

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

OCEAN TOMO, LLC,

Plaintiff-Counterdefendant,

vs.

JONATHAN BARNEY and
PATENTRATINGS, LLC,

Defendants-Counterplaintiffs.

No. 12 C 8450

Hon. Joan B. Gottschall

**STIPULATED PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DISCOVERY MATERIALS**

Whereas, the Parties have stipulated that certain discovery material be treated as confidential, and upon good cause appearing, IT IS HEREBY ORDERED:

I. Proceedings and Information Governed.

1. This Order and any amendments or modifications hereto (together, the “Protective Order”) shall govern the disclosure and use by a receiving party of any document (including electronic documents), information (including electronically stored information), and/or testimony (a) produced, disclosed, and/or provided by a Party in discovery, or (b) produced, disclosed, and/or provided by a non-party in discovery. The documents, information, and testimony protected by this Protective Order includes, but are not limited to, documents and information produced, disclosed, and/or provided in connection with answers to interrogatories, answers to requests for admission, and responses to requests for production of documents; deposition transcripts and videotapes; deposition exhibits; compiled or un-compiled source code; and other records or writings or things produced, given, or filed in this action that are designated by a Party as “Confidential” or

“Confidential – Prosecution Bar” in accordance with the terms of this Protective Order, as well as any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information (together, “Discovery Materials”). Ocean Tomo, LLC, Jonathan Barney, and PatentRatings, LLC, as well as their officers, directors, employees, agents, and legal counsel, are referred to as the “Parties” for the purposes of this Protective Order.

II. Designation and Maintenance of Discovery Materials as Confidential Or Confidential – Prosecution Bar.

2. For purposes of this Protective Order, the “Confidential” designation may be used when Discovery Materials contain or constitute sensitive personal information; trade secrets; non-public information relating to commercial research or development, business or marketing strategies, data, and analyses, technical specifications, and vendor relationships; non-publicly available pricing and financial information; commercial, financial, budgeting and/or accounting information; new product information; technical know-how; product development; marketing and pricing strategies; compilations of industry data and consumer needs, habits and preferences; intellectual property and other technical information; non-published financial and sales information; information about existing customers; marketing studies; performance and projections; business strategies; decisions and/or negotiations; personnel compensation; evaluations and other employment information; and confidential and proprietary information about affiliate, parents, subsidiaries and third parties with whom the parties to this action have had business relationships which a producing party in good faith so designates because of its view that the information or any information derived therefrom contains or reflect confidential commercial information; and information required by law or agreement to be kept confidential. In the event of information required by agreement to be kept confidential, the party designating

the information as “Confidential” must identify, within a reasonable period of time, the agreement or agreements which it contends requires such information to be kept confidential. The Parties shall treat the item(s) as confidential unless and until the Court determines otherwise.

3. Discovery Materials produced or disclosed during the course of this litigation within the scope of paragraph 2 may be designated by the producing Party as containing confidential information by placing on each page and each thing, in a manner that will not interfere with its legibility, the legends: “**CONFIDENTIAL**” and/or “**SUBJECT TO PROTECTIVE ORDER.**” Where Confidential Material is produced in a non-paper medium (*e.g.*, video tapes, audio tapes, and electronic documents, data, and/or files), the confidentiality notice above should be placed on the medium, if possible, and its container, if any, so as to clearly give notice of the designation. In the event that electronic documents, data, and/or files are produced that do not readily permit the foregoing legends to be placed on each page, the Parties shall negotiate in good faith to reach a further agreement regarding the manner of designation and the handling of such Discovery Materials, which shall be consistent with the terms of this Protective Order.

4. Except for documents produced for inspection, designation of confidential Discovery Materials shall be made before, or at the time of, production or disclosure. In the event that documents are produced for inspection, such documents may be produced for inspection before being marked “CONFIDENTIAL.” Once specific documents have been designated for copying, any documents containing confidential information will then be marked “CONFIDENTIAL” after copying but before delivery to the Party who inspected and designated the documents. There will be no waiver of confidentiality by the inspection of

confidential documents before they are copied and marked “CONFIDENTIAL” pursuant to this procedure.

5. A Party may designate information disclosed at a deposition as “CONFIDENTIAL” 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 may thereafter designate the deposition or portions thereof as “CONFIDENTIAL” as long as such designation is made in writing and presented to the other Parties and to the court reporter within 30 days of the deposition. 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. Any testimony that describes a document that has been designated as “CONFIDENTIAL” shall also be deemed to be designated as such. Counsel for any Disclosing Party shall have the right to exclude from oral depositions, other than the deponent, deponent’s counsel(s), the reporter, and videographer (if any), any person who is not authorized by this Protective Order to receive documents or information designated “Confidential.” Such right of exclusion shall be applicable only during periods of examination or testimony directed to or comprising Confidential Material. The Court Reporter or other person recording the proceedings shall segregate any portion of the transcript of the deposition or hearing which has been stated to contain Confidential Material and may furnish copies of these segregated portions, in a sealed envelope, only to the deponent, to the Court, and to counsel for the parties bound by the terms of this Protective Order. The Court Reporter may be asked to prepare Confidential or non-Confidential versions of the transcript, as appropriate.

6. For purposes of this Protective Order, the “Confidential – Prosecution Bar” designation may be used when Discovery Materials contain or constitute pending unpublished patent applications, current information technology processes, ongoing research and development projects, and/or uncited prior art. The Parties shall treat the item(s) as confidential unless and until the Court determines otherwise.

III. Inadvertent Failure to Designate.

7. The inadvertent failure to designate Discovery Materials as “CONFIDENTIAL” or “CONFIDENTIAL – PROSECUTION BAR” will not be deemed to waive a later claim as to their confidential nature, or to stop the producing Party from so designating such Discovery Materials at a later date in writing and with particularity. Notwithstanding anything herein to the contrary, any Discovery Materials received by a Party that have not been designated as confidential shall not be considered confidential for purposes of this Protective Order until such time as the receiving Party receives notice in writing from the producing Party within a reasonable time of the change in the designation.

IV. Disclosure and Use of Confidential Discovery Materials.

8. All Discovery Materials produced in this litigation may only be used for purposes of the litigation between the Parties (including the pending action between the Parties in the Circuit Court of Cook County, Illinois), and not for any other purpose. Discovery Materials designated as “CONFIDENTIAL” or “CONFIDENTIAL – PROSECUTION BAR” may only be shown to others as set forth in this Protective Order.

9. The Parties shall not disclose or permit the disclosure of any Discovery Materials designated as “CONFIDENTIAL” or “CONFIDENTIAL – PROSECUTION BAR” under this Protective Order to any other person or entity, except as expressly contemplated herein, including in the following circumstances:

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