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E-filed: 5/26/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. C-00-20905 RMW

ORDER GRANTING IN PART AND
DENYING IN PART REQUEST TO REDACT
PORTIONS OF ORDER GRANTING
HYNIX'S MOTION TO STAY EXECUTION
OF JUDGMENT

On May 14, 2009, the court filed under seal its order granting with conditions Hynix's motion to stay execution of judgment and directing that on-going royalties be paid into an escrow account. The order allowed the parties seven days to present a meritorious request that certain portions of the order be redacted from the publicly filed copy of the order, absent which the unredacted order would be publicly filed.

Hynix requested redactions on page 3 of the order: portions of lines 2-3, which discussed certain surety terms for the issuance of a bond, and portions of lines 15-16 which identified the specific properties offered as security to Rambus. Hynix's counsel stated that the information is confidential financial and business information of Hynix and was filed under seal in connection with

ORDER
C-00-20905-RMW
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1 the motion. Rambus objected to the proposed redactions, arguing that the nature of the security
2 underlying the bond and the specific identification of the properties offered as security is not a
3 sensitive business matter, similar in type to the contingency plans which Hynix has routinely
4 announced during earnings calls. Rambus cites Kamakana v. City and County of Honolulu, 447
5 F.23d 1172, 1178-81 (9th Cir. 2005), for the proposition that a party's subjective preference to keep
6 facts confidential is not enough to justify sealing them, and instead, that there must be an objective
7 and cognizable reason that overcomes the public's interest in access to judicial records and the
8 contents of court decisions.

9 In response, Hynix argues that Rambus has waived its objection to sealing these facts
10 because it did not object when Hynix sought to have the documents containing such facts submitted
11 under seal in connection with the underlying motion. Since the issue involves public access,
12 however, Rambus' alleged waiver is not dispositive. Hynix also contends that the redactions are
13 proper because the information is confidential and sensitive business information that has not been
14 publicly disclosed.

15 The Ninth Circuit in Kamakana stressed the presumption in favor of the public's access to
16 judicial records, finding that absent compelling reasons justifying maintaining documents under seal,
17 documents submitted in connection with dispositive motions should be open to the public. The
18 "compelling reasons" standard is a higher standard than the mere "good cause" requirement under
19 Rule 26(c) in connection with non-dispositive motions and protective orders governing discovery.

20 Hynix was obligated to present "articulable facts" identifying the interests favoring continued
21 secrecy and to show that these specific interests overcame the presumption of access by outweighing
22 the public interest in understanding the judicial process. Kamakana, 447 F.3d at 1181 (citing Foltz
23 v. State Farm Auto Ins. Co., 331 F.3d 1122, 1136 (9th Cir. 2003), and Hagestad v. Tragesser, 49
24 F.3d 1430, 1434 (9th Cir. 1995). Hynix has not done so except with respect to its negotiation with
25 the surety of the terms for the posting of the bond. The court finds that Hynix's concern that
26 publicly revealing those negotiations could interfere with Hynix's ability to successfully negotiate
27 favorable terms. Therefore, the request to redact the portion of page 3:2-3 is granted, pending the
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1 posting of the supersedeas bond. However, once the bond has been posted, there would not appear
2 to be a need to maintain confidentiality. A fully unredacted copy of the May 14, 2009 order will be
3 filed at that time.

4 The court fails to see why the identity of the properties offered by Hynix as security for the
5 portion of the judgment not bonded cannot be disclosed at this time. Accordingly, the request to
6 redact pages 3:15-16 is denied.

7 Therefore, a redacted copy of the May 14, 2009 order will be filed publicly, and following
8 the posting of the supersedeas bond, an unredacted copy of the order will be publicly filed.

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11 DATED: 5/22/09



RONALD M. WHYTE
United States District Judge

1 This document has been electronically sent to: counsel in 00-20905.

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23 **Dated:** 5/26/09 TER
24 **Chambers of Judge Whyte**

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