

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

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action No. 5:19-cv-00036-RWS

JURY TRIAL DEMANDED

AGREED SUPPLEMENTAL PROTECTIVE ORDER

This Agreed Supplemental Protective Order is in supplementation to the Plaintiff and Defendant’s (together “the Parties”) previous Agreed Protective Order (“Protective Order”) (Docket No. 45) and is agreed to by the Parties. The Parties anticipate that they may produce confidential source code, schematics, and other documents in this action that include or incorporate confidential information belonging to Qualcomm Incorporated (“QUALCOMM”), a non-party to the action. The Parties and Non-Party QUALCOMM have agreed to provisions in addition to those contained in the Protective Order (“Docket No. 45) to protect against misuse or disclosure of such QUALCOMM Confidential Information. Accordingly, it is hereby

ORDERED that source code, schematics, or documents that incorporate QUALCOMM Confidential Information produced in connection with the above- captioned matter that are designated as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” shall be subject to the following restrictions:

I. DEFINITIONS

1. “QUALCOMM MATERIAL”: Confidential information (regardless of how generated, stored, or maintained) or tangible things that include or incorporate Non-Party QUALCOMM Confidential Information, that Non-Party QUALCOMM (i) would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence, (ii) believes in good faith is significantly sensitive, or (iii) protected by a right to privacy under federal or state law, or any other applicable privilege or right related to confidentiality or privacy. QUALCOMM MATERIAL includes all information, documents, source code, schematics, testimony, and things produced, served, or otherwise provided in this action by any Party or by Non-Party QUALCOMM, that include or incorporate QUALCOMM Confidential Information.

2. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” material: information, documents, and things that include or incorporate QUALCOMM MATERIAL.

3. “Source Code”: includes human-readable programming language text that defines software, firmware, (collectively, “software Source Code”) and integrated circuits (“hardware Source Code”). Text files containing Source Code shall hereinafter be referred to as “Source Code files.” Software Source Code files shall include, but are not limited to, files containing Source Code in “C,” “C+,” BREW, Java ME, J2ME, assembler, digital signal processor (DSP) programming languages, and other human readable text programming languages. Software Source Code files further include “.include files,” “make” files, “link” files, and other human-readable text files used in the generation and/or building of software directly executed on a microprocessor, micro-controller, or DSP. Hardware Source Code files include, but are not limited to, files containing Source Code in VHDL, Verilog, and other

Hardware Description Language (“HDL”) formats, including but not limited to, Register Transfer Level (“RTL”) descriptions.

4. “Chip-Level Schematics”: means symbolic representations of analog electric or electronic circuits from which the physical structure of a chip is directly derived.

5. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” Material: QUALCOMM MATERIAL that includes Source Code and Chip- Level Schematics that constitute proprietary technical or commercially sensitive competitive information that Non-Party QUALCOMM maintains as highly confidential in its business, the disclosure of which is likely to cause harm to the competitive position of Non-Party QUALCOMM. This includes Source Code and Chip-Level Schematics in the Producing Party’s possession, custody, or control, and made available for inspection by the Producing Party.

6. “Designated QUALCOMM Material”: material that is designated “QUALCOMM OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” under this Supplemental Protective Order.

7. “Designated Source Code Material”: material that is designated “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” under this Supplemental Protective Order.

8. “Personnel Retained by a Receiving Party in this Action” means any consultants, experts, or outside counsel (including their support staff) that have been and continue to be retained by a Receiving Party in this action. For the sake of clarity, any person who was retained by a Receiving Party in this action will no longer fall under this definition if

that person ceases to be retained by a Receiving Party in this action.

9. “Party” means any Party to the above-captioned action, including all of its officers, directors, employees, consultants, retained experts, and all support staff thereof. “Producing Party” means a party or non-party that discloses or produces Designated QUALCOMM Material in the above-captioned actions.

10. “Receiving Party” a Party that receives Designated QUALCOMM Material from a Producing Party in the above-captioned actions.

11. “Authorized Reviewer(s)” shall mean persons authorized to review “QUALCOMM OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” material in accordance with this Supplemental Protective Order and the Protective Order.

12. “Counsel of Record”: (i) Outside Counsel who appears on the pleadings, or has entered an appearance in this action, as counsel for a Party, and (ii) partners, principals, counsel, associates, employees, and contract attorneys of such Outside Counsel to whom it is reasonably necessary to disclose the information for this litigation, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters.

13. “Outside Consultant”: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by Counsel of Record to serve as an expert witness or a litigation consultant in this action (including any necessary support personnel of such person to whom disclosure is reasonably necessary for this litigation), and who is not a current employee of a Party, of a competitor of a Party, or of Non-Party QUALCOMM, and who, at the time of retention, is not anticipated to become an employee

of, or a non-litigation consultant of: 1) a Party, 2) a competitor of a Party, 3) a competitor of Non-Party QUALCOMM, or of 4) Non- Party QUALCOMM.

14. “Professional Vendors”: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors who have been retained or directed by Counsel of Record in this action, and who are not current employees of a Party, a competitor of a Party, or of Non-Party QUALCOMM, and who, at the time of retention, are not anticipated to become employees of: 1) a Party, 2) a competitor of a Party, 3) a competitor of Non-Party QUALCOMM, or 4) Non-Party QUALCOMM. This definition includes ESI vendors, and professional jury or trial consultants retained in connection with this litigation to assist a Party, Counsel of Record, or any Outside Consultant in their work. Professional vendors do not include consultants who fall within the definition of Outside Consultant.

II. RELATIONSHIP TO PROTECTIVE ORDER

16. This Supplemental Protective Order shall not diminish any existing restriction with respect to Designated QUALCOMM Material. The Parties and QUALCOMM acknowledge and agree that this Supplemental Protective Order is a supplement to the Protective Order entered in this action on July 2, 2019, in the United States District Court, Eastern District of Texas, in this action. The Protective Order applies to all material designated pursuant to this Supplemental Protective Order. To the extent that there is any confusion or conflict between protective orders with respect to Designated QUALCOMM Material, then this Supplemental Protective Order governs.

17. In addition to the restrictions outlined in this Supplemental Protective Order,

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.