

Order entered in this cause with certain procedural guidelines which the Court has discussed in detail with the parties. For good cause shown, the Court therefore orders:

1. This Court hereby adopts in full the provisions of the Protective Order entered in this cause on January 31, 2002, modified as set out below.

2. Section I of the Protective Order ("Classification of Information") shall be amended by adding a new paragraph 2.1, as follows:

2.1. "CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY - TECHNICAL" means Confidential Information that is product research and development and other technical information not disclosed in any patents on which Dr. Michelson is a named inventor, except information as to which Dr. Michelson can document that he previously had personal access. This would include product research, development and technical information developed not only by Plaintiff and its related companies, but also by persons or entities who are not parties to this litigation.

3. In the following paragraphs of the Protective Order, the references to "CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY or CONFIDENTIAL INFORMATION" shall be amended to refer to "CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY or CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY – TECHNICAL or CONFIDENTIAL INFORMATION":

Paragraphs 3, 4, 5, 6, 10, 11, 13, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 31, 32, 33, 36, 37, 40, and Exhibit A.

Individuals who have already executed a copy of Exhibit A need not re-execute the same, but counsel for the party retaining or employing such person shall notify each such person that the provisions of Exhibit A shall apply equally to the category of documents designated "CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY – TECHNICAL," and shall provide each such individual with a copy of this Amended Protective Order.

3. Section III of the Protective Order (“Limitations on Using and Disclosing Information”) shall be amended to add a new paragraph 15.1, as follows:

15.1 Anything designated “CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY – TECHNICAL” shall not be disclosed or made available to any person or entity other than those persons specifically designated in paragraph 14 of the Protective Order, and Dr. Michelson shall not review or have access to any documents designated "Confidential Information - Attorneys' Eyes Only - Technical," unless that designation of the classification of such documents is changed by the dispute resolution process set out in paragraph 22.1 below.

4. Section V of the Protective Order (“Disputes Regarding Designations”) shall be amended by adding a new paragraph 22.1, as follows:

22.1 The procedures for disputing the designation of documents as described in paragraphs 7 and 22 are modified as to documents designated "CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY - TECHNICAL" as follows:

(a) Defendants may, from time to time, provide plaintiff with a list of documents designated "CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY - TECHNICAL" which defendants believe either should not be designated as such or which defendants believe (although properly designated), must be disclosed to Dr. Michelson personally. Along with that list, defendants shall provide a brief substantive explanation as to why each document or group of documents should not retain its "Confidential Information - Attorneys' Eyes Only - Technical" designation, including if possible, a statement suggesting the relationship of certain documents, or a group of documents to a particular disclosure by Dr. Michelson to plaintiff, or to a certain patent or patent application of Dr. Michelson. Defendants' statement need not be lengthy but shall include all points which defendants intend to assert in opposition to any motion by plaintiff under paragraph (d) below, so that plaintiff may fairly brief each issue in its opening brief.

(b) Within 10 business days after receipt of such list and explanatory statement, plaintiff will reconsider its designation and provide defendants with a list of any documents from which plaintiff is willing to remove the designation "CONFIDENTIAL


INFORMATION - ATTORNEYS' EYES ONLY- TECHNICAL" and either de-designate or replace with an alternate designation under the Protective Order. If, however, defendants' list exceeds thirty documents in one week, plaintiff shall have an additional 5 business days to provide a response, unless otherwise agreed by the parties.

(c) Within 10 business days after receipt of plaintiff's list, the parties will confer in a good faith attempt to resolve or narrow any remaining disputed documents.

(d) If the parties are unable to resolve the issues relating to the disputed documents, then plaintiff shall, within 10 business days from the termination of the conference between the parties or unless otherwise agreed by the parties, petition the Magistrate Judge for resolution of this dispute under such procedures as the Magistrate Judge shall determine. Plaintiff shall bear the burden of defending the designation "CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY - TECHNICAL" as to each document or group of documents in dispute.

(e) If the Magistrate Judge deems it necessary, the Magistrate Judge shall set a time for oral argument to obtain further information as to one or more of the disputed documents. The Magistrate Judge shall make the final determination as to whether a particular document should retain its "CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY - TECHNICAL" designation.

IT IS SO ORDERED, this 11th day of October, 2002.


JUDGE JULIA S. GIBBONS
UNITED STATES CIRCUIT JUDGE
sitting by designation

Date: _____



Notice of Distribution

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