

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN IP CAMERA SYSTEMS INCLUDING
VIDEO DOORBELLS AND COMPONENTS
THEREOF

INV. NO. 337-TA-1242

**ORDER NO. 9: GRANTING-IN-PART JOINT MOTION TO AMEND THE
PROTECTIVE ORDER TO ADD PROVISIONS COVERING
SOURCE CODE**

(June 17, 2021)

On June 9, 2021, complainants SkyBell Technologies, Inc., SB IP Holdings, LLC, and Eyetalk365, LLC, and respondents Vivint Smart Home Inc., SimpliSafe, Inc., and Arlo Technologies, Inc. (collectively, the “Parties”) filed a joint motion (“Mot.”) seeking to amend the Protective Order (Order No. 1) to include enhanced confidentiality provisions for source code produced in this investigation. Motion Docket No. 1242-003. The Parties also seek an amendment to the Protective Order that would bar persons who review source code from participating in certain patent prosecution activities concerning related subject matter. *See* Mot. Ex. A ¶ 21.

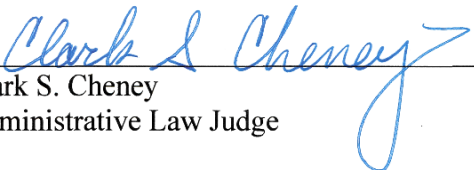
Motion No. 1242-003 is granted-in-part. Good cause has been shown for the additional source code provisions set forth in the Parties’ proposed addendum to the protective order. Those provisions, appended to this order as Attachment A, are hereby incorporated into the Protective Order.

The Parties’ request for a prosecution bar is denied without prejudice. To demonstrate the need for a patent prosecution bar in this investigation, the Parties must show that (1) the

information triggering the bar is confidential, relevant to patent prosecution, and is of the kind that may pose a heightened risk of inadvertent disclosure; (2) a particular patent prosecution attorney having access to the information is involved in competitive decision making; and (3) the risk of inadvertent disclosure by that person outweighs the burden a prosecution bar would impose on that individual. *See, e.g., Certain Consumer Electronics, Including Mobile Phones and Tablets*, Inv. No. 337-TA-839, Order No. 28, at 4 (Jan. 7, 2013) (discussing *In re Deutsche Bank Tr. Co. Americas*, 605 F.3d 1373 (Fed. Cir. 2010)); *see also Certain Multi-Domain Test and Measurement Instruments*, Inv. No. 337-TA-1104, Order No. 9, at 3 (Jun. 11, 2018) (applying *Deutsche Bank* to determine whether a prosecution bar is warranted).

The Parties have not demonstrated that a particular patent prosecution attorney has access to confidential information in this investigation such that there is a risk of inadvertent disclosure. *Compare Certain Pre-Filled Syringes for Intravitreal Injection and Components Thereof*, Inv. No. 337-TA-1207, Order No. 17, at 3–4 (Nov. 17, 2020) (four attorneys subscribed to the administrative protective order also represented the same client in pending inter partes review petitions before the U.S. Patent and Trademark Office) *with Certain Multi-Domain Test and Measurement Instruments*, Inv. No. 337-TA-1104, Order No. 9, at 3 (prosecution bar unwarranted without a showing related to a particular attorney).

SO ORDERED.


Clark S. Cheney
Administrative Law Judge

ATTACHMENT A

18. DEFINITIONS

(a) “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for a Party and (ii) partners, associates, and staff of such 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, and legal clerks. However, “Outside Counsel” expressly precludes any attorneys who also serve as In-house Counsel and/or

who are members, officers, or directors of a Party or anyone who is an employee of a Party even if that person appears on the pleadings as counsel for a Party.

(b) “In-house Counsel” means attorneys who are employees of a Party, and includes supporting personnel employed by those counsel, such as paralegals.

(c) “Party” means any party to this Investigation, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel and their support staff.

(d) “Producing Party” means any Party or non-party that discloses or produces any Discovery Material in this case.

(e) “Receiving Party” means any Party who receives Discovery Material from a Producing Party.

(f) “Source Code” means data that defines software, firmware, and/or circuits (“source code”), including computer code, object code (i.e., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), microcode, pseudocode, source code listings, software code for performing numerical or data analysis, mathematical modeling, or simulations (e.g., scripts, algorithms, and/or functions), register transfer language (“RTL”), source code for firmware, drivers, controllers, and hardware description language (“HDL”), as well as any and all programmer notes, annotations, revision histories, and other comments related thereto and directly associated with and accompanying the code. For avoidance of doubt, this includes, but is not limited to, source files, project files, make files, intermediate output files, executable files, header files, resource files, binaries, scripts, algorithms, library files, module definition files, map files, object files, linker files, and debug files.

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