

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AVAGO TECHNOLOGIES, INC., et al.,)	Case No.: 5:10-cv-02863-EJD
)	
Plaintiffs,)	ORDER RE: MOTIONS TO SEAL
v.)	
)	(Re: Docket Nos. 581, 583, 585, 594,
IPTRONICS INC., et al.,)	596, 601, 610)
)	
Defendants.)	
)	

Before the court are seven administrative motions to file various documents under seal.¹ “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”² Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”³ Parties seeking to seal judicial records relating to dispositive motions bear the burden of overcoming the presumption

¹ See Docket Nos. 563.

² *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

³ *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

1 with “compelling reasons” that outweigh the general history of access and the public policies
2 favoring disclosure.⁴

3 However, “while protecting the public's interest in access to the courts, we must remain
4 mindful of the parties' right to access those same courts upon terms which will not unduly harm
5 their competitive interest.”⁵ Records attached to nondispositive motions therefore are not subject
6 to the strong presumption of access.⁶ Because the documents attached to nondispositive motions
7 “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving
8 to seal must meet the lower “good cause” standard of Rule 26(c).⁷ As with dispositive motions, the
9 standard applicable to nondispositive motions requires a “particularized showing”⁸ that “specific
10 prejudice or harm will result” if the information is disclosed.⁹ “Broad allegations of harm,
11 unsubstantiated by specific examples of articulated reasoning” will not suffice.¹⁰ A protective
12 order sealing the documents during discovery may reflect the court’s previous determination that
13 good cause exists to keep the documents sealed,¹¹ but a blanket protective order that allows the
14 parties to designate confidential documents does not provide sufficient judicial scrutiny to
15 determine whether each particular document should remain sealed.¹²

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19 ⁴ *Id.* at 1178-79.

20 ⁵ *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

21 ⁶ *See id.* at 1180.

22 ⁷ *Id.* at 1179 (internal quotations and citations omitted).

23 ⁸ *Id.*

24 ⁹ *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);
25 *see Fed. R. Civ. P. 26(c).*

26 ¹⁰ *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

27 ¹¹ *See Kamakana*, 447 F.3d at 1179-80.

28 ¹² *See Civ. L.R. 79-5(d)(1)(A)* (“Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

1 In addition to making particularized showings of good cause, parties moving to seal
 2 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to
 3 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document
 4 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
 5 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
 6 must conform with Civil L.R. 79-5(d).”¹³ “Within 4 days of the filing of the Administrative
 7 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
 8 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹⁴
 9

10 With these standards in mind, the court rules on the instant motion as follows:

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
581-4	Plaintiffs’ Opposition to Defendants Motion to Strike In Part the Avago Entities Infringement Contentions	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
581-6	Declaration of Floyd Anderson In Support of Plaintiffs’ Opposition	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
581-8	Declaration of Kenneth Pedrotti In Support of Plaintiffs’ Opposition	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.

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 24 ¹³ Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed
 25 order that is narrowly tailored to seal only the sealable material” which “lists in table format each
 26 document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an
 27 “unreadacted version of the document” that indicates “by highlighting or other clear method, the
 28 portions of the document that have been omitted from the redacted version.”
 Civ. L.R. 79-5(d)(1)(d).

¹⁴ Civ. L.R. 79-5(e)(1).

1	581-10/587-1	Exhibit A to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-1 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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3	581-12/587-2	Exhibit B to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-2 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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5	581-14/587-3	Exhibit C to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-3 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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7	581-16	Exhibit D to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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9	581-18	Exhibit E to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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11	581-20	Exhibit F to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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13	581-22	Exhibit G to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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15	581-24	Exhibit H to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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17	581-26	Exhibit I to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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19	581-28	Exhibit W to Chang Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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1	583-4	Plaintiffs' Motion to Amend Infringement Contentions Pursuant to Patent L.R. 3-6	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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3	583-5/587-4	Exhibit 1 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-4 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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5	583-6/587-5	Exhibit 2 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-5 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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7	583-7/587-6	Exhibit 3 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-6 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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9	583-8/587-7	Exhibit 4 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-7 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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11	583-9/587-8	Exhibit 5 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-8 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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13	583-10/587-9	Exhibit 6 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-9 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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15	583-11/587-10	Exhibit 7 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-10 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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17	583-12/587-11	Exhibit 8 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-11 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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19	583-13/587-12	Exhibit 9 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-12 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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1	583-14/587-13	Exhibit 10 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-13 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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3	583-15/587-14	Exhibit 11 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-14 SEALED; remainder UNSEALED.	Only narrowly tailored to confidential business information.
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5	583-16/587-15	Exhibit 12 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-15 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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7	583-17/587-16	Exhibit 13 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-16 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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9	583-18/587-17	Exhibit 14 to Chang Declaration	Only designations highlighted in yellow at Docket No. 587-17 SEALED; remainder UNSEALED.	Only narrowly tailored to confidential business information.
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11	585-3	Defendant's Motion to Strike In Part the Avago Entities' Infringement Contentions	Designations highlighted in green SEALED.	Sealed portions narrowly tailored to confidential business information.
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13	585-4	Exhibit 1 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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15	585-5	Exhibit 2 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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17	585-6	Exhibit 2, Ex. A and B to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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19	585-7	Exhibit 3 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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1	585-8	Exhibit 4 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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3	585-9	Exhibit 5 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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6	585-10	Exhibit 6 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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9	585-11	Exhibit 7 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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11	585-12	Exhibit 8 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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14	585-13	Exhibit 9 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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17	585-14	Exhibit 10 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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19	585-15	Exhibit 11 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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22	585-16	Exhibit 12 to Brandwajn Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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25	594-4	Declaration of Henning Lysdal in Support of Defendants' Motion to Strike in Part the Avago Entities' Infringement Contentions	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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1 2 3	596-4	Plaintiffs' Motion to Compel the Production of Documents and Things	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
4 5	596-6	Exhibit T to Hunacek Declaration	SEALED.	Only sealed portions narrowly tailored to confidential business information.
6 7 8	601-4	Defendants' Opposition to the Avago Entities' Motion to Amend Infringement Contentions Pursuant to Patent L.R. 3-6	Designations highlighted in green SEALED.	Sealed portions narrowly tailored to confidential business information.
9 10 11	610-4	Avago's Reply Brief in support of Motion To Amend Infringement Contentions	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.

12 **SO ORDERED.**

13 Dated: June 30, 2015

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16 PAUL S. GREWAL
17 United States Magistrate Judge