

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and NINTENDO OF AMERICA INC.,
Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2021-01338
U.S. Patent No. 6,411,941 B1

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.” Third-party confidential information shall further be clearly marked as “THIRD-PARTY CONFIDENTIAL - PARTY ACCESS LIMITED.”
2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) *Parties*. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding. Third-party confidential information shall not be disclosed to Parties unless the respective third-party agrees in writing to the disclosure.

(B) *Party Representatives*. Outside representatives of record for a party in the proceeding.

(C) *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.

(i) For third-party confidential information to be disclosed to a retained expert under this agreement, the disclosing party must provide at least 10 days' notice to the third-party prior to disclosure to the retained expert to allow time for objection to the proposed disclosure.

(ii) A party introducing third-party confidential information will serve contact information for the third-party for purposes of giving the aforementioned 10-days' notice on all Party Representatives on the same date on which the introducing party introduces the third-party confidential information into a paper, exhibit, or otherwise into the record.

(iii) For any third-party confidential information for which the third-party objects to the proposed disclosure, the objected to expert will be extended access to the respective confidential information only by order of the Board upon a motion brought by the party seeking to disclose confidential information to that expert. The party opposing disclosure to that expert shall have the burden of proving that such expert should be restricted from access to confidential information.

(D) *In-House Counsel*. In-house counsel of a party. Third-party confidential information shall not be disclosed to In-House Counsel unless the respective third-party agrees in writing to the disclosure.

(E) *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 ("Other Employees of a Party") 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. Third-party confidential information shall not be disclosed to Other Employees of a Party unless the respective third-party agrees in writing to the disclosure.

(F) *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.

(G) *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.

3. Persons receiving confidential information 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 confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

4. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) *Documents and Information Filed with the Board.*

(i) A party filing documents or information with the Board having confidential information therein must file them under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) *Documents and Information Exchanged Among the Parties.* Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

Standard Acknowledgement of Protective Order. The following form may be used to acknowledge this Protective Order and gain access to information covered by the Protective Order:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and NINTENDO OF AMERICA INC.,
Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2021-01338
U.S. Patent No. 6,411,941 B1

Standard Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

[Signature]