

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.
Petitioner,

v.

INTIRION CORPORATION
Patent Owner

Case PGR2024-00004
Patent No. 11,674,746

PETITIONER'S UNOPPOSED MOTION TO FILE UNDER SEAL

EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 11,674,746
1002	Expert Declaration
1003	Prosecution File History, U.S. Patent No. 11,674,746
1004	Original Intirion Complaint Filed on June 8, 2022.
1005-1007	RESERVED
1008	U.S. Application No. 14/262,290 (“the ’290 Application”), published as U.S. Publication 2014/0251982.
1009	Exemplary embodiment Claim chart 1 sent by Intirion related to U.S. Patent No. 11,274,876
1010	RESERVED
1011	U.S. Application No. 12/317,632 (“the ’632 Application”) published as U.S. Publication U.S. Pub. 2009/0188911 (“Emma”)
1012	“ISDU: Integrated Smoke detector Unit for Commercial Microwave Ovens”, Cory Lloyd <i>et. al</i> , Northeastern University (2007). (“ISDU”)
1013	RESERVED
1014	U.S. Patent No. 4,496,817 to Smith (“Smith”)
1015	U.S. Patent No. 8,446,048 to Butt (“Butt”)
1016	Redline Comparison between 290 and Emma
1017-1019	RESERVED
1020	U.S. Application No. 13/094,747 (“the ’747 Application”) published as U.S. Publication U.S. Pub. 2012/0276763A1 (“Quezada”)
1021	Scheduling Order for <i>Intirion Corporation v. College Products, Inc.</i> , 5:23-cv-04023-KEM, Dkt. 75.
1022	Amended Complaint filed by Intirion Corporation, 5:23-cv-04023-KEM, Dkt. 62.

Exhibit No.	Description
1023	Supplemental Expert Declaration related to the 11,674,746 Petition
1024	Email correspondence between counsel for Petitioner and Northeastern University
1025	Claim construction order from <i>Intirion Corporation v. College Products, Inc.</i> , No. 5:23-cv-04023-CJW-KEM (N.D. Iowa May 31, 2024)
1026	Email from the Board, dated August 12, 2024, authorizing Petitioner to file the district court's <i>Markman</i> Order as an exhibit
1027	Deposition Transcript of Emad Y. Tanbour, Ph.D, dated September 13, 2024, and Errata Sheet

APPENDIX LIST

Appendix No.	Description
A	Parties' Jointly Proposed Protective Order
B	Marked-up comparison of the parties' proposed protective order to the Board's default protective order
C	Protective Order entered in <i>Intirion Corporation v. College Products, Inc.</i> , 5:23-cv-04023-CJW-KEM (N.D. Iowa).

Pursuant to 37 C.F.R. §§42.14 and 42.54, Petitioner College Products, Inc. (“Petitioner”) respectfully files this Unopposed Motion to File under Seal and requests the confidential version of Petitioner’s Reply to Patent Owner’s Response remain sealed. Confidential and non-confidential versions of Petitioner’s Reply are being filed concurrently with this motion. The confidential version is being filed provisionally under seal. Counsel for Petitioner has conferred with counsel for Patent Owner Intirion Corporation (“Patent Owner”) about this motion. Counsel for Patent Owner has stated Patent Owner does not oppose the motion.

I. LEGAL STANDARDS

For good cause, the Board may “issue an order to protect a party or person from disclosing confidential information.” 37 C.F.R. §42.54. “The [Board’s] rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” Board’s Consolidated Trial Practice Guide (“TPG”) at 19 (citing 37 C.F.R. §42.54).

The Board’s Scheduling Order states that if the parties seek to deviate from the default protective order, “they must submit the proposed order jointly along with a marked-up comparison of the proposed and default protective orders showing the differences between the two and explain why good cause exists to deviate from the

default protective order.” Paper 11 at 3.

II. GOOD CAUSE EXISTS TO ADOPT THE PARTIES’ JOINTLY PROPOSED PROTECTIVE ORDER

On July 16, 2024, Patent Owner filed an Unopposed Motion to File Under Seal Pursuant to 37 C.F.R. §§42.14 and 42.54. Paper 20. Attached as Exhibit A to that motion was the parties’ jointly proposed protective order that they agreed should govern the filing and submission of documents disclosing confidential information in this proceeding. *See id.* at Ex. A. For the Board’s convenience, Petitioner attaches that jointly proposed protective order as Appendix A.

Attached as Appendix B is “a marked-up comparison of the proposed and default protective orders showing the differences” between the two protective orders. *See* Paper 11 at 3. Good cause exists to deviate from the default protective order and enter the parties’ proposed protective order. Petitioner and Patent Owner are parties to a concurrent district court litigation involving the patent at issue in this proceeding. *See Intirion Corporation v. College Products, Inc.*, 5:23-cv-04023-CJW-KEM (N.D. Iowa). The Court entered a separate protective order in that case, *see* Appendix C, that the parties have already stipulated to and abided by when producing documents in discovery in that case. The parties’ jointly proposed protective order takes into account that existing protective order by allowing confidential documents previously designated in that proceeding to be produced and

maintain their same confidentiality designations here. Doing so avoids the need for unnecessary and duplicative confidentiality designations. The other provisions of the parties' jointly proposed protective order are identical to the default protective order.

For the foregoing reason, good cause exists for the Board to adopt the parties' jointly proposed protective order

III. GOOD CAUSE EXISTS TO SEAL THE CONFIDENTIAL VERSION OF PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

Petitioner has provisionally filed the confidential version of its Reply to Patent Owner's Response under seal. That Reply discusses and quotes Patent Owner's revenue numbers and product development and confidential terms from requests for proposals ("RFPs"). This information fits squarely within the types of information that the Board considers to be "confidential information," such as "confidential research, development, or commercial information." TPG at 19. Further, the RFPs were designated confidential or highly confidential in the related district court proceeding. Publicly revealing that information could put Petitioner and Patent Owner at a competitive disadvantage in the marketplace. Thus, good cause exists for the confidential version of Petitioner's Reply to remain under seal.

IV. CERTIFICATION OF CONFERENCE

Pursuant to 37 C.F.R. §42.54(a), Petitioner certifies that it has in good faith

conferred with Patent Owner about this motion in an effort to resolve any disputes. Patent Owner's counsel informed Petitioner's counsel that Patent Owner does not oppose this motion.

V. REQUEST FOR CONFERENCE CALL WITH THE BOARD

Should the Board not be inclined to grant the present Unopposed Motion to File under Seal, Petitioner hereby respectfully requests a conference call with the Board to discuss any concerns before the Board issues a decision on the motion.

VI. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board grant this Unopposed Motion to File under Seal and keep the confidential version of Petitioner's Reply to Patent Owner's Response sealed.

Dated: October 8, 2024

Respectfully submitted,

/Domingo M. LLagostera/
Domingo M. LLagostera
Reg. No. 70,684
Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e), the undersigned certifies that a copy of the foregoing **PETITIONER’S UNOPPOSED MOTION TO FILE UNDER SEAL AND APPENDICES A-C** were served on counsel of record on October 8, 2024, by electronic mail at the following address, as authorized by Patent Owner in its Mandatory Notices:

R. Scott Johnson
rsjohnson@fredlaw.com

Thomas M. Patton
tpatton@fredlaw.com

Cara S. Donels
cdonels@fredlaw.com

/M’Liss Hindman/
M’Liss Hindman

Appendix A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.,

Petitioner,

v.

INTIRION CORPORATION,

Patent Owner.

Case No. PGR2024-00004

Patent No. 11,674,746

PROTECTIVE ORDER

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

1. Patent Owner and Petitioner have agreed to use certain confidential information previously produced in the District Court proceeding, *Intirion Corporation v. College Products, Inc.*, 5:23-cv-04023-CJW-KEM (N.D. Iowa). The previously produced confidential information shall be marked in this proceeding as marked in the District Court. Confidential information produced for the first time in this proceeding that was not previously produced in the District Court proceeding shall be clearly marked as “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information used in this proceeding that was previously produced in the District Court proceeding shall be governed according to the Protective Order entered in the District Court. Access to confidential information produced for the first time in this proceeding that was not previously produced in the District Court proceeding is limited to the following individuals who have executed the acknowledgment appended to this order or who previously signed the acknowledgement in the District Court:

- (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. Representatives of record for a party in the proceeding.

- (C) Experts. Retained experts of a party in the proceeding who were allowed access to confidential information in the District Court proceeding or 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. 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 information.
- (F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the 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 in (d)(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 information to that person and after signing the Acknowledgement. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information 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. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of documents and other 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 publicly available. 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 that are disclosed to another party during this proceeding before the Board shall be clearly marked as stated in Section 1 and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

7. Standard Acknowledgment of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

[CAPTION]

Standard Acknowledgement 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 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.

[Signature]

For PATENT OWNER:

R. Scott Johnson
rsjohnson@fredlaw.com
USPTO Reg. No. 45,792

Fredrikson & Byron, P.A.
111 E Grand Ave #301
Des Moines, IA 50309
Phone: (515) 242-8900

Counsel for Patent Owner Intirion Corporation

For PETITIONER:

Domingo M. Llagostera
domingo.llagostera@blankrome.com
USPTO Reg. No. 70,684

Blank Rome LLP
717 Texas Avenue, Suite 1400
Houston, TX 77002
Phone: (713) 632-8682

Counsel for Petitioner College Products, Inc.

Appendix B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.,

Petitioner,

v.

INTIRION CORPORATION,

Patent Owner.

Case No. PGR2024-00004

Patent No. 11,674,746

PROTECTIVE ORDER

Default Protective Order

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

~~1. Confidential information shall be clearly mark as “PROTECTIVE ORDER MATERIAL.”~~

1. Patent Owner and Petitioner have agreed to use certain confidential information previously produced in the District Court proceeding, *Intirion Corporation v. College Products, Inc.*, 5:23-cv-04023-CJW-KEM (N.D. Iowa). The previously produced confidential information shall be marked in this proceeding as marked in the District Court. Confidential information produced for the first time in this proceeding that was not previously produced in the District Court proceeding shall be clearly marked as “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information used in this proceeding that was previously produced in the District Court proceeding shall be governed according to the Protective Order entered in the District Court. Access to confidential information produced for the first time in this proceeding that was not previously produced in the District Court proceeding is limited to the following individuals who have executed the acknowledgment appended to this order or who previously signed the acknowledgement in the District Court:

(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. Representatives of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who [were allowed access to confidential information in the District Court proceeding or 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. 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 information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the 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 in (d)(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 information to that person and after signing the Acknowledgement. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. Persons receiving confidential information 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.

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(A) Documents and Information Filed With the Board.

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(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 publicly available. 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 that are disclosed to another party during ~~discovery or other proceedings~~[this proceeding](#) before the Board shall be clearly marked as ~~“PROTECTIVE ORDER MATERIAL”~~[stated in Section 1](#) and shall be produced in a manner that maintains its confidentiality.

6. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

7. Standard Acknowledgment of Protective Order. The following form may be used to acknowledge a protective order and gain access to information

covered by the protective order:

[CAPTION]

Standard Acknowledgement 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 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.

[Signature]

For PATENT OWNER:

R. Scott Johnson
rsjohnson@fredlaw.com
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Fredrikson & Byron, P.A.
111 E Grand Ave #301
Des Moines, IA 50309
Phone: (515) 242-8900

Counsel for Patent Owner Intirion Corporation

For PETITIONER:

Domingo M. Llagostera
domingo.llagostera@blankrome.com
USPTO Reg. No. 70,684

Blank Rome LLP
717 Texas Avenue, Suite 1400
Houston, TX 77002
Phone: (713) 632-8682

Counsel for Petitioner College Products, Inc.

Summary report: Litera Compare for Word 11.3.1.3 Document comparison done on 7/17/2024 4:45:22 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: PTAB - Default PO.docx	
Modified filename: Jointly Proposed Protective Order - PGR2024-00004 ('746 Patent).docx	
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~~Delete~~	5
~~Move From~~	0
<u>Move To</u>	0
<u>Table Insert</u>	0
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<u>Table moves to</u>	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	51

Appendix C

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

INTIRION CORPORATION, Plaintiff/Counterclaim Defendant, v. COLLEGE PRODUCTS, INC., Defendant/Counterclaim Plaintiff.	Case No. 5:23-cv-04023 -CJW-KEM STIPULATION FOR PROTECTIVE ORDER
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Plaintiff/Counterclaim Defendant Intirion Corporation and Defendant/Counterclaim Plaintiff College Products, Inc., 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 confidential proprietary information in the above-captioned case (the “Action”). The Parties jointly request a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c).

The Parties stipulate and respectfully request that the Court enter the following Protective Order:

1. Scope of Protection This Protective Order shall be applicable to and shall govern without limitation all documents, materials, and information produced or disclosed in the course of the Action, including information produced informally and/or initial disclosures, response to requests for production of documents and things, depositions, interrogatory answers, responses to

request for admissions, any other discovery authorized by the Federal Rules of Civil Procedure, court testimony, and matters of evidence in connection with the Action. To be clear, the Protective Order shall govern any record of information produced in this Action and designated pursuant to this Protective Order, all designated testimony taken at a hearing or other pretrial proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

2. The protections conferred by this Protective Order cover not only Protected Material (as defined below), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Protective Order do not cover any information that has been made publicly available by the Party who has a rightful claim of ownership over such information at or before the time of disclosure. The provisions of this Protective Order shall not apply to materials lawfully obtained from a non-party outside of discovery in the Action or in a manner not governed by the Federal Rules of Civil Procedure.

3. This Protective Order shall apply to the Parties, any nonparties who have the Party's confidential or sensitive business and proprietary information disclosed to them in this Action and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

4. Unless ordered by the Court, or otherwise provided for herein, the Protected Material disclosed will be held and used by the person receiving such information solely for use in connection with the Action and any appeals therefrom.

5. This Protective Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any Protected Material into evidence at the trial of this Action, or from using any information contained in Protected Material at the trial of this Action, subject to any pretrial order issued by this Court.

6. This Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods. All references to “days” in this Order shall be construed as calendar days, unless otherwise specifically indicated.

7. **Definitions**

A. “Action”: means the above-captioned matter.

B. “CONFIDENTIAL INFORMATION”: Shall mean any document or information, testimony, exhibit, paper, representation of facts, discovery material, or any portion thereof supplied in any form, produced or given in the course of this Action, that a Party or third party contends in good faith contains or reflects any of the following: (i) confidential, proprietary, or commercially sensitive information, including confidential, proprietary, or sensitive design, development, technical, or manufacturing information; (ii) any information which is not generally known and which the Producing Party would not normally reveal to third parties or would cause third parties to maintain in confidence. Nothing herein is intended to preclude, and does not preclude, a *Receiving* Party or other *non-producing* party from designating a document produced, information disclosed, or testimony from a deposition, hearing or trial as CONFIDENTIAL INFORMATION pursuant to the terms of this Order that it reasonably believes to warrant this designation, which may be contested in a timely manner.

Any information that has been made publicly available by the Party who has a rightful claim of ownership over such information at or before the time of its disclosure in this litigation does not constitute CONFIDENTIAL INFORMATION for purposes of this Protective Order.

C. Designating Party: a Party or Non-Party that designates information or

items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”, “HIGHLY CONFIDENTIAL – AEO PROSECUTION BAR”, or “HIGHLY CONFIDENTIAL – SOURCE CODE”, or a Party that designates information or items that it receives from a Producing Party.

- D. Disclosure or Discovery Material: all items, information, documents, or other materials, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.
- E. Expert: a person with specialized knowledge or experience in a matter pertinent to the Action who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action, and who is not a current employee of a Party.
- F. “HIGHLY CONFIDENTIAL – AEO PROSECUTION BAR”: means any document or information, exhibit, paper, representation of facts, discovery material, or any portion thereof supplied in any form, produced or given in the course of this matter Action that reflects or contains the following: (i) information that is HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY (as defined below) and is proprietary technical information, the disclosure of which during patent acquisition or prosecution activities would create a risk of serious injury to the competitive interests of the Producing Party.
- G. “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”: means any document or information, exhibit, paper, representation of facts, discovery material, or any portion thereof supplied in any form, produced or given in the course of this Action that reflects or contains any of the following: (i) confidential information of a Non-Party that the Producing Party is bound by a separate confidentiality agreement or court order to maintain in confidence and that the Producing Party is permitted or required to produce in the Action; (ii) highly sensitive business planning, marketing, financial pricing, sales, design, development, technical, or manufacturing information, the disclosure of which would bring competitive harm to the Producing Party; (iii) trade secrets; (iv) information related to patent licensing strategies; and (v) any confidential agreement concerning an interest in a patent, including any agreement in which any party receives or grants a license, option to license, covenant not to sue, restriction on suit, or any other right of any kind to or under any patent.

- H. “HIGHLY CONFIDENTIAL – SOURCE CODE”: means any document or information, exhibit, paper, representation of facts, discovery material, or any portion thereof supplied in any form, produced or given in the course of this Action that reflects or contains any of the following: source code, pseudo code, or similar programming language or instructions that are in general converted into machine language by compilers, assemblers, or interpreters, including material derived from it, that is extremely sensitive, the disclosure of which to another Party or Non-Party would create substantial risk of serious harm that could not be avoided by less restrictive means (“Source Code Material”).
- I. Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.
- J. Outside Counsel of Record: attorneys who are not employees of a Party to this Action but are retained to represent or advise a Party to this Action and have appeared in this Action on behalf of that Party or are employed with a law firm which has appeared on behalf of that Party, including support staff.
- K. Party: any named party to this Action.
- L. Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.
- M. Professional Vendors: independent persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.
- N. Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”, “HIGHLY CONFIDENTIAL – AEO PROSECUTION BAR”, or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Any “Protected Material” may be used only for purposes of this Action and any appeals therefrom and in accordance with this Protective Order. Information is not Protected Material if it is disclosed in a printed publication, is known to the public, was known to the Receiving Party without obligation of confidentiality before the Producing Party disclosed it, or is or becomes known to the Receiving Party by lawful means not constituting a breach of this Protective Order

or separate court order without any obligation of confidentiality. Information is likewise not Protected Material if a person lawfully obtained it independently of this Action without any obligation of confidentiality. If a Receiving Party believes information and/or documents should not be designated as Protected Material, it may challenge that designation pursuant to Section 23.

- O. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party in this Action.

8. Designation of Protected Material. Before producing Protected Material, the Producing Party shall clearly and visibly designate such documents or information as containing Protected Material, by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows: “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”, “HIGHLY CONFIDENTIAL – AEO PROSECUTION BAR”, or “HIGHLY CONFIDENTIAL – SOURCE CODE”. For documents produced in native ESI format (such as Excel documents), a Party may designate that document as Protected Material by including the appropriate confidentiality designation in the filename as well as in any corresponding image placeholders. Protected Material produced or furnished during the course of this Action shall continue to be designated as containing Protected Material, by continuing to place on each page, each document (whether in paper or electronic form), or each thing a legend substantially the appropriate designation.

- A. **Depositions.** A Party may designate information disclosed at a deposition as Protected Material by requesting the reporter to so designate the transcript at the time of the deposition or within twenty-one (21) days following the receipt of the deposition transcript as described below. Thereafter, the deposition transcripts shall be protected, pending objection, under the terms of this Order. Within twenty-one (21) calendar days of receipt of the transcript, each Party or Non-Party may

designate all or a portion of the transcript, as appropriate, as Confidential, Highly Confidential – Attorneys’ Eyes Only, Highly Confidential – AEO Prosecution Bar, Highly Confidential – Source Code, or withdraw the Confidential designation. A deponent may review the transcript of his or her deposition at any time. Deposition transcripts shall be designated by the words “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, “HIGHLY CONFIDENTIAL – AEO PROSECUTION BAR”, or “HIGHLY CONFIDENTIAL – SOURCE CODE” on the cover page of the transcript. Until the expiration of the 21-day period, the entire deposition transcript shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Counsel for any Producing Party shall have the right to exclude from oral depositions, other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person who is not authorized by this Protective Order to receive or access Protected Material based on the designation of such Protected Material. Such right of exclusion shall be applicable only during periods of examination or testimony regarding such Protected Material.

- B. Discovery Responses, Filings, and Other Papers.** A Producing Party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers filed with the Court or served on opposing counsel as containing Protected Material when such papers are filed or served, in accordance with this Section.
- C. Hearing.** Unless otherwise ordered by the Court or agreed to in writing by the Parties, a Party shall designate information disclosed at a hearing as Protected

Material by requesting the Court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

- D. **Reasonable Care.** The Parties will use reasonable care to avoid designating any documents or information as Confidential, Highly Confidential – Attorneys’ Eyes Only, Highly Confidential – Source Code, or Highly Confidential – AEO Prosecution Bar that is not entitled to such designation, or which is generally available to the public. The Parties may raise objections to the confidentiality in a timely manner in accordance with the terms of this this Protective Order.

9. Disclosure and Use of Confidential Information. Any document or information that has been designated Confidential, Highly Confidential – Attorneys’ Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code shall be disclosed by the Receiving Party only to recipients qualified to receive the particular Protected Material according to Sections 110 and 11. All Qualified Recipients of Protected Material shall hold such information in confidence, shall use the information only for purposes of this Action and any appeals therefrom, shall not use it for any business or other commercial purpose, shall not use it for patent prosecution or for providing strategic patent prosecution or procurement advice, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated Confidential, Highly Confidential – Attorneys’ Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Protective Order.

10. Qualified Recipients of Confidential Material. In relation to material designated

as Confidential, the term Qualified Recipient of Confidential Material means:

- A. Outside Counsel of Record for any Party in this Action, as well as employees of such counsel (excluding experts and investigators) assigned to and reasonably necessary to assist such counsel with the litigation of this Action;
- B. Officers, directors, or employees (including in-counsel) of a Receiving Party to whom disclosure is reasonably necessary to assist Outside Counsel of Record in connection with this Action;
- C. Persons who were authors or recipients of the Protected Materials or previously had legal access to Protected Materials, as identified by sworn testimony of another or unambiguous information that appears on the face of a document;
- D. Experts (as defined in this Protective Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action, provided that, with sufficient time before access is given such that the Designating Party may object to the disclosure (and in no event less than 14 days prior to the disclosure), the Receiving Party makes a written notification to the Designating Party that provides (1) the full name, current employer, business address, and business title of the Expert and (2) an attached an up-to-date and accurate copy of the Expert's current resume or curriculum vitae, and such Experts agree in writing, in the form attached at **Appendix A**, to be bound by the terms of this Protective Order;
- E. Court reporters, stenographers, videographers, and their staff engaged to transcribe or record depositions conducted in this Action to whom disclosure is reasonably necessary for this Action;
- F. Professional jury or trial consultants, and mock jurors to whom disclosure is reasonably necessary for this Action, provided that such individuals agree in writing, in the form attached at **Appendix A**, to be bound by the terms of this Protective Order.
- G. Professional Vendors to whom disclosure is reasonably necessary to assist Outside Counsel of Record with the litigation of this Action;
- H. Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, provided that such individuals agree in writing, in the form attached at **Appendix A**, to be bound by the terms of this Protective Order; and

I. The Court and its support personnel.

11. Qualified Recipients of Highly Confidential Material. In relation to material designated as Highly Confidential – Attorneys’ Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code, the term Qualified Recipient of Highly Confidential Material means the individuals listed in Section 10(A) and (C)–(I).

12. Additional Recipients of Protected Material. A Party who wishes to disclose Protected Material to a person not otherwise authorized under this Protective Order to see that information must first make a reasonable attempt to obtain the Designating Party’s permission. The Designating Party must not unreasonably withhold permission. If the Party is unable to obtain permission, it may seek leave of the Court to designate such additional person(s) as a Qualified Recipient(s).

13. Confidentiality of Party’s Own Documents. Nothing herein shall affect the right of the Designating Party to disclose its own information to any person. Such disclosure shall not waive the protections of this Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the Designating Party the party information became public knowledge. Similarly, the Protective Order shall not preclude a Party from showing its own information that has been filed under seal by the opposing Party to any person.

14. Use of Protected Material at a Deposition or Hearing. Nothing contained herein shall be construed to prejudice any Party’s right to use any Protected Material in taking testimony at any deposition or hearing provided that the Protected Material is only disclosed to a person(s) who:

A. Appears on the face of the document to have drafted, prepared, executed, or received the document, or any person who is reasonably likely to have had prior legal access to the document or the information contained therein and is: (i) eligible to have access to the Protected Material by virtue of his or her employment with the Designating Party, (ii) a current officer, director or employee of the Designating Party, or (iii) a former officer, director, or employee of the Designating Party, but only to the extent that the examination and testimony pertains to the period(s) during which the former officer, director, or employee was employed by the Designating Party, or

B. Is a Qualified Recipient of the Protected Material under Sections 10 and 11.

15. Source Code.

A. Access to Protected Material designated “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be limited to Outside Counsel of Record and up to three (3) Experts retained for the purpose of this Action and approved to access such Protected Materials pursuant to Sections 10 and 11 above. Access to a Party’s Source Code Material shall be provided to the Receiving Party’s Outside Counsel of Record and/or Expert(s) only on “stand-alone” computer (that is, a computer on which all access ports have been disabled (except for one printer port) that may not be linked to any network, including a local area network (“LAN”), an intranet, or the Internet) (“Source Code Computer”). To the extent production of Source Code material becomes necessary in this Action, the Producing Party will ship the Source Code Computer to Outside Counsel of Record for the Receiving Party via hand carry, Federal Express or other similarly reliable courier (tracking numbers or comparable mechanisms must be used). The Source Code Computer may be connected to a printer. No recordable media or recordable devices, including, without limitation, sound

recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be used with the Source Code Computer. No input/output devices (e.g., USB memory sticks, cameras, etc.) shall be used on or with the Source Code Computer.

B. The Producing Party will produce Source Code Material in computer searchable format on the Source Code Computer. The native directory structure, if any exists, of the Source Code Material shall be maintained when made available for inspection.

C. A Receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, discovery document, or other Court document (“Source Code Document”), provided that the Source Code Documents are appropriately marked under this Protective Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court’s rules, procedures and orders. 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.”

D. The Receiving Party’s Outside Counsel of Record and/or Experts shall be entitled to take notes relating to the Source Code Material by hand or electronically on the Source Code Computer, but may not copy the Source Code Material verbatim into such notes. Notes relating to Source Code Material shall be marked “HIGHLY CONFIDENTIAL – SOURCE CODE.”

E. The Receiving Party shall be permitted to make printouts of Source Code Material. The Receiving Party must label any printouts of Source Code Material “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Receiving Party may print limited portions of the

Source Code Material only when necessary to prepare discovery, court filings, or pleadings or other papers (including a testifying expert's expert report) or for a deposition or a hearing. Printed portions of a continuous block of Source Code Material for each accused product shall not exceed twenty (20) pages unless otherwise agreed by the Parties, whose reasonable request for agreement shall not be denied. The Receiving Party may print no more than 200 pages for each accused product, unless otherwise agreed by the Parties, whose reasonable request for agreement shall not be withheld.

F. Any printouts or photocopies of the Source Code Material may not be photocopied, digitally imaged or otherwise duplicated, other than as allowed in this Protective Order. Under no circumstances is the Source Code Material to be copied, converted, or transmitted in electronic form without the prior written authorization of the Producing Party, except as necessary for a deposition or, a hearing, or trial or to create documents which, pursuant to the Court's rules, procedures, or order, must be filed or served electronically (including drafts thereof and related work product materials). With respect to the foregoing sentence, motions, pleadings, discovery responses, claim charts, and expert reports are included in the types of documents that "must be filed or served electronically." Images or copies of Source Code Material shall not be included in correspondence between the Parties.

G. The Receiving Party shall ensure its Outside Counsel of Record or Experts keep the Source Code Computer and any printouts or photocopies of Source Code Material in a secured locked area in the offices of such Outside Counsel of Record or Experts. The Receiving Party may also temporarily keep the Source Code Computer or any 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 (*e.g.*, a hotel prior to a Court proceeding or deposition), provided that the Source Code Computer and printouts or photocopies are stored in a secure manner that ensures that access is limited to the persons authorized under this Protective Order.

H. A Producing Party's Source Code Material and Source Code Computer may only be transported by the Receiving Party at the direction of a person authorized under Sections 10 and 11 above to another person authorized under Sections 10 and 11 above, on paper via hand carry, Federal Express or other similarly reliable courier (tracking numbers or comparable mechanisms must be used).

I. For depositions, when the Receiving Party uses any printouts of the Source Code Material during a deposition, it shall provide a copy of the printout to the Producing Party during the deposition. All other copies of printouts of Source Code Material necessary for and used during the deposition shall be retrieved by the Receiving Party and must not be given to or left with a court reporter or any other unauthorized individual.

J. At the conclusion of this Action and unless the Court otherwise orders, the Source Code Computer and printed copies of Source Code Material shall be returned to the Producing Party or, at the Producing Party's choosing, the Receiving Party shall certify that all printed copies of Source Code Material have been destroyed.

16. Agreements and Maintenance of Agreements to Terms of Protective Order at Appendix A. In no event shall any Protected Material be disclosed to any Qualified Recipient pursuant to Section 10(D), (F), or (H) and corresponding section in Section 11, until such person has executed an agreement in writing, in the form attached at **Appendix A**, to be bound by the terms

of this Protective Order. Outside Counsel of Record for the Party seeking to disclose material designated under this Order to any such person pursuant to these Sections shall be responsible for retaining the executed originals of all agreements. Regardless of any other provision in the Protective Order, such counsel shall maintain copies of each and every signed form for persons acknowledging their obligations under this Order, including the form attached at **Appendix A**, for a period of three (3) months after dismissal of the Action, the entry of final judgment and/or the conclusion of any appeals arising therefrom, whichever is later.

17. Filing of Protected Material Under Seal. Documents, papers, and transcripts filed with the Court that contain any other Party's Protected Material shall be filed under seal. If any Receiving Party's briefs, memoranda, discovery requests, requests for admission or other papers of any kind which are served or filed shall include another Party's Protected Material, the papers shall be appropriately designated and shall be treated accordingly. Any Protected Material that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. If a Petition or Answer filed with the Court, or an exhibit thereto, discloses or relies on Protected Material or information contained therein, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with 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. All **Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, and Highly Confidential – Source Code** material must be filed under seal in accordance with the manner prescribed by the Court for such filings. The Parties are granted leave to file Protected Materials under seal according to the

terms of this Protective Order. If Protected Materials are referenced or cited within a motion, brief, memorandum, or declaration, the Parties shall move for leave to file the motion, brief, memorandum, or declaration under seal. Within 7 days of filing motion, brief, memorandum, or declaration under seal pursuant to this Section, the filing party will provide the non-filing party with a proposed redacted version of such document(s) (excluding, unless otherwise agreed to by the parties, exhibits to filings that are more than 2 pages), removing all Protected Material, for purposes of sharing public versions of the sealed filing with the Parties. The non-filing party shall have 3 days to provide any additional redactions to the document filed under seal.

18. Prosecution Bar.

A. Any person who, under this Protective Order, obtains, receives, has access to, or otherwise learns, in whole or in part, any Discovery or Disclosure Material that is designated as “HIGHLY CONFIDENTIAL—SUBJECT TO PROSECUTION BAR” shall not prepare or Prosecute any patent application before a domestic or foreign agency, 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 the conclusion of this action (as defined in Section 24). “Prosecution” or “Prosecute” or “Prosecuting” as used in this Section includes drafting or amending patent claims, advising another on the drafting or amending of patent claims, or otherwise affecting the scope or maintenance of patent claims, but does not include the representation of a Party or the direction of outside counsel in connection with ex parte reexamination, inter partes review or other form of post-grant review, provided that no Protected Materials of another Party from this Action shall be used for any of those activities unless so permitted by written agreement of the Parties and a protective order entered in connection with those activities and such representation and direction may not include advising, consulting, or participating in any way in the drafting of new, amended,

or substitute claims or potential new, amended, or substitute claims, or in the drafting or preparation of any motion or document filed pursuant to 35 U.S.C. § 316(d) or 37 C.F.R. § 1.530(d). Nothing in this Section shall prohibit Outside Counsel of Record, and anyone, from providing alleged prior art references, invalidity and validity contentions, and/or any public (or redacted) filed or served documents in this Case, to a Party or anyone who is preparing or Prosecuting any patent application before a domestic or foreign agency on their behalf.

B. College Products' and Intirion's Outside Counsel of Record do not prepare or Prosecute any patent application for College Products and Intirion, respectively. If the parties' current representations in this Section change, they shall notify the other party.

19. Nonparties. Any Non-Party who produces documents or other information in response to discovery requests or subpoenas in this Action shall be entitled to the benefits and protections of this Protective Order and shall be entitled to seek additional protections. The Parties agree that they will treat Protected Material produced by Non-Parties according to the terms of this Protective Order. A Non-Party's use of this Protective Order to protect its documents and information does not entitle that Non-Party access to the Protected Material produced by any other Party in this Action.

20. Inadvertent Failure to Designate. In the event that a Producing Party inadvertently fails to designate any of its information pursuant to Section 8, it may later designate by notifying the Receiving Parties in writing within fifteen (15) days of discovering the inadvertent disclosure and provide replacement pages or documents bearing the appropriate confidentiality designation. An inadvertent failure to designate qualified information does not, standing alone, constitute forfeiture of a claim of confidentiality. The Receiving Parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation. The Receiving

Party shall destroy all copies of the inadvertently produced Protected Material and any documents, information, or material derived from or based thereon. It shall be understood however, that no person or Party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

21. Inadvertent Disclosures of Protected or Privileged Material.

A. Inadvertent Disclosure of Protected Material. In the event of an inadvertent disclosure of another party's Confidential information to a non-Qualified Recipient for Confidential Material (see Section 10) and/or an inadvertent disclosure of another party's Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, and/or Highly Confidential – Source Code material to a non-Qualified Recipient for Highly Confidential Material (see Section 11), the Party making the inadvertent disclosure shall within two (2) business days of learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains Protected Material subject to this Protective Order; (ii) make all reasonable efforts to preclude dissemination or use of the Protected Material by the person to whom disclosure was inadvertently made including, but not limited to, retrieving all copies of such materials from the non-Qualified Recipient and binding each non-Qualified Recipient who received such information to the terms of this Order by providing a copy of this Order and requesting such non-Qualified Recipient sign the form attached hereto as Appendix A; and (iii) notify the Producing Party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, the location(s) in which the copies of such material was maintained, any subsequent disclosures by the non-Qualified Recipient, and the steps taken to ensure against the dissemination or use of the information. The requirements set forth in this paragraph shall not prevent the Producing Party from applying to the Court for further or additional relief including, for example, injunctive relief

or sanctions (if appropriate).

B. Disclosure of Privileged Information. Nothing in this Protective Order shall require disclosure or production of information, documents, or other material protected by the attorney-client privilege, work product protection, or other privilege or immunity (“Privileged Materials”), and the production of such information shall not operate as a waiver in this case or in any other state or federal proceeding. Inadvertent disclosure of any Privileged Materials during discovery shall be without prejudice to any claim that such document or other information is privileged and/or protected, and no Party shall assert that the Producing Party has waived any rights by such inadvertent disclosure in this or any other proceeding as provided in Fed. R. Evid. 502(d). This Protective Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). If a Producing Party becomes aware that it has produced information protected by the attorney-client privilege, work product protection, or other privilege or immunity, the Producing Party will promptly notify the Receiving Party in writing of the inadvertent production. If the Producing Party claims in writing that Privileged Materials were inadvertently disclosed, the Receiving Party, without any (further) examination of the inadvertently disclosed materials, shall within five (5) business days of such notice return to counsel for the Producing Party any and all copies of the inadvertently produced Privileged Materials, or in the alternative, within five (5) business days of said notice, the Receiving Party, shall destroy the inadvertently produced Privileged Materials and certify such destruction to the Producing Party. Within ten (10) days of such notice, the Producing Party shall serve a privilege log identifying such inadvertently produced Privileged Materials, including, to the extent known, identification of the date of the document, author of the document, the sender of the document, the recipient of the document, a description of the contents of the document, and the basis for the

privilege claim. If the Receiving Party becomes aware that it is in receipt of material which it knows or reasonably should know is privileged or protected, counsel for the Receiving Party shall immediately take steps to (i) stop reading such information or materials, (ii) notify counsel for the Producing Party of such information or materials, (iii) collect all copies of such information or materials in its possession or control, (iv) destroy or return such information or materials to the Producing Party, and (v) otherwise comport themselves with the applicable provisions of the Rules of Professional Conduct.

22. Objections to Experts and Resolutions. A Receiving Party that provides the information specified in Sections 10 and 11 and an executed Appendix A form for its Expert with at least fourteen (14) days prior written notice, may disclose the subject Confidential, Highly Confidential – Attorneys’ Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code Material to the identified Expert seeking status as a Qualified Recipient unless, within fourteen (14) days of delivering the notice and request, the Receiving Party receives a written objection from the Designating Party. If a written objection is served by the Designating Party, the Receiving Party may not disclose the Protected Material until the objection is resolved. Any such objection must set forth in detail the grounds on which it is based. The Receiving Party that receives a timely written objection must meet and confer with the Designating Party to try to resolve the matter by agreement within seven (7) days of the written objection. If no agreement is reached, within ten (10) days of meeting and conferring, the Designating Party objecting to the disclosure shall follow the Court’s procedures for disputes relating to protective orders to seek an order prohibiting the disclosure. If the Designating Party does so, the disclosure may not be made until after the Court issues a ruling allowing the disclosure. If the Designating Party does not seek the Court’s assistance to resolve the dispute within the ten

(10)-day window after the parties' met and confer, the Receiving Party may thereafter make the disclosure.

23. Challenge to Designation. A Party may request in writing to a Designating Party that the designation given to any Protected Material be modified or withdrawn. If the parties are unable to agree as to whether the confidentiality designation should be modified or withdrawn within ten (10) days of receipt of the written request, the Receiving Party may apply to the Court for relief. Upon any such application, the Designating Party shall have the burden of establishing that the disputed Protected Material is entitled to the requested confidential treatment. Such application shall be treated procedurally as a motion to compel pursuant to [Federal Rule of Civil Procedure 37](#). All Protected Material is entitled to the relevant confidential treatment pursuant to the terms of this Order until and unless the Parties formally agree in writing to the contrary or a contrary determination is made by the Court as to whether all or a portion of designated Protected Material is entitled to confidential treatment.

24. Control of Documents. Each person given access to documents or information designated as Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code, or information derived therefrom, shall be advised that such documents or information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed other than pursuant to the terms hereof. Such persons shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents or information designated as Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code pursuant to the terms of this Order.

25. Conclusion of Action. Following final termination of this Action, by judgment,

settlement, or otherwise from which no appeal can be brought (“the conclusion of this action”), unless otherwise agreed to in writing by an attorney of record for the Designating Party, each Party or other person subject to the terms hereof shall, within the time set forth below, destroy or return to the Producing Party all materials and documents containing Protected Material and certify to the Producing Party such destruction or return,. Such return or destruction shall not relieve said Parties or persons from any of the continuing obligations imposed upon them by this Protective Order.

As used in this subdivision, all “Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) within sixty (60) days after the conclusion of this action that (1) verifies all the Producing Party’s (and, if not the same person or entity, the Designating Party’s) Protected Material was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Outside Counsel of Record are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, written discovery responses, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and Expert work product, even if such materials contain Protected Material. Further, Outside Counsel of Record shall not be required to delete their emails at the conclusion of this action. Any such archival copies or emails of Outside Counsel of Record that contain or constitute Protected Material remain subject to this Protective Order.

26. Rendering Legal Advice. Nothing in this Order shall restrict any Party's counsel from rendering advice to its clients with respect to this case and, in the course thereof, relying upon Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code information, provided that in rendering such advice, counsel shall not disclose any other party's Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code information other than in a manner provided for in this Order.

27. Compulsory Disclosure to Third Parties. If any Receiving Party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks information designated as Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, or Highly Confidential – Source Code under this Order, the Receiving Party shall (1) promptly notify the person or entity that issued the subpoena, demand or order that some or all of the material covered by the subpoena, demand, or order is subject to this Protective Order, and provide a copy of this Order, (2) give prompt written notice to the Producing Party (and the Designating Party if not the same party) of the pendency of the subpoena, demand, or order and provide a copy of such subpoena, demand, or court order, and (3) provide the Producing Party (and the Designating Party if not the same party) with a list of the Protected Material that the Receiving Party believes it is obligated to produce. The Receiving Party shall not produce the information until the Producing Party (and the Designating Party if not the same party) shall have reasonable time (which shall not be less than ten (10) days) to object to or take other appropriate steps to protect the Protected Material. The Receiving Party shall not take a position concerning the propriety of such subpoena,

demand, or order or the discoverability of the information sought thereby that is adverse to any Producing Party (and the Designating Party if not the same party) opposing the request for production of such documents or materials. In responding to the subpoena, demand, or order, the Receiving Party will take all reasonable measures to have such documents treated in accordance with the terms of this Protective Order. No compulsory disclosure to third parties of information or material exchanged under this Protective Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction. Compliance with another Court's order to produce Protected Material shall not be a violation of this Protective Order, provided that the above notification provisions are met.

28. Binding Effect. This Protective Order shall be binding upon the Parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, and other persons or organizations over which they have control, and persons made subject to this Order by its terms.

29. Jurisdiction to Interpret and Enforce Protective Order. The Court is responsible for the interpretation and enforcement of this Protective Order. All disputes concerning Protected Material produced under the protection of this Protective Order shall be resolved by the Court. In the event a Party violates or threatens to violate the terms of this Protective Order, the aggrieved Producing Party (and Designating Party if not the same party) may immediately apply to obtain injunctive relief against any such person violating or threatening to violate any of the terms of this Protective Order. After the termination of this Action, the Parties, including any Party or person agreeing to be bound hereunder, agree that

the Court will continue to have jurisdiction to enforce this Protective Order and to make such amendments, modifications, deletions, and additions to this Protective Order as the Court may deem appropriate.

30. Term. Unless otherwise agreed to by written stipulation executed by Outside Counsel of Record or ordered, this Order shall remain in force after the conclusion of this action except with respect to those documents and information that become a matter of public record by lawful means, not constituting a breach of this Protective Order or separate court order.

31. Modification of Stipulation. This Protective Order may be modified, and any matter related to it may be resolved, by written stipulation of the Parties without further Order of the Court. This Protective Order supersedes any agreement between the Parties regarding confidentiality of particular information entered into before the date of this Protective Order. Entry of this Protective Order is without prejudice to the right of any person or entity to request a modification of this Stipulation through stipulation of all Parties. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Protective Order to allow disclosure of Protected Material to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of Protected Material.

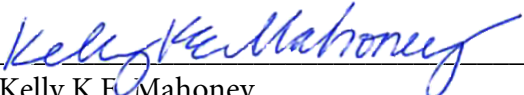
32. Select Captions. The title captions for each section of this Protective Order are for convenience only and are not intended to affect or alter the text of the sections or the substance of the Order.

33. Other Proceedings. By entering this Order and limiting the disclosure of information in this Action and any appeals therefrom, the Court does not intend to preclude

another Court from finding that information may be relevant and subject to disclosure in another case. A person or party subject to this Order who becomes subject to a motion to disclose another party's information designated as Confidential, Highly Confidential – Attorneys' Eyes Only, Highly Confidential – AEO Prosecution Bar, Highly Confidential – Source Code pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

34. Other. This Order shall not be construed: (a) to broaden the permissible scope of discovery in this Action; (b) as a waiver of any party's right to object to the furnishing of discovery; (c) as an admission by any party that any particular material contains or reflects trade secrets, proprietary or commercial information, or other confidential matter; or (d) to prejudice any party's right to apply to the Court for an Order.

SO ORDERED on September 15, 2023.



Kelly K.E. Mahoney
United States Chief Magistrate Judge
Northern District of Iowa

APPENDIX A
IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

INTIRION CORPORATION, Plaintiff/Counterclaim Defendant, v. COLLEGE PRODUCTS, INC., Defendant/Counterclaim Plaintiff.	Case No. 5:23-cv-04023
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**ACKNOWLEDGEMENT OF EXPERT OR OTHER INDIVIDUAL
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 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 **PROTECTED MATERIAL** that is disclosed to me.
4. Promptly upon termination of this action or upon the termination of my duties relating to this action, I will return all **PROTECTED MATERIAL** that came into my possession, and all documents and things that I have prepared relating thereto, to the party that provided the **PROTECTED MATERIAL** to me.

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 _____

September 13, 2023

Respectfully submitted,

/s/ Thomas M. Patton

Fredrikson & Byron, P.A.

R. Scott Johnson (#AT0004007)

Thomas M. Patton (#AT0014768)

Cara S. Donels (#AT0014198)

111 East Grand Avenue, Suite 301

Des Moines, IA 50309-1977

Telephone: (515) 242-8900

Facsimile: (515) 242-8950

Email: rsjohnson@fredlaw.com

tpatton@fredlaw.com

cdonels@fredlaw.com

Michael J. Frey

Michael J. Frey PC

701 Pierce Street, Suite 300

Sioux City, IA 51101

(712) 277-1434

Email: mfrey@maynelaw.com

**Attorneys for Plaintiff Intirion
Corporation**

September 13, 2023

Respectfully submitted,

/s/ Domingo M. Llagostera

Jeana L. Goosmann

William Hale

Goosmann Law Firm, PLC

410 5th Street

Sioux City, IA 51101

(712)226-4000

(712) 224-4517

GoosmannJ@Goosmannlaw.com

Domingo M. Llagostera (admitted *Pro Hac Vice*)

Russell T. Wong (admitted *Pro Hac Vice*)

Blank Rome LLP

717 Texas Avenue, Suite 1400

Houston, TX 77002

(713) 228-6601

(713) 228-6605

domingo.llagostera@blankrome.com

Megan R. Wood (admitted *Pro Hac Vice*)

Blank Rome LLP

1825 Eye Street NW

Washington DC 20006

(202) 420-2753

(202) 420-2201

megan.wood@blankrome.com

**Attorneys for Defendant College
Products, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record registered with CM/ECF.

/s/ Erica Palmer