

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IPA TECHNOLOGIES, INC.,

Plaintiff,

v.

AMAZON.COM, INC., and AMAZON
DIGITAL SERVICES, LLC,

Defendants.

No. 16-1266-RGA

IPA TECHNOLOGIES, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

No. 18-01-RGA

IPA TECHNOLOGIES, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

No. 18-318-RGA

PROTECTIVE ORDER

WHEREAS, Plaintiff IPA Technologies, Inc. (“IPA Technologies”) and Defendants Amazon.com Inc., Amazon Digital Services, LLC (together, “Amazon”), Microsoft Corporation (“Microsoft”), and Google, LLC (“Google”), hereafter referred to as “the Parties,” believe that

certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, there is a possibility that documents relevant to this proceeding may contain sensitive personal information that is protected under federal, state or foreign data protection laws or regulations, or other privacy obligations;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE” (or substantially similar designations) (“Designated Material”). The designation shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts and natively produced documents) for which such protection is sought. For deposition and hearing transcripts, the designation shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when

received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript. For natively produced Protected Material, the designation shall be placed in the filename of each such natively produced document.

2. With respect to Designated Material,¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any Designated Materials shall also be considered Designated Material and treated as such under this Order.

3. A designation of Protected Material (e.g., “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE”) may be made at any time. Inadvertent or unintentional production of documents, information or material that should have been Designated Material shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as Designated Material may request

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

destruction of that Protected Material by notifying the recipient(s) in writing, as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and provide replacement Protected Material that is properly designated within five (5) calendar days of that notice. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials. For clarity, this provision does not apply to privileged material, which is governed by Paragraph 15.

4. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 15 herein:

- a. outside counsel of record in this Action² for the Parties;
- b. employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
- c. up to two in-house counsel for the Parties who are members in good standing of at least one state bar, province or territory and have responsibility for making decisions dealing directly with the litigation of this Action and their paralegals. Prior to viewing “CONFIDENTIAL” materials, any in-house counsel resident outside the territorial United States shall sign the undertaking attached hereto as Appendix B;
- d. two employees of a Party who are assisting in-house counsel with the litigation of this Action.

² This “Action” means Case Nos. 1:16-cv-01266; 1:18-cv-00001; and 1:18-cv-00318.

e. outside consultants or experts³ (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action.⁴ Before access is given, the consultant or expert shall complete the undertaking attached as Appendix A hereto and the same shall be served upon any producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant. However, the producing Party may notify the receiving Party in writing that it objects to disclosure of Protected Material to a consultant or expert. The producing Party waives objection to disclosure of its Designated Material by a receiving Party to an identified outside consultant or expert of a receiving Party if the Producing Party provides no written objection within ten (10) days of service by a receiving Party of the Appendix A and current curriculum vitae of the identified outside consultant or expert. Such a waiver shall not preclude a Producing Party from raising an objection at a later time with respect to Protected Material if a party believes in good faith that newly disclosed or discovered

³ For any such person, the curriculum vitae shall identify his/her (i) current employer(s), (ii) each person or entity from whom s/he has received compensation or funding for work in his or her areas of expertise or to whom the s/he has provided professional services, including in connection with a litigation, at any time during the preceding five years; (iii) (by name and number of the case, filing date, and location of court) any litigation in connection with which s/he has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years; and (iv) and an identification of any patents or patent applications in which the technical advisor is identified as an inventor or applicant, is involved in prosecuting or maintaining, or has any pecuniary interest. If such consultant or expert believes any of this information is subject to a confidentiality obligation to a third-party, then the s/he should provide whatever information can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose Protected Material to the consultant or expert shall be available to meet and confer with the designating Party regarding any such engagement.

⁴ For avoidance of doubt, an independent expert or consultant retained (as opposed to employed) by a Party on another litigation would not be precluded under this section.

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