

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 POWERTECH TECHNOLOGY INC., a
5 Taiwanese corporation,

6 Plaintiff,

7 v.

8 TESSERA, INC., a Delaware
9 corporation,

10 Defendant.

No. C 11-6121 CW

ORDER GRANTING IN
PART MOTION TO
FILE UNDER SEAL
(Docket No. 94)

11 _____/
12 On May 24, 2012, Plaintiff Powertech Technology, Inc. filed a
13 motion seeking permission to file under seal its motion for leave
14 to file a first amended complaint and Exhibit One thereto,
15 including its proposed first amended complaint (1AC) and
16 Appendices A and G through O attached to the 1AC. Docket No. 94.

17 Plaintiff seeks to seal court records that are closely
18 related to the merits of its complaint. To establish that the
19 documents are sealable, the party who has designated it as
20 confidential "must overcome a strong presumption of access by
21 showing that 'compelling reasons supported by specific factual
22 findings . . . outweigh the general history of access and the
23 public policies favoring disclosure.'" Pintos v. Pac. Creditors
24 Ass'n, 605 F.3d 665, 679 (9th Cir. 2010) (citation omitted). Cf.
25 id. at 678 (explaining that a less stringent "good cause" standard
26 is applied to sealed discovery documents attached to
27 non-dispositive motions). This cannot be established simply by
28 showing that the document is subject to a protective order or by
stating in general terms that the material is considered to be

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1 confidential, but rather must be supported by a sworn declaration
2 demonstrating with particularity the need to file each document
3 under seal. Civil Local Rule 79-5(a). If a document has been
4 designated as confidential by another party, that party must file
5 a declaration establishing that the document is sealable. Civil
6 Local Rule 79-5(d).

7 In its motion to seal, Plaintiff states that it seeks to file
8 its motion for leave to amend the complaint under seal, because
9 the motion "discusses statements" from the depositions of Brian
10 Marcucci in his individual capacity and in his capacity as
11 Defendant's Rule 30(b)(6) witness, which Defendant has designated
12 as confidential. Mot. to Seal at 2; Heath Decl. ¶ 2. The Court
13 notes that, while Plaintiff apparently seeks to file its entire
14 motion for leave to amend under seal, the motion discusses the
15 content of Mr. Marcucci's testimony only on pages 3:25 through
16 4:25 and 8:22 through 9:10. Because Defendant has designated Mr.
17 Marcucci's testimony as sealable, it must file a declaration
18 demonstrating with particularity the need to file under seal these
19 portions of Plaintiff's motion within seven days of the date on
20 which Plaintiff filed its motion to seal, or by May 31, 2012.
21 Defendant's failure to do so will result in the denial of
22 Plaintiff's motion to seal as to this document.

23 Plaintiff states that it seeks to file under seal Appendix A
24 to its proposed 1AC, which contains the Tessera Complaint Chip
25 License Agreement (TCC License), because it contains "proprietary
26 and confidential information, including provisions regarding the
27 calculation, payment, and amount of royalties PTI pays to Tessera
28 on licensed products," and that its disclosure would harm

1 Plaintiff by giving its competitors this proprietary information.
2 Heath Decl. ¶ 14. The Court has previously granted the parties
3 leave to file the TCC License under seal. See Docket No. 26. At
4 that time, the Court also granted permission to file under seal
5 Appendix G, which contains a letter from Plaintiff to Defendant
6 that quotes extensively from the TCC license. Id. Accordingly,
7 Plaintiff has established that Appendices A and G are sealable.

8 Plaintiff also seeks to file under seal Appendices H through
9 O, which contain other correspondence between the parties that
10 include confidential and proprietary information, including
11 discussions related to the amount, calculation and payment of
12 royalties to Tessera and the parties' business relationship. The
13 Court notes that it has previously granted the parties permission
14 to file under seal Appendices J and O, as well as part of Appendix
15 H. See Docket No. 29. Having reviewed the contents of Appendices
16 H through O, the Court finds that Plaintiff has established that
17 these Appendices are sealable.


18 Finally, Plaintiff seeks to file its proposed 1AC under seal.
19 Plaintiff represents that the proposed 1AC "references, discusses
20 and quotes the Parties' TCC License and from several
21 correspondences between the parties," which are the documents that
22 this Court found cause to seal above. Mot. to Seal at 3. While
23 in its motion to seal, Plaintiff appears to request that the
24 proposed 1AC be sealed in its entirety, Plaintiff has indicated in
25 the copy provided to the Court the portions of it that refer to
26 the confidential material and that can be redacted. Thus, the
27 Court finds that Plaintiff has established compelling reasons to
28

1 seal the unredacted proposed 1AC and to file the redacted version
2 in the public record.

3 As set forth above, Plaintiff has provided sufficient reasons
4 supporting the sealing of the unredacted proposed 1AC and of the
5 entirety of Appendices A and G through O. Accordingly,
6 Plaintiff's motion for leave to file documents under seal is
7 GRANTED in part (Docket No. 94). Within three days of the date of
8 this Order, Plaintiff shall electronically file under seal its
9 unredacted proposed 1AC and Appendices A and G through O, and
10 shall file in the public record the redacted proposed 1AC.
11 Further, as previously stated, by May 31, 2012, Defendant must
12 file a declaration demonstrating with particularity the need to
13 seal the portions of Plaintiff's motion for leave to amend that
14 refer to Mr. Marcucci's deposition testimony.

15 IT IS SO ORDERED.

16
17 Dated: 5/31/2012



CLAUDIA WILKEN
United States District Judge