

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

WI-LAN INC.,	§	
	§	
Plaintiff,	§	
v.	§	
	§	Civil Action No. 2:08-CV-247 (TJW)
RESEARCH IN MOTION	§	
CORPORATION, RESEARCH IN	§	
MOTION LTD., MOTOROLA, INC.,	§	JURY TRIAL REQUESTED
UTSTARCOM, INC., LG ELECTRONICS	§	
MOBILECOMM U.S.A., AND LG	§	
ELECTRONICS, INC.,	§	
	§	
Defendants.	§	

JOINT MOTION FOR SUPPLEMENTAL PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26 (c) the parties respectfully move this Court to enter the Supplemental Protective Order attached to this Motion as Exhibit A. In support of this Motion, the parties present the Court the following:

1. Plaintiff Wi-LAN, Inc. (“Wi-LAN”) served a subpoena duces tecum issued by the United States District Court for the Southern District of California on non-party Qualcomm Incorporated, which supplies CDMA-2000 integrated circuits found in accused handset products made or sold by Defendants.
2. Non-party Qualcomm Incorporated has represented that at least some of the documents and the CDMA-2000 source code sought by the subpoena are competitively sensitive, proprietary trade secret and confidential such that they are not normally shared with any third party, including in-house attorneys or engineers of its customers who use its products, including Defendants;
3. Non-party Qualcomm Incorporated has requested additional provisions to protect

against misuse or disclosure of its sensitive proprietary information, and it has requested that the parties to the action voluntarily stipulate to the entry of a “Supplemental Protective Order” applicable to Non-party Qualcomm, attached as Exhibit A to this Motion.

As such, the parties respectfully move this Court to enter the Stipulated Protective Order attached as Exhibit A.

Dated: May 5, 2010

Respectfully submitted,

/s/ Sam Baxter

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**ATTORNEYS FOR DEFENDANT
MOTOROLA CORPORATION AND ON
BEHALF OF DEFENDANTS**

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

WI-LAN INC.,	§	
	§	
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MOBILECOMM U.S.A., AND LG	§	
ELECTRONICS, INC.,	§	
	§	
Defendants.	§	

**STIPULATION FOR SUPPLEMENTAL PROTECTIVE ORDER GOVERNING
DISCOVERY FROM NON-PARTY QUALCOMM IN THIS CASE**

WHEREAS, the Hon. T. John Ward, United States District Judge, entered a Protective Order to govern discovery in the above-referenced action on September 1, 2009; and

WHEREAS, Plaintiff Wi-LAN, Inc. served a subpoena duces tecum issued by the United States District Court for the Southern District of California on a non-party to this action, QUALCOMM INCORPORATED (“QUALCOMM”), which supplies CDMA 2000 integrated circuits found in some of the accused products made or sold by one or more of the Defendants in this action;

WHEREAS, Non-Party QUALCOMM represents that at least some of the documents and source code sought by the subpoena are competitively sensitive, proprietary trade secret and confidential such that they are not normally shared with any third party, including in-house attorneys or engineers of its customers who use its products;

WHEREAS, Non-Party QUALCOMM has requested additional provisions to protect against misuse or disclosure of its sensitive proprietary information, and it has requested that the Parties to the action voluntarily stipulate to the entry of an additional Protective Order (the

“Supplemental Protective Order”) applicable to Non-Party QUALCOMM as set forth below:

The Parties, by the signatures of counsel below, HEREBY STIPULATE AND AGREE that documents or source code that are produced or submitted by Non-Party QUALCOMM in connection with the above-captioned matter that are designated as “QUALCOMM - OUTSIDE ATTORNEYS EYES ONLY” and “QUALCOMM - OUTSIDE ATTORNEYS EYES ONLY – SOURCE CODE” shall be subject to the following restrictions:

A. Definitions

1. “Party”: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).
2. “Material”: all information, documents, testimony, and things produced, served, or otherwise provided in this action by non-parties.
3. “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” Material: information, documents, and things Non-Party QUALCOMM believes in good faith are not generally known to others, and that Non-Party QUALCOMM (i) would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law, or any other applicable privilege or right related to confidentiality or privacy.
4. “Source Code” includes human-readable programming language text that defines software, firmware (collectively “software source code”) and electronic hardware descriptions of application-specific integrated circuits or ASICs (“hardware source code”). Text files containing source code shall hereinafter be referred to as “source code files.” Software source code files include, but are not limited to files containing source code in “C”, “C++”, assembler, and digital signal processor (DSP) programming languages. Software source code files further include “.include files,” “make” files, “link” files, and other human-readable text files used in the generation and/or building of software directly executed on a microprocessor, micro-controller, or DSP. Hardware source code files include, but are not limited to files containing source code in VHDL, Verilog, or other RTL language.

5. “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”

Material: source code that Non-Party QUALCOMM believes in good faith is not generally known to others, and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and that Non-Party QUALCOMM (i) would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence.

6. “Receiving Party”: a Party that receives Material from Non-Party QUALCOMM.

7. “Designated Material”: Material that is designated “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY,” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” under this Order.

8. “Counsel of Record”: (i) outside counsel who appears on the pleadings as counsel for a Party, (ii) partners, principals, counsel, associates, employees and contract attorneys of such outside counsel to whom it is reasonably necessary to disclose the information for this litigation, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters, and/or (iii) independent legal translators retained to translate in connection with this action, or independent shorthand reporters retained to record and transcribe testimony in connection with this action.

9. “Outside Consultant”: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by Counsel of Record to serve as an expert witness, or as a litigation consultant in this action, and who is not a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of, or a non-litigation consultant of: 1) a Party, 2) a competitor of a Party, or 3) a competitor of Non-Party QUALCOMM.

10. “Professional Vendors”: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors who have been retained by Counsel of Record in this action, and

who are not current employees of a Party or of a competitor of a Party and who, at the time of retention, are not anticipated to become employees of: 1) a Party, 2) a competitor of a Party, or 3) a competitor of Non-Party QUALCOMM. This definition includes ESI vendors, professional jury or trial consultants retained in connection with this litigation retained by such consultants to assist them in their work. Professional vendors do not include consultants who fall within the definition of Outside Consultant.

B. Scope

11. The protections conferred by this Order cover not only Designated Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, or the Court's deadlines provided in the Docket Control Order and Discovery Order. Identification of any individual pursuant to this Supplemental Protective 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 Rules of Practice for Patent Cases before the Honorable T. John Ward, United States District Court for the Eastern District of Texas (cited as "P.R."), and the Court's deadlines provided in the Docket Control Order and Discovery Order.

C. Access To Designated Material

12. Access to "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" Material and "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE": Unless otherwise ordered by the Court or permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any information, document or thing designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" only to:

- a. Persons who appear on the face of Designated Material as an author, addressee or recipient thereof;
- b. Counsel of Record;

- c. Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this litigation, and who have, after the date of this Supplemental Protective Order, signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B;
- d. Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B;
- e. Court reporters and videographers employed in connection with this case; and
- f. Professional Vendors to whom disclosure is reasonably necessary for this litigation, and a representative of which has signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A.

13. Absent a court order or agreement of Non-Party QUALCOMM, Designated Material may not be disclosed to employees of a Receiving Party, including its-house attorneys and support staff.

14. Receiving Party may host “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” Material only on either 1) any system inside the firewall of a firm representing the Receiving Party, or 2) inside the system of a professional ESI Vendor retained by Counsel of Record of the Receiving Party. “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” Material also cannot be sent or transmitted to any person, location, or vendor outside of the United States except to Counsel of Record and Outside Consultants designated in subparagraph c above. To the extent that any “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY”

Material is transmitted from or to authorized recipients outside of the Receiving Party's Outside Counsel's office, or outside of the ESI Vendor's system, the transmission shall be by hand (and encrypted if in electronic format), by a secure transport carrier (e.g., Federal Express), or by encrypted electronic means.

15. Each person to whom Designated Material may be disclosed, and who is required to sign the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order" attached hereto as Exhibit A and, if applicable, the "Certification Of Consultant" attached hereto as Exhibit B, shall do so, prior to the time such Designated Material is disclosed to him or her. Counsel for the Receiving Party who makes any disclosure of Designated Material shall retain each original executed certificate and, upon written request, shall provide copies to counsel for Non-Party QUALCOMM at the termination of this action.

16. Absent written permission from Non-Party QUALCOMM, persons not permitted access to Designated Material under the terms of this Supplemental Protective Order shall not be present at depositions while Non-Party QUALCOMM's Designated Material is discussed or otherwise disclosed. Pre-trial and trial proceedings shall be conducted in a manner, subject to the supervision of the Court, to protect Designated Material from disclosure to persons not authorized to have access to such Material. Any Party intending to disclose or discuss Designated Material at pretrial or trial proceedings must give advance notice to assure the implementation of the terms of this Supplemental Protective Order.

D. Access By Outside Consultants

17. Notice. If a Receiving Party wishes to disclose Non-Party QUALCOMM's Designated Material to any Outside Consultant, such Receiving Party must provide notice to counsel for Non-Party QUALCOMM, which notice shall include: (a) the individual's name and business title; (b) business address; (c) business or profession; (d) the individual's CV; (e) any previous or current relationship (personal or professional) with any of the parties; (f) a list of other cases in which the individual has testified (at trial or deposition) within the last six years; (g) a list of all companies with which the individual has consulted or by which the individual has

been employed within the last four years and a brief description of the subject matter of the consultancy or employment; and (h) a signed copy of the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B.;

18. Objections. Non-Party QUALCOMM shall have five (5) business days from receipt of the notice specified in Paragraph 18 to object in writing to such disclosure (plus three (3) extra days if notice is given other than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5-day (plus 3-days, if appropriate) period, if no objection has been asserted, then Designated Material may be disclosed to the Outside Consultant pursuant to the terms of this Supplemental Protective Order. Any objection by Non-Party QUALCOMM must set forth in detail the grounds on which it is based. Should the Receiving Party disagree with the basis for the objection(s), the Receiving Party must first attempt to resolve the objection(s) informally with Non-Party QUALCOMM. If the informal efforts do not resolve the dispute within five (5) business days, the Receiving Party may file a motion requesting that the objection(s) be quashed after that five (5) day period has passed. Non-Party QUALCOMM shall have the burden of proof by a preponderance of the evidence on the issue of the sufficiency of the objection(s). Pending a ruling by the Court upon any such objection(s), the discovery material shall not be disclosed to the person objected to by Non-Party QUALCOMM.

E. Production of QUALCOMM - ATTORNEYS’ EYES ONLY – SOURCE CODE Material

19. Non-Party QUALCOMM’s source code:
- a. To the extent that Non-Party QUALCOMM makes source code available for inspection, Non-Party QUALCOMM shall make all relevant and properly requested source code available electronically and in text searchable form in a secure room at a secure facility selected by Non-Party QUALCOMM. All reasonable costs associated with the secure facility shall be paid by Plaintiff

Wi-LAN. Non-Party QUALCOMM shall make the source code available for inspection on a stand-alone, non-networked personal computer running a reasonably current version of the Microsoft Windows operating system (“Source Code Computer”). The Source Code Computer shall be configured to permit review of the source code through a password-protected account having read-only access. The Receiving Party may use appropriate tool software on the Source Code Computer, which shall be installed by Non-Party QUALCOMM, including at least one text editor like Visual Slick Edit that is capable of printing out source code with page and/or line numbers and at least one multi-file text search tool such as “grep.” Should it be necessary, other mutually agreed upon tools may be used. Licensed copies of other mutually agreed upon tool software shall be installed on the Source Code Computer by Non-Party QUALCOMM, and paid for by the Receiving Party.

- b. Non-Party QUALCOMM shall provide access to the Source Code Computer during the normal operating hours of the secure facility through the close of discovery, without waiver of a Party’s right to request access to the Source Code for the purposes of trial, including for pre-trial activities, in which case such request shall not be unreasonably denied by Non-Party Qualcomm.
- c. The Source Code Computer shall be equipped to print copies of the source code on watermarked pre-Bates numbered paper, which shall be provided by Non-Party QUALCOMM. Under no circumstances are original printouts of the source code to be made except for directly onto the watermarked and numbered sides of the paper provided by Non-Party QUALCOMM. Additionally, the Receiving Party shall not print any continuous block of source code that results in more than 30 printed pages, except the Receiving Party may request the printing of a continuous block of more than 30 pages, which request shall not be unreasonably denied by Non-Party QUALCOMM.

Counsel for Non-Party QUALCOMM will keep the original printouts, and shall provide copies of such original printouts to counsel for the Receiving Party within 48 hours of being notified that such original printouts have been made. Counsel for the Receiving Party may request up to 10 copies of each original printout of source code. No more than 10% or 500 pages of the total source code (not including copies of original printouts), whichever is greater, for any software release (or in the case of hardware source code, for any hardware product) may be in printed form at any one time, and all printed source code shall be logged by the Receiving Party as noted in paragraph h below. If necessary, the Receiving Party may request to print additional pages in excess of the 10% of the total source code or 500 pages (whichever is greater) of total source code for a software release, which request Non-Party QUALCOMM shall not unreasonably deny. No additional electronic copies of the source code shall be provided by Non-Party QUALCOMM. Hard copies of the source code also may not be converted into an electronic document, and may not be scanned using optical character recognition (“OCR”) technology.

- d. The Receiving Party is prohibited to bring outside electronic devices, including but not limited to laptops, floppy drives, zip drives, or other hardware into the secure room. Nor shall any cellular telephones, personal digital assistants (PDAs), Blackberries, cameras, voice recorders, Dictaphones, telephone jacks or other devices be permitted inside the secure room.
- e. If any individual inspecting Non-Party QUALCOMM’s source code seeks to take notes, all such notes will be taken on bound (spiral or other type of permanently bound) notebooks. No loose paper or other paper that can be used in a printer may be brought into the secure room.

- f. Where absolutely necessary or required by the Court, a Receiving Party may make further copies of original source code printouts in the form required to be included in pleadings filed under seal, to be included as exhibits in expert reports, or to be used as exhibits in depositions or at trial, where such pleadings, expert reports, and transcripts from such depositions or trial are designated “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”. In the event copies of source code printouts are used as exhibits in a deposition, the printouts shall not be provided to the court reporter other than to mark as an exhibit, and the further copies of the original source code printouts made for the deposition or trial shall be either destroyed or provided to counsel for Non-Party QUALCOMM at the conclusion of the deposition or trial.
- g. In addition to other reasonable steps to maintain the security and confidentiality of Non-Party QUALCOMM’s source code, printed copies of the source code maintained by the Receiving Party must be kept in a locked storage container when not being actively reviewed.
- h. The Receiving Party’s counsel shall keep a log that records the identity of each individual beyond Counsel of Record to whom each hard copy of the source code is provided and when it was provided to that person, and within thirty days after the issuance of a final, non-appealable decision resolving all issues in the case, the Receiving Party must serve upon Non-Party QUALCOMM the log. In addition, any Outside Consultants of the Receiving Party to whom the paper copies of the source code were provided must certify in writing that all copies of the source code were returned to the counsel who provided them the information and that they will make no use of the source code or of any knowledge gained from the source code in any future endeavor.

F. Financial Summaries

20. For the mutual convenience of the parties, Non-Party QUALCOMM may produce certain financial summaries for the purpose of this litigation. To the extent Non-Party QUALCOMM produces such financial summaries in a digital format (e.g., PDF, TIFF, Word, or Excel file), or to the extent a Receiving Party puts any such financial summary or the information from any such financial summary into a document in a digital format, the Receiving Party shall password protect that document on an encrypted media. To the extent that any such financial summaries are transmitted from or to authorized recipients outside of the Receiving Party's Outside Counsel's office, the transmission shall be by hand, by a secure transport carrier (e.g., Federal Express), or by encrypted electronic means.

G. Prosecution and Development Bar

21. Unless otherwise permitted in writing between Non-Party QUALCOMM and a Receiving Party, any individual who personally receives, other than on behalf of Non-Party QUALCOMM, any material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" shall not participate in amending or drafting patent specifications or claims other than for ministerial purposes (e.g., signing transmittal forms, oath and declaration, etc.) before a Patent Office of any patent or patent application relating to technology implementing the CDMA 2000 standard (including EVDO Rev-A), from the time of receipt of such material through and including the first to occur of (i) the complete resolution of this case through entry of a final non-appealable judgment or order for which appeal has been exhausted and completion of the requirements of paragraph 38, *infra*; (ii) the complete settlement of all claims in this action and completion of the requirements of paragraph 38, *infra*; (iii) the individual person(s) cease to represent the Receiving Party or respective client in this case; or (iv) the individual person(s) cease to have access to materials designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE." This provision shall not apply to post-grant adversarial proceedings, including reexamination or opposition proceedings filed in relation to the patents-in-suit or foreign counterparts.

22. Unless otherwise permitted in writing between Non-Party QUALCOMM and a Receiving Party, any expert consultant retained on behalf of Receiving Party who is to be given access to Non-Party QUALCOMM's documents or source code designated as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" must agree in writing not to perform hardware or software development work or product development work intended for commercial purposes relating to technology implementing the CDMA 2000 standard (including EVDO Rev-A), from the first time of receipt of such material through and including the first to occur of (i) the date the expert consultant ceases to represent the Receiving Party or respective client in this case or (ii) the date the expert consultant ceases to have access to any material designated "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" or "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE."

H. Use Of Designated Material

23. Use Of Designated Material By Receiving Party. Unless otherwise ordered by the Court, or agreed to in writing by Non-Party QUALCOMM, all Designated Material, and all information derived therefrom, shall be used by the Receiving Party only for purposes of this litigation and the related litigations *Wi-LAN Inc. v. Acer*, No. 07-CV-0473 (TJW) (E.D. Tex.) and *Wi-LAN Inc. v. Westell Technologies*, No. 07-CV-0474 (TJW) (E.D. Tex.) (conditioned on entry of an order in the related litigations that Qualcomm Designated Material is subject to this Supplemental Protective Order), and shall not be used in any other way, or for any other purpose, including the acquisition, preparation or prosecution before the Patent Office of any patent, patent application, for drafting or revising patent claims, or in connection with patent licensing or product development work directly or indirectly intended for commercial purposes relating to wireless or RF communications, or DSL technology. Information contained or reflected in Designated Materials shall not be disclosed in conversations, presentations by parties or counsel, in court or in other settings that might reveal Designated Material, except in accordance with the terms of this Order.

24. Use Of Designated Material By Non-Party QUALCOMM. Nothing in this Order shall limit Non-Party QUALCOMM's use of its own documents and information, nor shall it prevent Non-Party QUALCOMM from disclosing its own confidential information, documents or things to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Order, so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

25. Use of Designated Material at Depositions. Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and trial, and may testify concerning all Designated Material of which such person has prior knowledge, without in any way limiting the generality of the following

- a. A witness testifying on behalf of Non-Party QUALCOMM pursuant to a subpoena may be examined concerning all Designated Material that has been produced by Non-Party QUALCOMM; and
- b. A former director, officer, agent and/or employee of Non-Party QUALCOMM may be interviewed, examined and may testify concerning all Designated Material of which he or she has prior knowledge, including any Designated Material that refers to matters of which the witness has personal knowledge, that has been produced by Non-Party QUALCOMM and that pertains to the period or periods of his or her employment.

I. Procedure for Designating Materials

26. Subject to the limitations set forth in this Order, Non-Party QUALCOMM may: designate as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY" information that it believes, in good faith, meets the definition set forth in Paragraph 3 above; and designate as "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" information that it believes, in good faith, meets the definition set forth in Paragraph 5 above.

27. Except as provided above in Section E with respect to "QUALCOMM - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" Material, any material (including

physical objects) made available for initial inspection by counsel for the Receiving Party by a Non-Party QUALCOMM prior to producing copies of selected items shall initially be considered, as a whole, to constitute “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” information, and shall be subject to this Order. Thereafter, Non-Party QUALCOMM shall have ten (10) calendar days from the inspection to review and designate the appropriate documents as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” prior to furnishing copies to the Receiving Party.

28. Designation in conformity with this Order shall be made as follows:
 - a. For information in documentary form (apart from transcripts of depositions, or other pretrial or trial proceedings), Non-Party QUALCOMM shall affix the legend “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” on each page that contains Designated Material.
 - b. For testimony given in deposition, or in other pretrial or trial proceedings, Non-Party QUALCOMM shall specify any portions of the testimony that it wishes to designate as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY”, or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.” In the case of depositions, Non-Party QUALCOMM may also designate any portion of a deposition transcript as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY”, and/or “QUALCOMM OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” by informing the reporter, and the Parties, in writing within thirty (30) calendar days of completion of the deposition of the designations to be applied. All deposition transcripts not marked at least “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” during the deposition will nonetheless be treated as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” until the thirty (30) day period has expired. Transcript pages containing Designated Material must be separately bound by the court reporter, who must affix to the top of each such page the

legend “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” and/or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” as instructed by Non-Party QUALCOMM.

- c. For information produced in some form other than documentary, and for any other tangible items, Non-Party QUALCOMM shall affix in a prominent place on the exterior of the container or containers in which the information or thing is stored the legend “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”.
- d. The provisions of subparagraphs 28(a)-(c) do not apply to documents produced in native format. For documents produced in native format, the parties shall provide written notice to the Receiving Party of any confidentiality designations at the time of production.

J. No Waiver of Privilege

29. Subject to the provisions of Federal Rule of Evidence 502, inspection or production of documents (including physical objects) shall not constitute a waiver of the attorney-client privilege, work product immunity, or any other applicable privilege or immunity, if, after Non-Party QUALCOMM becomes aware of any such disclosure, Non-Party QUALCOMM designates any such documents as within the attorney-client privilege, work product immunity or any other applicable privilege or immunity, and requests in writing return of such documents to Non-Party QUALCOMM. Upon request by Non-Party QUALCOMM, the Receiving Party shall immediately retrieve and return all copies of such document(s). Nothing herein shall prevent the Receiving Party from challenging the propriety of the attorney-client privilege, work product immunity or other applicable privilege or immunity designation by submitting a written challenge to the Court; provided, however, that such challenge shall not assert as a ground for challenge the fact of the initial production or inspection of the documents later designated as attorney-client privileged, work product, or subject to another applicable

privilege or immunity.

K. Inadvertent Failure To Designate

30. An inadvertent failure to designate qualified information, documents or things as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” does not, standing alone, waive Non-Party QUALCOMM’s right to secure protection under this Order for such material. Upon discovery of an inadvertent failure to designate, Non-Party QUALCOMM may notify the Receiving Party in writing that the material is to be designated as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”. Upon receipt of such notice, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the terms of this Order, subject to the right to challenge the propriety of such designation(s). Non-Party QUALCOMM shall provide substitute copies of documents bearing the confidentiality designation.

L. Filing Designated Material

31. Without written permission from Non-Party QUALCOMM or a Court Order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Designated Material, but must file such Designated Material under seal in conformance with the Court’s rules and procedures. Material filed under seal shall bear the title of this matter, an indication of the nature of the contents of such sealed filing, the words “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”, as appropriate, and a statement substantially in the following form:

This filing contains confidential information filed in this case by QUALCOMM Incorporated and its contents shall not be displayed or revealed except by order of the Court presiding over this matter.

M. Challenges to Confidentiality Designations

32. Non-Party QUALCOMM will use reasonable care when designating documents

or information as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”. Nothing in this Order shall prevent a Receiving Party from contending that any or all documents or information designated as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” have been improperly designated. A Receiving Party may, at any time, request that Non-Party QUALCOMM cancel or modify the confidentiality designation with respect to any document or information contained therein.

33. A Receiving Party shall not be obligated to challenge the propriety of a “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” designation at the time made, and the failure to do so shall not preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on counsel for Non-Party QUALCOMM, and shall identify particularly the documents or information that the Receiving Party contends should be differently designated. The parties shall use their best efforts to resolve promptly and informally such disputes in accordance with all applicable rules. If agreement cannot be reached, the Receiving Party shall request that the Court cancel or modify a “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” designation.

N. Protected Material Subpoenaed or Ordered Produced In Other Litigation

34. If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any information, documents or things designated in this action as “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”, the Receiving Party must so notify Non-Party QUALCOMM, in writing (by fax and email) promptly, and in no event more than ten (10) calendar days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. The Receiving Party also must immediately inform, in writing, the party who caused the subpoena or order to issue that some or all of the material covered by the subpoena or

order is subject to this Supplemental Protective Order. In addition, the Receiving Party must deliver a copy of this Supplemental Protective Order promptly to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Supplemental Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. Non-Party QUALCOMM shall bear the burdens and the expenses of seeking protection in that court of its Designated Material. 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.

O. Unauthorized Disclosure Of Designated Material

35. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Designated Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing Non-Party QUALCOMM of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Designated Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A. Nothing in these provisions should be construed as limiting Non-Party QUALCOMM’s right to seek remedies for a violation of this Order.

P. Duration

36. Even after the termination of this action, the confidentiality obligations imposed by this Order shall remain in effect until Non-Party QUALCOMM agrees otherwise in writing or a court order otherwise directs.

Q. Final Disposition

37. Unless otherwise ordered or agreed in writing by Non-Party QUALCOMM, within sixty (60) days of the termination of all of this action, whether through settlement or final judgment (including any and all appeals therefrom), each Receiving Party, including outside

counsel for each Receiving Party, will destroy all Material designated “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” produced by Non-Party QUALCOMM in this action, as well as all work product, pleadings, motion papers, legal memoranda, correspondence, trial transcripts and trial exhibits admitted into evidence containing information from Non-Party QUALCOMM’s Designated Material (“derivations”) and all copies thereof, with the exception of copies stored on back up tapes or other disaster recovery media. Within sixty (60) days of the date of settlement or final judgment, each Receiving Party shall serve Non-Party QUALCOMM with a certification stating that it, including its outside counsel, has complied with its obligations under this paragraph. With respect to any copy of Material of Non-Party QUALCOMM or derivation thereof that remains on back-up tapes and other disaster storage media of a Receiving Party, neither the Receiving Party nor its consultants, experts, counsel or other party acting on its behalf shall make copies of any such information available to any person for any purpose other than backup or disaster recovery unless compelled by law and, in that event, only after thirty (30) days prior notice to Non-Party QUALCOMM or such shorter period as required by court order, subpoena, or applicable law.

R. Miscellaneous

38. Any of the notice requirements herein may be waived, in whole or in part, but only by a writing signed by the Counsel of Record for the Party or Non-Party QUALCOMM against whom such waiver will be effective.

39. This Order is entered without prejudice to the right of any Party or Non-Party QUALCOMM to apply to the Court at any time for modification of this Order, when convenience or necessity requires. Nothing in this Order abridges the right of any person to seek to assert other objections. No Party or Non-Party QUALCOMM waives any right it otherwise would have to object to disclosing or producing any information, documents, or things on any ground not addressed in this Supplemental Protective Order. Similarly, no Party or Non-Party QUALCOMM waives any right to object on any ground to the use in evidence of any of the

material covered by this Supplemental Protective Order. The Court shall take appropriate measures to protect Designated Material at trial and any hearing in this case.

40. This Order shall not diminish any existing obligation or right with respect to Designated Material, nor shall it prevent a disclosure to which Non-Party QUALCOMM consents in writing before the disclosure takes place.

41. The United States District Court for the Eastern District of Texas, Marshall Division, is responsible for the interpretation and enforcement of this Supplemental Protective Order. All disputes concerning Designated Material produced under the protection of this Supplemental Protective Order shall be resolved by the United States District Court for the Eastern District of Texas, Marshall Division. Every individual who receives any Designated Material agrees to subject himself or herself to the jurisdiction of this Court for the purpose of any proceedings related to performance under, compliance with, or violation of this Order.

Dated: May 5, 2010

Respectfully submitted,

/s/ Sam Baxter

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**ATTORNEYS FOR NON-PARTY
QUALCOMM INCORPORATED**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
BY SUPPLEMENTAL PROTECTIVE ORDER GOVERNING
DISCOVERY FROM NON-PARTY QUALCOMM IN THIS CASE**

I, _____ [print or type full name], state: My
business address is _____;

1. My present employer is _____;

2. My present occupation or job description is _____;

3. I have been informed of and have reviewed the Supplemental Protective Order Governing Discovery From Non-Party QUALCOMM In This Case (“Supplemental Protective Order) entered in this case, and understand and agree to abide by its terms. I agree to keep confidential all information provided to me in the matter of Wi-LAN Inc. v. Research in Motion Corporation, et al., Civil Action No. 2:08-CV-247 (TJW) in the United States District Court for the Eastern District of Texas, Marshall Division, in accordance with the restrictions in the Supplemental Protective Order, and to be subject to the authority of that Court in the event of any violation or dispute related to this Supplemental Protective Order.

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

Executed on _____.

[Printed name]

[Signature]

EXHIBIT B

**CERTIFICATION OF CONSULTANT RE
SUPPLEMENTAL PROTECTIVE ORDER GOVERNING
DISCOVERY FROM NON-PARTY QUALCOMM IN THIS CASE**

I, _____ [print or type full name], of
_____ am not an employee of the Party who retained me
or of a competitor of any Party or Non-Party QUALCOMM and will not use any information,
documents, or things that are subject to the Supplemental Protective Order Governing Discovery
From Non-Party QUALCOMM In This Case in the matter of Wi-LAN Inc. v. Research in Motion
Corporation, et al., Civil Action No. 2:08-CV-247 (TJW) (E.D. Tex.) for any purpose other than this
litigation and the related litigations Wi-LAN Inc. v. Acer, No. 07-CV-0473 (TJW) (E.D. Tex.) and
Wi-LAN Inc. v. Westell Technologies, No. 07-CV-0474 (TJW) (E.D. Tex.). I agree not to perform
hardware or software development work or product development work intended for commercial
purposes relating to technology implementing the CDMA 2000 standard (including EVDO Rev-
A), from the time of receipt of such material through and including the first to occur of: (i) the date
that I cease to represent the Party who retained me; or (ii) the date that I cease to have access to any
material designated “QUALCOMM - OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM
- OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.”

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

Executed on _____.

[Printed name]

[Signature]