

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PERSONALWEB TECHNOLOGIES LLC,  
et al.,

Plaintiffs,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant.

Case No. 16-cv-01266-EJD

**OMNIBUS ORDER RE:  
ADMINISTRATIVE MOTIONS TO  
SEAL**

Re: Dkt. Nos. 273, 286, 287, 289, 309, 316,  
319, 322, 324, 325, 334

Before the Court are administrative motions to seal filed by the parties in connection with their motions *in limine* and other pretrial orders. For the reasons set forth below, the motions are GRANTED.

**I. LEGAL STANDARD**

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City and Cnty. 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)). Consequently, access to motions and their attachments that are “more than tangentially related to the merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at 1097. In addition, sealing motions filed in this district must be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). A party moving to seal a document in whole or in part must file a declaration establishing that the

identified material is “sealable.” 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.” *Id.*

## II. DISCUSSION

The Court has reviewed each of the parties’ sealing motions and the declarations submitted in support thereof. The Court finds that the parties have articulated compelling reasons and good cause to seal the submitted documents. The proposed redactions are also narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables below:

### A. Dkt. No. 273

<u>Materials to be Sealed</u>	<u>Order</u>
PersonalWeb’s <i>Daubert</i> Motion, pp. 2-8, 10, 13-14, as indicated in the redacted copy filed with the motion to seal — showing information relating to IBM’s revenues, and the extent to which the accused client-side deduplication functionality is used by IBM customers.	GRANTED.
Exhibit A to the <i>Daubert</i> Motion — showing information relating to IBM’s revenue and sales.	GRANTED.
Exhibit B to the <i>Daubert</i> Motion — showing the manner in which IBM’s expert calculated his damages figure based on IBM’s revenues.	GRANTED.
Exhibit C to the <i>Daubert</i> Motion — showing the extent to which “client-side deduplication” is used by IBM’s TSM customers.	GRANTED.
Exhibit D to the <i>Daubert</i> Motion — showing the extent to which “client-side deduplication” is used by IBM’s TSM customers.	GRANTED.

### B. Dkt. No. 286

<u>Materials to be Sealed</u>	<u>Order</u>
Motion to Exclude the Opinions of Dr. Michael Akemann, page 1, lines 22-26, page 2, lines 3-14, page 3, lines 12, 26 and 28, page 4, lines 5-8, 10-21 and 24, page 5, lines 1-3, 6, 14, 15, 21, page 5, line 13, page 7, line 4 – contains confidential business information of IBM, PersonalWeb, and third parties	GRANTED.
Exhibit 1 - contains confidential business information of IBM, PersonalWeb, and third parties	GRANTED.
Exhibit 3 - contains confidential business information of PersonalWeb	GRANTED.
Exhibit 4 - contains confidential business information of PersonalWeb	GRANTED.

### C. Dkt. No. 287

<u>Materials to be Sealed</u>	<u>Order</u>
Exhibit 3 to IBM’s Motion <i>in Limine</i> No. 2 to Exclude from Trial Opinions Not Disclosed in Expert Reports, 9:5, 22:10-12, 22:25, 23:11, 23:18, 23:21, 24: 6, 24:24, 26:24, 27:1, 28:10 – contains IBM and PersonalWeb confidential business information	GRANTED.

1	Exhibit 4 to IBM's Motion <i>in Limine</i> No. 2 to Exclude from Trial Opinions Not Disclosed in Expert Reports, page 13, lines 6 & 8, page 15, lines 23-29 – contains IBM, PersonalWeb, and third party confidential business information	GRANTED.
2		
3	Exhibit 5 to IBM's Motion <i>in Limine</i> No. 2 to Exclude from Trial Opinions Not Disclosed in Expert Reports, page 9, lines 15-16, page 10, lines 3-6 and 16-21 – contains IBM confidential business information	GRANTED.
4		
5	Exhibit 5 to IBM's Motion <i>in Limine</i> No. 4 to Exclude Testimony Conflicting with Court's Claim Constructions and Arguing Claim Construction to the Jury – contains IBM confidential business information	GRANTED.
6		
7	Exhibit 6 to IBM's Motion <i>in Limine</i> No. 4 to Exclude Testimony Conflicting with Court's Claim Constructions and Arguing Claim Construction to the Jury – contains IBM confidential business information	GRANTED.
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9		
10	IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
11		
12	Exhibit 8 to IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
13		
14	Exhibit 9 to IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
15		
16	Exhibit 10 to IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
17		
18	Exhibit 11 to IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
19		
20	Exhibit 12 to IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
21		
22	Exhibit 13 to IBM's Motion <i>in Limine</i> No. 5 to Exclude From Trial USPTO Activities and Unsupported or Improper Validity Arguments – contains confidential information of PersonalWeb	GRANTED.
23		
24	Exhibit 1 to IBM's Motion <i>in Limine</i> No. 7 to Exclude From Trial Use of IBM's '257 Patent for Infringement Purposes – contains IBM confidential business information	GRANTED.
25	Exhibit 2 to IBM's Motion <i>in Limine</i> No. 7 to Exclude From Trial Use of IBM's '257 Patent for Infringement Purposes – contains IBM confidential business information	GRANTED.

**D. Dkt. No. 289**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
Exhibit 1, image on p. 54, image on p. 56 - contains confidential business information of IBM	GRANTED.

**E. Dkt. No. 309**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
Exhibit 2 to the Christoff Declaration — showing information relating to IBM’s confidential source code	GRANTED.
Exhibit 3 to the Christoff Declaration — showing information relating to IBM’s confidential source code	GRANTED.
Exhibit 8 to the Christoff Declaration — showing information relating to IBM’s TSM sales and revenues	GRANTED.
Exhibit 9 to the Christoff Declaration — showing information relating to IBM’s TSM sales and revenues	GRANTED.

**F. Dkt. No. 316**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
PersonalWeb’s Opposition, pp. 1-5, 7, and 11, contains confidential business information of IBM, PersonalWeb, and third parties	GRANTED.

**G. Dkt. No. 319**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
Opposition to Daubert Motion to Exclude Portions of the Rebuttal Expert Report and Proposed Testimony of Dr. James R. Kearl, page 3, line 7; page 4 lines 14-17, 19, 24-25; page 5, line 1; page 6, lines 6-7, 12-14; page 7, line 13; page 8, lines 2-3; page 12, line 20; page 13, lines 1-3; page 15, line 1 - contains confidential business information, confidential financial information related to IBM and third parties, and confidential settlement and license terms relating to third parties.	GRANTED.
Exhibit 1 - contains confidential business information, confidential financial information related to IBM and third parties, and confidential settlement and license terms relating to third parties.	GRANTED.
Exhibit 2 - contains confidential business information, confidential financial information related to IBM and third parties, and confidential settlement and license terms relating to third parties.	GRANTED.
Exhibit 4 - contains confidential business information, confidential financial information related to IBM and third parties, and confidential settlement and license terms relating to third parties.	GRANTED.
Exhibit 6 - contains confidential business information, confidential financial information related to IBM and third parties, and confidential settlement and license terms relating to third parties.	GRANTED.

**H. Dkt. No. 322**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
Reply in Support of Motion to Exclude the Opinions of Dr. Michael Akemann, page 1, line 10, page 2, line 2, page 3, lines 1 and 9 – contains confidential business information of IBM, PersonalWeb, and third parties.	GRANTED.

**I. Dkt. No. 324**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
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PersonalWeb's reply, p. 5, as indicated in the redacted copy filed with the motion to seal — showing the extent to which the accused client-side deduplication functionality is used by IBM customers.	GRANTED.
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**J. Dkt. No. 325**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
Exhibit 2 - contains confidential business information of IBM	GRANTED.

**K. Dkt. No. 334**

<b><u>Materials to be Sealed</u></b>	<b><u>Order</u></b>
IBM's Opposition to PersonalWeb's Motion to Strike Jacob Drew from IBM's Witness List, page 3 lines 6-11 - contains confidential business information of PersonalWeb	GRANTED.
Exhibit 2 - contains confidential business information of PersonalWeb	GRANTED.

**III. ORDER**

For the foregoing reasons, the sealing motions at Dkt. Nos. 273, 286, 287, 289, 309, 316, 319, 322, 324, 325, and 334 are GRANTED.

**IT IS SO ORDERED.**

Dated: July 27, 2017



EDWARD J. DAVILA  
United States District Judge