

United States District Court
For the Northern District of California

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E-Filed 5/11/11

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

ELAN MICROELECTRONICS CORPORATION,

No. C 09-01531 RS

Plaintiff,

ORDER DENYING MOTION TO SEAL, WITHOUT PREJUDICE

v.

APPLE, INC.,

Defendant.

Elan has filed a motion (Dkt. No. 198) to file under seal virtually all of the documents submitted in connection with its motion for partial summary judgment, including its brief, the supporting declarations, and virtually all of the exhibits thereto. The motion is denied, without prejudice to a renewed motions filed in compliance with Civil Local Rule 79-5 and the directions of this order.

The commentary to Rule 79-5 notes that, “[a]s a public forum, the Court has a policy of providing to the public full access to papers filed in the Office of the Clerk.” Accordingly Rule 79-5, “is designed to ensure that . . . a public copy is filed and available for public review that has the *minimum redactions necessary* to protect sealable information.” (Emphasis added).

The request to seal the entirety of the supporting brief rather than only redacted portions thereof is manifestly inappropriate. In the case of declaration exhibits, practical considerations warrant some flexibility in applying the rule. Thus, where an exhibit predominately consists of

1 sealable information, it may be appropriate to seal the entire document rather than requiring
2 submission of a heavily redacted document that would not substantially further the policy of
3 providing public access to, and understanding of, court proceedings. Parties must, however, give
4 particularized consideration to each exhibit prior to requesting that it be sealed, either in its entirety,
5 or through redactions. The mere fact that a document may have been designated by a party as
6 confidential during the discovery process does not automatically establish that sealing is
7 appropriate.

8 Elan's sealing request is based on the assertion that the materials constitute, or disclose
9 information contained in, documents designated by Apple as confidential under the protected order
10 in this action. Ordinarily, upon the filing of such a motion, it would be Apple's burden to submit a
11 declaration establishing what materials qualify for sealing, and a proposed sealing order, within 7
12 days. *See* Rule 79-5(d). In this instance, to facilitate Apple's ability to withdraw confidentiality
13 designations if and to the extent appropriate without unduly confusing the record, the parties are
14 ordered to meet and confer *before* Elan files its renewed sealing motion, such that it only requests
15 sealing of materials as to which Apple believes there exists a good faith basis to permit sealing,
16 bearing in mind the considerations mentioned above. Apple shall then submit the requisite
17 declaration and proposed sealing order within 7 days of the filing of the renewed motion. Elan need
18 not re-submit chambers copies of its motion for summary judgment, or the supporting declarations
19 and exhibits.

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IT IS SO ORDERED.

Dated: 5/11/11



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE