

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**SONY CORPORATION OF AMERICA,
ET AL.
Defendants.**

**CASE NO. 6:10-CV-373
PATENT CASE**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**DISK DOCTORS LABS, INC., ETAL.
Defendants.**

**CASE NO. 6:10-CV-471
PATENT CASE**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**NATIONAL INSTRUMENTS CORP., ET
AL.
Defendants.**

**CASE NO. 6:10-CV-472
PATENT CASE**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**ENGRASP, INC., ET AL.
Defendants.**

**CASE NO. 6:10-CV-591
PATENT CASE**

UNILOC USA, INC., ET AL.
Plaintiffs,

vs.

BMC SOFTWARE, INC., ET AL.
Defendants.

CASE NO. 6:10-CV-636
PATENT CASE

UNILOC USA, INC., ET AL.
Plaintiffs,

vs.

FOXIT CORPORATION, ET AL.
Defendants.

CASE NO. 6:10-CV-691
PATENT CASE

SYMANTEC CORPORATION, ET AL.
Plaintiffs,

vs.

UNILOC USA, INC., ET AL.
Defendants.

CASE NO. 6:11-CV-33
PATENT CASE

STIPULATED PROTECTIVE ORDER

The parties agree that certain information subject to discovery in this action may contain trade secrets or other confidential, proprietary and/or commercially sensitive information. In the interest of protecting that information and permitting discovery to proceed without delay occasioned by disputes regarding such information, the parties agree to the protective provisions set forth below. In view of these stipulations, and good cause appearing, the Court enters this Protective Order pursuant to Federal Rule of Civil Procedure 26(c).

IT IS HEREBY ORDERED:

Scope and Definitions

1. This Protective Order applies to all information, documents, testimony and/or things discovered in this action which contain non-public, confidential information and/or trade secrets, as well as any secondary material, such as pleadings, written discovery, expert reports, notes, summaries or any other materials that contain, describe or reflect such information (collectively, “Protected Material”).

2. “Producing Party” shall refer to any person that discloses, testifies regarding, produces or makes available for inspection any Protected Material. A Producing Party may be a party to this action or a non-party, and may disclose Protected Material either voluntarily or involuntarily.

3. “Receiving Party” shall refer to any party to this action which receives Protected Material under this Order, and to any other entity or person authorized to receive Protected Material under Paragraph 13 (CONFIDENTIAL Material), Paragraph 14 (CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY Material), and Paragraphs 15 and 20 (“SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” Material).

4. “Party” means any party to this case, including all of its officers, directors, employees, consultants, retained experts, and outside counsel and their support staffs.

5. “Source Code” means computer code, scripts, assembly, object code, source code listings and descriptions of source code, object code listings and descriptions of object code, and Hardware Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip, any of which are disclosed by a Producing Party.

6. “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for a Party, (ii) partners and associates of such counsel to whom it is reasonably necessary to disclose the information for this litigation, and (iii) outside, independent attorneys contracted to provide legal advice to a Party in connection with this litigation, who have qualified under

Paragraphs 16, 18 and 19 of this Order. Outside counsel may not be an officer, director, or managing agent of a Party or of a competitor of a Party and may not be involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party.

7. To the extent that any discovery is taken of persons not Parties to this action (“Third Parties”) and if such Third Parties contend the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.

8. A Producing Party may designate Protected Material as:

- a. “CONFIDENTIAL” if it contains information not readily available to the public and which the Producing Party would not reveal to others except in confidence; or
- b. “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” if it:
 - i. contains or describes non-public technical, financial, or other trade secrets or commercially sensitive information, including without limitation pricing, customer lists, business or marketing plans, or
 - ii. is subject to an express obligation of confidentiality owed by the Producing Party to a third party which prevents its disclosure otherwise; or
 - iii. is a license agreement to the extent it does not involve settlements or licenses related to the patents asserted in this litigation (unless expressly requiring a higher level of confidentiality, settlement agreements and licenses involving the patents asserted in this litigation may be marked “CONFIDENTIAL” and may be accessed by in-house counsel of the parties as provided below; however, if such agreements or licenses require a higher level of confidentiality, Plaintiffs agree that they will not object to

such agreements or licenses being produced on a “CONFIDENTIAL” basis, provided that the other party to any such agreement or license also agrees that it can be produced on a “CONFIDENTIAL” basis; or

- c. “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” for the source code produced by a Producing Party. Source code shall be subject to the additional restrictions and protections provided below.

9. To the extent that any one of Defendants in this litigation produces Protected Material (including third party Protected Material in the possession of a Defendant) under the terms of this Protective Order to Plaintiff, Plaintiff shall not share that material with the other Defendants in this litigation, absent express written permission from the producing Defendant. This Order does not confer any right to any one Defendant to access the Protected Material of any other Defendant (including third party Protected Material in its possession), except that any document served on any party in this case must be served on Outside Counsel for all parties in this case, subject to redaction of Protected Material.

Permitted Use of Protected Material

10. Protected Material shall not be distributed, disclosed or made available to anyone except as expressly provided in this Order.

11. Protected Material shall be used solely for this litigation, and shall not be used for any other purpose, including without limitation any other litigation, or acquisition, or any business or competitive purpose or function of any kind.

12. No Defendant is required to produce its Protected Material to any other Defendant or Defendants, but nothing in this Order shall preclude such production. Notwithstanding the provisions of this Protective Order, and with the exception of service copies pursuant to Paragraph 9, Plaintiff shall not disclose one Defendant’s Protected Material to any other

Defendant or Defendants through Court filings, oral argument in Court, expert reports, deposition, discovery requests, discovery responses, or any other means, without the express prior written consent of the Defendant that produced the Protected Material. Plaintiff is not in violation of this provision when it discloses Protected Material for one Defendant to that Defendant's Outside Counsel who also represents other Defendants.

Permitted Disclosure and Persons Who May Access Protected Material

13. A Receiving Party may disclose Protected Material designated "CONFIDENTIAL" only to the following:

- a. Any Persons authorized to receive "CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY" material as specified in Paragraph 14 below;
- b. Up to five (5) employees or officers of the Receiving Party provided, however, that each employee and/or officer agrees to be bound by the provisions of this Protective Order and signs the undertaking set forth in Exhibit A prior to receipt of the Protected Material; and
- c. In-house counsel of the Receiving Party to which disclosure is reasonably necessary for this litigation.

14. A Receiving Party may disclose materials designated "CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY" material only to the following:

- a. The Court, its technical advisor and/or mediator, court personnel, the jury, court reporters and/or videographers who record testimony or other proceedings in this action;
- b. Outside Counsel for the Receiving Party (including the non-attorney employees of their respective law firms under Outside Counsel's control);

- c. Persons who appear on the face of the Protected Material as an author, addressee or recipient, or as the original source of the information contained therein.

Persons authorized to view Protected Material only under this subparagraph shall not retain copies of the Protected Material;
- d. Outside experts and consultants of the Receiving Party, subject to Paragraphs 17-19, and their support staff and clerical employees assisting in the litigation, provided that any such persons may not be a current officer, director, or employee of a Party or of a competitor of a Party and may not be involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party;
- e. Professional litigation support vendors, including but not limited to copy, graphics, translation, database and/or trial support and/or trial consulting services; and
- f. While testifying at deposition or trial in this action only:
 - i. any current or former officer, director or employee of the Producing Party or the original source of the information;
 - ii. any person designated by the Producing Party to provide testimony under Rule 30(b)(6) of the Federal Rules of Civil Procedure where the category or categories of designation reasonably relate to the subject matter of the Protected Materials to be disclosed;
 - iii. any person who authored, previously received or was likely accorded access to such Protected Material, as evident from its face or reasonably certain in view of other evidence; and

- g. Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order.
 - h. Any other person with the prior written consent of the Producing Party.
 - i. In addition, a Party may disclose arguments and materials derived from Protected Material designated “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” to mock jurors who have signed Exhibit A. A Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, documents, deposition testimony, or interrogatory responses) produced by another Party designated as “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY”.
15. A Receiving Party may disclose materials designated “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” only to the following:
- a. The Court, its technical advisor and/or mediator, court personnel, the jury, court reporters and/or videographers who record testimony or other proceedings in this action.
 - b. Outside Counsel for the Receiving Party (including the non-attorney employees of their respective law firms under outside counsel’s control), except that, unless otherwise agreed, no Outside Counsel who is involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), shall have access to Protected Material designated as “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL”.

- c. Outside experts and consultants retained by the Receiving Party to assist in this action and their support staff and clerical employees assisting in the litigation, subject to paragraphs 17-19 of this Order, provided that disclosure is only to the extent necessary to perform such work, and (a) such expert or consultant has agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time of retention to become an officer, director or employee of a Party or of a competitor of a Party; (c) such expert or consultant is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party; and (d) no unresolved objections to such disclosure exist after proper notice has been given to all Parties as set forth in Paragraph 17 below. Without the express prior written consent of the Defendant that produced the Protected Material, no expert or consultant retained by a Defendant in this matter shall have access to “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” Protected Material produced by another Defendant in this matter;
- d. Witnesses at deposition and/or trial affiliated with the Source Code for the Producing Party, provided that such witnesses may not retain copies of Source Code unless permitted by other provisions of this Order;
- e. Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order; and
- f. Any other person with the prior written consent of the Producing Party.

Disclosure of Protected Material to Outside Counsel Not Appearing in the Action

16. Prior to disclosing a Producing Party's "CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY" or "SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL" material to an outside attorney who is not Outside Counsel as defined in paragraph 6, a Receiving Party shall provide written notice to the Producing Party that it intends to disclose such material to the outside attorney, including:

- a. the name of the outside attorney to which the Receiving Party intends to transmit the information (the "Proposed Recipient");
- b. the name of the Proposed Recipient's firm; and
- c. a copy of Exhibit A signed by the Proposed Recipient.

No Receiving Party shall provide any such "CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY" or "SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL" material to the outside attorney during the objection period of Paragraph 18, or while any such objection is unresolved under Paragraph 19.

Disclosure of Protected Material to Outside Experts and Consultants

17. Prior to disclosing a Producing Party's "CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY" or "SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL" material to any outside expert or consultant, a Receiving Party shall provide written notice to each Producing Party that has produced or may produce such material the Receiving Party intends to disclose to the outside expert or consultant, including:

- a. the name of the outside expert or consultant to which the Receiving Party intends to transmit the information (the "Proposed Recipient");
- b. the present employer and title of the Proposed Recipient;
- c. an up-to-date curriculum vitae for the Proposed Recipient;

- d. a list of all publications authored by the Proposed Recipient for the last ten (10) years;
- e. a list of current and past employment and consulting relationships undertaken by the Proposed Recipient for the last five (5) years, including direct relationships and relationships through entities owned or controlled by the Proposed Recipient;
- f. a list of all other cases in which, during the previous five (5) years, the expert or consultant testified, whether at trial or by deposition; and
- g. a copy of Exhibit A signed by the Proposed Recipient.

No Receiving Party shall provide any “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” material to the outside expert or consultant during the objection period of Paragraph 18, or until any such objection is resolved under Paragraph 19.

18. Within seven (7) business days of receiving the information in Paragraphs 16 or 17 regarding a Proposed Recipient, a Producing Party may for good cause object in writing to its disclosure to the Proposed Recipient. The objection cannot be unreasonable. The seven (7) business day objection period does not begin to run until the Receiving Party provides the Producing Party with all of the above information, and the Source Code is not accessible until the proposed Recipient is approved. In the absence of any objection by the end of this period, the Proposed Recipient shall be deemed approved to receive “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” information (as applicable) under this Protective Order from all Producing Parties which received notifications under Paragraphs 16 or 17 above.

19. If an objection is made under Paragraph 18 above, the parties affected shall meet and confer within three (3) business days following such objection to attempt in good faith to resolve

the dispute informally. If the dispute is not resolved, the party seeking the disclosure shall seek relief from the Court no later than seven (7) business days following its objection under Paragraph 18. If relief is not sought from the Court within this time, the objection stands and the Proposed Recipient shall not receive “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” and/or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” information respectively under this Protective Order from the Producing Party which had objected under Paragraph 18 above.

Disclosure and Review of Source Code

20. To the extent a Producing Party’s Source Code is discoverable in this action, it may be designated as “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” and, in addition to the protections of paragraph 14-19, shall be subject to the following additional restrictions and protections:

- a. Source code in electronic format shall be made available for inspection in native format on a standalone computer (the “Source Code Computer”) in a secure room (the “Source Code Review Room”) at one of the following locations at the election of the Producing Party: (i) any office of the Producing Party’s outside counsel in Texas, (ii) any place of business of the Producing Party in Texas, or (iii) if mutually agreed to, any other location.
- b. Source Code will be produced so that it can be reviewed as it is kept in the normal course of business in its native format reviewable with developer’s tools. This means in source code files (.c, .cpp,.cs,.java, etc., depending on the programming language used), in the same files and directories as the source code is kept in the normal course of business so that a reviewer is able to use the Source Code review tools to determine what functions call what other functions, and to step

through it line by line. Alternatively, at the option of the Producing Party, Source Code may be produced in encrypted media and the Receiving Party shall copy the Source Code from the encrypted media to the standalone Source Code Computer, which shall be maintained at its Outside Counsel offices following the restrictions in paragraphs 16-20 with the exception of the notification provisions for gaining access to the inspection location.

- c. Unless a Producing Party chooses to disclose Source Code prior to request from the Receiving Party, the Receiving Party shall provide ten (10) business days notice of the Source Code that it wishes to inspect prior to the first inspection of any Source Code.
- d. Once the Producing Party has initially produced the Source Code for inspection and review, it shall make it available for additional inspection upon three (3) business days notice and, to the extent shorter notice is provided, the Producing Party agrees to use reasonable efforts to accommodate the Receiving Party's request. The Producing Party and the Receiving Party shall consult with one another in advance regarding particular Source Code review tools to be installed on the computer. The Producing Party agrees to make review tools available on the Source Code Computer to the Receiving Party upon reasonable request, including free tools downloadable from the internet (such as Visual Studio Express tools). If the requested review tools must be purchased, the Receiving Party shall be responsible for bearing the cost and for providing the installation files at least seven (7) business days in advance of the date upon which the Receiving Party wishes to have the requested review tools available for use on the Source Code Computer.

- e. No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room. The Receiving Party's expert(s) and/or consultant(s) may use a single computer in the review room for the sole purpose of taking and reviewing his or her notes. However, the Receiving Party's expert (s) and/or consultant(s) may not copy any portion of the Source Code on the computer. Further, the computer shall be non-networked, shall not be connected to the Internet, and shall have all input/output connections disabled while taking notes or when present in the Source Code Review Room. The taking of photographs or video shall not be permitted in the Source Code Review Room.
- f. Under no circumstances is the Source Code to be copied or transmitted in electronic form without the prior authorization of the Producing Party, except as otherwise provided herein. The Producing Party may enforce reasonable restrictions on the review of source code in electronic format, including making source code available on a stand-alone, non-networked computer, with input/output connections disabled such that source code cannot be removed, copied, or otherwise transferred from the Source Code Computer and the Source Code Computer cannot be connected to the internet.
- g. The Receiving Party's expert(s) and/or consultant(s) may take notes relating to the Source Code, but may not copy the Source Code into the notes and may not take such notes electronically on the Source Code Computer itself.
- h. The Producing Party may visually monitor the activities of the Receiving Party's representatives during any Source Code review, but only to ensure that no

unauthorized electronic records of the Source Code are being created or transmitted in any way. Any observer used by the Producing Party shall be a reasonable distance away from the Receiving Party's representatives during the Source Code review so as to refrain from overhearing a whispered conversation (in order that the Receiving Party's representatives can quietly discuss the Source Code in the course of their review).

- i. The Receiving Party shall identify all experts or consultants it requests be allowed to obtain access to the source code ("Proposed Recipient") at least seven (7) business days prior to any inspection, to permit the Producing Party time to object. The Receiving Party, as part of the identification procedure, shall provide the Producing Party with the information set forth in paragraph 17. The outside counsel for the Receiving Party retaining the expert or consultant shall also retain the expert or consultant executed Exhibit A in its files.
- j. No copies of all or any portion of the Source Code may leave the Source Code Review Room except as otherwise provided herein. Further, no other written or electronic record of the Source Code is permitted except as otherwise provided herein. The Receiving Party may request certain portions of the Producing Party's Source Code be printed to paper copies by identifying such portions to the Receiving Party. The Receiving Party shall not request printed copies of the Source Code in order to review blocks of Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on the Source Code Computer, as the Parties acknowledge and agree that the purpose of the protections herein would be frustrated by printing portions of code for review and analysis elsewhere, and that the Producing Party shall be required to print

Source Code only when absolutely and directly necessary to prepare court filings or pleadings or other papers (including formal infringement contentions and a testifying expert's expert report). Within four (4) business days of a request, the Producing Party shall either (i) produce one copy set of the requested pages to the Receiving Party, or (ii) inform the Requesting Party that it objects to the request as excessive or not submitted for a permitted purpose. If, after meeting and conferring, the Producing Party and the Receiving Party cannot resolve the objection, the Receiving Party shall be entitled to seek a Court resolution of whether the request is narrowly tailored and for a permitted purpose. The burden shall be on the Receiving Party to demonstrate that such printed portions are reasonably necessary for a permitted purpose. The Producing Party will affix the proper Bates labeling and "SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL" confidentiality designation to any printed copies to be produced to the Receiving Party.

- k. All persons viewing Source Code in the Source Code Review Room shall sign on each day they view Source Code a log, if provided, that will include the names of persons who enter the Source Code Review Room to view the Source Code and when they enter and depart.
- l. Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the Receiving Party's outside counsel and/or experts shall remove all notes, documents, and all other materials from the Source Code Review Room. The Producing Party shall not be responsible for any items left in the room following each inspection session, and the Receiving Party shall have no expectation of confidentiality for any items left in

the room following each inspection session without a prior agreement to that effect.

- m. The Receiving Party will not print, 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 recordable media or recordable device. The Receiving Party will not transmit any Source Code in any way from the Source Code Review Room.
- n. The Receiving Party's outside counsel of record and any person receiving a copy of any Source Code shall maintain and store any paper copies of the Source Code at their offices in a manner that prevents duplication of or unauthorized access to the Source Code, including, without limitation, storing the Source Code in a locked room or cabinet at all times when it is not in use.
- o. The Receiving Party's outside counsel of record may make no more than three (3) additional paper copies of any portions of the Source Code received from a Producing Party pursuant to Paragraph 20.j above, not including copies attached to court filings, and shall maintain a log of all paper copies of the Source Code. The log shall include the names of the reviewers and/or recipients of paper copies and locations where the paper copies are stored. Upon seven (7) business day's advance notice to the Receiving Party by the Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party.
- p. For depositions, 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.

All paper copies of Source Code brought to the deposition shall be securely destroyed in a timely manner following the deposition.

Except as provided in this paragraph, absent express written permission from the Producing Party, the Receiving Party may not create electronic images, or any other images, or make electronic copies, of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the Receiving Party may not scan the Source Code to a PDF or photograph the code). 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 whenever possible. If a Party reasonably believes that it needs to submit a portion of Source Code as part of a filing with the Court, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such filing will not be made absent (i) agreement from the Producing Party that the confidentiality protections will be adequate, or (ii) Court order. If a Producing Party agrees to produce an electronic copy of all or any portion of its Source Code or provide written permission to the Receiving Party that an electronic or any other copy needs to be made for a Court filing, the Receiving Party's communication and/or disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Source Code under the provisions of this Order. Where the Producing Party has provided the express written permission required under this provision for a Receiving Party to create electronic copies of Source Code, the Receiving Party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations where the electronic copies are stored. Additionally, any such electronic copies must be labeled "SOURCE CODE –

OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” as provided for in this Order.

Prosecution Bar

21. Absent written consent from the Producing Party, any individual who receives access to “OUTSIDE ATTORNEYS’ EYES ONLY” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” information shall not be involved in the prosecution of patents or patent applications relating to technology that is the subject of the accessed information, including without limitation the technical subject matter of patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” means directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party before a domestic or foreign agency in connection with a reissue protest, ex parte reexamination, or inter partes reexamination; though, in connection with any such reissue protest, ex parte reexamination, or inter partes reexamination involving the patent-in-suit, Outside Counsel for Plaintiffs shall not: (i) prosecute the reexamination (in other words, serve as the prosecuting reexamination counsel); (ii) reveal any Defendant’s Protected Material to any prosecuting reexamination counsel or agent; or (3) consistent with Paragraph 11 herein, use any Defendant’s Protected Material for any purpose other than this litigation. This Prosecution Bar shall begin when access to “ATTORNEYS’ EYES ONLY” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” information is first received by the affected individual and shall end two (2) years after the settlement and dismissal of the Producing Party from this action or the final non-

appealable termination of this action. No other provision of this protective order shall be construed as invoking a prosecution bar or prohibiting any acts taken to discharge the duty of candor and good faith.

Making and Challenging Designations

22. A Producing Party designating Protected Material shall limit such designations to material that it believes in good faith meets the applicable standards in Paragraph 8 above.

23. A Producing Party shall designate Protected Material in substantially the following manner:

- a. The Producing Party may designate documents or written discovery responses by affixing the legend “CONFIDENTIAL” or “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” on each page that contains Protected Material. “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” Protected Material must be designated in accordance with Paragraphs 14-19.
- b. Documents made available for inspection need not be designated in advance and shall be treated as “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” until the Producing Party provides copies of documents identified by the inspecting party for production affixed with the appropriate legend.
- c. Parties may at a deposition or hearing or up to fourteen (14) business days after a deposition or hearing designate the depositions or hearing, or portions thereof, as Protected Material pursuant to this Order. If discovery or testimony is taken of Third Parties, the Third Parties may also make the same designations at a deposition or hearing or up to fourteen (14) business days after a deposition or hearing. The party making the designation shall make arrangements with the

court reporter to label the relevant pages with the appropriate designation. Video or DVD versions of the depositions will automatically have the same designation as the transcript. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 14-business day period, the entire deposition or hearing transcript shall be treated as “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY.” The Producing Party may cure such failure in accordance with Paragraph 24.

- d. A Producing Party shall affix the appropriate legend prominently on any tangible thing or media, or on the exterior of any case or container in which the information or item is stored. To ensure the security of “CONFIDENTIAL” and “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” information produced in electronic form, the Producing Party may produce such documents in TIFF or PDF formats. A Producing Party may designate any other Protected Material not in documentary, tangible or physical form by informing the Receiving Party of the designation in writing at or before the time of production or inspection.

24. Inadvertent failure to designate Protected Material does not waive a Producing Party’s right to secure the protections of this Order.

- a. The Producing Party must notify the Receiving Party in writing promptly upon the discovery of the inadvertent failure to designate and take whatever steps are necessary to replace the documents with documents containing the appropriate legends or otherwise designate the materials as set forth above.
- b. Upon receiving the written notice, the Receiving Party shall promptly make all reasonable efforts to assure that the material is treated in accordance with the

corrected designation, including seeking the retrieval or destruction of any copies distributed to unauthorized individuals; and destroy copies of documents that have been replaced with documents containing the proper designation.

- c. The Receiving Party shall not be held in violation of this Order for any otherwise permissible disclosures made before receipt of such notice.

25. At any time, a Receiving Party may challenge the propriety of the designation on Protected Materials by providing the Producing Party written notice identifying the documents or information that it contends should be designated differently. The Receiving Party challenging the propriety of the designation and the Producing Party which designated the Protected Material shall meet and confer in an attempt to resolve any such disputes promptly and informally. If they cannot reach agreement, either party may follow the Court's rules governing discovery disputes to request that the Court affirm, cancel or modify the designation. On any such request to the Court, the Receiving Party shall bear the burden of establishing good cause to establish that the Producing Party incorrectly classified the Protected Material. Until the Court rules otherwise, the Producing Party's designation of the Protected Material remains in effect and is fully enforceable under this Order.

26. Information does not qualify for protection under this Order, and none of its provisions apply to, material that:

- a. is available to the general public at the time of its production, or becomes available to the general public after its production through no fault of a Receiving Party;
- b. was independently and legally obtained by a Receiving Party from any other person or party having no obligation of confidentiality and the right to make such disclosure; or

- c. was previously produced, disclosed or provided by the Producing Party to the Receiving Party without an obligation of confidentiality, except for materials covered under Paragraph 24 inadvertent disclosure.

Inadvertent Production of Privileged Documents

27. The inadvertent production of documents or other material subject to the attorney-client privilege, work product doctrine or any other privilege or immunity does not constitute a waiver of any applicable privilege.

- a. Promptly upon learning of the inadvertent disclosure, the Producing Party must notify the Receiving Party of the inadvertent production, provide the basis for the asserted privilege(s), and request return of the documents.
- b. The Receiving Party must promptly return or confirm destruction of all copies of such materials; but doing so shall not preclude the Receiving Party from seeking to compel production of those materials, or constitute an admission that the materials were in fact privileged.
- c. In addition to any other obligation to preserve documents, the Producing Party must preserve any documents recalled under this Paragraph for the duration of this litigation.

Filing Under Seal

28. All transcripts of depositions, exhibits, answers to interrogatories, pleadings, briefs, and other documents submitted to the Court that have been designated as “CONFIDENTIAL,” or “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY,” or which contain information so designated, shall be filed under seal in accordance with Local Rule CV-5(a)(7), or if electronic submission is impossible, in sealed envelopes or other appropriate sealed containers labeled with the case caption, the words “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE

ATTORNEYS EYES ONLY,” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” as appropriate, and a statement in substantially the following form, or such as other form as ordered by the Court or required by the Clerk of the Court:

This envelope contains confidential information filed in this case by [name of party] that is subject to a Protective Order of the Court. It should not be opened or its contents disclosed, revealed or made public except by Order of the Court or agreement of the parties.

Use of Protected Material at Hearing or Trial

29. The Order also applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any Protected Material into evidence at the trial of this Action, or from using any information contained in Protected Material at the trial of this Action, subject to any pretrial order issued by this Court. In the event that Protected Material may be offered in evidence at trial or at any hearing, a Producing Party may move the Court for an order that Protected Material be received *in camera* or under such other conditions as are necessary to prevent inappropriate disclosure, such as filing under seal or exclusion from the courtroom of all persons not authorized to review the Protected Material under Paragraphs 10-20. Upon such a motion, the Court will determine what protection, if any, may be afforded to the Protected Material at the hearing or trial.

Additional Protection

30. This Protective Order is entered without prejudice to the right of any party to seek different or additional protections if it believes the protections of this order are not applicable or are inadequate. Nothing herein shall be deemed to preclude any Producing Party from seeking such different or additional protection, including that certain matter not be produced at all. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of Protected Material to additional persons or entities if reasonably necessary to

prepare and present this Action and/or (b) to apply for additional protection of Protected Material.

31. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

No Waiver

32. Execution of this Protective Order shall not constitute a waiver of the right of any party to claim in this action or otherwise that any Protected Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in this action or any other proceeding.

No Limitations on Party's Own Protected Material

33. Nothing in this Order shall restrict any party to this lawsuit or its attorneys from disclosing or using, in any manner and for any purpose, its own Protected Material.

Subpoena of Protected Material

34. If any Receiving Party receives a subpoena or other legal process commanding the production of any Protected Material, that party shall inform the party requesting the production that some or all of the material covered by the subpoena or order is subject to this Protective Order and promptly give written notice thereof to the Producing Party (or their counsel of record in this case). If the Producing Party challenges the production, it shall have the burden of seeking a court order relieving the subpoenaed party of the obligations pursuant to the subpoena;

and the Receiving Party shall not produce any Protected Material absent an order of a court of competent jurisdiction or the express written consent of the Producing Party.

Unauthorized Access

35. The Receiving Party shall promptly notify the Producing Party upon becoming aware of any loss, theft and/or unauthorized copying or disclosure of Protected Material, and shall take all steps reasonably necessary and available to retrieve such Protected Material and prevent any further unauthorized access or dissemination.

Disposition of Protected Material

36. Unless otherwise ordered or agreed, within sixty (60) days after the settlement and dismissal of a Producing Party from this action or the final non-appealable termination of this action, each Receiving Party shall, at the Producing Party's option, return or destroy all Protected Material, including all copies, duplicates, indexes, notes, abstracts, compilations, summaries or any other form of reproducing or capturing of any Protected Material. Outside counsel for each party shall remind any experts, consultants and others as appropriate of their obligation to destroy or return Protected Material. Outside Counsel for the party or parties receiving the Protected Material shall keep their attorney work product and all documents filed in this action which refer or relate to any Protected Material. Attorney work product may be used in subsequent litigation provided that such use does not disclose Protected Material or any information contained therein. The Receiving Party shall submit a written certification by the sixty-day (60) deadline confirming that all Protected Material has been destroyed (or handled as otherwise ordered or agreed) and which affirms that the Receiving Party has not retained any paper or electronic copies not otherwise authorized under this Order.

Survival of Order

37. The terms of this Protective Order shall survive and remain in effect after the termination of the above-captioned matter.

Binding Effect

38. This Order shall be binding upon the parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

Effective as a Stipulation

39. This Stipulated Protective Order shall become effective as a stipulation between the parties immediately upon the filing of the motion to enter stipulated protective order, notwithstanding the pendency of approval by the Court, and the parties shall treat any Protected Material produced before Court approval as provided herein.

40. In the event that any of dates provided for in this Orders falls on a weekend or Court holiday, the deadline is modified to be the next Court business day.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**SONY CORPORATION OF AMERICA, ET
AL.
Defendants.**

**CASE NO. 6:10-CV-373
PATENT CASE**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**DISK DOCTORS LABS, INC., ETAL.
Defendants.**

**CASE NO. 6:10-CV-471
PATENT CASE**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**NATIONAL INSTRUMENTS CORP., ET
AL.
Defendants.**

**CASE NO. 6:10-CV-472
PATENT CASE**

**UNILOC USA, INC., ET AL.
Plaintiffs,**

vs.

**ENGRASP, INC., ET AL.
Defendants.**

**CASE NO. 6:10-CV-591
PATENT CASE**

UNILOC USA, INC., ET AL.
Plaintiffs,

vs.

BMC SOFTWARE, INC., ET AL.
Defendants.

CASE NO. 6:10-CV-636
PATENT CASE

UNILOC USA, INC., ET AL.
Plaintiffs,

vs.

FOXIT CORPORATION, ET AL.
Defendants.

CASE NO. 6:10-CV-691
PATENT CASE

SYMANTEC CORPORATION, ET AL.
Plaintiffs,

vs.

UNILOC USA, INC., ET AL.
Defendants.

CASE NO. 6:11-CV-33
PATENT CASE

EXHIBIT A
UNDERTAKING REGARDING PROTECTIVE ORDER

I, _____, declare that:

1. My address is _____.
My current employer is _____.
My current occupation is _____.

2. I have received a copy of the Protective Order in this action. I have carefully read and

understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose any Protected Materials to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” that is disclosed to me.
4. Promptly upon termination of these actions or after my involvement in these actions otherwise terminates, I will return all documents and things designated as “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS EYES ONLY” or “SOURCE CODE – OUTSIDE ATTORNEYS EYES ONLY – RESTRICTED CONFIDENTIAL” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.
5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

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

Signature _____

Name Printed _____

Date _____