

Julia E. Markley, OSB No. 000791
JMarkley@perkinscoie.com
PERKINS COIE LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

Thomas H. Shunk (Ohio Bar No. 0025793)
TShunk@bakerlaw.com
(admitted *pro hac vice*)

Christina J. Moser (Ohio Bar No. 0074817)
cmoser@bakerlaw.com
(admitted *pro hac vice*)
BAKER & HOSTETLER LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
Telephone: 216.621.0200
Facsimile: 216.696.0740

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GOOGLE INC.,

Plaintiff,

v.

TRAFFIC INFORMATION LLC,

Defendant.

No. CV09-642-HU

STIPULATED PROTECTIVE ORDER

Plaintiff Google, Inc. (“Plaintiff” or “Google”) and Defendant Traffic Information LLC (“Defendant” or “Traffic”) through counsel undersigned, hereby enter into this Stipulated Protective Order in order to expedite the flow of discovery materials, to facilitate the prompt

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resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, 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 Fed. R. Civ. P. 26(c).

**FINDINGS REGARDING CONFIDENTIAL INFORMATION
AND THE NEED FOR THIS ORDER**

Google and Traffic each assert that they possess information relating to the subject matter of this action, which they deem confidential and proprietary. The parties recognize that in the course of discovery proceedings it may be necessary to disclose to the other party or parties certain of the asserted confidential and proprietary information, but each wishes to ensure that such information shall not be used for any purpose other than this action, and shall not be made public or be otherwise used or disseminated beyond the extent required for purposes of this action. In addition, the parties contemplate that confidential information may be produced by a non-party or non-parties. The parties hereto therefore seek to facilitate the production and protection of such information.

Documents that are to be protected under this Stipulated Protective Order contain information, which the parties contend is confidential including non-public product information, research, development, and commercial information relating to customers, sales, margins and the like that is valuable in the parties' respective businesses. Of particular sensitivity in this litigation – not to understate the confidentiality of other types of documents – are documents containing computer source code and documents relating to pending patent applications, the

nature of which require measures beyond those required for other types of confidential documents.

Computer source code is an extremely valuable corporate resource which, if made publicly available, can be duplicated without limit at almost no cost, thereby robbing it of its value in a very short period of time. **Pending patent applications**, until they are published, contain information about current inventive work and the direction of future business plans the value of which would be lost if they were to be disclosed to competitors in the industry, and in particular if they were to be disclosed to entities attempting to obtain patent protection in the same field.

Good cause exists for protecting information relating to source code, pending patent applications, and the other types of confidential documents defined herein, including the need to preserve the parties' current and/or future competitive advantage and the need to protect the parties from undue annoyance, embarrassment or oppression. Further, if third parties were to gain access to the confidential information, the parties' businesses would suffer specific prejudice and harm because their competitive advantage would be compromised or lost, or the parties would be subject to annoyance, embarrassment or oppression. This finding of prejudice and harm is consistent with the guidelines set out in *Foltz v. State Farm Mutual Automobile Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003), *Phillips v. General Motors Corp.*, 307 F. 3d 1206 (9th Cir.), *Beckman Industries, Inc. v. International Ins. Co.*, 966 F.2d 470 (9th Cir. 1992), *Gisby v. Les Schwab Tire Center of Oregon, Inc.*, 2004 WL 848191 (D. Or. 2004) and *Fischer v. City of Portland*, 2003 WL 23537981 (D. Or. 2003), as well as the requirements of Local Rule 26-4 and Fed. R. Civ. Pro. 26(c). These findings are for purposes of this Protective Order only and shall

not be presented to the jury or to support or refute any issue related to liability, damages or other form of relief sought in this action.

Accordingly, based upon the agreement of the parties and for good cause shown as reflected above, IT IS HEREBY ORDERED pursuant to Rule 26(c) of the Federal Rules of Civil Procedure that the following procedure shall be adopted for the protection of confidential and proprietary information:

1. INFORMATION SUBJECT TO THIS ORDER

Discovery materials produced in this case may be labeled as one of three categories: CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and RESTRICTED CONFIDENTIAL – SOURCE CODE, as set forth in Items A – C below. All three of the identified categories of information shall be identified collectively in this Order by the title “Protected Information.” Any documents derived from or containing Protected Information must be designated with the appropriate category of confidentiality, according to the terms of this Order.

A. Information Designated as “Confidential Information”

1. For purposes of this Order, “CONFIDENTIAL INFORMATION” shall mean all information or material produced for or disclosed to a receiving party that a producing party, including any party to this action and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order, considers to constitute confidential technical, sales, marketing, financial, or other commercially sensitive information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the producing party. Any CONFIDENTIAL INFORMATION obtained

by any party from any person pursuant to discovery in this litigation may be used only for purposes of this litigation.

2. Any document or tangible thing containing or including any CONFIDENTIAL INFORMATION may be designated as such by the producing party by marking it “CONFIDENTIAL” prior to or at the time copies are furnished to the receiving party.

3. All CONFIDENTIAL INFORMATION not reduced to documentary, tangible or physical form or which cannot be conveniently designated as set forth in paragraph 2, shall be designated by the producing party by informing the receiving party of the designation in writing.

4. Except as otherwise provided herein, any documents (including physical objects) made available for inspection by counsel for the receiving party prior to producing copies of selected items shall initially be considered, as a whole, to constitute CONFIDENTIAL OUTSIDE COUNSEL ONLY INFORMATION (unless otherwise designated at the time of inspection) and shall be subject to this Order. Thereafter, the producing party shall have a reasonable time to review and designate the appropriate documents as CONFIDENTIAL INFORMATION (or otherwise as appropriate) prior to furnishing copies to the receiving party.

5. The following information is not CONFIDENTIAL INFORMATION:

- a. Published advertising materials;
- b. Any information that is or, after its disclosure to a receiving party, becomes part of the public domain as a result of publication not involving a violation of this Order;
- c. Any information that the receiving party can show by written records was already publicly known prior to the disclosure;

d. Any information that the receiving party can show by written records was received by it from a source who obtained the information lawfully and under no obligation of confidentiality to the producing party;

e. Any information that the receiving party can show by written records was independently developed by it after the time of disclosure by personnel who did not have access to the producing party's CONFIDENTIAL INFORMATION.

6. Documents designated CONFIDENTIAL and information contained therein shall be available only to:

a. Outside litigation counsel of record and supporting personnel employed in the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;

b. Technical Advisers and their necessary support personnel, subject to the provisions of paragraphs 3A-3F herein, and who have signed the form attached hereto as Attachment A. For purposes of this Order, the term "Technical Adviser" shall mean independent outside expert witnesses or consultants not employed by a party with whom counsel may deem it necessary to consult and who comply with paragraph 15;

c. Up to two in-house counsel with responsibility for managing this litigation and one officer level employee of a party who either has responsibility for making decisions dealing directly with the litigation in this action or who is assisting outside counsel in preparation for proceedings in this action who have signed the form attached hereto as Attachment A;

d. The Court, its personnel and stenographic reporters (under seal or with other suitable precautions determined by the Court);

e. Independent legal translators retained to translate in connection with this action; independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action; graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; non-technical jury or trial consulting services, but not including mock jurors, who have signed the form attached hereto as Attachment A; and

f. Commercial copy vendors retained by counsel for purposes of this action who have signed the form attached hereto as Attachment A.

B. Information Designated “Confidential Outside Counsel Only”

1. The CONFIDENTIAL OUTSIDE COUNSEL ONLY designation is reserved for CONFIDENTIAL INFORMATION that constitutes non-public proprietary marketing, financial, sales, web traffic, research and development, or technical data/information or commercially sensitive competitive information, including, without limitation, confidential information obtained from a nonparty pursuant to a current Nondisclosure Agreement (“NDA”), CONFIDENTIAL INFORMATION relating to future products not yet commercially released, strategic plans, and settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the producing party. Documents marked CONFIDENTIAL OUTSIDE ATTORNEYS’ EYES ONLY or ATTORNEYS’ EYES ONLY or HIGHLY CONFIDENTIAL shall be treated as if designated CONFIDENTIAL OUTSIDE COUNSEL ONLY. In determining whether information should be designated as CONFIDENTIAL OUTSIDE COUNSEL ONLY, each party agrees to use such designation only in good faith.

2. Documents designated CONFIDENTIAL OUTSIDE COUNSEL ONLY and information contained therein shall be available only to:
 - a. Outside litigation counsel of record and supporting personnel employed in the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;
 - b. Technical advisers and their necessary support personnel, subject to the provisions of paragraphs 3A-3F herein, and who have signed the form attached hereto as Attachment A;
 - c. The Court, its personnel and stenographic reporters (under seal or with other suitable precautions determined by the Court);
 - d. Independent legal translators retained to translate in connection with this action; independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action; graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; non-technical jury or trial consulting services but not including mock jurors, who have signed the form attached hereto as Attachment A; and
 - e. Commercial copy vendors retained by counsel for purposes of this action who have signed the form attached hereto as Attachment A.

C. Information Designated “Restricted Confidential – Source Code”

1. Documents or other things that contain all or a portion of a party’s source code may be designated “RESTRICTED CONFIDENTIAL – SOURCE CODE”, if they comprise or

include confidential, proprietary and/or trade secret source code or metacode. Other documents or things that include confidential, proprietary and/or trade secret source code or metacode may only be designated RESTRICTED CONFIDENTIAL – SOURCE CODE if such source code cannot be segregated and redacted from the document or thing. If confidential, proprietary and/or trade secret source code or metacode is included within other documents or things and can be segregated and redacted from the document or thing, then the producing party must segregate and redact the confidential, proprietary and/or trade secret source code, produce the remaining redacted document (with a confidentiality designation, as appropriate), and produce only the segregated and redacted confidential, proprietary and/or trade secret source code or metacode as RESTRICTED CONFIDENTIAL – SOURCE CODE. The following conditions shall govern the production, review and use of source code or design documentation information.

2. All such source code, and any other Protected Information designated as “RESTRICTED CONFIDENTIAL – SOURCE CODE,” shall be subject to the following provisions:

a. Source code shall be made available in electronic format for inspection, at the option of the producing party, at (1) the offices of the producing party’s local counsel of record in this action; (2) a single, third-party site located within this judicial district (e.g., an escrow company); or (3) a location mutually agreed upon by the receiving and producing parties. Any location under (3) above shall be in the continental United States. All source code to be produced will be loaded on a single, non-networked computer that is password protected and maintained in a secure, locked area. Use of any input/output device (e.g., USB memory stick, CDs, floppy disk, portable hard drive, etc.) is prohibited while accessing the computer containing

the source code. The computer containing source code will be made available for inspection during regular business hours, upon reasonable notice to the producing party, which shall not be less than 3 business days in advance of the requested inspection.

b. The receiving party's outside counsel and/or Technical Advisors may request that commercially available licensed software tools for viewing and searching source code be installed on the secured computer. The receiving party must provide the producing party with the CD or DVD containing such software tool(s) at least four business days in advance of the inspection.

c. The receiving party's outside counsel and/or Technical Advisors shall be entitled to take notes relating to the source code but may not copy the source code into the notes. No copies of all or any portion of the source code may leave the room in which the source code is inspected except as otherwise provided herein. Further, no other written or electronic record of the source code is permitted except as otherwise provided herein.

d. No person shall copy, e-mail, transmit, upload, download, print, photograph or otherwise duplicate any portion of the designated Source Code, except that the receiving party may request a reasonable number of "proof copies" (which will never leave the production room and which will be destroyed at the conclusion of the reviewing session during which they are produced) of pages of Source Code to be printed by the producing party contemporaneously with the inspection and for use only thereat to facilitate review, but only if and to the extent necessary, and in no event may the receiving party request the producing party to print more than 25 consecutive pages and no more than 500 pages of "proof copies" of source code in aggregate during the various inspection sessions. Proof copies may be inspected only inside and may not

leave the room in which the receiving party is viewing the source code. Upon conclusion of a reviewing session, the receiving party may request a reasonable number of “production copies” of pages of source code to be printed by the producing party, but only if and to the extent necessary and in no event may the receiving party request the producing party to print more than 25 consecutive pages and no more than 500 of pages of “production copies” of source code in aggregate during the duration of the case without prior written approval by the producing party or Court order. The producing party will provide the requested “production copy” material within five days of the receiving party's request on watermarked or colored paper bearing Bates numbers and the legend “RESTRICTED CONFIDENTIAL – SOURCE CODE” unless objected to as discussed below. The printed “production copy” pages shall constitute part of the source code produced by the producing party in this action. At the inspecting party’s request, up to two additional sets (or subsets) of printed “production copy” source code may be requested and provided by the producing party in a timely fashion.

e. If the producing party objects that the printed portions are not reasonably necessary to any case preparation activity, the producing party shall make such objection known to the receiving party within five business days. If after meeting and conferring the producing party and the receiving party cannot resolve the objection (where such meet-and-confer need not take place in person), the producing party shall be entitled to seek a Court resolution of whether the printed source code in question is not reasonably necessary to any case preparation activity. Contested source code print outs need not produced to the requesting party until that matter is resolved by the Court.

f. Any printed pages of Source Code, and any other documents or things reflecting Source Code that have been designated by the producing party as “RESTRICTED CONFIDENTIAL – SOURCE CODE” may not be copied, digitally imaged or otherwise duplicated, except in limited excerpts necessary to attach as exhibits to depositions, expert reports, or court filings as discussed below.

g. Any paper copies designated “RESTRICTED CONFIDENTIAL – SOURCE CODE” shall be stored or viewed only at (i) the offices of outside counsel for the receiving party, (ii) the offices of Technical Advisors or consultants who have been approved to access Source Code; (iii) the site where any deposition is taken (iv) the Court; or (v) any intermediate location necessary to transport the information to a hearing, trial or deposition. Any such paper copies shall be maintained at all times in secure location under the direct control of counsel responsible for maintaining the security and confidentiality of the designated materials.

h. A list of names of persons who will view the source code will be provided to the producing party in conjunction with any written (including email) notice requesting inspection. The receiving party shall maintain a daily log of the names of persons who enter the locked room to view the source code and when they enter and depart. The producing party shall be entitled to have a person observe all entrances and exits from the source code viewing room, and to a copy of the log.

i. Unless otherwise agreed in advance by the parties in writing, following each inspection, the receiving party’s outside counsel and/or experts shall remove all notes, documents, laptops, and all other materials from the room that may contain work product and/or

attorney-client privileged information. The producing party shall not be responsible for any items left in the room following each inspection session.

j. The receiving party will not copy, remove, or otherwise transfer any source code from the Source Code Computer including, without limitation, copying, removing, or transferring the source code onto any other computers or peripheral equipment. The receiving party will not transmit any source code in any way from the location of the source code inspection.

k. Only the following individuals shall have access to “RESTRICTED CONFIDENTIAL - SOURCE CODE” materials, absent the express written consent of the Producing Party or further court order:

(1) Outside counsel of record for the parties to this action, including any attorneys, paralegals, technology specialists and clerical employees of their respective law firms;

(2) Up to three (3) Technical Advisors, pre-approved in accordance with Paragraphs 3A-3F and specifically identified as eligible to access Source Code;

(3) The Court, its technical advisor (if one is appointed), the jury, court personnel, and court reporters or videographers recording testimony or other proceedings in this action;

(4) While testifying at deposition or trial in this action only: (i) any current or former officer, director or employee of the producing party or original source of the information; (ii) any person designated by the producing party to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and/or (iii) any person who authored, previously received, or was directly involved in creating, modifying, or editing the source code, as evident

from its face or reasonably certain in view of other testimony or evidence. Persons authorized to view Source Code pursuant to this sub-paragraph shall not retain or be given copies of the Source Code except while so testifying.

l. The Receiving Party's outside counsel shall maintain a log of all copies of the source code (received from a Producing Party) that are delivered by the Receiving Party to any qualified person under Paragraph g above. The log shall include the names of the recipients and reviewers of copies and locations where the copies are stored;

m. Except as provided in this paragraph, the Receiving Party may not create electronic images, or any other images, of the source code from the paper copy for use on a computer (e.g., may not scan the source code to a PDF, or photograph the code). The Receiving Party may create an electronic copy or image of excerpts of source code in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, or any drafts of these documents ("SOURCE CODE DOCUMENTS"). The receiving party shall only include such excerpts as are reasonably necessary for the purposes for which such part of the source code is used. Images or copies of source code shall not be included in correspondence between the parties (references to production numbers shall be used instead) and shall be omitted from pleadings and other papers except to the extent permitted herein. The receiving party may create an electronic image of a selected portion of the source code only when the electronic file containing such image has been encrypted using commercially reasonable encryption software including password protection. The communication and/or disclosure of electronic files containing any portion of source code shall at all times be limited to individuals who are authorized to see source code under the provisions of this Protective Order. The receiving party

shall maintain a log of all electronic images and paper copies of source code in its possession or in the possession of its retained consultants, including the names of the recipients and reviewers of any electronic or paper copies and the locations where the copies are stored. Additionally, all electronic copies must be labeled "RESTRICTED CONFIDENTIAL - SOURCE CODE."

n. To the extent portions of source code are quoted in a SOURCE CODE DOCUMENT, either (1) the entire document will be stamped and treated as RESTRICTED CONFIDENTIAL – SOURCE CODE or (2) those pages containing quoted source code will be separately bound, and stamped and treated as RESTRICTED CONFIDENTIAL – SOURCE CODE.

o. All paper copies of source code shall be securely destroyed if they are no longer in use. Copies of source code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.

p. The receiving party's outside counsel may only disclose a copy of the source code to individuals specified in Paragraph g above (e.g., source code may not be disclosed to in-house counsel).

D. Use of Protected Information at Trial

The receiving party shall provide a minimum of one business day's notice to the producing party, in the event that a party intends to use any Protected Information during trial.

2. PROSECUTION BAR

A. Any person reviewing any of an opposing party's materials designated as CONFIDENTIAL OUTSIDE COUNSEL ONLY or RESTRICTED CONFIDENTIAL –

SOURCE CODE(all of which shall also be referred to as “Prosecution Bar Materials”) shall not, for a period commencing upon receipt of such information and ending one year following the conclusion of this case (including any appeals) engage in any Prosecution Activity (as defined below) on behalf of a party in this case. Furthermore, any person reviewing any of an opposing party’s Prosecution Bar Materials shall not, for a period commencing upon receipt of such information and ending one year following the conclusion of this case (including any appeals) engage in any Prosecution Activity involving claims on a method, apparatus, or system that provides, or assists in providing, traffic information to a plurality of mobile users connected to a network on behalf of a party in this case or a non-party to this case.

B. The following documents and materials shall not be eligible for classification as Prosecution Bar Materials: (i) documents and information related only to damages or reasonable royalty rates; (ii) publications, including patents and published patent applications; (iii) materials regarding 3rd party systems or products that were publicly known, on sale, or in public use before April 19, 1999, unless such materials are designated as Prosecution Bar Materials by a 3rd party; (iv) information that is publicly available; and (v) materials designated as CONFIDENTIAL.

C. Prosecution Activity shall mean: (1) prepare and/or prosecute any patent application (or portion thereof), whether design or utility, and either in the United States or abroad on behalf of a patentee or assignee of patentee’s rights; (2) prepare patent claim(s) on behalf of a patentee or assignee of patentee’s rights; (3) participate in any reissue or reexamination proceedings on behalf of a patentee or assignee of patentee’s rights; or (4) provide advice, counsel or suggestions regarding, or in any other way influencing, claim scope and/or

language, embodiment(s) for claim coverage, claim(s) for prosecution, or products or processes for coverage by claim(s) on behalf of a patentee or assignee of patentee's rights. Nothing in this paragraph shall prevent any attorney from sending Prior Art to an attorney involved in patent prosecution for purposes of ensuring that such Prior Art is submitted to the U.S. Patent and Trademark Office (or any similar agency of a foreign government) to assist a patent applicant in complying with its duty of candor. The parties expressly agree that the Prosecution Bar set forth herein shall be personal to any attorney who reviews Prosecution Bar Materials and shall not be imputed to any other persons or attorneys at the attorneys' law firm. It is expressly agreed that attorneys who work on this matter without reviewing Prosecution Bar Materials shall not be restricted from engaging in Prosecution Activity on matters that fall within the Prosecution Bar.

3. DISCLOSURE OF TECHNICAL ADVISERS

A. Information designated by the producing party under any category of Protected Information and such copies of this information as are reasonably necessary for maintaining, defending or evaluating this litigation may be furnished and disclosed to the receiving party's Technical Advisers and their necessary support personnel.

B. No disclosure of Protected Information to a technical adviser or their necessary support personnel shall occur until that person has signed the form attached hereto as Attachment A, and a signed copy has been provided to the producing party; and to the extent there has been an objection under paragraph 3C, that objection is resolved as discussed below.

C. A party desiring to disclose Protected Information to a Technical Adviser shall also give prior written notice by email to the producing party, who shall have ten business days after such notice is given to object in writing. The party desiring to disclose Protected

Information to a Technical Adviser must provide the following information for each Technical Adviser: name, address, curriculum vitae, current employer, employment history for the past five years, and a listing of cases in which the witness has testified as an expert at trial or by deposition within the preceding five years, and a identification of any patents or applications for patents in which the Technical Adviser is identified as an inventor or applicant, which the Technical Adviser is involved in the prosecution or maintenance thereof, or any patents or patent application that the technical Advisor has any pecuniary interest. No Protected Information shall be disclosed to such Technical Advisor(s) until after the expiration of the foregoing notice period.

D. A party objecting to disclosure of Protected Information to a Technical Adviser shall state with particularity the ground(s) of the objection and the specific categories of documents that are the subject of the objection. The objecting party's consent to the disclosure of Protected Information to a Technical Adviser shall not be unreasonably withheld, and its objection must be based on that party's good faith belief that disclosure of its Protected Information to the Technical Adviser will result in specific business or economic harm to that party.

E. If after consideration of the objection, the party desiring to disclose the Protected Information to a Technical Adviser refuses to withdraw the Technical Adviser, that party shall provide notice to the objecting party. Thereafter, the objecting party shall move the Court, within ten business days of receiving such notice, for a ruling on its objection. A failure to file a motion within the ten business day period shall operate as an approval of disclosure of the Protected Information to the Technical Adviser. The parties agree to cooperate in good faith to

shorten the time frames set forth in this paragraph if necessary to abide by any discovery or briefing schedules.

F. The objecting party shall have the burden of showing to the Court “good cause” for preventing the disclosure of its Protected Information to the Technical Adviser. This “good cause” shall include a particularized showing that: (1) the Protected Information is confidential commercial information, (2) disclosure of the Protected Information would result in a clearly defined and serious injury to the objecting party’s business, (3) the proposed Technical Advisor is in a position to allow the Protected Information to be disclosed to the objecting party’s competitors, and (4) that the Technical Advisor’s access to Protected Information may create other confidentiality or legal risks in connection with other patent-related activities or interests tied to the Technical Advisor.

4. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS

A. The parties shall use reasonable care when designating documents or information as Protected Information. Nothing in this Order shall prevent a receiving party from contending that any documents or information designated as Protected Information have been improperly designated or from requesting modification of any provision of this Order. A receiving party may at any time request that the producing party cancel or modify the Protected Information designation with respect to any document or information contained therein.

B. A party shall not be obligated to challenge the propriety of a designation of any category of Protected Information at the time of production, and a failure to do so shall not preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on counsel for the producing party, and shall particularly identify the documents or information that

the receiving party contends should be differently designated. The parties shall use their best efforts to resolve promptly and informally such disputes. If an agreement cannot be reached, the receiving party shall request that the Court cancel or modify a designation. The burden of demonstrating the confidential nature of any information shall at all times be and remain on the designating party.

C. Until a determination by the Court, the information in issue shall be treated as having been properly designated and subject to the terms of this Order.

5. LIMITATIONS ON THE USE OF PROTECTED INFORMATION

A. All Protected Information shall be held in confidence by each person to whom it is disclosed, shall be used only for purposes of this litigation, shall not be used for any business purpose, and shall not be disclosed to any person who is not entitled to receive such information as herein provided. All produced Protected Information shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

B. Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and trial and may testify concerning all Protected Information 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 all Protected Information which has been produced by that party and of which the witness has personal knowledge;

2. A former director, officer, agent and/or employee of a producing party may be interviewed, examined and may testify concerning all Protected Information of which he or she has personal knowledge, including any Protected Information that refers to matters of which the

witness has personal knowledge, which has been produced by that party and which pertains to the period or periods of his or her employment; and

3. Non-parties may be examined or testify concerning any document containing Protected Information of a producing party which appears on its face or from other documents or testimony to have been received from or communicated to the non-party as a result of any contact or relationship with the producing party or a representative of the producing party. Any person other than the witness, his or her attorney(s), or any person qualified to receive Protected Information under this Order shall be excluded from the portion of the examination concerning such information, unless the producing party consents to persons other than qualified recipients being present at the examination. If the witness is represented by an attorney who is not qualified under this Order to receive such information, then prior to the examination, the producing party shall request that the attorney provide a signed statement, in the form of Attachment A hereto, that he or she will comply with the terms of this Order and maintain the confidentiality of Protected Information disclosed during the course of the examination. In the event that such attorney declines to sign such a statement prior to the examination, the parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting the attorney from disclosing Protected Information.

4. All transcripts of depositions, exhibits, answers to interrogatories, pleadings, briefs, and other documents submitted to the Court which have been designated as Protected Information, or which contain information so designated, shall be filed under seal in a manner prescribed by the Court for such filings. Any party seeking to file a document under seal with the Court must consider, before filing the document under seal, redacting Protected Information

as an alternative to filing under seal as contemplated by *Foltz v. State Farm Mutual Automobile Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003).

5. Outside attorneys of record for the parties are hereby authorized to be the persons who may retrieve confidential exhibits and/or other confidential matters filed with the Court upon termination of this litigation without further order of this Court, and are the persons to whom such confidential exhibits or other confidential matters may be returned by the Clerk of the Court, if they are not so retrieved. No material or copies thereof so filed shall be released except by order of the Court, to outside counsel of record, or as otherwise provided for hereunder. Notwithstanding the foregoing and with regard to material designated as Restricted Confidential - Source Code, the provisions of Paragraph 1C are controlling to the extent those provisions differ from this paragraph.

6. Protected Information shall not be copied or otherwise produced by a receiving party, except for transmission to qualified recipients, without the written permission of the producing party, or, in the alternative, by further order of the Court. Nothing herein shall, however, restrict a qualified recipient from making working copies, abstracts, digests and analyses of CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information for use in connection with this litigation and such working copies, abstracts, digests and analyses shall be deemed Protected Information under the terms of this Order. Further, nothing herein shall restrict a qualified recipient from converting or translating CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information into machine readable form for incorporation into a data retrieval system used in connection with this action, provided that

access to that Protected Information, in whatever form stored or reproduced, shall be limited to qualified recipients.

7. At the request of any party, the original and all copies of any deposition transcript, in whole or in part, shall be marked "CONFIDENTIAL" by the reporter. This request may be made orally during the deposition or in writing within thirty (30) days of receipt of the final certified transcript. Deposition transcripts shall be treated as CONFIDENTIAL OUTSIDE COUNSEL ONLY until the expiration of the time to make a confidentiality designation. Any portions so designated shall thereafter be treated in accordance with the terms of this Order.

6. NON-PARTY USE OF THIS PROTECTIVE ORDER

A. A nonparty producing information or material voluntarily or pursuant to a subpoena or a court order may designate such material or information as Protected Information pursuant to the terms of this Protective Order.

B. A nonparty's use of this Protective Order to protect its Protected Information does not entitle that nonparty access to the Protected Information produced by any party in this case.

7. NO WAIVER OF PRIVILEGE

Nothing in this Protective Order shall require production of information that a party contends is protected from disclosure by the attorney-client privilege, the work product immunity or other privilege, doctrine, right, or immunity. If information subject to a claim of attorney-client privilege, work product immunity, or other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right or

immunity. Any party that inadvertently produces materials protected the attorney-client privilege, work product privilege, or other privilege, doctrine, right, or immunity may obtain the return of those materials by promptly notifying the recipient(s) and providing a privilege log for the inadvertently produced materials. The recipient(s) shall gather and return all copies of the privileged material to the producing party, except for any pages containing privileged markings by the recipient, which pages shall instead be destroyed and certified as such by the recipient to the producing party. Notwithstanding this provision, outside litigation counsel of record are not required to delete information that may reside on their respective firm's electronic back-up systems that are over-written in the normal course of business.

8. MISCELLANEOUS PROVISIONS

A. Any of the notice requirements herein may be waived, in whole or in part, but only in writing signed by the attorney-in-charge for the party against whom such waiver will be effective.

B. Inadvertent or unintentional production of documents or things containing Protected Information which are not designated as one or more of the three categories of Protected Information at the time of production shall not be deemed a waiver in whole or in part of a claim for confidential treatment. With respect to documents, the producing party shall immediately notify the other parties of the error in writing and provide replacement pages bearing the appropriate confidentiality legend. In the event of any unintentional or inadvertent disclosure of Protected Information other than in a manner authorized by this Protective Order, counsel for the party responsible for the disclosure shall immediately notify opposing counsel of all of the pertinent facts, and make every effort to further prevent unauthorized disclosure

including, retrieving all copies of the Protected Information from the recipient(s) thereof, and securing the agreement of the recipients not to further disseminate the Protected Information in any form. Compliance with the foregoing shall not prevent the producing party from seeking further relief from the Court.

C. Within sixty days after the entry of a final non-appealable judgment or order, or the complete settlement of all claims asserted against all parties in this action, each party shall, at the option of the producing party, either return or destroy all physical objects and documents which embody Protected Information it has received, and shall destroy in whatever form stored or reproduced, all physical objects and documents, including but not limited to, correspondence, memoranda, notes and other work product materials, which contain or refer to any category of Protected Information. All Protected Information, not embodied in physical objects and documents shall remain subject to this Order. In the event that a party is dismissed before the entry of a final non-appealable judgment or order, this same procedure shall apply to any Protected Information received from or produced to the dismissed party. Notwithstanding this provision, outside litigation counsel of record are not required to delete information that may reside on their respective firm's electronic back-up systems that are over-written in the normal course of business. Notwithstanding the foregoing, outside counsel shall be entitled to maintain copies of all pleadings, motions and trial briefs (including all supporting and opposing papers and exhibits thereto), written discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence at any hearing or trial, and their attorney work product which refers or is related to any CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information for archival

purposes only. If a party opts to destroy CONFIDENTIAL or CONFIDENTIAL OUTSIDE COUNSEL ONLY information, the party must provide a Certificate of Destruction to the producing party.

D. If at any time documents containing Protected Information are subpoenaed by any court, arbitral, administrative or legislative body, the person to whom the subpoena or other request is directed shall immediately give written notice thereof to every party who has produced such documents and to its counsel and shall provide each such party with an opportunity to object to the production of such documents. If a producing party does not take steps to prevent disclosure of such documents within ten business days of the date written notice is given, the party to whom the referenced subpoena is directed may produce such documents in response thereto.

E. Testifying experts shall not be subject to discovery on any draft of their reports in this case and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in this litigation are exempt from discovery. In addition, all communications to and from a testifying expert, and all materials generated by a testifying expert with respect to that person's work, are exempt from discovery unless relied upon by the expert in forming any opinions in this litigation.

F. No party shall be required to identify on their respective privilege log any document or communication between the party and its attorney dated on or after the filing of the first lawsuit filed regarding the patents at issue, September 7, 2007, which absent this provision, the party would have been obligated to so identify on said privilege log.

G. This Order is entered without prejudice to the right of any party to apply to the Court at any time for additional protection, or to relax or rescind the restrictions of this Order, when convenience, good cause or necessity requires. Furthermore, without application to this Court, any party that is a beneficiary of the protections of this Order may enter a written agreement releasing any other party hereto from one or more requirements of this Order even if the conduct subject to the release would otherwise violate the terms herein.

H. The United States District Court for the District of Oregon is responsible for the interpretation and enforcement of this Agreed Protective Order. After termination of this litigation, the provisions of this Agreed Protective Order shall continue to be binding except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Information for enforcement of the provision of this Agreed Protective Order following termination of this litigation. All disputes concerning Protected Information produced under the protection of this Agreed Protective Order shall be resolved by the United States District Court for the District of Oregon.

Pursuant to L. R. 11-1(d), all parties consent to the electronic signature and filing of this document.

IT IS SO STIPULATED.

DATED: June 30, 2010

/s/ Julia E. Markley
Julia E. Markley, OSB No. 000791
JMarkley@perkinscoie.com
Perkins Coie LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

/s/ Robert A. Shlachter
Robert A. Shlachter, OSB No. 911718
Timothy S. DeJong, OSB No. 940662
Stoll Stoll Berne Lokting & Shlachter P.C.
209 S.W. Oak Street, Fifth Floor
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

/s/ Thomas H. Shunk
Thomas H. Shunk (Ohio Bar No. 0025793)
Christina J. Moser (Ohio Bar No. 0074817)
Baker & Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
Telephone: 216.621.0200
Facsimile: 216.696.0740

/s/ C. Dale Quisenberry
C. Dale Quisenberry
John T. Polasek
Jeffrey S. David
Polasek, Quisenberry & Errington, L.L.P.
6750 West Loop South, Suite 920
Bellaire, Texas 77401
Telephone: (832) 778-6000
Facsimile: (832) 778-6010

(admitted *pro hac vice*)

Attorneys for Plaintiff

Attorneys for Defendant

IT IS SO ORDERED.

/s/ Dennis J. Hubel
Hon. Dennis J. Hubel
Dated: 7/2/10

ATTACHMENT A TO THE STIPULATED PROTECTIVE ORDER

CONFIDENTIAL AGREEMENT

I reside at _____.

1. My present employer is _____.

2. My present occupation or job description is _____

_____.

3. I have read the Agreed Protective Order dated _____, and have been engaged as _____ on behalf of _____ in the preparation and conduct of litigation styled "Google v. Traffic Information LLC, Case No. CV09-642-HU."

4. I am fully familiar with and agree to comply with and be bound by the provisions of said Order. I understand that I am to retain all copies of any documents designated as CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and/or RESTRICTED CONFIDENTIAL-SOURCE CODE information in a secure manner, and that all copies are to remain in my personal custody until I have completed my assigned duties, whereupon the copies and any writings prepared by me containing any CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and/or RESTRICTED CONFIDENTIAL-SOURCE CODE information are to be returned to counsel who provided me with such material.

5. I will not divulge to persons other than those specifically authorized by said Order, and will not copy or use except solely for the purpose of this action, any information obtained pursuant to said Order, except as provided in said Order. I also agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Order.

6. In accordance with the relevant paragraph of the Agreed Protective Order (if applicable), I have attached my resume, curriculum vitae or other information to this executed Confidentiality Agreement sufficient to identify my current employer and employment history for the past five (5) years, and the cases in which I have testified as an expert at trial or by deposition within the preceding five (5) years.

7. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 201_.