

ESTTA Tracking number: **ESTTA72057**

Filing date: **03/21/2006**

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

Proceeding	91163527
Party	Defendant PORTER INTERNATIONAL CO., LTD. PORTER INTERNATIONAL CO., LTD. 2F, NO. 86, SEC. 1 HUAMEI WEST ST., SHI CHIU TWX TAICHUNG, TAIWAN,
Correspondence Address	SHERIDAN NEIMARK BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, N.W. WASHINGTON, DC 20001  anawashiro@browdyneimark.com, rsjillions@browdyneimark.com, mail@browdyneimark.com
Submission	Other Motions/Papers
Filer's Name	Ronni S. Jillions
Filer's e-mail	mail@browdyneimark.com
Signature	/Ronni S. Jillions/
Date	03/21/2006
Attachments	06-03-22 executed protective order.pdf ( 11 pages )



shall be interpreted to mean: information of a sensitive nature that if disclosed to competitors would provide significant business advantages to the receiving party and that includes subject matter that is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. "Attorney's Eyes Only Information" includes certain highly sensitive technical information, trade secrets, past and current product development, marketing plans and forecasts, business development plans, customer lists, and highly sensitive financial information such as pricing plans.

**2. Restriction on Use and Disclosure of Designated and Non-Designated Materials**

No documents, information or things designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," nor any information derived therefrom, shall be disclosed to any person or entity except as set forth in paragraphs 6, 7, 8, 9, and 10 of this Order. No person shall use any material designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," or any information derived therefrom, for any purpose other than to assist outside counsel of record in the preparation and trial of the captioned proceedings. Counsel for each party shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure of any designated confidential material.

**3. Marking of Designated Materials**

A designation as to documents shall be made by placing a legend on each page of any document that a designating party wishes to protect against unauthorized use or disclosure. Documents or tangible items shall be designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" within the meaning of this Protective Order in the following ways:

(a) In the case of documents and the information contained therein, by placing on the document the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

(b) In the case of interrogatory answers and the information contained therein, designation shall be made by placing on the pages containing the confidential information the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

(c) In the case of tangible items, designation shall be made by visibly marking the item "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

(d) In producing original files and records for inspection, no marking need be made by the producing party in advance of the inspection. For the purposes of the inspection, all documents made available for inspection shall be considered as marked "ATTORNEYS' EYES ONLY." Thereafter, upon selection of specified documents for copying by the inspecting party, the producing party shall mark as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" the copies of such documents as may contain confidential information at the time the copies are produced to the inspecting party.

**4. Designation of Deposition Testimony**

Any party may unilaterally designate portions of a deposition transcript as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" provided such designation is either (a) made on the record during the deposition in which case the transcript of the designated testimony

shall be bound in a separate volume and marked either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" by the reporter or (b) made by written notice to all counsel of record, given within ten (10) business days after a deposition transcript is received by the deponent or his counsel, in which case all counsel receiving a transcript shall be responsible for marking the copies of the designated transcript in their possession or under their control as directed by the designating party. Pending the expiration of twenty (20) days after a deposition transcript is received by the deponent or his counsel, all parties shall treat the deposition testimony and transcript as if it had been designated "ATTORNEYS' EYES ONLY." The designating party shall have the right to have all persons, except the deponent and his counsel, outside counsel of record for named parties, the court reporter and such other persons as are permitted under paragraphs 6 and 7 hereof, excluded from a deposition, or any portion thereof, before the taking therein of deposition testimony which the designating party designates under this Order.

**5. Filing Designated Materials**

Any materials that are filed with the Board for any purpose and which are designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall be filed in a sealed envelope marked on the outside with the title of the proceeding, an identification of each document therein and a statement substantially in the following form:

**CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER**

This envelope (or container) containing documents (things) filed by [name of party] is not to be opened nor the contents thereof displayed, revealed or made public, except by written order of the Board or by agreement of the parties.

**6. Access to "CONFIDENTIAL" Materials**

Material designated as "CONFIDENTIAL" shall not be provided, shown, made available, or communicated in any way to any person or entity with the exception of:

- (a) the attorneys who are outside counsel for the parties in the captioned proceedings, namely attorneys of the law firms of Merchant & Gould P.C., and Browdy and Neimark, P.L.L.C., who are specifically representing plaintiffs or defendants in the captioned proceedings, as well as any foreign outside counsel for either of the named parties that are directly involved in the above-captioned United States proceedings;
- (b) the regularly employed office staffs for the above law firms who are performing legal and other related support services in connection the captioned proceedings;
- (c) the Board and Board personnel as set forth in paragraph 5;
- (d) stenographic reporters; and
- (e) independent experts retained in this matter and subject to the provisions of paragraph 10 below; and
- (f) the following board member, executive, or employee of each party provided that such board member, executive, or employee of the receiving party is provided with a copy of this Order in advance of disclosure and such individual agrees, in writing, to be bound by the terms of this order by executing a copy of Exhibit A hereto and a copy of such executed

Exhibit A is provided to outside counsel for the producing party as identified in subsection (a) hereof;

For Yoshida:

Shigeru Yoshida \_\_\_\_\_;

For Porter International:

I-sheng Lin \_\_\_\_\_.

**7. Access to “ATTORNEYS’ EYES ONLY” Materials**

Material designated as “ATTORNEYS’ EYES ONLY” shall not be provided, shown, made available or communicated in any way to any person or entity with the exception of:

- (a) the attorneys who are outside counsel for the parties in the captioned proceedings, namely attorneys of the law firms of Merchant & Gould P.C., and Browdy and Neimark, P.L.L.C., who are specifically representing plaintiffs or defendants in the captioned proceedings, as well as any foreign outside counsel for either of the named parties that are directly involved in the captioned United States proceedings;
- (b) the regularly employed office staffs for the above law firms who are performing legal and other related support services in connection the captioned proceedings;
- (c) the Board and Board personnel as set forth in paragraph 5;
- (d) stenographic reporters; and
- (e) independent experts retained in this matter and subject to the provisions of paragraph 10 below.

**8. Disclosures to Authors and Previous Recipients**

The designation of any document or other material as either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” shall not preclude any party from showing the document to any person who appears as the author or as an addressee on the face of the document, or who has been identified by the designating party as having been provided with the document or the information by the designating party provided such person is a board member, executive, or employee of one of the named parties.

**9. Procedure for Seeking Additional Disclosures**

Prior to any disclosure of material designated as either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” other than as provided in paragraphs 6, 7 and 8, above, counsel desiring to make such disclosure shall provide written notification to counsel for the designating party of the desire to make such disclosure, stating therein the specific material to be disclosed and the name, address, and position of the person to whom it is intended that disclosure be made. Disclosure to the person or persons so identified shall not be made until agreement of the designating party is obtained; however, if the designating party does not convey an objection to the proposed disclosure within seven (7) days of receipt of the written notification, the designating party will be deemed to have waived objection to the disclosure and its agreement

will be assumed. If within seven (7) days of receipt of the written notification, the designating party gives written notification of its objection to the disclosure to counsel desiring to make the disclosure, the proposed disclosure is forbidden until such time as the requesting party obtains a Board order permitting such disclosure.

**10. Disclosure of Designated Material to Independent Experts**

Prior to any disclosure by a party of material designated as either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" by a designating party to any person specified in subsection (e) of paragraph 6 or subsection (e) of paragraph 7, counsel desiring to make such disclosure shall provide written notification to counsel for the designating party of the desire to make such disclosure, stating therein the specific material to be disclosed and the name, address and position of the person to whom it is intended that disclosure be made together with a current curriculum vitae including a list of all companies for which such person has consulted during the last three (3) years. Disclosure to the person(s) so identified shall not be made until agreement of the designating party is obtained; however, if the designating party does not convey an objection to the proposed disclosure within seven (7) days of receipt of the written notification, the designating party will be deemed to have waived objection to the disclosure and its agreement will be assumed. If within seven (7) days of receipt of the written notification, designating party gives written notification of its objection to the disclosure to counsel desiring to make the disclosure, the proposed disclosure is forbidden until such time as the requesting party obtains a Board order permitting such disclosure.

**11. Retention of Confidential Materials**

All materials designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," and any and all copies or reproductions thereof, shall be retained (except as otherwise provided in paragraph number 15 hereof) as follows:

- (a) materials designated "CONFIDENTIAL" may be retained by the persons listed in subsection (a) of paragraph 6 hereof;
- (b) materials designated "ATTORNEYS' EYES ONLY" may be retained only by the firms identified in subsection (a) of paragraph 7 hereof; and
- (c) independent experts authorized to view designated materials under the terms of this Order may retain custody of copies of such materials as may be necessary for their participation in this litigation.

**12. Inadvertent Production**

(a) It is agreed that inadvertent production of documents or information subject to the attorney-client privilege or work product immunity does not waive the attorney-client privilege or work product immunity with respect to such production or with respect to other materials or information referred to in the materials produced if a request for return of such documents or information is made promptly after the disclosing party learns of its inadvertent production. Nothing in this paragraph shall prejudice the right of any party to seek discovery of communications, documents and things as to which a claim of privilege has been made.

(b) The inadvertent or unintended disclosure of materials deemed “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” by a designating party, or the failure to initially designate materials as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” under this Order, shall not be deemed a waiver of any claim for protection, provided the designating party gives prompt notice, after discovery of said inadvertent or unintended disclosure or the failure to initially designate, that the materials should be treated confidential in accordance with the provisions of this Order. Upon such notice, the receiving party must treat the material as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” and must then make a good faith effort to advise any person to whom such materials may have been disclosed as to the change in designation and the manner in which such materials must thereafter be treated.

**13. Disposition of Designated Materials at Conclusion of Case**

Within sixty (60) days of the adjudication or resolution through settlement of the claims at issue herein, unless otherwise agreed to in writing by an attorney of record for the designating party, each party shall assemble and return all material, including all copies and extracts thereof, to the party or third party witness from whom the designated material was obtained, or, at the producing party’s option, destroyed by counsel for the receiving party, except for a master copy of such documents as may be included in documents filed with the Board and except for attorney memos or notes that may include such information. The provisions of this Protective Order, insofar as it restricts the disclosure, communication of, and use of, materials designated as “CONFIDENTIAL” and “ATTORNEYS’ EYES ONLY,” shall continue to be binding after the conclusion of the captioned proceedings.

**14. Miscellaneous Provisions**

(a) This Protective Order shall be without prejudice to the right of either party to bring before the Board at any time the question of (i) whether any particular information is or is not confidential; or (ii) whether any particular information is or is not relevant to any issue of this case. Upon such hearing the party asserting confidentiality or relevance shall have the burden of establishing the same.

(b) Neither the failure to designate information in accordance with this Order nor the failure to object to a designation at a given time shall preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order shall not be construed as a waiver of any right to object to the furnishing of information in response to discovery or to object to a requested inspection of documents or things, and, except as expressly provided, shall not relieve any party of the obligation of producing information in the course of discovery.

(c) A party may object to the designation as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” by giving written notice to the party designating the disputed information. The written notice shall identify the information to which the objection is made. If the parties cannot resolve the objection within ten (10) business days after the time notice is received, it shall be the obligation of the party designating the information to file an appropriate motion requesting that the Board determine whether the disputed information should be subject to the terms of this Order. If such a motion is timely filed, the disputed information shall be treated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” under the terms of this Order

until the Board rules on the motion. With regard to information designated "CONFIDENTIAL," if the designating party fails to file such a motion within the prescribed time, the disputed information shall lose its designation as "CONFIDENTIAL" and shall not thereafter be treated as "CONFIDENTIAL" in accordance with this Order. With regard to information designated "ATTORNEYS' EYES ONLY," if the designating party fails to file such a motion within the prescribed time, the disputed information shall lose its designation as "ATTORNEYS' EYES ONLY" and shall thereafter be treated as "CONFIDENTIAL" in accordance with this Order. In connection with a motion filed under this provision, the party designating the information as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall bear the burden of establishing that good cause exists for the disputed information to be treated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

(d) In the event any one shall violate or threaten to violate the terms of this Order, the parties agree that the aggrieved party may immediately apply to obtain injunctive relief against any violation or threatened violation, and in the event the aggrieved party shall do so, the respondent, subject to the provisions of this Order, shall not employ as a defense thereto any claim that the aggrieved party possesses an adequate remedy at law. The parties and any other person subject to the terms of this Order agree that the state and federal courts located in Minnesota and Washington, D.C. shall retain jurisdiction over it and them for the purpose of enforcing this Order, notwithstanding any subsequent disposition of the captioned proceedings.

(e) Entry of this Order is without prejudice to any party seeking to impose further restrictions on the dissemination of certain materials designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" or seeking to rescind, modify, alter or amend this Order with respect to specific documents or information. The party seeking such relief shall first attempt in good faith to resolve the matter informally. If the matter cannot be resolved, the party seeking relief may then apply for a suitable order from the Board.

(f) Nothing in the foregoing provisions of this Protective Order shall affect any previous protective order or shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, additional protection with respect to the confidentiality of documents or other discovery material or relief from this Protective Order with respect to particular designated material.

**SO ORDERED.**

**DATED:** this \_\_\_\_ day of \_\_\_\_\_, 2006.

**BY THE BOARD**

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Trademark Trial and Appeal Board Judge



Dated: 3/20/2006

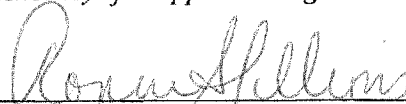
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# EXHIBIT A



Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

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(Signature)