

Exhibit B

Excerpts from

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
*STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING PATENTS, HIGHLY
SENSITIVE CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,
v.
Defendant.

Case No. C
STIPULATED PROTECTIVE ORDER
FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS

1. PURPOSES AND LIMITATIONS

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

1 8. PROSECUTION BAR [Optional]

2 Absent written consent from the Producing Party, any individual who receives
3 access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [Optional: or
4 “HIGHLY CONFIDENTIAL – SOURCE CODE”] information shall not be involved in the
5 prosecution of patents or patent applications relating to [insert subject matter of the invention and
6 of highly confidential technical information to be produced], including without limitation the
7 patents asserted in this action and any patent or application claiming priority to or otherwise
8 related to the patents asserted in this action, before any foreign or domestic agency, including the
9 United States Patent and Trademark Office (“the Patent Office”).¹¹ For purposes of this
10 paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or
11 otherwise affecting the scope or maintenance of patent claims.¹² To avoid any doubt,
12 “prosecution” as used in this paragraph does not include representing a party challenging a patent
13 before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*
14 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [Optional: or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE”] information is first received by the affected individual
17 and shall end two (2) years after final termination of this action.¹³

18 9. SOURCE CODE [Optional]

19 (a) To the extent production of source code becomes necessary in this case, a
20 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
21 if it comprises or includes confidential, proprietary or trade secret source code.

22 _____
23 ¹¹ It may be appropriate under certain circumstances to require Outside and House Counsel who
24 receive access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information to
implement an “Ethical Wall.”

25 ¹² Prosecution includes, for example, original prosecution, reissue and reexamination
proceedings.

26 ¹³ *Alternative:* It may be appropriate for the Prosecution Bar to apply only to individuals who
27 receive access to another party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
28 technical or source code information pursuant to this Order, such as under circumstances where
one or more parties is not expected to produce “HIGHLY CONFIDENTIAL – ATTORNEYS’
EYES ONLY” information that is technical in nature or “HIGHLY CONFIDENTIAL –
SOURCE CODE” information,

1 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
2 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” information [*Optional*: including the Prosecution Bar set forth in
4 Paragraph 8], and may be disclosed only to the individuals to whom “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in
6 Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.¹⁴

7 (c) Any source code produced in discovery shall be made available for
8 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
9 business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel
10 or another mutually agreed upon location.¹⁵ The source code shall be made available for
11 inspection on a secured computer in a secured room without Internet access or network access to
12 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
13 portion of the source code onto any recordable media or recordable device. The Producing Party
14 may visually monitor the activities of the Receiving Party’s representatives during any source
15 code review, but only to ensure that there is no unauthorized recording, copying, or transmission
16 of the source code.¹⁶

17 (d) The Receiving Party may request paper copies of limited portions of source
18 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports,
19 or other papers, or for deposition or trial, but shall not request paper copies for the purposes of
20 reviewing the source code other than electronically as set forth in paragraph (c) in the first
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22 ¹⁴ It may be appropriate under certain circumstances to allow House Counsel access to derivative
23 materials including “HIGHLY CONFIDENTIAL - SOURCE CODE” information, such as
exhibits to motions or expert reports,

24 ¹⁵ *Alternative*: Any source code produced in discovery shall be made available for inspection in a
25 format through which it could be reasonably reviewed and searched during normal business hours
26 or other mutually agreeable times at a location that is reasonably convenient for the Receiving
Party and any experts to whom the source code may be disclosed. This alternative may be
appropriate if the Producing Party and/or its counsel are located in a different jurisdiction than
counsel and/or experts for the Receiving Party.

27 ¹⁶ It may be appropriate under certain circumstances to require the Receiving Party to keep a
28 paper log indicating the names of any individuals inspecting the source code and dates and times
of inspection, and the names of any individuals to whom paper copies of portions of source code
are provided.

1 instance. The Producing Party shall provide all such source code in paper form including bates
2 numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party
3 may challenge the amount of source code requested in hard copy form pursuant to the dispute
4 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
5 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute
6 resolution.

7 (e) The Receiving Party shall maintain a record of any individual who has
8 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
9 maintain all paper copies of any printed portions of the source code in a secured, locked area.
10 The Receiving Party shall not create any electronic or other images of the paper copies and shall
11 not convert any of the information contained in the paper copies into any electronic format. The
12 Receiving Party shall only make additional paper copies if such additional copies are (1)
13 necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s
14 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
15 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the
16 end of each day and must not be given to or left with a court reporter or any other individual.¹⁷

17 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that
20 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
21 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” [*Optional:* or “HIGHLY
22 CONFIDENTIAL – SOURCE CODE”] that Party must:

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

25 (b) promptly notify in writing the party who caused the subpoena or order to issue

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27 ¹⁷ The nature of the source code at issue in a particular case may warrant additional protections or
28 restrictions, For example, it may be appropriate under certain circumstances to require the
Receiving Party to provide notice to the Producing Party before including “HIGHLY
CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.