

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SIGHTSOUND TECHNOLOGIES, LLC,)	
)	
Plaintiff,)	Civil Action No. 2:11-cv-01292-DWA
)	
v.)	Honorable Judge Donetta W. Ambrose
)	
APPLE INC.,)	
)	
Defendant.)	

~~IN RE~~ **PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following Protective Order has been entered by the Court.

Proceedings and Information Governed.

1. This Order and any amendments or modifications hereto (“Protective Order”) shall govern any document, information or other thing furnished by any party, to any other party, and includes non-parties who receive a subpoena in connection with this action. The information protected includes, but is not limited to, answers to interrogatories, answers to requests for admission, responses to requests for production of documents, deposition transcripts and videotapes, deposition exhibits, and other writings or things produced, given or filed in this action that are designated by a party as “Confidential Information,” “Confidential Attorney Eyes Only Information,” or “Confidential Outside Attorney Eyes Only Source Code” in accordance with the terms of this Order, as well as to any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information.

Designation and Maintenance of Information.

2. For purposes of this Protective Order, (a) the “Confidential Information” designation shall mean that the document is comprised of trade secrets or commercial information which is not publicly known and is of technical or commercial advantage to its possessor, in accordance with Fed. R. Civ. P. 26(c)(7), or other information required by law or agreement to be kept confidential, (b) the “Confidential Attorney Eyes Only” designation shall mean that the document is comprised of information that the producing party deems especially sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, any other sensitive trade secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter, and (c) the “Confidential Outside Attorney Eyes Only Source Code” designation shall mean that the document is comprised of computer code, scripts, assembly,

object code, source code listings and descriptions of source code, object code listings and descriptions of object code, or Hardware Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip. Confidential Information, Confidential Attorney Eyes Only Information, and Confidential Outside Attorney Eyes Only Source Code do not include, and this Protective Order shall not apply to, information that is already in the knowledge or possession of the party to whom disclosure is made unless that party is already bound by agreement not to disclose such information, or information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

3. Documents and things produced during the course of this litigation within the scope of paragraph 2(a) above, may be designated by the producing party as containing Confidential Information by placing on each page and each thing a legend substantially as follows:

**CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER**

Documents and things produced during the course of this litigation within the scope of paragraph 2(b) above may be designated by the producing party as containing Confidential Attorney Eyes Only Information by placing on each page and each thing a legend substantially as follows:

**CONFIDENTIAL ATTORNEY EYES ONLY INFORMATION
SUBJECT TO PROTECTIVE ORDER**

Documents and things produced during the course of this litigation within the scope of paragraph 2(c) above may be designated by the producing party as containing Confidential Outside Attorney Eyes Only Source Code by placing on each page and each thing a legend substantially as follows:

**CONFIDENTIAL OUTSIDE ATTORNEY EYES ONLY SOURCE CODE
SUBJECT TO PROTECTIVE ORDER**

A party may designate information disclosed at a deposition as Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code by requesting the reporter to so designate the transcript or any portion thereof at the time of the deposition. If no such designation is made at the time of the deposition, any party shall have fourteen (14) calendar days after the date of the deposition to designate, in writing to the other parties and to the court reporter, whether the transcript is to be designated as Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code. If no such designation is made at the deposition or within such fourteen (14) calendar day period (during which period, the transcript shall be treated as Confidential Attorney Eyes Only Information, unless the disclosing party consents to less confidential treatment of the information), the entire deposition will be considered devoid of Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code. Each party and the court reporter shall attach a copy of any

final and timely written designation notice to the transcript and each copy thereof in its possession, custody or control, and the portions designated in such notice shall thereafter be treated in accordance with this Protective Order.

It is the responsibility of counsel for each party to maintain materials containing Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

Inadvertent Failure to Designate.

4. The inadvertent failure to designate or withhold any information as confidential or privileged will not be deemed to waive a later claim as to its confidential or privileged nature, or to stop the producing party from designating such information as confidential at a later date in writing and with particularity. The information shall be treated by the receiving party as confidential from the time the receiving party is notified in writing of the change in the designation.

Challenge to Designations.

5. A receiving party may challenge a producing party's designation at any time. Any receiving party disagreeing with a designation may request in writing that the producing party change the designation. The producing party shall then have fourteen 14 days after receipt of a challenge notice to advise the receiving party whether or not it will change the designation. If the parties are unable to reach agreement after the expiration of this fourteen (14) day time frame, and after the conference required under Local Rule 37.1, the receiving party may at any time thereafter seek a Court Order to alter the confidential status of the designated information. Until any dispute under this paragraph is ruled upon by the Court, the designation shall remain in full force and effect and the information shall continue to be accorded the confidential treatment required by this Protective Order.

Disclosure and Use of Confidential Information.

6. Information designated as Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code may only be used for purposes of preparation, trial and appeal of this action. Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code may not be used under any circumstances for prosecuting any patent application, for patent licensing or for any other purpose. The provisions of LCvR 16.1.D, relating to the inadvertent disclosure of privileged information, shall apply in all cases governed by this Protective Order.

7. Subject to paragraphs 10 & 11 below, Confidential Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) two (2) employees or Managing Board members of the receiving party who are required in good faith to provide assistance in the conduct of this litigation, including any settlement discussions, and who are identified as such in

writing to counsel for the designating party in advance of the disclosure; (b) outside counsel for the receiving party; (c) supporting personnel employed by (b) , such as paralegals, legal secretaries, data entry clerks, legal clerks and private photocopying services; (d) experts or consultants; and (e) any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court reporting services, demonstrative exhibit preparation, or the creation of any computer database from documents.

8. Subject to paragraphs 10 & 11 below, Confidential Attorney Eyes Only Information may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) outside counsel for the receiving party; (b) supporting personnel employed by (c), such as paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying services; (d) experts or consultants; and (e) those individuals designated in paragraph 13(c).

9. Subject to paragraphs 10, 11 & 14-28 below, Confidential Outside Attorney Eyes Only Source Code may be disclosed by the receiving party only to the following individuals provided that such individuals are informed of the terms of this Protective Order: (a) outside counsel for the receiving party; (b) supporting personnel employed by (a), such as paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying services; (c) experts or consultants; and (d) those individuals designated in paragraph 13(c).

10. Further, prior to disclosing Confidential Information to a receiving party's proposed employee or Managing Board member, the receiving party shall provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A. Prior to disclosing Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code to a receiving party's proposed expert or consultant, the receiving party shall provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit B, the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant's business affiliation, any current and past consulting relationships in the industry, and a list of cases in which the expert or consultant has testified at deposition or trial within the last five (5) years. Such materials shall include an identification of any individual or entity with or for whom the proposed expert or consultant is employed or to whom the expert or consultant provides consulting services relating to the design, development, operation, or patenting of technology for the electronic sale and transmission of digital audio and video signals via telecommunications lines, or relating to the acquisition of intellectual property assets relating to technology for the electronic sale and transmission of digital audio and video signals via telecommunications lines. During the pendency of this action, each of the receiving party's experts or consultants who has signed the Confidentiality Agreement in the form attached as Exhibit B shall immediately provide written notice of any updates to the foregoing materials, other than new engagements pertaining to litigation not involving the producing party. The receiving party's experts and consultants shall provide such other information regarding any proposed individual's professional activities reasonably requested by the producing party for the producing party to evaluate whether good cause exists to object to the proposed individual. The producing party shall thereafter have fourteen (14) days from receipt of the Confidentiality Agreement to object to any proposed individual. Such objection must be made for good cause and in writing, stating with particularity the reasons for objection. Failure to object within fourteen (14) days shall constitute approval. If the parties are

unable to resolve any objection, at either party's request the parties will jointly telephone the ~~_____~~ designated special master that same day to seek resolution. There shall be no disclosure to any proposed individual during the fourteen (14) day objection period, unless that period is waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the Court or special master has ruled upon any resultant motion. The parties shall meet and confer via telephone or in person to agree on a rescheduling of any case deadlines impacted by an objection. Neither the receiving party nor its counsel will be liable for the failure of any expert or consultant to timely provide the information called for in this paragraph.

11. An initial failure to object to an individual under paragraph 10 shall not preclude the producing party from later objecting to continued access by that individual for good cause, such as a status update. If an objection is made, the parties shall meet and confer via telephone or in person within seven (7) days following the objection and attempt in good faith to resolve the dispute informally. If the dispute is not resolved, at either party's request the parties will jointly telephone the ~~_____~~ designated special master that same day to seek resolution. The individual may continue to have access to information that was provided to him or her prior to the date of the objection. If a later objection is made, no further Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code shall be disclosed to the individual until the ~~Court~~^{special master} resolves the matter or the producing party withdraws its objection. Notwithstanding the foregoing, if the producing party fails to request resolution by the ~~_____~~ special master within seven (7) days after the meet and confer, further Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code may thereafter be provided to the individual. The parties shall meet and confer via telephone or in person to agree on a rescheduling of any case deadlines impacted by an objection.

12. Counsel shall be responsible for the adherence by third-party vendors to the terms and conditions of this Protective Order. Counsel may fulfill this obligation by obtaining a signed Confidentiality Agreement in the form attached as Exhibit C.

13. Confidential Information, Confidential Attorney Eyes Only Information, or Confidential Outside Attorney Eyes Only Source Code may be disclosed to a person, not already allowed access to such information under this Protective Order, if:

- (a) the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a Rule 30(b)(6) designee;
- (b) the designating party is the person or is a party for whom the person is a director, officer, employee, consultant or agent; or
- (c) counsel for the party designating the material agrees that the material may be disclosed to the person. In the event of disclosure under this paragraph, only the reporter, the person, his or her counsel, the judge and persons to whom disclosure may be made, and who are bound by the Protective Order, may be present during the disclosure or discussion of Confidential Information. Disclosure of material pursuant to this

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