

Exhibit D

From: Diane Hutnyan [dianehutnyan@quinnemanuel.com]
Sent: Tuesday, December 27, 2011 12:08 AM
To: 'Maselli, Samuel'
Cc: Samsung v. Apple; AppleMoFo; 'WH Apple Samsung NDCal Service'
Subject: RE: Apple v. Samsung, C.A. 11-CV-1846 (ND Cal) - Submission of Stipulated Protective Order
Attachments: 4522273_2_Apple_Samsung - SM PO for court_DCH edit (2).doc

Sam,

Hope you had a good holiday. I write regarding the draft protective order.

You had mentioned last week that Apple might be agreeable to some alternate form of "Confidential" tier, and recent events have caused us to reconsider this option and do some quick thinking about what we would actually propose in that regard.

The attached redline includes our proposal (as well as a little clean-up I found needed to be done). We believe this tier is absolutely necessary because there are many documents in both companies that do not merit the "Confidential – Attorneys' Eyes Only" designation (for example, because they are older documents, do not contain technical or other very sensitive information) but yet need some designation (because they are internal company documents that should not be made public). Neither party should be put in the position of having to seek complete de-designation of items that are confidential because they cannot litigate their case with their being designated "Confidential – Attorneys' Eyes Only." Please note that the new proposal would retain the outside-counsel-only feature, as well as the ability to show mock jurors "confidential" materials.

We also gave some careful thought to your concern about the seamless transfer of items from the ITC matters and made an adjustment to paragraph 22 that we believe eliminates those concerns. Documents deemed produced by virtue of the cross-use agreement would receive a default designation of "Confidential – Attorneys' Eyes Only" but then could be re-designated as needed using the provision in Paragraph 13.

We are still very much wanting to move forward quickly on a stipulated protective order, but cannot stipulate to the version without a confidential tier. Please review this proposal and let me know if Apple will agree to it. Certainly, if you have any questions, please call me directly so we can talk about it.

Diane

From: Maselli, Samuel [<mailto:Samuel.Maselli@wilmerhale.com>]
Sent: Friday, December 23, 2011 2:29 PM
To: Diane Hutnyan
Cc: Samsung v. Apple; 'AppleMoFo'; WH Apple Samsung NDCal Service
Subject: FW: Apple v. Samsung, C.A. 11-CV-1846 (ND Cal) - Submission of Stipulated Protective Order

Diane,

Please let us know if we have your approval to proceed with filing of the attached Agreed Upon Protective Order.

We would like to get the Protective Order on file today, if at all possible.

Thanks for your time.

Regards,

Sam Maselli

Samuel Maselli | WilmerHale

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sam.maselli@wilmerhale.com

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From: Maselli, Samuel

Sent: Thursday, December 22, 2011 12:15 PM

To: Diane Hutnyan

Cc: 'Samsungv.Apple@quinnemanuel.com'; 'AppleMoFo'; WH Apple Samsung NDCal Service

Subject: Apple v. Samsung, C.A. 11-CV-1846 (ND Cal) - Submission of Stipulated Protective Order

Diane,

Further to our meet-and-confer call held yesterday, December 21, attached please find a clean and formatted copy of the Agreed Upon Protective Order Regarding the Use and Disclosure of Discovery Materials. As discussed during our call, you will note that I added signature blocks for the respective parties, as well as a signature line for Judge Koh. Also attached please find a brief cover letter to the Protective Order for purposes of submission.

Please let me know at your earliest convenience if we have your approval to proceed with submission.

Regards,

Sam Maselli

Samuel Maselli | WilmerHale

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1 **UNITED STATES DISTRICT COURT**
2 **NORTHERN DISTRICT OF CALIFORNIA**
3 **SAN JOSE DIVISION**

4 APPLE INC., a California corporation,

5 Plaintiffs,

6 vs.

7 SAMSUNG ELECTRONICS CO., LTD., a
8 Korean business entity, SAMSUNG
9 ELECTRONICS AMERICA, INC., a New
10 York corporation, and SAMSUNG
11 TELECOMMUNICATIONS AMERICA,
12 LLC, a Delaware limited liability company,

13 Defendants.

14 SAMSUNG ELECTRONICS CO., LTD., a
15 Korean business entity, SAMSUNG
16 ELECTRONICS AMERICA, INC., a New
17 York corporation, and SAMSUNG
18 TELECOMMUNICATIONS AMERICA,
19 LLC, a Delaware limited liability company, a
20 California corporation,

21 Counterclaim-Plaintiff,

22 v.

23 APPLE INC., a California corporation,

24 Counterclaim-Defendants.
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27

Civil Action No. 11-CV-01846-LHK

**AGREED UPON PROTECTIVE ORDER
REGARDING DISCLOSURE AND USE
OF DISCOVERY MATERIALS**

28 02198.51855/4522273.2

AGREED UPON PROTECTIVE ORDER
REGARDING DISCLOSURE AND
USE OF DISCOVERY MATERIALS
Case No. 11-cv-01846 (LHK)

1 **AGREED UPON PROTECTIVE ORDER**
2 **REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS**

3 Plaintiff and counterclaim-defendant Apple Inc. ("Apple") and defendants and
4 counterclaim-plaintiffs Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and
5 Samsung Telecommunications America, LLC (collectively, "Samsung") (collectively referred to
6 herein as the "Parties") anticipate that documents, testimony, or information containing or
7 reflecting confidential, proprietary, trade secret, and/or commercially sensitive information
8 are likely to be disclosed or produced during the course of discovery, initial disclosures, and
9 supplemental disclosures in this case and request that the Court enter this Order setting forth
10 the conditions for treating, obtaining, and using such information.
11

12 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds
13 good cause for the following Agreed Protective Order Regarding the Disclosure and Use of
14 Discovery Materials ("Order" or "Protective Order").
15

16 1. **PURPOSES AND LIMITATIONS**

17 (a) Unless otherwise agreed by the parties, Protected Material designated
18 under the terms of this Protective Order shall be used by a Receiving Party solely for this case,
19 and shall not be used directly or indirectly for any other purpose whatsoever.

20 (b) The Parties acknowledge that this Order does not confer blanket
21 protections on all disclosures during discovery, or in the course of making initial or supplemental
22 disclosures under Rule 26(a). Designations under this Order shall be made with care and shall
23 not be made absent a good faith belief that the designated material satisfies the criteria set forth
24 below. If it comes to a Producing Party's attention that designated material does not qualify for
25 protection at all, or does not qualify for the level of protection initially asserted, the Producing
26 Party must promptly notify all other Parties that it is withdrawing or changing the designation.
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1 2. **DEFINITIONS**

2 (a) “Discovery Material” means all items or information, including from any
3 non-party, regardless of the medium or manner generated, stored, or maintained (including,
4 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or
5 generated in connection with discovery or Rule 26(a) disclosures in this case.
6

7 (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings
8 as counsel for a Party, (ii) partners and associates of such counsel to whom it is reasonably
9 necessary to disclose the information for this litigation, and their paralegals and support staff,
10 and (iii) outside, independent attorneys contracted to provide legal advice to a Party in
11 connection with this action.

12 (c) “Patents-in-suit” means U.S. Patents Nos. 7,812,828; 6,493,002;
13 7,469,381; 7,844,915; 7,853,891; 7,663,607; 7,864,163; 7,920,129; D627,790; D617,334;
14 D604,305; D593,087; D618,677; D622,270; D504,889; 6,928,604; 7,050,410; 7,069,055;
15 7,079,871; 7,200,792; 7,362,867; 7,386,001; 7,447,516; 7,456,893; 7,577,460; 7,675,941; and
16 7,698,711 and any other patent asserted in this action, as well as any related patents, patent
17 applications, provisional patent applications, continuations, and/or divisionals.
18

19 (d) “Party” means any party to this case, including all of its officers, directors,
20 employees, consultants, retained experts, and outside counsel and their support staffs.
21

22 (e) “Producing Party” means any Party or non-party entity that discloses or
23 produces any Discovery Material in this case.

24 (f) “Protected Material” means any Discovery Material that is designated as
25 “CONFIDENTIAL.” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or
26

1 “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE,” as provided
2 for in this Order.

3 (g) “Receiving Party” means any Party who receives Discovery Material from
4 a Producing Party.

5 (h) “Source Code” means confidential and proprietary computer code, scripts,
6 assembly, object code, source code listings and descriptions of source code, object code listings
7 and descriptions of object code, and Hardware Description Language (HDL) or Register Transfer
8 Level (RTL) files that describe the hardware design of any application-specific integrated circuit
9 (ASIC) or other chip.

10
11 3. **COMPUTATION OF TIME**

12 The computation of any period of time prescribed or allowed by this Order shall
13 be governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

14
15 4. **SCOPE**

16 (a) The protections conferred by this Order cover not only Discovery Material
17 governed by this Order as addressed herein, but also any information copied or extracted
18 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
19 conversations, or presentations by Parties or their counsel in court or in other settings that might
20 reveal Protected Material.

21
22 (b) Nothing in this Protective Order shall prevent or restrict a Producing
23 Party’s own disclosure or use of its own Discovery Material for any purpose, and nothing in this
24 Order shall preclude any Producing Party from showing its Discovery Material to an individual
25 who prepared the Discovery Material.
26

1 (c) Nothing in this Order shall be construed to prejudice any Party's right to
2 use any Protected Material in court or in any court filing with consent of the Producing Party or
3 by order of the Court.

4 (d) This Order is without prejudice to the right of any Party to seek further or
5 additional protection of any Discovery Material or to modify this Order in any way, including,
6 without limitation, an order that certain matter not be produced at all.
7

8 5. **DURATION**

9 Even after the termination of this case, and unless otherwise indicated in this
10 Order, the confidentiality obligations imposed by this Order shall remain in effect until a
11 Producing Party agrees otherwise in writing or an order from this Court otherwise directs.
12

13 6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

14 (a) Basic Principles. All Protected Material shall be used solely for this case
15 or any related appellate proceeding, and not for any other purpose whatsoever, including without
16 limitation any other litigation, patent prosecution or acquisition, patent reexamination or reissue
17 proceedings, or any business or competitive purpose or function, except as expressly provided
18 herein. Protected Material shall not voluntarily be distributed, disclosed or made available to
19 anyone except as expressly provided in this Order.
20

21 (b) Patent Prosecution Bar. Absent the written consent of the Producing
22 Party, anyone who receives one or more items designated "CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY" or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE
24 CODE" shall not be involved, directly or indirectly, in any of the following activities: advising
25 on, consulting on, preparing, prosecuting, drafting, editing, and/or amending of patent
26 applications (whether for design or utility patents), specifications, claims, and/or responses to
27

1 office actions, or otherwise affecting the disclosure in patent applications or specifications or the
2 scope of claims in patents or patent applications relating to the subject matter of the patents-in-
3 suit before any foreign or domestic agency, including the United States Patent and Trademark
4 Office. These prohibitions are not intended to and shall not preclude (i) participating in or
5 advising on any reexamination or reissue proceeding by Samsung's Outside Counsel with respect
6 to any patents in which Apple has any interest, or participating in or advising on any
7 reexamination or reissue proceeding (except for participating in or advising on, directly or
8 indirectly, claim drafting or amending claims) by Apple's Outside Counsel with respect to any
9 patents in which Apple has any interest; and (ii) participating in or advising on any
10 reexamination or reissue proceeding by Apple's Outside Counsel with respect to any patents in
11 which Samsung has any interest, or participating in or advising on any reexamination or reissue
12 proceeding (except for participating in or advising on, directly or indirectly, claim drafting or
13 amending claims) by Samsung's Outside Counsel with respect to any patents in which Samsung
14 has any interest.

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17 (c) The prohibitions in Paragraph 6(b) shall begin when access to
18 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL – OUTSIDE
19 ATTORNEYS' EYES ONLY – SOURCE CODE" materials are first received by the affected
20 individual, and shall end two (2) years after the final resolution of this action, including all
21 appeals.

23 (d) Secure Storage. Protected Material must be stored and maintained by a
24 Receiving Party at a location and in a secure manner that ensures that access is limited to the
25 persons authorized under this Order.

1 (e) Legal Advice Based on Protected Material. Nothing in this Protective
2 Order shall be construed to prevent counsel from advising their clients with respect to this case
3 based in whole or in part upon Protected Materials, provided counsel does not disclose the
4 Protected Materials themselves, the content of those Protected Materials, or the fact of those
5 particular Protected Materials' existence except as provided in this Order.
6

7 (f) Limitations. Nothing in this Order shall restrict in any way a Producing
8 Party's use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any
9 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become
10 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or
11 known to the Receiving Party independent of the Producing Party; (iii) previously produced,
12 disclosed and/or provided by the Producing Party to the Receiving Party or a non-party without
13 an obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the
14 Producing Party; or (v) pursuant to Order of the Court. Notwithstanding the foregoing, a
15 Producing Party may not disclose its own Protected Material to the extent such Protected
16 Material is also the Protected Material of any other party (e.g., settlement discussions and
17 agreements containing confidentiality obligations), without the prior written consent of such
18 other party, unless compelled to do so by a Court of competent jurisdiction.
19

20
21 7. **DESIGNATING PROTECTED MATERIAL**

22 (a) Available Designations. Any Producing Party may designate Discovery
23 Material with any of the following designations, provided that it meets the requirements for such
24 designations as provided for herein: "CONFIDENTIAL," "CONFIDENTIAL - ATTORNEYS'
25 EYES ONLY," or "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE
26 CODE."
27

1 (b) Written Discovery and Documents and Tangible Things. Written
2 discovery, documents (which include “electronically stored information,” as that phrase is used
3 in Federal Rule of Procedure 34), and tangible things that meet the requirements for the
4 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the
5 appropriate designation on every page of the written material prior to production. For digital
6 files being produced, the Producing Party may mark each viewable page or image with the
7 appropriate designation, and mark the medium, container, and/or communication in which the
8 digital files were contained. In the event that original documents are produced for inspection, the
9 original documents shall be presumed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 during the inspection and re-designated, as appropriate during the copying process.
11

12 (c) Depositions and Testimony. Parties or testifying persons or entities may
13 designate depositions and other testimony with the appropriate designation by indicating on the
14 record at the time the testimony is given or by sending written notice of how portions of the
15 transcript of the testimony are designated within twenty one (21) days of receipt of the transcript
16 of the testimony. If no indication on the record is made, all information disclosed during a
17 deposition shall be deemed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time
18 within which it may be appropriately designated as provided for herein has passed. Any Party
19 that wishes to disclose the transcript that has been deemed “CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY” as a result of no designation having been made on the record at the time the
21 testimony was given, or information contained therein, may provide written notice of its intent to
22 treat the transcript as non-confidential, after which time, any Party that wants to maintain any
23 portion of the transcript as confidential must designate the confidential portions within fourteen
24 (14) days, or else the transcript may be treated as non-confidential. Any Protected Material that
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1 is used in the taking of a deposition shall remain subject to the provisions of this Protective Order,
2 along with the transcript pages of the deposition testimony dealing with such Protected Material.
3 In such cases the court reporter shall be informed of this Protective Order and shall be required
4 to operate in a manner consistent with this Protective Order. In the event the deposition is
5 videotaped, the original and all copies of the videotape shall be marked by the video technician
6 to indicate that the contents of the videotape are subject to this Protective Order, substantially
7 along the lines of “This videotape contains confidential testimony used in this case and is not
8 to be viewed or the contents thereof to be displayed or revealed except pursuant to the terms
9 of the operative Protective Order in this matter or pursuant to written stipulation of the
10 parties.” Counsel for any Producing Party shall have the right to exclude from oral
11 depositions, other than the deponent, deponent’s counsel, the reporter and videographer (if
12 any), any person who is not authorized by this Protective Order to receive or access Protected
13 Material based on the designation of such Protected Material. Such right of exclusion shall
14 be applicable only during periods of examination or testimony regarding such Protected
15 Material.
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18 8. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

19 (a) A Producing Party may designate Discovery Material as
20 “CONFIDENTIAL” if it contains or reflects information that qualifies for protection under
21 Federal Rule of Civil Procedure 26(c).

22 (b) Unless otherwise ordered by the Court, Discovery Material designated as
23 “CONFIDENTIAL” may be disclosed only to the following:

24 (i) The Receiving Party’s Outside Counsel;
25
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1 (ii) Outside Counsel's immediate paralegals and staff, and any copying
2 or clerical litigation support services working at the direction of such counsel, paralegals, and
3 staff;

4 (iii) Any outside expert or consultant retained by the Receiving Party to
5 assist in this action, provided that disclosure is only to the extent necessary to perform such
6 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions
7 of the Protective Order by signing a copy of Exhibit A; and (b) such expert or consultant is not
8 a current officer, director, or employee of a Party, nor anticipated at the time of retention to
9 become an officer, director or employee of a Party;

10 (iv) Court reporters, stenographers and videographers retained to
11 record testimony taken in this action;

12 (v) The Court, jury, and court personnel;

13 (vi) Document processing and hosting vendors, and graphics,
14 translation, design, and/or trial consulting services, having first agreed to be bound by the
15 provisions of the Protective Order by signing a copy of Exhibit A;

16 (vii) Mock jurors who have signed an undertaking or agreement
17 agreeing not to publicly disclose Protected Material and to keep any information concerning
18 Protected Material confidential;

19 (viii) Any mediator who is assigned to hear this matter, and his or her
20 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
21 Protective Order; and

22 (ix) Any other person with the prior written consent of the Producing
23 Party or by Order of this Court,

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1 9. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY”

3 (a) A Producing Party may designate Discovery Material as
4 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is
5 confidential and/or, proprietary, trade secret, and/or commercially sensitive. The Parties agree
6 that at least the following information, if non-public, shall be presumed to merit the
7 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing
8 information, financial data, sales information, sales or marketing forecasts or plans, business
9 plans, sales or marketing strategy, cost information, licensing of the Producing Party’s
10 intellectual property, product development information, engineering documents, testing
11 documents, employee information, and other non-public information of similar competitive and
12 business sensitivity.
13

14 (b) Unless otherwise ordered by the Court, Discovery Material designated as
15 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:
16

17 (i) The Receiving Party’s Outside Counsel, except that unless
18 otherwise agreed no Outside Counsel who is involved in competitive decision-making¹, as
19 defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), shall have
20 access to Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”;
21

22 (ii) Outside Counsel’s immediate paralegals and staff, and any copying
23 or clerical litigation support services working at the direction of such counsel, paralegals, and
24 staff;
25

26 ¹ For the absence of doubt, for the purposes of this Protective Order, “competitive
27 decision-making” shall not include duties traditionally performed by outside counsel with respect
28 to advising the Parties regarding this or other litigation.

1 (iii) Any outside expert or consultant retained by the Receiving Party to
2 assist in this action, provided that disclosure is only to the extent necessary to perform such
3 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions
4 of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a
5 current officer, director, or employee of a Party or of a competitor of a Party with respect to the
6 subject matter of the patents-in-suit, nor anticipated at the time of retention to become an officer,
7 director, or employee of a Party or of a competitor of a Party with respect to the subject matter of
8 the patents-in-suit; (c) such expert or consultant is not involved in competitive decision-making,
9 as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of
10 a Party or a competitor of a Party with respect to the subject matter of the patents-in-suit; and (d)
11 no unresolved objections to such disclosure exist after proper notice has been given to all Parties
12 as set forth in Paragraph 12 below;

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15 (iv) Court reporters, stenographers and videographers retained to
16 record testimony taken in this action;

17 (v) The Court, jury, and court personnel;

18 (vi) Document processing and hosting vendors, and graphics,
19 translation, design, and/or trial consulting services, having first agreed to be bound by the
20 provisions of the Protective Order by signing a copy of Exhibit A;

21 (vii) Any mediator who is assigned to hear this matter, and his or her
22 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
23 Protective Order; and
24

1 (viii) Any other person with the prior written consent of the Producing
2 Party or by order of this Court.

3 10. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –**
4 **OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”**

5
6 (a) To the extent production of Source Code becomes necessary to the
7 prosecution or defense of the case, a Producing Party may designate Source Code as
8 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” if it
9 comprises or includes confidential, proprietary, and/or trade secret Source Code.

10
11 (b) Nothing in this Order shall be construed as a representation or admission
12 that Source Code is properly discoverable in this action, or to obligate any Party to produce any
13 Source Code.

14 (c) Unless otherwise ordered by the Court, Discovery Material designated as
15 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” shall be
16 subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject to
17 Paragraph 11 below, solely to:

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18
19 (i) The Receiving Party’s Outside Counsel, except that unless
20 otherwise agreed no Outside Counsel who is involved in competitive decision-making, as
21 defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), shall have
22 access to Discovery Material designated as “CONFIDENTIAL – OUTSIDE ATTORNEYS’
23 EYES ONLY - SOURCE CODE”;

24 (ii) Outside Counsel’s immediate paralegals and staff, and any copying
25 or clerical litigation support services working at the direction of such counsel, paralegals, and
26 staff;
27

1 (iii) Any outside expert or consultant retained by the Receiving Party to
2 assist in this action, provided that disclosure is only to the extent necessary to perform such
3 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions
4 of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a
5 current officer, director, or employee of a Party or of a competitor of a Party with respect to the
6 subject matter of the patents-in-suit, nor anticipated at the time of retention to become an officer,
7 director or employee of a Party or of a competitor of a Party with respect to the subject matter of
8 the patents-in-suit; (c) such expert or consultant is not involved in competitive decision-making,
9 as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of
10 a Party or a competitor of a Party with respect to the subject matter of the patents-in-suit; and (d)
11 no unresolved objections to such disclosure exist after proper notice has been given to all Parties
12 as set forth in Paragraph 12 below;

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15 (iv) Court reporters, stenographers and videographers retained to
16 record testimony taken in this action;

17 (v) The Court, jury, and court personnel;

18 (vi) Any mediator who is assigned to hear this matter, and his or her
19 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
20 Protective Order; and

21 (vii) Any other person with the prior written consent of the Producing
22 Party or by order of this Court.
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1 11. **DISCLOSURE AND REVIEW OF SOURCE CODE**

2 (a) The following provisions apply to the production of Source Code that is
3 designated “[PRODUCING PARTY’S] CONFIDENTIAL— OUTSIDE ATTORNEYS’ EYES
4 ONLY — SOURCE CODE,” unless otherwise agreed by the Producing Party:

5 (b) All Source Code shall be made available by the Producing Party to the
6 Receiving Party in a secure room, on at least two secured, stand-alone computers (running a
7 reasonably current operating system) per software platform produced, without Internet access or
8 network access to other computers, as necessary and appropriate to prevent and protect against
9 any unauthorized copying, transmission, removal, or other transfer of any Source Code outside
10 or away from the computer on which the Source Code is provided for inspection (hereinafter
11 “Confidential Source Code Computer”). If it should be necessary, the Confidential Source Code
12 Computer may be configured by the Producing Party to run other mutually agreed upon
13 operating systems. Except as otherwise authorized by the Producing Party, no more than a total
14 of 25 individuals identified by the Receiving Party shall have access to the secure room in which
15 the Producing Party produces its Source Code.
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18 (c) The Producing Party shall install tools that are sufficient for viewing and
19 searching the code produced, on the platform produced, if such tools exist and are presently used
20 in the ordinary course of the Producing Party’s business. The Receiving Party’s outside counsel
21 and/or experts may request that commercially available software tools for viewing and searching
22 Source Code be installed on the secured computer, provided, however, that (a) the Receiving
23 Party possesses an appropriate license to such software tools; (b) the Producing Party approves
24 such software tools; and (c) such other software tools are reasonably necessary for the Receiving
25 Party to perform its review of the Source Code consistent with all of the protections herein. The
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1 Receiving Party must provide the Producing Party with the CD or DVD containing such licensed
2 software tool(s) at least fourteen (14) days in advance of the date upon which the Receiving
3 Party wishes to have the additional software tools available for use on the Confidential Source
4 Code Computer. Specific tools may include but are not limited to: Visual Slick Edit, Source-
5 Navigator, PowerGrep, and ExamDiff Pro, or other similar programs. The Receiving Party shall
6 not at any time use any compilers, interpreters or simulators in connection with the Producing
7 Party's Source Code.
8

9 (d) The Producing Party shall make the Source Code available electronically
10 and in text searchable form in a secure room at the offices of the Producing Party's outside
11 counsel as defined in paragraph 2(b) or any other location mutually agreed by the parties.
12

13 (e) In order to verify that its Source Code has not later been altered, the
14 Producing Party may benchmark the materials before and after they are provided but shall not
15 install any keystroke or other monitoring software on the Confidential Source Code Computer.
16

17 (f) The Confidential Source Code Computer shall be made available from
18 9:00 a.m. to 7:00 p.m. local time, Monday through Friday (excluding holidays), and other days
19 and/or times, including weekends, upon reasonable request at least until the close of expert
20 discovery in this action. Access on weekends or after hours shall be permitted only on three
21 days' advance written notice.

22 (g) Prior to the first inspection of any requested piece of Source Code, the
23 requesting party shall provide fourteen (14) days notice of the Source Code that it wishes to
24 inspect. The requesting party shall provide two (2) days notice prior to any additional
25 inspections of the same Source Code, although the parties will be reasonable in accommodating
26 requests of less than two (2) days. The Receiving Party shall identify any individual who will be
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1 given access to the Source Code at least ten (10) days prior to the first time any such individual
2 is given access to the Source Code, and, during that 10-day period, the Producing Party may
3 object to providing access to any persons so identified. The Receiving Party shall provide two (2)
4 days notice any time each such individual is given access to the Source Code after the first time,
5 although the parties will be reasonable in accommodating notice of less than two (2) days. If an
6 objection to an individual is made by the Producing Party, it will be the burden of the Producing
7 Party to prove that the individual should not be authorized to inspect the Producing Party's
8 Source Code.
9

10 (h) Proper identification of all authorized persons shall be provided prior to
11 any access to the secure room or to the Confidential Source Code Computer. Proper
12 identification requires showing, at a minimum, a photo identification card sanctioned by the
13 government of any State of the United States, by the government of the United States, or by the
14 nation state of the authorized person's current citizenship. Access to the secure room or the
15 Confidential Source Code Computer may be denied, at the discretion of the Producing Party, to
16 any individual who fails to provide proper identification.
17

18 (i) The Confidential Source Code Computer shall be equipped with a printer
19 with commercially reasonable printing speeds to print copies of the Source Code on
20 watermarked pre-Bates numbered paper, which shall be provided by the Producing Party. The
21 Receiving Party may print limited portions of the Source Code only when reasonably necessary
22 to facilitate the Receiving Party's preparation of court filings, expert reports, and trial exhibits,
23 and shall print only such portions as are relevant to the claims and defenses in the case and are
24 reasonably necessary for such purpose. The Receiving Party shall not print Source Code in order
25 to review blocks of Source Code elsewhere in the first instance, *i.e.*, as an alternative to
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1 reviewing that Source Code electronically on the Confidential Source Code Computer, as the
2 parties acknowledge and agree that the purpose of the protections herein would be frustrated by
3 printing portions of code for review and analysis elsewhere. If the Producing Party objects that
4 the printed portions are excessive and/or not done for a permitted purpose, the Producing Party
5 shall make such objection known to the Receiving Party within five (5) days. Printed portions
6 which exceed 50 continuous pages or 10% or more of a specific software release shall be
7 presumed excessive and not done for a permitted purpose. If, after meeting and conferring, the
8 Producing Party and the Receiving Party cannot resolve the objection, the Receiving Party shall
9 be entitled to seek the Court's resolution of whether the printed Source Code in question is
10 narrowly tailored and was printed for a permitted purpose. The burden shall be on the Receiving
11 Party to demonstrate that such printed portions are no more than is reasonably necessary for a
12 permitted purpose and not merely printed for the purposes of review and analysis elsewhere.
13 Except as otherwise authorized by the Producing Party, no more than a total of 40 individuals
14 identified by the Receiving Party shall have access to the printed portions of Source Code
15 (except insofar as such code appears in any filing with the Court or expert report in this case).

16 (j) The printed Source Code shall be labeled with "[PRODUCING
17 PARTY'S NAME] CONFIDENTIAL— OUTSIDE ATTORNEYS' EYES ONLY — SOURCE
18 CODE." Outside counsel for the Producing Party will keep the originals of these printed
19 documents, and copies shall be made for outside counsel for the Receiving Party on watermarked
20 paper within 48 hours. It is the responsibility of the Producing Party to ensure delivery of the
21 printed documents to outside counsel for the Receiving Party within 48 hours. The Receiving
22 Party's outside counsel may make no more than ten (10) additional paper copies of any portions
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1 of the Source Code received from a Producing Party, not including copies attached to court
2 filings or used at depositions.

3 (k) In addition to other reasonable steps to maintain the security and
4 confidentiality of the Producing Party's Source Code, printed copies of the Source Code
5 maintained by the Receiving Party must be kept in a locked storage container when not in use.
6 No electronic copies of the Source Code shall be provided by the Producing Party beyond the
7 Confidential Source Code Computer.
8

9 (l) Except as provided herein, absent express written permission from the
10 Producing Party, the Receiving Party may not create electronic images, or any other images, or
11 make electronic copies, of the Source Code from any paper copy of Source Code for use in any
12 manner (including, by way of example only, the Receiving Party may not scan the Source Code
13 to a PDF or photograph the code). Images or copies of Source Code shall not be included in
14 correspondence between the parties (references to production numbers shall be used instead),
15 and shall be omitted from pleadings and other papers whenever possible. If a party reasonably
16 believes that it needs to submit a portion of Source Code as part of a filing with the Court, the
17 parties shall meet and confer as to how to make such a filing while protecting the confidentiality
18 of the Source Code and such filing will not be made absent agreement from the supplier that the
19 confidentiality protections will be adequate. If a Producing Party agrees to produce an electronic
20 copy of all or any portion of its Source Code or to provide written permission to the Receiving
21 Party to produce an electronic or any other copy of Source Code for purposes of a court filing,
22 the Receiving Party's communication and/or disclosure of electronic files or other materials
23 containing any portion of Source Code (paper or electronic) shall at all times be limited solely to
24 individuals who are expressly authorized to view Source Code under the provisions of this
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1 Order, and all such individuals must be identified, in accordance with paragraph 11(q), on the
2 Confidential Source Code Access Log as reviewers and/or recipients of paper copies. In the case
3 where the Producing Party has provided the express written permission required under this
4 provision for a Receiving Party to create electronic copies of Source Code, the electronic copies
5 shall be included on the log required by paragraph 11(q); and any other information required by
6 paragraph 11(q) shall be included on the log. Additionally, any such electronic copies must be
7 labeled “[PRODUCING PARTY’S NAME] CONFIDENTIAL — OUTSIDE ATTORNEYS’
8 EYES ONLY — SOURCE CODE” as provided for in this Order.
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10 (m) For depositions, the Receiving Party shall not bring copies of any printed
11 Source Code. Rather, at least five (5) days before the date of the deposition, the Receiving Party
12 shall notify the Producing Party about the specific portions of Source Code it wishes to use at the
13 deposition, and the Producing Party shall bring printed copies of those portions to the deposition
14 for use by the Receiving Party. Copies of Source Code that are marked as deposition exhibits
15 shall not be provided to the court reporter or attached to deposition transcripts; rather, the
16 deposition record will identify the exhibit by its production numbers. All paper copies of Source
17 Code brought to the deposition shall be returned to the Producing Party and securely destroyed in
18 a timely manner following the deposition.
19

20 (n) Other than the Confidential Source Code Computer and printer provided
21 by the Producing Party, no electronic devices, including but not limited to laptops, floppy drives,
22 zip drives or other hardware, shall be permitted in the secure room. Nor shall any cellular
23 telephones, personal digital assistants, Blackberries, cameras, voice recorders, Dictaphones,
24 telephone jacks, or other devices be permitted inside the secure room. No non-electronic devices
25 capable of similar functionality shall be permitted in the secure room. The Receiving Party shall
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1 be entitled to take notes relating to the Source Code but may not copy the Source Code into the
2 notes and may not take such notes electronically on the Confidential Source Code Computer
3 itself or any other computer. No copies of all or any portion of the Source Code may leave the
4 room in which the Source Code is inspected except as otherwise provided herein. Further, no
5 other written or electronic record of the Source Code is permitted except as otherwise provided
6 herein. The Producing Party may visually monitor the activities of the Receiving Party's
7 representatives during any Source Code review, but only to ensure that no unauthorized records
8 of the Source Code and no information concerning the Source Code are being created or
9 transmitted in any way.

11 (o) Other than as provided in paragraph 11(n), the Receiving Party will not
12 copy, remove, or otherwise transfer any Source Code from the Confidential Source Code
13 Computer including, without limitation, copying, removing, or transferring the Source Code onto
14 any recordable media or recordable device, including without limitation sound recorders,
15 computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any
16 kind. The Receiving Party will not transmit any Source Code in any way from the Producing
17 Party's facilities or the offices of the Producing Party's outside counsel.

19 (p) Unless otherwise agreed in advance by the parties in writing, following
20 each day on which inspection of Source Code is done under this Order, the Receiving Party's
21 outside counsel and/or experts shall remove all notes, documents, and all other materials from
22 the secure room. The Producing Party shall not be responsible for any items left in the room
23 following each inspection session, and the Receiving Party shall have no expectation of
24 confidentiality for any items left in the room following each inspection session without a prior
25 agreement to that effect.

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1 (q) The Receiving Party shall maintain a Confidential Source Code Access
2 Log identifying each hard copy (or electronic copy as permitted by paragraph 11(l)) of Source
3 Code that it has in its possession and, for each and every time the hard copy (or electronic copy
4 as permitted by paragraph 11(l) of the Source Code is viewed, the following additional
5 information: (i) the name of each person who viewed the Source Code; and (ii) whether any
6 portion of the Source Code was copied and, if so, what portion was copied. The Producing Party
7 shall be entitled to a copy of the log upon one (1) day's advance notice to the Receiving Party.
8 Within thirty (30) days after the issuance of a final, non-appealable decision resolving all issues
9 in the above-captioned action, the Receiving Party must serve upon the Producing Party the
10 Confidential Source Code Access Log. Additionally, within thirty (30) days after the issuance of
11 a final, non-appealable decision resolving all issues in the action, all persons to whom the paper
12 copies of the Source Code were provided must certify in writing that all copies of the Source
13 Code were returned to Counsel of Record for the Producing Party and that they will make no use
14 of the Source Code or of any knowledge gained from the Source Code in any future endeavor.
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17 (r) Nothing herein shall be deemed a waiver of a party's right to object to the
18 production of Source Code. Absent a subsequent and specific court or agency order, nothing
19 herein shall obligate a party to breach any non-party license agreement relating to such Source
20 Code.
21

22 (s) The parties further acknowledge that some or all of the Source Code may
23 be owned by non-parties and not in a party's possession, custody, or control. Nothing herein
24 shall be deemed a waiver of any non-party's right to object to the production of Source Code or
25 object to the manner of any such production.
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1 (t) Any consultant or expert retained on behalf of a Receiving Party who is
2 to be given access to a Producing Party's Source Code — whether in electronic form or
3 otherwise — must agree in writing not to use the accessed code to write source code directly
4 intended for commercial purposes relating to the technology at issue in this action for a period of
5 six (6) months after the issuance of a final, non-appealable decision resolving all issues in the
6 action. This shall not preclude such consultants and experts from any academic work or
7 consulting in future litigation, so long as such consulting does not involve writing source code
8 directly intended for commercial purposes relating to the technology at issue in this action.
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10 12. **NOTICE OF DISCLOSURE**

11 (a) Prior to disclosing any Protected Material to any person described in
12 Paragraphs ~~9(b)(iii) or 10(c)(iii)~~ (referenced below as “Person”), the Party seeking to disclose
13 such information shall provide the Producing Party with written notice that includes: (i) the name
14 of the Person; (ii) the present employer and title of the Person; (iii) an identification of all of the
15 Person’s past or current employment or consulting relationships, including direct relationships
16 and relationships through entities owned or controlled by the Person, within the last five (5)
17 years; (iv) an up-to-date curriculum vitae of the Person; and (v) a list of the cases in which the
18 Person has testified at deposition or trial within the last five (5) years. Said written notice shall
19 include an identification of any individual or entity with or for whom the person is employed or
20 to whom the person provides consulting services relating to the design, development, operation,
21 or patenting of mobile phones and tablet computers, or relating to the acquisition of intellectual
22 property assets relating to mobile phones and tablet computers. The Party seeking to disclose
23 Protected Material shall provide such other information regarding the Person’s professional
24 activities reasonably requested by the Producing Party for it to evaluate whether good cause
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1 exists to object to the disclosure of Protected Material to the outside expert or consultant. During
2 the pendency of this action, including all appeals, the Party seeking to disclose Protected
3 Material shall immediately provide written notice of any change with respect to the Person's
4 involvement in the design, development, operation or patenting of mobile phones and tablet
5 computers, or the acquisition of intellectual property assets relating to mobile phones and tablet
6 computers.
7

8 (b) Within seven (7) days of receipt of the disclosure of the Person, the
9 Producing Party or Parties may object in writing to disclosure to the Person for good cause. In
10 the absence of an objection at the end of the seven (7) day period, the Person shall be deemed
11 approved under this Protective Order. There shall be no disclosure of Protected Material to the
12 Person prior to expiration of this seven (7) day period. If the Producing Party objects to
13 disclosure to the Person within such seven (7) day period, the Parties shall meet and confer via
14 telephone or in person within seven (7) days following the objection and attempt in good faith to
15 resolve the dispute on an informal basis. If the dispute is not resolved, the Party objecting to the
16 disclosure will have seven (7) days from the date of the meet and confer to seek relief from the
17 Court. If relief is not sought from the Court within that time, the objection shall be deemed
18 withdrawn. If relief is sought, designated materials shall not be disclosed to the Person in
19 question until the Court resolves the objection.
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22 (c) For purposes of this section, "good cause" shall include an objectively
23 reasonable concern that the Person will, advertently or inadvertently, use or disclose Discovery
24 Materials in a way or ways that are inconsistent with the provisions contained in this Order.
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1 (d) Prior to receiving any Protected Material under this Order, the Person
2 must execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and
3 serve it on all Parties.

4 (e) An initial failure to object to a Person under this Paragraph 12 shall not
5 preclude the non-objecting Party from later objecting to continued access to Protected Material
6 by that Person based on new facts or circumstances for good cause shown. In this event, a Party
7 must make a written objection to the other Party concerning the continued access of Protected
8 Material by that Person, and the Parties must meet and confer in good faith concerning such
9 objection. To the extent that the objection is unable to be resolved, the later-objecting Party must
10 present its objection to the Court for resolution within no later than five (5) days of making such
11 objection. Notwithstanding such objection, the designated Person may continue to have access
12 to Protected Material until judicial resolution of the objection.
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15 13. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

16 (a) A Party shall not be obligated to challenge the propriety of any
17 designation of Discovery Material under this Order at the time the designation is made, and a
18 failure to do so shall not preclude a subsequent challenge thereto.

19 (b) Any challenge to a designation of Discovery Material under this Order
20 shall be written, shall be served on outside counsel for the Producing Party, shall particularly
21 identify the documents or information that the Receiving Party contends should be differently
22 designated, and shall state the grounds for the objection. Thereafter, further protection of such
23 material shall be resolved in accordance with the following procedures:
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25 (i) The objecting Party shall have the burden of conferring either in
26 person, in writing, or by telephone with the Producing Party claiming protection (as well as any
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1 other interested party) in a good faith effort to resolve the dispute. The Producing Party shall
2 have the burden of justifying the disputed designation;

3 (ii) Failing agreement, the Receiving Party may bring a motion to the
4 Court for a ruling that the Discovery Material in question is not entitled to the status and
5 protection of the Producing Party's designation. The Parties' entry into this Order shall not
6 preclude or prejudice either Party from arguing for or against any designation, establish any
7 presumption that a particular designation is valid, or alter the burden of proof that would
8 otherwise apply in a dispute over discovery or disclosure of information;

9 (iii) Notwithstanding any challenge to a designation, the Discovery
10 Material in question shall continue to be treated as designated under this Order until one of the
11 following occurs: (a) the Party who designated the Discovery Material in question withdraws
12 such designation in writing; or (b) the Court rules that the Discovery Material in question is
13 not entitled to the designation.
14

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16 14. **SUBPOENAS OR COURT ORDERS**

17 (a) If at any time Protected Material is subpoenaed by any court, arbitral,
18 administrative, or legislative body, the Party to whom the subpoena or other request is directed
19 shall immediately give prompt written notice thereof to every Party who has produced such
20 Discovery Material and to its counsel and shall provide each such Party with an opportunity to
21 move for a protective order regarding the production of Protected Materials implicated by the
22 subpoena.
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1 15. **FILING PROTECTED MATERIAL**

2 (a) Absent written permission from the Producing Party or a court Order
3 secured after appropriate notice to all interested persons, a Receiving Party may not file in the
4 public record any Protected Material.

5 (b) Any Receiving Party is authorized under Local Rule 79-5 to request the
6 filing under seal with the Court of any brief, document or materials that are designated as
7 Protected Material under this Order. Nothing in this section shall in any way limit or detract
8 from this Order's requirements as to Source Code.

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10 16. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

11 (a) The inadvertent production by a Party of Discovery Material subject to the
12 attorney-client privilege, work-product protection, or any other applicable privilege or
13 protection, despite the Producing Party's reasonable efforts to prescreen such Discovery Material
14 prior to production, will not waive the applicable privilege and/or protection if a notice and
15 request for return of such inadvertently produced Discovery Material is made promptly after the
16 Producing Party learns of its inadvertent production.

17 (b) Upon a notice and request from any Producing Party who has
18 inadvertently produced Discovery Material that it believes is privileged and/or protected, each
19 Receiving Party shall immediately return within five (5) days of such notice and request such
20 Protected Material or Discovery Material and all copies to the Producing Party, except for any
21 pages containing privileged markings by the Receiving Party which shall instead be destroyed and
22 certified as such by the Receiving Party to the Producing Party.

23 (c) Within five (5) days of the Producing Party's notice and request for the
24 return and/or destruction of privileged Discovery Material, the Producing Party shall provide a
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1 privilege log with entries for the inadvertently produced document(s). The Producing Party shall
2 maintain the referenced document(s) until the Parties resolve any dispute concerning the
3 privileged nature of such documents or the Court rules on any motion to compel production of
4 such documents. If a dispute arises concerning the privileged nature of the document(s)
5 demanded or returned, the Parties shall meet and confer in good faith in an effort to resolve the
6 dispute. If the Parties are unable to resolve the dispute, the Receiving Party may file a motion to
7 compel the production of such document(s). In the event of such a motion to compel, the
8 Producing Party shall have the burden to demonstrate the claimed privilege, work product
9 immunity or other immunity. However, in no case will the return of any demanded document be
10 delayed or refused by reason of a party's objection to the demand or by the filing of a motion to
11 compel, nor may a party assert the fact of the inadvertent production as a ground for any such
12 motion. The Parties further agree that the Receiving Party will not use or refer to any information
13 contained within the document(s) at issue, including in deposition or at trial or in any Court
14 filing, unless and until such a motion to compel production of that document is granted by a
15 Court, except as such information may appear in any applicable privilege log.
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18 17. **INADVERTENT FAILURE TO DESIGNATE PROPERLY**

19 (a) The inadvertent failure by a Producing Party to designate Discovery
20 Material as Protected Material with one of the designations provided for under this Order shall
21 not waive any such designation provided that the Producing Party notifies all Receiving Parties
22 that such Discovery Material is protected under one of the categories of this Order within
23 fourteen (14) days of the Producing Party learning of the inadvertent failure to designate. The
24 Producing Party shall reproduce the Protected Material with the correct confidentiality
25 designation within seven (7) days upon its notification to the Receiving Parties. Upon receiving
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1 the Protected Material with the correct confidentiality designation, the Receiving Parties shall
2 destroy all Discovery Material that was not designated properly.

3 (b) A Receiving Party shall not be in breach of this Order for any use of such
4 Discovery Material before the Receiving Party receives the notice described in Paragraph 17(a),
5 unless an objectively reasonable person would have realized that the Discovery Material should
6 have been appropriately designated with a confidentiality designation under this Order. Once a
7 Receiving Party has received the Protected Material with the correct confidentiality designation,
8 the Receiving Party shall treat such Discovery Material (subject to the exception in Paragraph 17(c)
9 below) at the appropriately designated level pursuant to the terms of this Order.
10

11 (c) Protected Material produced without the designation of
12 “CONFIDENTIAL.” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
13 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” may be so
14 designated subsequent to production when the Producing Party failed to make such designation
15 at the time of production through inadvertence or error. If Discovery Material is designated
16 subsequent to production, the Receiving Party promptly shall collect any copies that have been
17 provided to individuals so that they can be re-labeled with the “CONFIDENTIAL.”
18 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE
19 ATTORNEYS’ EYES ONLY – SOURCE CODE” designation. Notwithstanding the above,
20 such subsequent designation of “CONFIDENTIAL.” “CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE
22 CODE” shall apply on a going forward basis and shall not disqualify anyone who reviewed
23 “CONFIDENTIAL.” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
24 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” materials
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1 only while the materials were not marked “CONFIDENTIAL.” “CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
3 ONLY – SOURCE CODE” from engaging in the activities set forth in Paragraph 6(b).

4 18. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

5 (a) In the event of a disclosure of any Discovery Material pursuant to this
6 Order to any person or persons not authorized to receive such disclosure under this Protective
7 Order, the Party responsible for having made such disclosure, and each Party with knowledge
8 thereof, shall immediately notify counsel for the Producing Party whose Discovery Material has
9 been disclosed and provide to such counsel all known relevant information concerning the nature
10 and circumstances of the disclosure. The responsible disclosing Party shall also promptly take
11 all reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure
12 that no further or greater unauthorized disclosure and/or use thereof is made
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14 (b) Unauthorized or inadvertent disclosure does not change the status of
15 Discovery Material or waive the right to hold the disclosed document or information as
16 Protected.
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18 19. **FINAL DISPOSITION**

19 (a) Not later than ninety (90) days after the Final Disposition of this case,
20 each Party shall return all Discovery Material of a Producing Party to the respective outside
21 counsel of the Producing Party or destroy such Material, at the option of the Producing Party.
22 For purposes of this Order, “Final Disposition” occurs after an order, mandate, or dismissal
23 finally terminating the above-captioned action with prejudice, including all appeals.
24

25 (b) All Parties that have received any such Discovery Material shall certify in
26 writing that all such materials have been returned to the respective outside counsel of the
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1 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,
2 outside counsel may retain one set of pleadings, correspondence and attorney and consultant
3 work product (but not document productions) for archival purposes, but must return or destroy
4 any pleadings, correspondence, and consultant work product that contain Source Code.

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6 20. **DISCOVERY FROM EXPERTS OR CONSULTANTS**

7 (a) The Parties will not seek drafts of expert reports, declarations, affidavits,
8 or notes taken by experts retained to testify in this litigation, whether those reports, declarations,
9 affidavits, or notes relate to this litigation, to any prior litigation, or to any currently pending
10 investigation, litigation or proceeding involving any of the Parties. The Parties will not seek
11 documents relating to communications between such experts and counsel, including email
12 communications, whether generated in connection with this litigation, a prior litigation, or any
13 currently pending investigation, litigation or proceeding involving any of the Parties, except for
14 documents, information and things included in or attached to such communications that are
15 directly relied upon by the expert in his or her expert report, declaration, affidavit, or testimony.

16
17 (b) Except where a draft was produced as the only available copy, the Parties
18 will not inquire at deposition or trial as to the contents of drafts of expert reports, declarations or
19 affidavits, nor notes pertaining thereto, whether drafted in connection with this litigation, a prior
20 litigation, or any currently pending investigation, litigation or proceeding involving any of the
21 Parties, and the Parties will not inquire at deposition or at trial as to the expert's communications,
22 written or oral, with counsel, whether generated in connection with this litigation, a prior
23 litigation, or any currently pending investigation, litigation or proceeding involving any of the
24 Parties, except to the extent that the expert explicitly references or cites information from
25 counsel in his or her expert report, declaration, affidavit, or testimony.
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1 (c) Furthermore, nothing in Paragraph ~~20~~(a)-(b) is intended to restrict the
2 Parties' ability to inquire into the basis of any of the opinions expressed by any expert in his or
3 her report, declaration, or affidavit, including the manner by which such opinions were reached,
4 and information considered in reaching such opinions.

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5 (d) Materials, communications, and other information exempt from discovery
6 under the foregoing Paragraph ~~20~~(a)-(b) shall be treated as attorney-work product for the
7 purposes of this litigation and Order.
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9 21. **ELECTRONIC DISCOVERY**

10 (a) The Parties agree that no voicemail, instant messages, text messages, or
11 materials that may be archived and/or retained in tape, floppy disc, optical disc or similar media
12 for backup or disaster recovery shall be searched for or produced unless good cause for the
13 production can be shown, and further subject to the Producing Party's claim of undue burden or
14 cost. The Parties shall meet and confer as to good cause on this issue.
15

16 (b) Materials retained in tape, floppy disk, optical disk or similar formats
17 primarily for back-up or disaster recovery purposes should be considered not reasonably
18 accessible under Rule 26(b)(2) of the Federal Rules of Civil Procedure and, accordingly, should
19 not be subject to production unless specific facts demonstrate a particular need for such evidence
20 that justifies the burden of retrieval. Archives stored on computer servers, external hard drives,
21 notebooks, or personal computer hard drives that are created for disaster recovery purposes and
22 not used as reference materials in the ordinary course of a party's business operations need not be
23 searched or produced absent good cause, and further subject to the Producing Party's claim of
24 undue burden or cost. Neither party need deviate from the practices it normally exercises with
25 regard to preservation of such "tape, floppy disk, optical disk or similar formats primarily for
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1 back-up or disaster recovery purposes" that it does not otherwise exercise when not in
2 anticipation of litigation (e.g., recycling of backup tapes is permitted).

3 22. **CROSS-REFERENCE AND USE OF DISCOVERY MATERIALS**

4 Documents that have been or are produced (with appropriate Bates numbers) in
5 the below-referenced pending United States proceedings involving Apple and Samsung are
6 deemed produced in the above-captioned action, and neither party shall be deemed to have
7 violated a protective order in the below listed matters by using such documents in the above-
8 captioned action: *In the Matter of Certain Electronic Devices, Including Wireless*
9 *Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers,*
10 *USITC Inv. No. 337-TA-794, and In the Matter of Certain Electronic Digital Media Devices and*
11 *Components Thereof, USITC Inv. No. 337-TA-796. Any document produced by a Party in the*
12 *one of the aforementioned proceedings shall be used and treated with the same level of*
13 *confidentiality for purposes of this action (e.g., a document designated by a Party as*
14 *"Confidential Business Information" shall be treated as "CONFIDENTIAL –ATTORNEYS'*
15 *EYES ONLY" in this action).* as an initial matter, but may be re-designated pursuant to Paragraph
16 13 of this Order. This paragraph shall not extend to cross-use of confidential materials produced
17 by third parties in such matters. This cross-use provision also does not apply to other forms of
18 discovery, including, without limitation, deposition transcripts and videos, deposition exhibits,
19 expert reports and responses to interrogatories or requests for admission. Nothing in this
20 paragraph, however, prohibits a party from seeking such other forms of discovery through
21 service of formal discovery requests in this action. Any costs incurred in the above-referenced
22 ITC matters shall be excluded from a computation of taxable costs under Fed. R. Civ. P. 54 and
23 N.D. Cal. Civ. L.R. 54.
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1 23. **MISCELLANEOUS**

2 (a) **Right to Further Relief.** Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future. By stipulating to this Order, the
4 Parties do not waive the right to argue that certain material may require additional or different
5 confidentiality protections than those set forth herein.
6

7 (b) **Termination of Matter and Retention of Jurisdiction.** The Parties agree
8 that the terms of this Protective Order shall survive and remain in effect after the Final
9 Disposition of the above-captioned matter. The Court shall retain jurisdiction after Final
10 Disposition of this matter to hear and resolve any disputes arising out of this Protective Order.

11 (c) **Successors.** This Order shall be binding upon the Parties hereto, their
12 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal
13 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
14 experts, and any persons or organizations over which they have direct control.
15

16 (d) **Right to Assert Other Objections.** By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
18 producing any information or item. Similarly, no Party waives any right to object on any ground
19 to use in evidence of any of the material covered by this Protective Order. This Order shall not
20 constitute a waiver of the right of any Party to claim in this action or otherwise that any
21 Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not
22 admissible in evidence in this action or any other proceeding.
23

24 (e) **Burdens of Proof.** Notwithstanding anything to the contrary above,
25 nothing in this Protective Order shall be construed to change the burdens of proof or legal
26 standards applicable in disputes regarding whether particular Discovery Material is confidential,
27

1 which level of confidentiality is appropriate, whether disclosure should be restricted, and if so,
2 what restrictions should apply.

3 (f) Modification by Court. This Order is subject to further court order based
4 upon public policy or other considerations, and the Court may modify this Order *sua sponte* in
5 the interests of justice. The United States District Court for the Northern District of California is
6 responsible for the interpretation and enforcement of this Order. All disputes concerning
7 Protected Material, however designated, produced under the protection of this Order shall be
8 resolved by the United States District Court for the Northern District of California.

9
10 (g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change
11 in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for
12 the United States District Court for the Northern District of California, or the Court's own
13 orders. Identification of any individual pursuant to this Protective Order does not make that
14 individual available for deposition or any other form of discovery outside of the restrictions and
15 procedures of the Federal Rules of Civil Procedure, the Local Rules for the United States District
16 Court for the Northern District of California, or the Court's own orders.

17
18 (h) Supersession of Any Protective Orders. Except as otherwise set forth in
19 this paragraph, this Protective Order supersedes any protective orders referenced by the Parties
20 as applying to material disclosed before the entry of this Protective Order. Any discovery
21 material disclosed by any Party before the entry of this Protective Order shall retain whatever
22 confidentiality designation it originally bore. Such Protected Material that was designated as
23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
24 – OUTSIDE COUNSEL'S EYES ONLY" pursuant to this Court's Patent L.R. 2-2 Model
25 Interim Protective Order, or by the Stipulated Modification to Patent L.R. 2-2 Model Interim
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1 Protective Order for Purposes of Expedited Discovery (D.N. 76), shall be treated as if they were
2 designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY," and such Protected Material
3 previously designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to either or
4 both of those prior orders shall be treated as if they were designated "CONFIDENTIAL -
5 OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE." In addition, any expert disclosed
6 pursuant to Paragraph 7.4(a)(2) of the Interim Protective Order shall be deemed to have been
7 disclosed pursuant to Paragraph 11 of this Protective Order.
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STIPULATED AND AGREED:

1 Dated: December 22, 2011

Respectfully submitted,

2
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*Counsel for Samsung Electronics Co., Ltd.,
Samsung Electronics America, Inc., and
Samsung Telecommunications America, LLC*

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20 **IT IS SO ORDERED.**

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22 Date: _____

UNITED STATES DISTRICT JUDGE

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26 **EXHIBIT A**

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I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Apple Inc. v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC*, United States District Court, Northern District of California, San Jose Division, Civil Action No. 11-cv-01846-LHK. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]