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

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

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that
22 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
23 unnecessarily encumber or retard the case development process or to impose unnecessary
24 expenses and burdens on other parties) expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection at all or do not qualify for the level of
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This Court will retain jurisdiction to enforce the terms of this protective order for a period of six months after the final disposition (as defined herein) of this action.

and only after making a good faith determination,

1 protection initially asserted, that Designating Party must promptly notify all other parties that it is
2 withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this
4 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
5 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
6 designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but
9 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
10 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains
12 protected material. If only a portion or portions of the material on a page qualifies for protection,
13 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
14 appropriate markings in the margins) and must specify, for each portion, the level of protection
15 being asserted.

16 A Party or Non-Party that makes original documents or materials available for
17 inspection need not designate them for protection until after the inspecting Party has indicated
18 which material it would like copied and produced. During the inspection and before the
19 designation, all of the material made available for inspection shall be deemed “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
21 documents it wants copied and produced, the Producing Party must determine which documents,
22 or portions thereof, qualify for protection under this Order. Then, before producing the specified
23 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL,”
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
25 SOURCE CODE”) to each page that contains Protected Material. If only a portion or portions of
26 the material on a page qualifies for protection, the Producing Party also must clearly identify the
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1 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
2 each portion, the level of protection being asserted.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings,
4 that the Designating Party identify on the record, before the close of the deposition, hearing, or
5 other proceeding, all protected testimony and specify the level of protection being asserted. When
6 it is impractical to identify separately each portion of testimony that is entitled to protection and it
7 appears that substantial portions of the testimony may qualify for protection, the Designating
8 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
9 a right to have up to 21 days to identify the specific portions of the testimony as to which
10 protection is sought and to specify the level of protection being asserted. Only those portions of
11 the testimony that are appropriately designated for protection within the 21 days shall be covered
12 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
13 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
14 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a deposition,
17 hearing or other proceeding to include Protected Material so that the other parties can ensure that
18 only authorized individuals who have signed the “Acknowledgment and Agreement to Be
19 Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
20 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 Transcripts containing Protected Material shall have an obvious legend on the title
23 page that the transcript contains Protected Material, and the title page shall be followed by a list
24 of all pages (including line numbers as appropriate) that have been designated as Protected
25 Material and the level of protection being asserted by the Designating Party. The Designating
26 Party shall inform the court reporter of these requirements. Any transcript that is prepared before
27 the expiration of a 21-day period for designation shall be treated during that period as if it had

1 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety
2 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
3 actually designated.

4 (c) for information produced in some form other than documentary and for any
5 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
6 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
8 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the
9 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
10 level of protection being asserted.

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
12 to designate qualified information or items does not, standing alone, waive the Designating
13 Party’s right to secure protection under this Order for such material. Upon timely correction of a
14 designation, the Receiving Party must make reasonable efforts to assure that the material is
15 treated in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
19 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
20 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
21 right to challenge a confidentiality designation by electing not to mount a challenge promptly
22 after the original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process by providing written notice of each designation it is challenging and describing
25 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
26 written notice must recite that the challenge to confidentiality is being made in accordance with
27 this specific paragraph of the Protective Order. The parties shall attempt to resolve each

1 challenge in good faith and must begin the process by conferring directly (in voice to voice
2 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
3 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
4 confidentiality designation was not proper and must give the Designating Party an opportunity to
5 review the designated material, to reconsider the circumstances, and, if no change in designation
6 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
7 the next stage of the challenge process only if it has engaged in this meet and confer process first
8 or establishes that the Designating Party is unwilling to participate in the meet and confer process
9 in a timely manner.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
11 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
12 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
13 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
14 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
15 accompanied by a competent declaration affirming that the movant has complied with the meet
16 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
17 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
18 shall automatically waive the confidentiality designation for each challenged designation. In
19 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
20 time if there is good cause for doing so, including a challenge to the designation of a deposition
21 transcript or any portions thereof. Any motion brought pursuant to this provision must be
22 accompanied by a competent declaration affirming that the movant has complied with the meet
23 and confer requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass
26 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
27 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing

1 to file a motion to retain confidentiality as described above, all parties shall continue to afford the
2 material in question the level of protection to which it is entitled under the Producing Party's
3 designation until the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this case only for
7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
8 disclosed only to the categories of persons and under the conditions described in this Order.
9 When the litigation has been terminated, a Receiving Party must comply with the provisions of
10 section 15 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a secure manner that ensures that access is limited to the persons authorized under
13 this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
15 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
16 disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
19 information for this litigation;

20 (b) Up to two (2) Designated House Counsel of the Receiving Party (1) whose
21 advice and consultation are being or will be used by the Receiving Party in connection with this
22 action; (2) who are neither involved in competitive decision making nor patent prosecution work
23 as specified in paragraph 8; and (3) who have signed the Acknowledgement and Agreement to Be
24 Bound (Exhibit A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
27 and Agreement to Be Bound" (Exhibit A);

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

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

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

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
16 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
20 information for this litigation;

21 (b) Up to two (2) Designated House Counsel of the Receiving Party (1) whose
22 advice and consultation are being or will be used in connection with this action; (2) who are
23 neither involved in competitive decision making nor patent prosecution work as specified in
24 paragraph 8; (3) who have signed the Acknowledgement and Agreement to Be Bound (Exhibit
25 A); and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been
26 followed;

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

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and
7 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

9 (f) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” Information or Items to Experts.

14 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
15 Designating Party, a Party that seeks to disclose to Designated House Counsel any
16 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” pursuant to paragraph 7.3(b) first must send notice to the Designating Party
18 that (1) sets forth the full name of the Designated House Counsel and the city and state of his
19 or her residence and (2) describes the Designated House Counsel’s current and reasonably
20 foreseeable future primary job duties and responsibilities in sufficient detail to determine if House
21 Counsel is involved, or may become involved, in any competitive decision-making or patent
22 prosecution as specified in paragraph 8.

23 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
24 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
25 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
26 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must give
27 written notice to the Designating Party that (1) identifies the general categories of “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
2 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
3 forth the full name of the Expert and the city and state of his or her primary residence, (3)
4 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
5 identifies each person or entity from whom the Expert has received compensation or funding for
6 work in his or her areas of expertise or to whom the expert has provided professional services,
7 including in connection with a litigation, at any time during the preceding five years, and (6)
8 identifies (by name and number of the case, filing date, and location of court) any litigation in
9 connection with which the Expert has offered expert testimony, including through a declaration,
10 report, or testimony at a deposition or trial, during the preceding five years.

11 (b) A Party that gives notice and provides the information specified in the
12 preceding respective paragraph may disclose the subject Protected Material to Designated House
13 Counsel or the identified Expert unless, within 7 calendar days of delivering the request, the Party
14 receives a written objection from the Designating Party. Any such objection must set forth in
15 detail the grounds on which it is based.

16 (c) A Party that receives a timely written objection must meet and confer with
17 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
18 agreement within seven days of the written objection. If no agreement is reached, the Party
19 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
20 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
21 seeking permission from the court to do so. Any such motion must describe the circumstances
22 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
23 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
24 suggest any additional means that could be used to reduce that risk (e.g., requiring Designated
25 House Counsel to review the Protected Material at the offices of Outside Counsel). In addition,
26 any such motion must be accompanied by a competent declaration describing the parties’ efforts
27 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer

1 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
2 approve the disclosure.

3 In any such proceeding, the Party opposing disclosure to Designated House
4 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure
5 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose
6 the Protected Material to Designated House Counsel or its Expert.

7 8. PROSECUTION BAR

8 Absent written consent from the Producing Party, any individual who receives access to
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
10 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
11 applications relating to RF transmitters for portable audio devices, including without limitation
12 the patents asserted in this action and any patent or application claiming priority to or otherwise
13 related to the patents asserted in this action, before any foreign or domestic agency, including the
14 United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,
15 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting
16 the scope or maintenance of patent claims.¹ To avoid any doubt, "prosecution" as used in this
17 paragraph does not include representing a party challenging a patent before a domestic or foreign
18 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
19 reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information
21 is first received by the affected individual and shall end two (2) years after final termination of
22 this action.

23 9. SOURCE CODE

24 (a) To the extent production of source code becomes necessary in this case, a
25 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"

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27 ¹ Prosecution includes, for example, original prosecution, reissue and reexamination
28 proceedings.

1 if it comprises or includes confidential, proprietary or trade secret source code.

2 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
3 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in paragraph
5 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and
7 7.4, with the exception of Designated House Counsel.

8 (c) Outside counsel of record shall maintain and store all source code produced
9 in electronic form in a manner that prevents unauthorized access, including without limitation the
10 following minimum safeguards:

11 (1) Each produced copy of source code may be provided on or loaded
12 onto a single, non-networked computer, respectively;

13 (2) Any external media (e.g., hard drives, DVDs) that contains source
14 code must be kept in a locked safe or storage cabinet when not connected to or inserted in the
15 non-networked computer for viewing. The external media must be disconnected from and/or
16 removed from the non-networked computer and stored in such locked safe of cabinet when it is
17 not actually being used to view the source code contained therein;

18 (3) The non-networked computer and the safe or storage cabinet must
19 be kept in a locked and secure room;

20 (4) The locked room shall not be on the ground floor of the building.
21 Access to the floor on which the locked and secure room is located is permitted only via a key (or
22 card) system;

23 (5) The non-networked computer and/or external media used to store
24 the source code shall be password protected; and

25 (6) At the end of the case, any entity receiving source code will certify
26 that: (a) all external media, print-outs, and copies containing source code have been destroyed,
27 with the exception of exhibits that were attached to filed pleadings or admitted into evidence; (b)

1 the hard drives of the non-networked computer and any other storage or memory media which
2 may contain source code have been reformatted and destroyed; and (c) the access and print logs
3 have been archived along with counsel's other records from this litigation. Other than set forth in
4 this subparagraph, counsel may not maintain a file copy of source code material;

5 (7) No electronic copies, other than volatile copies necessarily made in
6 the course of loading and accessing the source code on the non-networked computer shall be
7 made;

8 (8) Any paper copies of portions of source code that are printed shall
9 be printed onto paper marked "HIGHLY CONFIDENTIAL – SOURCE CODE" on each page;

10 (9) If counsel desires to store and access such source code at a secure
11 facility at a location other than the offices of outside counsel of record, counsel shall propose in
12 writing to outside counsel of record for the designation party the precise location of the proposed
13 secure facility. Source code shall not be taken to such new facility unless approved by the
14 designating party.

15 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
16 OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation that
18 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"
19 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
20 CONFIDENTIAL – SOURCE CODE" that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to
24 issue in the other litigation that some or all of the material covered by the subpoena or order is
25 subject to this Protective Order. Such notification shall include a copy of this Stipulated
26 Protective Order; and

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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by
2 the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action as
5 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
7 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking protection in
9 that court of its confidential material – and nothing in these provisions should be construed as
10 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
11 another court.

12 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
13 IN THIS LITIGATION

14 (a) The terms of this Order are applicable to information produced by a Non-
15 Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such
17 information produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be construed as
19 prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
22 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
23 Party shall:

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

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

4 3. make the information requested available for inspection by the
5 Non-Party.

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

13 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
15 Material to any person or in any circumstance not authorized under this Stipulated Protective
16 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
18 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
19 made of all the terms of this Order, and (d) request such person or persons to execute the
20 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other protection, the
25 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
26 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
27 an e-discovery order that provides for production without prior privilege review. Pursuant to

1 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
2 disclosure of a communication or information covered by the attorney-client privilege or work
3 product protection, the parties may incorporate their agreement in the stipulated protective order
4 submitted to the court.

5 14. MISCELLANEOUS

6 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the court in the future.

8 14.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order no Party waives any right it otherwise would have to object to disclosing or
10 producing any information or item on any ground not addressed in this Stipulated Protective
11 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
12 the material covered by this Protective Order.

13 14.3 Export Control. Disclosure of Protected Material shall be subject to all
14 applicable laws and regulations relating to the export of technical data contained in such
15 Protected Material, including the release of such technical data to foreign persons or nationals in
16 the United States or elsewhere. The Producing Party shall be responsible for identifying any such
17 controlled technical data, and the Receiving Party shall take measures necessary to ensure
18 compliance.

19 14.4 Filing Protected Material. Without written permission from the
20 Designating Party or a court order secured after appropriate notice to all interested persons, a
21 Party may not file in the public record in this action any Protected Material. A Party that seeks to
22 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
23 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
25 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
26 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
27 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then

1 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
2 Rule 79-5(e) unless otherwise instructed by the court.

3 15. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4,
5 each Receiving Party must return all Protected Material to the Producing Party or destroy such
6 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
7 compilations, summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
9 submit a written certification to the Producing Party (and, if not the same person or entity, to the
10 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
11 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
12 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
13 capturing any of the Protected Material. Notwithstanding this provision, the parties' Outside
14 Counsel of Record are entitled to retain an archival copy of all pleadings, motion papers, trial,
15 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
16 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
17 such materials contain Protected Material. Any such archival copies that contain or constitute
18 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 Dated: March 17, 2011

2 DLA PIPER LLP (US)

3 By /s/ Christine K. Corbett

4 MARK FOWLER
5 BRENT YAMASHITA
6 CHRISTINE CORBETT
7 CARRIE WILLIAMSON
8 CHANG KIM
9 Attorneys for Plaintiff,
10 Aerielle Technologies, Inc.

11 Dated: March 17, 2011

12 DICKSTEIN SHAPIRO LLP

13 By /s/ Robert W. Dickerson

14 ROBERT W. DICKERSON
15 YASSER EL-GAMAL
16 JEFFREY A. MILLER
17 Attorneys for Defendants
18 Belkin International, Inc., Best Buy Co., Inc.,
19 BestBuy.com, LLC and Radio Shack
20 Corporation

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 Dated: April 5, 2011

23 
24 ~~LUIS H. KOH~~
25 ~~United States District Judge~~

26 HOWARD R. LLOYD
27 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, who resides at _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California in the case of *Aerielle Technologies, Inc. v. Belkin International, Inc., et al*, Case No. C 10-01301 LHK (HRL). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____, located at _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____