

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

RAYTHEON COMPANY,

Plaintiff.

vs.

SAMSUNG ELECTRONICS CO., LTD., ET
AL.,

Defendants.

Civil Action No. 2:15-CV-341-JRG-RSP
LEAD CASE

**AGREED PROTECTIVE ORDER
REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS**

WHEREAS, Plaintiff RAYTHEON COMPANY and Defendants SONY KABUSHIKI KAISHA (A/K/A SONY CORPORATION), SONY CORPORATION OF AMERICA, SONY SEMICONDUCTOR CORPORATION, SONY EMCS CORPORATION, SONY ELECTRONICS INC., SONY MOBILE COMMUNICATIONS INC., SONY MOBILE COMMUNICATIONS AB, SONY MOBILE COMMUNICATIONS (USA) INC., OMNIVISION TECHNOLOGIES, INC., APPLE INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG SEMICONDUCTOR, INC., and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, hereafter referred to as “the Parties,” believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with

Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL,” “RESTRICTED – OUTSIDE ATTORNEYS’ EYES ONLY,” “RESTRICTED CONFIDENTIAL SOURCE CODE,” “THIS DOCUMENT CONTAINS TECHNICAL DATA CONTROLLED UNDER THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) AND MAY NOT BE EXPORTED, REEXPORTED, TEMPORARILY IMPORTED, TRANSFERRED, OR RETRANSFERRED TO ANY NON-U.S. PERSON, COUNTRY OR ENTITY, BY ANY MEANS, WITHOUT THE APPROPRIATE APPROVAL OF THE U.S. DEPARTMENT OF STATE, DIRECTORATE OF DEFENSE TRADE CONTROLS (DDTC)” (“ITAR-RESTRICTED”), and/or “SUBJECT TO PROSECUTION BAR” (the foregoing collectively, “DESIGNATED MATERIAL”). The confidentiality designation shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the confidentiality designation shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript.

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation “Confidential” or “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “RESTRICTED – OUTSIDE ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is redesignated to have a different classification under this Order.
3. With respect to documents, information or material that is DESIGNATED MATERIAL¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.
4. A designation of Protected Material (*i.e.*, “CONFIDENTIAL,” “RESTRICTED – OUTSIDE ATTORNEYS’ EYES ONLY,” “ITAR-RESTRICTED,” “RESTRICTED CONFIDENTIAL SOURCE CODE,” or “SUBJECT TO PROSECUTION BAR”) may be made at any time. The inadvertent failure by a Producing Party to properly designate Protected Material with one of the designations provided for under this Order shall not be

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “RESTRICTED – OUTSIDE ATTORNEYS’ EYES ONLY,” “ITAR-RESTRICTED,” “SUBJECT TO PROSECUTION BAR” or “RESTRICTED CONFIDENTIAL SOURCE CODE,” both individually and collectively.

deemed a waiver in whole or in part of a claim for such designations provided that the Producing Party follows the procedures identified in Paragraph 27. The ITAR contains additional provisions relating to the disclosure of any actual or suspected infractions regarding “ITAR-RESTRICTED” documents and things.² Any party aware of actual or suspected ITAR infractions will immediately inform Raytheon Company and await further instructions from Raytheon Company or its Counsel.

5. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 16 herein:

- (a) outside counsel of record in this Action for the Parties;
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
- (c) up to and including five (5) designated representatives (who may be, but need not be, in-house counsel) of each of the Parties to the extent reasonably necessary for the litigation of this Action, as well as their immediate paralegals and staff, to whom disclosure is reasonably necessary for this case, provided that: (a) each such person has agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A; and (b) no unresolved objections to such disclosure exist after notice has been given to all Parties. Either party may in good faith request the other party’s consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;
- (d) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto and the same is served upon the producing Party with the following information relating to the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or Undertaking to object to and notify the receiving Party

² See ITAR § 127.12

in writing that it objects to disclosure of Protected Material to the consultant or expert:

- (i) the name of the Person;
 - (ii) an up-to-date curriculum vitae of the Person;
 - (iii) the present employer and title of the Person;
 - (iv) an identification of all of the Person's past and current employment and consulting relationships, including direct relationships and relationships through entities owned or controlled by the Person, including but not limited to an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services relating to the manufacturing, design, development, operation, or patenting of image sensors, or relating to the acquisition of intellectual property assets relating to image sensors, including, but not limited to, backside-illuminated image sensors;
 - (v) an identification of all pending patent applications on which the Person is named as an inventor, in which the Person has any ownership interest, or as to which the Person has had or anticipates in the future any involvement in advising on, consulting on, preparing, prosecuting, drafting, editing, amending, or otherwise affecting the scope of the claims;
 - (vi) a list of the cases in which the Person has testified at deposition or trial within the last four (4) years; and
 - (vii) such other information regarding the Person's professional activities reasonably requested by the Producing Party for it to evaluate whether good cause exists to object to the disclosure of Protected Material to the outside expert or consultant. The Parties agree to promptly confer and use good faith to resolve any such objection. For purposes of this section, good cause for an objection shall include an objectively reasonable concern that the Person will, advertently or inadvertently, use or disclose Protected Materials in a way or ways that are inconsistent with the provisions contained in this Order. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;
- (e) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

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