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 THE UNIVERSITY OF CHICAGO and
 10 UCHICAGO ARGONNE LLC

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 NANOEXA CORPORATION, a Delaware
 Corporation,
 15
 16 Plaintiff,
 17 vs.
 18 THE UNIVERSITY OF CHICAGO, an Illinois
 Corporation; UCHICAGO ARGONNE LLC, an
 Illinois limited liability company,
 19 Defendants.
 20
 21

Case No. CV 10-02631 LHK

**STIPULATED PROTECTIVE ORDER
 FOR LITIGATION INVOLVING
 PATENTS, HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION
 AND/OR TRADE SECRETS**
AS AMENDED BY THE COURT
 Judge: Hon. Lucy H. Koh
 Ctrm: 4, 5th Fl.

Complaint Filed: June 15, 2010

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity 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 warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
10 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
12 the standards that will be applied when a party seeks permission from the court to file material
13 under seal.

14 2. DEFINITIONS

and General Order 62

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

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

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

22 2.4 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as “PROTECTED” or
24 “PROTECTED – ATTORNEYS’ EYES ONLY”.

25 2.5 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including, among other
27 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or
28 responses to discovery in this matter.

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected
5 Material (as defined above), but also (1) any information copied or extracted from Protected
6 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
7 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
8 Material. However, the protections conferred by this Stipulation and Order do not cover the
9 following information: (a) any information that is in the public domain at the time of disclosure
10 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
11 as a result of publication not involving a violation of this Order, including becoming part of the
12 public record through trial or otherwise; and (b) any information known to the Receiving Party
13 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
14 obtained the information lawfully and under no obligation of confidentiality to the Designating
15 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the nondisclosure obligations imposed
18 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
19 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
20 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
21 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
22 including the time limits for filing any motions or applications for extension of time pursuant to
23 applicable law. **For a period of six (6) months after the final disposition of this action, this court
will retain jurisdiction to enforce the terms of this protective order.**

24 5. DESIGNATING MATERIAL FOR PROTECTION

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
26 Party or Non-Party that designates information or items for protection under this Order must take
27 care to limit any such designation to specific material that qualifies under the appropriate
28 standards. To the extent it is practical to do so, the Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written communications that
2 qualify – so that other portions of the material, documents, items, or communications for which
3 protection is not warranted are not swept unjustifiably within the ambit of this Order

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

8 If it comes to a Designating Party’s attention that information or items that it
9 designated for protection do not qualify for protection at all or do not qualify for the level of
10 protection initially asserted, that Designating Party must promptly notify all other parties that it is
11 withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
14 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
15 designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
19 affix the legend “PROTECTED” or “PROTECTED – ATTORNEYS’ EYES ONLY” to each page
20 that contains protected material. If only a portion or portions of the material on a page qualifies
21 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
22 making appropriate markings in the margins) and must specify, for each portion, the level of
23 protection being asserted.

24 A Party or Non-Party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has indicated
26 which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed “PROTECTED –
28 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,
2 qualify for protection under this Order. Then, before producing the specified documents, the
3 Producing Party must affix the appropriate legend (“PROTECTED” or “PROTECTED –
4 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
7 specify, each portion, the level of protection being asserted.

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

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

26 Transcripts containing Protected Material shall have an obvious legend on the title
27 page that the transcript contains Protected Material, and the title page shall be followed by a list of
28 all pages (including line numbers as appropriate) that have been designated as Protected Material

1 and the level of protection being asserted by the Designating Party. The Designating Party shall
2 inform the court reporter of these requirements. Any transcript that is prepared before the
3 expiration of a 21-day period for designation shall be treated during that period as if it had been
4 designated “PROTECTED – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
5 agreed. After the expiration of that period, the transcript shall be treated only as actually
6 designated.

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

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

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

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

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

1 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. When
9 the litigation has been terminated, a Receiving Party must comply with the provisions of section
10 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 "PROTECTED" 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 "PROTECTED" 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) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, and
28 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

10 7.3 Disclosure of “PROTECTED – ATTORNEYS’ EYES ONLY” Information
11 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party,
12 a Receiving Party may disclose any information or item designated “PROTECTED –
13 ATTORNEYS’ EYES ONLY” only to:

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

17 (b) Designated House Counsel of the Receiving Party (1) who has no involvement
18 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
19 and (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

24 (d) the court and its personnel;

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

28 (f) the author or recipient of a document containing the information or a custodian

1 or other person who otherwise possessed or knew the information.

2 7.4 Procedures for Approving or Objecting to Disclosure of “PROTECTED –
3 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

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

18 (b) A Party that makes a request and provides the information specified in the
19 preceding respective paragraph may disclose the subject Protected Material to the identified
20 Expert unless, within 14 days of delivering the request, the Party receives a written objection from
21 the Designating Party. Any such objection must set forth in detail the grounds on which it is
22 based.

23 (c) A Party that receives a timely written objection must meet and confer with the
24 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
25 agreement within seven days of the written objection. If no agreement is reached, the Party
26 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
27 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to
28 do so. Any such motion must describe the circumstances with specificity, set forth in detail the

1 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
2 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
3 In addition, any such motion must be accompanied by a competent declaration describing the
4 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
5 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
6 to approve the disclosure.

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

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
11 OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as "PROTECTED" or
14 "PROTECTED – ATTORNEYS' EYES ONLY" that Party must:

15 (a) promptly notify in writing the Designation Party. Such notification shall
16 include a copy of the subpoena or court order;

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

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

23 If the Designating Party timely seeks a protective order, the Party served with the
24 subpoena or court order shall not produce any information designated in this action as
25 "PROTECTED" or "PROTECTED – ATTORNEYS' EYES ONLY" before a determination by
26 the court from which the subpoena or order issued, unless the Party has obtained the Designating
27 Party's permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material – and nothing in these provisions should be

1 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
2 directive from another court.

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

5 (a) The terms of this Order are applicable to information produced by a Non-
6 Party in this action and designated as “PROTECTED” or “PROTECTED – ATTORNEYS’ EYES
7 ONLY”. Such information produced by Non-Parties in connection with this litigation is protected
8 by the remedies and relief provided by this Order. Nothing in these provisions should be
9 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

19 3. make the information requested available for inspection by the Non-
20 Party.

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

28 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

8 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently
11 produced material is subject to a claim of privilege or other protection, the obligations of the
12 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
13 provision is not intended to modify whatever procedure may be established in an e-discovery order
14 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
16 communication or information covered by the attorney-client privilege or work product protection,
17 the parties may incorporate their agreement in the stipulated protective order submitted to the
18 court.

19 14. MISCELLANEOUS

20 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the court in the future.

22 14.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to disclosing or
24 producing any information or item on any ground not addressed in this Stipulated Protective
25 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
26 the material covered by this Protective Order.

27 14.3 Export Control. Disclosure of Protected Material shall be subject to all
28 applicable laws and regulations relating to the export of technical data contained in such Protected

1 Material, including the release of such technical data to foreign persons or nationals in the United
2 States or elsewhere. The Producing Party shall be responsible for identifying any such controlled
3 technical data, and the Receiving Party shall take measures necessary to ensure compliance.

4 14.4 Filing Protected Material. Without written permission from the Designating
5 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
6 in the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
10 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
11 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
12 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving
13 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)
14 unless otherwise instructed by the court.

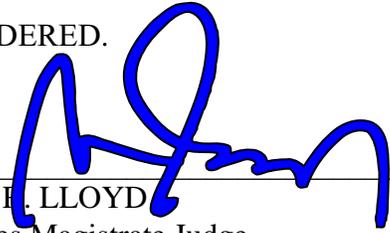
15 15. FINAL DISPOSITION

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

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 30, 2010



HOWARD F. LLOYD
United States Magistrate Judge

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 that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on [date] in the case of NanoeXa Corporation v. The University
7 of Chicago and UChicago Argonne LLC, United States District Court for the Northern District of
8 California Case No. CV 10-02631 LHK. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 will not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]