

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

STC.UNM,

Plaintiff,

v.

INTEL CORPORATION,

Defendant.

Civil No. 1:10-cv-01077-RB-WDS

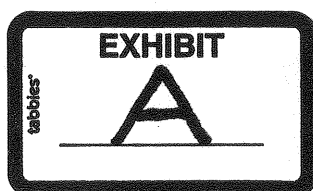
STIPULATED INTERIM PROTECTIVE ORDER

The Court finds that this action may involve trade secrets and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution or defense of this action is warranted. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, and to ensure that the parties are permitted reasonable necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Federal Rule of Civil Procedure 26(c), and for good cause shown,

IT IS HEREBY ORDERED THAT:

DEFINITIONS

- A. "Party": any party to this action, including all of its officers, directors, employees, consultants, retained experts and consultants, and outside counsel (and their support staff).
- B. "Material": all information, documents, items and things produced, served or otherwise provided in this action (whether paper, electronic, tangible or otherwise) by the parties or by non-parties.
- C. "Producing Party": a Party or non-party that produces Material in this action.
- D. "Receiving Party": a Party that receives Material from a Producing Party.
- E. "Designating Party": a Party or non-party that designates Material as "CONFIDENTIAL" or "OUTSIDE COUNSEL RESTRICTED."
- F. "CONFIDENTIAL" Material: Material the Designating Party believes in good faith is not generally known to others, and that the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, (ii)



believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy, or (iii) believes in good faith to constitute or to contain confidential research, development, or commercial information. CONFIDENTIAL Material shall include all Material referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing, and shall be designated as such in the manner described in Section 2.

G. “OUTSIDE COUNSEL RESTRICTED” Material. Material the Designating Party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and which the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy, or (iii) believes in good faith constitutes proprietary financial, technical or commercially sensitive competitive information that the Producing Party maintains as highly confidential in its business. OUTSIDE COUNSEL RESTRICTED Material shall include all Material referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing, and shall be designated as such in the manner described in Section 2. Material designated as “OUTSIDE COUNSEL RESTRICTED” is automatically subject to the PROSECUTION BAR in Section 10.

H. “Designated Material”: Material that is designated “CONFIDENTIAL” or “OUTSIDE COUNSEL RESTRICTED.”

I. “Outside Counsel”: attorneys (including litigation and clerical support staff) who are not employees, directors, or officers of a Party or a Party’s parents, affiliates, or subsidiaries but who are counsel of record for a Party.

J. “Outside Consultant”: a person with specialized knowledge or experience in a matter pertinent to the action who has been retained by a Party or its Outside Counsel to serve as an expert witness or as a consultant in this action and who is not: (i) a current or anticipated employee of a Party or of a Party’s competitor, or (ii) a consultant involved in product and/or process design or development for a Party or for a Party’s competitor.

K. “Professional Vendors”: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing or processing data) and their employees and subcontractors. This definition includes a professional jury or trial consultant retained in connection with this action and mock jurors retained by such a consultant to assist them in their work. Professional Vendors do not include consultants who fall within the definition of Outside Consultant.

L. “Involved In The Prosecution Of Patents Or Patent Applications”: participation in any way on behalf of a patent owner/patent applicant or other person or entity having ownership, license or other financial interest in the patent or in the patent or reissue application, in: (i)

reexamination proceedings (except reexamination proceedings of U.S. Patent No. 6,042,998 brought by an entity other than STC.UNM, UNM, or any other stakeholder in any interest in U.S. Patent No. 6,042,998) or (ii) drafting, reviewing, approving or prosecuting any portion (e.g., any claim, any figure, or any specification language) of a patent application (including, but not limited to, provisional, non-provisional, original, continuation, continuation-in-part, divisional, reissue, and/or continued prosecution applications) or any portion of any amendment, response, reply, or other paper submitted to the United States Patent and Trademark Office (including the United States Board of Patent Appeals and Interferences) or any foreign agency responsible for examining or issuing patents. With regard to a reexamination of the '998 patent, participation in the reexamination process shall be limited to instances in which STC did not initiate the reexamination process.

TERMS AND CONDITIONS

1. General Limitations on Disclosure and Use of Designated Material

Designated Material and the substance and content thereof, including any copies, notes, memoranda, summaries, excerpts, compilations, or other similar documents relating thereto, shall be used by a Receiving Party solely for the purpose of this litigation and not for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media or public. Any person in possession of Designated Material shall exercise reasonably appropriate care with regard to storage, custody, or use of such Material in order to ensure that the confidential nature of the Material is maintained. If Designated Material is disclosed or comes into the possession of any person other than in the manner authorized by this Protective Order, any Party having knowledge of the disclosure must immediately inform the Producing Party (and, if not the same person or entity, the Designating Party) of all pertinent facts relating to such disclosure and shall make reasonable efforts to retrieve such Material and to prevent further disclosure.

2. Procedure for Designating Materials

(a) Documents and Other Tangible Materials. The designation of Material in the form of documents, discovery responses, or other tangible materials (other than depositions or other pre-trial testimony) shall be made by the Designating Party by conspicuously affixing (physically or electronically) the legend "CONFIDENTIAL" or "OUTSIDE COUNSEL RESTRICTED" on each page containing information to which the designation applies (or in the case of computer medium on the medium label and/or cover). To the extent practical, the legend shall be placed near the Bates number identifying the Material. If a document has more than one designation, the more restrictive or higher designation applies.

(b) Nontangible Materials. All Designated Materials that are not reduced to documentary, tangible, or physical form or that cannot be conveniently designated in the manner set forth in Section 2(a) above shall be designated by the Designating Party by informing the Receiving Party in writing.

(c) Deposition Testimony and Transcripts. Any Party may designate as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED Material that is disclosed at a deposition by indicating on the record at the deposition that the testimony is CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED and is subject to the provisions of this Protective Order. Any Party may also designate Material as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED by notifying the court reporter and all of the parties, in writing within thirty (30) days after receipt of the final deposition transcript, of the specific pages and lines of the transcript that should be treated thereafter as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED. Each Party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his/her possession, custody, or control. All deposition transcripts shall be treated as OUTSIDE COUNSEL RESTRICTED for at least a period of thirty (30) days after receipt of the final transcript.

(d) Nonparty Designations. Non-parties who produce Material in this action may avail themselves of the provisions of this Protective Order, and such Material produced by non-parties shall be treated by the parties in conformance with this Protective Order. A non-party's use of this Protective Order for production of its Material does not entitle that non-party to have access to Material produced by any Party in this action.

3. Inadvertent Production

(a) Inadvertent Failures to Properly Designate. If a Party or nonparty inadvertently produces Material without labeling or otherwise designating it in accordance with the provisions of this Protective Order, the Party or nonparty may give written notice to the Receiving Party that the Material produced is designated CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED and should be treated as such in accordance with the provisions of this Protective Order. The Receiving Party must treat such Material according to its most recent designation of CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED from the date such notice is received. If, before receiving such notice, the Receiving Party disclosed such Material to recipients who are not qualified to receive it under the most recent designation, the Receiving Party must immediately inform the Designating Party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to assure that the Material is treated in accordance with the provisions of this Protective Order, including retrieving any copies that may have been disclosed to unqualified recipients.

(b) No Waiver of Privilege. The production or inspection of Material that a Producing Party claims was inadvertent and should not have been produced or disclosed because of the attorney-client privilege, the work product immunity or any other applicable privilege or immunity from discovery shall not be deemed to be a waiver of any such privilege or immunity to which the Producing Party would have been entitled had the Material not inadvertently been produced or disclosed. Upon request by the Producing Party, the Receiving Party shall immediately return all copies of such inadvertently produced Material.

4. Material Not Covered By This Protective Order

No Material shall be deemed CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED if:

- (a) it is in the public domain at the time of disclosure;
- (b) it becomes part of the public domain as a result of publication not involving a violation of this Protective Order;
- (c) the Receiving Party can show it was in the Receiving Party's rightful and lawful possession at the time of disclosure;
- (d) the Receiving Party lawfully received it from a nonparty without restriction as to disclosure, provided such nonparty has the right to make the disclosure to the Receiving Party; or
- (e) the Receiving Party can show it was independently developed by the Receiving Party after the time of disclosure by personnel who did not have access to the Producing Party's Designated Material.

5. Challenges to Designations

(a) Written Notice. The Designating Party shall use reasonable care when designating Material as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED. Nothing in this Protective Order shall prevent a Receiving Party from contending that any Material has been improperly designated. If the Receiving Party disagrees with the designation of any Material, the Receiving Party may challenge such designation by providing the Designating Party with written notice of such challenge and by identifying the Material as specifically as possible. The challenge should be made as soon as is practicable following production, and unreasonable delay may be considered a waiver of the challenge if the circumstances so warrant. If the parties do not resolve the dispute within fourteen (14) days of the Designating Party receiving written notice of the challenge, the Receiving Party may file a motion with the Court challenging the designation as invalid as set forth below.

(b) Meet and Confer. A Party that elects to challenge a designation must do so in good faith and, in addition to the written notice, must confer directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the Material challenged and to reconsider the circumstances, and if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may file a motion challenging the designation only if it has engaged in this meet and confer dialogue first. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with these meet and confer requirements and that sets forth with specificity the

justification for the designation that was given by the Designating Party in the meet and confer dialogue.

(c) Judicial Intervention. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the Material in question the level of protection to which it entitled under the Designating Party's designation.

6. Inspection of Materials

Material made available for inspection by Outside Counsel for the Receiving Party shall initially be considered to be OUTSIDE COUNSEL RESTRICTED and subject to this Protective Order even though no formal designation has yet been made. Thereafter, the Producing Party shall have a reasonable time to review and designate the inspected Material as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED prior to furnishing copies to the Receiving Party.

7. Access to CONFIDENTIAL Material

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, CONFIDENTIAL Material shall not be disclosed, directly or indirectly, to anyone except the following (and those identified in Section 17 below regarding use of Designated Material at depositions):

- (a) The Court and its personnel.
- (b) Outside Counsel for each Party whose functions require access to CONFIDENTIAL Material.
- (c) Outside Consultants, subject to the provisions and limitations set forth in Section 14 herein.
- (d) Employees, officers, and directors of a Receiving Party who have responsibility for maintaining, defending, or evaluating this litigation (and supporting personnel). No CONFIDENTIAL Material shall be disclosed to a Party employee, officer, or director until the individual has signed the Confidentiality Agreement attached hereto as Exhibit A, thereby declaring that he or she has read and understands this Protective Order and agrees to be bound by its provisions. Such written agreement shall be retained by counsel for the Receiving Party and must be disclosed to the Producing Party within seven (7) days after execution.

8. Access to OUTSIDE COUNSEL RESTRICTED Material

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, OUTSIDE COUNSEL RESTRICTED Material shall not be disclosed, directly or indirectly, to

anyone except the following (and those identified in Section 17 below regarding use of Designated Material at depositions):

- (a) The Court and its personnel.
- (b) Outside Counsel for each Party whose functions require access to OUTSIDE COUNSEL RESTRICTED Material.
- (c) Outside Consultants, subject to the provisions and limitations set forth in Section 14 herein.

9. Additional Restrictions on Access to Code, Materials Concerning Intel's Semiconductor Fabrication Processes, or Schematics

Access to (i) RTL, iHDL, or similarly sensitive code, (ii) materials concerning Intel's semiconductor fabrication processes, (iii) GDS Data materials, or (iv) schematics shall be provided under the OUTSIDE COUNSEL RESTRICTED designation only and shall be subject to the Prosecution Bar of Section 10 and to the following additional restrictions:

(a) Intel shall produce copies of process flow documents at the secure location mentioned in the below paragraph (b) in paper and electronic word searchable format. At the request of the Receiving Party, the Producing Party must provide paper copies of reasonable portions of the materials at the time of inspection by the Receiving Party, which Outside Counsel for the Receiving Party may take when completing an inspection. Copies must be made by STC's Outside Counsel at its office. The electronic version may not be sent to a third-party vendor for copying.

(b) The materials identified in the first paragraph of Section 9 above shall be provided on a stand-alone computer (i.e., not connected to a network or the Internet) in a secure location at the offices of the Producing Party's counsel in Dallas, Texas or Chicago, Illinois. The Producing Party shall provide access to this stand-alone computer during regular business hours on reasonable notice. In limited circumstances, access to the stand-alone computers will also be provided on a Saturday and Sunday as long as actual notice is provided to the Producing Party not later than one week before the weekend for which access is requested. Access on weekends shall be limited to one weekend. In limited circumstances, access from the close of business through 10:00 PM local time on weekdays shall be provided so long as actual notice of such need is provided to the Producing Party not later than one week before access is requested. Access on weekday evenings shall be limited to two separate days. Beginning one week prior to the beginning of trial and continuing through the end of trial, access to the materials identified in the first paragraph of Section 9 above shall be provided under the same conditions and with the same limitations and restrictions at the offices of the Atkinson, Thal & Baker law firm in Albuquerque, NM. Intel shall make its GDS Data available in a usable format and the stand-alone shall include any necessary software, including a GDS/Oasis viewer, to allow the reviewer to view and search the GDS Data. Intel shall provide STC with the name of viewing software. In

the event that STC and Intel agree on (a) review tool(s) that is/are not conventionally used by Intel, STC must provide Intel with the CD or DVD containing a licensed copy of such software tool(s) at least ten (10) business days in advance of the date upon which STC wishes to have the additional software tool(s) available for use on the GDS Computer. At the request of the Receiving Party, the Producing Party must provide paper copies of reasonable portions of the materials at the time of inspection by the Receiving Party, which Outside Counsel for the Receiving Party may take when completing an inspection.

(c) A Receiving Party that wants to use any such materials at a deposition may, no earlier than 72 hours prior to any such deposition, make only as many copies, and only of the specific pages, as the Receiving Party intends to actually use at the deposition. At the conclusion of the deposition, the Producing Party will collect each copy of such materials, except for the copy used by the examining attorney (who shall destroy such copy within 24 hours of the completion of the subject deposition), and will retain the original of any such exhibit, which shall not be appended to the transcript of the deposition.

(d) A Receiving Party that wants to file or otherwise submit any such materials to the Court in connection with a filing may, no earlier than 48 hours prior to the relevant filing, make only as many copies, and only of the specific pages as needed, for submission to the Court and shall file any and all such copies of the materials with an application to file under seal. In the event that a Receiving Party wants to make electronic copies of such material to display demonstrative exhibits in court proceedings, the parties will meet and confer on appropriate procedures.

(e) Outside Counsel for the Receiving Party shall maintain a complete log of Bates-numbered pages of such materials printed and shall produce such log at the request of the Producing Party. For security purposes, this log must be produced to the Producing Party regardless of any other stipulation limiting expert discovery. Paper copies shall include Bates numbers and OUTSIDE COUNSEL RESTRICTED labels when printed.

(f) Intel seeks specific restrictions on the manner and location of storage for authorized copies of documents produced under this paragraph 9. The parties have advised the Court that they have been unable to reach agreement on that issue. Within seven days of the entry of this Interim Protective Order, Intel will file a motion to resolve the issue pursuant to Fed. R. Civ. P. 26(c) and D.N.M. L.Rs.-Civ.7.1 and 26.5.

10. Prosecution Bar

(a) Any Material designated OUTSIDE COUNSEL RESTRICTED is subject to a PROSECUTION BAR. Any person who has access to any such Material from the opposing Party under Section 8 shall not be Involved In The Prosecution Of Patents Or Patent Applications relating to the semiconductor patterning (including lithography, mask, and etch) from the time of receipt of such Material through and including one year following the latter of: (i) December 31, 2011 and (ii) the entry of a final, nonappealable judgment or order or the complete settlement of all claims and dismissal with prejudice against all parties in this action.