

THE HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re Ex Parte Application of  
BROADCOM CORPORATION, a  
Delaware corporation, and AVAGO  
TECHNOLOGIES INTERNATIONAL  
SALES PTE. LIMITED, a business entity  
formed under the laws of Singapore,

Applicants,

for an Order Pursuant to 28 U.S.C. § 1782  
Granting Leave to Obtain Discovery for  
Use in Foreign Proceedings.

Case No. 2:19-cv-00966-RAJ

**SUPPLEMENTAL STIPULATION AND  
PROTECTIVE ORDER REGARDING  
SOURCE CODE**

SUPPLEMENTAL STIPULATION AND PROTECTIVE  
ORDER REGARDING SOURCE CODE

Case No. 2:19-cv-00966-RAJ

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1           The purpose of this order (“Supplemental Order Re Source Code”) is to supplement the  
2 Stipulated Protective Order entered in the above-captioned matter (Dkt. 28) (“Original Protective  
3 Order”), by establishing additional protections and procedures regarding the discovery and  
4 disclosure of source code. The goal of this Supplemental Order Re Source Code, like the  
5 Original Protective Order, is to expedite the flow of discovery materials, facilitate the prompt  
6 resolution of disputes over confidentiality, adequately protect confidential materials, and ensure  
7 that protection is afforded only to material so entitled, and for good cause shown, pursuant to  
8 Fed. R. Civ. P. 26(c). For the avoidance of doubt, unless expressly modified herein, all  
9 provisions of the Original Protective Order remain in effect, and the rights and obligations  
10 thereunder remain available to and binding on the Parties.

11 **1.     DEFINITIONS**

12           1.1     Definitions from Original Protective Order: In addition to new terms defined  
13 herein, this Supplemental Order Re Source Code uses the defined terms contained in the Original  
14 Protective Order, which shall have the same meaning as defined in the Original Protective Order.

15           1.2     “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
16 Extremely sensitive Discovery Material representing computer code and associated comments  
17 and revision histories, formulas, engineering specifications, or schematics that define or  
18 otherwise describe in detail the algorithms or structure of software or hardware designs,  
19 disclosure of which to another Party or Non-Party would create a substantial risk of serious harm  
20 that could not be avoided by less restrictive means. “HIGHLY CONFIDENTIAL – SOURCE  
21 CODE” information shall be considered Protected Material as that term is used in the Original  
22 Protective Order.

1 **2. SOURCE CODE**

2 2.1 A Producing Party may designate source code as “HIGHLY CONFIDENTIAL -  
3 SOURCE CODE” if it comprises or includes confidential, proprietary, or trade secret source  
4 code that meets the definition in Section 1.2.

5 2.2 Except as otherwise described herein, material designated as “HIGHLY  
6 CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections, procedures, and  
7 requirements in the Original Protective Order governing “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY” items and information, and shall be treated, handled, and used in  
9 the same manner.

10 2.3 Information or items designated as “HIGHLY CONFIDENTIAL – SOURCE  
11 CODE” may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Section 6.5 of the  
13 Original Protective Order, with the exception that printouts of such material used as exhibits in a  
14 deposition shall not be provided to the court reporter or their staff.

15 2.4 The Patent Prosecution Bar and Development Bar as set forth in Sections 6.8 and  
16 6.9 of the Original Protective Order apply to any person who reviews “HIGHLY  
17 CONFIDENTIAL – SOURCE CODE” information. For the avoidance of doubt, the Patent  
18 Prosecution Bar and Development Bar apply to any “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE” Information, regardless of the age of such information.

20 2.5 All persons who will review a Producing Party’s “HIGHLY CONFIDENTIAL –  
21 SOURCE CODE” information on behalf of a Receiving Party, including a Receiving Party’s  
22 outside Counsel, shall be identified in writing to the Producing Party at least two (2) days in  
23 advance of the first time that such person reviews such information. Such identification shall be  
24 in addition to any other disclosure required under this Protective Order. All persons viewing  
25 such information shall sign on each day they view such information a log that will include the

1 names of persons who enter the locked room to view the information and when they enter and  
2 depart. The Producing Party shall be entitled to a copy of the log upon three (3) days' advance  
3 notice to the Receiving Party.

4           2.6     Any source code produced in discovery shall be made available for inspection, in  
5 its native format and in its buildable and runtime debuggable form, during normal business hours  
6 or at other mutually agreeable times, at the offices of Producing Party's Outside Counsel of  
7 record in the above captioned case in Palo Alto, California, or another mutually agreed upon  
8 location. The source code shall be made available for inspection on one secured computer (the  
9 "Source Code Computer") in a secured room (the "Source Code Review Room") in a  
10 configuration deemed secure by the Producing Party, as necessary and appropriate to prevent and  
11 protect against any unauthorized copying, transmission, removal or other transfer of any source  
12 code outside or away from the computer on which the source code is provided for inspection.  
13 The configuration of the Source Code Computers shall employ customary means to render the  
14 code secure, and shall not unreasonably interfere with the ability of the Receiving Party to  
15 review the code.

16           2.7     The Producing Party shall install tools that are sufficient for viewing and  
17 searching the source code produced, on the platform produced, including the tools used in the  
18 ordinary course of the Producing Party's business. Within three days of entry of this  
19 Supplemental Protective Order, Producing Party shall provide to Receiving Party a list of such  
20 tools for purposes of determining whether such tools will be sufficient for Receiving Party's use.  
21 The Receiving Party's Outside Counsel and/or Experts may request that commercially available  
22 software tools for viewing and searching source code be installed on the secured computer,  
23 provided, however, that (a) the Receiving Party possesses an appropriate license to such software  
24 tools; (b) the Producing Party approves such software tools, which approval shall not be  
25 unreasonably withheld; and (c) such other software tools can be used in a manner consistent with

1 all of the protections herein. Prior to the first inspection of any requested source code, the  
2 Receiving Party must provide the Producing Party with a CD or DVD (or via other appropriate  
3 means, e.g., flash/thumb drive or file transfer) containing such licensed software tool(s) at least  
4 seven (7) days in advance of the date upon which the Receiving Party wishes to have the  
5 additional software tools available for use on the Source Code Computer. For the purposes of  
6 clarity, the Parties agree that the Receiving Party need only provide appropriate software tools to  
7 the Producing Party one time and can reasonably expect that the software tools will remain  
8 available for use on the inspection computer thereafter without further notice by the Receiving  
9 Party. The Producing Party shall make diligent efforts to make the Source Code Computer and  
10 Source Code Review Room available for first inspection within ten (10) days of entry of this  
11 Stipulated Protective Order.

12           2.8     The producing Party shall provide the receiving Party with information explaining  
13 how to start, log on to, and operate the stand-alone computer(s) in order to access the produced  
14 source code material on the stand-alone computer(s).

15           2.9     The Receiving Party shall not copy, remove, or otherwise transfer any portion of  
16 the source code onto any recordable media or recordable device. No recordable media or  
17 recordable devices, including without limitation sound recorders, computers, tablets, cellular  
18 telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted  
19 into the Source Code Review Room.

20           2.10    No copies of all or any portion of the source code may leave the Source Code  
21 Review Room except as otherwise provided herein. Further, no other written or electronic  
22 record of the source code is permitted except as otherwise provided herein.

23           2.11    The Receiving Party's Outside Counsel and/or Experts shall be entitled to take  
24 notes relating to the source code but may not copy the source code into the notes and may not  
25 take such notes electronically on the Source Code Computer itself or any other computer. Each

1 page of any such notes containing source code information (and any additional notes, analyses,  
2 or descriptions relating thereto) must be marked as “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY – SOURCE CODE.”

4 2.12 Access to and review of the source code shall be strictly for the purposes of  
5 investigating the claims and defenses at issue in the Actions.

6 2.13 The Producing Party may visually monitor the activities of the Receiving Party’s  
7 representatives during any source code review, but only to ensure that there is no unauthorized  
8 recording, copying, or transmission of the source code, and only in a manner that does not enable  
9 the Producing Party to access, review, or otherwise learn about any confidential or privileged  
10 communications by the Receiving Party and/or its representatives, and that does not unreasonably  
11 interfere with the review of source code by Receiving Party’s representatives.

12 2.14 The Receiving Party may request paper copies of a reasonable number of pages of  
13 source code that are reasonably necessary for the preparation of court filings, pleadings, expert  
14 reports, other papers, or for deposition or trial, but shall not request paper copies for the sole  
15 purpose of merely reviewing the source code in paper form in the first instance, rather than  
16 electronically as set forth in Section 2.6. The Producing Party shall not unreasonably deny any  
17 reasonable request by the Receiving Party to produce printed source code. Upon request, the  
18 Producing Party shall provide within four (4) business days all such source code in paper form  
19 with production numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The  
20 Producing Party may challenge the amount of source code requested pursuant to the dispute  
21 resolution procedure and timeframes set forth in Section 10 of the Original Protective Order  
22 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the  
23 “Designating Party” for purposes of dispute resolution. If the Producing Party intends to  
24 challenge any request for production of printed source code, the Producing Party must produce  
25 the undisputed amount of code, and may challenge the remainder as provided herein.

1           2.15    The Receiving Party shall maintain all paper copies of any printed portions of the  
2 source code in a secured, locked area. Receiving Party's outside counsel may make no more than  
3 five (5) paper copies of any page containing source code, not including copies attached to Court  
4 filings or to be used at depositions, provided the Receiving Party shall not create any electronic  
5 or other images of the paper copies and shall not convert any of the information contained in the  
6 paper copies into any electronic format (unless otherwise permitted in connection with a filing in  
7 the Actions pursuant to the procedures set forth in Section 2.17). The Receiving Party shall only  
8 make additional paper copies if such additional copies are (1) necessary to prepare court filings,  
9 pleadings, or other papers for the Actions, including a testifying expert's expert report, (2)  
10 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
11 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
12 and must not be given to or left with a court reporter or any other unauthorized individual.

13           2.16    Images or copies of source code shall not be included in correspondence between  
14 the Parties (references to production numbers shall be used instead), and shall be omitted from  
15 pleadings and other papers whenever possible. If a Party reasonably believes that it needs to  
16 submit a portion of source code as part of a filing in the Actions, then the Parties shall meet and  
17 confer as to how to make such a filing while protecting the confidentiality of the source code and  
18 such source code will not be filed absent agreement from the Producing Party that the  
19 confidentiality protections will be adequate, which agreement shall not be unreasonably  
20 withheld.

21           2.17    The Parties reserve the right to seek to modify this order for good cause shown.  
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1                   **IT IS SO STIPULATED.**

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3           DATED: November 15, 2019

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22  
23           DATED: November 15, 2019

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11 INC., and NINTENDO SOFTWARE  
12 TECHNOLOGY CORPORATION

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14 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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16 DATED this 15th day of November, 2019.

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The Honorable Richard A. Jones  
United States District Judge