

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

BELL NORTHERN RESEARCH, LLC,

Plaintiff,

v.

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

Defendants.

Civil Action No. 2:19-CV-00286-JRG

JURY TRIAL DEMANDED

**COVID-19 ADDENDUM TO THE STIPULATED SUPPLEMENTAL PROTECTIVE
ORDER BETWEEN NON-PARTY QUALCOMM INCORPORATED, PLAINTIFF, AND
DEFENDANTS**

WHEREAS, Plaintiff Bell Northern Research, LLC; and Defendants Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., hereafter referred to as “the Parties,”; and non-party Qualcomm Incorporated (“Non-Party Qualcomm”); have worked together to reconcile the needs of this case with the exigencies of the ongoing public health emergency;

WHEREAS, the Parties have concurrently moved for entry of the Stipulated Supplemental Protective Order Between Non-Party Qualcomm Incorporated, Plaintiff, and the Defendants (the “Qualcomm SPO”);

WHEREAS, the outbreak of the novel coronavirus (COVID-19) has been declared a global pandemic by the World Health Organization, and the Centers for Disease Control and Prevention has described the outbreak of COVID-19 in the United States as a “rapidly evolving situation” and has recommended social distancing to limit further community spread of COVID-19;

WHEREAS, in response to the COVID-19 pandemic, virtually every state, including California, has issued a “shelter-in-place” or “stay-at-home” orders to limit the spread of the

disease, which vary in scope and duration but generally require businesses not considered “essential” to close their physical offices and continue their operations remotely;

WHEREAS, in addition to these orders and advisories, numerous state and federal courts, including the U.S. District Court for the Eastern District of Texas, Marshall Division, have issued Orders restricting or preventing public access to courthouses given the severity of risk to persons by the spread of COVID-19;

WHEREAS, this Court’s Standing Order Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present Covid-19 Pandemic, issued April 20, 2020 (“Pandemic Standing Order”), recognizes that: “[t]rying to keep cases moving forward while prioritizing the health of individuals” may require “unconventional practices and accommodations that would not normally be accepted as appropriate,” such as “the production of computer source code that are not consistent with the producing party’s normal security protocols” (¶2); to encourage parties “to be willing to make special accommodations during the health emergency,” that “those special accommodations will not be used against them in the future” (¶ 3); and that with respect to source code production the “the use of . . . temporary code- review procedures during the pandemic will not be citable as evidence of appropriate code-review procedures after the pandemic,” and that “[a]fter the pandemic, parties producing source code can return to advocating all their normal security protocols” (¶20 (emphasis in original));

WHEREAS, Section VI of the Qualcomm SPO sets forth the procedures for the production and review of Non-Party Qualcomm’s source code, including that Qualcomm source code produced by Non-Party Qualcomm shall be made available for review at a “secure facility selected by Non-Party QUALCOMM”;

WHEREAS, pursuant to the Qualcomm SPO, Non-Party Qualcomm has made Qualcomm source code available for review, just as it has for years in numerous other cases venued in this District, at its dedicated source code review facility in Los Angeles, California;

WHEREAS, Non-Party Qualcomm's dedicated source code review facility has become temporarily unavailable because of public health orders and advisories relating to Covid-19;

WHEREAS, solely in this period of national—and international—public health emergency, Non-Party Qualcomm has developed, as a special accommodation, a temporary alternative to the standard inspection protocols used at the Qualcomm dedicated source code discovery facility, said alternative includes using a dedicated, specially-configured source code discovery laptops (“Remote Review Laptop”) which can be shipped to reviewers who are sheltering in place, and enable the recipient of each such Remote Review Laptop to review code in an environment designed to approximate the security precautions that have become a longtime standard at the Qualcomm dedicated source code discovery facility, to allow discovery of source code in this action to continue while the public health restrictions are in place;

WHEREAS, Non-Party Qualcomm has limited resources to support concurrent remote source code reviews and faces competing demands for such remote reviews in other cases, such that Qualcomm will need to allocate remote review reservation slots on a first-come first served basis; and

WHEREAS, to encourage Non-Party Qualcomm to diverge from its standard security protocols and to make these special accommodations, to which Non-Party Qualcomm would not otherwise agree, the Parties acknowledge the exceptional exigencies presented by the international health emergency and will not later argue that Non-Party Qualcomm's accommodations during this emergency constitute a proper approach in any other circumstances;

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

1. This COVID-19 Addendum to the Qualcomm SPO shall be effective immediately upon entry and shall continue in effect until the close of expert discovery in this case (currently October 23, 2020), unless extended by agreement between the Parties and Non-Party Qualcomm or further order of the Court. Except as modified herein, all other provisions of the Qualcomm SPO shall remain in full force and effect.

2. Defined terms in this Addendum shall have the meaning established in the Qualcomm SPO filed concurrently with this Addendum.

3. Notwithstanding anything to the contrary in the Qualcomm SPO:

(a) Any Remote Review Laptop made available by Non-Party Qualcomm and assigned to an individual Authorized Reviewer may be used by that Authorized Reviewer as follows:

(i) The Remote Review Laptop assigned to an individual Authorized Reviewer must, at all times, be kept within a locked safe or a locked room (including a secure closet) within the office or home of the Authorized Reviewers when not in use;

(ii) Any Authorized Reviewer who is to receive a Remote Review Laptop shall, prior to receipt thereof, provide a description of how the Remote Review Laptop will be connected to the Internet for purposes of connecting to Non-Party Qualcomm's VPN, a 360-degree video of the location at which such computer shall be used for reviewing ("Source Code Review Room"), as well as the location at which such computer shall be stored when not being used for reviewing ("Laptop Storage Location"), for the sole purposes of ensuring compliance with the requirements of this Addendum, and a copy of an Authorized Reviewer's government issued picture ID card as well as a current photo of the Authorized Reviewer;

(iii) Any Authorized Reviewer who is to receive a Remote Review Laptop shall further participate in a video identification verification in which they will present over video a government issued picture ID card and provide any other information needed by Non-Party Qualcomm necessary to assign a dedicated account for Non-Party Qualcomm's VPN network to the Authorized Reviewer, after which the Authorized Reviewer will be provided with credentials which only that Authorized Reviewer may use to log on to the Remote Review Laptop, to Non-

Party Qualcomm's VPN network, and to access the appropriate source code for this case;

(iv) No one other than the Authorized Reviewer who receives a Remote Review Laptop may use or log on to that Remote Review Laptop, and an Authorized Reviewer who receives credentials under this Addendum from Non-Party Qualcomm may not share those credentials with any other person;

(v) No recordable media or recordable devices, including without limitation sound recorders, computers, cell phones, smart watches, peripheral equipment, cameras, devices containing unobstructed cameras (e.g., webcams, unless entirely shielded with an opaque material), CDs, DVDs, or drives of any kind, may be in the Source Code Review Room when the Remote Review Laptop is powered on, and Non-Party Qualcomm reserves the right to conduct logging and monitoring for purposes of maintaining the defense of Non-Party Qualcomm's network, but not for tracking authorized activity of the reviewer;

(vi) The Remote Review Laptop provided by Non-Party Qualcomm shall include a built-in webcam located above the screen of the Remote Review Laptop and enabled during any review session to allow Non-Party Qualcomm to visually monitor the activities of the Authorized Reviewer during any Source Code review, but only to ensure that no unauthorized records of the Source Code are being created or transmitted in any way and no one other than the Authorized Reviewer is in the room, and Non-Party Qualcomm reserves the right to terminate a review session in the event of an apparent violation of this Addendum;

(vii) While any Remote Review Laptop is in use, its screen shall be positioned in such a way that it is not visible from any external window of the room in which it is stored, or such window shall be covered with blinds, shades, or a similar covering;

(viii) At least twenty-four hours prior to each review session using the Remote Review Laptop by an Authorized Reviewer who has already been assigned credentials as described in section 3.(a)(iii) above, the assigned Authorized Reviewer for that laptop shall request a reservation for a review session from Non-Party Qualcomm via email at <COVID-19-Review-Request@qualcomm.com>, including the date, time, and estimated duration (within reasonable COVID-19-adjusted business hours to be set by Non-Party Qualcomm), which reservation Non-Party Qualcomm will confirm or reject based on availability of resources;

(ix) At the beginning of each review session, the Authorized Reviewer shall activate the webcam described in the previous paragraphs and participate in a video identification verification session using a government issued picture ID card to enable verification as the Authorized Reviewer for the subject source code, after which the webcam will be enabled and used for video-only (*i.e.*, without audio) monitoring and recording of the review session by Non-Party Qualcomm;

(x) During the review session, the Authorized Reviewer shall not disable or obscure the field of view of the webcam on the Remote Review Laptop;

(xi) During the review session and at all other times, the Authorized Reviewer shall not copy, remove, or otherwise transfer any Source Code from the Remote Review Laptop including, without limitation, copying, removing, transferring, or otherwise capturing (through video, photo, or any other means) the Source Code onto any recordable media or recordable device;

(xii) The Remote Review Laptop must be turned off when not in active use;

(xiii) Upon completing each source code review session, the Authorized Reviewer shall turn off the Remote Review Laptop and immediately notify Non-Party Qualcomm via email at <COVID-19-Review-Request@qualcomm.com>, that they are ending the review session and may deactivate the webcam described in subparagraph (iii);

(xiv) The Remote Review Laptop shall not be connected to a printer in any way; however, Authorized Reviewers will be able to designate source code for printing, and the parties will be able to obtain printouts, in the same manner as if the review were taking place at the Qualcomm dedicated source code review facility pursuant to the terms of the Qualcomm SPO;

(xv) The Reviewing Party may not install software or take notes on, or otherwise alter the configuration of the Remote Review Laptop in any way without written authorization from Non-Party Qualcomm;

(b) Any Remote Review Laptop made available by Non-Party Qualcomm may

be transported as follows:

(i) Via hand carry, Federal Express, or other similarly reliable courier by Non-Party Qualcomm to the address of the Source Code Review Room, wherein the recipient of the Remote Review Laptop shall retain any shipping container and/or packing materials to use in returning the Remote Review Laptop; and

(ii) Remote Review Laptops may not be removed from the Source Code Review Room or safe Laptop Storage Location, except to be returned to Non-Party Qualcomm via hand carry, Federal Express, or other similarly reliable courier, after providing notice to Non-Party Qualcomm of the intended shipment and receiving confirmation from Non-Party Qualcomm that such shipment can be securely received.

(c) Authorized Reviewers who are provided with a Remote Review Laptop

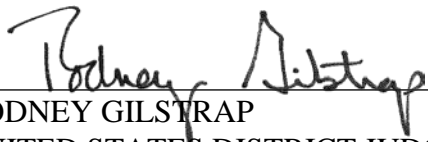
under the terms of this Addendum shall, pursuant to the procedures in Paragraph 3(b)(ii)

above, use the shipping container and/or packing materials in which the Remote Review Laptop was received to return the Remote Review Laptop to Non-Party Qualcomm immediately following the completion of their review, but in no event later than 14 days after delivery of the Remote Review Laptop. The Parties may make a request for an Authorized Reviewer to be allowed to maintain possession of a Remote Review Laptop for longer than 14 days and such request will not be unreasonably denied by Non-Party Qualcomm.

(d) Each Authorized Reviewer shall sign a copy of this Addendum acknowledging agreement to be bound to the conditions hereof.

IT IS ORDERED THAT: The operative provisions of the above Stipulation (beginning on page 4 hereof and following) are Accepted and Adopted by the Court, and shall be binding upon and enforced between the parties and all persons subject hereto; while the introductory (non-operative) recitals prior to page 4 are not adopted by the Court, but remain herein as an expression of the parties' respective views and agreements.

So ORDERED and SIGNED this 30th day of July, 2020.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

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

BELL NORTHERN RESEACH LLC,

Plaintiff,

v.

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

Defendants.

Civil Action No. 2:19-CV-00286-JRG

**AGREEMENT TO BE BOUND BY ADDENDUM TO THE STIPULATED
SUPPLEMENTAL PROTECTIVE ORDER BETWEEN NON-PARTY QUALCOMM
INCORPORATED, PLAINTIFFS, AND DEFENDANTS**

I, _____, have reviewed the Covid-19 Addendum to the Stipulated Supplemental Protective Order Between Non-Party Qualcomm Incorporated, Plaintiff, and Defendants, and hereby agree to be bound by the conditions thereof.

[SIGNATURE]

Address:

Date: