

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

**AKOUSTIS TECHNOLOGIES, INC. AND
AKOUSTIS, INC.,**

Plaintiffs,

vs.

QORVO, INC.,

Defendant.

Civil Action No. 2:23-cv-180-JRG-RSP

JURY TRIAL

**AKOUSTIS TECHNOLOGIES, INC. AND AKOUSTIS, INC.'S
NOTICE OF SUBPOENA TO IQE KC, LLC.**

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Akoustis Technologies, Inc. and Akoustis, Inc., intend to serve a Subpoena, in the form attached hereto, on **IQE KC LLC** as soon as service may be effectuated.

Dated: October 17, 2023

McKool Smith, P.C.

/s/ John B. Campbell

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**ATTORNEYS FOR AKOUSTISS
AKOUSTIS TECHNOLOGIES, INC and
AKOUSTIS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been
served on all counsel of record via electronic mail on October 17, 2023

/s/ John B. Campbell
John B. Campbell

UNITED STATES DISTRICT COURT

for the

Eastern District of Texas

AKOUSTIS TECHNOLOGIES, INC., et al.

Plaintiff

v.

QORVO, INC.,

Defendant

Civil Action No. 2:23-cv-180

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: IQE KC LLC, 200 John Hancock Rd, Taunton, MA 02780
through National Registered Agents, Inc., 155 Federal Street, Suite 700, Boston, MA 02110

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Jones & Fuller
10 High Street, Suite 902
Boston, MA 02110

Date and Time:

11/16/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/17/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ John B. Campbell

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Akoustis Technologies, Inc. and Akoustis, Inc., who issues or requests this subpoena, are: John Campbell, McKool Smith, PC, 303 Colorado Street, Ste 2100, Austin, Texas 78701; jcampbell@mckoolsmith.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:23-cv-180

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

ATTACHMENT A TO CIVIL SUBPOENA (DOCUMENTS)

Pursuant to Rules 34 and 45 of the Federal Rules of Civil Procedure, Plaintiffs Akoustis Technologies, Inc. and Akoustis, Inc. request that IQE KC LLC produce the documents and things requested below. The requested documents and things must be produced on or before November 16, 2023 at 10:00 A.M., at Jones & Fuller, 10 High Street, Suite 902, Boston, Massachusetts 02110, or at such other time and place as may be mutually agreed upon in writing. A copy of the Protective Order entered in this action for the protection of any requested proprietary, confidential, or commercially sensitive information is attached hereto as Exhibit 1.

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

1. “Action” refers to the above-captioned action, *Akoustis Technologies, Inc., et al. v. Qorvo, Inc.*, No. 2:23-cv-00180 (E.D. Texas).
2. “Akoustis” or “Plaintiff” means Akoustis Technologies, Inc. and Akoustis, Inc., collectively or separately, together with their successors, predecessors, divisions, wholly or partially owned subsidiaries, domestic or foreign parents, affiliates, partnerships, and joint ventures, and any and all past and present officers, directors, employees, agents, representatives, and any other persons acting on its behalf and its affiliates, subsidiaries, parents, assigns, predecessors and successors in interest.
3. “And” and “or” shall be construed conjunctively and disjunctively, so as to acquire the broadest possible meaning.
4. “Any” and “all” shall each be construed to mean “each and every,” so as to acquire the broadest possible meaning.
5. “Communication” or “Communications” means any contact or act by which information or knowledge is transmitted or conveyed between two or more Persons and includes,

without limitation: (1) written contact, whether by letter, memoranda, e-mail, facsimile, telegram, telex, or other Document; (2) oral contact, whether by face-to-face meetings, telephone conversations, or otherwise; and, (3) nonverbal acts intended to communicate or convey any meaning, understanding, or other message.

6. “Complaint” means Plaintiffs’ Complaint (Dkt. 1) in this Action and any amendments thereto.

7. “Concerning” means directly or indirectly mentioning, constituting, discussing or describing, relating to, pertaining to, or being connected with a stated subject matter or any aspect thereof.

8. “Defendant” or “Qorvo” refers to Qorvo, Inc., together with their successors, predecessors, divisions, wholly or partially owned subsidiaries, domestic or foreign parents, affiliates, partnerships, and joint ventures, and any and all past and present officers, directors, employees, agents, representatives, and any other persons acting on its behalf and its affiliates, subsidiaries, parents, assigns, predecessors and successors in interest.

9. “Document(s)” is used herein in their broadest sense as set forth in the Federal Rules of Civil Procedure. These words mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices, within your possession, custody, or control. Without limiting the forgoing, the term “Document(s)” shall include all agreements, contracts, communications, correspondence, facsimile, letters, opinion letters, telegrams, telexes, telefaxes, messages, memoranda, records, reports, books, summaries or other records of telephone conversations or interviews, summaries or other records of personal conversations or interviews, minutes, summaries, other records of meetings and conferences, statements obtained from witnesses, summaries or other records of

negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, forecasts, progress reports, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, charts, tables, accounts, analytical records, consultants' and experts' reports, appraisals, bulletins, notes, notices, marginal notations, notebooks, telephone records, bills, statements, records of obligation and expenditure, invoices, lists, journals, printouts, compilations, tabulations, analyses, studies, surveys, expense reports, microfilm, microfiche, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, programs, electronic mail ("e-mail") and data compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made. The word "Document(s)" also includes all copies of Documents by whatever means made, except that where a Document is produced, identical copies of it that do not contain any markings, additions, or deletions that are different from the original do not have to be separately produced.

10. "Each" and "every" mean "each and every."

11. "Growth Recipe" means the collection of all sequential process steps employed in the growth of a specific material with pre-determined, defined, and/or memorized parameters for each process step, such as duration, gas flows, temperature and pressure, or the set of instructions describing each and every process step undertaken by machinery to form a predetermined structure.

12. "Identification," "identify," or "identity" when used in reference to:

- (a) a Document, means: (1) its date, author, and addressee(s); (2) the type of Document (e.g., letter, memorandum, etc.); and (3) its present location and

identity of its custodian.

- (b) a natural person, means: (1) the person's full name or title, last known address, and telephone number; (2) the person's present employer(s) and place(s) of employment; and (3) the person's job title or position held.
- (c) a statement, either written or spoken, means: (1) the substance of each such statement; (2) the exact words used by each person participating in the statement; (3) to identify each person engaging in the statement; (4) the identity of each person present at the making or reception of such statement; (5) the time and place of the statement; (6) the means of such statement (e.g., written, telephone, face-to-face, etc.).

13. "Including" means including, but not limited to.

14. "IQE," "you," "your," and "yours" refer to IQE KC LLC and includes any officers, directors, partners, associates, employees, staff members, agents, representatives, attorneys, consultants, subsidiaries foreign or domestic, parents, affiliates, divisions, successors, predecessors, and any others acting on its behalf or under its direction and control, and any and all assets or entities that have been acquired by it or to which it has succeeded to rights or obligations.

15. "Parties" means the terms "Plaintiff" and "Defendants" as defined herein.

16. "Party" means any natural person, corporation, partnership, association, joint venture, government body, or other legal entity, including Plaintiffs and Defendant.

17. "Patent-in-Suit" or the "'360 Patent" means United States Patent No. 7,250,360.

18. "Person" means all natural persons, male or female, and all types and kinds of business or other entities, including, but not limited to, corporations, partnerships, joint ventures, associations, and sole proprietorships and any reference to an individual person, either singularly

or as part of a defined group, including that person's employees, agents, legal representatives, non-legal representatives, personal representatives, attorneys, heirs, successors, assigns, and any other person or entity acting on the behalf of such individual person.

19. "Person" means all natural persons, male or female, and all types and kinds of business or other entities, including, but not limited to, corporations, partnerships, joint ventures, associations, and sole proprietorships and any reference to an individual person, either singularly or as part of a defined group, including that person's employees, agents, legal representatives, non-legal representatives, personal representatives, attorneys, heirs, successors, assigns, and any other person or entity acting on the behalf of such individual person.

20. "Plaintiff(s)" and "Akoustis" means Akoustis Technologies Inc. and/or Akoustis Inc. and all past and present officers, directors, affiliates, brokers, agents, representatives, employees, servants, and all Persons acting directly or indirectly under its control, including any attorney.

21. "Relate to," "related to," "in relation to," and "relating to" mean, in addition to their customary and usual meaning, bearing upon, discussing, identifying, referring to, pertaining to, or concerning.

22. "Supplied Products" means wafers, or components thereof, sold, provided, or otherwise supplied by IQE to Qorvo from April 20, 2017 onwards, including those that include epitaxial layers of GaN, AlN, InAlN, GaP, InGaP, or AlGaP on lattice mismatched substrates made of SiC, Si, or sapphire.

23. "Third Party" means any natural person, corporation, partnership, association, joint venture, government body, or other legal entity other than Plaintiffs and Defendants.

24. "Use" or "used" means the utilization or deploying of something as a means of

accomplishing a purpose or achieving a result.

INSTRUCTIONS

1. These instructions shall be deemed to seek production of documents and things as of the date hereof and to the full extent of the Federal Rules of Civil Procedure.

2. You are to provide full and complete responses to the following requests, after conducting a diligent and thorough investigation into all information within your possession, custody, or control. If you cannot provide a full and complete response to any request, you should respond to the request to the extent possible, specifying the portion of the request you are unable to answer and providing any information you have regarding the unanswered portion.

3. For any document responsive to a request herein that exists in electronic form, You shall produce such documents in electronic form, including, but not limited to, originals and all copies of electronic mail (“e-mail”); activity listings of electronic mail receipts and/or transmittals; voice-mail; audio or video recordings of any kind; computer programs (whether private, commercial, or a work-in-progress); programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs, and outlines; operating systems; source code of all types including, where applicable, Hardware Description Language (“HDL”) source code or equivalent source code for describing electronic circuits, specifically, digital logic; image files including but not limited to JPG or JPEG, TIFF, PICT, and BMP; PDF files, batch files in any format, including ASCII, XML or CSV format; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file, or file fragments. Electronic data includes any and all information stored in or on hard disks, floppy disks, CD and DVD disks, external hard drives or their equivalent, portable storage devices including USB-or Fire Wire drives; magnetic tapes of all kinds, and computer chips (including,

but not limited to, EPROM, PROM and ROM). Electronic data also includes the file, folder tabs, containers or labels appended to any storage device containing electronic data.

4. All documents electronically produced shall be provided in a file format that can be read by a computer configured to process ADOBE ACROBAT®, Microsoft Word®, and/or Microsoft Excel® formatted files. Should a document not be capable of being produced in one of the before mentioned file formats, You shall identify the software application, including the version number and trade-name, which can be utilized to open such document(s). If any document produced in electronic form has already been printed by You in the ordinary course of business, a hard copy of such print-out shall also be produced. You shall mark or otherwise identify documents produced in electronic form in a method mutually agreeable to You and Plaintiff.

5. All other documents and things not in electronic form shall be produced in the form in which they were created.

6. Any response made by reference to documents shall identify by litigation document control number each responsive document.

7. If you claim that any information, document or thing or part thereof requested herein is privileged or immune from discovery, produce that part falling within the scope of that which is not privileged or immune from discovery, and separately identify in a privileged document list each such document, thing or part thereof withheld from production at least the following:

- (a) The date that the document or thing was created;
- (b) The sender(s) by position and entity (corporation or firm, *etc.*) with which they are employed or associated;
- (c) the recipient(s), including copy recipient(s), by position and entity

- (corporation or firm, etc.) with which they reemployed or associated;
- (d) if the sender or recipient is an attorney or foreign patent agent, he or she should be so identified. In the case of a foreign patent agent, there should be a statement of whether the laws of the agent's country grant privileged status to a patent agent's communication;
 - (e) the general subject matter of the document;
 - (f) the portion(s) of the document as to which privilege is claimed (e.g., one sentence, one paragraph, entire document, etc.);
 - (g) an explanation as to why the privilege is applicable with enough specificity to allow Plaintiffs to determine whether to object to the privilege asserted; and
 - (h) the type of privilege claimed, together with certification that all elements of the claimed privilege have been met and not waived with respect to each document.

8. You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document, or thing in a privilege log.

9. If any information, document or thing requested herein was, but no longer is, in your possession, custody, or control, state whether it has been lost, destroyed, or transferred, is missing, or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the deposition of the information, document, or thing and the date that such disposal occurred.

10. Pursuant to the Federal Rules of Civil Procedure, Local Civil Rules, and Local Patent Rules, documents and things shall be produced by You as they are kept in the regular and

ordinary course of business, or they shall be organized and labeled to correspond to each of the Requests set forth below.

11. If You have documents to produce that are in a language other than English, then You are requested to produce each and every English translation in the possession, custody and/or control of You along with the original language document called for by the Requests set forth below.

12. Documents from any single file should be produced in the same order as they were found in such file, including any labels, files, folders, and/or containers in which such documents are located or with which such documents are associated. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the originals.

13. All documents that constitute electronically stored information, with that term having the meaning ascribed to it by the Federal Rules of Civil Procedure, shall be produced in an intelligible format.

14. All pronouns shall be construed to refer to the masculine, feminine, or neutral gender, in singular or plural, as in each case makes the request more inclusive.

15. The Requests are deemed to be continuing and must be supplemented as set forth in the applicable rules of the Federal Rules of Civil Procedure, Local Civil Rules, Local Patent Rules and Standing Orders. If after producing documents, You obtain or become aware of any further document(s), thing(s), or information responsive to these Requests, You are required to produce to Plaintiff such additional documents and things, and/or to provide Plaintiff with such additional information as set forth in the applicable rules of the Federal Rules of Civil Procedure, Local Civil Rules, Local Patent Rules and Standing Orders.

16. You are under a duty to supplement all responses to these Requests to include information acquired after service of the responses, even if such responses were correct when first provided.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

The subpoena *duces tecum* to which these document requests are attached requires you to produce for inspection and copying the following documents:

1. Documents sufficient to identify the Supplied Products, including the name, model number, epitaxial layer, and substrate of each Supplied Product.
2. Documents sufficient to identify the number of each Supplied Product sold, provided, or otherwise supplied to Qorvo.
3. Documents sufficient to understand how the Supplied Products are designed, manufactured, and produced.
4. Documents sufficient to identify the Growth Recipe for each of the Supplied Products.
5. Documents sufficient to show the cost of manufacturing, the revenue associated with, and the profit associated with each of the Supplied Products.
6. Technical manuals, specifications, data sheets, design documents, and presentations related to Supplied Products.
7. All documents requested of You in connection with or related to this Action, whether requested by subpoena or in another manner.
8. All documents provided by You to Qorvo in connection with or related to this Action.
9. Documents and communications exchanged between You and Qorvo concerning the design, development, manufacturing, and production of the Supplied Products, including Qorvo's technical or business requirements concerning the design, development, and production of the Supplied Products.

10. Documents and communications concerning the Patent-in-Suit, this Action, and Akoustis.

11. All license agreements and any amendments, supplements, or extensions thereto regarding the Supplied Products.

12. Documents and communications relating to license agreements regarding the Supplied Products, including regarding payment or nonpayment of royalties under any such license agreements or any communication with counterparties to such license agreements.

13. Documents sufficient to show how the royalty rate in any license agreement regarding the Supplied Products was calculated or derived, including the royalty base for such payments.

14. Documents sufficient to show Your marketing and promotion of the Supplied Products.

15. Documents sufficient to show the advantages and disadvantages of the Supplied Products as compared to other available alternatives.

16. Documents sufficient to show for each Supplied Product, from April 20, 2017 onwards: the manufacturing process and Growth Recipe for each Supplied Product, including identification of the process, order of the process steps, identification of each substrate employed, the reactants and corresponding flow-rates introduced in each step, the temperature and pressure at each step, and any testing performed to ensure successful growth, adhesion, or production.

17. Documents sufficient to identify each Supplied Product, either by name or model number, and, on a monthly and quarterly basis from April 20, 2017 onwards: (a) the number of units sold, provided, or otherwise supplied to Qorvo; (b) the retail sales price associated with the units sold, provided, or otherwise supplied to Qorvo; (c) the actual price paid by Qorvo for the

number of units sold, provided, or otherwise supplied to Qorvo; (d) the revenues associated with the units sold, provided, or otherwise supplied to Qorvo; (e) costs associated with the units sold, provided, or otherwise supplied to Qorvo; (f) the date of first sale, provision, or supply to Qorvo; (g) the price charged on the first date of sale, provision, or supply to Qorvo; (h) all other price changes.

18. Documents related to efforts to value, assess demand for, or determine the importance to consumers of wafers with epitaxial layers of GaN, AlN, InAlN, GaP, InGaP, and AlGaP on lattice mismatched substrates made of Si, SiC, and sapphire, including whether or not they are made by a process that includes pre-treating a surface of the substrate with at least one group III reactant or at least one group II reactant at an elevated growth temperature prior to introducing a group V reactant or a group VI reactant.

EXHIBIT 1

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

AKOUSTIS TECHNOLOGIES, INC. AND
AKOUSTIS, INC.,

Plaintiffs,

v.

QORVO, INC.,

Defendant.

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CIVIL ACTION NO. 2:23-CV-00180-JRG-RSP

PROTECTIVE ORDER

WHEREAS, Plaintiffs Akoustis Technologies, Inc. and Akoustis, Inc. (collectively “Akoustis”) and Defendant Qorvo, Inc. (hereinafter “Qorvo”), 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, 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 as confidential 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.” The designation shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word(s) “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” 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 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Where electronic files and documents are produced in native electronic format, such electronic files and documents shall be designated for protection by appending to the file names or designators information indicating whether the file contains “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Material. If such electronic files or documents are printed (for example, for use at a deposition, in a court proceeding, or for provision in printed form to an approved expert or consultant), the Party printing the electronic files or documents shall place on the printed document the appropriate designation, as well as the production numbers associated with the electronic files or documents. Alternatively, a Party may choose to produce native electronic files and documents with a slip sheet that includes the production number(s) associated with the electronic files or documents as well as the appropriate confidentiality designation. If a Party chooses to produce native electronic files and documents with a slip

sheet, the Party printing such electronic files or documents for use in deposition or otherwise shall also print or include the slip sheet in any exhibit or transmission of the file/document.

2. Any document produced before issuance of this Order, including under Patent Rules 2-2, 3-2, and/or 3-4, with the designation “CONFIDENTIAL,” “RESTRICTED – ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” shall receive the same treatment as if designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is re-designated to have a different classification under this Order. Information and items designated in other matters as “CONFIDENTIAL – OUTSIDE ATTORNEYS EYES ONLY” or “RESTRICTED ATTORNEYS EYES ONLY” which are produced in this matter shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to this Order without further designation.
3. With respect to documents, information or material designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (“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,

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.

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.

4. A designation of Protected Material (i.e., “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 has not been designated as 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 destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.
5. “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 or upon order of the Court:
 - (a) outside counsel of record in the above-captioned action (“Action”) for the Parties;
 - (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
 - (c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;

- (d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other party's consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;
- (e) mock jurors who have signed the Undertaking attached as Exhibit A hereto, provided that: (1) no mock juror shall receive any Designated Material electronically; and (2) all mock jurors shall be obligated by agreement to return any printed Designated Material that s/he receives upon the conclusion of the mock trial. The receiving Party shall retain a copy of each Undertaking executed by a mock juror and shall provide such copies to the designating party upon a showing of good cause;
- (f) 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, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto and the same is served upon the 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 or Undertaking to object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;
- (g) any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Order;
- (h) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, interpreters or translators, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and
- (i) While testifying at deposition or trial in this action only: (i) any current officer, director or employee of the producing Party; (ii) any person designated by the

producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and/or (iii) any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the material, as evident from its face. The Parties expressly agree that notwithstanding the access set forth in subparagraphs 5(i)(i), 5(i)(ii), or 5(i)(iii), persons authorized to access or otherwise review material under subparagraph 5(i) during a deposition or trial in this action shall not include any individual currently employed by the receiving Party.

- (j) the Court and its personnel.
6. A Party shall designate documents, information, or material as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only upon a good faith belief that the documents, information or material contains 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 documents, information, or material.
 7. Documents, information, or material produced in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries, or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.
 8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material “HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” To the extent such Protected Material contains a Party’s source code, including non-public computer source code, chip-level schematics and/or live data (e.g., database files or data as it exists residing in a database or databases) (“Source Code Material”), the producing Party may designate such Protected Material as “HIGHLY CONFIDENTIAL – SOURCE CODE.” “Source Code Material” shall mean documents containing or substantively relating to confidential, proprietary and/or trade secret source code, including (but not limited to) computer source code, source code listing and descriptions of source code, object code (i.e. computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), object code listings and descriptions of object code, microcode, register transfer language (“RTL”), firmware, hardware description language (“HDL”), other machine language instructions, scripts, software application code, any text written in any high-level programming language defining firmware and/or software functionalities implemented on an integrated circuit, as well as any and all programmer notes, annotations, and other comments of any type related thereto and accompanying the code. Source Code Material also includes files for use with chip design software or that can be used to create a significant portion of the producing Party’s chip associated with the schematic, including symbolic representations of integrated circuits (“Chip-Level Schematics”) or graphical depictions of physical configuration of semiconductor material within integrated circuit die or chip (“Integrated Circuit Layouts”). For avoidance of doubt, this includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files.

9. For Protected Material designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-b) and (e-j). However, the Parties agree to meet and confer to discuss in good faith whether particular information designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY may be disclosed to an individual meeting the description in paragraph 5(c), but such disclosure shall not occur absent agreement or an order of the Court.
10. For Protected Material designated “HIGHLY CONFIDENTIAL – SOURCE CODE,” access to, and disclosure of such Protected Material shall be limited to only the individuals listed below (“Authorized Reviewers”):
 - (a) Outside counsel of record for the Parties to this action, including any attorneys, paralegals, technology specialists, and clerical employees of their respective law firms;
 - (b) Up to four (4) outside experts or consultants per Party,² pre-approved in accordance pursuant to paragraph 5(f) above;
 - (c) The Court, its technical advisor (if one is appointed), the jury, court personnel, and court reporters or videographers recording testimony or other proceedings in this action. Court reporters and/or videographers shall not retain or be given copies of any portions of the Source Code Material; copies of Source Code Material that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to the deposition transcript; rather, the deposition record will identify the exhibit by its production numbers; and
 - (d) While testifying at deposition or trial in this action only: (i) any current officer, director or employee of the producing Party; (ii) any person designated by the producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and/or (iii) any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the Source Code Material, or other versions thereof, as

² For the purpose of this paragraph, an outside consultant or expert is defined to include the outside consultant’s or expert’s direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within their firm to help in their analysis shall count as a disclosure to a single consultant or expert.

evident from its face. The Parties expressly agree that notwithstanding the access set forth in subparagraphs 10(d)(i), 10(d)(ii), or 10(d)(iii), persons authorized to access or otherwise review Source Code Material under subparagraph 10(d) shall not include any individual currently employed by the receiving Party.³ Persons authorized to view Source Code Material pursuant to this sub-paragraph shall not retain or be given copies of the Source Code Material except while so testifying.

11. Access to and review of the Source Code Material shall be strictly for the purpose of investigating the claims and defenses at issue in the above-captioned case. No person shall review or analyze any Source Code Material for purposes unrelated to this case, nor may any person use any knowledge gained as a result of reviewing Source Code Material in this case in any other pending or future dispute, proceeding, or litigation.
12. The inspection of Source Code Material shall be governed by the following provisions:
 - (a) All Source Code Material shall be made available by the producing Party to the receiving Party's outside counsel and experts or consultants on a "stand-alone" computer (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet) located at a Texas office of outside counsel of record for the producing Party, or if mutually agreed upon, a domestic office of outside counsel of record for the producing Party. A second "stand-alone" computer may be provided at the same location as the initial "stand-alone" computer at a receiving Party's request to accommodate simultaneous review by multiple people. All stand-alone computers on which Source Code Material is made available shall be subject to the restrictions described herein. The stand-alone computers may be connected to a monitor (of size no less than 23 inches), keyboard and mouse. The stand-alone computers must conform to reasonable, modern specifications;
 - (b) Use or possession of any recording device or memory device (e.g., USB memory stick, cameras or any camera-enabled device, CDs, floppy disk, portable hard drive, cellular telephone, smartphone, and/or other mobile devices, including tablets, computers, etc.) is prohibited while accessing the stand-alone computer(s) containing Source Code Material.
 - (c) To enable electronic note taking during Source Code reviews, the producing Party of Source Code shall also provide one (1) additional stand-alone "note-taking" computer loaded with at least Microsoft Word software, unless otherwise agreed by the producing Party and the receiving Party. The note-taking computer shall

³ For the avoidance of doubt, it is the intent of the parties that nothing in this Protective Order, including paragraph 10, shall permit a receiving Party's employees to review, access, or otherwise receive a producing Party's Source Code Material.

either be a portable laptop or be located in close proximity to the stand-alone computer(s) to facilitate electronic note taking, and shall not be linked to any network, including a local area network, an intranet or the Internet;

- (d) At the end of a Source Code review session, the reviewer may save any notes in a file located on the note-taking computer. The reviewer may encrypt or otherwise password protect such notes. The producing Party shall, when requested by the reviewer, download from the note-taking computer any files and provide an electronic copy to the reviewer (e.g., downloading the encrypted notes file from the note-taking computer to a USB memory stick provided by the reviewer). The producing Party shall not delete the note file from the review computer or alter it in anyway without the consent of either the reviewer or the receiving Party's outside counsel of record;
- (e) The reviewer shall not take notes electronically on the "stand-alone" computer containing Source Code Material or any other computer or electronic device (besides the note-taking computer) while conducting a review. Additionally, no person reviewing Source Code Material on a stand-alone computer may at any time copy, photograph, record, or otherwise reproduce or include in electronic notes any portions or sections of the Source Code. Reviewers using the electronic note-taking computer will be directed by undersigned counsel not to copy, photograph, record, or otherwise reproduce or include in electronic notes any portions or sections of the Source Code;⁴
- (f) The producing Party will make the stand-alone computers available to the receiving Party for inspection between the hours of 9 a.m. and 5:30 p.m. on business days (i.e., weekdays that are not Federal holidays), although the Parties will be reasonable in accommodating reasonable requests to conduct inspections at other times. 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 receiving Party shall provide five (5) business days' notice of its intent to inspect for its initial inspection of the Source Code Material that has been produced by the producing Party and identify in writing all qualified persons who will review the Source Code Material. The receiving Party shall provide three (3) business days' notice prior to any additional inspection and identify in writing all qualified persons who will review the Source Code Material. The producing Party shall be reasonable in accommodating requests for inspection on shorter notice. The receiving Party's qualified persons entering the source code room shall sign on each day they view Source Code Material on the stand-alone computers a log that will include the names of persons who enter the room containing the stand-alone computers and when they enter and depart;

⁴ Including a source code file name or function name in electronic notes shall not constitute prohibited copying of a portion or section of the Source Code.

- (g) Proper identification of all authorized persons shall be provided prior to any access to the room containing a stand-alone computer. Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States or by the government of the United States. Access to the room where stand-alone computers are located may be denied, at the discretion of the producing Party, to any individual who fails to provide proper identification;
- (h) Access to Protected Material designated HIGHLY CONFIDENTIAL – SOURCE CODE shall be limited to those outlined in paragraph 10 above. If the receiving Party determines based upon the volume of Source Code Material produced that it would like to have more outside consultants or experts for reviewing such material, the producing Party shall in good faith discuss with the receiving Party reasonable requests to increase the number. Except for the note-taking computer described above in paragraph 12(c), the receiving Party may not bring any electronic devices into the room where stand-alone computers are provided, including, but not limited to, cameras, cellular phones, recordable media, or recording devices. The receiving Party will not copy, remove, or otherwise transfer or transmit any Source Code Material from a stand-alone computer. The receiving Party will not remove copies of all or any portion of the Source Code Material from the room in which the Source Code Material is inspected. Further, no electronic copies of Source Code Material shall be made without prior written consent of the producing Party, except as set forth in paragraph 15 below;
- (i) The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the produced Source Code Material on the stand-alone computers;
- (j) The producing Party will produce Source Code Material in native (computer searchable) format on the stand-alone computers as described above; and
- (k) The producing Party shall include the following software on the stand-alone computer: (1) Notepad ++ v. 7.9.5; (2) Microsoft Visual Studio Community 2019; (3) Adobe Reader; and (4) Microsoft Excel. The receiving Party's outside counsel may request that additional commercially available software tools for viewing and searching Source Code Material be installed on the stand-alone computers, provided, however, that (a) the receiving Party possesses an appropriate license to such software tools; (b) the producing Party approves such software tools, such approval not to be unreasonably withheld; and (c) such other software tools are reasonably appropriate for the receiving Party to perform its review of the Source Code Material consistent with all of the protections herein. The receiving Party must provide the producing Party with the CD or DVD, or link, containing such licensed software tool(s) at least three (3) 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. Parties may not unreasonably restrict the use of software tools requested by another Party.

13. The production and storage of printed Source Code Material following an inspection shall be governed by the following provisions:

- (a) Except as set forth in this paragraph 13 and paragraphs 14-15 below, no person shall copy, e-mail, transmit, upload, download, print, photograph, copy, reproduce, or otherwise duplicate any portion of the designated “HIGHLY CONFIDENTIAL – SOURCE CODE” material. The receiving Party may request up to three (3) paper copies (“Source Code Printouts”) of limited portions of Source Code Material, but only if and to the extent reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial. Any printed portion that consists of more than twenty-five (25) pages of a continuous block of Source Code shall be presumed to be excessive, and the burden shall be on the receiving Party to demonstrate good cause for such a printed copy. Further, print outs of more than 1000 pages total of source code shall be presumed to be excessive, and the burden shall be on the receiving Party to demonstrate good cause for exceeding 1000 total pages of source code. Using the software available on the stand-alone computer(s), the receiving Party shall create PDFs of the printed copies the receiving Party is requesting and save them in a folder on the desktop named “Print Requests” with a subfolder identifying the date of the request. The PDF printouts must include identifying information including the full file path and

file name, page number, line numbers, and date. The request for printed Source Code Material shall be served via email request identifying the subfolders of the “Print Requests” folder that the receiving Party is requesting. Within five (5) business days, the producing Party shall either (i) provide the requested material on watermarked or colored paper bearing Bates numbers and the legend “HIGHLY CONFIDENTIAL – SOURCE CODE” or (ii) inform the requesting Party that it objects that the printed portions are excessive and/or not done for a permitted purpose. If, after meeting and conferring, the producing Party and the receiving Party cannot resolve the objection, the receiving Party shall be entitled to seek a Court resolution of whether the request for the printed Source Code Material is reasonable and was printed for a permitted purpose. The burden shall be on the producing Party to establish that the request for the printed pages is unreasonable, except where the pages sought to be printed are presumed to be excessive as set forth in this paragraph (13(a)), in which case the receiving Party bears the burden to establish that the request is not unreasonable as excessive. Although the receiving Party may print entire file(s) that have been identified as of interest (not to exceed twenty-five consecutive pages), the receiving Party shall not print Source Code Material in order to review blocks of Source Code Material outside the stand-alone computer in the first instance, i.e., as an alternative to reviewing that Source Code Material electronically on the stand-alone computer;

- (b) The receiving Party’s outside counsel shall maintain a log of the three paper copies of the Source Code Material received pursuant to paragraph 13(a), including the

recipients and storage locations of the same. All such copies shall be designated and clearly labeled HIGHLY CONFIDENTIAL – SOURCE CODE. Upon five (5) days advance notice to the receiving Party, based on a particularized showing of need for the log, the receiving Party shall provide a copy of this log to the producing Party, and in any event the receiving Party shall provide this log to the producing Party upon the conclusion of the litigation;

- (c) If the receiving Party's outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material pursuant to paragraph 13(a), 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; and
- (d) A receiving Party may temporarily make up to three (3) additional printed copies of Source Code Material for purposes of providing a witness, the Court, and producing Party's counsel a printed copy for use during a deposition, hearing, or trial. As an exception to paragraphs 13(b)-13(c), the receiving Party may also temporarily keep such 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); and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or deposition);
- (e) A producing Party's Source Code Printouts may only be transported by the receiving Party by a person authorized under paragraph 10(d) above to another

person authorized under paragraph 10(d) above, on paper via hand carry, Federal Express or other similarly reliable courier. Copies of printed Source Code Material that are marked as deposition exhibits, may be provided to the Court Reporter during the deposition, but shall not be retained by the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All paper copies of Source Code Material brought to the deposition that are used as exhibits shall remain with the producing Party's outside counsel.

14. The use of Source Code Material at a deposition, hearing, or trial shall be governed by paragraph 13 above and the following additional provisions:
 - (a) The receiving Party may request that one stand-alone computer be provided at a deposition or hearing or trial for use during the testimony of a witness who would otherwise be permitted access to the stand-alone computers;
 - (b) Any deposition requiring a stand-alone computer of Source Code Material shall ordinarily take place at the offices of outside counsel for the producing Party, unless otherwise agreed by the Parties. The receiving Party shall endeavor to make such requests to the producing Party at least three (3) business days before the deposition.
15. The use of Source Code Material in pleadings, exhibits, expert reports, demonstratives, discovery documents, contentions, or other Court documents ("Source Code Documents") shall be governed by the following provisions:
 - (a) Except as provided in this Paragraph 15, the receiving Party shall not make any electronic copies of the Source Code Material (e.g., receiving Party may not create

electronic images, or any other images, or make electronic copies, of the source code from any paper copy of source code for use in any manner—including by way of example only, the receiving party and any persons receiving source code from receiving party may not scan the source code to a PDF or photograph the code);

- (b) If Source Code Material is quoted in Source Code Documents, the Party quoting the Source Code Material will endeavor to limit the quoted amount to what is reasonably necessary for the party to make its point.
- (c) Source Code Documents must be appropriately marked under this Order, and restricted to those who are entitled to have access to Source Code Material as specified herein;
- (d) Except as otherwise provided in this paragraph 15, the receiving Party must at all times password protect any Source Code Document with a password comprising at least ten characters which include at least the following: a lower case letter, a capital letter, a number, and a special character;
- (e) The receiving Party may electronically transmit the password protected Source Code Documents by electronic mail or secure FTP transmission to those qualified to access Source Code Material under paragraphs 10(a)-10(c). Any such electronic transmission must be encrypted. Except as permitted herein, unless agreed in advance by the parties in writing, images or electronic copies of source code shall not be included in correspondence (references to production numbers shall be used instead);

(f) Unredacted Source Code Documents may be filed electronically under seal using the Court's CM/ECF system, including without password protection if the Court's CM/ECF system does not allow a password.

(g) 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.

16. Absent written consent from the designating Party, any outside counsel representing a Party and any person associated with a Party and permitted to receive the other Party's Protected Materials that is designated HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY and/or HIGHLY CONFIDENTIAL – SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's HIGHLY SENSITIVE MATERIAL under this Order shall not thereafter prepare, prosecute, supervise, or assist in the preparation or

prosecution of any patent application pertaining to the field of the invention of the patent-in-suit on behalf of the receiving Party or its acquirer, successor, predecessor, or other affiliate during the pendency of this Action and for one year after its conclusion, including any appeals. The prohibitions in this Paragraph are not intended to and shall not preclude counsel who obtains, receives, or otherwise learns of, in whole or in part, the other Party's HIGHLY SENSITIVE MATERIAL of a technical nature from participating directly or indirectly⁵ in reexamination, *inter partes* review, interference proceedings, or post-grant review proceedings, provided that any attorney who obtains, receives, or otherwise learns, in whole or in part, the other Party's HIGHLY SENSITIVE MATERIAL of a technical nature produced by another Party may not, directly or indirectly, advise, consult, or participate in the drafting of amended or substitute claims in the proceeding, and will not use any of the producing Party's Protected Material in the proceeding. To ensure compliance with the purposes of this provision, each Party shall create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who, on behalf of the Party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patents-in-suit. The provision shall not bar entire firms, rather only the individuals who actually review or learn the substance of a Party's HIGHLY SENSITIVE MATERIAL.

⁵ "Indirectly" in this provision includes support staff and attorneys who are not counsel of record, but are supporting or working with the counsel of record in the relevant proceedings. For sake of clarity, all attorneys of any Party may participate, supervise, and assist in any and all IPR proceedings related to the patents-in-suit, even if they have received and/or reviewed the HIGHLY SENSITIVE MATERIAL, provided that they do not participate or provide guidance, assistance, instruction, analysis, or input on any claim drafting or amendment of claims in such IPR proceedings.

17. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. The inadvertent production or disclosure of any information (including documents) in this Action that a producing Party later claims should not have been produced due to a privilege or protection from discovery, including but not limited to any attorney-client privilege, work product privilege, joint defense privilege, or settlement privilege, shall not be deemed to waive any such privilege or protection. If a receiving Party receives information that the receiving Party believes may be subject to a claim of privilege or protection from discovery, the receiving Party shall promptly identify the information to the producing Party. When a producing Party identifies such information as privileged or protected, a receiving Party: 1) shall not use, and shall immediately cease any prior use of, such information; 2) shall take reasonable steps to retrieve the information from others to which the receiving Party disclosed the information; 3) shall within five (5) business days of the producing Party's request return to the producing Party or destroy the information and destroy all copies thereof; and 4) shall confirm to the producing Party the destruction under 3) above of all copies of the information not returned to the producing Party. No one shall use the inadvertent production of privileged or protected information in this Action to argue that any privilege or protection has been waived. Within three (3) business days after providing notice of the disclosure of information over which privilege has been asserted, the producing Party shall provide a log that describes the basis for the claim that the information is privileged or otherwise protected from disclosure. Within five (5) business days thereafter, a Party disputing a claim of privilege shall provide in writing the identification of the information

for which it questions the claim of privilege and the reasons (including legal support) for its assertion that the information is not privileged, or that any privilege has been waived by some act other than production. Within three (3) business days thereafter, the Parties shall meet and confer in good faith as to the claims of privilege. Within ten (10) business days after the meet and confer, and not thereafter, the receiving Party may file a motion to compel the production of the information. Notwithstanding this provision, no party shall be required to return or destroy any information that may exist on any disaster recovery backup system.

18. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information, and material to protect against disclosure to any unauthorized persons or entities. Outside counsel with access to DESIGNATED MATERIAL, including attorneys, staff, and other support personnel, may only store DESIGNATED MATERIAL on law firm-managed computing devices (that is, not on personal devices), which are managed by a law firm-appointed information technology ("IT") administrator and include safeguards to prevent the installation of unauthorized software. For clarity, "Bring Your Own Device" or BYOD mobile devices that are managed via law-firm managed Mobile Device Manager (MDM) software, or like technology, qualify as law-firm managed computing devices. When working remotely in a virtual setting (for example, via Citrix Workspace), file share drives providing the ability to export files shall be disabled. And any virtual remote access to DESIGNATED MATERIAL using a personal or non-law firm managed device must be configured so that no files may be downloaded or transferred using the virtual remote

access directly to the personal or non-law firm managed device. For the avoidance of doubt, “screen mirroring” functionality that permits remote viewing of DESIGNATED MATERIAL is permissible. For clarity, use of a law firm-managed computing device via a law-firm managed VPN does not qualify as “working remotely in a virtual setting.” Furthermore, this paragraph 18 is not intended to prohibit storing DESIGNATED MATERIAL on the servers of professional third-party discovery vendors that have safeguards in place to protect against unauthorized access. This paragraph 18 is also not intended to prohibit accessing and downloading DESIGNATED MATERIAL stored on the servers of such professional third-party discovery vendors from law firm-managed computing devices. To enhance security, access by outside counsel personnel to the third-party discovery vendors storing DESIGNATED MATERIAL shall be limited to those personnel actively working on this matter. Furthermore, to the extent technically feasible, outside counsel personnel with access to the DESIGNATED MATERIAL stored with such third-party discovery vendors shall be limited to accessing such DESIGNATED MATERIAL from law-firm managed computing devices. Even if not technically feasible to limit access to such third-party discovery vendors from law-firm managed computing devices, outside counsel personnel with access to the DESIGNATED MATERIAL stored with such third-party discovery vendors shall only access such material from law-firm managed computing devices. Personnel permitted access to DESIGNATED MATERIAL under this order that are not outside counsel must employ the most comparable protections reasonably available to them (for example, only using professional devices to store DESIGNATED MATERIAL, as opposed to personal devices). For clarity, the additional protections for Source Code Material and HIGHLY CONFIDENTIAL – SOURCE CODE

material included in this order apply.

19. If a receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the receiving Party must immediately (a) notify the designating Party in writing of the unauthorized disclosures, and provide all known, relevant information concerning the nature and circumstances of the disclosure; and (b) use its best efforts to retrieve all unauthorized copies of the Protected Material and to ensure that no further or greater unauthorized disclosure and/or use occurs.
20. Parties may, at a deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period and unless previously designated, the entire deposition or hearing transcript shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”.
21. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material,

such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

22. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court. Further, nothing in this Order shall be deemed to prevent the Parties from requesting that the Court seal the courtroom or enact other measures to prevent the unauthorized disclosure of Protected Material during hearings or trial.
23. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to re-designation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.
24. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has

agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.

25. To the extent that any discovery is taken of persons who are not Parties to this Action (“Third Parties”), and in the event that such Third Parties contend that the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order. Information originating with a Third Party and in a producing Party’s custody or control that a producing Party reasonably and in good faith believes is subject to a confidentiality obligation may be designated by a producing Party as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” and such Protected Information shall be subject to the restrictions specified in this Order.
26. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” any documents, information or other material, in whole or in part, produced or given by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as “CONFIDENTIAL” in accordance with this Order.
27. Within seven (7) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL stored in electronic form in the possession of a receiving Party including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or

extracts thereof, shall be taken “offline,” meaning that any access to those materials available via login over the public Internet (for example, login to a e-discovery vendor hosting DESIGNATED MATERIAL) shall be removed. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL in the possession of a receiving Party, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall be returned or destroyed, at the election of the receiving Party. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party’s request.

28. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.
29. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

30. In the event the receiving Party becomes aware of any potential, suspected, apparent, or actual unauthorized access to DESIGNATED MATERIAL, including any “data breach” of DESIGNATED MATERIAL, the receiving Party shall immediately provide written notice of the potential, suspected, apparent, or actual unauthorized access to the producing Party. “Immediately” for purposes of this paragraph shall be defined to mean “as soon as reasonably possible” and, in any event, no longer than three (3) business days from the date of first awareness. The written notice shall include complete information regarding the potential, suspected, apparent, or actual unauthorized access, including all applicable facts and circumstances leading up to and resulting from the potential, suspected, apparent, or actual unauthorized access. The receiving Party will reasonably cooperate with the producing Party to investigate the potential, suspected, apparent, or actual unauthorized access. Neither party waives any rights that would otherwise be available to them to seek compensation for actual unauthorized access. Such rights include the right of the producing Party to seek an order from the Court that the receiving Party shall bear the losses and expenses (including any attorneys’ fees) associated with actual unauthorized access.
31. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.
32. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.
33. The United States District Court for the Eastern District of Texas is responsible for the

interpretation and enforcement of this Protective Order. All disputes concerning DESIGNATED MATERIAL produced under the protection of this Protective Order shall be resolved by the United States District Court for the Eastern District of Texas.

34. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.
35. Export Control. DESIGNATED MATERIAL that is marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY SOURCE CODE,” must be stored and maintained by a receiving Party at a location within the United States and in a secure manner that ensures that access is limited to the persons authorized under this Order. DESIGNATED MATERIAL that is marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY SOURCE CODE” and which was produced in the United States may not be exported outside the United States. All Parties shall comply with applicable United States Export Administration Regulations, and nothing in this Order should be read to be inconsistent with or to permit disclosure otherwise prohibited by those regulations.

SIGNED this 17th day of August, 2023.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

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

AKOUSTIS TECHNOLOGIES, INC. AND
AKOUSTIS, INC.,

Plaintiffs,

v.

QORVO, INC.,

Defendant.

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CIVIL ACTION NO. 2:23-CV-00180-JRG-RSP

**APPENDIX A
UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING
PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____.
My current employer is _____.
My current occupation is _____.
2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE” that is disclosed to me.
4. Promptly upon termination of these actions, I will return all documents and things designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE”

that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____