

Proposed Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. ~~Patent Owner~~The parties further contemplates designating “PROTECTIVE ORDER MATERIAL” as material and information subject to The International Traffic in Arms Regulations (“ITAR”) found in Title 22 of the Code of Federal Regulations, parts 120 to 130 (“ITAR Restricted Documents”). ITAR Restricted Documents shall be clearly marked “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”). A Party shall designate documents, information or material as “ITAR-RESTRICTED” only upon a good faith belief that the documents, information or material are subject to restrictions under the ITAR regulations. Confidential Information and ITAR Restricted Documents shall be collectively referred to as “Designated Material”).

3. Access to Confidential Information is limited to the following individuals who have executed the acknowledgment appended to this order:

- (A) Counsel of Record. Counsel of record for the parties in the proceeding, including counsel (whether licensed to practice before the USPTO or not) employed at the same law firm as any Counsel of Record.
- (B) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.
- (C) In-house counsel. In-house counsel of a party.
- (D) Other Employees of a Party. Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.
- (E) The Office. Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

(F) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

4. Subject to all ITAR export and temporary import controls, ITAR Restricted Documents are further limited to the individuals in paragraph [34](#) above who are U.S. Persons (as defined by ITAR §120.15). Notwithstanding anything in this Order, access to or disclosure or release of ITAR Restricted Documents by any unauthorized person is controlled by the ITAR, and nothing in this order shall be construed to contravene the ITAR, without the prior written approval of the U.S. Department of State, Directorate of Defense Trade Controls, or a violation of the ITAR could result.

5. “ITAR-RESTRICTED” documents, information and material may not be exported, reexported, temporarily imported, transferred, or retransferred to any foreign person (as defined by ITAR § 120.16), country, or entity, by any means, without the appropriate approval of the U.S. Department of State, Directorate of Defense Trade Controls. These restrictions also apply to United States citizens and permanent residents employed by a company or organization that falls within the definition of “foreign person.” *See* ITAR § 120.16. United States persons employed by such a foreign organization or company are not eligible to receive ITAR-controlled information absent an authorization from the DDTC.

6. In any instance where information designated as “ITAR-RESTRICTED” is accessed, the person with such access shall not transfer, carry, or send such information to a location outside the United States, including via any electronic device or means, nor otherwise share such information with any person not explicitly authorized to receive such information as set forth above. “ITAR-RESTRICTED” documents related to this case containing technical data under the ITAR must be protected from export or transfer to unauthorized foreign persons, whether located inside or outside of the United States, including any foreign persons (as defined under these export control regimes) that may be employed by law firms, consultants, or any other third party involved in this dispute. Additionally, the furnishing of technical assistance (including the disclosure or release of ITAR-controlled technical data) may constitute a “defense service,” which also requires approval. Any disclosure of ~~Raytheon-produced~~ export-controlled technical data, or furnishing of technical assistance where an authorization is needed but not secured, constitutes an export violation, which should be disclosed to the Department of State. Counsel will take all necessary steps to ensure that any “ITAR-RESTRICTED” documents will only be provided to, or accessible by, U.S. persons employed by Counsel that have entered an appearance in this case. Counsel also must ensure that only U.S. persons serving as expert or fact witnesses, or acting on behalf of Counsel as contractors, vendors, or other service providers, have access to export control restricted Documents. Additionally, Counsel will take all necessary steps to ensure access to these documents will be restricted to U.S. Persons (as defined by ITAR §120.15), that these documents will not be exported to foreign persons or foreign countries, and that no technical

assistance directly related to controlled defense articles or other commodities will be provided to foreign persons or foreign countries. No provision herein shall be construed as preventing Counsel from submit ITAR-Restricted Restricted information to the Board consistent with the Board's procedures for filing sealed documents.

7. The ITAR contains additional provisions relating to the disclosure of any actual or suspected infractions regarding "ITAR-RESTRICTED" documents and things. *See* ITAR § 127.12. Any party aware of actual or suspected ITAR infractions, with respect to information designated by Raytheon as ITAR-RESTRICTED, will immediately inform Raytheon Company.

8. Persons receiving Designated Material shall use reasonable efforts to maintain the confidentiality of the information, including:

- (A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- (B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- (C) Ensuring that support personnel of the recipient who have access to the Designated Material understand and abide by the obligation to maintain the confidentiality of information received that is designated; and

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