

# **EXHIBIT 1**

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18  
19 **UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN JOSE DIVISION**

21 FUJITSU LIMITED,  
Plaintiff,  
22 v.  
23 BELKIN INTERNATIONAL, INC.,  
BELKIN, INC., D-LINK CORPORATION,  
24 D-LINK SYSTEMS, INC., NETGEAR,  
INC., ZYXEL COMMUNICATIONS  
25 CORPORATION, and ZYXEL  
COMMUNICATIONS, INC.,  
26 Defendant.

Case No. 10-cv-03972-LHK (PSG)

**STIPULATED PROTECTIVE ORDER**

Before: The Honorable Lucy H. Koh  
Discovery Matters Assigned to:  
Magistrate Judge Paul S. Grewal

27 **AND RELATED COUNTERCLAIMS**  
28

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

14       **2.       DEFINITIONS**

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       “CONFIDENTIAL” 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 (as  
21 well as their support staff).

22           2.4       Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24           2.5       Designating Party: a Party or Non-Party that designates information or items that  
25 it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
27 SOURCE CODE.”

1           2.6    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other  
3 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
4 or responses to discovery in this matter.

5           2.7    Expert: a person with specialized knowledge or experience in a matter pertinent  
6 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
7 or as a consultant in this action, (2) is not a current employee of a Party or of a Party's  
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
9 or of a Party's competitor.

10          2.8    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
13 less restrictive means.

14          2.9    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
15 extremely sensitive "Confidential Information or Items" representing computer code and  
16 associated comments and revision histories, formulas, engineering specifications, or schematics  
17 that define or otherwise describe in detail the algorithms or structure of software or hardware  
18 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
19 serious harm that could not be avoided by less restrictive means.

20          2.10 House Counsel: attorneys who are employees of a party to this action and no  
21 more than one designated attorney who is an employee of Fujitsu America, Inc. and licensed to  
22 practice law in the United States.. House Counsel does not include Outside Counsel of Record  
23 or any other outside counsel.

24          2.11 Non-Party: any natural person, partnership, corporation, association, or other  
25 legal entity not named as a Party to this action.

26          2.12 Outside Counsel of Record: attorneys who are not employees of a party to this  
27 action but are retained to represent or advise a party to this action and have appeared in this  
28

1 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
2 that party.

3 2.13 Party: any party to this action, including all of its officers, directors, employees,  
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
6 Material in this action.

7 2.15 Professional Vendors: persons or entities that provide litigation support services  
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
9 organizing, storing, or retrieving data in any form or medium) and their employees and  
10 subcontractors.

11 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
13 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

14 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
15 Producing Party.

16 **3. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only Protected  
18 Material (as defined above), but also (1) any information copied or extracted from Protected  
19 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
20 testimony, conversations, or presentations by Parties or their Counsel that reveal Protected  
21 Material. However, the protections conferred by this Stipulation and Order do not cover the  
22 following information: (a) any information that is in the public domain at the time of disclosure  
23 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving  
24 Party as a result of publication not involving a violation of this Order, including becoming part  
25 of the public record through trial or otherwise; and (b) any information known to the Receiving  
26 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
27 source who obtained the information lawfully and under no obligation of confidentiality to the  
28

1 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
2 agreement or order.

3 **4. DURATION**

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

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
13 Party or Non-Party that designates information or items for protection under this Order must  
14 take care to limit any such designation to specific material that qualifies under the appropriate  
15 standards. To the extent it is practical to do so, the Designating Party must designate for  
16 protection only those parts of material, documents, items, or oral or written communications that  
17 qualify – so that other portions of the material, documents, items, or communications for which  
18 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

23 If it comes to a Designating Party's attention that information or items that it designated  
24 for protection do not qualify for protection at all or do not qualify for the level of protection  
25 initially asserted, that Designating Party must promptly notify all other parties that it is  
26 withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
28 (see, e.g., sections 5.2(a) and 5.3, below), or as otherwise stipulated or ordered, Disclosure or

1 Discovery Material that qualifies for protection under this Order must be clearly so designated  
2 before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

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

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

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
27 Designating Party identify on the record, before the close of the deposition, hearing, or other  
28 proceeding, all protected testimony and specify the level of protection being asserted. When it

1 is impractical to identify separately each portion of testimony that is entitled to protection and it  
2 appears that substantial portions of the testimony may qualify for protection, the Designating  
3 Party may invoke on the record (before the deposition, hearing, or other proceeding is  
4 concluded) a right to have up to 28 days to identify the specific portions of the testimony as to  
5 which protection is sought and to specify the level of protection being asserted. Only those  
6 portions of the testimony that are appropriately designated for protection within the 28 days  
7 shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a  
8 Designating Party may specify, at the deposition or up to 21 days afterwards if that period is  
9 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

26 (c) for information produced in some form other than documentary and for any other  
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
28 container or containers in which the information or item is stored the legend



1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE”. If only a portion or portions of the  
3 information or item warrant protection, the Producing Party, to the extent practicable, shall  
4 identify the protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
6 designate qualified information or items does not, standing alone, waive the Designating Party’s  
7 right to secure protection under this Order for such material. Upon timely correction of a  
8 designation, the Receiving Party must make reasonable efforts to assure that the material is  
9 treated in accordance with the provisions of this Order.

## 10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
12 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
18 process by providing written notice of each designation it is challenging and describing the basis  
19 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
20 notice must recite that the challenge to confidentiality is being made in accordance with this  
21 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge  
22 in good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
23 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
24 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
25 designation was not proper and must give the Designating Party an opportunity to review the  
26 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
27 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
28 stage of the challenge process only if it has engaged in this meet and confer process first or

1 establishes that the Designating Party is unwilling to participate in the meet and confer process  
2 in a timely manner.

3           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
5 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 28 days  
6 of the initial notice of challenge or within 21 days of the parties agreeing that the meet and  
7 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
8 accompanied by a competent declaration affirming that the movant has complied with the meet  
9 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party  
10 to make such a motion including the required declaration within 28 days (or 21 days, if  
11 applicable) shall automatically waive the confidentiality designation for each challenged  
12 designation. In addition, the Challenging Party may file a motion challenging a confidentiality  
13 designation at any time if there is good cause for doing so, including a challenge to the  
14 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to  
15 this provision must be accompanied by a competent declaration affirming that the movant has  
16 complied with the meet and confer requirements imposed by the preceding paragraph.

17           The burden of persuasion in any such challenge proceeding shall be on the Designating  
18 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
19 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
20 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
21 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
22 material in question the level of protection to which it is entitled under the Producing Party's  
23 designation until the court rules on the challenge.

## 24     **7.     ACCESS TO AND USE OF PROTECTED MATERIAL**

25           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed  
26 or produced by another Party or by a Non-Party in connection with this case only for  
27 prosecuting, defending, or attempting to settle this litigation or any pending reexamination  
28 proceedings relating to the patent-in-suit. Such Protected Material may be disclosed only to the

1 categories of persons and under the conditions described in this Order. When the litigation has  
2 been terminated, a Receiving Party must comply with the provisions of section 15 below  
3 (FINAL DISPOSITION).

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

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

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
11 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
12 Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the  
14 Receiving Party and no more than one designated attorney who is an employee of Fujitsu  
15 America, Inc. and licensed to practice law in the United States to whom disclosure is reasonably  
16 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
17 Bound” (Exhibit A);

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

21 (d) the court and its personnel;

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

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
26 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
27 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
28 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as  
2 permitted under this Stipulated Protective Order.

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

5 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
7 ordered by the court or permitted in writing by the Designating Party, and except as provided in  
8 section 9, a Receiving Party may disclose any information or item designated “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
10 SOURCE CODE” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
13 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
14 Bound” that is attached hereto as Exhibit A;

15 (b) Designated House Counsel of the Receiving Party and no more than one  
16 designated attorney who is an employee of Fujitsu America, Inc. and licensed to practice law in  
17 the United States (1) who has no involvement in competitive decision-making, (2) to whom  
18 disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment  
19 and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in  
20 paragraph 7.4(a)(1), below, have been followed. Notwithstanding the above, the  
21 aforementioned Designated House Counsel and/or designated attorney shall not be permitted to  
22 view competitively-sensitive financial information or documents designated "CONFIDENTIAL  
23 -- ATTORNEYS' EYES ONLY" (*e.g.*, cost, price, profit, market share, customer lists),  
24 disclosure of which to another Party or Non-Party would create a substantial risk of serious  
25 harm, except in the form of summaries of total annual or quarterly sales revenues or unit sales  
26 volumes;

27 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
28 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have  
2 been followed;

3 (d) the court and its personnel;

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

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

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
11 SOURCE CODE” Information or Items to Designated House Counsel or Experts.

12 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
13 Party, a Party that seeks to disclose to Designated House Counsel any information or item that  
14 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
15 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the  
16 full name of the Designated House Counsel and the city and state of his or her residence, (2) sets  
17 forth the jurisdictions in which the Designated House Counsel is admitted to practice law to the  
18 extent that such an admission requirement applies, and (3) describes the Designated House  
19 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in  
20 sufficient detail to determine if House Counsel is involved, or may become involved, in any  
21 competitive decision-making.

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

1 Expert, (2) sets forth the full name of the Expert, the city and state of his or her primary  
2 residence, and his or her business address, (3) attaches a copy of the Expert's current resume,  
3 (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom  
4 the Expert has received compensation or funding for work in his or her areas of expertise or to  
5 whom the expert has provided professional services, including in connection with a litigation, at  
6 any time during the preceding five years,<sup>1</sup> and (6) identifies (by name and number of the case,  
7 filing date, and location of court) any litigation in connection with which the Expert has offered  
8 expert testimony, including through a declaration, report, or testimony at a deposition or trial,  
9 during the preceding five years.

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

15 (c) A Party that receives a timely written objection must meet and confer with the  
16 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
17 agreement within seven days of the written objection. If no agreement is reached, the Party  
18 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
19 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
20 seeking permission from the court to do so. Any such motion must describe the circumstances  
21 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel  
22 or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,  
23 and suggest any additional means that could be used to reduce that risk. In addition, any such  
24 motion must be accompanied by a competent declaration describing the parties' efforts to  
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26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party,  
27 then the Expert should provide whatever information the Expert believes can be disclosed without  
28 violating any confidentiality 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 resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
2 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
3 approve the disclosure.

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

#### 8 **8. PROSECUTION BAR**

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

23  
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26 \_\_\_\_\_  
27 <sup>2</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings. For  
28 purposes of this provision, however, prosecution does not include representing Fujitsu or any party  
challenging the patent in connection with reexamination proceedings relating to the patent-in-suit.

1     **9.     SOURCE CODE**

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

5           (b)     Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
6     CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
7     ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in  
8     Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY  
9     CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth  
10    in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel. Designated House  
11    Counsel shall be entitled to access to derivative materials that include “HIGHLY  
12    CONFIDENTIAL – SOURCE CODE” information such as infringement contentions, expert  
13    reports, motions and exhibits, but shall not otherwise be allowed access to “HIGHLY  
14    CONFIDENTIAL – SOURCE CODE.”

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

24          (d)     The Receiving Party may request paper copies of limited portions of source code  
25    that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
26    other papers, or for deposition or trial, but shall not request paper copies for the purposes of  
27    reviewing the source code other than electronically as set forth in paragraph (c) in the first  
28    instance. The Producing Party shall provide all such source code in paper form including bates



1 numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party  
2 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
3 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
4 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute  
5 resolution.

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

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

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

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

24 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
25 the other litigation that some or all of the material covered by the subpoena or order is subject to  
26 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
27 and  
28

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
2 Designating Party whose Protected Material may be affected.<sup>3</sup>

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-Party in  
15 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 produce a Non-  
21 Party’s confidential information in its possession, and the Party is subject to an agreement with  
22 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

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

26 \_\_\_\_\_  
27 <sup>3</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                   2.       promptly provide the Non-Party with a copy of the Stipulated Protective  
2 Order in this litigation, the relevant discovery request(s), and a reasonably specific description  
3 of the information requested; and

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

6           (c)     If the Non-Party fails to object or seek a protective order from this court within  
7 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  
9 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
10 information in its possession or control that is subject to the confidentiality agreement with the  
11 Non-Party before a determination by the court.<sup>4</sup> Absent a court order to the contrary, the Non-  
12 Party shall bear the burden and expense of seeking protection in this court of its Protected  
13 Material.

14 **12.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

22 **13.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
23 **PROTECTED MATERIAL**

24           When a Producing Party gives notice to Receiving Parties that certain inadvertently  
25 produced material is subject to a claim of privilege or other protection, the obligations of the

26 \_\_\_\_\_  
27 <sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of  
28 a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this  
court.

1 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
2 provision is not intended to modify whatever procedure may be established in an e-discovery  
3 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
4 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of  
5 a communication or information covered by the attorney-client privilege or work product  
6 protection, the parties may incorporate their agreement in the stipulated protective order  
7 submitted to the court.

8 **14. MISCELLANEOUS**

9 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
10 seek its modification by the court in the future.

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

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

22 14.4 Filing Protected Material. Without written permission from the Designating  
23 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
24 file in the public record in this action any Protected Material. A Party that seeks to file under  
25 seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
26 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
27 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only  
28 upon a request establishing that the Protected Material at issue is privileged, protectable as a

1 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to  
2 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,  
3 then the Receiving Party may file the Protected Material in the public record pursuant to Civil  
4 Local Rule 79-5(e) unless otherwise instructed by the court.

5 **15. FINAL DISPOSITION**

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

21  
22 DATE: May 13, 2011

COVINGTON & BURLING LLP

23 By: /s/ Robert D. Fram

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DATE: May 13, 2011

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ZyXEL Communications, Inc.

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATE:    May 18, 2011                   

By: Paul S. Grewal  
The Honorable JXXXXXXXXXXXX Paul S. Grewal  
United States JXXXXXXXXXXXX  
Magistrate Judge

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

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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 in the case of *Fujitsu Limited v. Belkin International, Inc.*, et al., Case No. 10-cv-03972-LHK (PSG). 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 the 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 \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] 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/Country where sworn and signed: \_\_\_\_\_

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

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