

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



Think Computer Corporation

02-19-2003

Opposer,

Opposition No. 125,553  
(Serial No. 76/201,442)

U.S. Patent & TMO/TM Mail Rcpt Dt. #71

v.

Re Mark: THINK! COMPUTER PRODUCTS

H. Co. Computer Products, Inc.,

Applicant.

**STIPULATED PROTECTIVE ORDER**

Certain information disclosed during the course of this action may contain confidential, proprietary and/or trade secret information of the disclosing party. Therefore, in order to preserve the status of the material and information so disclosed,

**IT IS HEREBY STIPULATED AS FOLLOWS:**

1. All information produced formally or informally in accordance with the Rule 26 of the Federal Rules of Civil Procedure, contained in documents produced pursuant to a request for production of documents, provided in an answer to an interrogatory or contained in a document produced in lieu thereof, produced in response to a subpoena *duces tecum*, provided by way of testimony, presented in any pleading or memorandum, or contained in responses to requests for admission, including copies, summaries and abstracts of the foregoing, shall be used solely for the purpose of this proceeding, and not for any business or other purpose whatsoever.

2. If any party (or third-party) wishes to designate as confidential any of the information described in paragraph 1 above, the party may designate such information in accordance with the following categories for treatment as hereafter set forth:

A. Information may be designated by the producing party as "**CONFIDENTIAL**." Only information believed in good faith to constitute confidential, proprietary and/or trade secret information of the producing party may be designated and marked in whole or in part as "**CONFIDENTIAL**." Access to information designated "**CONFIDENTIAL**" shall be permitted by the receiving party only to outside counsel of record in this proceeding for such party, including their associates, clerks, legal assistants and stenographic personnel, and to the additional individuals described below, provided each such individual has read this Stipulated Protective Order in advance of disclosure and agreed in writing to be bound by its terms, by signing the Acknowledgment attached hereto as Exhibit A:

- (1). Expert witnesses of the parties who need to be consulted by outside counsel for the receiving party in connection with this litigation;
- (2). Stenographic and clerical employees associated with the individuals enumerated above.

B. Information may be designated by the producing party as "**ATTORNEY'S EYES ONLY**." Only information believed in good faith to be highly sensitive confidential, proprietary and/or trade secret information of the producing party may be designated as "**ATTORNEY'S EYES ONLY**." Access to information which has been designated "**ATTORNEY'S EYES ONLY**" by the producing party shall be permitted only to outside counsel of record in this proceeding, their clerical, secretarial and support staff, as necessary, and outside experts retained by a party for the purposes of this proceeding. No confidential document or information shall be shown to an outside expert until five (5) days after said expert is identified in writing to the opposing party. If the producing party

believes in good faith that disclosure of any confidential information or documents to that identified expert would irreparably harm that party's business, then that party may object within five (5) days of such disclosure to such expert having access to any confidential information or documents, and the expert shall be barred from such access until the parties reach agreement or the Board rules on a motion brought by either party.

C. Information which is designated either "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" shall be maintained in confidence in accordance with the terms of this Stipulated Protective Order and shall be used only for the purposes of this proceeding.

3. If it is necessary for a receiving party to file documents or deposition excerpts with the Board which have been designated by the opposing party as "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**," all such materials, and all pleadings or memoranda which reproduce or summarize the information contained in such materials, shall be filed under seal with the Board in envelopes or other suitable containers bearing the caption of this proceeding, the opposition number and a statement substantially in the following form:

**"CONFIDENTIAL"**

**"SUBJECT TO PROTECTIVE ORDER"**

**"This envelope contains documents which are filed in this case by (name of party). It is not to be opened, nor the contents displayed or revealed, except by Order of the Board."**

If only a portion of the information contained in a pleading or memorandum is subject to designation as "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" pursuant to this Stipulated Protective Order, a duplicate copy of such pleading or memorandum shall be filed with the Board in redacted form for placement in files which are open to public inspection. Only

information subject to designation as "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" may be redacted from this duplicate copy.

4. The restrictions set forth in any of the preceding paragraphs shall not apply to information which: (a) is, or becomes, public knowledge as shown by publicly available writings, other than through violation of this Stipulated Protective Order; (b) is acquired by a non-designating party from a third-party lawfully possessing such information and/or having no obligation to the owner thereof; or (c) was lawfully possessed by a non-designating party prior to discovery in this lawsuit. Any person who is the author or copy recipient of a document designated "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" may be shown the document for the purpose of interrogation of such person by deposition or at trial or during the course of preparation for a deposition or for testimony at trial.

5. Acceptance by a party of disclosure of information pursuant to this Stipulated Protective Order shall not be construed as an admission that the disclosed information constitutes confidential information or trade secrets. A party shall not be obligated to challenge the propriety of a designation of a document or information as confidential at the time made, and failure to do so shall not preclude subsequent challenge to the designation or constitute any admission of confidentiality. In the event that any party to this litigation objects at any stage of these proceedings to the propriety of a designation by the supplying party of any information as confidential information, the parties shall first try to resolve such disagreement in good faith on an informal basis. If the disagreement cannot be thus resolved, the objecting party may seek appropriate relief from this Board, and the designating party shall have the burden of proving, by the preponderance standard, that the information for which confidentiality is claimed is in fact confidential and thus subject to the restrictions of this Order.

6. Any party may hereafter apply to the Board for relief from this Stipulated Protective Order or for further protection of confidential information and/or trade secrets. This Order shall not prejudice the applicant in any way in making such application. If a party feels that certain of its confidential information is of a character which should not be disclosed even to opposing outside counsel in this proceeding, the party may apply to the Board for appropriate protection.

7. Every document which a producing party wishes to designate "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" shall be so marked in a conspicuous manner on each page prior to production to the opposing party. However, the parties may agree that outside counsel in this proceeding may first review potentially responsive documents that have not been marked, with the understanding that all documents selected for copying will be properly marked prior to delivery to the reviewing counsel. With respect to depositions, if it appears that a portion of a deposition will involve topics appropriate for designation as "**CONFIDENTIAL**," then persons other than those identified in Paragraph 2.A above shall be excluded from that portion of the deposition, and, if it appears that a portion of a deposition will involve topics appropriate for designation as "**ATTORNEYS' EYES ONLY**," then persons other than those identified in Paragraph 2.B above shall be excluded from that portion of the deposition. With respect to deposition transcripts, each party may designate a deposition or a portion thereof of any of its current or former officers, employees or agents to be either "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" if it appears that the deposition will involve topics appropriate for such designations. Such designation shall expire 30 days after the designating party has received a copy of the transcript of the deposition unless, during such 30 day period, the designating party advises the other party in writing of the pages and lines of the transcript which are designated "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**." With respect to testimony given during the testimony period, the

designating party shall indicate on the record at the time the testimony is taken that the testimony contains or is expected to contain confidential information.

8. It is expressly contemplated and agreed that the terms of this Stipulated Protective Order are applicable to confidential information designated as such by a non-party, and/or produced by a non-party in connection with this litigation, and that the parties will treat all such designated confidential information of a non-party in accordance with the terms of this Order.

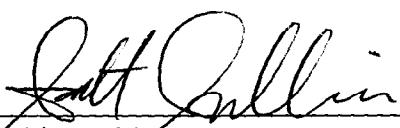
9. Inadvertent production of documents subject to work product immunity or the attorney-client privilege shall not constitute a waiver of this immunity or privilege; provided that the producing party shall notify the receiving party of such inadvertent production no later than the first time the producing party knows or should have known of its use by the receiving party. Such inadvertently produced documents shall be returned to the producing party upon request, provided that the producing party makes a showing of the circumstances surrounding the documents' inadvertent production. No use shall be made of such documents during deposition or at trial, nor shall they be shown to anyone who has not already been given access to them subsequent to the request to return them. With respect to the application of any claim of privilege or immunity for inadvertently produced materials, if the parties are unable to reach a satisfactory agreement within five (5) days, the producing party may, within five (5) days thereafter, petition the Board to resolve the matter. The non-producing party shall not disclose the document, for which the belated claim of immunity or privilege is being made, to any persons, other than those persons who have had it in their possession prior to receipt of notification from the producing party, until the expiration of the five (5) day period identified in this paragraph or, if the matter is submitted to the Board, until disposition of the matter. Nothing in this Stipulated Protective Order precludes either party from

petitioning the Board for return of later-discovered, inadvertently produced work production immunity or attorney/client privileged documents.

10. Nothing in this Stipulated Protective Order shall bar or otherwise restrict any attorney herein from rendering advice to his client with respect to this litigation and, in the course thereof, referring to or relying upon his examination of confidential information, provided, however, that in rendering such advice and in otherwise communicating with his clients, the attorney shall not make any disclosure of confidential information.

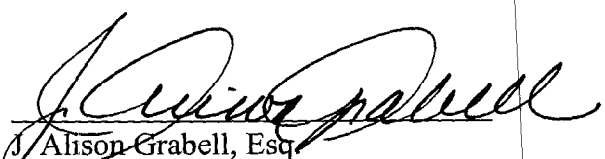
11. Within 30 days of the final termination of this proceeding, including all subsequent appeals, each receiving party shall, upon request, return to each producing party all materials which have been designated by the producing party as either "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**," and shall destroy all copies, digests or summaries which have been made of, or prepared from, such documents. However, outside counsel may retain one copy of any pleading containing "**CONFIDENTIAL**" or "**ATTORNEY'S EYES ONLY**" information, for archival purposes.

Dated: Feb. 17, 2003

  
\_\_\_\_\_  
Robin Preble  
Scott Sullivan  
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Tel.: (612) 492-7000  
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Attorneys for Opposer

Dated: Feb. 18, 2003

  
\_\_\_\_\_  
Alison Grabell, Esq.  
BIRCH, STEWARD, KOLASCH &  
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10940 Wilshire Boulevard, 18<sup>th</sup> Floor  
Los Angeles, CA 90024-3945

Attorneys for Applicant

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Trademark Trial and Appeal Board



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

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Think Computer Corporation

Opposer,

Opposition No. 125,553

(Serial No. 76/201,442)

v.

Re Mark: THINK! COMPUTER PRODUCTS

H. Co. Computer Products, Inc.,

Applicant.

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**AGREEMENT CONCERNING MATERIAL COVERED BY  
PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION**

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The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order regarding confidential information entered in this proceeding pursuant to Federal Rule of Civil Procedure 26(c), and Trademark Rule 2.120(f), understands the terms thereof, agrees to be bound by such terms, and agrees to be subject to the jurisdiction of the Trademark Trial and Appeal Board in all matters relating to said Stipulated Protective Order.

Dated: \_\_\_\_\_

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

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

Present Occupation: \_\_\_\_\_

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

Relationship to or  
interest in this proceeding: \_\_\_\_\_

**EXHIBIT "A"**

#2762414\1

TTAB3

BIRCH, STEWART, KOLASCH & BIRCH, LLP

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02-19-2003

U.S. Patent & TMO/c/TM Mail RcptDt. #76

February 19, 2003

**VIA EXPRESS MAIL**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 2202-3513

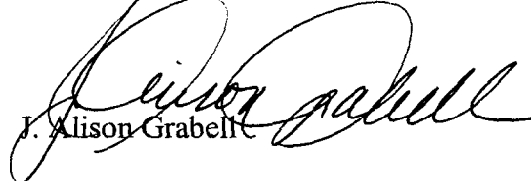
BOX TTAB-NO FEE

Re: *Think Computer Corporation v. H. Co. Computer Products, Inc.*  
Opposition No. 125,553  
Our Reference No.: 8341-1002

Dear Madam:

Enclosed is a fully executed copy of the Stipulated Protective Order with Exhibit "A" (in triplicate), in the above-identified proceeding for filing with the Trademark Trial and Appeal Board.

Very truly yours,

  
J. Alison Grabell

JAG/vk  
enclosure

cc: Thomas M. Small, Esq. (w/out enclosure)

02/19/03 09:05 AM

DD