

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PACT XPP SCHWEIZ AG	)	
	)	
Plaintiff,	)	C.A. No. 19-cv-01006-RGA
	)	
v.	)	
	)	
INTEL CORPORATION,	)	
	)	
Defendant.	)	

AGREED PROTECTIVE ORDER

To expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it is hereby **ORDERED THAT**:

A. DEFINITIONS

1. "Party": any party to this action, including all of its officers, directors, employees, consultants, retained experts and consultants, and outside counsel (and their support staff).
2. "Material": all information, documents, items and things produced, served or otherwise provided in this action (whether paper, electronic, tangible or otherwise) by the Parties or by non-parties.

3. “Producing Party”: a Party or non-party that produces Material in this action.

4. “Receiving Party”: a Party that receives Material from a Producing Party.

5. “Designating Party”: a Party or non-party that designates Material as “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES ONLY,” “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.”

6. “Source Code”: computer code, RTL, HDL, and microcode. The parties reserve the right to address the protections applicable to Oasis, Opus, and GDS files (including whether they should be treated as Source Code or Schematics) should such files be deemed responsive to a request for production, subject to any objections.

7. “Schematics”: Documents with primary content consisting of representations of any silicon mask or circuit design, diagram, or blueprint containing specific gate-level circuit design representations.

8. “CONFIDENTIAL Material”: Material that the Designating Party believes in good faith is not generally known to others and that it (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy. Copies, abstracts, compilations, summaries, and extracts of Materials designated as CONFIDENTIAL will also be treated as CONFIDENTIAL Material.

9. “OUTSIDE ATTORNEYS’ EYES ONLY Material”: Material that the Designating Party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury and that the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy. The designation is reserved for information that constitutes proprietary financial, technical, competitive, or commercially sensitive information that the Designating Party maintains as highly confidential in its business, including but not limited to information relating to future products, strategic plans, non-public financial data, documents that would reveal trade secrets, licensing documents or licensing communications, and settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the Designating Party. This designation also includes Material obtained from a non-party pursuant to a Nondisclosure Agreement (“NDA”), unless the non-party permits a different designation in writing. Copies, abstracts, compilations, summaries, and extracts of Materials designated as OUTSIDE ATTORNEYS’ EYES ONLY will also be treated as OUTSIDE ATTORNEYS’ EYES ONLY Material.

10. “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material”: Source Code and copies, abstracts, compilations, summaries, and extracts of Source Code.

11. “Designated Material”: Material that is designated “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES ONLY,” “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” and all copies, abstracts, compilations, summaries, and extracts of such Material.

12. “Counsel of Record”: (i) outside counsel who appear on the pleadings as counsel for a Party, and (ii) partners, associates and employees of such outside counsel to whom it is reasonably necessary to disclose the information for this litigation, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks, and shorthand reporters “Counsel of Record” does not include any person who is an employee, director, or officer of a Party or a Party’s affiliates even if that person appears on the pleadings as counsel for a Party.

13. “Outside Consultant”: a person with specialized knowledge or experience in a matter pertinent to the action who has been retained by a Party or its Counsel of Record to serve as an expert witness or as a consultant in this action and who is not a current or anticipated officer, director, or employee of a Party or of a Party’s competitor.

14. “Professional Vendors”: persons or entities unaffiliated with a Party or a competitor of a Party that provide litigation support services (e.g., photocopying, videotaping, translating, preparing transcripts, exhibits, or demonstrations, organizing or

processing data) and their employees and subcontractors. This definition includes a professional jury or trial consultant retained in connection with this action and mock jurors retained by such a consultant to assist them in their work. Professional Vendors do not include consultants who fall within the definition of Outside Consultant.

15. “Prosecution Bar Technology”: Microprocessor chips with multiple cores, multi-level cache, bus segments, cache nodes, data processor core, array data processor, and instruction dispatch unit, separated cache, separated cache segments, module identification, bus segments, bus systems with flexible data channels, bus system adapted for forming a ring, dynamic/programmable bus systems; multiprocessor bus system, dynamic frequency and voltage control, thermal management, stacked dies with programmable data processing units, core testing and disabling.

B. SCOPE

16. Compliance with Applicable Rules Governing Confidentiality and Filing Under Seal. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under applicable legal principles.

C. ACCESS TO DESIGNATED MATERIAL

17. Access to CONFIDENTIAL Material. Only the following persons are permitted to have access to CONFIDENTIAL Material:

(a) employees of the Receiving Party to whom disclosure is reasonably necessary for the management, supervision, or oversight of this litigation and who have signed the “Agreement to Be Bound by Protective Order” attached as Exhibit A;

(b) persons who appear on the face of Designated Material as an author, addressee or recipient thereof;

(c) Counsel of Record;

(d) Outside Consultants, subject to the procedures set forth in Section D;

(e) the Court and its personnel;

(f) court reporters;

(g) a mediator assigned to hear this matter, and his or her staff, who have signed the “Agreement to Be Bound by Protective Order” attached as Exhibit A and the “Certification of Consultant” attached as Exhibit B; and

(h) Professional Vendors to which disclosure is reasonably necessary for this litigation and a representative of which, except for photocopying vendors, has signed the “Agreement To Be Bound By Protective Order” attached as Exhibit A.

18. Access to OUTSIDE ATTORNEYS’ EYES ONLY Material. Only the persons identified in Paragraph 17(b)-(h) are permitted to have access to OUTSIDE ATTORNEYS’ EYES ONLY Material, and as allowed during depositions pursuant to Paragraph 38.

19. Access to OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material and OUTSIDE COUNSEL RESTRICTED – SCHEMATICS Material. Only the

persons identified in Paragraph 17(b)-(g) are permitted to have access to OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material and OUTSIDE COUNSEL RESTRICTED – SCHEMATICS Material. Absent consent of the Producing Party (which will not be unreasonably withheld), no more than fifteen (15) Counsel of Record and six (6) Outside Consultants for a Receiving Party are permitted to have access to OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material and OUTSIDE COUNSEL RESTRICTED – SCHEMATICS Material.

20. Acknowledgements to be Bound. Each person to whom Designated Material may be disclosed, and who is required to sign the “Agreement to Be Bound by Protective Order,” and/or the “Certification of Consultant” must do so prior to reviewing Designated Material. Counsel of Record for the Receiving must retain each original executed document and, on written request, must provide copies to Counsel of Record for all other Parties after the termination of this action. The identification of an individual pursuant to this Order does not make that individual subject to deposition or any other form of discovery.

D. DISCLOSURE TO OUTSIDE CONSULTANTS

21. Notice. Before disclosing another party’s Designated Material to an Outside Consultant, a Receiving Party must first provide written notice by hand-delivery or email to Counsel of Record for the Designating Party. The notice must include: (a) the Outside Consultant’s name, business title, business address, and business or profession; (b) a current CV; (c) the Outside Consultant’s previous or current relationship (personal or

professional) with any of the Parties, their predecessors, or their successors in interest; (d) a list of cases in which the Outside Consultant has testified (at trial or deposition) within the last four years¹; (e) a list of all companies for which the Outside Consultant has consulted or that have employed the Outside Consultant within the last four years; and (f) a signed copy of the Agreement to Be Bound by Protective Order attached as Exhibit A and the “Certification of Outside Consultant” attached as Exhibit B.

22. Objections. The Designating Party will have seven (7) calendar days from receipt of the notice to object to the disclosure. The notice must identify the grounds for the objection. If the Designating Party does not object during that seven-day period, then the Receiving Party may disclose Designated Material to the Outside Consultant pursuant to the terms of this Order. However, if the Designating Party objects within that period, the Receiving Party may not disclose Designated Material to the challenged individual absent resolution of the dispute or Court Order. In the event the Designating Party makes a timely objection, the Parties must meet and confer by telephone or in person within two (2) business days to try to resolve the matter by agreement. If the Parties cannot reach an agreement, the objecting Party may within seven (7) calendar days following the meet

¹ If the Outside Consultant believes any of this information is subject to a confidentiality obligation to a third-party, then the Outside Consultant should provide whatever information the Outside Consultant believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Outside Consultant shall be available to meet and confer with the Designating Party regarding any such engagement. In all instances, the Outside Consultant may not omit entirely the existence of work that was performed pursuant to a confidentiality agreement.

and confer seek a protective order preventing disclosure of Designated Material to the Outside Consultant or other appropriate relief under the Court's procedures. If the objecting Party fails to seek a protective order within the prescribed period, any objection to the Outside Consultant is waived, and Designated Material may thereafter be disclosed to such individual (upon signing the "Acknowledgment and Agreement To Be Bound By Protective Order" attached hereto as Exhibit A). If the objecting Party timely moves for a protective order, Designated Material must not be disclosed to the challenged individual until and unless a final ruling allowing such disclosure is made by this Court or by the consent of the objecting Party, whichever occurs first.

E. INSPECTION AND PRODUCTION OF SOURCE CODE AND SCHEMATICS

23. Unless otherwise agreed to in writing between the Producing Party and the Receiving Party, Source Code designated as "OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" may only be provided on at least two stand-alone computers (that is, computers not connected to a network, the Internet, or any peripheral device, except that the stand-alone computers may be connected to a printer or printers and dual-display monitors and will have a mouse connected, all other ports must be disabled) at secure locations, to be made available during regular business hours (9:00 a.m. to 5:00 p.m. local time) on weekdays on three (3) business days' notice, at Producing Party's counsel's offices in the United States. For Intel, the secure locations will be the offices of Kirkland & Ellis LLP in Los Angeles and San Francisco, California. The Receiving Party must

identify in writing to the Producing Party the persons who will be conducting the inspection or will be present during the inspection no less than 48 hours in advance of any such inspection.

24. Unless otherwise agreed to in writing between the Producing Party and the Receiving Party, Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” may only be provided on at least three stand-alone computers (that is, computers not connected to a network, the Internet, or any peripheral device, except that the stand-alone computers may be connected to a printer or printers and dual-display monitors and will have a mouse connected, all other ports must be disabled) at secure locations, to be made available during regular business hours (9:00 a.m. to 5:00 p.m. local time) on weekdays on three (3) business days’ notice, at Producing Party’s counsel’s offices in the United States. For Intel, the secure locations will be the offices of Kirkland & Ellis LLP in Los Angeles and San Francisco, California, and Womble Bond Dickinson US LLP in Atlanta, Georgia. The Receiving Party must identify in writing to the Producing Party the persons who will be conducting the inspection or will be present during the inspection no less than 48 hours in advance of any such inspection. The parties agree that, when Intel adds Source Code or Schematics to any of the stand-alone computers, Intel will first update the machine in San Francisco, and within one week thereafter shall update the Los Angeles computer and Atlanta computer, and Intel need not simultaneously update all computers on the same day.

25. The Producing Party will produce Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” in computer searchable format and in a file structure and format that mirrors the file structure and format of the Source Code as maintained by the Producing Party in the ordinary course of business, pursuant to the provisions of paragraph 23 above, but need not produce in executable format absent further agreement of the parties or order of the Court. The Producing Party may monitor any review of Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” but only as is reasonable to ensure compliance with this Protective Order and in a manner that will not interfere with the Receiving Party's confidential communications or otherwise invade the Receiving Party's attorney work product, and that will afford the Receiving Party adequate privacy to permit the development of appropriate work product. The Producing Party shall provide the Receiving Party with information explaining how to start, log on to, and operate any stand-alone computers in order to access the produced Source Code or Schematics. In order to verify that its Source Code and Schematics have not later been altered, the Producing Party may benchmark the materials to confirm that the materials have not been altered before and after they are provided but shall not install any keystroke or other monitoring software on any stand-alone computers.

26. The Receiving Party may request that commercially available software tools for viewing and searching Source Code designated as “OUTSIDE COUNSEL

RESTRICTED – SOURCE CODE” be installed on the stand-alone computers, provided that such tools are reasonably necessary for the Receiving Party to perform its review of the Source Code consistent with the protections herein. Specific tools may include, but are not limited to, Understand, Notepad++, Beyond Compare, XCode tools, Slick Edit, Source-Navigator, PowerGrep, ExamDiffPro, Sigasi, UltraEdit, Graphviz, Eclipse, or other similar programs, and software programs that may be necessary to review RTL, HDL, and similar-type files. Other mutually agreed upon tools may be used. Licensed copies of mutually agreed upon tools must be installed on the stand-alone computers by the Producing Party, and paid for by the Receiving Party. The Receiving Party must provide the Producing Party with such licensed software tools at least five (5) business days before the date on which the Receiving Party wishes to have the additional software tools available for use on the stand-alone computer. If a mutually agreed upon software tool is available at no cost from an easily accessible and publicly available source, the Receiving Party must identify where the Producing Party may obtain the tool at least five (5) business days before the date on which it wishes to have the additional tool and the mutually agreed upon tool will be installed on the stand-alone computers by the Providing Party. The Receiving Party must not at any time use any compilers, interpreters or simulators in connection with the Producing Party’s Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.” The parties agree to meet and confer on any further specific format for reviewing the Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as

“OUTSIDE COUNSEL RESTRICTED – SCHEMATICS,” including any additional tools that may be requested. Except as otherwise provided herein, in no event may tools be installed on the stand-alone computer that have the effect of altering, modifying, deleting, copying, or otherwise permitting the reproduction or removal of any Source Code or Schematics.

27. Except as otherwise provided herein, no copies of any portion of the Source Code or Schematics may leave the secure location in which the Source Code or Schematics is inspected. Further, except as provided herein, no written or electronic record of the Source Code or Schematics is permitted. Notwithstanding the foregoing, the Receiving Party may request printed copies of specific portions of Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS.”² Within three (3) business days of the printing request, the Producing Party must either (i) provide five (5) paper copies of Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” including Bates numbers and appropriate confidentiality labels when printed, along with a native Microsoft Excel file that lists the filepath and filename, as

² Intel agrees that PACT may request printed copies of source code or schematics be delivered to its Outside Counsel of Record offices in the United States at Quinn Emanuel in Los Angeles, Redwood City, and San Francisco. Should PACT request source code copies be delivered or relocated to another Quinn Emanuel office in the United States, the parties agree to meet and confer to discuss PACT’s request and how to deliver or re-locate the source code.

they appear on any stand-alone computers, of each requested file, correlated to the beginning Bates number of the corresponding print-out, or, alternatively, the Producing Party may brand printouts with the filepath and filename of each file, as it appears on any stand-alone computer; or (ii) object that a printing request is excessive and/or not done for a permitted purpose. The Producing Party must retain copies of any portions of Source Code or Schematics printed. The entire code or an unreasonably large portion of the code must not be requested. The Receiving Party is not entitled to request copies in order to review blocks of Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” elsewhere in the first instance, i.e., as an alternative to reviewing the materials electronically on the stand-alone computers provided by the Producing Party, 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. Printouts of the Source Code that exceed 60 continuous pages or 20% or more of a specific software release will be presumed excessive unless the Receiving Party provides a compelling justification that such printed portions are necessary. For example, if the requested portion of the source code comprises a complete code module that is directly relevant to the operation of the accused instrumentality, yet that requested portion exceeds the aforementioned page limits, such request may be deemed a compelling justification. If the Producing Party objects within three (3) business days of a printing request that the printing request is excessive and/or not done for a permitted

purpose, the Producing Party and Receiving Party will meet and confer within three (3) business days of the Producing Party's objection. If the Producing Party and the Receiving Party cannot resolve the objection, the Receiving Party may, within three (3) business days after the meet and confer, seek the Court's resolution of whether the request is narrowly tailored for a permitted purpose. The burden will be on the Receiving Party to demonstrate that such portions are no more than is reasonably necessary for a permitted purpose, and not merely for the purpose of review and analysis in another location.

28. A Receiving Party of any paper copies of any Source Code designated as "OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" or Schematics designated as "OUTSIDE ATTORNEYS' EYES ONLY – SCHEMATICS" must always keep the paper copies of the Source Code or Schematics at the United States office of the Receiving Party's Outside Counsel of Record, and in a locked storage container at the United States office of the Receiving Party's Outside Counsel of Record when the paper copies of the Source Code or Schematics are not in use. Notwithstanding the above, Intel agrees, upon request, to make one of the five permitted paper copies of Source Code or Schematics available for inspection at the offices of Womble Bond Dickinson US LLP in Atlanta, Georgia, during regular business hours (9:00 a.m. to 5:00 p.m. local time) on weekdays on two (2) business days' notice. Any such copies stored at Womble Bond Dickinson will be kept in a locked storage container when not in use. The Receiving Party may not reproduce the paper copies of the Source Code or Schematics, absent

written agreement of the Producing Party. The Receiving Party must maintain a Source Code Access Log and Schematics Access Log identifying, for each and every time any Source Code or Schematic is viewed, accessed, or analyzed: (i) the name of each person who accessed the Source Code or Schematic; (ii) the date of access; and (iii) the location of access. The Receiving Party must produce such log to the Producing Party within one month of final disposition of this action or, during this action, upon seven (7) business days' advance notice to Receiving Party only when the Producing Party has a good faith reasonable basis for believing that a violation of paragraph 28 of this Protective Order has occurred and explains the basis for such belief in writing at the time of the request for the log. If a Party has in its possession any Source Code or Schematic that is owned by a third party and subject to a claim of confidentiality or subject to any license restriction on its distribution or release, the Party possessing the third party Source Code or Schematic will not be required to produce such code or Schematic until such time as the third party has been notified by the Party of the anticipated production of such code or Schematic and the third party has had an opportunity to object to such production and to seek a protective order from the Court concerning the same within fifteen (15) days of being notified of the anticipated production of such code or Schematic.

29. Except as otherwise provided herein, no electronic devices, including but not limited to cellular phones, PDAs, cameras, and voice recorders will be permitted in the secure locations. Laptops may be used during inspection of Source Code or Schematics, provided any such use is consistent with this Protective Order (e.g., any

camera or other non-permitted functionality will not be used). The Producing Party must provide the Receiving Party's source code and Schematic reviewers with a "breakout room" that is separate from the room containing the stand-alone computer, where said Receiving Party source code reviewers may keep their cellular phones, etc., and have access to the internet. The Receiving Party's source code and Schematic reviewers will be entitled to take notes relating to the source code or schematics, but may not copy the source code or Schematics into the notes. Such notes will be treated the same as original printouts.

30. A Receiving Party that wants to use any printouts of Source Code designated as "OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" or Schematics produced as printouts and designated as "OUTSIDE COUNSEL RESTRICTED – SCHEMATICS" at a deposition must notify the Producing Party in writing at least five (5) calendar days before the date of the deposition about the specific pages the Receiving Party intends to actually use at the deposition by Bates production number, and the Producing Party will either authorize the Receiving Party to prepare copies for use in the deposition or the Producing Party will bring printed copies of those portions of the code or Schematics to the deposition for use by the Receiving Party. Copies of Source Code designated as "OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" or Schematics designated as "OUTSIDE COUNSEL RESTRICTED – SCHEMATICS" that are marked as deposition exhibits must not be provided to the court reporter or attached to deposition transcripts; rather the deposition record will identify such an exhibit by its production

numbers. All printouts of Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” brought to a deposition must be collected by the Producing Party at the conclusion of the deposition. In addition (or as an alternative to the use of printouts at a deposition), the Producing Party shall, on request, make a copy of the Source Code and Schematics available on a single stand-alone computer (but otherwise in the same format in which the source code is available under Paragraph 24 above and the Schematics are available under Paragraph 25 above) during depositions of witnesses who would otherwise be permitted access to such Source Code. The Receiving Party shall make such requests at least ten (10) calendar days before the deposition. The Producing Party shall make reasonable efforts to comply with such a request made less than ten (10) calendar days before a deposition, provided the request is made in good faith and could not reasonably under the circumstances have been made sooner.

31. Except as provided herein, 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 designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” from any paper copy of the Source Code or Schematics for use in any manner (including, by way of example only, the Receiving Party may not scan Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” to a PDF, or photograph code or Schematics). Paper copies of the

Source Code designated as “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or Schematics designated as “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” also may not be converted by the Receiving Party into an electronic document, and may not be scanned using optical character recognition (“OCR”) technology. The exception to this restriction is for the Receiving Party’s expert reports, including any rebuttal reports, and for filings with the Court (subject to the limitations below).

32. Use in Filings. A Receiving Party that wants to file or otherwise submit pages of Source Code or Schematics in connection with a filing may, no earlier than 24 hours prior to the relevant filing, make only as many copies, and only of the specific pages as needed, for submission. It must file the materials under seal and must immediately notify the Producing Party.

33. Use in Expert Reports and Discovery Documents. To the extent it is necessary to reference Source Code or Schematics in an expert report or other discovery document, the excerpts must be limited to the minimum amount necessary to support the specific argument made, but in no event may a source code excerpt exceed 25 lines of contiguous code. Documents containing excerpts must be designated “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” or “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS.”

34. The Producing Party shall provide a manifest of the contents of the source code or Schematic computer promptly after adding files to the computer. This manifest, which will be supplied in both printed and electronic form, will list the name and location

(including the full file path) of each file. The electronic form of the manifest will not leave the source code review room. The printed form of the manifest will be produced to the Receiving Party under the designation “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” and/or or “OUTSIDE COUNSEL RESTRICTED – SCHEMATICS” and receive all the protections set forth in this Protective Order for source code and Schematics.

F. PROSECUTION BAR

35. Prosecution Bar. Individuals associated with a Receiving Party (i.e., Counsel of Record, and Outside Consultants) who personally review any technical OUTSIDE ATTORNEYS’ EYES ONLY Material or OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material or OUTSIDE COUNSEL RESTRICTED – SCHEMATICS Material are prohibited from participating in the preparation or prosecution of patents or patent applications, and from drafting or revising a patent claim, before any foreign or domestic agency, including the United States Patent and Trademark Office, specifically directed to the Prosecution Bar Technology, from the time of receipt of such Material through one (1) year after final and non-appealable termination of this litigation. Notwithstanding the foregoing, if an individual has not had access to Material for one (1) year and the individual is no longer performing work for the Receiving Party, the individual is no longer subject to the prosecution bar, except for (i) applications filed during the period in which the prosecution bar applied, and (ii) applications claiming priority from applications filed during the period in which the prosecution bar applied.

For purposes of this paragraph, "prosecution" means directly or indirectly drafting, amending, or advising on the drafting or amending of claims in connection with original prosecution, reissue, reexamination, *inter partes* review proceedings, or other domestic or foreign post-grant review proceedings. Notwithstanding the foregoing, the Receiving Party's Outside Counsel of Record that is permitted to receive and does receive technical ATTORNEYS' EYES ONLY Material or OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material or OUTSIDE COUNSEL RESTRICTED – SCHEMATICS Material may be involved in domestic or foreign post-grant patent proceedings (*e.g.*, *inter partes* review, reexamination, nullity proceedings, etc.) provided, however, such counsel is prohibited from directly or indirectly drafting, amending, or advising on the drafting or amending of claims in connection with such post-grant patent proceedings. To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* review).

G. USE OF DESIGNATED MATERIAL

36. Use of Designated Material by a Receiving Party. A Receiving Party is permitted to use Designated Material only for purposes of the above-captioned civil action (excluding new patent assertions) and any appeals therefrom, and must not be used in any other way whatsoever. Information contained or reflected in Designated Material must not be disclosed in conversations, presentations (by Parties, Counsel of Record,

Professional Vendors, Outside Consultants, or otherwise), in court, or in other settings that might reveal Designated Material, except in accordance with this Order.

37. Use of Designated Material by a Producing Party. Nothing in this Order restricts a Producing Party's or Designating Party's use or disclosure of its own Designated Material.

38. Use of Designated Material at Depositions. A Receiving Party can examine (a) a witness about Designated Material of which the witness had prior knowledge, and (b) present directors, officers, employees, designated Rule 30(6)(b) witnesses, and Outside Consultants of a Designating Party about any Designated Material of that Designating Party. A non-party may be examined about documents containing Designated Material that appear on their face or from other documents or testimony to have been received from or delivered to the non-party. Any person not permitted to have access to Designated Material that is disclosed at a deposition will be excluded from the portion of the deposition relating to that information.

39. Filing Designated Material. Absent written permission from the Designating Party or a Court Order issued after appropriate notice, a Party must file Designated Material under seal in conformance with the Court's rules and procedures. Material filed under seal shall include a cover page including the words "FILED UNDER SEAL."

40. Transmittal of Designated Material. A Receiving Party will not transmit or transport Designated Material outside of the United States. The parties agree to meet and

confer regarding transport of Designated Material outside of the United States for any foreign depositions.

41. Unauthorized Use or Disclosure. If a Receiving Party learns of the disclosure or use of Designated Material in any circumstance not authorized by this Order, it must promptly notify in writing the Designating Party of the unauthorized use or disclosure. In the event of unauthorized disclosure, the Receiving Party must also promptly (a) use its best efforts to retrieve all copies of the Designated Material, (b) inform the person to whom unauthorized disclosures were made of the terms of this Order, and (c) ask that person to execute the “Acknowledgment and Agreement to Be Bound” that is attached as Exhibit A.

H. PROCEDURE FOR DESIGNATING MATERIALS

42. Designating Documents. For Material in documentary form (other than transcripts), the Designating Party must affix the legend “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” on each page that contains Designated Material, except for filings which shall be marked on the first page.

43. Designating Other Material. For non-documentary Material, the Designating Party must affix in a prominent place on the exterior of the container or containers in which the information or thing is stored the legend “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.”

44. Testimony and Transcripts. For testimony given in deposition or in other pretrial or trial proceedings, the Designating Party will specify any portions of the testimony that it wishes to designate as “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE.” In the case of depositions, the Designating Party may also designate any portion of a deposition transcript by informing the reporter and the Parties in writing of the applicable designations by page and line number ranges within thirty calendar days of completion of the certified transcript. The entire transcript of a deposition at which OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material was disclosed will be treated as OUTSIDE COUNSEL RESTRICTED – SOURCE CODE until the thirty-day period has expired. The entire transcript of all other depositions will be treated as OUTSIDE ATTORNEYS’ EYES ONLY until the thirty-day period has expired. Transcript pages identified by a Designating Party must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” as instructed by the Designating Party. The non-Designating Party may also request the Designating Party provide a transcript with “CONFIDENTIAL,” “OUTSIDE ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL RESTRICTED – SOURCE CODE” material redacted. Such redacted copy will be provided within a reasonable number of days after the request. Subject to the Court’s preferences, the parties will work together to make arrangements for making such designations to exhibits, testimony, and

other Material used during hearings, pre-trial proceedings, and during the trial of this case.

45. Non-party Designations. A non-party producing information or Material voluntarily or pursuant to a subpoena or court order may designate the information or Material in the same manner as a Party. A non-party's use of this Protective Order for production of its Material does not entitle that non-party to have access to Material produced by any Party in this action.

46. Challenges to Designations. A Receiving Party may at any time request that a Designating Party withdraw or modify a confidentiality designation; it is not obligated to do so at the time the designation is made. Challenges must be in writing, identify each document by production number, and set forth the reason for believing the designation was improper. The Receiving Party will continue to treat the document in accordance with the Designating Party's designation unless and until otherwise agreed to by the Designating Party or ordered by the Court. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly within five (5) days of the notice of challenge. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. If the Parties cannot resolve a challenge without court intervention, the Receiving party may seek relief under the Court's procedures.

I. INADVERTENT PRODUCTION

47. Inadvertent Failure to Designate. An inadvertent failure to designate confidential Material does not waive a Designating Party's right to secure protection under this Order for that Material. On discovery of an inadvertent failure to designate, a Designating Party may give written notice of the designation and provide substitute copies of the Material bearing the appropriate legend. The Receiving Party must then treat the Material in accordance with the new designation, use reasonable efforts to retrieve and destroy all copies of the previously produced version of the Material from anyone who had received it, and destroy any electronic copies of the previously produced version.

48. No Waiver of Privilege. Inspection or production of Material will not constitute a waiver of the attorney-client privilege or work product immunity or any other applicable privilege or immunity from discovery if, after becoming aware of an inadvertent or unintentional disclosure, the Producing Party designates the Material as privileged or immune from discovery. On request by the Producing Party, the Receiving Party will immediately retrieve and return (or destroy) any copies of the inadvertently produced Material, including copies distributed to others (e.g., Outside Consultants and Professional Vendors). The Receiving Party will remain entitled to challenge the privilege or immunity or immunity designation.

J. MISCELLANEOUS

49. Enforcement and Jurisdiction. This Court will have exclusive jurisdiction to enforce this Order, even following the final disposition of this action. Every individual who reviews Designated Material agrees to be subject to the jurisdiction of this Court for the purpose of any proceedings related to the enforcement of this Order.

50. Injunctive Relief. Every individual who reviews Designated Material acknowledges that a breach of this Order may result in immediate and irreparable injury for which there is no adequate remedy at law. A party may immediately apply to obtain temporary, preliminary, and permanent injunctive relief against a violation or threatened violation of this Order.

51. Final Disposition. Within sixty days after the final disposition of this action, each Receiving Party must destroy or return all Designated Material to the Producing Party and submit a written confirmation of the return or destruction to the Producing Party (and, if not the same person or entity, to the Designating Party). However, Counsel of Record are entitled to retain archival copies of all pleadings, motion papers and supporting materials), transcripts (including exhibits), legal memoranda, correspondence, briefs and supporting materials, written discovery requests and responses, exhibits offered or introduced into evidence at trial, or attorney work product. Any such archival copies remain subject to this Protective Order.

52. **Duration.** The confidentiality obligations imposed by this Order will remain in effect even after the final disposition of this action, until and unless otherwise agreed to by the Designating Party or ordered by the Court.

53. **Further Protections.** This Order is entered without prejudice to the right of any party to apply to the Court at any time for additional protection or to relax or rescind the restrictions of this Order.

54. **Subpoenas in Other Litigation.** If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any Designated Material, it must so notify the Producing Party (and, if not the same person or entity, the Designating Party), in writing (by hand delivery, or email) promptly and in no event more than ten (10) days after receiving the subpoena or order. The notice must include a copy of the subpoena or order. The Receiving Party also must promptly inform in writing the party who caused the subpoena or order to issue that some or all of the requested material is subject to this Order.

55. **Other Proceedings.** By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

Dated: August 2, 2019

Respectfully submitted,

FARNAN LLP

MORRIS, NICHOLS, ARSHT & TUNNELL
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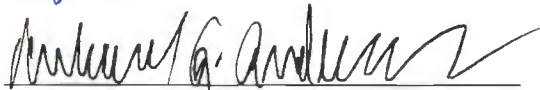
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SO ORDERED this 5 day of August, 2019.


UNITED STATES DISTRICT JUDGE