

Exhibit B

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

DCG SYSTEMS, INC.,

Plaintiff,

v.

CHECKPOINT TECHNOLOGIES, LLC,

Defendant.

Case No. 5:11-cv-03792-PSG

**~~PROPOSED~~ ORDER REGARDING E-
DISCOVERY**

JUDGE: HON. PAUL S. GREWAL

1 The Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive
4 determination” of this action, as required by Federal Rule of Civil Procedure 1.

5 2. This Order may be modified for good cause. The parties shall jointly submit any
6 proposed modifications within 30 days after the Federal Rule of Civil Procedure 16 conference of
7 November 1, 2011. If the parties cannot resolve their disagreements regarding these
8 modifications, the parties shall submit their competing proposals and a summary of their dispute.

9 3. Costs will be shifted for disproportionate ESI production requests pursuant to
10 Federal Rules of Civil Procedure 26 and 37. Likewise, a party’s nonresponsive or dilatory
11 discovery tactics will be cost-shifting considerations.

12 4. A party’s meaningful compliance with this Order and efforts to promote efficiency
13 and reduce costs will be considered in cost-shifting determinations.

14 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
15 shall not include metadata beyond the fields agreed to in Section 8.B. of the Joint Case
16 Management Statement and [Proposed] Order, filed October 25, 2011.

17 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
18 shall not include email or other forms of electronic correspondence (collectively “email”). To
19 obtain email parties must propound specific email production requests.

20 7. Email production requests shall only be propounded for specific issues, rather than
21 general discovery of a product or business.

22 8. Email production requests shall be phased to occur after the parties have
23 exchanged initial disclosures and basic documentation about the patents, the prior art, the accused
24 instrumentalities, and the relevant finances. While this provision does not require the production
25 of such information, the Court encourages prompt and early production of this information to
26 promote efficient and economical streamlining of the case.

1 9. Email production requests shall identify the custodian, search terms, and time
2 frame. The parties shall cooperate to identify the proper custodians, proper search terms and
3 proper timeframe.

4 10. Each requesting party shall limit its first email production requests to a total of ten
5 (10) custodians per producing party for all such requests. Sixty (60) days after the receipt of
6 initial documents responsive to the first set of email production requests, a party may make
7 additional email production requests to five (5) custodians. The five custodians who receive the
8 additional email production requests may include custodians from whom documents have already
9 been requested. The parties may jointly agree to modify these limits without the Court's leave.
10 The Court shall consider contested requests for up to five (5) additional custodians per producing
11 party, upon showing a distinct need based on the size, complexity, and issues of this specific case.
12 Should a party serve email production requests for additional custodians beyond the limits agreed
13 to by the parties or granted by the Court pursuant to this paragraph, the requesting party shall bear
14 all reasonable costs caused by such additional discovery.

15 11. Each requesting party shall limit its first email production requests to a total of
16 twenty (20) search terms per custodian per party. Each requesting party shall limit its additional
17 email production requests to a total of five (5) search terms per custodian per party. The parties
18 may jointly agree to modify these limits without the Court's leave. The Court shall consider
19 contested requests for up to five (10) additional search terms per custodian, upon showing a
20 distinct need based on the size, complexity, and issues of this specific case. The search terms shall
21 be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's
22 name or its product name, are inappropriate unless combined with narrowing search criteria that
23 sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or
24 phrases (e.g., "computer" and "system") narrows the search and shall count as a single search
25 term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system")
26 broadens the search, and thus each word or phrase shall count as a separate search term unless
27 they are variants of the same word. Use of narrowing search criteria (e.g., "and," "but not,"
28 "w/x") is encouraged to limit the production and shall be considered when determining whether

1 to shift costs for disproportionate discovery. Should a party serve email production requests with
2 search terms beyond the limits agreed to by the parties or granted by the Court pursuant to this
3 paragraph, the requesting party shall bear all reasonable costs caused by such additional
4 discovery.

5 12. The receiving party shall not use ESI that the producing party asserts is attorney-
6 client privileged or work product protected to challenge the privilege or protection.

7 13. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
8 privileged or work product protected ESI is not a waiver in the pending case or in any other
9 federal or state proceeding.

10 14. The mere production of ESI in a litigation as part of a mass production shall not
11 itself constitute a waiver for any purpose.

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13 Dated: November 2, 2011

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16 The Honorable Paul S. Grewal
17 United States Magistrate Judge
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