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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Iconfind, Inc.,	)	
	)	2:11-cv-00319-GEB-JFM
Plaintiff,	)	
	)	
v.	)	<u>ORDER DENYING DEFENDANT'S</u>
	)	<u>SEALING REQUEST</u>
Google, Inc.,	)	
	)	
Defendant.	)	
_____	)	

On May 15, 2012, Google, Inc. ("Google") filed on the public docket a "Notice of Request to Seal Documents" in which it "requests to file under seal certain portions of its Opening Claim Construction Brief." (ECF No. 95, 1:20-21.) Google makes the following conclusory argument in this filing: "Google's Opening Claim Construction Brief contains IconFind's confidential commercial information and was designated CONFIDENTIAL OUTSIDE COUNSEL ONLY under the Protective Order (Dkt. 68) by IconFind. These documents should be filed under seal as . . . their disclosure to the public could harm IconFind's business." Id. at 1:22-26.

On May 16, 2012, Google emailed the following documents to the Court for in camera consideration of its sealing request: a three page request to seal documents, a twenty-seven page opening claim construction brief ("Brief") to which is attached fifteen exhibits, and a one page proposed sealing order. The information Google seeks to have sealed is Exhibit 9 to its Brief and one sentence on page 9, footnote 2,

1 of its Brief, which relates to Exhibit 9. The sentence which Google  
2 seeks to seal simply states that a prior case involving Plaintiff and  
3 Yahoo!, Inc. settled for a certain monetary amount; Exhibit 9 is the  
4 settlement agreement between Plaintiff and Yahoo!, Inc.<sup>1</sup>

5 Google made the following arguments in its Request to Seal,  
6 which should have been included in its public filing:

7 Discovery documents attached to a  
8 non-dispositive motion may be sealed upon a showing  
9 of good cause by the producing party.

9 . . . .

10 Exhibit [9] to Google's Opening Claim  
11 Construction Brief is a settlement agreement  
12 between Plaintiff and Yahoo! Inc. It contains the  
13 terms of that settlement and Plaintiff designated  
14 it CONFIDENTIAL OUTSIDE COUNSEL ONLY. One sentence  
15 in Google's Opening Claim Construction Brief  
16 contains a term of that settlement agreement.

17 The lower "good cause" standard should be  
18 applied because claim construction briefs are  
19 non-dispositive. Good cause exists to seal Exhibit  
20 [9] and the related sentence because the document  
21 and related sentence contain IconFind's  
22 confidential commercial information. The settlement  
23 agreement is available only to IconFind employees  
24 and counsel and derive value from their  
25 confidential nature. . . . Furthermore, the  
26 public's interest in viewing this information is  
27 weak because the Claim Construction brief is not  
28 dispositive. This document and the related sentence  
are not necessary for the public to understand the  
issues presented in this case.

Google's proposed sealing of documents is  
narrowly drawn to only confidential information  
that derives value from its confidential nature.  
Google respectfully requests that these documents  
be sealed from public disclosure.

(Def.'s Request to Seal, 2:4-3:14 (internal citations omitted).) "All

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<sup>1</sup> Google identified the wrong exhibit number, Exhibit 10, in its sealing request and proposed order. The referenced settlement agreement is Exhibit 9 to the Brief.

1 requests to seal must specify the particular reason that the information  
2 should be sealed. . . . The guiding principle here is that as much  
3 information as possible should remain accessible to the public and no  
4 more should be sealed than absolutely necessary." Lahrichi v. Lumera  
5 Corp., No. C04-2124C, 2007 WL 1521222, at \*2 (W.D. Wash. May 22, 2007).

6 Further, Google has not explained why it submitted the Brief's  
7 fourteen additional exhibits to the Court for in camera consideration of  
8 its sealing request. "To the extent [the other exhibits are] not  
9 relevant to the [sealing decision]" submitting unnecessary and  
10 "voluminous [documents] . . . is an inefficient use of judicial  
11 resources[.]" Young v. Actions Semiconductor Co., Ltd., No. 06cv1667-  
12 L(AJB), 2007 WL 2177028, at \*5 (S.D. Cal. Jul. 27, 2007). Nor did Google  
13 adequately address in its moving papers the relevancy of the information  
14 it seeks to have sealed; the Court was forced to comb through Google's  
15 twenty-seven page Brief to ascertain its relevancy to a claim  
16 construction issue. Google, as the movant for a sealing order, is  
17 required to succinctly evince the relevancy of the information it seeks  
18 to have sealed.

#### 19 DISCUSSION

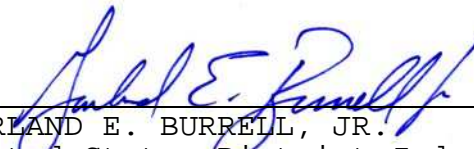
20 "Two standards generally govern motions to seal documents[;]"  
21 Google makes a conclusory argument in its Request to Seal, a brief which  
22 it seeks to file under seal, that the lesser "good cause" standard  
23 applies to its sealing request. Pintos v. Pac. Creditors Ass'n, 605 F.3d  
24 665, 677 (9th Cir. 2010). However, the issue concerning which sealing  
25 standard applies need not be reached since Google has not shown that  
26 what it seeks to seal is relevant to the claim construction at issue,  
27 and is text which needs to be referenced in its Brief or attached as an  
28 exhibit. See Young, 2007 WL 2177028, at \*4 (denying a request to seal,

1 partly because the request sought to have irrelevant information  
2 sealed).

3 A party filing a motion to seal or redact "should carefully  
4 consider not only whether a document or a portion thereof warrants  
5 sealing, but whether what [it] deems to be confidential is relevant" to  
6 what is at issue. Id. This relevancy determination is important because  
7 the Court should not condone what are "essentially secret judicial  
8 proceedings" on a matter that has no relevancy or sufficient probative  
9 value on what is at issue. Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel  
10 Rittenhouse Assocs., 800 F.2d 339, 345 (3d Cir. 1986); see also E.D.  
11 Cal. R. 141(b) ("The [Request] shall set forth the statutory or other  
12 authority for sealing, the requested duration, . . . and all other  
13 relevant information.").

14 For the stated reasons, Google's sealing request is denied.  
15 See U.S. v. Baez-Alcaino, 718 F. Supp. 1503, 1507 (M.D. Fla. 1989)  
16 (indicating that when a judge denies a sealing request the party  
17 submitting the request then decides how to proceed in light of the  
18 ruling).

19 Dated: May 21, 2012

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22 \_\_\_\_\_  
GARLAND E. BURRELL, JR.  
United States District Judge