

In addition, any person subject to this PROSECUTION BAR shall not be Involved In The Prosecution Of Patents Or Patent Applications relating to semiconductor patterning (including lithography, mask, and etch) where the patent application was filed or claims priority from any application filed prior to one year following 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. Notwithstanding the forgoing, the parties agree that Stadheim and Gear, and STC's Outside Consultants, may participate in any reexamination proceeding involving U.S. Patent No. 6,042,998 that was not initiated by STC.UNM, UNM, or any other stakeholder in any interest in U.S. Patent No. 6,042,998.

(b) Intel seeks to have a longer prosecution bar apply in the event that discovery is required regarding research and development on future process technologies. 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.

#### 11. Access by Professional Vendors

Despite the access restrictions set forth in Sections 7 and 8, but otherwise subject to the requirements set forth in this Protective Order, Designated Material, and such copies as are reasonably necessary for maintaining, defending, or evaluating this litigation, may be furnished and disclosed to Professional Vendors as defined in Definition K. Before disclosing any Designated Material to any person or service described in this paragraph, Outside Counsel for the Receiving Party shall first obtain from such person or service a written Confidentiality Agreement, in the form attached hereto as Exhibit A. Such written agreement shall be retained by Outside Counsel for the Receiving Party, but need not be disclosed to the Producing Party until the conclusion of the case.

#### 12. Transmittal of Designated Material

No OUTSIDE COUNSEL RESTRICTED Material shall be transmitted or transported outside of the United States, or communicated to any recipient under this agreement who is located outside of the United States, for any purpose without the express written permission of the Producing Party. A Receiving Party shall not transmit OUTSIDE COUNSEL RESTRICTED Material or any summaries of such documents that are in electronic form (e.g., PDF, TIFF, Word, Excel files) outside of any individual outside counsel's office for a Receiving Party (e.g., in e-mail traveling on the Internet) unless the documents or summaries are encrypted using PGP<sup>®</sup> encryption with a pass phrase whose length is at least 20 characters. Transmission of such PGP-encrypted documents shall be only (a) by hand delivery, (b) by a secure transport carrier (e.g., Federal Express), or (c) by electronic means (e.g., e-mail sent directly to a qualified recipient). A Receiving Party shall not reproduce portions of OUTSIDE COUNSEL RESTRICTED Material or summaries of such material in the text of an unencrypted e-mail, but may send such information in a PGP-encrypted attachment that uses a pass phrase whose length is at least 20 characters. A Receiving Party may transmit paper copies of Designated Material and paper

copies of any summaries of Designated Material between or among qualified recipients, *e.g.*, Outside Consultants, outside any individual outside counsel's office for a Receiving Party, but this transmission shall be only by (a) hand delivery in sealed envelopes or containers, (b) a secure transport carrier (*e.g.*, Federal Express) in sealed envelopes or containers, or (c) facsimile where, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused by any person who is not a qualified recipient.

13. Electronic Accessibility

The Receiving Party shall ensure that Designated Material is not accessible or transmitted over any electronic system or connection (*e.g.*, the Internet, electronic mail) that does not ensure compliance with Sections 7 through 12 of this Protective Order.

14. Disclosure to Outside Consultants

(a) Confidentiality Agreement. An Outside Consultant's access to Designated Material shall be subject to the terms in this section, including the notice-and-objection provisions below, and the requirement that the Outside Consultant execute the Confidentiality Agreement attached hereto as Exhibit A. The Confidentiality Agreement shall be retained by Outside Counsel for the Party that retained the Outside Consultant, but need not be disclosed to any other Party.

(b) Written Notice. Before a Receiving Party may disclose, directly or indirectly, any Designated Material to an Outside Consultant, the Receiving Party must give written notice to the Producing Party of the following information as it relates to the Outside Consultant:

- (1) current curriculum vitae, including the full name of the individual and the city and state of his or her primary residence;
- (2) business address and title;
- (3) nature of business or profession;
- (4) any previous or current relationship (personal or professional) with any of the parties;
- (5) a listing of other actions (including case name, case number, and court/agency) in which the individual has testified (at trial, deposition or in a hearing);
- (6) the individual's current employer;
- (7) all companies for which the individual has consulted or been employed by, within the past five years, and the years of such consulting or employment and brief description of the work performed;
- (8) a listing of all papers or articles written by the individual; and

(9) whether the individual is involved in or anticipates involvement in any aspect of prosecuting patent applications relating to the manufacture of semiconductors.

(c) Objection. A Party that makes a written notice and provides the information specified in the preceding paragraph may disclose the Designated Material to the identified Outside Consultant unless, within ten (10) business days of the written notice (plus three (3) additional business days if notice is given other than by hand delivery, email, or facsimile transmission), the Producing Party objects in writing.

(d) Judicial Intervention. If an objection is made, the parties shall meet and confer to try to resolve the dispute by agreement. If no agreement is reached within fourteen (14) days, the objecting Party may move the Court for an order that access to CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED Material be denied the designated individual, or other appropriate relief. Unless and until the Court determines otherwise, no disclosure of any such Designated Material shall be made by the Receiving Party to any Outside Consultant to whom an objection has been made.

#### 15. Exceptions to Limitations on Disclosure

Nothing herein shall prevent disclosure of Designated Material: (a) by the Producing Party to anyone else; (b) by the Receiving Party to an officer or employee of the Producing Party who is authorized by the Producing Part to have access to that Designated Material; (c) by a Party to any person, whether or not affiliated with the Producing Party at the time of disclosure, who either authored the Designated Material, in whole or in part, or who has independently received the Designated Material other than through a means constituting a breach of this Protective Order; or (d) to any person who is reasonably identified as previously having had access to the Designated Material, which identification is made by the sworn testimony of another or unambiguously appears on the face of a document, other than through a means constituting breach of this Protective Order.

#### 16. Filing Under Seal

All transcripts, exhibits, discovery responses, pleadings, briefs, and other Material submitted to the Court that contain or disclose Designated Material shall be filed in a sealed envelope or other appropriate sealed containers on which shall be endorsed the title of this matter, an indication of the nature of the contents of such sealed envelope or other container, the words "CONFIDENTIAL—FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER," and a statement substantially in the following form: "This envelope contains confidential information filed in this case by (name of Party) and is not to be opened nor the contents thereof displayed or revealed except by order of the Court presiding over this matter." In addition, the first page of any Material filed under seal shall include the conspicuous legend: "CONFIDENTIAL—FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER."

If any person fails to file protected Material under seal, the Producing Party or any Party claiming confidentiality for the Material may request that the Court place the filing under seal (in addition to seeking any remedies for breach of this Protective Order).

17. Use at Depositions

(a) Except as otherwise ordered by the Court, any deposition or trial witness may be examined and may testify concerning Designated Material of which such person has prior knowledge. Without in any way limiting the generality of the foregoing:

(1) A present director, officer, and/or employee of a Producing Party may be examined and may testify concerning Designated Material of the Producing to the extent that that person is authorized by the Producing Part to have access to that Designated Material.

(2) A former director, officer, and/or employee of a Producing Party may be interviewed, examined, and may testify concerning all Designated Material of which such person has prior knowledge (not involving a violation of this Protective Order), including any such Material that refers to matters of which the witness has personal knowledge, which has been produced by that Party, and which pertains to the time period or periods of such witness's employment or service.

(3) Non-parties may be examined or testify concerning any document containing Designated Material that appears on its face or from other documents or testimony to have been received from, or communicated to, the nonparty as a result of any contact or relationship with the Producing Party. Any person other than the witness, his or her counsel, and any person qualified to receive Designated Material under this Protective Order shall be excluded from the portion of the examination concerning such Material, absent the consent of the Producing Party. If the witness is represented by an attorney who is not qualified under this Protective Order to receive Designated Material, then prior to the examination, the attorney shall provide a signed Confidentiality Agreement, in the form attached hereto as Exhibit A, declaring that he or she will comply with the terms of this Protective Order and maintain the confidentiality of Designated Material disclosed during the course of the examination. If such attorney declines to sign such a Confidentiality Agreement before the examination, the parties, by their counsel, shall jointly seek a protective order from the Court prohibiting such attorney from disclosing such Designated Material.

(b) In addition to the restrictions set forth in this Protective Order, the following shall apply to Designated Material used at a deposition:

(1) A witness who previously had access to Designated Material, but who is not under a present nondisclosure agreement with the Producing Party that applies to the Designated Material, may be shown the Designated Material if a copy of this Protective

Order is attached to any subpoena, notice, or request served on the witness for the deposition, and the witness is advised on the deposition record of the existence of the Protective Order and agrees to its requirements to keep confidential any questions, testimony, or documents that in any way relate to or constitute Designated Material.

(2) Witnesses may not retain copies of any Designated Material used or reviewed at a deposition. A witness may not take out of the deposition room any exhibit that is marked CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED. The Producing Party of any Designated Material used at a deposition may also require that the transcript and exhibits not be copied by the witness or his or her counsel and that the transcript and exhibits may only be reviewed by the witness in the offices of Outside Counsel representing a Party in this case (or another firm acting for Outside Counsel representing a Party in this case under the supervision of one of the lawyers bound by the terms of the Protective Order).

18. Stipulations or Additional Relief from the Court

The parties may, by stipulation, provide for exceptions to this Protective Order. Nothing in this Protective Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, additional protection with respect to the confidentiality of Material or relief from this Protective Order with respect to particular Designated Material.

19. Return of Designated Material

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after a final, nonappealable judgment or order, or the complete settlement of all claims asserted and dismissal with prejudice against all parties in this action, each Receiving Party must return all Designated Material to the Producing Party. As used in this section "Designated Material" includes Designated Material and any derivatives therefrom, including, but not limited to, all copies, abstracts, compilations, summaries, notes, or any other form of reproducing, referring to, or capturing any portion of the Designated Material. The Receiving Party's obligation to return Designated Material received from another Party extends to Designated Material the Receiving Party disclosed to others pursuant to this Protective Order. With written permission from the Producing Party, the Receiving Party may destroy some or all of the Designated Material instead of returning it. Whether the Designated Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Designated Material that was returned or destroyed and that affirms that neither the Receiving Party nor others to which the Receiving Party disclosed Designated Material has retained any Designated Material (or otherwise identifies any person or entity that has failed to return or destroy such Designated Material). Notwithstanding this section, counsel are entitled to retain an archival copy of all pleadings, motion papers (including all supporting and opposing papers and exhibits and declarations thereto), transcripts, legal memoranda, correspondence, briefs (including all supporting and opposing papers and exhibits and declarations thereto), written discovery requests and responses, exhibits offered or introduced

into evidence at trial, or attorney work product. Any such archival copies remain subject to this Protective Order as set forth in Section 21.

20. Injunctive Relief

The parties acknowledge that any breach of this Protective Order may result in immediate and irreparable injury for which there is no adequate remedy at law. If anyone violates or threatens to violate the terms of this Protective Order, the parties agree that the aggrieved Party may immediately apply to obtain injunctive relief against any such violation or threatened violation, and if the aggrieved Party does so, any respondent who is subject to the provisions of this Protective Order may not employ as a defense that the aggrieved Party possesses an adequate remedy at law.

21. Survival of Order

The terms of this Protective Order shall survive the final termination of this action to the extent that any Designated Material is not or does not become known to the public (or to the extent that any Designated Material has become known to the public due to a violation of this Protective Order). This Court shall retain jurisdiction over this action for the purpose of enforcing this Protective Order. The parties agree that any order of dismissal of the Action as to any or all parties shall include specific provision that the Court retains jurisdiction to enforce the terms of this Protective Order following dismissal. Each Party hereby consents to the personal jurisdiction of the Court for that purpose.

22. Treatment Prior to Entry of Order

Each Party agrees to be bound by the terms of this Protective Order as of the date it executed the Order below, even if prior to entry of the Order by the Court.

23. Protected Material Subpoenaed or Ordered Produced In Other Litigation

If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any Designated Material, the Receiving Party must so notify the Producing (and, if not the same person or entity, the Designating Party), in writing (by hand delivery, fax, or email) promptly and in no event more than ten (10) days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue that some or all the material covered by the subpoena or order is subject to this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Producing or Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its Designated Material.

Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2011.

HONORABLE W. DANIEL SCHNEIDER  
UNITED STATES MAGISTRATE JUDGE



**Exhibit A**

**ACKNOWLEDGMENT AND AGREEMENT  
TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, state:

1. I reside at \_\_\_\_\_.

2. My present employer is \_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_.

4. I agree to keep confidential all information and material provided to me in the matter of *STC.UNM v. Intel Corporation*, Civil No. 1:10-cv-01077-RB-WDS, and to be subject to the authority of the U.S. District Court for the District of New Mexico in the event of any violation of this agreement or dispute related to this agreement.

5. I have been informed of and/or read the Stipulated Protective Order ("Order") dated *[DATE]*, and understand and will abide by its contents and confidentiality requirements. I will not divulge any confidential information or material to persons other than those specifically authorized by the Order. I will not use any confidential information or material in any manner not expressly allowed by the Order.

6. I state under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Signature

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