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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91166346
Party	Defendant TOMTOM LICENSING GMBH TOMTOM LICENSING GMBH NEULERCHENFELDERSTRASSE 12 ATX 1160 VIENNA,
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Submission	Other Motions/Papers
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Date	12/04/2006
Attachments	I05334 protective order.pdf (11 pages)(402769 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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TOMTOM B.V.

Opposer,

vs.

OPPOSITION NO.: 91166346
SERIAL NO.: 76125536
MARK: TOMTOM

TOMTOM LICENSING GMBH LLC,

Applicant.

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STIPULATED PROTECTIVE ORDER

FOR DISCLOSURE OF CONFIDENTIAL MATERIALS

Upon the request of the parties for the entry of a protective order governing the disclosure of trade secrets, confidential and/or proprietary business information, or other confidential, non-public personal or proprietary business information, including such information that could be especially detrimental or harmful to the producing party if disclosed to its adversary;

IT IS ORDERED THAT in connection with discovery in, and any hearing on and trial of, this action, the following provisions shall govern the disclosure of documents or other information:

1. A party to this action or a third party from which documents or other information is sought ("Producing Party") producing information, testimony, tangible things, or documents ("Discovery Material") shall have the right to designate Discovery Material as "CONFIDENTIAL" if the Producing Party believes that the Discovery

Material contains confidential and/or proprietary business information, including trade secrets or other confidential, non-public, personal or proprietary business information, the disclosure of which could be detrimental or harmful to the designating party ("Confidential Information"). Confidential Information shall include Discovery Material in its original form, and any copy, excerpt, summary, or other document containing Confidential Information.

2. The Producing Party may designate Discovery Materials as confidential by placing the following legend or similar legend on the document or thing: "CONFIDENTIAL." In the event that original documents are produced for inspection, the Producing Party may designate such as Confidential Information and the appropriate "CONFIDENTIAL" legend shall be placed on the documents in the copying process. In the event a party produced documents before the execution of this Order, that party may designate such documents "CONFIDENTIAL" in accordance with the procedures of Paragraph 3 of this Order.

3. If a Producing Party inadvertently produces Confidential Information without marking it with the appropriate legend, it may give written notice that the Discovery Material is Confidential Information and it shall thereafter be treated as such.

4. Parties may designate deposition or trial testimony as Confidential Information by indicating on the record that the testimony is Confidential Information at the time it is given or by sending written notice that the testimony is Confidential Information within fifteen (15) days of the date the final transcripts are received by the parties. All testimony in this action shall be deemed "For Attorneys' Eyes Only Information" (as defined subsequently herein) until the time within which it may be

designated as Confidential Information or "For Attorneys' Eyes Only Information" (as defined subsequently herein) has passed.

5. Confidential Information shall be made available only to "Qualified Persons" as defined in Paragraph 6, who shall have read this Order and agreed to be bound by its terms. No other person shall have access to Confidential Information without the approval of the Producing Party or the Trademark Trial and Appeal Board, nor shall any other person be informed of Confidential Information by any person having access to Confidential Information.

6. "Qualified Persons" means: (a) the Trademark Trial and Appeal Board; (b) counsel, whether retained counsel or in-house counsel; (c) employees of counsel; (d) translators, duplicating services, auxiliary services of a like nature, routinely engaged by counsel; (e) experts who are not potential fact witnesses in this action, engaged by counsel or the parties to assist in this litigation, provided that any such third party has signed an undertaking in the form of Exhibit A attached hereto; and (g) any other person designated by written agreement of the parties.

7. Before disclosure of Confidential Information by any party or its attorney to any individual not already provided access to such information by the terms of this Order, the individual shall be informed of the existence of this Order and provided with a copy to read. The individual will then be required to certify in writing that the Order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such

certification is attached to this Order as Exhibit A. The party or attorney receiving the completed form shall retain the original.

8. Confidential Information can be used only in preparation for, and at any hearing on and the trial of, this action, and shall not be used for any other purpose.

9. The parties may use Discovery Material marked "CONFIDENTIAL" during witness interviews, depositions, hearings, or other proceedings as provided herein. In advance of the use of any Confidential Information with a witness or deponent, the witness or deponent shall be advised of this Order and his or her obligation to adhere to its terms. Among other things, the witness or deponent shall be requested: (a) not to disclose any information, transcripts or documents relating to Confidential Information (whether or not exhibited to the witness or deponent) to anyone other than Qualified Persons in the absence of agreement by the parties or permission from the Trademark Trial and Appeal Board; and (b) to take appropriate precautions to ensure that prohibited disclosure does not occur.

10. A party to this action shall have the right to designate Discovery Material as "HIGHLY CONFIDENTIAL" if it reasonably believes that such Discovery Material contains trade secrets or highly confidential, non-public, personal or proprietary business information, disclosure of which could be especially detrimental or harmful to the Producing Party if disclosed to its adversary ("Highly Confidential").

11. Discovery Material marked "HIGHLY CONFIDENTIAL" may only be shown to: (a) outside counsel of record who are engaged in the preparation of this action; (b) the Trademark Trial and Appeal Board and its officers; (c) paraprofessionals, stenographic or clerical employees assisting outside counsel of record in the preparation

of this action; and (d) independent expert witnesses retained by the parties in connection with this action who have executed an undertaking in the form marked Exhibit A attached hereto. All such persons shall be informed by outside counsel of record of the provisions of this Order and shall agree to be bound by its provisions.

12. Only persons identified in Paragraph 11 of this Order shall have access to Highly Confidential Information without the approval of the Producing Party or the Trademark Trial and Appeal Board, and no other person may be informed of Highly Confidential Information by any person having access to Highly Confidential Information.

13. Before disclosure of Highly Confidential Information by any party or its attorney to any individual not already provided access to such information by the terms of this Order, the disclosing party first shall advise, by first-class mail and facsimile, the party designating the information as Highly Confidential as to the identity of the person(s) to whom they are disclosing the Highly Confidential Information and the reason(s) for such disclosure. The party, which designated the information as Highly Confidential, shall have ten (10) business days to object to the proposed disclosure, and must do so by first-class mail and facsimile. If the parties are unable to settle their dispute, then the party proposing disclosure must first file a Motion with the Trademark Trial and Appeal Board, and obtain formal leave before making the desired disclosure.

14. Parties may designate testimony as Highly Confidential Information by indicating on the record that the testimony is "HIGHLY CONFIDENTIAL" at the time it is given or by sending written notice that the testimony is Highly Confidential

Information within fifteen (15) days of the date the final transcripts are received by the parties.

15. For Highly Confidential Information can be used only in preparation for, and at any hearing on or at the trial of, this action, and shall not be used for any other purpose.

16. If material or information marked as "HIGHLY CONFIDENTIAL" is to be filed with the Trademark Trial and Appeal Board, all such material and information shall be submitted to the Trademark Trial and Appeal Board in a sealed envelope to which suitable designation shall be affixed, and shall not be opened or made available to any person other than the Trademark Trial and Appeal Board, its officers, and persons permitted access to such information under the terms of this Order, except by agreement of the attorneys or Order of the Trademark Trial and Appeal Board. In addition, the envelope shall bear the caption of the case; the name of the party filing the sealed envelope; a concise, nondisclosing inventory of its contents for docketing purposes; and shall state thereon that it is filed under the terms of this Order.

17. Any third party producing documents or other information in this action may avail themselves of this Order if they agree in writing to be bound by its terms.

18. When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. Redaction is governed by a rule of reasonableness as discussed in Paragraph 19.

19. Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply

filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should by rare.

20. In the event that a party receiving Discovery Material ("Receiving Party") marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" objects to the designation, counsel for the Receiving Party shall notify the Producing Party of its objections in writing. The Receiving Party shall make the objection substantially contemporaneous with the designation, or as soon as practicable after the basis for the objection is known. When an objection is made long after a designation of information as protected, the Receiving Party will be expected to show why it could not have made the challenge at an earlier time. The parties will use their best efforts to resolve the objections between themselves. If the parties cannot resolve the objections, the Receiving Party may seek a hearing before the Trademark Trial and Appeal Board with respect to the propriety of the designation.

21. When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who discloses the information, so as to maintain the protected status of the information.

22. Not later than thirty days after the termination of this proceeding, all Discovery Material marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be returned to counsel for the Producing Party or destroyed. If any Discovery Material marked "HIGHLY CONFIDENTIAL" is furnished under this Order to any expert or to any other person, the attorney for the party retaining such expert or furnishing the Discovery Material marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be responsible to ensure that it is returned or destroyed. If the Receiving Party opts to destroy Discovery Material marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," Receiving Party's counsel shall certify in writing that such material has been destroyed. A proceeding is terminated after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

23. If information subject to a claim of attorney-client privilege, attorney work product or any other ground on which production of such information should not be made to any party is nevertheless inadvertently produced to a party or parties, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel to, any claim of privilege, work product or other ground for withholding production to which the Producing Party would otherwise be entitled. If a claim of inadvertent production is made with respect to information then in the custody of another party, such party shall

promptly return the information to the claiming party or person and the receiving party shall not use such information for any purpose other than in connection with a motion to compel (which shall be filed under seal). The party returning such material may then move the Trademark Trial and Appeal Board for an order compelling production of the material, which shall be filed under seal, and the motion shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

24. The terms of this Order shall survive any final disposition of this action.

25. If either party finds that any of the terms of this Order impede its ability to prepare or present its case, or are otherwise objectionable, that party may seek appropriate modification of the Order from the Trademark Trial and Appeal Board.

26. This Order is not a waiver of any applicable privilege or any objection that might be raised as to a discovery request or the admissibility of evidence.

27. This Order becomes binding on the parties once counsel for all parties endorse the Order.

By Agreement of the Following,
Effective

Robert S. Pierce

Robert Pierce, Attorney for Applicant
12/01/2006
[signature date]

Jacobson Holman PLLC
400 7th Street NW, Suite 600
Washington, DC 20004-2218
tel: 202.638.6666
Fax: 202.393.5350

Brendan J. Reilly, Attorney for Opposer
November 29, 2006
[signature date]

COLLEN *IP*
80 South Highland Ave.
Ossining, NY 10562
Tel: (914) 941-5668
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By Order of the Board, effective

EXHIBIT A

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I hereby acknowledge receipt of materials or information alleged to be confidential by _____. I certify my understanding that such material is provided to me pursuant to the terms and restrictions of the Protective Order entered by the Trademark Trial and Appeal Board _____, in the proceeding TomTom B.V. v. TomTom Licensing GmbH LLC (Opposition No. 91166346), and that I have been given a copy of and have read the Protective Order. I understand that I am to retain control of any copies of any of the confidential documentary material and that, upon completion of my assigned duties, I shall be responsible for the identification and disposition of the designated material, including any copies of documentary material, pursuant to the terms of Paragraph 23 of the Protective Order. I also agree not to disseminate such information, except for purposes of this action and as permitted by the Protective Order or a further order of the Trademark Trial and Appeal Board.

Dated: _____ Signed: