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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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CORE OPTICAL TECHNOLOGIES, LLC,	No. 8:19-cv-02190 JAK (RAOx)
Plaintiff,	**ORDER RE JOINT MOTION FOR ENTRY OF SUPPLEMENTAL PROTECTIVE ORDER RE SOURCE CODE (DKT. 72)**
v.	
NOKIA CORPORATION and NOKIA OF AMERICA CORPORATION,	
Defendants.	

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Based on a review of the parties' Joint Motion for Entry of Supplemental Protective Order Re Source Code (the "Motion" (Dkt. 72)), sufficient good cause has been shown for the requested relief. Thus, the Motion is **GRANTED**. For the Proposed Material designated "HIGHLY CONFIDENTIAL – SOURCE CODE," the following additional restrictions apply and supersede Section 5 of the Court's Standing Protective Order for Patent Cases:

(a) Access to a Party's Source Code Material shall be provided on two "stand-alone computers" (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet). The stand-alone computers may be (i) connected to a printer, or (ii) include a print driver capable of printing electronic copies for temporary storage on the

stand-alone computers for subsequent printing by the Producing Party for the limited purposes permitted pursuant to paragraphs (h) and (l) below. Additionally, the stand-alone computers shall be located at the Silicon Valley offices of the Producing Party's outside counsel, Alston & Bird. The Receiving Party shall be entitled to take notes (electronic or non-electronic) relating to the Source Code but may not copy the Source Code into such notes. To the extent the Receiving Party desires to take notes electronically, the Producing Party shall provide a note-taking computer (e.g., a computer, which is distinct from the standalone computer, that is not linked to any network, including a local area network ("LAN"), an intranet or the Internet, and has image making functionality of any type disabled, including but not limited to camera or video functionality) ("note-taking computer") with a current, widely used word processing program in the Source Code review room for the Receiving Party's use in taking such notes. The "note-taking computer" shall be used for the sole purpose of note-taking and shall be retained by the Producing Party. Such notes shall be downloaded to a removable disk or drive for the Receiving Party to retain, and the computer cleared of such notes. The laptop computer shall have no features which would hinder the complete clearing of the Receiving Party's notes after such notes have been downloaded. Any such notes shall not include copies or reproductions of portions of the Source Code; however, the notes may contain filenames, directory names, module names, class names, parameter names, variable names, function names, method names, or procedure names. An individual inspecting Source Code may not otherwise take into the Source Code review room any device with network or recording functionality or a camera.

(b) The Receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computers to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 6:00

p.m. However, upon reasonable notice from the Receiving Party, the Producing Party shall make reasonable efforts to accommodate the Receiving Party's request for access to the stand-alone computers outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the Producing Party's Source Code Material at the offices of its outside counsel shall not unreasonably hinder the Receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this action. The Producing Party shall use reasonable efforts to make the Source Code available during the Covid-19 pandemic. If an office is otherwise closed or access restricted due to Covid-19 guidelines, or government health restrictions, then the Parties shall in good faith identify another mutually convenient California office of Alston & Bird for the stand-alone computers. The computers containing Source Code will be made available for inspection, upon reasonable notice to the Producing Party, which generally shall not be less than two (2) business days in advance of the requested inspection. However, the Receiving Party shall provide at least five (5) business days' notice prior to first requesting to review the Source Code material. Each time a person accesses the Source Code, the person shall sign a sign-in sheet prior to, and a sign-out sheet subsequent to, accessing the Source Code including the name of the person accessing, the date and time in and out, and whether any hard copies were requested.

(c) The Producing Party shall provide the Receiving Party with information explaining how to start, log on to, and operate the stand-alone computers in order to access and search the produced Source Code Material on the stand-alone computers;

(d) The Producing Party will produce Source Code Material in native, computer searchable format on the stand-alone computers as described above. Computer searchable format means electronic files containing native text not

produced through any process involving optical character recognition. The Producing Party shall install tools that are sufficient for viewing and searching the code produced, on the platform produced. Further, the Receiving Party's outside counsel and/or experts or consultants may request that commercially available licensed software tools for reviewing and searching Source Code be installed on the stand-alone Computers. The Receiving Party must provide the Producing Party with a CD/DVD/USB drive containing such software tool(s) or a link for downloading such software tool(s), and any necessary licenses, at least 14 business days in advance of the date upon which the Receiving Party wishes to have the additional software tools available for use on the stand-alone computers. A Producing Party shall produce Source Code on the stand-alone computers as the Source Code is kept in the ordinary course of the Producing Party's business (e.g., with the same directory structure);

(e) Access to Protected Material designated "HIGHLY CONFIDENTIAL – SOURCE CODE" shall be limited to outside counsel and up to three (3) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to paragraph 4(e) above. A Receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, infringement contention, discovery document, deposition transcript, other Court document ("Source Code Document"), provided that the Source Code Documents are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures and orders;

(f) To the extent portions of Source Code Material are quoted in a Source Code Document, either (1) the entire Source Code Document will be stamped and treated as HIGHLY CONFIDENTIAL – SOURCE CODE or (2)

those pages containing quoted Source Code Material will be separately stamped and treated as HIGHLY CONFIDENTIAL – SOURCE CODE. However, quoting filenames, directory names, module names, class names, parameter names, variable names, function names, method names, or procedure names (e.g., for note-taking or identification purposes) does not render the underlying document a Source Code Document;

(g) No electronic copies of Source Code Material shall be made without prior written consent of the Producing Party, except as necessary to create documents which, pursuant to the Court's rules, procedures and order, must be filed or served electronically;

(h) The Receiving Party shall be permitted to make a reasonable number of printouts, not to exceed 500 total pages, of Source Code Material that they in good faith consider to be necessary to proving elements of their case, unless upon the request of the Requesting Party and for good cause shown additional pages are needed, all of which shall be designated and clearly labeled "HIGHLY CONFIDENTIAL – SOURCE CODE," and the Receiving Party shall maintain a log of all such files that are printed.

(i) Should such printouts or photocopies be transferred back to electronic media for purposes allowed under this Protective Order, such media shall be labeled "HIGHLY CONFIDENTIAL – SOURCE CODE" and shall continue to be treated as such;

(j) The Receiving Party may request that the Producing Party make no more than three (3) additional paper copies of any portions of the Source Code printed, not including copies attached to court filings or used at depositions, and the Receiving Party shall maintain a log of all paper copies of the Source Code.

(k) Whenever printouts of Source Code Material are requested to be made, the Producing Party shall provide printouts to the Requesting Party

within five (5) business days, and may retain a copy, along with an identification of when the printouts were made and who made them;

(l) If the Receiving Party's outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material, the Receiving Party shall ensure that such outside counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The Receiving Party may also temporarily keep the printouts or photocopies at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); (iii) the Court for any filing(s) related to the Source Code Material, filed under court seal; and (iv) any intermediate location reasonably necessary to transport the printouts or photocopies (e.g., a hotel prior to a Court proceeding or deposition);

(m)   A Producing Party's Source Code Material may only be transported by the Receiving Party at the direction of a person authorized under paragraph (e) above to another person authorized under paragraph (e) above, on paper via hand carry, Federal Express or other similarly reliable courier. Source Code Material may only be transported electronically for the purpose of Court proceeding(s) or filings or deposition(s), as set forth in paragraph (l) above and is at all times subject to the transport restrictions set forth herein.

(n) All HIGHLY CONFIDENTIAL – SOURCE CODE materials utilized during a deposition or marked as an exhibit at a deposition will be retrieved by the party conducting the deposition at the end of each day. At no time, will any HIGHLY CONFIDENTIAL – SOURCE CODE material be

1   given to or left with the Court Reporter.

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3   **IT IS SO ORDERED.**

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6   Date: February 17, 2021   _____

7   John A. Kronstadt
                                     United States District Judge

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