SAMPLE JOINT DEFENSE
AND COMMON INTEREST AGREEMENT

THIS JOINT DEFENSE AND COMMON INTEREST AGREEMENT (the “Agreement”) is entered into by and among the undersigned Counsel, as of __________, 2010, acting for and on behalf of their respective clients (“the Parties”), each of whom is a defendant in litigation filed by __________ ________________, asserting claims of, among other things, __________ ________________. The Parties share an interest in the defense of the claims or potential claims of patent infringement concerning the ____ Patent (the “Infringement Claims”), including, without limitation, demonstrating that the _____ Patent is invalid and unenforceable and that the Parties do not infringe any claim of the _______ Patent. Because the undersigned wish to continue to pursue their separate but common interests and to avoid any suggestion of waiver of the confidentiality of privileged communications or documents, they hereby agree as follows:

1. **Definition of Counsel** - For purposes of this Agreement, the term “Counsel” means and includes both outside and in-house Counsel for any Party, and execution of this Agreement by either outside or in-house counsel for a Party binds that Party and all in-house and outside Counsel retained to provide legal services in connection with the Infringement Claims at any time.

2. **Defense Materials** - The Parties and their counsel have concluded that it is in each of their individual and mutual best interests in the defense of the Infringement Claims to share certain information related to that defense with some or all of Counsel and/or the Parties in writing and/or orally. These communications may include but are not limited to written communications, the disclosure of documents, factual and legal analyses, summaries, and memoranda, opinions, legal strategies, interview reports and reports of experts, consultants or investigators, joint meetings between defense counsel, the parties, their representatives and employees, and any meetings with prospective witnesses or consulting experts or litigation support service providers in connection with the litigation in person, by telephone or in any other form, and records or reports of such communications, all of which are included within the term “Defense Materials” used herein. However, nothing in this Agreement shall be construed to affect the separate and independent representation of each client by its respective Counsel.

3. **Common Interest** - The Parties and their counsel agree that all sharing and pooling of information pursuant to this Agreement will be done within the context of and in furtherance of the Parties’ common goal and effort in defending against the Infringement Claims.

4. **Privileged Communications** - Some or all of the Defense Materials may be protected from disclosure to adverse or other Parties as a result of the attorney-client privilege, the work product doctrine, or other applicable privileges, protections or immunities. It is the desire, intention, and mutual understanding of the Parties hereto (a) that the sharing of Defense Materials among one another is not intended to, and shall not, waive or diminish in any way the confidentiality of such materials or their continued protection under the attorney-client privilege, the work product doctrine or other applicable privileges, protections or immunities; and (b) that
all Defense Materials provided by a Party pursuant to this Agreement that are entitled to protection under the attorney-client privilege, the work product doctrine or other applicable privileges, protections or immunities, shall remain entitled to such protection under the common interest doctrine, and may not be disclosed to persons other than those described in Paragraph 5 without the consent of the providing party. The Parties also intend and understand that any disclosure of Defense Materials pursuant to this Agreement will not constitute a waiver of any available privilege, protection or immunity.

5. **Disclosure of Defense Materials** - Each of the undersigned Counsel has further agreed that he or she will not disclose any exchanged Defense Materials received by him or her from another Party to this Agreement or Counsel for another Party to this Agreement to anyone except (a) in-house counsel, employees or officers of each Party who are responsible for the defense of the Infringement Claims on behalf of their employer; (b) outside Counsel of record for any Party to this Agreement; and (c) paralegals, support staff, or experts who are directly employed by or retained by and assisting outside Counsel in the defense of the Infringement Claims. All persons permitted access to Defense Materials (collectively, “Authorized Persons”) shall be specifically advised that the Defense Materials are privileged and subject to the terms of this Agreement.

6. **Limited Use of Defense Materials** - Any shared Defense Materials, and the information contained therein, are to be used by each person or Party receiving them solely in connection with the defense of the Infringement Claims. Neither the Defense Materials nor the information contained therein may be used by any person or Party receiving them for any other purpose whatsoever.

7. **Previously Exchanged Defense Materials** - All Defense Materials exchanged between and among any of the undersigned counsel pursuant to prior oral agreements or any previous joint defense agreement are now subject to this Agreement. This Agreement specifically preserves the protections afforded to those materials shared between the parties from the time that the commonality of interest came into being until execution of this Agreement under the same terms as contained in this Agreement.

8. **Privilege Not Waived** - The privileges and protections for the Defense Materials to which this Agreement is applicable may not be waived by any Party to this Agreement without the prior written consent of the Party that provided the Defense Materials. Any inadvertent or purposeful disclosure of Defense Materials exchanged pursuant to this Agreement that is made by a Party contrary to the terms of this Agreement shall not constitute a waiver of any privilege or protection. If any Party is required by court order or rule of law to produce or reveal any confidential information, documents or privileged materials which are part of the Parties’ efforts pursuant to this Agreement, reasonable notice shall be given to each Party who has executed this Agreement before responding to, or complying with, such requests so that any Party may, at its own cost, have the opportunity to resist the production of such information by timely and appropriate process. In the event the Party from whom disclosure is sought has no objection to the disclosure, such Party shall nevertheless invoke this Agreement during the pendency of any action taken by the objecting Party and shall otherwise make reasonable efforts to prevent disclosure until the final resolution of the objection of the objecting Party.
9. **Withdrawal** - In the event that a Party determines that it no longer has a commonality of interest in the defense of the Infringement Claims, such Party shall withdraw from this Agreement. Each undersigned Counsel has a duty to withdraw from the Agreement when, in good faith, he or she reasonably believes that a commonality of interest no longer exists and to give prompt written notice of such withdrawal to each of the undersigned. Notwithstanding a Party’s withdrawal, this Agreement shall remain operative as to: (a) all other remaining Parties to this Agreement; and (b) all previously furnished Defense Materials. Any Party may withdraw from this Agreement on written notice to all of the undersigned Counsel. Any such withdrawal will be solely on a prospective basis and any Defense Materials provided pursuant to this Agreement prior to such withdrawal shall continue to be governed by the terms of this Agreement.

10. **Settlement or Dismissal** - A party who is dismissed or settles all pending claims will be deemed to have withdrawn from the Agreement in accordance with terms of paragraph 9 as of the date of the dismissal or settlement.

11. **Modification** - The provisions of this Agreement may be modified only by written agreement of all affected Parties, and it shall be binding upon all successors and assigns of the Parties.

12. **Additional parties** - The parties recognize that other counsel and their clients may be permitted to join this Agreement at a future time by signing a copy of this Agreement. Any such additions shall be made only with the permission of all then-current signatories to this Agreement.

13. **No endorsement or authorization** - While the undersigned believe that their clients are well served by the sharing of information under this Agreement, they also understand that participation in this Agreement represents neither an endorsement of, nor an authorization to control, the defense strategy or decisions of other participating counsels’ clients.

14. **Protective Order obligations** - Nothing in this Agreement shall relieve the Parties on their counsel from any obligation or obligations pursuant to the terms of any protective order or similar order entered by any court regarding the disclosure or dissemination of information pertaining to any Infringement Claims.

15. **Independent work product** - Nothing in this Agreement shall limit the right of any Party to use or disclose any documents or information or work product that have been independently obtained or generated by such Party (i.e. they were not obtained or generated as part of the common defense efforts made pursuant to this Agreement), whether or not such documents, information or work product have been provided to any other Party pursuant to this Agreement.

16. **Effect on Other Agreements** - Nothing in this Agreement shall prevent the Parties from entering into common interest agreements with other parties or among themselves, and this Agreement shall not be deemed to supersede or nullify, in whole or in part, any common interest agreement any Party has entered into prior to the date of its execution of this Agreement.
17 **Scope of Protection** - This Agreement shall be interpreted so as to afford the broadest and greatest protection possible of Defense Materials from disclosure to third parties.

18. **No Attorney-Client Relationship** - Nothing in this Agreement is intended to create any attorney-client relationship for the purposes of conflicts or otherwise. Each undersigned counsel understands that it is his or her sole responsibility to represent his or her or their respective client and that none of the other signatories to this Agreement have in any way assumed any such responsibility. Moreover, the participation in, execution or receipt of any information pursuant to this Agreement shall not disqualify any representative of a signatory (including a law firm) from accepting any other future engagement.

19. **No Admission of Liability** - Nothing in this Agreement is intended as, nor shall be construed or deemed to be, an admission of liability by any Party, or of the existence of facts upon which liability could be based.

20. **Continuing Obligation** - This Agreement shall continue in full force and effect notwithstanding any conclusion or resolution as to any Party of the Infringement Claims.

21. **Confidentiality of Terms** - The contents of this Agreement are confidential and shall not be released to any person or entity not a Party to this Agreement or as necessary to enforce the terms of this Agreement.

22. **Counterparts** - This Agreement may be signed in counterparts. All executed counterparts shall comprise the entire Agreement. This Agreement may be executed by counsel for a Party. Each counsel signing this Agreement represents that he or she has been authorized by his or her client to execute this Agreement on behalf of the client.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

By:_________________________  By:_________________________

_________________________  _________________________

Counsel for ______________  Counsel for ______________

Dated: _____________________  Dated: _____________________