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49 IPTRONICS INC. AND IPTRONICS A/S

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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN JOSE DIVISION**  
6

7 AVAGO TECHNOLOGIES FIBER IP  
8 (SINGAPORE) PTE. LTD.

9 Plaintiff,

10 v.

11 IPTRONICS, INC. and IPTRONICS A/S

12 Defendants.  
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Case No. C 5:10-CV-02863 EJD (PSG)

**STIPULATED PROTECTIVE ORDER**

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**STIPULATED PROTECTIVE ORDER**  
**CASE NO. C 5:10-CV-02863 EJD (PSG)**

**STIPULATED PROTECTIVE ORDER**

1  
2 Plaintiff Avago Technologies Fiber IP (Singapore) Pte. Ltd. (“Plaintiff” or “Avago”) and  
3 Defendants IPtronics, Inc. and IPtronics A/S (“Defendants” or collectively “IPtronics”) hereby  
4 stipulate that the following Protective Order (“Order”) regarding confidential information may be  
5 entered by the Court.

6 1. **PURPOSES AND LIMITATIONS**

7 Disclosure and discovery activity in this action are likely to involve production of  
8 confidential, proprietary, or private information for which special protection from public disclosure  
9 and from use for any purpose other than preparation and litigation of this matter, as set forth in  
10 Section 7 (ACCESS TO AND USE OF PROTECTED MATERIAL), may be warranted.

11 Accordingly, the Parties hereby stipulate to and petition the court to enter the following Stipulated  
12 Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all  
13 disclosures or responses to discovery and that the protection it affords from public disclosure and use  
14 extends only to the limited information or items that are entitled to confidential treatment under the  
15 applicable legal principles. The Parties further acknowledge, as set forth in Section 15.4 below, that  
16 this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil  
17 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied  
18 when a Party seeks permission from the court to file material under seal.

19 2. **DEFINITIONS**

20 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of  
21 information or items under this Order.

22 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of how it is  
23 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
24 Civil Procedure 26(c).

25 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House Counsel (as  
26 well as their support staff).

1           2.4    Designating Party: a Party or Non-Party that designates information or items  
2 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
4 CODE.”

5           2.5    Disclosure or Discovery Material: all items or information, regardless of the  
6 medium or manner in which it is generated, stored, or maintained (including, among other things,  
7 testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses  
8 to discovery in this matter.

9           2.6    Expert: a person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who (1) is identified as an expert whose opinions may be presented at trial  
11 of this case or is retained by a Party or its counsel in anticipation of litigation or preparation for trial  
12 and who is not expected to be called as a witness at trial, including, but not limited to, a proposed  
13 expert witness with whom Counsel may deem it necessary to consult concerning technical, financial,  
14 or other aspects of this case for the preparation or trial thereof; (2) is not a past or current employee of  
15 a Party or of a Party’s competitor; and (3) at the time of retention, is not anticipated to become an  
16 employee of a Party or of a Party’s competitor. The term “expert” as it is used herein is to be  
17 construed within the meaning of Federal Rule of Civil Procedure 26(b)(4). .

18           2.7    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
19 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party  
20 or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
21 restrictive means.

22           2.8    “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
23 extremely sensitive “Confidential Information or Items” representing computer code and associated  
24 comments and revision histories, formulas, engineering specifications, or schematics that define or  
25 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of  
26 which to another Party or Non-Party would create a substantial risk of serious harm that could not be  
27 avoided by less restrictive means.  
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1           2.9    House Counsel: attorneys who are employees of a Party to this action. House  
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3           2.10   Non-Party: any natural person, partnership, corporation, association, or other  
4 legal entity not named as a Party to this action.

5           2.11   Outside Counsel of Record: attorneys who are not employees of a Party to this  
6 action but are retained to represent or advise a Party to this action and have appeared in this action on  
7 behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

8           2.12   Party: any party to this action, including all of its officers, directors,  
9 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10          2.13   Patents-in-Suit: United States Patent Nos. 5,359,447 and 6,947,456.

11          2.14   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
12 Material in this action.

13          2.15   Professional Vendors: persons or entities that provide litigation support  
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
15 organizing, storing, or retrieving data in any form or medium) and their employees and  
16 subcontractors.

17          2.16   Protected Material: any Disclosure or Discovery Material that the Disclosing  
18 Party designates as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
19 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

20                 Protected Material also includes any information copied or extracted therefrom, as  
21 well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
22 presentations by Parties or Counsel to or in court or in other settings that might reveal Protected  
23 Material.

24          2.17   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
25 Producing Party.

26          3.    SCOPE

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

13           4.     DURATION

14           The confidentiality obligations imposed by this Order shall remain in effect for four  
15 (4) years after final disposition of this litigation, including any appeals, or a court order otherwise  
16 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in  
17 this action, with or without prejudice; and (2) final judgment herein after the completion and  
18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
19 limits for filing any motions or applications for extension of time pursuant to applicable law.

20           5.     DESIGNATING PROTECTED MATERIAL

21           5.1    Exercise of Restraint and Care in Designating Material for Protection. Each  
22 Party or Non-Party that designates information or items for protection under this Order must take care  
23 to limit any such designation to specific material that qualifies under the appropriate standards. To  
24 the extent it is practical to do so, and consistent with all paragraphs of section 5.2(a) the Designating  
25 Party must designate for protection only those parts of material, documents, items, or oral or written  
26 communications that qualify – so that other portions of the material, documents, items, or  
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1 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
2 this Order.

3           If it comes to a Designating Party’s attention that information or items that it  
4 designated for protection do not qualify for protection at all or do not qualify for the level of  
5 protection initially asserted, that Designating Party must promptly notify all other Parties that it is  
6 withdrawing the mistaken designation.

7           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
9 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
10 designated before the material is disclosed or produced.

11           Designation in conformity with this Order requires:

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

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

6 Documents from other litigation which are requested in discovery and which contain  
7 any restrictive legend from such other litigation (e.g., “Confidential Business Information,” “CBI,”  
8 “Confidential,” “Confidential – Outside Attorneys Eyes Only” or words of similar import shall be  
9 treated for all purposes under this Stipulated Protective Order as being designated “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” To the extent that either Party later believes that  
11 any document or group of documents should be de-designated or designated in some other manner  
12 (e.g., “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - SOURCE CODE”), the Parties shall  
13 meet and confer as provided in section 6.2.

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

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

5 Transcripts containing Protected Material shall have an obvious legend on the title  
6 page that the transcript contains Protected Material, and the title page shall be followed by a list of all  
7 pages (including line numbers as appropriate) that have been designated as Protected Material and the  
8 level of protection being asserted by the Designating Party. The Designating Party shall inform the  
9 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day  
10 period for designation shall be treated during that period as if it had been designated “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
12 expiration of that period, the transcript shall be treated only as actually designated.

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

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
21 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
22 to secure protection under this Order for such material. Upon timely correction of a designation, the  
23 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
24 the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
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1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
2 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
3 confidentiality designation by electing not to mount a challenge promptly after the original  
4 designation is disclosed.

5           6.2     Meet and Confer. The Challenging Party shall initiate the dispute  
6 resolution process by providing written notice of each designation it is challenging and describing the  
7 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
8 notice must recite that the challenge to confidentiality is being made in accordance with this specific  
9 paragraph of the Protective Order. The Parties shall attempt to resolve each challenge in good faith  
10 and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
11 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the  
12 Challenging Party must explain the basis for its belief that the confidentiality designation was not  
13 proper and must give the Designating Party an opportunity to review the designated material, to  
14 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the  
15 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only  
16 if it has engaged in this meet and confer process first or establishes that the Designating Party is  
17 unwilling to participate in the meet and confer process in a timely manner.

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

5 The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or  
7 impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party to  
8 sanctions. All Parties shall continue to afford the material in question the level of protection to which  
9 it is entitled under the Producing Party's designation until the Court rules on the challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. Any Protected Material obtained by any Party from any  
12 person pursuant to discovery in this litigation or otherwise may be used only for purposes of  
13 preparation and litigation of this matter, and may not be used for any other purpose, including but not  
14 limited to use in other litigations, use for business purposes, or use for patent prosecution or for  
15 providing strategic patent prosecution advice other than specifically provided for in this section of the  
16 Protective Order.

17 A Receiving Party may use Protected Material that is disclosed or produced by another  
18 Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to  
19 settle (a) any action involving one or both of the Patents-in-Suit and/or their foreign counterpart  
20 patents and involving at least one party to this action, (b) any bankruptcy proceeding involving the  
21 Designating Party, and/or (c) any collection efforts relative to any judgment obtained in this  
22 litigation. Protected Material, including documents and things, exchanged during this case shall not  
23 be used for drafting, filing or prosecution of new or currently pending patent applications, or for  
24 reexamination and/or reissues on behalf of a Party to this litigation that may have access to such  
25 Protected Material, as specified in the provisions of section 9 below (PROSECUTION BAR). Such  
26 Protected Material may be disclosed only to the categories of persons and under the conditions  
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1 described in this Order. When the litigation has been terminated, a Receiving Party must comply  
2 with the provisions of section 16 below (FINAL DISPOSITION).

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose  
7 any information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action<sup>1</sup>;

9 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
10 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
13 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
14 Be Bound” (Exhibit A);

15 (d) the court and its personnel;

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

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

21 (g) the Designating parties’ deposition or trial witnesses.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
23 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered  
24 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
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26 \_\_\_\_\_  
27 <sup>1</sup> The Receiving Party’s Outside Counsel of Record in this action may disclose any information or item  
28 designated “CONFIDENTIAL” only to employees of said Outside Counsel of Record to whom it is reasonably necessary  
to disclose the information for this litigation.

1 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action<sup>2</sup>;

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

7 (c) the court and its personnel;

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

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

13 (f) the Designating parties’ deposition or trial witnesses.

14 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
16 CODE” Information or Items to Experts.

17 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
18 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
19 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a  
21 written request to the Designating Party that (1) sets forth the full name of the Expert and the city and  
22 state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies  
23 the Expert’s current employer(s), (4) identifies each person or entity from whom the Expert has  
24 received compensation or funding (excluding academic and/or government funding) for work in his  
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26 <sup>2</sup> The Receiving Party’s Outside Counsel of Record in this action may disclose any information or item  
27 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
28 CONFIDENTIAL – SOURCE CODE” only to employees of said Outside Counsel of Record to whom it is  
reasonably necessary to disclose the information for this litigation.

1 or her areas of expertise or to whom the expert has provided professional services, including in  
2 connection with a litigation, at any time during the preceding five years,<sup>3</sup> and (5) identifies (by name  
3 and number of the case, filing date, and location of court) any litigation in connection with which the  
4 Expert has offered expert testimony, including through a declaration, report, or testimony at a  
5 deposition or trial, during the preceding five years.

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

10 (c) A Party that receives a timely written objection must meet and confer with the  
11 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
12 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
13 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with  
14 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion  
15 must describe the circumstances with specificity, set forth in detail the reasons why disclosure to the  
16 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest  
17 any additional means that could be used to reduce that risk. In addition, any such motion must be  
18 accompanied by a competent declaration describing the Parties' efforts to resolve the matter by  
19 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the  
20 reasons advanced by the Designating Party for its refusal to approve the disclosure. If a Party invokes  
21 section 7.4(b) and (c) and makes an objection to the other party's Expert, the objecting party must  
22 agree to a shortened briefing schedule whereby the objecting party's opposing papers are due no later  
23 than 5 court days after receipt of the Party filing the motion seeking to make the disclosure to the  
24 Expert, with a Reply brief due within 3 court days after receipt of the opposing Party's brief, and  
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26 <sup>3</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
27 Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality  
28 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating  
Party regarding any such engagement.

1 further submits to have the issue resolved by the Magistrate Judge appointed to this action, for  
2 resolution no later than 21 days after the motion seeking to make the disclosure to the Expert is filed  
3 or within the shortest time period available for the Court or the Magistrate to resolve the dispute.

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

7 8. USE OF PROTECTED MATERIAL AT TRIAL

8 A Party shall provide notice to the Producing Party, in the event that a Party intends to  
9 use any Protected Material during trial.

10 9. PROSECUTION BAR

11 Absent written consent from the Producing Party, any individual who receives access  
12 to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
13 SOURCE CODE" information shall not be involved in the prosecution of patents or patent  
14 applications relating to laser drivers (including but not limited to VCSEL drivers), transimpedance  
15 amplifiers, parallel optical interconnects, and optical communication systems (using VCSELs),  
16 including without limitation the Patents-in-Suit and any patent or application claiming priority to or  
17 otherwise related to the Patents-in-Suit, before any foreign or domestic agency, including the United  
18 States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,  
19 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting the  
20 scope or maintenance of patent claims.<sup>4</sup> To avoid any doubt, "prosecution" as used in this paragraph  
21 does not include representing a Party challenging a patent before a domestic or foreign agency  
22 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination)  
23 nor does it include sharing work product based on information and material obtainable from asserted  
24 public prior art. This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –  
25 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information is

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27 \_\_\_\_\_  
28 <sup>4</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 first received by the affected individual and shall end two (2) years after final termination of this  
2 action.

3 10. SOURCE CODE

4 (a) To the extent production of source code becomes necessary in this case, a  
5 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it  
6 comprises or includes confidential, proprietary or trade secret source code.

7 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
8 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8,  
10 and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

12 (c) Any source code produced in discovery shall be made available for inspection,  
13 in a format allowing it to be reasonably reviewed and searched, during normal business hours or at  
14 other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually  
15 agreed upon location. The source code shall be made available for inspection on a secured computer  
16 in a secured room without Internet access or network access to other computers, and the Receiving  
17 Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable  
18 media or recordable device. The Producing Party may visually monitor the activities of the  
19 Receiving Party’s representatives during any source code review, but only to ensure that there is no  
20 unauthorized recording, copying, or transmission of the source code.

21 (d) The Receiving Party may request paper copies of limited portions of source  
22 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
23 other papers, or for deposition or trial, but shall not request paper copies for the purpose of reviewing  
24 the source code other than electronically as set forth in paragraph (c) in the first instance. The  
25 Producing Party shall provide all such source code in paper form, including bates numbers and the  
26 label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the  
27 amount of source code requested in hard copy form pursuant to the dispute resolution procedure and  
28

1 timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the  
2 Receiving Party is the “Designating Party” for purposes of dispute resolution.

3 (e) The Receiving Party shall maintain a record of any individual who has  
4 inspected any portion of the source code in electronic or paper form. The Receiving Party shall  
5 maintain all paper copies of any printed portions of the source code in a secured, locked area. The  
6 Receiving Party shall not create any electronic or other images of the paper copies and shall not  
7 convert any of the information contained in the paper copies into any electronic format. The  
8 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to  
9 prepare court filings, pleadings, or other papers (including a testifying expert’s expert report), (2)  
10 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies  
11 used during a deposition shall be retrieved by the Producing Party at the end of each day and must not  
12 be given to or left with a court reporter or any other unauthorized individual.

13 11. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
14 OTHER LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that  
16 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –  
18 SOURCE CODE,” that Party must:

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

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

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
25 the Designating Party whose Protected Material may be affected.<sup>5</sup>

26 \_\_\_\_\_  
27 <sup>5</sup> The purpose of imposing these duties is to alert the interested Parties to the existence of this Protective  
28 Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the  
court from which the subpoena or order issued.

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

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

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

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

- 20                   1.    promptly notify in writing the Requesting Party and the Non-Party that
- 21                   some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 22                   2.    promptly provide the Non-Party with a copy of the Stipulated
- 23                   Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
- 24                   description of the information requested; and
- 25                   3.    make the information requested available for inspection by the Non-
- 26                   Party.

27           13.    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 of  
4 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 of  
6 all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment  
7 and Agreement to Be Bound” that is attached hereto as Exhibit A.

8           14.    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 provision  
13 is not intended to modify whatever procedure may be established in an e-discovery order that  
14 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)  
15 and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or  
16 information covered by the attorney-client privilege or work product protection, the Parties may  
17 incorporate their agreement in the stipulated protective order submitted to the court.

18           15.    MISCELLANEOUS

19                   15.1   Right to Further Relief. Nothing in this Order abridges the right of any  
20 person to seek its modification by the court in the future.

21                   15.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
22 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
23 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
24 Party waives any right to object on any ground to use in evidence of any of the material covered by  
25 this Protective Order.

26                   15.3   Export Control. Disclosure of Protected Material shall be subject to all  
27 applicable laws and regulations relating to the export of technical data contained in such Protected  
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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           15.4 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 in  
6 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 issue.  
9 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the  
10 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
11 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
12 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the Protected  
13 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the  
14 court.

15           16. FINAL DISPOSITION

16           Within 60 days after the final disposition, as defined in paragraph 4, of all actions for  
17 which use of Protected Materials is permitted under provisions of Section 7.1, first paragraph, each  
18 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
19 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
20 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
21 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
22 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by  
23 the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that  
24 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
25 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
26 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
27 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
28

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

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

7  
8  
9 DATED: April 28, 2011

*/s/ Ary Chang* \_\_\_\_\_

10 John C. Vetter  
11 Rick S. Florsheim  
12 Cynthia J. Franecki  
13 Gina A. Bibby  
14 Ary Chang  
Attorneys for Plaintiff  
Avago Technologies Fiber IP (Singapore)Pte. Ltd.

15 DATED: April 28, 2011

*/s/ Richard Allan Horning* \_\_\_\_\_

16 Richard Allan Horning  
17 Attorneys for Defendants  
18 IPtronics, Inc. and IPtronics A/S

19  
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21  
22 DATED: May 2, 2011

*Paul S. Grewal*

XXXXXXXXXXXXXXXXX Paul S. Grewal

24 United States XXXXX Judge  
25 Magistrate

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], 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 on \_\_\_\_\_ [date] in the case of *Avago  
Technologies Fiber IP (Singapore) Pte. Ltd. v. IPtronics Inc., et al.*, Case No. 5:10-CV-02863 EJD  
(PT). 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.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_