UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

AUBURN UNIVERSITY, Plaintiff, v. INTERNATIONAL BUSINESS MACHINES CORPORATION, Defendant.	§ § § § § § § § § §	Civil Action No. 3:09-cv-694-MEF

IBM'S MOTION FOR LEAVE TO FILE CONTINGENT MOTION TO STRIKE UNDER SEAL

In accordance with the Protective Order (Docket No. 68) entered in this case, IBM requests leave to file under seal an unredacted version of its Contingent Motion to Strike Portions of Dr. F. Joel Ferguson's Expert Report and to Exclude Any Testimony or Evidence Regarding the Doctrine of Equivalents ("Motion") and exhibits which contain information designated "Highly Confidential – Outside Attorneys' Eyes Only." Redacted versions of IBM's Motion and exhibits are being filed concurrently with this motion.

IBM has conferred with Auburn, and Auburn has indicated that: "Auburn has no objection to IBM's filing of confidential documents under seal pursuant to the Protective Order, but reserves the right to object or seek other relief based on its subsequent review of the confidential information and any associated filing(s) by IBM."

Under paragraph 18 of the Protective Order entered by the Court, all information that has been designated "Confidential" or "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the Protective Order must be filed with the Court under seal. (*See* Docket No. 68 at ¶

18.) The protected information must be submitted in a sealed envelope, and may not be revealed except by further Order of the Court or by agreement of the parties. (*See id.*)

IBM's Motion seeks to strike portions of Dr. Ferguson's expert report and exclude testimony or evidence regarding the doctrine of equivalents for failure to comply with the Court's Amended Scheduling Order. In discussing Auburn's prior contentions and Dr. Ferguson's report, IBM's Motion includes statements and references to material IBM has designated "Confidential" or "Highly Confidential – Outside Attorneys' Eyes Only." For example IBM refers to portions of Dr. Ferguson's expert report, all of which has been designated Highly Confidential – Outside Attorneys' Eyes Only." So that IBM can fully present its arguments regarding Auburn's infringement contentions and expert report, IBM respectfully requests leave from the Court to file its Motion and confidential exhibits under seal.

DATED: September 23, 2011

/s/ Ryan M. Hubbard

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this the 23rd day of September, 2011.

/s/ Brent P. Ray