

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Monode Marking Products, Inc.	)	Case No. 1:18-cv-16
	)	
Plaintiff,	)	Judge Donald C. Nugent
	)	
vs.	)	
	)	
Columbia Marking Tools, Inc.	)	<b><u>STIPULATED SOURCE CODE</u></b>
	)	<b><u>ADDENDUM TO PROTECTIVE</u></b>
	)	<b><u>ORDER</u></b>
Defendant.	)	

The parties stipulated to a Protective Order that the Court entered on September 14, 2018 (ECF 18) (“the Protective Order”). To facilitate remote source code review during the COVID-19 pandemic, the parties shall apply procedures subject to the provisions set forth in this Source Code Addendum to the Protective Order (“the Source Code Addendum”). These provisions supplement the Protective Order, and any violation of the Source Code Addendum will constitute a violation of the Protective Order. The parties to the Source Code Addendum have agreed to the terms of this Order and have asked that it be entered pursuant to 18 U.S.C. § 1835(a); accordingly, it is ORDERED:

1. This Source Code Addendum to the Protective Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

2. A producing party may designate Source Code, as defined below, as "CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY" if it includes confidential, proprietary, or trade secret information.

3. The receiving party may challenge the designation of Source Code as “CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY” pursuant to the procedure and timeframes set forth in Paragraph 8 of the Protective Order.

4. “Source Code” shall mean source code irrespective of programming language (i.e., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, interpreter, or other translator), application programming interfaces (“API”), byte code, microcode, register transfer language (“RTL”), firmware, and hardware description language (“HDL”) for programming a configurable digital circuit such as a programmable logic controller or device (PLC or PLD), as well as any and all programmer notes, annotations, and other comments of any type related thereto that are included within such code. For avoidance of doubt, this includes source files, make files, intermediate output files, header files, resource files, library files, module definition files, map files, linker files, browse info files, and debug files, and specifically includes the entirety of the “software source code” materials provided to and reviewed by Dr. Wyatt Newman, as referenced in Paragraph 8 of his declaration in support of CMT’s “Limited Rule 56 Motion.”

5. Source Code designated as “CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY” shall be subject to all of the protections afforded to material designated ATTORNEY'S EYES ONLY under the Protective Order and may be disclosed only to the individuals to whom ATTORNEY'S EYES ONLY information may be disclosed, as set forth in Section 6(c) of the Protective Order (hereafter a “Qualified Reviewer” if one person or “Qualified Reviewers” if multiple persons). “Independent Consultants, Investigators, and Experts” referenced in Section 6(c)(5) of the Protective Order and “Others by Consent” referenced in Section 6(c)(6) of the Protective Order must complete the certification contained

in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound to Source Code Addendum, of this Source Code Addendum to be eligible to become a Qualified Reviewer, which also constitutes agreement to be bound by and to comply with the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound, of the Protective Order. For the avoidance of doubt, each such “Qualified Reviewer” must first be qualified to access ATTORNEY'S EYES ONLY information under the terms of Section 6 of the Protective before reviewing Source Code produced by the opposing party. A violation of this requirement would result in a violation of the Protective Order.

6. The producing party shall make arrangements to allow Qualified Reviewers of the receiving party to remotely inspect Source Code (“the Source Code review”) using an agreed-upon remote desktop platform (e.g., TeamViewer) that allows the Source Code to be reasonably reviewed and searched (“the remote desktop”). The remote desktop shall provide the Qualified Reviewers of the receiving party remote access to one (1) standalone, secured virtual computer (“the Source Code computer”) which, except for restricted Internet access enabling the remote desktop, will be without Internet access or network access to other computers, and without connection to any printer or storage device other than the internal hard disk drive of the virtual computer. The Source Code computer shall include access to the same Source Code, source code review software, and tools as provided to or otherwise used by the producing party’s outside counsel and/or experts when reviewing Source Code and shall provide the ability to (a) view, search, and line-number any source file, (b) search for a given pattern of text through a number of files, and (c) compare two files and display their differences.

7. At least two (2) business days in advance of each Source Code review, the receiving party must request in writing to counsel for the producing party date(s) and anticipated start time(s) and end time(s) for the Source Code review. The receiving party may request access to use the remote desktop during normal business hours, which for purposes of this paragraph shall be 9:00 AM to 5:00 PM Eastern Standard Time, Monday through Friday. The parties are to cooperate in good faith to schedule the Source Code review by Qualified Reviewers.

8. At least two (2) business days in advance of the Source Code review, the receiving party must identify in writing to counsel for the producing party the name(s) of any Qualified Reviewer(s) who will review the Source Code during or subsequent to the Source Code review.

9. At each scheduled date and time for the Source Code review, the producing party's counsel shall provide the receiving party's counsel a passcode to allow remote access by Qualified Reviewers to the Source Code computer via the remote desktop. The passcode will be unique to each remote desktop session. At the end of the Source Code review, the Qualified Reviewers shall log out of the remote desktop. Immediately upon completion of the Source Code review, the receiving party's counsel shall inform the producing party's counsel that the Source Code review has ended. Qualified Reviewers are not permitted to access the Source Code computer outside of agreed-upon times. Except as necessary to administer the passcode procedures set forth in this section, the producing party shall not observe, monitor, log or track the requesting party's review of any Source Code.

10. The Qualified Reviewers shall not transfer, copy, or screen capture any of the Source Code, or otherwise use the remote desktop to do anything but inspect the Source Code

as provided in this Source Code Addendum. The Qualified Reviewers are prohibited from using the Source Code computer or any other device for audio or video recording or still image photography during the Source Code review. The Qualified Reviewers may take notes on a laptop or other personal electronic device and such notes shall be marked and treated as ATTORNEY'S EYES ONLY under this Order. Nothing in this Source Code Addendum to the Protective Order shall prevent the receiving party from claiming such notes are protected from disclosure under the work product doctrine, or any other applicable privilege or immunity.

11. The receiving party may request one (1) hard copy printout of limited, discrete portions of Source Code that are reasonably necessary for the preparation of court filings, expert reports, or other papers, or used at deposition or trial, but shall not request hard copy printouts for the purposes of reviewing the Source Code in lieu of the remote inspection above. The receiving party must identify the limited, discrete portions of Source Code by document or file name and function or method name or by version, document or file name and line number(s). Each paper copy of Source Code excerpts shall be produced by the producing party within two (2) business days of the request unless a dispute arises as to the volume of Source Code requested (in which case counsel shall promptly meet and confer in an effort to resolve the dispute). The producing party shall provide all such Source Code in paper form including production numbers and the label "CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY." The producing party otherwise shall not undertake any effort to track or otherwise determine which pages of code have been accessed, reviewed, or analyzed. The receiving party shall maintain all paper copies of any printed portions of the Source Code in a secured, locked area. The receiving party shall not create any paper copies, electronic or other images of paper copies of Source Code and shall not convert any of the information contained

in the paper copies into any electronic format except as reasonably necessary for the preparation of court filings, expert reports, or other papers, or use at deposition or trial. Access to each paper copy of portions of Source Code shall be restricted to persons with access to ATTORNEY'S EYES ONLY information who are Qualified Reviewers.

12. The receiving party may also request an electronic copy of limited, discrete portions of Source Code that are reasonably necessary for the preparation of court filings, expert reports, or other papers, or use at deposition or trial, but shall not request electronic copies for the purposes of reviewing the Source Code in lieu of the remote inspection above. The receiving party must identify the limited, discrete portions of Source Code by document or file name and function or method name. All electronic copies of Source Code excerpts shall be produced by the producing party within five (5) business days of the request unless a dispute arises as to the volume of Source Code requested (in which case counsel shall promptly meet and confer in an effort to resolve the dispute). The producing party shall provide all such Source Code in a password protected PDF document on an encrypted thumb drive including production numbers and the label "CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY." The receiving party shall maintain the encrypted thumb drive in a secured, locked area. Neither the PDF document nor the encrypted thumb drives shall be copied or reproduced, in whole or in part, under any circumstance except as expressly provided herein. Access to each electronic copy of portions of Source Code contained on an encrypted thumb drive shall be restricted to persons with access to ATTORNEY'S EYES ONLY information who are Qualified Reviewers. Any Qualified Reviewer must take all reasonable steps to restrict any unauthorized access to or viewing of the Source Code and must immediately notify the producing party of any actual or perceived violation.

13. The producing party may challenge the amount of Source Code requested in hard copy form or electronic form pursuant to the procedure and timeframes set forth in Paragraph 8 of the Protective Order, whereby the producing party is the objecting party and the receiving party is the designating party for purposes of the procedure.

14. All hard copy printouts and all thumb drives provided under the Source Code Addendum shall be returned to the producing party or else destroyed within twenty (20) days after the completion of the litigation. The receiving party must promptly certify the destruction in writing to the producing party.

15. Outside litigation counsel for the receiving party shall maintain a source code log containing the following information: (1) the identity of each person (other than outside litigation counsel for the receiving party) granted access to the Source Code or portions thereof, regardless of form; and (2) the dates of each identified person's access to the Source Code. Outside litigation counsel for the receiving party shall produce to the producing party a copy of the source code log ten (10) days after trial or upon a request by the producing party supported by good cause.

16. A receiving party that wishes to use any document designated as Source Code at a deposition may make only as many copies, and only of the specific pages, as the receiving party intends to actually use at, or anticipates may be reasonably necessary for, the deposition. No exhibits containing Source Code shall be appended to the transcript of the deposition. If a party has a concern as to the accuracy of a copy of a deposition exhibit, the examining party shall make available the original exhibit(s) at the request of the receiving party. If the receiving party made copies of portions of Source Code for purposes of a deposition, but did not use such portions as an exhibit, the receiving party shall promptly destroy all such copies.

17. A receiving party that wants to file or otherwise submit any document designated as CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY to the Court in connection with a filing shall, and is hereby authorized to, file such document under seal along with a publicly-available version with all materials designated as CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY redacted. No earlier than seven (7) days prior to the relevant filing, the receiving party may make only as many copies, and only of the specific pages, as the receiving party intends to actually use at, or anticipates may be reasonably necessary for, preparation, filing and service thereof. Immediately upon filing, the receiving party must delete or otherwise destroy all copies containing materials designated as CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY other than the final version of the document filed with the Court.

18. To the extent reasonably necessary to prosecute or defend this case, a receiving party may include excerpts of Source Code in an expert report or discovery document provided that the Source Code excerpts are appropriately marked under this Source Code Addendum and restricted to those who are entitled to have access to them as specified herein.

***So Ordered.***

Dated: January 20, 2021

*s/ Donald C. Nugent*  
\_\_\_\_\_  
U.S. District Judge Donald C. Nugent



**WE SO MOVE/STIPULATE  
and agree to abide by the  
terms of this Order**

/s/ David T. Movius

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*Counsel for Columbia Marking Tools, Inc.*

**ATTACHMENT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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Defendant.	)	

**ACKNOWLEDGMENT  
AND  
AGREEMENT TO BE BOUND  
TO SOURCE CODE ADDENDUM**

The undersigned hereby acknowledges that he/she has read the Protective Order dated September 14, 2018, including the Source Code Addendum to Protective Order dated \_\_\_\_\_, in the above-captioned action and attached hereto (collectively, the “Protective Order”), understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Northern District of Ohio, Eastern Division in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER, ATTORNEYS’ EYES ONLY, or CONFIDENTIAL SOURCE CODE - ATTORNEY'S EYES ONLY in accordance with the Protective Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature