

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., and
HUAWEI TECHNOLOGIES USA, INC.,

Plaintiff(s)/Counterclaim
Defendants,

vs.

SAMSUNG ELECTRONICS CO., LTD,
SAMSUNG ELECTRONICS AMERICA,
INC.

Defendants / Counterclaim-
Plaintiffs

and

SAMSUNG RESEARCH AMERICA,

Defendant,

v.

HISILICON TECHNOLOGIES CO., LTD.,

Counterclaim-Defendant.

Case Number: 3:16-cv-2787-WHO
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under

1 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
2 will be applied when a party seeks permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
8 Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
10 as their support staff).

11 2.4 *Intentionally left blank.*

12 2.5 Designating Party: a Party or Non-Party that designates information or items that it
13 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
15 CODE”.

16 2.6 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner in which it is generated, stored, or maintained (including, among other things,
18 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
19 responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
21 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
22 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
23 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
24 of a Party’s competitor.

25 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
26 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
27 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
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1 restrictive means.

2 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
3 sensitive “Confidential Information or Items” representing computer code and associated
4 comments and revision histories, formulas, engineering specifications, or schematics that define or
5 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
6 of which to another Party or Non-Party would create a substantial risk of serious harm that could
7 not be avoided by less restrictive means.

8 2.10 House Counsel: attorneys who are employees of a party to this action. House
9 Counsel does not include Outside Counsel of Record or any other outside counsel.

10 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

12 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
13 action but are retained to represent or advise a party to this action and have appeared in this action
14 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

15 2.13 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

17 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
18 Material in this action.

19 2.15 Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
21 storing, or retrieving data in any form or medium) and their employees and subcontractors.

22 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
23 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
24 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

25 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
26 Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material
3 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
6 However, the protections conferred by this Stipulation and Order do not cover the following
7 information: (a) any information that is in the public domain at the time of disclosure to a
8 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
9 result of publication not involving a violation of this Order, including becoming part of the public
10 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
11 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
12 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
13 of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
24 Non-Party that designates information or items for protection under this Order must take care to
25 limit any such designation to specific material that qualifies under the appropriate standards. Mass,
26 indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly
27 unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or
28 retard the case development process or to impose unnecessary expenses and burdens on other

1 parties) expose the Designating Party to sanctions.

2 If it comes to a Designating Party's attention that information or items that it designated for
3 protection do not qualify for protection at all or do not qualify for the level of protection initially
4 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
5 mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
9 designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents, but
12 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
13 affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
14 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected
15 material.

16 A Party or Non-Party that makes original documents or materials available for inspection
17 need not designate them for protection until after the inspecting Party has indicated which material
18 it would like copied and produced. During the inspection and before the designation, all of the
19 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
21 copied and produced, the Producing Party must determine which documents, or portions thereof,
22 qualify for protection under this Order. Then, before producing the specified documents, the
23 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
25 CODE) to each page that contains Protected Material.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
27 Designating Party identify on the record, before the close of the deposition, hearing, or other
28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

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