

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

WI-LAN INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ALCATEL-LUCENT USA INC.;	§	
TELEFONAKTIEBOLAGET LM	§	Civil Action No. 6:10-cv-521-LED
ERICSSON; ERICSSON INC.; SONY	§	
ERICSSON MOBILE COMMUNICATIONS	§	JURY TRIAL DEMANDED
AB; SONY ERICSSON MOBILE	§	
COMMUNICATIONS (USA) INC.; HTC	§	
CORPORATION; HTC AMERICA, INC.;	§	
EXEDEA INC.; LG ELECTRONICS, INC.;	§	
LG ELECTRONICS MOBILECOMM U.S.A.,	§	
INC.; LG ELECTRONICS U.S.A., INC.	§	
	§	
Defendants.	§	

PROTECTIVE ORDER

This Protective Order is issued to facilitate document disclosure and production under the Local Rules of this Court and the Federal Rules of Civil Procedure. Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect through the conclusion of this Litigation.

In support of this order, the Court finds that:

1. Documents or information containing confidential proprietary and business information and/or trade secrets (“Confidential Information”) that bear significantly on the parties’ claims or defenses is likely to be disclosed or produced during the course of discovery in this Litigation;

2. The parties to this litigation may assert that public dissemination and disclosure of Confidential Information could severely injure or damage the party disclosing or producing the Confidential Information and could place that party at a competitive disadvantage;

3. Counsel for the party or parties receiving Confidential Information are presently without sufficient information to accept the representation(s) made by the party or parties producing Confidential Information as to the confidential, proprietary, and/or trade secret nature of such Confidential Information; and

4. To protect the respective interests of the parties and to facilitate the progress of disclosure and discovery in this Litigation,

IT IS HEREBY ORDERED:

A. DEFINITIONS

1. “Confidential Source Code” means information (regardless of how generated, stored, or maintained) or tangible things that constitute confidential, proprietary, and/or trade secret Source Code.

2. “Discovery Material” means all items or information, including from any non-party, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or generated in connection with discovery in this matter.

3. “Litigation” means the case styled *Wi-Lan Inc. v. Alcatel-Lucent USA Inc.*, Case No. 6:10-cv-00521, filed in the United States District Court for the Eastern District of Texas.

4. “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for a Party; and (ii) partners, associates, employees, and staff of such counsel to whom it is reasonably necessary to disclose information for this litigation, including supporting personnel

employed by the attorneys, such as paralegals, legal translators, legal secretaries, and legal clerks; or (iii) independent attorneys contracted to assist outside counsel in connection with this action.

5. “Patents-in-Suit” means U.S. Patent Nos. 6,222,819 (“the ’819 patent”), 6,381,211 (“the ’211 patent”), 6,088,326 (“the ’326 patent”), and 6,195,327 (“the ’327 patent”), and any other patent asserted in this litigation, as well as any related patents, patent applications, provisional patent applications, continuations, and/or divisionals.

6. “Party” means any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel.

7. “Producing Party” means any Party or other third-party entity who discloses or produces any Discovery Material in this action.

8. “Protected Material” means any Discovery Material that is designated as “Confidential,” “Confidential – Attorneys’ Eyes Only,” or “Confidential – Outside Counsel Restricted – Source Code,” as provided in this Order.

9. “Receiving Party” means any Party who receives Discovery Material.

10. “Source Code” means computer code that defines or otherwise describes in detail the algorithms or structure of software or hardware designs. Source code includes computer code, scripts, assembly code, object code, pseudocode, source code listings and descriptions of source code, object code listings and descriptions of object code, Hard Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip, and similarly sensitive implementation details.

B. SCOPE

1. Protected Material designated under the terms of this Order shall be used by a Receiving Party solely for this Litigation, and shall be used only for purposes of litigating this case, and shall not be used directly or indirectly for any other purpose whatsoever.

2. Unless specifically required by another provision of this Order, no Defendant is required to produce its Protected Material to any other Defendant(s), but nothing in this Order shall preclude such production. Plaintiff may disclose one Defendant's Protected Material to any other Defendant or Defendants through Court filings, oral argument, expert reports, deposition, discovery requests, discovery responses, or any other means, without the prior written consent of the Defendant that produced the Protected Material, provided that Plaintiff marks such disclosure with the same confidentiality designation as utilized by the disclosing party.

3. The parties acknowledge that this Order does not confer blanket protections on all disclosures during discovery. Designations under this Order shall be made with care and shall not be made absent a good faith belief that the designated material satisfies the criteria set forth in this Order. The Producing Party may not unreasonably or improperly refuse to withdraw or change the designation when appropriate, whether for delay or otherwise. Any new designation will become effective immediately, regardless of when the Receiving Party receives the replacement copy of the re-designated or de-designated material. This paragraph applies regardless of whether the Producing Party discovers the incorrect designation on its own, becomes aware of the incorrect designation after being informed thereof by the Receiving Party, or if the Producing Party otherwise becomes aware of the incorrect designation by any means whatsoever.

4. The computation of any period of time prescribed or allowed by this Order shall be governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6 and Local Rule CV-6, in their present form as of the date this Order is entered by the Court.

5. Nothing in this Order shall prevent or restrict a Producing Party's own disclosure or use of its own Discovery Material for any purpose.

6. Nothing in this Order shall be construed to prejudice any Party's right to use any Protected Material in Court or in any Court filing, provided the Party complies with the express requirements and provisions of this Order.

7. Nothing in this Order shall be construed to prevent counsel from advising their clients with respect to this case based in whole or in part upon Protected Material, provided counsel does not disclose the Protected Material except as provided in this Order.

C. DESIGNATING PROTECTED MATERIAL

1. Available Designations. Any Producing Party may designate Discovery Material with any of the following designations, provided that it meets the requirements for such designations as provided for herein: "CONFIDENTIAL," "CONFIDENTIAL –ATTORNEYS' EYES ONLY," and "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE." Any materials that are publicly available, and not due to any unauthorized act or omission, or violation of this Order, or otherwise do not contain confidential information, including but not limited to (a) publicly available advertising materials, (b) non-draft materials that on their face show that they have been published to the general public, or (c) documents that have been submitted to any governmental entity without request for or understanding regarding confidential treatment, shall not be considered Protected Materials for purposes of this Litigation.

2. Written Discovery and Documents and Tangible Things. Written discovery, documents, and tangible things that meet the requirements for the confidentiality designations listed in Paragraph C.1 may be so designated by placing the appropriate designation on at least the cover page of the written material prior to production. Other tangible things not produced in documentary form may be designated by affixing the appropriate designation on a cover page for such material and in a prominent place on the exterior of the container or containers in which the information or things are stored. In the event that original documents other than Source Code are provided for inspection, the Producing Party may produce the documents for inspection under a temporary designation communicated in writing by the Producing Party, provided that the documents are re-designated as necessary by placing the appropriate legend on the documents during the copying process. Source Code shall be inspected, designated, and produced according to the provisions of Section G below.

3. Depositions and Testimony. Parties or testifying persons or entities may designate confidential portions of depositions and other testimony with the appropriate designation by indicating on the record at the time the testimony is given or by sending written notice that the relevant portions of the testimony are so designated within ten business (10) days of receipt of the transcript of the testimony. All information disclosed during a deposition shall be deemed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time within which it may be appropriately designated as provided for herein has passed. Any designated Discovery Material that is used in the taking of a deposition shall remain subject to the provisions of this Order, along with the transcript pages of the deposition testimony dealing with such Discovery Material. In such cases, the court reporter shall be informed of this Order and shall be required to operate in a manner consistent with this Order. In the event the deposition is videotaped or

recorded by other video means, the original and all copies of the videotape or other video media shall be marked by the video technician to indicate that the contents of the videotape or other video media are subject to this Order (*e.g.*, by including a label on the videotape or other video media which contains the appropriate confidentiality designation).

4. Information Not Reduced to Any Physical Form. For information not reduced to any documentary, tangible, or physical form, or which cannot be conveniently designated as set forth in Paragraphs C.1 or C.2 above, the Producing Party must inform the Receiving Party of the designation of such information in writing.

D. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”

1. A Producing Party may designate Discovery Material as “CONFIDENTIAL” if it contains or reflects confidential, proprietary and/or commercially sensitive information.

2. Discovery Material designated as “CONFIDENTIAL” may be disclosed only to the following:

- (a) The Receiving Party’s Outside Counsel;
- (b) Up to three (3) in-house counsel for the Receiving Party (including in-house counsel for any parent companies of the Receiving Party) with responsibility for managing this litigation, to whom disclosure is reasonably necessary for this litigation, and who have signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order;
- (c) Any expert or consultant, and their necessary support personnel, retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that: (i) such person has signed the acknowledgement form annexed hereto as Exhibit A, agreeing to be bound by the terms of this

Order; and (ii) no unresolved objections to such disclosure exist after proper notice has been given to all parties to which such notice is required to be given, as set forth in Paragraph H.2 below;

(d) Court reporters, stenographers and videographers retained to record testimony taken in this action, to whom disclosure is reasonably necessary for this Litigation;

(e) The Court, jury, and Court personnel (under seal or with other suitable precautions determined by the Court);

(f) Graphics, translation, design, and/or trial consulting services, and electronic discovery vendors, by a Party to whom disclosure is reasonably necessary for this Litigation, provided that each such person, including their staff, has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order;

(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; and

(h) Any other person with the prior written consent of the Producing Party.

3. A Receiving Party may disclose arguments and materials derived from a Producing Party's Discovery Material designated as "CONFIDENTIAL" (*e.g.*, summaries or abstractions) to mock jurors who have signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms and conditions of this Order (said signed acknowledgement for mock jurors need not be provided to counsel for any other party). A Receiving Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, originals or copies of as-produced documents, portions of deposition testimony that are designated as Protected Material, or interrogatory responses)

produced by another Party designated as “CONFIDENTIAL.” A Receiving Party making a disclosure to mock jurors under this paragraph shall use all reasonable efforts to ensure that the identity of the Producing Party whose Discovery Material is being disclosed is not revealed.

E. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1. A Producing Party may designate Discovery Material as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that the disclosure of such Discovery Material is likely to cause economic harm or significant competitive disadvantage to the Producing Party. The Parties agree that the following information, if non-public, shall be presumed to merit the “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data, sales information, sales or marketing forecasts or plans, licenses or licensing agreements, business plans, sales or marketing strategy, product development information, engineering documents, testing documents, employee information, and other non-public information of similar competitive and business sensitivity.

2. Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

- (a) The Receiving Party’s Outside Counsel;
- (b) Any expert or consultant, and their necessary support personnel, retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that: (i) such person has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order; and (ii) no unresolved objections to such disclosure exist after proper notice has been

given to all parties to which such notice is required to be given, as set forth in Paragraph H.2 below;

(c) Court reporters, stenographers and videographers retained to record testimony taken in this action, to whom disclosure is reasonably necessary for this Litigation;

(d) The Court, jury, and court personnel (under seal or with other suitable precautions determined by the Court);

(e) Graphics, translation, design, and/or trial consulting services, and electronic discovery vendors, retained by a Party to whom disclosure is reasonably necessary for this Litigation, provided that each such person, including their staff, has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order;

(f) 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

(g) Any other person with the prior written consent of the Producing Party.

3. A Receiving Party may disclose arguments and materials derived from a Producing Party's Discovery Material designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" (*e.g.*, summaries or abstractions) to mock jurors who have signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms and conditions of this Order (said signed acknowledgement for mock jurors need not be provided to counsel for any other party). A Receiving Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, originals or copies of as-produced documents, portions of deposition testimony that are designated as Protected Material, or interrogatory responses)

produced by another Party designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” A Receiving Party making a disclosure to mock jurors under this sub-paragraph shall use all reasonable efforts to ensure that the identity of the Producing Party whose Discovery Material is being disclosed is not revealed.

4. In the 60 days prior to mediation(s) and in the 60 days prior to trial, certain CONFIDENTIAL – ATTORNEYS’ EYES ONLY information may also be shared with two in-house counsel for the Receiving Party, complying with Section D.2(b) above, for purposes of keeping each party informed regarding the development and value of the case, including theories of infringement and damages, and for the purposes of settlement and mediation. Such CONFIDENTIAL – ATTORNEYS’ EYES ONLY information shall be limited to expert reports marked as CONFIDENTIAL – ATTORNEYS’ EYES ONLY, high-level summaries of technical information only with respect to the accused technology (*i.e.*, information regarding unaccused features of the accused products cannot be shared with in-house counsel), and/or a high-level summary of revenue information regarding the Producing Party’s accused products.

5. Except as provided in Paragraph E.4 above, no other CONFIDENTIAL – ATTORNEYS’ EYES ONLY documents (including CONFIDENTIAL – ATTORNEYS’ EYES ONLY exhibits and attachments to expert reports) will be shared with in-house counsel for the Receiving Party without first requesting permission from the Producing Party. Should such permission be withheld by the Producing Party following a request by the Receiving Party, the Receiving Party may move the Court for permission to disclose such materials to up to two (2) in-house counsel for the Receiving Party with responsibility for managing this Litigation, to whom disclosure is reasonably necessary for the management or resolution of this Litigation, and

who sign or have signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order.

6. No information designated CONFIDENTIAL – ATTORNEYS’ EYES ONLY by any Defendant may be made available to any in-house attorney or support staff of any other Defendant (unless agreed to separately by the Defendants).

F. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE”

1. A Producing Party may designate Discovery Materials as “CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” if it comprises or includes Confidential Source Code.

2. Nothing in this Order shall be construed as a representation or admission that Confidential Source Code is properly discoverable in this action, or to obligate any party to produce any Confidential Source Code.

3. Discovery Material designated as “CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” shall be subject to the provisions set forth in Section G below, and may be disclosed, subject to Section G below, solely to:

(a) The Receiving Party’s Outside Counsel;

(b) For the Confidential Source Code of any one Producing Party, up to three (3) outside experts or consultants, and their necessary support personnel retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that: (i) each such person, including his or her staff, has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order; (ii) each such person, including his or her staff, has specifically been identified as eligible to access Confidential Source Code under Paragraph H.2 below; and (c) no unresolved

objections to such disclosure exist after proper notice has been given to all parties to which such notice is required to be given, as set forth in Paragraph H.2 below. To the extent the Receiving Party seeks to have additional experts or consultants obtain access to a particular Producing Party's Confidential Source Code, the Parties shall meet and confer in good faith;

(c) Court reporters, stenographers and videographers retained to record testimony taken in this action, to whom disclosure is reasonably necessary for this Litigation;

(d) The Court, jury, and court personnel (under seal or with suitable precautions determined by the Court);

(e) Graphics and design services, and electronic discovery vendors, to whom disclosure is reasonably necessary for this Litigation, provided that each such person, including their staff, has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Order; and

(f) Any other person with the prior written consent of the Producing Party.

G. DISCLOSURE AND REVIEW OF CONFIDENTIAL SOURCE CODE AND RESTRICTED MATERIAL

1. Any Confidential Source Code that a Producing Party produces shall be made available for inspection in electronic format at a secure site at the Producing Party's discretion, either (i) an office of its Outside Counsel, (ii) an office of the Producing Party, or (iii) at another location mutually agreed by the Parties.

2. Confidential Source Code that is designated "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" shall be produced for inspection and review subject to the following provisions, unless otherwise agreed by the Producing Party:

(a) All Confidential Source Code shall be made available by the Producing Party to the Receiving Party's Outside Counsel and/or experts in a secure room on a secured

computer (the “Source Code Computer”). The Source Code Computer will be made available for inspection during regular business hours (*e.g.*, 9 am to 5pm), unless otherwise agreed by the parties. The Producing Party shall install tools that are sufficient for viewing and searching the Confidential Source Code produced, on the platform produced, if such tools exist and are presently used in the ordinary course of the Producing Party’s business and the Producing Party has the right to so install them for the Receiving Party’s use under the Producing Party’s license agreements for such tools, or if such tools are provided by the Receiving Party with at least seven (7) days notice in advance of the review. The Receiving Party’s Outside Counsel and/or experts may request that commercially available software tools for viewing and searching Confidential Source Code be installed on the Source Code Computer, as reasonably necessary for the Receiving Party to perform its review of the Confidential Source Code consistent with all of the protections herein. The Receiving Party must provide the Producing Party with the licensed software tool(s) at least five business (5) days in advance of the date upon which the Receiving Party wishes to have the software tools available for use on the Source Code Computer.

(b) The Producing Party may not re-configure its Confidential Source Code in a manner that unreasonably impedes or slows the Receiving Party’s ability to inspect the Confidential Source Code. The Producing Party may make its Confidential Source Code available in a format in which it is kept in the ordinary course of business, provided, however, that the Producing Party may not provide its Confidential Source Code in a manner that allows the Producing Party to monitor the Receiving Party’s inspection (*e.g.*, key logging, video capture, etc.). The Producing Party may have up to one representative in the room with the Source Code Computer during the review, but may not monitor the substance of the review and

inspection in any manner whatsoever, other than with respect to the printing provisions of Paragraph G.2(d), below.

(c) The Receiving Party's Outside Counsel and/or experts shall be entitled to take notes relating to the Confidential Source Code. Any such notes shall be subject to the provisions governing printed copies of Confidential Source Code in Paragraph G.2(e), below.

(d) The Producing Party shall allow printing of paper copies of Confidential Source Code at the time of inspection by the Receiving Party. The Producing Party shall make available a printer and a reasonable amount of paper for use with the printer. At the conclusion of each review session conducted by the Receiving Party, the pages printed by the Receiving Party shall be collected by the Producing Party. The Producing Party shall thereafter Bates number, copy, and label "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" any pages printed by the Receiving Party. If the Producing Party objects that the printed portions are excessive and/or not reasonably necessary to any case preparation activity, the Producing Party shall make such objection known to the Receiving Party within three (3) business days. If after meeting and conferring, the Producing Party and the Receiving Party cannot resolve the objection, the Producing Party shall be entitled to seek a Court resolution within five (5) business days of the conclusion of the meet and confer process as to whether the printed source code in question is excessive and/or not reasonably necessary to any case preparation activity. In the absence of any objection, or upon resolution of any such dispute by the Court, the Producing Party shall provide one (1) copyset of such pages to the Receiving Party within two (2) business days and shall retain one (1) copyset for its own use. The printed pages shall constitute part of the Source Code produced by the Producing Party in this action.

(e) Printed copies of Confidential Source Code may be reviewed by outside counsel for the Receiving Party or the Receiving Party's independent consultants or experts, and such review may occur at the offices of outside counsel of the Receiving Party or at the offices of the Receiving Party's independent consultants or experts. Printed copies of Confidential Source Code may not be removed from the aforementioned locations, except that: (A) copies may be made for and used in Court filings and proceedings, expert reports, and depositions of persons or entities permitted to access Confidential Source Code of the Producing Party if necessary; and (B) outside counsel of the Receiving Party, and/or the Receiving Party's independent consultants or experts may transfer the Receiving Party's printed copies of the Producing Party's source code between outside counsel of the Receiving Party's own offices (via overnight delivery with signature required or hand delivery with signature required), or between any other locations where such printed copies of Confidential Source Code may be viewed pursuant to this paragraph., as reasonably necessary for preparation of the Receiving Party's case. Any such printed copies shall be maintained at all times in a locked and secure location, except while in transit or being reviewed consistent with this paragraph. Produced source code shall not be converted to electronic form by the Receiving Party, except as may be necessary for use in Court filings and proceedings, and expert reports.

H. NOTICE OF DISCLOSURE

1. Experts or consultants receiving Protected Material shall not be 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.

2. Prior to disclosing any Protected Material to any person described in Paragraphs D.2(b), D.2(c), E.2(b), or F.3(b) ("Person"), the party seeking to disclose such information shall

provide the Producing Party or Parties with written notice that includes: (i) the name and contact address of the Person; (ii) the present employer and title of the Person. For any Person described in Paragraphs D.2(c), E.2(b), or F.3(b), the party seeking to disclose such information shall also provide the Producing Party or Parties with (iii) an up-to-date curriculum vitae of the Person.

3. Within ten (10) calendar days of receipt of the disclosure of the Person, the Producing Party or Parties may object in writing to the Person for good cause. Any such objection must set forth in detail the grounds on which it is based. The objecting Party's consent to a Person shall not be unreasonably withheld. In the absence of an objection at the end of the ten (10) calendar day period, the person shall be deemed approved under this Order. There shall be no disclosure of Protected Material to the Person prior to expiration of this ten (10) calendar day period. If the Producing Party objects to disclosure to the Person within such ten (10) calendar day period, the parties shall meet and confer via telephone or in person within three (3) business days following the objection and attempt in good faith to resolve the dispute on an informal basis. If the dispute is not resolved, the party objecting to the disclosure will have five business (5) days from the date of the meet and confer to seek relief from the Court. If relief is not sought from the Court within that time, the objection shall be deemed withdrawn. If relief is sought, Protected Materials of the objecting party shall not be disclosed to the Person in question until the objection is resolved by the Court.

4. For purposes of this section, "good cause" shall include an objectively reasonable concern that the proposed Person will, advertently or inadvertently, use or disclose Protected Materials in a way or ways that are inconsistent with the provisions contained in this Order.

5. Prior to receiving any Protected Material under this Order, the Person must execute a copy of the "Agreement to Be Bound by Protective Order" (Exhibit A hereto).

I. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL

1. A Party shall not be obligated to challenge the propriety of any designation of Discovery Material under this Order at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

2. Any challenge to a designation of Discovery Material under this Order shall be written, shall be served on Outside Counsel for the Producing Party, shall particularly identify the documents or information that the Receiving Party contends should be differently designated, and shall particularly identify the grounds for the objection. Thereafter, further protection of such material shall be resolved in accordance with the following procedures:

(a) The objecting Party shall have the burden of conferring either in person, in writing, or by telephone with the Producing Party claiming protection in a good faith effort to resolve the dispute. The Producing Party shall have the burden of justifying the disputed designation;

(b) Failing agreement, the objecting Party may bring a motion to the Court for a ruling that the Discovery Material in question is not entitled to the status and protection of the Producing Party's designation. The Parties' entry into this Order shall not preclude or prejudice any Party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information;

(c) Notwithstanding any challenge to a designation, the Discovery Material in question shall continue to be treated as designated under this Order until one of the following occurs: (a) the Producing Party that designated the Discovery Material in question withdraws

such designation in writing; or (b) the Court rules that the Discovery Material in question is not entitled to the designation.

J. FILING AND USE OF PROTECTED MATERIAL IN COURT

1. Absent written permission from the Producing Party or a Court order secured after appropriate notice to all interested persons, a Receiving Party may not file in the public record any Protected Material.

2. Notwithstanding the foregoing, any Party is authorized under E.D. Tex. L.R. CV-5(a)(7) to file under seal with the Court in this proceeding any brief, document or materials designated as Protected Material under this Order.

3. Where Protected Material is used at a hearing on a dispositive motion or at trial, it is the burden of the party seeking to use that information to make arrangements with the Court to ensure that Protected Material remains confidential. The Parties shall meet and confer prior to trial to discuss procedures for maintaining the confidentiality of Protected Material during the course of trial.

K. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL

1. The inadvertent production by a party of Discovery Material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection will not waive the applicable privilege and/or protection if a request for return of such inadvertently produced Discovery Material is made promptly after the Producing Party learns of its inadvertent production.

2. Upon a request from any Producing Party who has inadvertently produced Discovery Material that it believes is privileged and/or protected and/or otherwise not subject to discovery in this matter, each Receiving Party shall immediately return such Protected Material

or Discovery Material and all copies to the Producing Party. The Producing Party shall provide the Receiving Party with a privilege log of any such returned material that identifies the basis for it being withheld from production.

3. Nothing herein is intended to alter any attorney's obligation to abide by any applicable rules of professional responsibility relating to the inadvertent disclosure of privileged information.

L. INADVERTENT FAILURE TO DESIGNATE

1. The inadvertent failure by a Producing Party to designate Discovery Material as Protected Material with one of the designations provided for under this Order shall not waive any such designation provided that the Producing Party notifies all Receiving Parties that such Discovery Material is protected under one of the categories of this Order promptly after the Producing Party learns of the inadvertent failure to so designate.

2. A Receiving Party shall not be in breach of this Order for any use of such Discovery Material before the Receiving Party receives notice of the inadvertent failure to designate. Once a Receiving Party has received notice of the inadvertent failure to designate pursuant to this provision, the Receiving Party shall treat such Discovery Material (subject to the exception in Paragraph (c) below) at the appropriately designated level pursuant to the terms of this Order.

3. Protected Material produced without the designation of "CONFIDENTIAL," "CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE," may be so designated subsequent to production when the Producing Party failed to make such designation at the time of production through inadvertence or error. If Discovery Material is designated subsequent to production, the

Receiving Party promptly shall collect any copies that have been provided to individuals so that they can be re-labeled with the “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” designation. Notwithstanding the above, such subsequent designation of “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” shall apply on a going-forward basis and shall not have any retroactive effect on anyone who reviewed those “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” materials prior to those materials being designated as such by the Producing Party.

M. TERMINATION OF LITIGATION

1. After termination of this litigation, the provisions of this Protective Order shall continue to be binding, except with respect to those documents and information that become a matter of public record and not due to any unauthorized act or omission, or violation of this Order.

2. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Material for enforcement of the provisions of this Protective Order following termination of this litigation.

3. Within sixty (60) calendar days after termination of this litigation with respect to a Producing Party, whether such termination arises from dismissal with respect to the Producing Party, judgment for or against the Producing Party (including exhaustion of all appeals or settlement), or otherwise, any Receiving Party that has received Protected Material from the terminated Producing Party shall destroy or return the same to the Producing Party. If the

Protected Material is destroyed, the Receiving Party shall promptly notify the Producing Party of such destruction in writing. Nothing herein shall require Outside Counsel for any Party to delete any electronic copies of materials from backup tapes or other electronic backup storage that is overwritten in the ordinary course of business.

4. Notwithstanding the provisions of Paragraph M.3 above, Outside Counsel for a Receiving Party or Receiving Parties to this litigation may retain a copy of any pleading, transcript (for each deposition, hearing, and trial), discovery responses, and any exhibits thereto, and attorney work product, regardless of whether it includes or details Protected Material, except that a Receiving Party's Outside Counsel shall not retain Protected Material designated "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" or documents or things including or detailing Protected Material designated "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE." Attorney work product may be used in subsequent litigation provided that such use does not disclose Protected Materials or any protectable information contained therein. Any documents or things retained by Outside Counsel pursuant to this provision shall remain subject to this Order.

N. USE OF PROTECTED MATERIAL

Protected Material, and the substance or content thereof, including any notes, memoranda, or other documents incorporating, reflecting, or summarizing such information, or any other information that might reveal such protected information, shall be used by a Receiving Party and its authorized representatives or designees under this Protective Order solely for the purpose of this Action and any appeals therefrom. Such information may not be used for any other purpose, including but not limited to use in other litigations, use for business purposes, or use for patent prosecution or for providing strategic patent prosecution or patent procurement or

acquisition advice. In particular, such information shall not be used for drafting, filing, or prosecuting new or currently pending patent applications, or for re-examination and/or reissues on behalf of a Party to this litigation.

In the event any person subject to the terms of this Order is served with a subpoena or request for production of Protected Material, it will give sufficient notice in writing (by facsimile or e-mail) to the Producing Party to allow the Producing Party a reasonable opportunity to intervene to oppose or limit such production. In no event shall the person receiving the subpoena or other process produce Protected Material of any Producing Party in response to the subpoena or other process unless and until such person or party has: (i) received written authorization from counsel for the Producing Party to produce said Protected Material; or (ii) been ordered to do so by a court of competent jurisdiction.

O. MISCELLANEOUS

1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek modification of the Order by the Court in the future, to seek access to a Producing Party's Protected Material, or to apply to the Court at any time for additional protection. Furthermore, without application to this Court, any Producing Party may enter into a written agreement releasing any Receiving Party from one or more requirements of this Order, even if the conduct subject to the release would otherwise violate the terms herein.

2. Successors. This Order shall be binding upon the Parties hereto and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

3. Nonparty Use of This Protective Order. A nonparty producing information or material voluntarily or pursuant to a subpoena or a court order may designate such material or information as Protected Material pursuant to the terms of this Protective Order. A nonparty's use of the Protective Order to protect its Protected Material does not entitle that nonparty access to the Protected Material produced by any Party in this case.

4. Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item. Similarly, no Party waives any right to object on any ground to the use in evidence of any of the material covered by this Order. This Order shall not constitute a waiver of the right of any party to claim in this Litigation or otherwise that any Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in this Litigation or any other proceeding.

5. Modification by Court. This Order is subject to further court order based upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the interests of justice, or upon motion of a party for good cause shown.

So ORDERED and SIGNED this 19th day of December, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**

EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Wi-Lan Inc. v. Alcatel-Lucent USA Inc.*, Case No. 6:10-cv-00521 (E.D. Tex.). Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order, including any proceedings related to contempt.

In accordance with Section H of the Order (if applicable) I have attached my resume, curriculum vitae, and the other information required under Section H to this executed Confidentiality Agreement.

Name of Individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____
