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8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 NAVCOM TECHNOLOGY, INC.; and  
 DEERE & COMPANY,  
 12  
 Plaintiffs,  
 13  
 v.  
 14  
 OKI ELECTRIC INDUSTRY CO., LTD.; and  
 15 DOES 1 through 10, inclusive,  
 16  
 Defendants.

Case No. 5:12-cv-04175 EJD  
 STIPULATED PROTECTIVE ORDER  
 AND ~~PROPOSED~~ ORDER  
 (MODIFIED BY THE COURT)

17  
 18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of  
 20 confidential, proprietary, or private information for which special protection from public  
 21 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 22 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 23 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 24 all disclosures or responses to discovery and that the protection it affords from public disclosure  
 25 and use extends only to the limited information or items that are entitled to confidential treatment  
 26 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
 27 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential  
 28 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that

1 must be followed and the standards that will be applied when a party seeks permission from the  
2 court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
7 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
8 of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
10 support staff).

11 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
15 medium or manner in which it is generated, stored, or maintained (including, among other things,  
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
17 responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
19 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
20 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
21 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
22 or of a Party’s competitor.

23 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
24 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
25 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
26 less restrictive means.

27 2.8 House Counsel: attorneys who are employees of a party to this action. House  
28 Counsel does not include Outside Counsel.

1           2.9    Non-Party: any natural person, partnership, corporation, association, or other legal  
2 entity not named as a Party to this action.

3           2.10   Outside Counsel: attorneys who are not employees of a party to this action but are  
4 retained to represent or advise a party to this action.

5           2.11   Party: any party to this action, including all of its officers, directors, employees,  
6 consultants, retained experts, and Outside Counsel (and their support staffs).

7           2.12   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
8 Material in this action.

9           2.13   Professional Vendors: persons or entities that provide litigation support services  
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
11 organizing, storing, or retrieving data in any form or medium) and their employees and  
12 subcontractors.

13           2.14   Protected Material: any Disclosure or Discovery Material that is designated as  
14 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15           2.15   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
16 Producing Party.

17   3.    SCOPE

18           The protections conferred by this Stipulation and Order cover not only Protected Material  
19 (as defined above), but also (1) any information copied or extracted from Protected Material;  
20 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
21 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
22 However, the protections conferred by this Stipulation and Order do not cover the following  
23 information: (a) any information that is in the public domain at the time of disclosure to a  
24 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
25 a result of publication not involving a violation of this Order, including becoming part of the  
26 public record through trial or otherwise; and (b) any information known to the Receiving Party  
27 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
28

1 obtained the information lawfully and under no obligation of confidentiality to the Designating  
2 Party. Any use of Protected Material at trial shall be governed by a separate 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 action,  
9 including the time limits for filing any motions or applications for extension of time pursuant to  
10 applicable law. **For a period of six months after final disposition of this litigation, this court  
will retain jurisdiction to enforce the terms of this order.**

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
13 or Non-Party that designates information or items for protection under this Order must take care  
14 to limit any such designation to specific material that qualifies under the appropriate standards.  
15 To the extent it is practical to do so, the Designating Party must designate for protection only  
16 those parts of material, documents, items, or oral or written communications that qualify – so that  
17 other portions of the material, documents, items, or communications for which protection is not  
18 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., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
2 designated 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,  
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
6 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
7 EYES ONLY” to each page that contains protected material. If only a portion or portions of the  
8 material on a page qualifies for protection, the Producing Party also must clearly identify the  
9 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
10 each portion, the level of protection being asserted.

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

24 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
25 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
26 other proceeding, all protected testimony and specify the level of protection being asserted. When  
27 it is impractical to identify separately each portion of testimony that is entitled to protection and it  
28 appears that substantial portions of the testimony may qualify for protection, the Designating

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

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

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

24 (c) for information produced in some form other than documentary and for  
25 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
26 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
27 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of  
28

1 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
2 identify the protected portion(s) and specify the level of protection being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is  
7 treated in accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
14 original designation is disclosed.

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

1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
2                     **parties shall comply with the undersigned's Standing Order re Civil**  
3     intervention, the ~~Designating Party shall file and serve a motion to retain confidentiality under~~  
4     ~~Civil Local Rule 7 (and in compliance with Civil Local Rule 79.5 and General Order 62, if~~  
5     ~~applicable)~~ within 21 days of the initial notice of challenge or within 14 days of the parties  
6     agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. ~~Each~~  
7     ~~such motion must be accompanied by a competent declaration affirming that the movant has~~  
8                     **have been satisfied.**  
9     ~~complied with~~ the meet and confer requirements imposed in the preceding paragraph. Failure by  
10                    **seek judicial intervention**  
11     the Designating Party to ~~make such a motion including the required declaration~~ within 21 days (or  
12     14 days, if applicable) shall automatically waive the confidentiality designation for each  
13                    **seek relief with respect to**  
14     challenged designation. In addition, the Challenging Party may ~~file a motion challenging a~~  
15     confidentiality designation at any time if there is good cause for doing so, including a challenge to  
16     the designation of a deposition transcript or any portions thereof. ~~Any motion brought pursuant to~~  
17     ~~this provision must be accompanied by a competent declaration affirming that the movant has~~  
18     ~~complied with the meet and confer requirements imposed by the preceding paragraph.~~

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

## 22     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

23           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
24     produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
25     defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
26     the categories of persons and under the conditions described in this Order. When the litigation has  
27     been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
28     DISPOSITION).

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “CONFIDENTIAL” only to:

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

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

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

16 (d) the court and its personnel;

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

20 (f) during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who is (i) the author of the original source of the “CONFIDENTIAL”  
22 material, (ii) an actual or intended recipient of the “CONFIDENTIAL” material, (iii) someone for  
23 whom there is a reasonable basis to believe has previously seen or received the

24 “CONFIDENTIAL” material, (iv) or who have signed the “Acknowledgment and Agreement to  
25 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

26 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
27 must be separately bound by the court reporter and may not be disclosed to anyone except as  
28 permitted under this Stipulated Protective Order.

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

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
4 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
5 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

11 (b) House Counsel of the Receiving Party to whom it is reasonably necessary  
12 to disclose the information for this litigation and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” that is attached hereto as Exhibit A;

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

18 (d) the court and its personnel;

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

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

24 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to Experts

26 (a) (1) Unless otherwise ordered by the court or agreed to in writing by the  
27 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
28 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’

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

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

17 (c) A Party that receives a timely written objection must meet and confer with  
18 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
19 agreement within seven days of the written objection. If no agreement is reached, the ~~Party~~  
20 **parties shall comply with the undersigned’s Standing Order re Civil Discovery Disputes.**  
~~seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
(and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking  
21 permission from the court to do so. Any such motion must describe the circumstances with  
22 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,  
23 assess the risk of harm that the disclosure would entail, and suggest any additional means that  
24 could be used to reduce that risk. In addition, any such motion must be accompanied by a  
25 competent declaration describing the parties’ efforts to resolve the matter by agreement (i.e., the  
26 extent and the content of the meet and confer discussions) and setting forth the reasons advanced  
27 by the Designating Party for its refusal to approve the disclosure.~~

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

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that compels  
8 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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

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

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

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

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

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

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

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

27 **Paragraph 14.**

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
10 MATERIAL

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

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
26 Party waives any right to object on any ground to use in evidence of any of the material covered  
27 by this Protective Order.

1           12.3 Filing Protected Material. Without written permission from the Designating Party  
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
3 the public record in this action any Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
5 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
7 sealing order will issue only upon a request establishing that the Protected Material at issue is  
8 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
9 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
10 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected  
11 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by  
12 the court.

13           13. FINAL DISPOSITION

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

14. In the event of any discovery or disclosure dispute, the parties and any affected non-parties shall comply with the undersigned's Standing Order re Civil Discovery Disputes.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 1/15/13

Attorneys for Plaintiff

DATED: 1/15/13

Attorneys for Defendant

**AS MODIFIED BY THE COURT**  
PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 24, 2013

~~Hon. Edward J. Davila~~  
~~United States District Judge~~

HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
in its entirety and understand the Stipulated Protective Order that was issued by the United States  
District Court for the Northern District of California on [date] in the case of *Navcom Technology,  
Inc. et al. v. Oki Electric Industry Co., Ltd. et al.*, Case No. 5:12-cv-04175-EDJ. I agree to comply  
with and to be bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature  
of contempt. I solemnly promise that I will not disclose in any manner any information or item  
that is subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

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

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 where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]