EXHIBIT I

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

AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. GOOGLE LLC,	§	Case No. 2:19-cv-00361-JRG (LEAD CASE) **JURY TRIAL DEMANDED**
WAZE MOBILE LIMITED,	§	Case No. 2:19-cv-00359-JRG (CONSOLIDATED CASE)
SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	§	Case No. 2:19-cv-00362-JRG (CONSOLIDATED CASE)

JOINT MOTION FOR ENTRY OF DISPUTED PROTECTIVE ORDER

Pursuant to the Docket Control Order (Dkt. 68), dated April 8, 2020, and the Court's Order granting the parties' Joint Motion for Extension of Time to File Proposed Protective Order (Dkt. 69), Plaintiff AGIS Software Development LLC and Defendants Google LLC, Waze Mobile Limited, Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc., (collectively, the "Parties), hereby submit the Proposed Disputed Protective Order attached as Exhibit A. The Parties have indicated their competing proposals using, highlighting, square brackets and denoted by "**Plaintiff's Proposal:**" and "**Defendants' Proposal:**" as indicated in Exhibit A. The Parties were able to reach agreement on almost all provisions of the Protective Order, but two provisions in paragraphs 8 and 11 remain in dispute: (i) the definition of "Source Code" in paragraph 8, footnote 6; and (ii) certain provisions of the proposed bar on prosecution, acquisition, and licensing of patents in paragraph 11.

Parties' competing proposals and arguments in favor of their proposals are presented below:

Plaintiff's Position

The parties have three disputes: (1) whether "Source Code" should include the names of files or directories in which such files are stored, (2) whether the bar on prosecution, licensing, and acquisition of patents should be expanded to include "the accused products, services, or features of Defendants in above-captioned cases," and (3) whether the limitations on prosecution of patent applications should exclude "acquisition, licensing, or any other transaction involving the patents-in-suit and/or all patents and patent applications related thereto."

First, regarding the definition of Source Code,[1] AGIS seeks the clarification that "Source Code does not include the names of Source Code files or the names of directories in which such files are stored." File names and directories are not source code and are not so sensitive that they merit the same protections as source code. *See e.g. Packet Intelligence LLC v. Netscout Sys. Inc. et al.*, 2:16-CV-00230-JRG, Dkt. 343 at 12-13 (E.D. Tex., May 31, 2019) (discussing source code file names in an unsealed order); *see also Fujinomaki v. Google, Inc. et al.*, 3-16-cv-03137, Dkt. No. 230 (N.D. Cal., Dec. 19, 2016) ("[handwritten notes] are permitted for the names of files, folders, directories, subroutines, and variables, so long as they do not include actual source code"). File names and directories cannot be appropriately designated "Source Code Material" under provisions of the protective order to which Defendants have agreed, as they are not "copies, reproductions, extracts, digests and complete or partial summaries" of source code. *See* Exhibit A at Section 3. In any case, the rationale that a party may suffer economically if its

[1] In this Court's sample Protective Order, "Source Code Material" is simply defined as "computer source code and/or live data (that is, data as it exists residing in a database or databases.)."

source code were copied or leaked, which ordinarily justifies the exceptional restrictions imposed by the model protective order, does not apply to file names and directories.

On the other hand, it is important that AGIS be allowed to refer to files by name and location in seeking discovery and in its papers filed for consideration of this Court. Under Defendants' proposal, references to source code file names or directories in written discovery requests would be a violation of the protective order unless such documents themselves are treated as "RESTRICTED CONFIDENTIAL SOURCE CODE." This would impede AGIS's ability to litigate this case. Moreover, Defendants have not explained why a designation of "RESTRICTED-ATTORNEY'S EYES ONLY" would be insufficient. Rather, Defendant's position appears to be an attempt to gain a tactical advantage by impeding AGIS's ability to refer to or request access to specific files.

Regarding the limitations on patent prosecution, given that Plaintiff is agreeing to a two-year prosecution bar, Plaintiff believes it is appropriate to specifically carve out activities related to the "acquisition, licensing, or any other transaction involving the patents-in-suit and/or all patents and patent applications related thereto." Defendants should not be permitted to further restrict Plaintiff's ability to engage in transactions related to the patents within its portfolio with the inclusion of the following language: "Nothing in this Order shall prohibit the acquisition or patents or patent applications for assertion or licensing with respect to the products, services, or features of any entity other than a party." Defendants' proposal adds ambiguity and seeks to expand the restrictions to "products, services, or features" rather than limiting them to the field of invention of the patents-in-suit. As discussed below in relation to the acquisition bar, this departure from the model order greatly expands the scope of these limitations and would have serious and wide-ranging consequences.

Defendants also seek to include "the accused products, services, or features of Defendants in the above-captioned cases" in the disputed provisions that impose restrictions on prosecution, licensing, and acquisition of patents. Specifically, Defendants seek the addition of a non-standard acquisition bar that would prevent outside counsel in this case from any involvement in the acquisition of patents not only in the pertinent field of technology. The additional requirements that Defendants seek to impose have the potential to serve as a disqualification of outside counsel, are not in the model protective order for good reasons, and should be rejected on several grounds.

First, it is Defendants' burden to show that such a bar is warranted, and Defendants cannot do so. A party seeking a bar must show (1) that the risk of inadvertent disclosure exists; and (2) that the balance of interests suggests a bar is appropriate.[2] *In re Deutsche Bank Trust Co. Americas*, 605 F.3d 1373, 1378 (Fed. Cir. 2010). Defendants cannot show any risk of inadvertent disclosure, thus, their proposed heightened acquisition bar is not appropriate.

In balancing the interests of both parties, courts have denied acquisition bars because they are burdensome to plaintiffs. *Sol IP, LLC v. AT&T Mobility LLC*, 2:18-cv-0526-RWS-RSP, Dkt. 129 (E.D. Tex. May 29, 2019).[3] Here, such a restriction would burden Plaintiff's counsel as well because counsel would be unnecessarily bound by the Protective Order's restrictions based on nothing but conjecture. Plaintiff's counsel has already agreed to be bound by a two-year prosecution bar, longer than the typical one year. Yet, Defendants insist on further handicaps to Plaintiff's counsel in the form of a burdensome and wide-ranging acquisition bar. For these

[2] In this District, prosecution bars and acquisition bars are both analyzed under the *In re Deutsche Bank* framework. *See E-Contact Techs., LLC v. Apple, Inc.*, No. 1:11-CV-426-LEDKFG, 2012 WL 11924448, at *1 (E.D. Tex. June 19, 2012).

[3] "[I]nlight of the broad scope of activities covered by the requested acquisition bar and its extended duration, the balance of interests supports that the proposed acquisition bar is not appropriate." *Id.*

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