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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SPH AMERICA, LLC, a Virginia company,)	Civil No.09cv2535 JAH (AJB)
)	
Plaintiff,)	
v.)	ORDER GRANTING JOINT MOTION
)	FOR ORDER REGARDING
ACER, INC., a Taiwanese company, et al.,)	ELECTRONIC DISCOVERY
)	
Defendants.)	[Doc. No. 398.]
)	

Having reviewed and considered the parties' joint motion for order regarding electronic discovery, the Court GRANTS the parties' joint motion and ORDERS the following:

I. FILE FORMAT

All documents should be produced in single page TIFF image with corresponding load files that identify the Bates number ranges for the beginning and ending of each document, with the exception of source code, which shall be produced in its native format pursuant to the relevant provisions of the Protective Order. Each party will also produce corresponding optical character recognition (OCR) files for its document production. If a document exists only in paper form, then a party may produce that document in paper form with the consent of the requesting party, which shall be not unreasonably withheld. Any party may request that any financial information relating to the sales of any accused products be produced in electronic, searchable and manipulable format to the extent such format exists, such as Microsoft Excel spreadsheets, and such request will not be unreasonably denied.

II. ELECTRONIC DISCOVERY

1 A. Format of Electronic Discovery

2 Subject to Sections I and III, electronic documents need not be produced in their native file formats,
3 unless (1) a requesting party can show a justifiable need for a specific electronic document in its native
4 format and it would not be unreasonable, unduly burdensome, or expensive for the producing party to
5 provide the electronic document in this manner; or (2) the document is in a multimedia form (e.g.,
6 sound, graphics, animation and/or video). Where documents fall under exceptions (1) or (2) above, such
7 documents shall be produced in their native format on non-rewriteable media such as DVD-ROMs or
8 CD-ROMs. However, the Parties may later agree to produce certain information in native format to
9 facilitate use by either side, or to make other agreements for their mutual convenience relating to the
10 form and manner of production.

11 B. Collection Methods

12 The Parties need not employ forensic data collection or tracking methods and technologies, but instead
13 may make electronic copies for collection and processing purposes using widely-accepted methods or
14 methods described in manufacturers' and/or programmers' instructions, help menus, websites, and the
15 like (e.g., .pst's, .zip's. etc.), except when and to the extent there is good cause to believe specific,
16 material concerns about authenticity or spoliation exist with respect to specific documents and materials.

17 C. When Production is Not Required

18 The Parties need not search or produce electronic mail, electronic mail documentation, metadata (as
19 used herein to refer to electronically stored information about a document that does not appear on the
20 face of the original document if emailed or printed), audio information, or video information unless a
21 requesting party can show a justifiable need for these secondary documents and it would not be
22 unreasonable, unduly burdensome, or expensive for the producing party to provide the requested
23 documents.

24 Materials retained primarily for back-up or disaster recovery purposes need not be searched or
25 produced, and the Parties need not deviate from any back-up schedule or other practice they normally
26 follow with regard to preservation of such materials (e.g., recycling of back-up tapes conducted in the
27 ordinary course of the Parties' business operations is permitted), except when and to the extent there is
28 good cause to believe specific responsive information may have been lost, destroyed, or inadvertently

1 deleted other than in accordance with a document retention policy, provided however that the party
2 takes all other reasonable and necessary steps to ensure and comply with its obligations and duties to
3 preserve evidence.

4 If a responsive document is located on a centralized server or network, an individual employee's
5 computer, or otherwise located within a party's possession, custody or control, the producing party shall
6 not be required to produce multiple copies of the same responsive document, absent a showing of good
7 cause that the production of such additional copies is necessary, except where the document is part of,
8 attached to, or comprises a section or segment of another document or has been modified.

9 III. DOCUMENT RETENTION POLICIES

10 The Parties will exchange copies of relevant companywide document retention policies adopted or
11 generally recognized as such; however, the Parties will not produce "litigation hold" notices, if any, that
12 were prepared for purposes of this litigation.

13 IV. MEDIA USED FOR PRODUCTION

14 Documents shall be exchanged as discussed in Part 1 on media such as DVD-ROMs, CD-ROMs, or
15 portable hard drives.

16 V. PASSWORD-PROTECTED OR ENCRYPTED FILES

17 Documents that are locked by a password or encrypted as they are kept in the ordinary course of
18 business shall be produced in a form that is unlocked or decrypted.

19 VI. ELECTRONIC SERVICE

20 The parties agree to accept service via electronic means (e.g., e-mail or facsimile). For documents that
21 are not required by Local Rule 5.4(a) to be filed electronically with the Court's Electronic Filing System,
22 service by electronic means after 11:59 p.m. Pacific Time shall be deemed service the next business day.

23 VII. BEST EFFORTS COMPLIANCE

24 The parties shall make their best efforts to comply with and resolve any differences concerning
25 compliance with this stipulation. If a producing party cannot comply with any aspect of this stipulation,
26 such party shall inform the requesting party in writing before the time of production as to why
27 compliance with the protocol was unreasonable or not possible. No party may seek relief from the Court

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3 concerning compliance with the stipulation until it has conferred with the other party to this action.


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5 IT IS SO ORDERED.

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7 DATED: May 24, 2010

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Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court

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