

~~Default~~ Filed on behalf of: Orca Security Ltd.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-00863
U.S. Patent 11,663,031 B2

JOINT PROPOSED PROTECTIVE ORDER

[PROPOSED] Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. ~~Confidential~~CONFIDENTIAL information and CONFIDENTIAL – ATTORNEYS’ EYES ONLY information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”¹

2. Access to ~~confidential~~CONFIDENTIAL information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) ~~Party Representatives.~~RepresentativesOutside Counsel.
Counsel of record for a party in ~~the~~this proceeding, as well as

¹ The term PROTECTIVE ORDER MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” both individually and collectively.

partners, associates, and employees of such counsel reasonably necessary to assist such counsel in this proceeding.

- (C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.
- (D) In-house ~~counsel~~Counsel. In-house counsel of a party.
- (E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives ~~confidential~~CONFIDENTIAL information.
- (F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the ~~confidential~~CONFIDENTIAL information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director,

members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in ~~(d)(Paragraphs 2)(A)-(E)~~, shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose ~~confidential~~CONFIDENTIAL information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to ~~confidential~~the CONFIDENTIAL information.

4. A Party shall designate documents, information, or material as “CONFIDENTIAL” 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.

5. To the extent a producing Party believes that certain PROTECTIVE ORDER MATERIAL qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may

designate such PROTECTIVE ORDER MATERIAL as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6. For PROTECTIVE ORDER MATERIAL designated CONFIDENTIAL –ATTORNEYS’ EYES ONLY, access to, and disclosure of, such PROTECTIVE ORDER MATERIAL shall be limited to individuals listed in Paragraphs 2(B)-(C) above, as well as Support Personnel of such individuals, consistent with Paragraph 2(E), and the Office, consistent with Paragraph 2(F).

4.7. Persons receiving ~~confidential information~~PROTECTIVE ORDER MATERIAL shall use reasonable efforts to maintain the confidentiality of the information, including:

- (A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;
- (B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;
- (C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the

obligation to maintain the confidentiality of information received that is designated as confidential; and

- (D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

5.8. Persons receiving ~~confidential information~~ PROTECTIVE ORDER MATERIAL shall use the following procedures to maintain the confidentiality of the information:

A. Documents and Information Filed With the Board.

- i. A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

- ii. Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

B. Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as ~~confidential~~PROTECTIVE ORDER MATERIAL that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as

“PROTECTIVE ORDER MATERIAL” and CONFIDENTIAL
or CONFIDENTIAL – ATTORNEYS’ EYES ONLY
information (as appropriate), and shall be produced in a manner
that maintains its confidentiality.

9. A designation of PROTECTIVE ORDER MATERIAL (i.e., a
designation of “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
ONLY” information) may be made at any time. Inadvertent or unintentional
production of documents, information, or material that has not been designated as
PROTECTIVE ORDER 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 PROTECTIVE ORDER MATERIAL without designating
it as PROTECTIVE ORDER MATERIAL may request destruction of that
PROTECTIVE ORDER 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 PROTECTIVE ORDER
MATERIAL that is properly designated. The recipient(s) shall then destroy all
copies of the inadvertently or unintentionally produced PROTECTIVE ORDER
MATERIAL and any documents, information or material derived from or based
thereon.

10. Any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party and permitted to receive the other Party's PROTECTIVE ORDER MATERIAL that is designated CONFIDENTIAL – ATTORNEYS' EYES ONLY who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's CONFIDENTIAL – ATTORNEYS' EYES ONLY information under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application substantially related to the particular information disclosed in such CONFIDENTIAL – ATTORNEYS' EYES ONLY information, from the time of receipt of such information through and including the first to occur of (i) one year after the complete resolution of this proceeding through entry of a final non-appealable judgment or order for which appeal has been exhausted and completion of the requirements of this agreement; (ii) one year after the complete settlement of all claims in this proceeding and completion of the requirements of this agreement; or (iii) one year after the time the individual person(s) cease(s) to have access to such information. This provision does not apply to participation in *inter partes* review, *ex parte* reexamination, or other post-grant proceedings, except that persons covered by this prosecution bar shall not assist, supervise, or participate in the proposal, drafting, or modification of any new or amended claims in such proceedings. For purposes of clarity, a patent or patent application is not "related to" the particular

CONFIDENTIAL – ATTORNEYS’ EYES ONLY information disclosed if it both makes no use of that information and the claims do not encompass, in whole or in part, any of the hardware, software, or technical functionality to which the particular information relates.

11. Production of PROTECTIVE ORDER MATERIAL or filing of PROTECTIVE ORDER MATERIAL under seal or with appropriate redactions 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.

12. Each of the Parties retains the right to file a motion with the Board (a) to modify this Order to allow disclosure of PROTECTIVE ORDER MATERIAL to additional persons or entities if reasonably necessary to prepare and present this proceeding and (b) to apply for additional protection of PROTECTIVE ORDER MATERIAL.

6-13. Within 60 days after the final disposition of this ~~action~~proceeding, including the exhaustion of all appeals and motions, each party receiving ~~confidential information~~PROTECTIVE ORDER MATERIAL must return, or certify the destruction of, all ~~copies of the confidential information~~PROTECTIVE ORDER MATERIAL to the producing party~~;~~ including all copies, duplicates,

abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof, but excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this proceeding.

7.14. (k) — ~~Standard~~ Acknowledgement of Protective Order. The following form may be used to acknowledge athe protective order and gain access to information covered by the protective order:

[CAPTION]

Standard

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Acknowledgment for Access to Protective Order Material

I _____, affirm that I have read the Protective Order; that I will abide by its terms; that I will use ~~the confidential~~ information designated as PROTECTIVE ORDER MATERIAL only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements

of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Dated: _____

Signature: _____