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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARGAN PRECISION CO., LTD.,

Plaintiff,

v.

ABILITY OPTO-ELECTRONICS
TECHNOLOGY CO., LTD.; AND HP INC.,

Defendants.

Case No. 3:20-cv-06607-JD

~~PROPOSED~~ ORDER GRANTING
MOTION FOR ISSUANCE OF LETTERS
ROGATORY

The Court has reviewed the proposed letters rogatory and the addenda identifying the discovery sought, and for good cause shown, the Court **GRANTS** the motion for issuance of letters rogatory. A final version with the Court’s seal is attached as Exhibit 1, and the Court orders entry of the letter in the docket.

IT IS SO ORDERED.

Dated: 1/20/2021



JAMES DONATO
United States District Judge

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6 *Attorneys for Defendant HP Inc.*

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

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12 LARGAN PRECISION CO., LTD.,

13 Plaintiff,

14 v.

15 ABILITY OPTO-ELECTRONICS
16 TECHNOLOGY CO., LTD.;
AND HP INC.,

17 Defendants.

Case No. 3:20-cv-06607-JD

**REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE**

~~**PROPOSED**~~ **LETTERS ROGATORY**

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19 TO THE APPROPRIATE JUDICIAL AUTHORITY OF TAIWAN:

20 The United States District Court for the Northern District of California presents its
21 compliments to the Appropriate Judicial Authority of Taiwan, and requests international assistance
22 to obtain evidence to be used in a civil proceeding before this Court in the above-captioned matter.

23 The Court requests the assistance described herein in the interests of justice.

24 **I. REQUEST**

25 The Court requests that the Appropriate Judicial Authority of Taiwan compel production
26 of documents from the following corporate entity:

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GENIUS ELECTRONIC OPTICAL CO., LTD.

No. 1, Keya East Road, Daya District

Taichung Central Taiwan Science Park, Taiwan 428

Specifically, the Court requests that, to the extent possible under Taiwanese law, Genius Electronic Optical Co., Ltd. (“Genius”) be required to (a) produce the documents and things set out in **Exhibit A** to this Request and (b) designate one or more officers, directors, or knowledgeable employees who consent to testify on its behalf as to the topics set forth in **Exhibit B** to this Request.

The Court understands that the documents and information requested may be of a confidential nature. As such, there is a protective order in this case to protect the confidentiality of any documents produced and of any responses to the written questions. A copy of the protective order is attached as **Exhibit C**. The parties may negotiate a more detailed protective order at a later date. If the Court enters a new protective order, it will be sent separately.

II. FACTS

Plaintiff Largan Precision Co., Ltd. (“Largan”), a Taiwanese corporation, filed suit against Defendants HP Inc. (“HP”) and Ability Opto-Electronics Technology Co., Ltd. (“AOET”) in the United States District Court for the Eastern District of Texas, alleging infringement of U.S. Patent Nos. 7,274,518 (“the ’518 patent”); 8,395,691 (“the ’691 patent”); 8,988,796 (“the ’796 patent”); and 9,146,378 (“the ’378 patent”) (collectively, the “Asserted Patents”), alleging infringement by optical lens systems made by AOET which are allegedly incorporated into some HP laptops. On September 25, 2020, the case was transferred to the Northern District of California. Largan seeks an award of damages from HP and AOET to compensate for the alleged patent infringement and injunctive relief prohibiting further infringement. The technology described and claimed in the Asserted Patents relates to optical image-capturing lens systems, and specifically, the design and measurements of the lens elements that make up those lens systems.

Through its investigation, Largan has determined that AOET makes optical lens components that Largan alleges infringe the above-mentioned patents. Largan further alleges that these allegedly infringing AOET lenses are incorporated into some HP laptops. Like AOET,

1 Genius also makes optical lens systems. Largan previously sued Genius in a separate case for
2 making and selling optical lenses that allegedly infringed certain Largan patents, including the
3 '691 patent, which is now asserted against HP and AOET. In view of this prior lawsuit, on
4 information and belief, Genius possesses information that is relevant to the validity of the '691
5 patent and to Largan's entitlement to the damages it now seeks from HP and Ability.

6 **III. EVIDENCE**

7 The documents requested to be produced are identified in **Exhibit A**. The deposition topics
8 to which Genius' testimony is requested are set forth in **Exhibit B**.

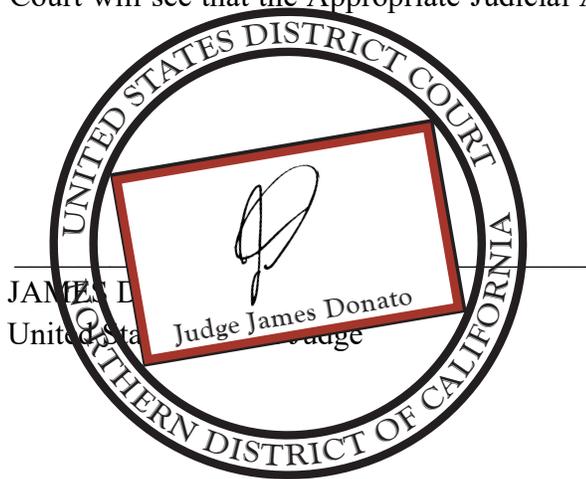
9 **IV. OFFER OF RECIPROCAL ASSISTANCE**

10 The United States District Court for the Northern District of California is willing to provide
11 similar assistance to the Appropriate Judicial Authority of Taiwan. See 28 U.S.C. § 1782.

12 **V. REIMBURSEMENT OF COSTS**

13 To the extent that there are expenses and costs associated with providing assistance in
14 response to these Letters Rogatory, the Court will see that the Appropriate Judicial Authority of
15 Taiwan is reimbursed by HP.

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18 DATED: January 20, 2021



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EXHIBIT A

DOCUMENTS REQUESTED

DEFINITIONS AND INSTRUCTIONS

DEFINITIONS

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5 1. The terms “Genius,” “You,” and/or “Your” refer to Genius Electronic Optical Co.,
6 Ltd., as well as any of its past and present affiliates, operating divisions, parent corporations,
7 subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest
8 in Genius Electronic Optical Co., Ltd.

9 2. The term “Apple” refers to Apple Inc.

10 3. The term “Apple Products” refers to all computers, laptops, and mobile devices
11 incorporating a camera module used, offered for sale or sold by Apple.

12 4. “Optical lens systems containing 3, 4, or 5 lenses” means optical lens systems for
13 use in cameras or camera modules of mobile phones, mobile devices or laptops containing: three
14 lens elements; or four lens elements; or five lens elements.

15 5. The term “technical specifications” means documents that describe any physical,
16 mechanical or optical attributes of optical lens systems and the component lenses that make up the
17 systems, such as, focal length(s), aperture(s), refractive index(ces), lens shape(s), lens
18 arrangement, and/or curvature characteristics, lens orientation in the optical lens system and lens
19 orientation relative to the other component lenses.

20 6. The term “Genius Lawsuit” refers to the case styled *Largan Precision Co., Ltd. v.*
21 *Genius Elec. Optical Co., Ltd.*, Case No. 3:13-cv-02502-JD, filed in the United States District for
22 the Northern District of California.

23 7. The terms “Largan” or “Plaintiff” refers to Largan Precision Co., Ltd., including
24 any of its past and present affiliates, operating divisions, parent corporations, subsidiaries,
25 directors, officers, agents, employees, representatives, and all predecessors in interest to Largan.

26 8. The terms “HP” or “Defendant” refers to HP Inc., including any of its past and
27 present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents,
28 employees, representatives, and all predecessors in interest to HP.

1 9. The term “communication” means the transmittal of information of any kind
2 (including, without limitation, facts, ideas, inquiries, or opinions) by any means, and includes,
3 without limitation, any transfer or exchange between two or more persons or entities of any
4 information whether by document or oral means, including but not limited to, personal
5 conversation, correspondence, telephone calls, electronic mail, and telegrams. This definition also
6 includes all communications for which you claim privilege.

7 10. The term “document” refers to documents and electronically stored information—
8 including writings, drawings, graphs, charts, photographs, sound recordings, images, and other
9 data or data compilations – stored in any medium from which information can be obtained, and
10 includes all preliminary and final drafts of such item. The term “all documents” means any and
11 all documents that Genius can locate through a diligent search of all locations likely to contain the
12 documents requested herein and through a reasonable inquiry of all persons likely to know of the
13 existence of the documents requested herein.

14 11. The term “thing” refers to any tangible object or information embodied in a tangible
15 object other than a document and includes objects of every kind and nature including, but not
16 limited to, devices, computer data, computer programs prototypes, models, and specimens.

17 12. As used herein, any references to a particular entity (such as a corporation) include
18 that entity and all its divisions, departments, subsidiaries, branches, parents, affiliates, subsidiaries
19 of parents, affiliates, partners, predecessors-in-interest, successors-in-interest, present and former
20 officers, directors, managers, employees, consultants, agents, attorneys, accountants,
21 representatives, entities acting in joint-venture or partnership relationship with that particular
22 entity.

23 13. The terms “and,” “and/or,” and “or” shall be construed to mean “and” or “or” in
24 such a manner as to encompass the broadest possible scope of requested documents, things, or
25 information, and not so as to permit the option of providing some requested documents, things, or
26 information instead of others.

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1 3. If you contend a particular document or category of documents contains trade
2 secret or other confidential research, development, or commercial information, please mark
3 the document or documents as such, as required by the protective order attached to this Letters
4 Rogatory as **Exhibit C**.

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DOCUMENT REQUESTS

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1. Documents sufficient to show any sales or offers to sell optical lens systems containing 3, 4, or 5 lenses by Genius between January 1, 2003 and December 31, 2013.

2. For each genius product that was accused of infringing U.S. Patent No. 8,395,691 in the *Genius* Lawsuit, documents sufficient to show the date on which such products were first sold or offered to sale.

3. Documents sufficient to identify the part numbers, units, price, and technical specifications of any optical lens systems containing 3, 4, or 5 lenses sold or offered for sale by Genius between January 1, 2003 and December 31, 2013.

4. Documents sufficient to demonstrate public use of optical lens systems containing 3, 4, or 5 lenses made by Genius between January 1, 2003 and December 31, 2013.

5. Documents sufficient to identify the part numbers, units, price, and technical specifications of any optical lens systems containing 3, 4, or 5 lenses made by Genius between January 1, 2003 and December 31, 2013.

6. Any technical specifications describing optical lens systems containing 3, 4, or 5 lenses made by Genius between January 1, 2003 and December 31, 2013.

7. Technical specifications for each Genius product that was accused of infringing U.S. Patent No. 8,395,691 in the *Genius* Lawsuit.

8. Any photographs, x-ray, or microscope images taken between January 1, 2003 and December 31, 2013 showing the shape, spacing, or orientation of lenses used in any optical lens systems containing 3, 4, or 5 lenses made by Genius and offered for sale, sold, or used in the United States.

9. Any prior art describing optical lens systems containing 3, 4 or 5 lens systems from the *Genius* Lawsuit.

10. Documents sufficient to show any marking by Genius of its products U.S. Patent No. 8,395,691 following resolution of the *Genius* Lawsuit.

1 11. Documents sufficient to show and communications between Genius and Largan
2 relating to any requirement by Largan that Genius mark its products with U.S. Patent No.
3 8,395,691.

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EXHIBIT B

DEPOSITION TOPICS

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3 1. The origin and maintenance of documents produced by You in response to these
4 letters rogatory, including (a) authentication of the documents; (b) whether the documents are
5 business records; (c) the circumstances under which each document was prepared; (d) the
6 recipients of each document; and (e) how each document was maintained from the time of
7 creation through the present.

8 2. The identification of any lens systems containing 3, 4, or 5 lenses sold or offered
9 for sale by Genius between January 1, 2003 and December 31, 2013.

10 3. The design and technical specifications of any optical lens systems containing 3,
11 4, or 5 lenses sold or offered for sale by Genius between January 1, 2003 and December 31,
12 2013.

13 4. The design and technical specifications of each Genius product that was accused
14 of infringing U.S. Patent No. 8,395,691 in the *Genius* Lawsuit

15 5. Customers to whom Genius sold lens systems containing 3, 4, or 5 lenses between
16 January 1, 2003 and December 31, 2013.

17 6. Sales and revenue information associated with lens systems containing 3, 4, or 5
18 lenses sold or offered for sale by Genius between January 1, 2003 and December 31, 2013.

19 7. The date upon which each Genius product that was accused of infringing U.S.
20 Patent No. 8,395,691 in the *Genius* Lawsuit was first sold or offered for sale.

21 8. Defenses asserted by Genius in the *Genius* Lawsuit.

22 9. Marking by Genius of its products U.S. Patent No. 8,395,691 following resolution
23 of the *Genius* Lawsuit.

24 10. Communications between Genius and Largan relating to any requirement by
25 Largan that Genius mark its products with U.S. Patent No. 8,395,691.

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EXHIBIT C

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

LARGAN PRECISION CO., LTD.,

Plaintiff,

v.

**ABILITY OPTO-ELECTRONICS
TECHNOLOGY CO., LTD.;**
NEWMAX TECHNOLOGY CO., LTD.;
AND HP INC.,

Defendants.

Case No. 4:19-cv-00696-ALM

JURY TRIAL DEMANDED

**AGREED PROTECTIVE ORDER REGARDING THE DISCLOSURE AND
USE OF DISCOVERY MATERIALS**

Plaintiff Largan Precision Co., Ltd., and Defendants Ability Opto-Electronics Technology Co., Ltd., Newmax Technology Co., Ltd., and HP Inc., anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information may be disclosed or produced during the course of discovery, initial disclosures, supplemental disclosures, and otherwise in this action. The Parties request that the Court enter this Agreed Protective Order setting forth the conditions for treating, obtaining, and using such information.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for the following Agreed Protective Order Regarding the Disclosure and Use of Discovery Materials (“Order”).

1. PURPOSES AND LIMITATIONS

(a) Protected Material designated under the terms of this Order shall be used by a Receiving Party solely for this action, *Largan Precision Co., Ltd. v. Ability Opto-Electronics Technology Co., Ltd et al.*, Civil Action No. 4:19-CV-696-ALM (E.D. Tex.) and all related appeals, and shall not be used directly or indirectly for any other purpose whatsoever.

(b) The Parties acknowledge that this Order does not confer blanket protections on all disclosures during discovery, or in the course of making initial or supplemental disclosures under Federal Rule of Civil Procedure 26(a). Designations under this Order shall be made with care and shall not be made absent a good faith belief that the designated material satisfies the criteria set forth below.

(c) Nothing in this Order shall be construed to require a Producing Party to produce or disclose information not otherwise required to be produced under the applicable rules or orders of this Court. Production or disclosure of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE” information under this Order shall not prejudice the right of any Producing Party making that production or disclosure to maintain the trade secret status or confidentiality of that information in other contexts. Moreover, nothing in this Order creates a presumption or implies that information designated as Protected Material actually constitutes a trade secret, is proprietary, or is otherwise protectable information.

2. DEFINITIONS

(a) “Discovery Material” means all items, documents, or information, including from any non-party, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced, disclosed, exchanged, or generated in connection with discovery, in Federal Rule of Civil

Procedure 26(a) disclosures, at hearings, or otherwise in this action.

(b) “Outside Counsel” means outside attorneys for the Parties working on this action, who are not employees of any Party, as well as their associates and support personnel working in connection with this action.

(c) “Outside Expert or Consultant” shall mean any person (and their support personnel) who is not an employee of a Party and who is identified as an expert whose opinions may be presented at trial of this action, or is retained or specially employed in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, including but not limited to, a proposed expert witness with whom counsel may deem it necessary to consult concerning technical, financial, or other aspects of this action for the preparation or trial thereof. This term is to be construed within the meaning of Fed. R. Civ. P. 26(b)(4)(A)-(D).

(d) “Party” means any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel and their support staffs.

(e) “Patents-in-suit” means U.S. Patent Nos. 7,274,518, 8,395,691, 8,988,796, 9,146,378 and any other patent later asserted in this action.

(f) “Producing Party” means any Party or non-party that discloses or produces any Discovery Material in this action.

(g) “Prosecution Activity” means any activity related to the competitive business decisions involving the preparation or prosecution (for any person or entity) of patent applications relating to imaging lenses or imaging lens systems (including, without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency), or advising or counseling clients regarding the same, including but not limited to providing any advice, counseling, or drafting of claims for any patent application, reexamination or reissue application. “Prosecution

Activity” does not include any of the following: (1) instances when any attorney sends non-confidential prior art to an attorney involved in patent prosecution for purposes of ensuring that such prior art is submitted to the U.S. Patent and Trademark Office (or any similar agency of a foreign government) to assist a patent applicant in complying with its duty of candor; (2) instances when any attorney of record in this litigation discusses any aspect of this case that is reasonably necessary for the prosecution or defense of any claim or counterclaim in this litigation with his/her client, or (3) representing a party challenging or defending a patent before the U.S. Patent and Trademark Office (or any similar agency of a foreign government) (including, but not limited to, a reissue protest, *ex parte* reexamination, post-grant review or *inter partes* review) in which no claim amendments are proposed.

(h) “Prosecution Bar Materials” means all “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL SOURCE CODE” materials EXCEPT for (i) documents and information related only to damages or reasonable royalty rates; (ii) materials regarding a third party system or product that is publicly known, on sale, or in public use unless such materials are designated as Prosecution Bar Materials by that third party or are subject to confidentiality obligations owed to that third party; and (iii) information that is publicly available.

(i) “Protected Material” means any Discovery Material that is designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE,” as provided for in this Order. Protected Material shall not include: (i) any materials that have actually been published or publicly disseminated; or (ii) documents that have been submitted to any governmental entity without request for confidential treatment.

(j) “Receiving Party” means any Party who receives Discovery Material from a

Producing Party.

AGREED PROTECTIVE ORDER – PAGE 4

(k) “Source Code” means computer code and associated comments and revision histories, scripts, binaries, assembly, object code, source code listings and descriptions of source code, object code listings and descriptions of object code, formulas, engineering specifications, schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, or optical design files (e.g., Zemax, Code V), disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

3. COMPUTATION OF TIME

The computation of any period of time prescribed or allowed by this Order shall be governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

4. SCOPE

(a) The protections conferred by this Order cover not only Discovery Material governed by this Order as addressed herein, but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, compilations, or derivations in any way thereof, plus testimony, conversations, or presentations by Parties or their counsel in court or in other settings that might reveal Protected Material.

(b) Nothing in this Order shall prevent or restrict a Producing Party’s own disclosure or use of its own Protected Material for any purpose, and nothing in this Order shall preclude any Receiving Party from showing Protected Material to an individual who prepared the Protected Material.

(c) Nothing in this Order shall be construed to prejudice any Party’s right to use any Protected Material in court or in any court filing with the consent of the Producing Party or by order of the Court.

(d) Nothing in this Order shall be construed to preclude any Party’s right to file any

Protected Material with the Court under seal.

(e) This Order is without prejudice to the right of any Producing Party to seek further or additional protection of any Discovery Material or to modify this Order in any way, including, without limitation, an order that certain material not be produced at all.

5. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

6. ACCESS TO AND USE OF PROTECTED MATERIAL

(a) **Basic Principles.** All Protected Material shall be used solely for this case or any related appellate proceeding, and not for any other purpose whatsoever, including without limitation any other litigation, patent prosecution or acquisition, patent reexamination or reissue proceedings, or any business or competitive purpose or function. Protected Material shall not be distributed, disclosed or made available to anyone except as expressly provided in this Order.

(b) **Secure Storage.** Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that is reasonably calculated to ensure that access is limited to the persons authorized under this Order. This provision shall not limit the ability of the Receiving Party to use data storage services, including cloud storage, hosted document review platforms, or email servers, hosted and/or maintained by Outside Counsel for the Receiving Party, as long as such data storage services provide adequate security and/or encryption. The

Receiving Party shall take necessary steps to ensure and confirm that any data storage services have adequate security and/or encryption.

(c) **Limitations**. Nothing in this Order shall restrict in any way a Producing Party's use or disclosure of its own Protected Material for any purpose. Nothing in this Order shall restrict in any way the use or disclosure by a Receiving Party of Discovery Material: (i) that is or has become publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known to the Receiving Party independent of the Producing Party or otherwise not involving a violation of this Order; (iii) that was previously produced, disclosed and/or provided by the Producing Party to the Receiving Party or a non-party without an obligation of confidentiality and not by inadvertence or mistake; (iv) that a Receiving Party can show was independently developed by it after the time of disclosure by personnel who have not had access to the Producing Party's Protected Material; (v) that was or is produced with the consent of the Producing Party; or (vi) that is produced pursuant to order of the Court.

(d) **Disclosure to Author or Recipient**. Notwithstanding any other provision, nothing in this Order shall prohibit Outside Counsel for a Party from disclosing Protected Material to any person whom the Discovery Material clearly identifies as an author, addressee, or carbon copy recipient of such Discovery Material. In addition, regardless of its designation, if Discovery Material makes reference to the actual or alleged conduct or statement of a person, Outside Counsel may discuss such conduct or statements with such person, provided that such discussions do not disclose or reveal any other portions of the document.

(e) **Disclosure During Depositions**. Except as otherwise approved by the Producing Party or by an order of this Court, a Party may use Protected Material in deposing only: (a) an individual who has had or who is eligible to have access to the Protected Material by virtue of their employment or other relationship with the Producing Party; (b) an individual identified in the Protected Material as an author, addressee, or carbon copy recipient of such information; (c) an

individual who although not identified as an author, addressee, or carbon copy recipient of such Protected Material, has, in the ordinary course of business, seen such Protected Material, or (d) an individual designated pursuant to Paragraph 12(a) of this Order.

7. DESIGNATING PROTECTED MATERIAL

(a) **Available Designations.** Any Producing Party may designate Discovery Material with any of the following designations, provided that it meets the requirements for such designations as provided for herein: “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE.” A Producing Party shall use reasonable care in designating information as Protected Material.

(b) **Written Discovery and Documents and Tangible Things.** Written discovery, documents (which include “electronically stored information,” as that phrase is used in Federal Rule of Civil Procedure 34), and tangible things that meet the requirements for the confidentiality designations provided for in Paragraph 7(a) may be so designated by placing the appropriate designation on every page of the written material prior to production. Court filings, such as pleadings, declarations, affidavits and the like, may be designated by placing the appropriate designation on the face of such document. For digital files being produced, the Producing Party may mark each viewable page or image with the appropriate designation, and/or may mark the medium, container, and/or communication in which the digital files were contained with the appropriate designation, and/or may mark the files by indicating the appropriate designation in the file names. In the event that original documents are produced for inspection, the original documents shall be presumed “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” during the inspection and re-designated as appropriate during the copying process. To the extent a Receiving Party generates copies of any designated documents or information, whether electronic or hard copy, it shall ensure such copies reflect any such designation. In the

event that the Receiving Party prints documents produced electronically in a native file format, the Receiving Party shall mark each page of the printed documents with the designation made by the Producing Party, if any.

(c) **Native Files**. Where electronic files and documents are produced in native electronic format, such electronic files and documents shall be designated for protection under this Order by appending to the file names or designators the confidentiality designations provided for in Paragraph 7(a), or any other reasonable method for so designating Protected Materials produced in electronic format. When electronic files or documents are printed, the Receiving Party printing the electronic files or documents shall affix a legend to the printed document corresponding to the designation of the Producing Party, if any, and include the production number and designation associated with the native file.

(d) **Depositions and Testimony**. Parties or testifying persons or entities may designate depositions and other testimony, or portions thereof, with the appropriate designation by indicating on the record at the time the testimony is given or by sending written notice of how the transcript of the testimony is designated within thirty (30) days of receipt of the transcript of the testimony. If no indication on the record is made, all information disclosed during a deposition shall be deemed “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” until the time within which it may be appropriately designated as provided for herein has passed. Any Protected Material that is used in the taking of a deposition shall remain subject to the provisions of this Order, along with the transcript pages of the testimony dealing with such Protected Material. The court reporter shall be informed of this Order and shall be required to operate in a manner consistent with this Order. In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Order, substantially along the lines of “This videotape contains confidential testimony used in

this action and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the operative Protective Order in this matter or pursuant to written stipulation of the parties.” Counsel for any Producing Party shall have the right to exclude from oral depositions, other than the deponent, deponent’s counsel, Outside Counsel for each of the Parties in this litigation, the reporter and the videographer (if any), any person who is not authorized by this Order to receive or access Protected Material based on the designation of such Protected Material. Such right of exclusion shall be applicable only during periods of examination or testimony regarding such Protected Material.

8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”

(a) A Producing Party may designate as “CONFIDENTIAL” Discovery Material which it reasonably determines contains or reflects non-public, confidential, proprietary, and/or commercially sensitive information, or information subject to an obligation of confidentiality to a third party or a court.

(b) Unless otherwise ordered by the Court, Discovery Material designated as “CONFIDENTIAL” may be disclosed only to the following:

(i) The Receiving Party’s Outside Counsel and any copying, clerical, or technical litigation support services working at the direction of such Outside Counsel;

(ii) Not more than one (1) in-house counsel or one (1) designated person in the legal department for the Receiving Party to whom disclosure is reasonably necessary for this action, provided that: (a) each such person has agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A; and (b) the Receiving Party gives notice to the Producing Party of such disclosure by providing the in-house counsel’s name, employer and title. Protected materials may not be disclosed to the so designated in-house counsel prior to the expiration of the seven (7) business day period for objection by the Producing Party as set forth in

Paragraph 12(b) below. In the event the Producing Party objects to the designated in-house counsel, the procedure set forth in Paragraph 12(b) for resolution of the objection shall be followed;

(iii) Any Outside Expert or Consultant retained by the Receiving Party to assist in this action, and his/her support staff working at the direction of the Outside Expert or Consultant, provided that: (a) such expert or consultant has agreed to be bound by the provisions of this Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current officer, director, or employee of a Party or of a competitor of an opposing Party, nor anticipated at the time of retention to become an officer, director or employee of a Party or of a competitor of an opposing Party; and (c) no unresolved objections to such disclosure exist after proper notice has been given to all Parties and the Producing Party as set forth in Paragraph 12 below;

(iv) Court reporters, stenographers and videographers retained to record testimony taken in this action;

(v) The Court, jury, and court personnel;

(vi) Graphics, translation, design, and/or trial consulting personnel, who have signed an undertaking or agreement agreeing not to publicly disclose Protected Material and to keep any information concerning Protected Material confidential;

(vii) Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Order;

(viii) Any other person with the prior written consent of the Producing Party.

(c) In addition, a Party may disclose arguments and materials derived from Discovery Material designated as “CONFIDENTIAL” to mock jurors who have signed an undertaking or agreement agreeing not to publicly disclose Protected Material and to keep any information concerning Protected Material confidential. A Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, documents, deposition

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testimony, or interrogatory responses) produced by another Party designated as

“CONFIDENTIAL.”

9. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”

(a) A Producing Party may designate Discovery Material as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” if it contains or reflects information that is extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that the disclosure of the Discovery Material is likely to cause economic harm or significant competitive disadvantage to the Producing Party. The Parties agree that, by way of non-limiting example, information in one or more of the following categories, if non-public, shall be presumed to merit the “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data, sales information, sales or market forecasts or plans, business plans, sales or marketing strategy, price lists and/or pricing information, product development information, schematic diagrams, manufacturing and engineering documents, specifications, research notes and materials, technical descriptions and/or depictions of the relevant technology, testing documents, employee information, customer and vendor lists and agreements, patent license agreements and information, other license and/or settlement agreements and information, negotiations regarding patent license, other license and/or settlement agreements, and other non-public information of similar competitive and business sensitivity.

(b) Unless otherwise ordered by the Court, Discovery Material designated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” may be disclosed only to those persons identified in Paragraph 8(b)(i) and 8(b)(iii)-(viii).

(c) In addition, a Party may disclose arguments and materials derived from Discovery Material designated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” to mock jurors who have signed an undertaking or agreement agreeing not to

publicly disclose Protected Material and to keep any information concerning Protected Material confidential. A Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, documents, deposition testimony, or interrogatory responses) produced by another Party designated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY.”

(d) For the mutual convenience of the Parties, either Party may generate certain financial summaries for the purpose of this action. To the extent such financial summaries are in a native format (e.g., a Word, Excel, or other native file), the Party shall password-protect that document on an encrypted media. All such financial summaries are to be designated “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”. To the extent that any such financial summaries are transmitted from or to authorized recipients outside of a Party’s Outside Counsel’s office, the transmission shall be by hand (and encrypted if in electronic format), by a secure transport carrier (e.g., Federal Express), or via a secure FTP site or similarly secure means of electronic transmission.

(e) In no event shall an employee, officer, or director of any Party to this action or of any competitor of any Party to this action have access to Protected Material relating to patent licensing matters, related merger and acquisition activities, or source code without a Court order or the written consent of the Producing Party.

10. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL SOURCE CODE”

(a) To the extent production of Source Code becomes necessary to the prosecution or defense of this action, a Producing Party may designate Source Code as “HIGHLY CONFIDENTIAL SOURCE CODE” if it comprises or includes non-public, sensitive, confidential, proprietary, and/or trade secret Source Code.

(b) Nothing in this Order shall be construed as a representation or admission that

Source Code is properly discoverable in this action, or to obligate any Producing Party to produce any Source Code.

(c) Unless otherwise ordered by the Court, Discovery Material designated as “HIGHLY CONFIDENTIAL SOURCE CODE” shall be subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject to Paragraph 11 below, solely to those persons identified in Paragraph 8(b)(i) and 8(b)(iii)-(viii).

11. DISCLOSURE AND REVIEW OF SOURCE CODE

(a) Any Source Code that is produced shall be made available for inspection in electronic format at the Producing Party’s Outside Counsel’s office in the contiguous United States, or at any other location mutually agreed to by the parties. Source Code will be made available for inspection between the hours of 9 a.m. and 5 p.m. in the time zone of the location of inspection on business days (i.e., weekdays that are not Federal holidays), although the Producing and Receiving Parties will be reasonable in accommodating reasonable requests to conduct inspections at other times.

(b) Following a Producing Party’s notification that Source Code is available for inspection, the Receiving Party shall provide at least seven (7) days’ notice to the Producing Party that it will be sending individual(s) authorized to review such Source Code on the Source Code Computer.

(c) Source Code that is designated “HIGHLY CONFIDENTIAL SOURCE CODE” shall be produced for inspection and review subject to the following provisions, unless otherwise agreed by the Producing Party:

(i) All Source Code shall be made available by the Producing Party to the Receiving Party’s Outside Counsel and/or Outside Expert or Consultant in a secure room on a secured computer without Internet access or network access to other computers, as necessary and

appropriate to prevent and protect against any unauthorized copying, transmission, removal or other transfer of any Source Code outside or away from the computer on which the Source Code is provided for inspection (the “Source Code Computer” in the “Source Code Review Room”). The Producing Party may also configure the secured computer to permit review of the Source Code through a password-protected account having only read-only access. The Producing Party shall install tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist, and are presently used in the ordinary course of the Producing Party’s business, including any software (e.g., Zemax, Code V) and licenses required to access and review the produced optical design files in their native form. In no event shall the Receiving Party use any compilers, interpreters or simulators in connection with the Producing Party’s Source Code absent the consent of the Producing Party.

(ii) No outside electronic devices, recordable media or recordable devices, including without limitation laptops, tablet devices, sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room.

(iii) The Receiving Party’s Outside Counsel and/or Outside Expert or Consultant shall be entitled to take notes relating to the Source Code but may not copy the Source Code into the notes and may not take such notes electronically on the Source Code Computer itself or any other computing device. Each page of any such notes containing Source Code information (and any additional notes, analyses, or descriptions relating thereto) must be marked as “HIGHLY CONFIDENTIAL SOURCE CODE.”

(iv) The Producing Party may visually monitor the activities of the Receiving Party’s representatives during any Source Code review, but only to ensure that no unauthorized electronic records of the Source Code and no information concerning the Source Code are being created or transmitted in any way.

(v) Access to and review of the Source Code shall be strictly for the purpose of investigating the claims and defenses at issue in this action. No person shall review or analyze any Source Code for purposes unrelated to this action, and no person may use any knowledge gained as a result of reviewing the Source Code in this action in any other pending or future dispute, proceeding, or litigation.

(vi) No copies of all or any portion of the Source Code may leave the Source Code Review Room except as otherwise provided herein. Further, no other written or electronic record of the Source Code is permitted except as otherwise provided herein. The Producing Party shall make available a laser printer with commercially reasonable printing speeds for on-site printing during inspection of the Source Code. The Receiving Party may print limited portions of the Source Code only when necessary to prepare court filings or pleadings or other papers (including a testifying expert's expert report). No more than **200** pages of Source Code may be printed for each Producing Party's Source Code, except pursuant to agreement of the Producing and Receiving Parties or Court order. The Receiving Party shall not print the Source Code in order to review blocks of the Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on the Source Code Computer, as the Producing and Receiving Parties acknowledge and agree that the purpose of the protections herein would be frustrated by printing portions of the Source Code for review and analysis elsewhere, and that printing is permitted only when necessary to prepare court filings or pleadings or other papers (including a testifying expert's expert report). Upon the printing of any such portions of the Source Code, the printed pages shall be collected by the Producing Party. The Producing Party shall Bates number, copy, and label "HIGHLY CONFIDENTIAL SOURCE CODE" any pages printed by the Receiving Party. Within fourteen (14) days, the Producing Party shall either (i) provide one copy set of such pages to the Receiving Party or (ii) inform the Receiving Party that it objects that the printed portions are excessive and/or not done for a permitted purpose. If, after meeting and

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conferring, the Producing Party and the Receiving Party cannot resolve the objection, the Producing Party shall be entitled to seek a Court resolution of whether the printed Source Code in question is narrowly tailored and was printed for a permitted purpose. The printed pages shall constitute part of the Source Code produced by the Producing Party in this action.

(vii) No more than three (3) individuals for the Receiving Party who qualify under Paragraphs 8(b)(i) or 8(b)(iii) above may have access to the Source Code Computer. However, all attorneys and/or experts for the Receiving Party who qualify under Paragraphs 8(b)(i) or 8(b)(iii) above may have access to printed copies of any portion of the Producing Party's Source Code. All persons who will have access to the Producing Party's Source Code Computer on behalf of the Receiving Party, including members of a Receiving Party's outside law firm, shall be identified in writing to the Producing Party at least fourteen (14) days in advance of the first time such person has access to the Source Code Computer. Such identification shall be in addition to any other disclosure required under this Order. The Producing Party may object to providing Source Code Computer access to any persons so identified. If objection to an individual is made by the Producing Party, it will be the burden on the Producing Party to prove that the individual should not be authorized to access the Producing Party's Source Code Computer.

(viii) All persons accessing the Source Code Computer shall sign on each day they view the Source Code a log that will include the names of persons who enter the Source Code Review Room to view the Source Code and when they enter and depart. The Producing Party shall be responsible for providing and maintaining the log.

(ix) Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the Receiving Party's Outside Counsel and/or Outside Expert or Consultant shall remove all notes, documents, and all other materials from the Source Code Review Room, and must be given reasonable opportunity to do so.

(x) Other than as provided above, the Receiving Party will not copy,
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remove, or otherwise transfer any Source Code from the Source Code Computer including, without limitation, copying, removing, or transferring the Source Code onto any recordable media or recordable device. The Receiving Party will not transmit any Source Code in any way from the Producing Party's facilities or the offices of its Outside Counsel.

(xi) The Receiving Party's Outside Counsel may make no more than three (3) additional paper copies of any portions of the Source Code received from a Producing Party pursuant to Paragraph 11(c)(vi), not including copies attached to court filings, expert reports, or used at depositions, and shall maintain a log of all paper copies of the Source Code. The log shall include the names of the reviewers and/or recipients of paper copies and locations where the paper copies are stored. Upon three (3) days' advance notice to the Receiving Party by the Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party.

(xii) The Receiving Party's Outside Counsel and any person receiving a copy of any Source Code shall maintain and store any paper copies of the Source Code or any notes, analyses, or descriptions of Source Code at their offices in a manner that prevents duplication of or unauthorized access to the Source Code, including, without limitation, storing the Source Code or any notes, analyses, or descriptions of Source Code in a locked room or cabinet at all times when it is not in use.

(xiii) For deposition, the Receiving Party shall not bring copies of any printed Source Code. Rather, at least four (4) days before the date of the deposition, the Receiving Party shall notify the Producing Party about specific portions of the Source Code it wishes to use at the deposition, and the Producing Party shall bring printed copies of those portions to the deposition for use by the Receiving Party. Copies of the Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All paper copies of the Source Code brought to the deposition shall remain with the Producing Party's Outside Counsel for secure

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destruction in a timely manner following the deposition.

(xiv) Except as provided in this sub-paragraph, absent express written permission from the Producing Party, the Receiving Party may not create electronic images, or any other images, or make electronic copies, of the Source Code from any paper copy of the Source Code for use in any manner (including by way of example only, the Receiving Party may not scan the Source Code to a PDF or photograph the code). Images or copies of the Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. In no event shall the Receiving Party seek to communicate electronically any copy of the Source Code, including through email, FTP or any other means of electronic communication, and in no event shall any copy of the Source Code be created using optical character recognition technology. If a Party reasonably believes that it needs to submit a portion of the Source Code as part of a filing with the Court, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such Source Code will not be filed absent agreement from the Producing Party that the confidentiality protections will be adequate. If a Producing Party agrees to produce an electronic copy of all or any portion of the Source Code or provide written permission to the Receiving Party that an electronic or any other copy needs to be made for a Court filing, access to the Receiving Party's submission, communication, and/or disclosure of electronic files or other materials containing any portion of the Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view the Source Code under the provisions of this Order. Where the Producing Party has provided the express written permission required under this provision for a Receiving Party to create electronic copies of the Source Code, the Receiving Party shall maintain a log of all such electronic copies of any portion of the Source Code in its possession or in the possession of its retained experts or consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the

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locations and manner in which the electronic copies are stored. Additionally, any such electronic copies must be labeled “HIGHLY CONFIDENTIAL SOURCE CODE” as provided for in this Order.

12. NOTICE OF DISCLOSURE TO OUTSIDE EXPERTS OR CONSULTANTS

(a) Prior to disclosing any Protected Material to any person described in Paragraphs 8(b)(iii) (referenced below as “Outside Expert or Consultant”), the Party seeking to disclose such information shall provide the Producing Party with written notice that includes: (i) the name of the Outside Expert or Consultant; (ii) the present employer and title of the Outside Expert or Consultant; (iii) an identification of all of the Outside Expert or Consultant’s past and current professional or personal relationships with any Party, including direct relationships and relationships through entities owned or controlled by the Outside Expert or Consultant; (iv) an up-to-date curriculum vitae of the Outside Expert or Consultant listing such Outside Expert or Consultant’s education and experience; (v) for the past four (4) years, a list of the actions in which the Outside Expert or Consultant has testified at deposition or trial along with identification of the party by which they were retained, all companies for which the individual has provided consulting services, either directly or through a consulting firm, and all companies by which the individual has been employed; and (vi) an identification of all issued and/or published pending patent applications on which the Outside Expert or Consultant is named as an inventor, or in which the Outside Expert or Consultant has any current or prior direct ownership interest. Said written notice shall include an identification of any individual or entity with or for whom the Outside Expert or Consultant is employed or to whom the Outside Expert or Consultant provides consulting services relating to the design, development, operation, or patenting of imaging lenses, or relating to the acquisition of intellectual property assets relating to imaging lenses. The Party seeking to disclose Protected Material shall provide such other information regarding the Outside Expert or Consultant’s professional activities

reasonably requested by the Producing Party for it to evaluate whether good cause exists to object to the disclosure of Protected Material to the Outside Expert or Consultant. Any information provided pursuant to this subsection, as appropriate, may itself be designated as Protected Material. During the pendency of this action, including all appeals, the Party seeking to disclose Protected Material shall immediately provide written notice of any change with respect to the Outside Expert or Consultant's involvement in the design, development, operation or patenting of imaging lenses, or the acquisition of intellectual property assets relating to imaging lenses.

(b) Within seven (7) business days of receipt of the disclosure of an Outside Expert or Consultant pursuant to Paragraph 12(a), a Producing Party may object in writing to the Outside Expert or Consultant for good cause, stating in that written objection the basis or bases for the objection. In the absence of an objection at the end of the seven (7) business day period, the Outside Expert or Consultant shall be deemed approved under this Order and may be provided access to Protected Materials starting on the eighth (8) business day after disclosure under Paragraph 12(a). There shall be no disclosure of Protected Material to the Outside Expert or Consultant prior to expiration of this seven (7) business day period. If the Producing Party objects to disclosure to the Outside Expert or Consultant within such seven (7) business day period, the Producing Party and the Party seeking to disclose the information shall meet and confer via telephone or in person within three (3) business days following the objection and attempt in good faith to resolve the dispute on an informal basis. If the dispute is not resolved, the Producing Party will have seven (7) business days from the date of the meet-and-confer to seek relief from the Court. If relief is not sought from the Court within that time, the objection shall be deemed withdrawn and the Outside expert or Consultant may immediately be provided access to Protected Material. If relief is sought, designated materials shall not be disclosed to the Outside Expert or Consultant in question until the Court resolves the objection or the dispute is otherwise resolved.

(c) Prior to receiving any Protected Material under this Order, the Outside Expert

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or Consultant must execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and serve it on all Parties.

(d) An initial failure to object to an Outside Expert or Consultant under this Paragraph 12 shall not preclude the non-objecting Producing Party from later objecting to continued access by that Outside Expert or Consultant for good cause. If a later written objection is made, the Producing Party and the Party seeking to continue to disclose the information shall meet and confer via telephone or in person within three (3) days following receipt of the written objection and attempt in good faith to resolve the dispute informally. If the dispute is not resolved, the Producing Party objecting to the disclosure will have seven (7) days from the date of the meet-and-confer to seek relief from the Court. The designated Outside Expert or Consultant may continue to have access to information that was provided to such Outside Expert or Consultant prior to the date of the objection. If a later objection is made, no further Protected Material shall be disclosed to the Outside Expert or Consultant until the Court resolves the matter or the Producing Party withdraws its objection. Notwithstanding the foregoing, if the Producing Party fails to seek relief from the Court within seven (7) business days after the meet-and-confer, further Protected Material may thereafter be provided to the Outside Expert or Consultant.

13. DISCOVERY CONCERNING NON-PARTIES

(a) The Parties recognize that, during the course of this action, non-parties may be called upon to produce “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE” Discovery Materials. In such a case, the non-party who produces such Discovery Material is considered to be a Producing Party, protected under this Order as though a signatory to it, and may use the procedures described herein to designate its Discovery Materials as Protected Material.

(b) A non-party’s use of this Order to designate Protected Material does not entitle

that non-party to access any other Protected Material produced by any Party or other non-party in this action.

14. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL

(a) There is no obligation to challenge the propriety of any designation of Discovery Material under this Order at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

(b) Any challenge to a designation of Discovery Material under this Order shall be written, shall be served on Outside Counsel for the Producing Party, shall particularly identify the documents or information that the Receiving Party contends should be differently designated, and shall state the grounds for the objection. Thereafter, further protection of such material shall be resolved in accordance with the following procedures:

(i) The Receiving Party shall have the burden of conferring either in person, in writing, or by telephone with the Producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute. The Producing Party must timely and reasonably respond to the Receiving Party, and the Producing Party shall have the burden of justifying the disputed designation;

(ii) Failing agreement, the Receiving Party may bring a motion to the Court for a ruling that the Discovery Material in question is not entitled to the status and protection of the Producing Party's designation. This Order shall not preclude or prejudice argument for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information;

(iii) Notwithstanding any challenge to a designation, the Discovery Material in question shall continue to be treated as designated under this Order until one of the following

occurs: (a) the Producing Party who designated the Discovery Material in question withdraws such designation in writing; or (b) the Court rules that the Discovery Material in question is not entitled to the designation;

(iv) No Receiving Party shall be obligated to challenge the propriety of any designation at any time, and failure to do so shall not constitute an admission that any item or information is in fact considered proprietary or confidential.

15. USE OF PROTECTED MATERIAL IN THIS LITIGATION

Nothing in this Order will bar counsel from rendering advice to their clients with respect to this litigation and, in the course thereof, relying upon any information designated as Protected Material, provided the contents of the information must not be disclosed.

16. SUBPOENAS OR COURT ORDERS

(a) If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL SOURCE CODE” that Party must:

i. promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

ii. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

iii. cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.¹

¹ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to protect its confidentiality interests in the court from which the subpoena or order issued.

(b) If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

17. PROSECUTION BAR MATERIALS AND PROSECUTION ACTIVITY

Any person who has reviewed any of an opposing party’s Prosecution Bar Material, as defined in Paragraph 2(h) of this Order, shall not, for a period commencing upon receipt of such information and ending one year following the conclusion of this case (including any appeals) engage in any Prosecution Activity, as defined in Paragraph 2(g) of this Order, on behalf of a party asserting or defending against an assertion of a patent in this case. For the avoidance of doubt, any attorney who has reviewed any of an opposing party’s Prosecution Bar Material, as defined in Paragraph 2(h) of this Order, may represent a party in a post-grant proceeding before the United States Patent and Trademark Office but may not advise, participate or assist in any motion to amend the claims at issue in the proceeding. Any such motion to amend may be handled by: (1) an attorney affiliated with the same law firm as is representing a party to this litigation as long as that attorney has not reviewed any of an opposing party’s Prosecution Bar Material, as defined in Paragraph 2(h) of this Order; or, (2) an attorney who is affiliated with a different law firm from those representing the parties in this litigation.

18. FILING PROTECTED MATERIAL

(a) Absent written permission from the Producing Party or a court order secured

after appropriate notice to all interested persons, a Receiving Party may not file or disclose in the public record any Protected Material.

(b) Any Party is authorized to file under seal with the Court any brief, document or materials that are designated as Protected Material under this Order. However, nothing in this section shall in any way limit or detract from this Order's requirements as to Source Code.

19. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL

(a) The inadvertent production by a Producing Party of Discovery Material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection will not waive the applicable privilege and/or protection if a request for return of such inadvertently produced Discovery Material is made promptly after the Producing Party learns of its inadvertent production.

(b) Upon a request from any Producing Party who has inadvertently produced Discovery Material that it believes is privileged and/or protected, each Receiving Party shall immediately return such Discovery Material and all copies thereof to the Producing Party, except for any pages containing privileged markings, information, summaries or derivations thereof made by the Receiving Party which shall instead be destroyed and certified as such by the Receiving Party to the Producing Party. Within seven (7) business days of requesting return of inadvertently produced Discovery Material, the Producing Party shall provide a privilege log identifying such inadvertently produced Discovery Material, including the particular relevant bases and facts upon which its assertion of privilege and/or other protection is claimed.

(c) No use shall be made of any inadvertently produced or disclosed Discovery Material during deposition, at trial, or otherwise. Nor shall any inadvertently produced or disclosed Discovery Material be shown to anyone who has not already been given access to them subsequent to the request that they be returned. The Receiving Party may move the Court for an order

compelling production of any inadvertently produced or disclosed Discovery Material within 14 days after the Producing Party requests its return. The motion shall not assert as a ground for production the fact of the inadvertent production or disclosure, nor shall the motion disclose or otherwise use the content of the inadvertently produced or disclosed Discovery Material (beyond any information appearing on the above-referenced privilege log) in any way in connection with any such motion.

20. INADVERTENT FAILURE TO DESIGNATE PROPERLY

(a) The inadvertent failure by a Producing Party to designate (or to properly designate) Discovery Material as Protected Material with one of the designations provided for under this Order shall not waive any such designation provided that the Producing Party notifies all Receiving Parties that such Discovery Material is protected under one of the categories of this Order within ten (10) business days of the Producing Party learning of the inadvertent failure. The Producing Party shall promptly reproduce the Protected Material with the proper designation. Upon receiving the Protected Material with the proper designation, the Receiving Parties shall return or securely destroy, and certify as such to the Producing Party, all Discovery Material that was identified as being not designated properly.

(b) A Receiving Party shall not be in breach of this Order for any use of improperly designated Discovery Material before the Receiving Party receives notice that such Discovery Material is protected under one of the confidentiality designations provided in this Order, or that the Discovery Material is entitled to a different designation than that originally represented. Once a Receiving Party has received notification of the correct designation for the Protected Material, the Receiving Party shall treat such Discovery Material (subject to the exception in Paragraph 20(c) below) at the appropriately designated level pursuant to the terms of this Order.

(c) Notwithstanding the above, a subsequent designation of “CONFIDENTIAL,”

“HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE” shall apply on a going forward basis.

21. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER

(a) In the event of a disclosure of any Discovery Material pursuant to this Order to any person or persons not authorized to receive such disclosure under this Order, the Party responsible for having made such disclosure, and each Party with knowledge thereof, shall immediately notify counsel for the Producing Party whose Discovery Material has been disclosed. The responsible disclosing Party shall also promptly take all reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

(b) Unauthorized or inadvertent disclosure does not change the status of Discovery Material or waive the right to hold the disclosed material as Protected.

22. FINAL DISPOSITION

(a) Within 60 days after the final disposition of this action, as defined in paragraph 5, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Outside Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing

transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in paragraph 5.

23. DISCOVERY FROM EXPERTS OR CONSULTANTS

(a) An Outside Expert or Consultant shall not be subject to discovery with respect to any draft of his/her report(s) in this action. Draft reports, notes, outlines for draft reports, or other written materials relating to the drafting of a report by the testifying expert and/or his or her staff are also exempt from discovery.

(b) Discovery of materials provided to testifying experts shall be governed by the provisions of Federal Rule of Civil Procedure 26. No conversations or communications between counsel and any Outside Expert or Consultant will be subject to discovery except for that permitted under Federal Rule of Civil Procedure 26(b)(4)(C).

(c) Materials, communications, and other information exempt from discovery under Paragraphs 23(a)–(b) shall be treated as attorney-work product for the purposes of this litigation and Order.

24. MISCELLANEOUS

(a) **Right to Further Relief**. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future. By stipulating to this Order, the Producing and Receiving Parties do not waive the right to argue that certain material may require additional or different confidentiality protections than those set forth herein. The provisions of this Order may not be modified, waived, or terminated except by the written stipulation of counsel or order of the Court.

(b) **Termination of Matter and Retention of Jurisdiction**. The Parties agree

that the terms of this Order shall survive and remain in effect after the Final Determination of this action. The Court shall retain jurisdiction after Final Determination of this matter to hear and resolve any disputes arising out of this Order.

(c) **Destruction Obligations.** Any destruction obligations under this Order shall not apply to electronically-stored information in archival form stored on backup tapes, computer servers, external hard drives, notebooks, personal computer hard drives, or other media that are created for disaster recovery purposes and not used as reference materials in the ordinary course of a Receiving Party's business operations.

(d) **Successors.** This Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

(e) **Right to Assert Other Objections.** By stipulating to the entry of this Order, no Producing Party waives any right it otherwise would have to object to disclosing or producing any information or item. Similarly, no Producing Party waives any right to object on any ground to use in evidence of any of the Discovery Material covered by this Order. This Order shall not constitute a waiver of the right of any Producing Party to claim in this action or otherwise that any Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in this action or any other proceeding. This Order does not address discovery objections nor preclude any Producing Party from moving for any relief cognizable under the Federal Rules of Civil Procedure or this Court's inherent power.

(f) **Burdens of Proof.** Notwithstanding anything to the contrary above, nothing in this Order shall be construed to change the burdens of proof or legal standards applicable in disputes regarding whether particular Discovery Material is confidential, which level of confidentiality is

appropriate, whether disclosure should be restricted, and if so, what restrictions should apply.

(g) **Modification by Court.** This Order is subject to further court order based upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the interests of justice. The United States District Court for Eastern District of Texas is responsible for the interpretation and enforcement of this Order. All disputes concerning Protected Material, however designated, that is produced under the protection of this Order shall be resolved by the United States District Court for the Eastern District of Texas.

(h) **Discovery Rules Remain Unchanged.** Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Eastern District of Texas, or the Court's own orders. Identification of any individual pursuant to this Order does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Eastern District of Texas, or the Court's own orders.

(i) **Interpretation.** Should the Producing Parties have any issues concerning the interpretation of this Order, before any Producing Party moves for this Court's assistance, they shall first endeavor to promptly meet and confer to resolve the dispute. The headings used in this Order are supplied for convenience only and shall not be taken into account in the interpretation of this Order.

(j) **No Probative Value.** The Order shall not aggregate or diminish any contractual, statutory or other legal obligation or right of any party or person with respect to any Protected Material. The fact that information is designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL SOURCE CODE" under this Order shall not be deemed to be determinative of what a trier of fact may determine to actually be "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – OUTSIDE
AGREED PROTECTIVE ORDER – PAGE 31

ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL SOURCE CODE." This Order shall be without prejudice to the right of any Party to bring before the Court questions regarding (a) whether any particular material is or is not properly designated or (b) whether any particular information or material is or is not entitled to a greater or lesser degree of protection under the terms of this Order, provided that in doing so, the Party complies with the procedures set forth herein. The fact that any information is disclosed, used, or produced in any court proceeding in this action shall not be offered in any action proceeding before any court, agency or tribunal as evidence of or concerning whether or not such information is admissible, confidential, or proprietary.

(k) **Notice.** All notices required by this Order are to be served via facsimile or email to the attorney(s) of record for each Party.

(l) **Sanctions.** This Order will be enforced by the sanctions set forth in Federal Rule of Civil Procedure 37(b) and any other sanctions as may be available to the Court, including the power to hold Parties or other violators of this Order in contempt. All other remedies available to any person injured by a violation of this Order are fully reserved.

IT IS SO ORDERED.

SIGNED this 24th day of March, 2020.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

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

LARGAN PRECISION CO., LTD.,

Plaintiff,

v.

ABILITY OPTO-ELECTRONICS
TECHNOLOGY CO., LTD.;
NEWMAX TECHNOLOGY CO., LTD.;
AND HP INC.

Defendants.

Case No. 4:19-cv-00696-ALM

JURY TRIAL DEMANDED

EXHIBIT A

AGREEMENT TO BE BOUND BY THE PROTECTIVE ORDER

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Largan Precision Co., Ltd., v. Ability Opto-Electronics Technology Co., Ltd., Newmax Technology Co., Ltd., and HP Inc.*, United States District Court, Eastern District of Texas, Sherman Division, Civil Action No. 4:19-cv-696. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the personal jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order, including any proceedings related to contempt of Court.

I will not disclose Discovery Materials marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE” to anyone other than persons specifically authorized by the Order, and I agree to return all such materials which come into my possession to counsel from whom I received such materials.

Name of individual: _____

Current Title/occupation: _____

Current Employer: _____

Employer Address: _____

Telephone Number: _____

Retained on Behalf of: _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

[Signature]