ESTTA Tracking number: **ESTTA37791**
Filing date: **07/06/2005**

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

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| **Proceeding** | 91161817 |
| **Party** | Plaintiff<br>Nextel Communications, Inc.<br><br>, |
| **Correspondence Address** | John L. Stewart, Jr.<br>Crowell & Moring, LLP<br>P.O. Box 14300<br>Washington, DC 20004-4300<br><br>jstewart@crowell.com |
| **Submission** | Protective Order |
| **Filer's Name** | William J. Sauers |
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| **Signature** | /William J. Sauers/ |
| **Date** | 07/06/2005 |
| **Attachments** | Executed Protective order.pdf ( 10 pages ) |

**UNITED STATES PATENT AND TRADEMARK OFFICE**
**TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
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| NEXTEL COMMUNICATIONS, INC., Opposer, | ) | |
| v. | ) | Opp. No.: 91/161,817<br>App. No.: 78/235,618<br>Mark: Sensory Mark (911 Hz tone) |
| MOTOROLA, INC., Applicant. | ) | |

**PROTECTIVE ORDER**

Upon stipulation of the parties to this proceeding, it is hereby ordered that:

(1) Any document or portion thereof ("document" being defined herein to include information and tangible objects) produced during this proceeding that contains any confidential or trade secret information may be designated by the producing party as **"Confidential – Subject to Protective Order in TTAB Opposition No. 91/161,817"** (referred to herein as **"Confidential"**) or **"Confidential – Attorneys' Eyes Only – Subject to Protective Order in TTAB Opposition No. 91/161,817"** (referred to herein as **"Confidential – Attorneys' Eyes Only"**). The designation shall be made in good faith and on the basis that the document contains confidential or proprietary business information or trade secrets of the producing party.

(a) The producing party may designate material as **"Confidential"** only when the producing party in good faith believes the material includes

or constitutes proprietary or confidential research, development or commercial information or information that the party is under a duty to maintain in confidence.

(b) The producing party may designate material as **"Confidential – Attorneys' Eyes Only"** only when the producing party in good faith believes that in addition to satisfying all criteria for **"Confidential"** material, the material includes or constitutes non-public trade secret or highly sensitive confidential information relating to licensing, research, development, testing, patents that have not issued, business plans, sales forecasts, financial forecasts, product formulas, or specifications.

(2) Documents may be designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only"** as follows:

(a) By marking each page **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** as appropriate. Such documents need not be so marked at the time of production, but all copies of such documents must be so marked when they are delivered to the requesting party.

(b) Transcripts of depositions shall be treated as **"Confidential – Attorneys' Eyes Only"** for thirty (30) business days after receipt of the transcript. Thereafter, only those portions designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only"** shall be afforded the corresponding level of protection. With respect to any deposition that contains testimony that has been designated **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** the reporter shall include on the

cover page of said deposition the following notice "This deposition contains confidential information of [the designating party] subject to a Protective Order entered in the captioned action."

(c) Tangible objects may be designated as **"Confidential"** or **"Confidential –Attorneys' Eyes Only"** by affixing to the object or its container an appropriate label or tag bearing the appropriate designation.

(3) Documents that have been designated as **"Confidential"** may be disclosed only to the following groups:

(a) The parties' outside and in-house counsel (and legal staff reporting directly to such counsel) who have direct functional responsibility for the preparation and trial of this action;

(b) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this Order;

(c) Persons testifying in depositions to the extent the **"Confidential"** document or information was authored by, or addressed to the person testifying, or the person testifying is employed by the designating party, or, in the case of a third-party deponent, the document is designated as a deposition exhibit and contains factual information that, in good faith, counsel believes is directly relevant to the person being deposed. Further, disclosure may only be made to such third-party deponents after

opposing counsel has had an opportunity to review the document, make any necessary objections and/or seek leave of the Board for greater protection, and the deponent has been provided with a copy of this order and has agreed to be bound by its terms;

(d) Experts or consultants who meet the requirements of ¶ 5, below; and

(e) Employees of a party if such employees are required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed. Any such disclosure shall only be made as is reasonably necessary to enable such employee to provide assistance in this action. In addition to the requirements set forth above, before any employee as described herein is given access to documents that are designated as **"Confidential,"** he or she must agree in writing to the following undertaking:

> CONFIDENTIALITY UNDERTAKING. I declare and certify that: I have been provided with a copy of the Protective Order entered in this action; I have read and fully understand the terms of the Order; I agree and recognize that I am bound by the terms of the Order; I agree to abide by and comply with the terms; I consent to the personal jurisdiction of the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office, or to the jurisdiction of any appropriate United States District Court, for any proceedings involving my compliance with and enforcement of the Order.

(4) Documents that have been designated as **"Confidential – Attorneys' Eyes Only"** may be disclosed only to the following groups:

(a) The parties' outside and in-house counsel (and legal staff reporting directly to such counsel) who have direct functional responsibility for the preparation and trial of this action;

(b) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this Order;

(c) Persons testifying in depositions to the extent the **"Confidential – Attorneys' Eyes Only"** document or information was authored by, or addressed to the person testifying, or the person testifying is employed by the designating party, or, in the case of a third-party deponent, the document is designated as a deposition exhibit and contains factual information that, in good faith, counsel believes is directly relevant to the person being deposed. Further, disclosure may only be made to such third-party deponents after opposing counsel has had an opportunity to review the document, make any necessary objections and/or seek leave of the Board for greater protection, and the deponent has been provided with a copy of this order and has agreed to be bound by its terms; and

(d) Experts or consultants who meet the requirements of ¶ 5, below.

(5) If either party desires to disclose documents that have been designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only"** to an expert or consultant pursuant to ¶¶ 3 or 4, above:

(a) In the case of a testifying witness:

(i) The disclosing party must identify in writing the expert or consultant to the producing party before any such disclosure is made. The identification shall include the full name and professional address and affiliations of the proposed expert or consultant, an up-to-date curriculum vitae identifying all other present and prior employments or consultancies in the relevant field(s), and a list of the cases in which the expert or consultant has testified at deposition or trial (including in testimony before the Board) within the last four years.

(ii) The producing party shall have five (5) business days from receipt of such notice to object to disclosure of the documents to the proposed expert or consultant. If no objection is made, the expert or consultant may be given access to the documents.

(iii) If objection is made, the disclosure shall not be made and the parties shall attempt to resolve the issue informally. If the objection cannot be resolved, the party seeking to disclose the documents to the expert or consultant must move the Court for an order allowing the disclosure. While the motion is pending, the disclosure cannot be made. The party objecting to disclosure of the documents to the proposed expert or consultant may (but is not required to) move the Court for appropriate relief.

(b) In addition to the requirements set forth above, before any expert or consultant is given access to documents that are designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** he or she must agree in writing to the following undertaking:

> CONFIDENTIALITY UNDERTAKING. I declare and certify that: I have been provided with a copy of the Protective Order entered in this action; I have read and fully understand the terms of the Order; I agree and recognize that I am bound by the terms of the Order; I agree to abide by and comply with the terms; I consent to the personal jurisdiction of the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office, or to the jurisdiction of any appropriate United States District Court, for any proceedings involving my compliance with and enforcement of the Order.

(6) In the event a party produces one or more documents that should have been designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only"** but was produced without any or without the proper confidentiality designation due to an oversight or other unintentional error, the party may properly designate such documents by providing prompt written notice thereof to the receiving party. Such documents shall be deemed as having been designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** as appropriate, from the time of original production. Any actions of the receiving party that took place before receiving the written notice described above shall not be the basis for any finding that the receiving party has violated this Order. In the event a document or other information is subsequently designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** (and was not previously so designated), the parties will be under an ongoing obligation to take all reasonable steps to obtain, retrieve, and destroy all copies of the information or documents as they existed prior to the

new designation. Written confirmation, including by e-mail, of any such activity will be provided to the designating party within seven (7) business days of any such action.

(7) In the event a party inadvertently discloses one or more documents that are protected by the attorney-client privilege, attorney work product immunity doctrine, or otherwise privileged or immune from discovery, the producing party shall promptly so advise the receiving party in writing and request that all such documents be returned to the producing party. The receiving party shall return the inadvertently-produced documents, and all copies thereof, within three business days of receiving the written notice and request. Upon receiving the written notice and request, the receiving party shall not assert that the inadvertent disclosure waived any privilege or immunity. Any actions of the receiving party that took place before receiving the written notice described above shall not be the basis for any finding that the receiving party has violated this Order.

(8) When a party intends to file with the Board any document that has been designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** the documents shall be filed in a sealed envelope marked on the outside with the title of the action, and a statement in substantially the following form:

> FILED UNDER SEAL. SUBJECT TO PROTECTIVE ORDER. The materials in this envelope have been designated confidential pursuant to a protective order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board.

(9) Except as otherwise agreed, all **"Confidential"** and **"Confidential – Attorneys' Eyes Only"** documents shall be used only for the purpose of these proceedings and not for any other purpose, including any business or competitive purpose.

(10) A party challenging a **"Confidential"** or **"Confidential – Attorneys' Eyes Only"** designation shall do so in a writing served on the designating party and shall state the basis for the challenge. The designating party shall, within five days after receiving such notice, respond in writing. If the parties are unable to resolve the issue after good faith discussion between the parties, the challenging party may, after following the procedure set forth above, move the Board for an order that the material has not been properly designated. The designating party shall have the burden of proving the correctness of the designation. Pending a decision from the Board, the challenged documents shall be treated as have been properly designated.

(11) Nothing herein shall prevent either party from using or continuing to use documents that are lawfully in the public domain or that lawfully become part of the public domain through no act of such party.

(12) Within sixty (60) days after the conclusion of this proceeding, including any appeals, and at the request of the producing party, all documents produced and designated as **"Confidential"** or **"Confidential – Attorneys' Eyes Only,"** including all copies thereof, shall be returned to the producing party or destroyed, at the option of the producing party.

(13) At the request of any third party and with agreement of the parties to this action, this Order may be extended to documents and information produced in this action by any third party to this action.

(14) The Board shall retain jurisdiction over the parties for the purpose of ensuring compliance with this Order and granting such amendments, modifications and

additions to this Order and such other relief as may be necessary, and either party may apply to the Board at any time for an amendment, modification or addition to this Order. This Order shall survive the final disposition of this action, by judgment, dismissal, settlement or otherwise.

SO ORDERED:

DATE: _____

_____
TRADEMARK TRIAL AND APPEAL BOARD

Approved And Agreed To By:


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DATE: July 5, 2005

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DATE: July 6, 2005