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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TECHNOLOGY PROPERTIES LTD. LLC,
et al.,
Plaintiffs,
v.
BARNES & NOBLE, INC.,
Defendant.

Case No.: 3:12-CV-03863-VC (PSG)

**STIPULATED SUPPLEMENTAL
PROTECTIVE ORDER BETWEEN NON-
PARTY QUALCOMM INCORPORATED,
PLAINTIFFS AND DEFENDANTS**

TECHNOLOGY PROPERTIES
LIMITED LLC, PHOENIX DIGITAL
SOLUTIONS LLC, and PATRIOT
SCIENTIFIC CORPORATION,

Case No. 3:12-cv-03880-VC (PSG)

Plaintiffs,

vs.

LG ELECTRONICS, INC. and LG
ELECTRONICS U.S.A., INC.,

Defendants.

1 TECHNOLOGY PROPERTIES
2 LIMITED LLC, PHOENIX DIGITAL
3 SOLUTIONS LLC, and PATRIOT
4 SCIENTIFIC CORPORATION,

5 Plaintiffs,

6 vs.

7 GARMIN LTD., GARMIN
8 INTERNATIONAL, INC., AND
9 GARMIN USA, INC.,

10 Defendants.

Case No. 3:12-cv-03870-VC (PSG)

11 TECHNOLOGY PROPERTIES
12 LIMITED LLC, PHOENIX DIGITAL
13 SOLUTIONS LLC, and PATRIOT
14 SCIENTIFIC CORPORATION,

15 Plaintiffs,

16 vs.

17 HUAWEI TECHNOLOGIES CO., LTD.
18 and HUAWEI NORTH AMERICA,

19 Defendants.

Case No. 2:12-cv-03865-VC (PSG)

20 TECHNOLOGY PROPERTIES
21 LIMITED LLC, PHOENIX DIGITAL
22 SOLUTIONS LLC, and PATRIOT
23 SCIENTIFIC CORPORATION,

24 Plaintiffs,

25 vs.

26 ZTE CORPORATION and ZTE (USA)
27 INC.,

28 Defendants.

Case No. 3:12-cv-03876-VC (PSG)

1 TECHNOLOGY PROPERTIES
2 LIMITED LLC, PHOENIX DIGITAL
3 SOLUTIONS LLC, and PATRIOT
4 SCIENTIFIC CORPORATION,

5 Plaintiffs,

6 vs.

7 SAMSUNG ELECTRONICS CO., LTD.
8 and SAMSUNG ELECTRONICS
9 AMERICA, INC.,

10 Defendants.

Case No. 3:12-cv-03877-VC (PSG)

11 TECHNOLOGY PROPERTIES
12 LIMITED LLC, PHOENIX DIGITAL
13 SOLUTIONS LLC, and PATRIOT
14 SCIENTIFIC CORPORATION,

15 Plaintiffs,

16 v.

17 NINTENDO CO., LTD. and
18 NINTENDO OF AMERICA INC.,

19 Defendants.

Case No. 3:12-cv-03881-VC (PSG)

20 WHEREAS, Plaintiffs Technologies Properties Limited LLC, Phoenix Digital Solutions
21 LLC and PATRIOT SCIENTIFIC (collectively, "Plaintiffs") and Defendants Barnes & Noble,
22 Inc., LG Electronics, Inc. and LG Electronics U.S.A., Inc., Garmin Ltd., Garmin International,
23 Inc., Garmin USA, Inc., Huawei Technologies Co., Ltd., Huawei North America, ZTE
24 Corporation, ZTE (USA) Inc., Samsung Electronics Co., Ltd., Samsung Electronics America, Inc.,
25 Novatel Wireless, Inc., Nintendo Co., Ltd. and Nintendo of America Inc. (collectively,
26 "Defendants") are currently subject to the stipulated protective order entered in each of the above
27 captioned cases (the "Protective Order");

28 WHEREAS, Plaintiffs, and Defendants (together, hereinafter referred to as "the Parties"),
and Qualcomm Incorporated ("QUALCOMM"), a non-party to this action, may produce
confidential source code, schematics, and other documents in this action that include or
incorporate CONFIDENTIAL INFORMATION belonging to QUALCOMM ("QUALCOMM
Confidential Information"); and

1
2 WHEREAS the Parties and Non-Party QUALCOMM have agreed to additional provisions
3 to protect against misuse or disclosure of such QUALCOMM Confidential Information;

4 WHEREFORE, IT IS HEREBY ORDERED that source code, schematics, or documents
5 that incorporate QUALCOMM Confidential Information produced in connection with the above-
6 captioned matters after the date of entry of this protective order that are designated as
7 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM – OUTSIDE
8 ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” shall be subject to the
9 following restrictions:

10 **A. Definitions**

11 1. “QUALCOMM MATERIAL”: Confidential information (regardless of how
12 generated, stored, or maintained) or tangible things that include or incorporate Non-Party
13 QUALCOMM Confidential Information, that Non-Party QUALCOMM (i) would not normally
14 reveal to third parties except in confidence, or has undertaken with others to maintain in
15 confidence, (ii) believes in good faith is significantly sensitive, or (iii) protected by a right to
16 privacy under federal or state law, or any other applicable privilege or right related to
17 confidentiality or privacy. QUALCOMM MATERIAL includes all information, documents,
18 source code, schematics, testimony, and things produced, served, or otherwise provided in this
19 action by any Party or by Non-Party QUALCOMM, that include or incorporate QUALCOMM
20 Confidential Information.

21 2. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” material:
22 information, documents, and things that include or incorporate QUALCOMM MATERIAL.

23 3. “Source Code”: includes human-readable programming language text that defines
24 software, firmware, (collectively, “software Source Code”) and integrated circuits (“hardware
25 Source Code”). Text files containing Source Code shall hereinafter be referred to as “Source Code
26 files.” Software Source Code files shall include, but are not limited to, files containing Source
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1 Code in “C,” “C+,” BREW, Java ME, J2ME, assembler, digital signal processor (DSP)
2 programming languages, and other human readable text programming languages. Software
3 Source Code files further include “.include files,” “make” files, “link” files, and other human-
4 readable text files used in the generation and/or building of software directly executed on a
5 microprocessor, micro-controller, or DSP. Hardware Source Code files include, but are not
6 limited to, files containing Source Code in VHDL, Verilog, and other Hardware Description
7 Language (“HDL”) formats, including but not limited to, Register Transfer Level (“RTL”)
8 descriptions.

9 4. “Chip-Level Schematics”: means symbolic representations of analog electric or
10 electronic circuits from which the physical structure of a chip is directly derived.

11 5. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL
12 SOURCE CODE” Material: QUALCOMM MATERIAL that includes Source Code and Chip-
13 Level Schematics that constitute proprietary technical or commercially sensitive competitive
14 information that Non-Party QUALCOMM maintains as highly confidential in its business, the
15 disclosure of which is likely to cause harm to the competitive position of Non-Party
16 QUALCOMM. This includes Source Code and Chip-Level Schematics in the Producing Party’s
17 possession, custody, or control, and made available for inspection by the Producing Party.

18 6. “Designated QUALCOMM Material”: material that is designated “QUALCOMM
19 – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’
20 EYES ONLY – CONFIDENTIAL SOURCE CODE” under this Supplemental Protective Order.

21 7. “Designated Source Code Material”: material that is designated “QUALCOMM –
22 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” under this
23 Supplemental Protective Order.

24 8. “Personnel Retained by a Receiving Party in this Action” means any consultants,
25 experts, or outside counsel (including their support staff) that have been and continue to be
26 retained by a Receiving Party in this action. For the sake of clarity, any person who was retained

1 by a Receiving Party in this action will no longer fall under this definition if that person ceases to
2 be retained by a Receiving Party in this action.

3 9. “Party” means any Party to the above-captioned actions, including all of its
4 officers, directors, employees, consultants, retained experts, and all support staff thereof.

5 10. “Producing Party” means a party or non-party that discloses or produces
6 Designated QUALCOMM Material in the above-captioned actions.

7 11. “Receiving Party” a Party that receives Designated QUALCOMM Material from a
8 Producing Party in the above-captioned actions.

9 12. “Authorized Reviewer(s)” shall mean persons authorized to review “QUALCOMM
10 – OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM – OUTSIDE ATTORNEYS’
11 EYES ONLY – CONFIDENTIAL SOURCE CODE” material in accordance with this
12 Supplemental Protective Order and the Protective Order.

13 13. “Counsel of Record”: (i) Outside Counsel who appears on the pleadings, or has
14 entered an appearance in this action, as counsel for a Party, and (ii) partners, principals, counsel,
15 associates, employees, and contract attorneys of such Outside Counsel to whom it is reasonably
16 necessary to disclose the information for this litigation, including supporting personnel employed
17 by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand
18 reporters.

19 14. “Outside Consultant”: a person with specialized knowledge or experience in a
20 matter pertinent to the litigation who has been retained by Counsel of Record to serve as an expert
21 witness or a litigation consultant in this action (including any necessary support personnel of such
22 person to whom disclosure is reasonably necessary for this litigation), and who is not a current
23 employee of a Party, of a competitor of a Party, or of Non-Party QUALCOMM, and who, at the
24 time of retention, is not anticipated to become an employee of, or a non-litigation consultant of: 1)
25 a Party, 2) a competitor of a Party, 3) a competitor of Non-Party QUALCOMM, or of 4) Non-
26 Party QUALCOMM.

1 subject to obligations with respect to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” material outlined in the Protective Order.

3 **C. Scope**

4 19. The protections conferred by this Supplemental Protective Order cover not only
5 Designated QUALCOMM Material (as defined above), but also any information copied or
6 extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof. Nothing
7 herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil
8 Procedure or any applicable local rules or General Orders. Identification of any individual
9 pursuant to this Supplemental Protective Order does not make that individual available for
10 deposition, or any other form of discovery outside of the restrictions and procedures of the Federal
11 Rules of Civil Procedure or any applicable rules or General Orders.

12 20. This Supplemental Protective Order shall not prevent a disclosure to which Non-
13 Party QUALCOMM consents in writing before that disclosure takes place.

14 21. This Supplemental Protective Order shall apply to all Designated QUALCOMM
15 Material that is produced or provided for inspection in this action, including all Designated
16 QUALCOMM Material that is in the possession, custody or control of QUALCOMM or any Party
17 in these actions, or that is otherwise relevant to these actions.

18 **D. Access to Designated QUALCOMM Material**

19 22. Access to “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” Material:
20 Unless otherwise ordered by the Court or permitted in writing by Non-Party QUALCOMM, a
21 Receiving Party may disclose any information, document or thing designated “QUALCOMM –
22 OUTSIDE ATTORNEYS’ EYES ONLY” only to:

- 23 a. Persons who appear on the face of Designated QUALCOMM Material as an
24 author, addressee or recipient thereof, or persons who have been designated
25 under FRCP 30(b)(6) to provide testimony of behalf of a Producing Party or
26 Qualcomm regarding the same;

1 Designated QUALCOMM Material shall not be disclosed to mock jurors
2 without Non-Party QUALCOMM's express written consent;

3 g. The Court and its personnel.

4 23. Access to "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY –
5 CONFIDENTIAL SOURCE CODE" Material: Unless otherwise ordered by the Court or
6 permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any
7 information, document, or thing designated "QUALCOMM – OUTSIDE ATTORNEYS' EYES
8 ONLY – CONFIDENTIAL SOURCE CODE" only to:

9 a. Persons who appear on the face of Designated QUALCOMM Material as an
10 author, addressee or recipient thereof, or persons who have been designated
11 under FRCP 30(b)(6) to provide testimony of behalf of a Producing Party or
12 Qualcomm regarding the same;

13 b. Counsel of Record;

14 c. Outside Consultants of the Receiving Party to whom disclosure is
15 reasonably necessary for this litigation, and who have, after the date of this
16 Supplemental Protective Order, signed the "Acknowledgement And
17 Agreement To Be Bound By Supplemental Protective Order Governing
18 Confidential Information of Non-Party Qualcomm In This Case" attached
19 hereto as Exhibit A, and the "Certification Of Consultant Re Supplemental
20 Protective Order Governing Confidential Information of Non-Party
21 Qualcomm In This Case," attached hereto as Exhibit B;

22 d. Any designated arbitrator or mediator who is assigned to hear this matter, or
23 who has been selected by the Parties, and his or her staff; who have, after
24 the date of this Supplemental Protective Order, signed the
25 "Acknowledgement And Agreement To Be Bound By Supplemental
26 Protective Order Governing Confidential Information of Non-Party

1 Qualcomm In This Case” attached hereto as Exhibit A, and the
2 “Certification Of Consultant Re Supplemental Protective Order Governing
3 Confidential Information of Non-Party Qualcomm In This Case,” attached
4 hereto as Exhibit B, as well as any arbitrator’s or mediator’s staff who have
5 also signed Exhibits A and B, provided, however, that before such
6 disclosure, QUALCOMM is provided notice including: (a) the individual’s
7 name and business title; (b) business address; (c) business or professions;
8 and (d) the individual’s CV. QUALCOMM shall have five (5) business
9 days from receipt of the notice to object in writing to such disclosure (plus
10 three (3) extra days if notice is given other than by hand delivery, e-mail
11 delivery or facsimile transmission). After the expiration of the 5 business
12 days (plus 3 days, if appropriate) period, if no objection has been asserted,
13 then “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
14 CONFIDENTIAL SOURCE CODE” materials may be disclosed pursuant
15 to the terms of this Supplemental Protective Order;

- 16 e. Court reporters and videographers employed in connection with this action,
17 subject to the provisions provided in subparagraph 33(h) herein;
- 18 f. Professional Vendors to whom disclosure is reasonably necessary for this
19 action, and a representative of which has signed the “Acknowledgement
20 And Agreement To Be Bound By Supplemental Protective Order
21 Governing Confidential Information of Non-Party Qualcomm In This Case”
22 attached hereto as Exhibit A, subject to the following exception: Designated
23 QUALCOMM Material shall not be disclosed to mock jurors without Non-
24 Party QUALCOMM’s express written consent; and
- 25 g. The Court and its personnel.

1 **E. Access By Outside Consultants**

2 31. **Notice.** If a Receiving Party wishes to disclose Designated QUALCOMM Material
3 to any Outside Consultant, Receiving Party must, prior to the Outside Consultant being granted
4 access to any Designated QUALCOMM Material, provide notice to counsel for Non-Party
5 QUALCOMM, which notice shall include: (a) the individual's name and business title; (b)
6 business address; (c) business or profession; (d) the individual's CV; (e) any previous or current
7 relationship (personal or professional) with Non-Party QUALCOMM or any of the Parties to this
8 action; (f) a list of other cases in which the individual has testified (at trial or deposition) within
9 the last five years; (g) a list of all companies with which the individual has consulted or by which
10 the individual has been employed within the last four years, the dates of the consultancy or
11 employment, a brief description of the subject matter of the consultancy or employment,¹ and
12 copies of the "Acknowledgement and Agreement To Be Bound By Supplemental Protective
13 Order" attached as Exhibit A, and the "Certification Of Consultant" attached hereto as Exhibit B,
14 that have both been signed by that Outside Consultant.

15 32. **Objections.** With respect to Outside Consultants that have not been previously
16 disclosed to Non-Party QUALCOMM, Non-Party QUALCOMM shall have five (5) business
17 days, starting from the first business day following the date upon which Receiving Party provides
18 the notice and all information required by paragraph 31 to the Producing Party, to object for good
19 cause in writing to such disclosure (plus three (3) extra days if notice is given in any manner other
20 than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5
21 business days (plus 3-days, if appropriate) period, if no objection for good cause has been asserted
22 by Non-Party QUALCOMM, then Designated QUALCOMM Material may be disclosed to the
23 Outside Consultant pursuant to the terms of this Supplemental Protective Order. Any objection by
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25 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third
26 party, then the Expert should provide whatever information the Expert believes can be disclosed
27 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
28 shall be available to meet and confer with QUALCOMM regarding any such engagement.

1 Non-Party QUALCOMM must be made for good cause, and must set forth in detail the grounds
 2 on which it is based. Should Receiving Party disagree with the basis for the objection(s),
 3 Receiving Party must first attempt to resolve the objection(s) informally with Non-Party
 4 QUALCOMM. If the informal efforts do not resolve the dispute within five (5) business days
 5 from the date upon which Receiving Party was first notified of any objection for good cause by
 6 Non-Party QUALCOMM, Receiving Party may file a motion requesting that the objection(s) be
 7 quashed after that five (5) day period has passed. Non-Party Qualcomm shall have the burden of
 8 proof by a preponderance of the evidence on the issue of the sufficiency of the objection(s).
 9 Pending a ruling by the Court upon any such objection(s), or the subsequent resolution of the
 10 objection for good cause by Receiving Party and Non-Party QUALCOMM, the discovery material
 11 shall not be disclosed to the person objected to by Non-Party QUALCOMM.

12 **F. Production of QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –**
 13 **CONFIDENTIAL SOURCE CODE Material**

14 33. Non-Party QUALCOMM’s Source Code and Chip-Level Schematics:

15 a. To the extent that a Producing Party makes Non-Party QUALCOMM’s
 16 Source Code or Chip-Level Schematics available for inspection:

17 (i) The Producing Party shall make all relevant and properly requested Non-
 18 Party QUALCOMM Source Code available electronically and in text
 19 searchable form (1) if produced by Non-Party QUALCOMM, in a separate
 20 room at a secure facility selected by Non-Party QUALCOMM or (2) if
 21 produced by Defendants, at the offices of Counsel of Record for the
 22 producing Defendant or at a secure facility approved by QUALCOMM.

23 The Producing Party shall make the Source Code available for inspection on
 24 a stand-alone, non-networked personal computer running a reasonably
 25 current version of the Microsoft Windows operating system (“Source Code
 26 Computer”). Alternatively, solely at the option of the Producing Party, the

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Producing Party may make such source code available on a Source Code Computer that is networked, in a configuration deemed secure by Non-Party QUALCOMM. The Source Code Computer shall be configured to permit review of the Source Code through a password-protected account having read-only access. The Source Code Computer shall also be equipped with software sufficient to review and search the Source Code. Any additional software reasonably necessary to review and search the Source Code may be requested by the Receiving Party, and any such additional software that is mutually agreed upon shall be provided for at Receiving Party’s expense. Licensed copies of such other mutually agreed upon tool software shall be installed on the Source Code Computer by the Producing Party and paid for by the Receiving Party.

(ii) The Producing Party shall make all relevant and properly requested Chip-Level Schematics available for inspection electronically on the Source Code Computer in a secure room at a secure facility selected by Non-Party QUALCOMM. The Producing Party shall ensure that the Source Code Computer includes software sufficient to allow a user to view such electronic Chip-Level Schematics.

- b. The Producing Party shall provide access to the Source Code Computer during the normal operating hours of the secure facility.
- c. The Source Code Computer shall be equipped to allow printing of the Source Code and Chip-Level Schematics made available for inspection by the Producing Party. Copies of Source Code and Chip-Level Schematics shall only be made on watermarked pre-Bates numbered paper, which shall be provided by the Producing Party. Under no circumstances are original printouts of the Source Code or Chip-Level Schematics to be made except

1 for directly onto the watermarked and numbered sides of the paper provided
2 by the Producing Party. Additionally, the Receiving Party may not print
3 any continuous block of source code that results in more than 50
4 consecutive printed pages, except that Authorized Reviewer(s) may request
5 the printing of a continuous block of more than 50 pages, which request
6 shall not be unreasonably denied by the Producing Party. Counsel for the
7 Producing Party will keep the original printouts, and shall provide copies of
8 such original printouts to counsel for the Receiving Party within four (4)
9 business days of (1) any request by the Receiving Party, or (2) otherwise
10 being notified that such original printouts have been made or designated.
11 Counsel of Record for the Receiving Party may request up to 10 copies of
12 each original printout of Source Code or Chip-Level Schematics. No more
13 than 10% or 500 pages of the total Source Code (not including copies of
14 original printouts) whichever is greater, for any software release (or in the
15 case of hardware Source Code, for any hardware product), no more than
16 500 pages of Chip-Level Schematics, and no continuous blocks of Source
17 Code or Chip-Level Schematics that exceed 50 pages, may be in printed
18 form at any one time, without the express written consent of Non-Party
19 QUALCOMM, which shall not be unreasonably denied. All printed Source
20 Code and Chip-Level Schematics shall be logged by Receiving Party's
21 Counsel of Record and/or other Personnel Retained by a Receiving Party in
22 this action as noted in subparagraph 33 (i) below. No additional electronic
23 copies of the Source Code or Chip-Level Schematics shall be provided by
24 the Producing Party. Hard copies of the Source Code or Chip-Level
25 Schematics also may not be converted into an electronic document, and
26 may not be scanned using optical character recognition ("OCR")

1 technology. Only printouts of Source Code and Chip-Level Schematics
2 may be made, and such printouts must include (1) directory path
3 information and filenames from which the Source Code and Chip-Level
4 Schematics came and (2) line numbers. The Producing Party may refuse to
5 provide copies of Source Code and Chip-Level Schematics printouts that
6 fail to comply with this section.

7 d. Authorized Reviewer(s) in this action shall not print Source Code or Chip-
8 Level Schematics which have not been reviewed on the Source Code
9 Computer, or in order to review the Source Code or Chip-Level Schematics
10 elsewhere in the first instance, i.e., as an alternative to reviewing that
11 Source Code or Chip-Level Schematics electronically on the Source Code
12 Computer, as the Parties and QUALCOMM acknowledge and agree that the
13 purpose of the protections herein would be frustrated by such actions.

14 e. Authorized Reviewer(s) are prohibited from bringing outside electronic
15 devices, including but not limited to laptops, floppy drives, zip drives, or
16 other hardware into the secure room. Nor shall any cellular telephones,
17 personal digital assistants (PDAs), Blackberries, cameras, voice recorders,
18 Dictaphones, external or portable telephone jacks or other outside electronic
19 devices be permitted inside the secure room, except for medical devices,
20 implants, or equipment reasonably necessary for any legitimate medical
21 reason.

22 f. If any Authorized Reviewer(s) reviewing Non-Party QUALCOMM's
23 Source Code or Chip-Level Schematics seeks to take notes, all such notes
24 will be taken on bound (spiral or other type of permanently bound)
25 notebooks. No loose paper or other paper that can be used in a printer may
26 be brought into the secure room.

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g. In the event copies of Source Code or Chip-Level Schematic printouts are used as exhibits in a deposition, additional copies may be made for the witness and outside counsel for the parties. The printouts shall not be provided to the court reporter, except that the one copy for the witness which will be used as an exhibit can be provided to the court reporter for the purpose of marking the exhibit, and the further copies of the original QUALCOMM Source Code or Chip-Level Schematics printouts made for the deposition or trial shall be destroyed at the conclusion of the deposition or trial. The original copies of deposition exhibits designated “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” will be maintained by the deposing party under the terms set forth in this Supplemental Protective Order.

h. In addition to other reasonable steps to maintain the security and confidentiality of Non-Party QUALCOMM’s Source Code and Chip-Level Schematics, printed copies of the Designated Source Code Material maintained by the Receiving Party must be kept in a locked storage container when not being actively reviewed or otherwise being transferred as permitted by the Protective Order and/or this Supplemental Protective Order.

i. The Receiving Party’s Counsel of Record shall keep log(s) recording the identity of each individual beyond Counsel of Record to whom each hard copy of each Producing Party’s QUALCOMM Source Code or Chip-Level Schematics is provided and when it was provided to that person in the first instance, and within thirty (30) days after the issuance of a final, non-appealable decision resolving all issues in this action, the Receiving Party must serve upon Non-Party QUALCOMM the log. In addition, any Outside

1 Consultants of the Receiving Party to whom the paper copies of the
2 QUALCOMM Source Code or Chip-Level Schematics were provided must
3 certify in writing that all copies of the QUALCOMM Source Code or Chip-
4 Level Schematics were destroyed or returned to the counsel who provided
5 them the information and that they will make no use of the Source Code or
6 Chip-Level Schematics, or of any knowledge gained from the source code
7 in any future endeavor.

8 **G. Procedure for Designating Materials**

9 34. Subject to the limitations set forth in the Protective Order and in this Supplemental
10 Protective Order, Non-Party QUALCOMM may: designate as “QUALCOMM – OUTSIDE
11 ATTORNEYS’ EYES ONLY” or information that it believes, in good faith, meets the definition
12 set forth in paragraph 2 above; and designate as “QUALCOMM – OUTSIDE ATTORNEYS’
13 EYES ONLY – CONFIDENTIAL SOURCE CODE” information that it believes, in good faith,
14 meets the definition set forth in paragraph 5 above.

15 35. Except as provided above in paragraph 33 with respect to “QUALCOMM –
16 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” Material, any
17 material, including (including physical objects) made available by Non-Party QUALCOMM for
18 initial inspection by counsel for the Receiving Party prior to producing copies of selected items
19 shall initially be considered, as a whole, to constitute “QUALCOMM – OUTSIDE
20 ATTORNEYS’ EYES ONLY” information, and shall be subject to this Order. Thereafter, Non-
21 Party QUALCOMM shall have seven (7) calendar days from the inspection to review and
22 designate the appropriate documents as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES
23 ONLY” prior to furnishing copies to the Receiving Party.

24 36. Designation in conformity with the Protective Order and this Supplemental
25 Protective Order shall be made as follows:

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a. For information in documentary (including “electronically stored information”) form (apart from transcripts of depositions or other pretrial or trial proceedings): the Designating Party shall affix the legend “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” conspicuously on each page that contains Protected Material.

A party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the Receiving Party has indicated which material it would like copied or produced. Before and during the inspection, all material made available for inspection shall be deemed “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY.” After the Receiving Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order and, before producing the specified documents, the Producing Party must affix the appropriate legend to each page that contains Designated QUALCOMM Material.

b. For Testimony Given in Deposition: For deposition transcripts, the Designating Party shall specify any portions of the testimony that it wishes to designate, by line and page number, no later than 20 business days after the final transcript of the deposition has been received. The Party or Non-Party may identify the entirety of the transcript as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE,” but all deposition transcripts not designated during the deposition will

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nonetheless be treated as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE,” until the time within which it may be appropriately designated as provided for herein has passed. Any Protected Material that is used in the taking of a deposition shall remain subject to the provisions of this Supplemental Protective Order and the Protective Order in these actions, along with the transcript pages of the deposition testimony dealing with such Protected Material. In such cases the court reporter shall be informed of this Supplemental Protective Order and shall be required to operate in a manner consistent with this Supplemental Protective Order. Transcript pages containing Designated Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” and/or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE.” An encrypted, password protected copy of deposition transcripts containing Designated Qualcomm Material made pursuant to this paragraph may be hosted electronically by the Receiving Party on any system inside the firewall of a law firm representing the Receiving Party, however, all other restrictions in this Supplemental Protective Order pertaining to Designated Source Code Material apply. In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Supplemental Protective Order and the Protective Order, substantially along the lines of “This videotape contains confidential or outside counsel eyes only confidential testimony used in this case and is not to be viewed or the

1 contents thereof to be displayed or revealed except pursuant to the terms of
2 the operative protective orders in this matter or pursuant to written
3 stipulation of the parties.” Counsel for any Designating Party shall have the
4 right to exclude from oral depositions, other than the deponent, deponent’s
5 counsel, and the reporter and videographer (if any), any person who is not
6 authorized by the Protective Orders in this action to receive or access
7 Protected Material based on the designation of such Protected Material.

8 c. For information produced in some form other than documentary, and for
9 any other tangible items, the Designating Party shall affix, in a prominent
10 place on the exterior of the medium, container or containers in which the
11 information or item is stored, the appropriate legend.

12 d. The provisions of subparagraphs 36(a-c) do not apply to documents
13 produced in native format. For documents produced in native format, the
14 parties shall provide written notice to the Receiving Party of any
15 confidentiality designations at the time of production.

16 **H. Use of Designated QUALCOMM Material**

17 37. Use of Designated QUALCOMM Material By Receiving Party: Unless otherwise
18 ordered by the Court, or agreed to in writing by Non-Party QUALCOMM, all Designated
19 QUALCOMM Material, and all information derived therefrom, shall be used by the Receiving
20 Party only for purposes of this action, and shall not be used in any other way, or for any other
21 purpose, including the acquisition, preparation or prosecution before the Patent office of any
22 patent, patent application, for drafting or revising patent claims, or in connection with patent
23 licensing or product development work directly or indirectly intended for commercial purposes
24 related to the particular technologies or information disclosed in the Designated QUALCOMM
25 Material. Information contained or reflected in Designated QUALCOMM Material shall not be
26 disclosed in conversations, presentations by parties or counsel, in court or in other settings that

1 might reveal Designated QUALCOMM Material, except in accordance with the terms of the
2 Protective Order or this Supplemental Protective Order.

3 38. Use of Designated QUALCOMM Material by Non-Party QUALCOMM: Nothing
4 in this Supplemental Protective Order shall limit Non-Party QUALCOMM's use of its own
5 documents and information, nor shall it prevent Non-Party QUALCOMM from disclosing its own
6 confidential information, documents or things to any person. Such disclosure shall not affect any
7 designations made pursuant to the terms of this Supplemental Protective Order, so long as the
8 disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the
9 information.

10 39. Use of Designated QUALCOMM Material at Deposition: Non-Party
11 QUALCOMM shall, on request prior to the deposition, make a searchable electronic copy of the
12 QUALCOMM Source Code available on a stand-alone computer connected to a printer during
13 depositions of QUALCOMM personnel otherwise permitted access to such Source Code. To the
14 extent required, the party conducting the deposition may print additional pages of Source Code
15 printouts to be marked as exhibits at such depositions consistent with other provisions and
16 limitations of the Protective Order and this Supplemental Protective Order. Except as may be
17 otherwise ordered by the Court, any person may be examined as a witness at depositions and trial,
18 and may testify concerning all Designated QUALCOMM Material of which such person has prior
19 knowledge.

20 40. Use of Designated QUALCOMM Material at Hearing or Trial: The parties will
21 give Non-Party QUALCOMM prior notice of, and an opportunity to object to, any intended use of
22 the Designated QUALCOMM Material at any hearing or trial in this case. Said notice shall (a) be
23 served by facsimile or email on counsel for Non-Party QUALCOMM at least five (5) business
24 days prior to the hearing or first day of trial, (2) identify the Designated QUALCOMM Material
25 with specificity while redacting any other Party's Confidential Business Information and (3)
26 identify the measures the party intends to rely upon to protect the Designated QUALCOMM

1 Material when used at any hearing or trial consistent with this Supplemental Protective Order.
2 This section shall not limit in any way the use of Designated QUALCOMM Material during the
3 cross-examination of any witness otherwise permitted access to such Designated QUALCOMM
4 Material, as long as the parties take all necessary steps to protect and maintain the confidentiality
5 of any such Designated QUALCOMM Material.

6 **I. Prosecution and Development Bar**

7 41. Unless otherwise permitted in writing between Producing Party and Receiving
8 Party, any individual who personally receives, other than on behalf of Producing Party, any
9 material designated “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or
10 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE
11 CODE” shall not participate in amending or drafting patent specifications or claims before a
12 Patent Office of any patent or patent application related to the particular technologies or
13 information disclosed in the Designated QUALCOMM Material, from the time of receipt of such
14 material through the date the individual person(s) cease to have access to materials designated
15 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE
16 ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE,” as well as any materials
17 that contain or disclose Designated QUALCOMM Material. This provision shall not apply to
18 post-grant proceedings, including without limitation reexamination or opposition proceedings filed
19 in relation to the patents-in-suit or foreign counterparts.

20 42. Unless otherwise permitted in writing between Non-Party QUALCOMM and
21 Receiving Party, any Outside Consultant retained on behalf of Receiving Party who is to be given
22 access to Non-Party QUALCOMM’s documents, Source Code, or Chip-Level Schematics
23 designated as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM –
24 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” must agree in
25 writing, using the form in Exhibit B, not to perform hardware or software development work or
26 product development work directly or indirectly intended for commercial purposes related to the

1 particular technologies or information disclosed in the Designated QUALCOMM Material, which
2 is not publicly known, from the time of first receipt of such material through the date the expert
3 consultant ceases to have access to any material designated “QUALCOMM – OUTSIDE
4 ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
5 CONFIDENTIAL SOURCE CODE,” as well as any materials that contain or disclose Designated
6 QUALCOMM Material.

7 **J. Designated QUALCOMM Material Subpoenaed or Ordered Produced In**
8 **Other Litigation**

9 43. If a Receiving Party is served with a subpoena or a court order that would compel
10 disclosure of any information, documents or things designated in this action as “QUALCOMM –
11 OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM –OUTSIDE ATTORNEYS’ EYES
12 ONLY – CONFIDENTIAL SOURCE CODE”, Receiving Party must notify the Producing Party
13 and Non-Party QUALCOMM of such information, documents or things, in writing (by fax and
14 email) promptly, and in no event more than ten (10) calendar days after receiving the subpoena or
15 order. Such notification must include a copy of the subpoena or order. Receiving Party also must
16 immediately inform, in writing, the party who caused the subpoena or order to issue that some or
17 all of the material covered by the subpoena or order is subject to this Supplemental Protective
18 Order and the Protective Order. In addition, the Receiving Party must provide a copy of this
19 Supplemental Protective Order and the Protective Order promptly to the party in the other action
20 that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the
21 interested parties to the existence of this Supplemental Protective Order and the Protective Order,
22 and to afford the Party whose Designated QUALCOMM Material in this case, is at issue in the
23 other case, an opportunity to try to protect its confidentiality interests in the court from which the
24 subpoena or order issued. Producing Party shall bear the burdens and the expenses of seeking
25 protection in that court of its Designated QUALCOMM Material. Nothing in these provisions
26

1 should be construed as authorizing or encouraging any Receiving Party in this action to disobey a
2 lawful directive from another court.

3 **K. Unauthorized Disclosure Of Designated QUALCOMM Material**

4 44. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Designated QUALCOMM Material to any person or in any circumstance not authorized under this
6 Order, the Receiving Party must immediately (a) notify in writing Producing Party and Non-Party
7 QUALCOMM of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
8 Designated QUALCOMM Material, (c) inform the person or persons to whom unauthorized
9 disclosures were made of all the terms of this Order, and (d) request such person or persons to
10 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.
11 Nothing in these provisions should be construed as limiting any Producing Party's rights to seek
12 remedies for a violation of this Supplemental Protective Order.

13 **L. Duration**

14 45. Even after the termination of this action, the confidentiality obligations imposed by
15 this Supplemental Protective Order shall remain in effect following the termination of this action,
16 or until Non-Party QUALCOMM agrees otherwise in writing or a court order otherwise directs.

17 **M. Final Disposition**

18 46. Unless otherwise ordered or agreed in writing by Producing Party, within sixty (60)
19 days of the termination of all of this action, whether through settlement or final judgment
20 (including any and all appeals therefrom), each Receiving Party, including Outside Counsel for
21 each Receiving Party, will destroy all Designated QUALCOMM Material produced by Non-Party
22 QUALCOMM or any other Party in this action and will destroy or redact any such Designated
23 QUALCOMM Material included in work product, pleadings, motion papers, legal memoranda,
24 correspondence, trial transcripts and trial exhibits admitted into evidence ("derivations") and all
25 copies thereof, with the exception of copies stored on back-up tapes or other disaster recovery
26 media. Within sixty (60) days of the date of settlement or final judgment, each Receiving Party

1 shall serve Non-Party QUALCOMM with a certification stating that it, including its Outside
2 Counsel, has complied with its obligations under this paragraph. With respect to any copy of
3 Designated QUALCOMM Material or derivation thereof that remains on back-up tapes and other
4 disaster storage media of an Authorized Reviewer(s), neither the Authorized Reviewer(s) nor its
5 consultants, experts, counsel or other party acting on its behalf shall make copies of any such
6 information available to any person for any purpose other than backup or disaster recovery unless
7 compelled by law and, in that event, only after thirty (30) days prior notice to Producing Party or
8 such shorter period as required by court order, subpoena, or applicable law.

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 Dated: July 8, 2015

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/s/ Olga I. May

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AMERICA, INC.

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ATTESTATION

I, Barry J. Bumgardner, am the ECF User whose ID and password are being used to file this Stipulated Supplemental Protective Order Between Non-Party Qualcomm Incorporated, Plaintiffs and Defendants. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the signatories listed above have read and approved the filing of this Stipulated Supplemental Protective Order.

Dated: July 8, 2015

/s/Barry J. Bumgardner

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: July 8, 2015

Paul S. Grewal
HONORABLE PAUL S. GREWAL
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY SUPPLEMENTAL
PROTECTIVE ORDER GOVERNING CONFIDENTIAL INFORMATION
OF NON-PARTY QUALCOMM IN THIS CASE**

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I, _____ [print or type full name], state:

My business address is _____;

1. My present employer is _____;

2. My present occupation or job description is _____;

3. I have been informed of and have reviewed the Supplemental Protective Order Governing Discovery from Non-Party QUALCOMM in this case (the “Supplemental Protective Order”) entered in this case, and understand and agree to abide by its terms. I agree to keep confidential all information provided to me in the matters of _____, Civil Action No(s). _____

_____ in the United States District Court, Northern District of California in accordance with the restrictions in the Supplemental Protective Order, and to be subject to the authority of that Court in the event of any violation or dispute related to the Supplemental Protective Order.

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

[Signature]

Executed On _____
[Printed Name]

EXHIBIT B

**CERTIFICATION OF CONSULTANT RE SUPPLEMENTAL PROTECTIVE ORDER
GOVERNING CONFIDENTIAL INFORMATION OF NON-PARTY QUALCOMM
IN THIS CASE**

I, _____ [print or type full name], of

_____ am not an employee of the Party who retained
me or of a competitor of any Party or Non-Party QUALCOMM and will not use any information,
documents, or things that are subject to the Supplemental Protective Order Governing Discovery
From Non-Party QUALCOMM in _____ v. _____, Civil
Action No(s). _____ in the United States District Court,
Northern District of California, for any purpose other than this litigation. I agree not to perform
hardware or software development work or product development work intended for commercial
purposes related to the particular technologies or information disclosed in the Designated
QUALCOMM Material, from the time of receipt of such material through and including the date
that I cease to have access to any material designated “QUALCOMM – OUTSIDE
ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
CONFIDENTIAL SOURCE CODE.”

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

[Signature]

Executed On _____

[Printed Name]