

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GUZIK TECHNICAL ENTERPRISES, INC.,)	Case No.: 5:11-cv-03786-PSG
Plaintiff and Counterclaim Defendant,)	ORDER RE: SEALING MOTIONS
v.)	(Re: Docket Nos. 467, 468, and 469)
WESTERN DIGITAL CORPORATION, et al.,)	
Defendants and Counterclaim Plaintiffs,)	
and)	
WESTERN DIGITAL (THAILAND))	
COMPANY LIMITED and)	
WESTERN DIGITAL (MALAYSIA))	
SDN.BHD,)	
Defendants.)	

Before the court are Defendants' Western Digital Corp., et al. (collectively, "Western Digital") three renewed sealing motions. The court presumes familiarity with the background of this case¹ and turns immediately to the motions before it.

¹ Unfamiliar readers are directed to three of the court's recent summary judgment orders. See Docket Nos. 442, 443, and 445.

I. LEGAL STANDARDS

A. Sealing Motions

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

Records attached to nondispositive motions, however, are not subject to the strong presumption of access.⁵ Because the documents attached to nondispositive motions “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal must meet the lower “good cause” standard of Rule 26(c).⁶ As with dispositive motions, the standard applicable to nondispositive motions requires a “particularized showing”⁷ that “specific prejudice or harm will result” if the information is disclosed.⁸ “Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning” will not suffice.⁹ A protective order sealing the documents during discovery may reflect the court’s previous determination that good

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)).

⁴ *Id.* at 1178-79.

⁵ *See id.* at 1180.

⁶ *Id.* at 1179 (internal quotations and citations omitted).

⁷ *Id.*

⁸ *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*.

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

1 cause exists to keep the documents sealed,¹⁰ but a blanket protective order that allows the parties to
2 designate confidential documents does not provide sufficient judicial scrutiny to determine whether
3 each particular document should remain sealed.¹¹

4 In addition to making particularized showings of good cause, parties moving to seal
5 documents must comply with the procedures established by Civil L.R. 79-5. Pursuant to
6 Civil L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document
7 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
8 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
9 must conform with Civil L.R. 79-5(d).”¹² “Within 4 days of the filing of the Administrative
10 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
11 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹³

12 II. ANALYSIS

13 A. Western Digital’s Motion for Summary Judgment on Breach of Contract

14 1. Exhibit 12 to the Masuda Declaration

15 Exhibit 12 “is a document introduced as Exhibit 67 to the Deposition of JD Buttar, an email
16 from Mr. Buttar to Barry Coughlin, dated October 30, 2003,” produced in this case that
17 “summarizes confidential conversations among employees from Read-Rite, Western Digital, and
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22 ¹⁰ See *Kamakana*, 447 F.3d at 1179-80.

23 ¹¹ See Civil L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party
24 to designate certain documents as confidential is not sufficient to establish that a document, or
portions thereof, are sealable.”).

25 ¹² Civil L.R. 79-5(b). In part, Civil L.R. 79-5(d)(1) requires the submitting party to attach a
26 “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table
27 format each document or portion thereof that is sought to be sealed” and an “unredacted version of
the document” that indicates “by highlighting or other clear method, the portions of the document
that have been omitted” from the redacted version.

28 ¹³ Civil L.R. 79-5(e)(1).

1 Guzik, and reveals character issues about Nahum Guzik, the founder of Guzik.”¹⁴ Western Digital
2 claims that if “these conversations are publicly revealed, Nahum Guzik or Guzik could use them to
3 file a defamation lawsuit against Western Digital” or its employees and the disclosure of this
4 information “may harm Western Digital’s competitive standing.”¹⁵ The court has reviewed
5 Western Digital’s representations alongside Exhibit 12 and finds Western Digital’s concerns about
6 this ten-year old e-mail are speculative and insufficiently particularized. Western Digital’s request
7 is DENIED.

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9 **2. Exhibit 19 to the Masuda Declaration**

10 Exhibit 19 to the Masuda Declaration consists of “excerpts from the transcripts of the
11 March 15, 2013 and April 19, 2013 depositions of JD Buttar.”¹⁶ The “documents describe the
12 internal development of the accused products and details regarding Western Digital’s test suites.
13 The documents also refer to possible future Western Digital products that are currently in
14 development. Western Digital considers the information in these documents highly sensitive and
15 derives a business advantage from the information not being known by its competitors and the
16 general public.”¹⁷ The court has reviewed Western Digital’s representations alongside the
17 highlighted redactions from Exhibit 19 and finds sealing the redacted transcript excerpts is
18 warranted. Western Digital’s request is GRANTED.

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20 **3. Exhibit 20 to the Masuda Declaration**

21 Exhibit 20 to the Masuda Declaration consists of “excerpts from the transcript of the
22 April 11, 2013 deposition of Maxine Gandall.”¹⁸ The “deposition transcript contains confidential
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25 ¹⁴ Docket No. 467-1 at ¶ 2a.

26 ¹⁵ *Id.*

27 ¹⁶ *Id.* at ¶ 2b.

28 ¹⁷ *Id.*

1 details on the Master Purchase Agreement between Guzik and Western Digital, including the
2 circumstances under which Western Digital signed the agreement.”¹⁹ The court has reviewed
3 Western Digital’s representations alongside Exhibit 20 and finds sealing the deposition excerpts is
4 not warranted. Western Digital’s request is DENIED.

5 **4. Exhibit 15 to the Shaul Declaration**

6 Exhibit 15 consists of an e-mail produced in this case that “includes quotations from the
7 Master Purchase Agreement which by its own terms is confidential, and for which the Court has
8 already allowed sealing.”²⁰ Although “Western Digital considers the information in this document
9 to be highly” sensitive, the court finds that the e-mail’s disclosure that a Western Digital agreement
10 requires thirty days-notice prior to termination does not warrant sealing. Western Digital’s request
11 is DENIED.
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13 **5. Exhibit 24 to the Shaul Declaration**

14 Exhibit 24 consists of a series of e-mails that “reveals confidential joint development plans
15 between Western Digital and Guzik.”²¹ The court has reviewed Western Digital’s representations
16 alongside the e-mail chain and finds sealing the e-mail chain is not warranted. Western Digital’s
17 request is DENIED.
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19 **6. Exhibit 2 to the Woodhouse Declaration**

20 Exhibit 2 consists of a presentation that “includes highly confidential information relating
21 to Western Digital’s business operations, specifically internal financial analyses and product
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25 ¹⁸ *Id.* at ¶ 2c.

26 ¹⁹ *Id.*

27 ²⁰ *Id.* at ¶ 3a.

28 ²¹ *Id.* at ¶ 3b.

1 strategies.”²² The court has reviewed Western Digital’s representations alongside the presentation
2 and finds sealing Exhibit 2 is warranted. Western Digital’s request is GRANTED.

3 **7. Exhibit 3 the Woodhouse Declaration**

4 Exhibit 3 consists of a presentation produced in this case that contains “highly confidential
5 information relating to Western Digital’s business operations, specifically internal financial
6 analyses and product” strategies and “contains proprietary technical and financial information” of
7 nonparties including Maxtor , SAE, and Hitachi.²³ The court has reviewed Western Digital’s
8 representations alongside the presentation and finds sealing the presentation to be warranted.
9 Western Digital’s request is GRANTED.
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11 **8. Exhibit 6 the Woodhouse Declaration**

12 Exhibit 6 consists of “excerpts of the April 19, 2013 deposition of JD Buttar.”²⁴ The
13 transcript “describes the internal development of the accused products and details” test suites and
14 also “refers to possible future Western Digital products that are currently in development.”²⁵ The
15 court has reviewed Western Digital’s representations alongside the highlighted redactions from the
16 deposition transcript and finds sealing the redacted transcript excerpts is warranted.
17 Western Digital’s request is GRANTED.
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19 **B. Western Digital’s Opposition to Guzik’s Motion to Strike**

20 **1. Exhibit M to the Woodhouse Declaration**

21 Exhibit M consists of “an email from Tahir Ali to Herbert Lin cc JD Buttar, Kriangkrai
22 Sitthiosoth, Terry Farren, Anchalee Siwasttaporn, and Rob Eaton with subject “ROI and Cost
23 analysis for DBT with current KPI,’ dated April 13, 2011” produced in this case that contains “an
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25 ²² *Id.* at ¶ 4a.

26 ²³ *Id.* at ¶ 4b.

27 ²⁴ *Id.* at ¶ 4c.

28 ²⁵ *Id.*

1 internal chart that compares the test cost per head gimbal assembly against units” per hour and
2 “also reveals design and development details about a confidential alternative tester that Western
3 Digital developed.”²⁶ The court has reviewed Western Digital’s representations alongside the
4 email and finds sealing is warranted. Western Digital’s request is GRANTED.

5 **2. Exhibit N to the Woodhouse Declaration**

6 Exhibit N “is an e-mail from Kriangkrai Sitthiosoth to Tahir Ali, Rob Eaton, Terry Farren
7 cc Anan Wonganu , Rittirong Bamrungham, Jarupat Yamjerm, Kitti Tangtrakoon with subject
8 ‘ROI calculation worksheet,’ dated April 12, 2011,” that contains “charts detailing internal cost
9 analyses and scenario modeling and discusses budgeting” concerns and “also reveals design and
10 development details about a confidential alternative tester that Western Digital developed.”²⁷ The
11 court has reviewed Western Digital’s representations alongside the email and finds sealing is
12 warranted. Western Digital’s request is GRANTED.

13 **3. Exhibit O to the Woodhouse Declaration**

14 Exhibit O “is an e-mail exchange between Jinghuan Chen, Terry Farren, Rob Eaton and
15 other Western Digital employees with subject ‘WDB DBT Production Pareto 3-10-2011,’ dated
16 March 2011,” produced in this case that “reveals design and development details about an
17 alternative tester that Western Digital developed as well as information regarding its performance
18 and capabilities.”²⁸ The court has reviewed Western Digital’s representations alongside the e-mail
19 chain and finds sealing is warranted. Western Digital’s request is GRANTED.

20 **4. Exhibit P to the Woodhouse Declaration**

21 Exhibit P consists of Mr. Pampinella’s expert rebuttal damages report.²⁹ The report “details
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26 ²⁶ Docket No. 468-1 at ¶ 2a.

27 ²⁷ *Id.* at ¶ 2b.

28 ²⁸ *Id.* at ¶ 2c.

1 the economic considerations Western Digital undertakes” in making purchasing decisions, contains
2 information regarding costs and Western Digital testing statistics, and contains GTE’s “financial
3 information and profit margins.”³⁰ After reviewing Exhibit P, the court finds that some sealing is
4 warranted. Pages 9-13, 18, 27-29, 42, and 44-45 may be filed under seal. Western Digital’s
5 request is GRANTED-IN-PART.

6 **C. Western Digital’s Motion for Summary Judgment of Non-Infringement**

7 **1. Exhibit D to the Woodhouse Declaration**

8 Exhibit D contains excerpts from Dr. Phinney’s infringement expert report.³¹ The exhibit
9 consists “of two infringement claim charts comparing the ’145 patent claim elements to
10 Western Digital’s DCT-400 and EH-300” testers including “information regarding the hardware
11 layout of Western Digital’s servo board, including the specific components” of the board and a
12 description of “Western Digital’s method of reading and writing servo bursts, including the servo
13 burst patterns.”³² The court agrees that sealing Exhibit D is warranted. Western Digital’s request
14 is GRANTED.
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16 **2. Dr. Phinney’s Declaration**

17 Dr. Phinney’s declaration supporting GTE’s opposition to Western Digital’s motion
18 “contains information regarding Western Digital’s head testing procedures and certain testing
19 parameters that Western Digital uses during the testing” process, details on the “structural
20 relationship between certain specifically identified” components that might enable the reverse
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25 ²⁹ See *id.*

26 ³⁰ *Id.* at ¶ 2d.

27 ³¹ See Docket No. 469-1 at ¶ 2a.

28 ³² *Id.* at ¶ 2a.

1 engineering of Western Digital’s testers.³³ The court has reviewed Western Digital’s
2 representations alongside Dr. Phinney’s declaration and believes some sealing is warranted.
3 Western Digital’s request is GRANTED-IN-PART. Western Digital seeks leave to file
4 Dr. Phinney’s declaration with redactions to paragraphs 2-37 under seal. Paragraphs 2-6 may not
5 be filed under seal. Paragraphs 7-37 may be filed under seal.

6 **3. Exhibit 8 to the Kolassa Declaration**

7 Exhibit 8 consists of excerpts from the Infringement Report of Dr. Joshua Phinney
8 described above.³⁴ Exhibit 8 may be filed under seal. Western Digital’s request is GRANTED.
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10 **4. Exhibit 12 to the Kolassa Declaration**

11 Exhibit 12 consists of “GTE’s infringement contentions served on Western Digital” in this
12 case and includes “include photographs of disassembled Western Digital products which
13 Western Digital does not sell or display” publicly that “could be utilized to redesign
14 Western Digital’s testers.”³⁵ Exhibit 12 may be filed under seal. Western Digital’s request is
15 GRANTED.
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17 **5. Exhibit 14 to the Kolassa Declaration**

18 Exhibit 14 is a document that “provides direction on how various parts of the EH-300
19 tester” are interconnected that was produced in this case.³⁶ Exhibit 14 may be filed under seal.
20 Western Digital’s request is GRANTED.

21 **6. Exhibit 16 to the Kolassa Declaration**

22 “Exhibit 16 contains six pages of detailed schematics and is entitled ‘SPS7.’ The document
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25 ³³ *Id.* at ¶ 3a.

26 ³⁴ *See id.* at ¶ 3b.

27 ³⁵ *Id.* at ¶ 3c.

28 ³⁶ *Id.* at ¶ 3d.

describes the hardware layout of the Western Digital servo board, including but not limited to the actual hardware components and interconnections.”³⁷ Exhibit 16 may be filed under seal.

Western Digital’s request is GRANTED.

7. Exhibit 17, 26-28, and 31-32 to the Kolassa Declaration

Exhibits 17, 26-28, and 31-32 to the Kolassa Declaration “are schematics produced in this case” that “describe the hardware layout of the Western Digital servo board and related auxiliary boards, including but not limited to the actual hardware components and interconnections.”³⁸ These exhibits may be filed under seal. Western Digital’s request to file these exhibits under seal is GRANTED.

8. Exhibit 18 and 39-40 to the Kolassa Declaration

Exhibits 18-20 and 39-40 to the Kolassa Declaration “are copies of source code produced in this case” that are “used by Western Digital’s accused testers in performing its head testing functions.”³⁹ These exhibits may be filed under seal. Western Digital’s request to file these exhibits under seal is GRANTED.

9. Exhibit 21 to the Kolassa Declaration

Exhibit 21 consists of a presentation produced in this case that “details the preparation plan for the DCT400, which Western Digital generally keeps confidential from its competitors.”⁴⁰ Exhibit 21 may be filed under seal. Western Digital’s request is GRANTED.

10. Exhibit 24 to the Kolassa Declaration

Exhibit 24 consists of a document produced in this case that “details internal testing specifications that are integral to Western Digital’s technology and business” operations and

³⁷ *Id.* at ¶ 3e.

³⁸ *Id.* at ¶ 3f.

³⁹ *Id.* at ¶ 3g.

⁴⁰ *Id.* at ¶ 3h.

discloses “insight into Western Digital’s intellectual property and engineering capabilities and quality assurance process.” Exhibit 24 may be filed under seal. Western Digital’s request is GRANTED.

11. Exhibit 1 to the Rogaski Declaration

Exhibit 1 contains excerpts from GTE’s infringement contentions including “photographs of disassembled Western Digital products which Western Digital does not sell or display” publicly that “could be utilized to redesign Western Digital’s testers.”⁴¹ Exhibit 1 may be filed under seal. Western Digital’s request is GRANTED.

12. Exhibit 2 to the Rogaski Declaration

Exhibit 2 consists of excerpts from Dr. Phinney’s infringement expert report.⁴² The excerpts from the report “contains information regarding the hardware layout of Western Digital’s servo board, including the specific components” of the board and “additionally describes Western Digital’s method of reading and writing servo bursts, including the servo burst patterns.”⁴³ Exhibit 2 may be filed under seal. Western Digital’s request is GRANTED.

13. Exhibit B to the Woodhouse Declaration

Exhibit B is the same as the document submitted as Exhibit D to the Woodhouse Declaration above (*see* page 8). As above, the court finds sealing is warranted. Exhibit B may be filed under seal. Western Digital’s request is GRANTED.

⁴¹ *Id.* at ¶ 4a.

⁴² *See id.* at ¶ 4b.

⁴³ *Id.*

1 **IT IS SO ORDERED.**

2 Dated: December 2, 2013

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4 PAUL S. GREWAL
5 United States Magistrate Judge
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