

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PATENT HOLDER, LLC,

Plaintiff,

v.

LEONARD L. MAGILL, ET AL.,

Defendants.

Case No.: 3:17-CV-02082-CAB-BGS

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
STIPULATED
PROTECTIVE ORDER**

The parties recognizes that at least some of the documents, electronic data, and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing, or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials as much as practically possible during the litigation. THEREFORE:

DEFINITIONS

- 1. The term “Confidential Information” will mean and include information

1 contained or disclosed in any materials, including documents, portions of documents,
2 answers to interrogatories, responses to requests for admissions, trial testimony, deposition
3 testimony, and transcripts of trial testimony and depositions, including data, summaries,
4 and compilations derived therefrom that is deemed to be Confidential Information by any
5 party to which it belongs.

6 2. The term “materials” will include, but is not limited to: documents;
7 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
8 material that identify customers or potential customers; price lists or schedules or other
9 matter identifying pricing; minutes; telegrams; letters; statements; canceled checks;
10 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
11 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
12 compilations from which information can be obtained and translated into reasonably
13 useable form through detection devices; sketches; drawings; notes (including laboratory
14 notebooks and records); reports; instructions; disclosures; other writings; models and
15 prototypes and other physical objects.

16 3. The term “counsel” will mean outside counsel of record, and other attorneys,
17 secretaries, and other support staff employed in the law firms identified as follows: San
18 Diego IP Law Group, LLP and Buche and Associates, P.C.

19 GENERAL RULES

20 4. Each party to this litigation that produces or discloses any materials, answers
21 to interrogatories, responses to requests for admission, trial testimony, and transcripts of
22 trial testimony and depositions, or information that the producing party believes should be
23 subject to this Protective Order may designate the same as “CONFIDENTIAL” or
24 “CONFIDENTIAL – FOR COUNSEL ONLY.”

25 a. Designation as “CONFIDENTIAL”: Any party may designate information as
26 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the
27 unrestricted disclosure of such information could be potentially prejudicial to the business
28

1 or operations of such party.

2 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any party
3 may use the “CONFIDENTIAL – FOR COUNSEL ONLY” designation only if, in the
4 good faith belief of such party and its counsel, the information is among that considered to
5 be the most sensitive by the party, including but not limited to trade secret or other
6 confidential research, development, financial or other commercial information.

7 5. In the event the producing party elects to produce materials for inspection, no
8 marking need be made by the producing party in advance of the initial inspection. For
9 purposes of the initial inspection, all materials produced will be considered as
10 “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as such pursuant to
11 the terms of this Order. Thereafter, upon selection of specified materials for copying by the
12 inspecting party, the producing party must, within a reasonable time prior to producing
13 those materials to the inspecting party, mark the copies of those materials that contain
14 Confidential Information with the appropriate confidentiality marking.

15 6. Whenever a deposition taken on behalf of any party involves a disclosure of
16 Confidential Information of any party:

17 a. the deposition or portions of the deposition must be designated as
18 containing Confidential Information subject to the provisions of this
19 Order; such designation must be made on the record whenever possible,
20 but a party may designate portions of depositions as containing
21 Confidential Information after transcription of the proceedings; [A]
22 party will have until fourteen (14) days after receipt of the deposition
23 transcript to inform the other party or parties to the action of the
24 portions of the transcript to be designated “CONFIDENTIAL” or
25 “CONFIDENTIAL - FOR COUNSEL ONLY.”

26 b. the disclosing party will have the right to exclude from attendance at
27 the deposition, during such time as the Confidential Information is to
28 be disclosed, any person other than the deponent, counsel (including

1 their staff and associates), the court reporter, and the person(s) agreed
2 upon pursuant to paragraph 8 below; and

3 c. the originals of the deposition transcripts and all copies of the
4 deposition must bear the legend “CONFIDENTIAL” or
5 “CONFIDENTIAL - FOR COUNSEL ONLY,” as appropriate, and the
6 original or any copy ultimately presented to a court for filing must not
7 be filed unless it can be accomplished under seal, identified as being
8 subject to this Order, and protected from being opened except by order
9 of this Court.

10 7. All Confidential Information designated as “CONFIDENTIAL” or
11 “CONFIDENTIAL - FOR COUNSEL ONLY” must not be disclosed by the receiving
12 party to anyone other than those persons designated within this order and must be handled
13 in the manner set forth below and, in any event, must not be used for any purpose other
14 than in connection with this litigation, unless and until such designation is removed either
15 by agreement of the parties, or by order of the Court.

16 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must
17 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
18 independent experts under the conditions set forth in this Paragraph. The right of any
19 independent expert to receive any Confidential Information will be subject to the advance
20 approval of such expert by the producing party or by permission of the Court. The party
21 seeking approval of an independent expert must provide the producing party with the name
22 and curriculum vitae of the proposed independent expert, and an executed copy of the form
23 attached hereto as Exhibit A, in advance of providing any Confidential Information of the
24 producing party to the expert. Any objection by the producing party to an independent
25 expert receiving Confidential Information must be made in writing within fourteen (14)
26 days following receipt of the identification of the proposed expert. Confidential
27 Information may be disclosed to an independent expert if the fourteen (14) day period has
28 passed and no objection has been made. The approval of independent experts must not be

1 unreasonably withheld.

2 9. Information designated “CONFIDENTIAL” must be viewed only by counsel
3 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
4 terms of paragraph 8), and by the additional individuals listed below, provided each such
5 individual has read this Order in advance of disclosure and has agreed in writing to be
6 bound by its terms:

7 (a) Executives who are required to participate in policy decisions with
8 reference to this action;

9 (b) Technical personnel of the parties with whom Counsel for the parties
10 find it necessary to consult, in the discretion of such counsel, in
11 preparation for trial of this action; and

12 (e) Stenographic and clerical employees associated with the individuals
13 identified above.

14 10. With respect to material designated “CONFIDENTIAL” or
15 “CONFIDENTIAL - FOR COUNSEL ONLY,” any person indicated on the face of the
16 document to be its originator, author or a recipient of a copy of the document, may be
17 shown the same.

18 11. All information which has been designated as “CONFIDENTIAL” or
19 “CONFIDENTIAL -FOR COUNSEL ONLY” by the producing or disclosing party, and
20 any and all reproductions of that information, must be retained in the custody of the counsel
21 for the receiving party identified in paragraph 3, except that independent experts authorized
22 to view such information under the terms of this Order may retain custody of copies such
23 as are necessary for their participation in this litigation.

24 12. Before any materials produced in discovery, answers to interrogatories,
25 responses to requests for admissions, deposition transcripts, or other documents which are
26 designated as Confidential Information are filed with the Court for any purpose, the party
27 seeking to file such material must seek permission of the Court to file the material under
28 seal. No document shall be filed under seal unless counsel secures a court order allowing

1 the filing of a document under seal. An application to file a document under seal shall be
2 served on opposing counsel, and on the person or entity that has custody and control of the
3 document, if different from opposing counsel. If opposing counsel, or the person or entity
4 who has custody and control of the document, wishes to oppose the application, he/she
5 must contact the chambers of the judge who will rule on the application, to notify the
6 judge's staff that an opposition to the application will be filed.

7 13. At any stage of these proceedings, any party may object to a designation of
8 the materials as Confidential Information. The party objecting to confidentiality must
9 notify, in writing, counsel for the designating party of the objected-to materials and the
10 grounds for the objection. If the dispute is not resolved consensually between the parties
11 within seven (7) days of receipt of such a notice of objections, the objecting party must
12 follow the assigned Magistrate Judge's procedures for resolution of discovery disputes.
13 The materials at issue must be treated as Confidential Information, as designated by the
14 designating party, until the Court has ruled on the objection or the matter has been
15 otherwise resolved.

16 14. All Confidential Information must be held in confidence by those inspecting
17 or receiving it, and must be used only for purposes of this action. Counsel for each party,
18 and each person receiving Confidential Information must take reasonable precautions to
19 prevent the unauthorized or inadvertent disclosure of such information. If Confidential
20 Information is disclosed to any person other than a person authorized by this Order, the
21 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
22 relating to the unauthorized disclosure to the attention of the other parties and, without
23 prejudice to any rights and remedies of the other parties, make every effort to prevent
24 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

25 15. No party will be responsible to another party for disclosure of Confidential
26 Information under this Order if the information in question is not labeled or otherwise
27 identified as such in accordance with this Order.

28 16. If a party, through inadvertence, produces any Confidential Information

1 without labeling or marking or otherwise designating it as such in accordance with this
2 Order, the designating party may give written notice to the receiving party that the
3 document or thing produced is deemed Confidential Information, and that the document or
4 thing produced should be treated as such in accordance with that designation under this
5 Order. The receiving party must treat the materials as confidential, once the designating
6 party so notifies the receiving party. If the receiving party has disclosed the materials before
7 receiving the designation, the receiving party must notify the designating party in writing
8 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
9 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or
10 “CONFIDENTIAL - FOR COUNSEL ONLY” - SUBJECT TO PROTECTIVE ORDER.

11 17. Nothing within this order will prejudice the right of any party to object to the
12 production of any discovery material on the grounds that the material is protected as
13 privileged or as attorney work product.

14 18. Nothing in this Order will bar counsel from rendering advice to their clients
15 with respect to this litigation and, in the course thereof, relying upon any information
16 designated as Confidential Information, provided that the contents of the information
17 be disclosed.

18 19. This Order will be without prejudice to the right of any party to oppose
19 production of any information for lack of relevance or any other ground other than the mere
20 presence of Confidential Information. The existence of this Order must not be used by
21 either party as a basis for discovery that is otherwise improper under the Federal Rules of
22 Civil Procedure.

23 20. Nothing within this order will be construed to prevent disclosure of
24 Confidential Information if such disclosure is required by law or by order of the Court.

25 21. Upon final termination of this action, including any and all appeals, counsel
26 for each party must, upon request of the producing party, return all Confidential
27 Information to the party that produced the information, including any copies, excerpts, and
28 summaries of that information, or must destroy same at the option of the receiving party,

1 and must purge all such information from all machine-readable media on which it resides.
2 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
3 memoranda, motions, and other documents filed with the Court that refer to or incorporate
4 Confidential Information, and will continue to be bound by this Order with respect to all
5 such retained information. Further, attorney work product materials that contain
6 Confidential Information need not be destroyed, but, if they are not destroyed, the person
7 in possession of the attorney work product will continue to be bound by this Order with
8 respect to all such retained information.

9 22. The restrictions and obligations set forth within this order will not apply to
10 any information that: (a) the parties agree should not be designated Confidential
11 Information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
12 parties agree, or the Court rules, has become public knowledge other than as a result of
13 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
14 (d) has come or will come into the receiving party's legitimate knowledge independently
15 of the production by the designating party. Prior knowledge must be established by pre-
16 production documentation.

17 23. The restrictions and obligations within this order will not be deemed to
18 prohibit discussions of any Confidential Information with anyone if that person already has
19 or obtains legitimate possession of that information.

20 24. Transmission by facsimile is acceptable for all notification purposes within
21 this order.

22 25. This Order may be modified by agreement of the parties, subject to approval
23 by the Court.

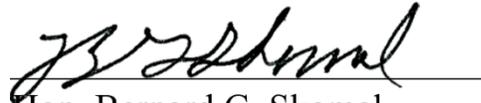
24 26. With thirty (30) days after the above-captioned case is closed, the Court shall
25 destroy all confidential or sealed documents. Any such action by this Court must be
26 preceded by an ex parte motion for an order authorizing the destruction thereof.

27 27. The Court may modify the terms and conditions of this Order for good cause,
28 or in the interest of justice, or on its own order at any time in these proceedings. The parties

1 prefer that the Court provide them with notice of the Court's intent to modify the Order
2 and the content of those modifications, prior to entry of such an order.

3 28. Without separate court order, the Protective Order and the parties' stipulation
4 does not change, amend, or circumvent any court rule or local rule.

5 Dated: November 13, 2017



6 Hon. Bernard G. Skomal
7 United States Magistrate Judge

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28