

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

JAWBONE INNOVATIONS, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 2:21-cv-00186-JRG-RSP
	§	
SAMSUNG ELECTRONICS CO. LTD. and SAMSUNG ELECTRONICS AMERICA, INC.,	§	
	§	
<i>Defendants.</i>	§	

PROTECTIVE ORDER

WHEREAS, Plaintiff Jawbone Innovations, LLC (“Jawbone” or “Plaintiff”) and Defendants Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”), 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”). The

“Producing Party” is the Party producing any information, and the “Receiving Party” is any Party receiving information. 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 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL - SOURCE CODE.” The 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 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 CONFIDENTIAL - 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 designated “CONFIDENTIAL,” “RESTRICTED CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL - SOURCE CODE” (“DESIGNATED MATERIAL”),¹ subject to the provisions herein and unless otherwise stated, this

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

Order governs, without limitation: (a) all documents, electronically stored information, discovery responses, 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 CONFIDENTIAL -ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL - SOURCE CODE”) may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any Party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the Producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy the original together with all copies of the inadvertently or unintentionally produced Protected Materials, including any and all documents, information, or material containing information or extracts derived from or based on the Protected Materials.
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 12 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) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action, and employees assigned to and reasonably necessary to assist such in-house counsel in the litigation of this Action;
- (d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that 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; and before access is given, each designated representative has completed the Undertaking attached as Appendix A hereto and the same is served upon the Producing Party with a detailed description of the daily job-related tasks of the designated representative at least ten (10) days before access to the Protected Material is to be given to that designated representative, to allow the Producing Party to notify the Receiving Party in writing that it objects to disclosure of Protected Material to the designated representative. The Parties agree to promptly meet and confer in good faith, either in person or telephonically, to resolve any such objection. 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) 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 as consultant for litigation(s);
 - (2) before access is given, the consultant or expert has completed the Undertaking attached as Appendix A hereto and the same is served upon the Producing Party with (i) the individual's name and business title; (ii) business

address; (iii) business or profession; (iv) a current curriculum vitae; (v) any previous or current relationship (personal or professional) with any Party; and (vi) a list of other cases in which the individual has testified (at trial or deposition) within the last five (5) years at least ten (10) days before access to the Protected Material is to be given to that consultant or expert, to allow the Producing Party to notify the Receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly meet and confer, either in person or telephonically, in good faith to resolve any such objection. 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 sufficiency of the objection. No disclosure shall occur until all such objections are resolved by agreement or Court order;

- (f) 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. All such litigation support service providers shall complete the Undertaking attached as Appendix A hereto before access to such Protected Materials is provided;
- (g) the Court and its personnel;
- (h) any witness in a deposition or trial providing sworn testimony where the use of such Protected Materials is necessary for the purpose examining that witness. Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the Undertaking attached hereto as Appendix A are present at those proceedings. Use of Protected Materials with a witness shall be subject to the limitations outlined in Paragraph 14 herein;
- (i) any mediator who is assigned to hear this matter, and his or her staff, subject to the agreement to maintain confidentiality to the same degree as required by this Protective Order; and
- (j) an author, signatory, or prior recipient of the document or the original source of the CONFIDENTIAL information. Such person shall be given access only to the specific document or information therein.

6. A Party shall designate documents, information or material as “CONFIDENTIAL” only upon a good faith belief that the documents, information or material contains

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