

1 THE HONORABLE JOHN H. CHUN

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 NXP USA, INC., and NXP B.V.,

11 Plaintiffs,

12 v.

13 IMPINJ, INC.,

14 Defendant.

Case No. 2:20-cv-01503-JHC

STIPULATED MOTION AND
ORDER TO SEAL

**NOTE ON MOTION CALENDAR:
JULY 8, 2022**

15
16 **I. INTRODUCTION**

17 Plaintiffs NXP USA, Inc. and NXP B.V. (together, “NXP”) and Defendant Impinj, Inc.
18 (“Impinj”) jointly move the Court to maintain under seal the unredacted version of Impinj’s
19 Motion for Leave to File Amended Answer, filed on June 21, 2022 at docket 179, pursuant to
20 Local Civil Rule 5(g).

21 **II. BACKGROUND**

22 On June 21, 2022, Impinj filed a Motion for Leave to File Amended Answer. Dkt. 179. In
23 that filing, Impinj included certain information NXP considers to be, and designated under the
24 Protective Order (Dkt. 77) as, confidential, specifically the dollar amount of a paid licensing fee.
25 See Dkt. 179 at p. 9. NXP notified Impinj of the issue as soon as NXP became aware of it, at

STIPULATED MOTION AND ORDER TO SEAL - 1
(Case No. 2:20-cv-01503-JHC)

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1 which point Impinj requested by phone that the Court seal the filing at docket 179. The Court
2 provisionally sealed the filing on June 27, 2022 and also directed Impinj to file a redacted version
3 of the Motion for Leave to File Amended Answer. June 27, 2022 Notice of Docket Text
4 Modification. On June 29, 2022, Impinj filed a redacted version of the Motion for Leave to File
5 Amended Answer. Dkt. 183. The parties believe that the minimal redactions on page 5 of the
6 Motion for Leave to File Amended Answer (only two words) protect against the disclosure of
7 confidential information without interfering with the public's access to judicial records, and
8 request that the Court keep the unredacted version of Impinj's Motion for Leave to File Amended
9 Answer under seal.

10 III. CERTIFICATION

11 In accordance with Local Civil Rule 5(g)(3)(A), Kaitlin Crowder (for NXP) and Ramsey
12 Al-Salam (for Impinj) engaged in email discussions on June 27, 2022 regarding Impinj's filing at
13 docket 179, and agreed that Impinj immediately would request that the Court seal that filing
14 because it includes confidential commercial information. At the Court's direction, Impinj then
15 filed with the Court a public version of the Motion for Leave to File Amended Answer containing
16 only minimal redactions. Dkt. 183 (redacting two words). On July 7, 2022, counsel for NXP and
17 Impinj engaged in additional discussions relating to the present stipulated motion.

18 IV. ARGUMENT

19 A. The "Good Cause" Standard Applies to NXP's Request for the Filing at Docket 179 to 20 Remain Sealed.

21 The standard for determining whether to seal a document depends "on whether the motion
22 at issues is more than tangentially related to the underlying cause of action." *Ctr. for Auto Safety*
23 *v. Chrysler Grp.*, 809 F.3d 1092, 1098 (9th Cir. 2016). If the records at issue are more than
24 tangentially related to the merits of a case, the "compelling reasons" standard applies to the motion
25

1 to seal. *Id.* at 1098-1102. But if the records are only tangentially related to the merits, the less
2 exacting “good cause” standard applies. *Id.*

3 Because the information NXP seeks to maintain under seal (a dollar amount) is not related
4 to the merits NXP needs only to show “good cause” to maintain Impinj’s unredacted motion under
5 seal.

6 **B. The Parties Agree that Good Cause Exists for the Filing at Docket 179 to Remain**
7 **Sealed and for a Version with only Limited Redactions to be Publicly Filed.**

8 Federal courts consistently recognize that the risk of disclosure of confidential and
9 commercially sensitive information satisfies the more exacting “compelling reasons” standard and
10 have permitted the filing under seal of documents containing such information. *See, e.g., In re*
11 *Elec. Arts, Inc.*, 298 F. App’x 568, 569-70 (9th Cir. 2008) (holding it was error not to seal
12 “confidential and commercially sensitive information,” including pricing terms, royalty rates, and
13 guaranteed minimum payment terms in a licensing agreement); *O’Donnell/Salvatori Inc. v.*
14 *Microsoft Corp.*, No. C20-882-MLP, 2020 WL 3962132, at *3 (W.D. Wash. July 13, 2020)
15 (sealing material which “appears to be confidential and commercially sensitive”); *see also* Fed. R.
16 Civ. P. 26(c)(1)(G) (trial court has broad discretion to permit sealing of court documents to protect
17 “a trade secret or other confidential research, development, or commercial information”). This is
18 because “[e]very court has supervisory power over its own records and files” and thus an
19 obligation “to insure that its records are not used . . . as sources of business information that might
20 harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
21 (1978). Where the material sought to be sealed “includes information about proprietary business
22 operations, a company’s business model or agreements with clients, there are compelling reasons
23 to seal the material” which “outweigh[] the general public interest in understanding the judicial
24 process.” *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491, 2011 WL
25 1630338, at *6 (D. Nev. Apr. 29, 2011).

1 Here, the parties agree that good cause exists for Impinj's unredacted Motion for Leave to
2 File Amended Answer (Dkt. 179) to remain sealed. The unredacted motion discloses confidential
3 commercial information relating to the price paid for certain of NXP's licensing agreements. This
4 information is not generally known to NXP's current and potential licensing partners, and NXP
5 will suffer significant injury to its competitive standing if it is disclosed, including potentially
6 diminished future negotiating power. *See Fed. Trade Comm'n v. Amazon.com, Inc.*, No. C14-
7 1038-JCC, 2016 WL 4162440, at *1 (W.D. Wash. Mar. 22, 2016) (sealing information regarding
8 Amazon's refund rates, which were deemed sensitive commercial information). Further, because
9 Impinj's Motion for Leave to File Amended Answer already has been filed, there is no less
10 restrictive alternative to protect NXP from competitive harm other than to maintain Impinj's
11 unredacted motion at docket 179 under seal. A version of the motion with limited redactions
12 already has been publicly filed.

13 IV. CONCLUSION

14 For the foregoing reasons, NXP and Impinj respectfully request that this Court maintain
15 under seal the unredacted version of Impinj's Motion for Leave to File Amended Answer, filed on
16 June 21, 2022 at docket 179.

1 DATED this 8th day of July, 2022.

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1 **ORDER**

2 Based on the foregoing Stipulated Motion, the Court orders the clerk to maintain under seal
3 the unredacted version of Impinj's Motion for Leave to File Amended Answer, filed on June 21,
4 2022 at docket 179.

5 IT IS SO ORDERED

6 DATED this 8th day of July, 2022.

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8 THE HONORABLE JOHN H. CHUN
9 UNITED STATES DISTRICT COURT JUDGE

10 Presented by:

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