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3	UNITED STATES	DISTRICT COURT
4	NORTHERN DISTRI	ICT OF CALIFORNIA
5	SAN JOSE	DIVISION
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7	AGIS SOFTWARE DEVELOPMENT LLC,	Case No. 22-cv-04826-BLF
8	Plaintiff,	
9	v.	ORDER GRANTING ADMINISTRATIVE MOTION TO
10	GOOGLE LLC,	SEAL
11	Defendant.	[Re: ECF No. 451]

On June 14, 2023, AGIS filed an administrative motion to seal portions of its opposition to Defendants' Motion for Summary Judgment and related exhibits. ECF No. 451. The Court denied AGIS's motion and directed AGIS to refile by September 4, 2023. *See* ECF No. 460. AGIS did not refile. Upon further consideration, the Court recognizes that its order (ECF No. 460) may have been unclear. Thus, in the interest of efficiency, the Court reconsiders its prior ruling and GRANTS AGIS's Administrative Motion to Seal, ECF No. 451.

I. LEGAL STANDARD

"Historically, courts have recognized a 'general right to inspect and copy public records 20 and documents, including judicial records and documents." Kamakana v. City & Cty. Of 21 Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Nixon v. Warner Commc'ns, Inc., 435 22 23 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, "a 'strong presumption in favor of access' is the starting point." Id. (quoting Foltz v. State Farm Mut. Auto. 24 Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to 25 motions that are "more than tangentially related to the underlying cause of action" bear the burden 26 of overcoming the presumption with "compelling reasons" that outweigh the general history of 27 28 access and the public policies favoring disclosure. Ctr. for Auto Safety v. Chrysler Grp., 809 F.3d

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1092, 1099 (9th Cir. 2016); Kamakana, 447 F.3d at 1178-79.

Records attached to motions that are "not related, or only tangentially related, to the merits of a case," however, are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 ("[T]he public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action."). Parties moving to seal the documents attached to such motions must meet the lower "good cause" standard of Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This standard requires a "particularized showing," *id.*, that "specific prejudice or harm will result" if the information is disclosed. *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). "Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning" will not suffice. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

II. DISCUSSION

The documents at issue in AGIS's motion to seal are associated with AGIS's Opposition to Defendant's Motion for Summary Judgment. These documents concern infringement and invalidity of the patents at issue in the case. These issues are "more than tangentially related to the merits of [the] case" and therefore the parties must provide "compelling reasons" for maintaining the documents under seal. *See Ctr. for Auto Safety*, 809 F.3d at 1101; *see also Finjan, Inc. v. Juniper Network, Inc.*, No. C 17-5659 WHA, 2021 WL 1091512, at *1 (N.D. Cal. Feb. 10, 2021).

AGIS argues that compelling reasons exist to seal the material it seeks to seal that disclose: "source code and technical information regarding the Accused Products that have been designated highly confidential by Defendants"; "confidential communications regarding settlement discussions and/or negotiations"; "confidential business information"; and "technical functionality of the Accused Products." ECF No. 451. Defendant Google does not object to the sealing of any of the documents in its response. ECF No. 454.

The Court finds that compelling reasons exist to seal the identified portions of each
document. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2016 WL 7911651, at *1

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(N.D. Cal. Apr. 6, 2016) (finding "technical operation of [defendant's] products" sealable under "compelling reasons" standard); Exeltis USA Inc. v. First Databank, Inc., No. 17-CV-04810-HSG, 2020 WL 2838812, at *1 (N.D. Cal. June 1, 2020) (noting that courts have found "confidential business information" in the form of "business strategies" sealable under the compelling reasons standard.).

Accordingly, AGIS's Administrative Motion (ECF No. 451) is GRANTED. The Court finds that AGIS's request is not narrowly tailored because it seeks to seal several documents in their entirety. Furthermore, the Court notes that AGIS should have filed separate motions regarding sealing of its own material and Defendants' material. The Court will overlook the failure for this motion. However, future failures to comply with the standing order may result in denial of a motion to seal with prejudice.

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14	ECF No.	Document	Portion(s) to Seal	Ruling
13	ECF	Plaintiff AGIS	Highlighted Portions at:	Granted, as the highlighted portions
	451-3	Software	• Page 4: lines 8, 10,	disclose information from Exhibits A-
14		Development	14;	J, Z-DD, TT-WW, and BBB-DDD
 14 15 16 17 18 19 20 21 22 23 24 25 26 		Development LLC's Response in Opposition to Defendants' Motion for Summary Judgment	 14; Page 7: lines 5-8, 15- 17; Page 10: lines 10-13; Page 11: lines 18-21, 22-24; Page 12: lines 14-18; Page 13: line 26; Page 13: line 26; Page 14: lines 6-8, 10; Page 15: lines 16-27; Page 18: lines 20-26; Page 20: lines 6-8, 15-20; Page 24: lines 10, 12-13, 18-24, 27-28; Page 25: lines 3, 12- 13, 17-20. 	J, Z-DD, TT-WW, and BBB-DDD to AGIS's Response in Opposition to Defendants' Motion for Summary Judgment (Dkt. 434), which AGIS and/or Defendants have designated as highly confidential / RESTRICTED ATTORNEYS' EYES ONLY. These highlighted portions contain highly confidential source code, settlement discussions and/or negotiations, and testimony from party witnesses. Furthermore, revealing the identity and nature of settlement discussions and/or negotiations with AGIS would be harmful if its contents became known to competitors of the parties, would cause parties harm. Finally, disclosure of source code of Defendants that Defendants have designated highly confidential, and
27				testimony from party witnesses
27				regarding the functionality of the
28				Accused Products that have also been
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Northern District of California United States District Court

1				designated highly confidential by Defendants would be harmful to
2 3				Defendants, and if its contents became known to competitors of Defendants, would cause competitive harm.
3	ECF	Ex. A to AGIS	Entire Document	Granted, as this document discloses
4 5	451-4	Software's Response in		source code and technical information regarding the Accused Products that
6		Opposition to Defendants' Motion for		have been designated highly confidential by Defendants.
7		Summary Judgment		
8	ECF	Ex. B to AGIS	Entire Document	Granted, as this document discloses
9	451-5	Software's Response in		source code and technical information regarding the Accused Products that
10 11		Opposition to Defendants'		have been designated highly confidential by Defendants.
12		Motion for Summary Judgment		
13	ECF 451-6	Ex. C to AGIS Software's	Entire Document	Granted, as this document discloses excerpts of the deposition testimony of
14		Response in Opposition to		Joseph C. McAlexander III, the technical expert of AGIS Software. Mr.
15 16		Defendants' Motion for		McAlexander's testimony includes information regarding the functionality
17		Summary Judgment		of the Accused Products, and contents of documents and source code of the Accused Products which have been
18				designated highly confidential by Defendants.
19 20	ECF 451-7	Ex. D to AGIS Software's	Entire Document	Granted, as this document discloses source code and technical information
20		Response in Opposition to		regarding the Accused Products that have been designated highly
22		Defendants' Motion for		confidential by Defendants.
23		Summary Judgment		
24	ECF 451-8	Ex. E to AGIS Software's	Entire Document	Granted, as this document discloses source code and technical information
25		Response in Opposition to		regarding the Accused Products that have been designated highly
26 27		Defendants' Motion for		confidential by Defendants.
27 28		Summary Judgment		

1	ECF	Ex. F to AGIS	Entire Document	Granted, as this document discloses
	451-9	Software's Response in		source code and technical information regarding the Accused Products that
2		Opposition to		have been designated highly
3		Defendants'		confidential by Defendants.
4		Motion for		
4		Summary		
5	ECF	Judgment Ex. G to AGIS	Entire Document	Granted, as this document discloses
6	451-10	Software's	Entire Document	source code and technical information
0	101 10	Response in		regarding the Accused Products that
7		Opposition to		have been designated highly
8		Defendants'		confidential by Defendants.
0		Motion for		
9		Summary Judgment		
10	ECF	Ex. H to AGIS	Entire Document	Granted, as this document discloses
11	451-11	Software's		source code and technical information
11		Response in Opposition to		regarding the Accused Products that have been designated highly
12		Defendants'		confidential by Defendants.
13		Motion for		
15		Summary		
14	EGE	Judgment		
15	ECF 451-12	Ex. I to AGIS Software's	Entire Document	Granted, as this document discloses source code and technical information
	431-12	Response in		regarding the Accused Products that
16		Opposition to		have been designated highly
17		Defendants'		confidential by Defendants.
18		Motion for Summary		
18		Judgment		
19	ECF	Ex. J to AGIS	Entire Document	Granted, as this document discloses
20	451-13	Software's		excerpts of the deposition testimony of
		Response in		Yuval Shmuelevitz, the corporate witness of Waze Mobile Limited. Mr.
21		Opposition to Defendants'		Shmuelevitz's testimony includes
22		Motion for		technical information regarding the
23		Summary		functionality of the Waze Accused
23		Judgment		Products, and contents of documents and source code of the Waze Accused
24				Products, which Defendants have
25				designated highly confidential.
	ECF	Ex. Z to AGIS	Entire Document	Granted, as this document discloses
26	451-14	Software's		confidential communications regarding
27		Response in Opposition to		settlement discussions and/or negotiations between AGIS Software
<u></u>		Defendants'		and Google. Revealing the identity and
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1	Ī		Motion for		nature of settlement discussions and/or
			Summary Judgment		negotiations with AGIS would be harmful if its contents became known to
2			Judgment		competitors of the parties, would cause
3					parties harm, and also violate the Fed.
4					R. Evid. 408. See Powertech Tech., Inc.
4					v. Tessera, Inc., 2013 WL 12324116, at
5					*19 (N.D.Cal. Apr. 15, 2013) (granting a motion to seal a draft license
6					agreement with a third party). Rubino
					Decl. ¶ 4.
7		ECF	Ex. AA to AGIS	Entire Document	Granted, as this document discloses
8		451-15	Software's Response in		confidential business information regarding third- party Advanced
0			Opposition to		Ground Information Systems' product,
9			Defendants'		LifeRing. Disclosure of this
10			Motion for		confidential business information
11			Summary Judgment		would be harmful to Advanced Ground Information Systems if its contents
			Judgment		became known to competitors of the
12					Advanced Ground Information
13					Systems, because it includes
1.4					confidential technical information. <i>See Powertech Tech., Inc.</i>
14					<i>v. Tessera, Inc.</i> , 2013 WL 12324116,
15					at *19 (N.D.Cal. Apr. 15, 2013)
16					(granting a motion to seal a draft
					license agreement with a third party). Rubino Decl. ¶ 4.
17		ECF	Ex. BB to AGIS	Entire Document	Granted, as this document discloses
18		451-16	Software's		excerpts of the deposition testimony of
19			Response in		Malcolm K. Beyer, Jr., the corporate
19			Opposition to Defendants'		witness of AGIS. Mr. Beyer's testimony includes information
20			Motion for		regarding confidential settlement
21			Summary		discussions and/or negotiations
22			Judgment		between AGIS Software and Google.
22					Revealing the identity and nature of settlement discussions and/or
23					negotiations with AGIS would be
24					harmful if its contents became known
					to competitors of the parties, would
25					cause parties harm, and also violate the Fed. R. Evid. 408. <i>See Powertech</i>
26					Tech., Inc. v. Tessera, Inc., 2013 WL
27					12324116, at *19 (N.D.Cal.
					Apr. 15, 2013) (granting a motion to seal a draft license agreement with a
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			third party). Rubino Decl. ¶ 4.
ECF	Ex. CC to AGIS	Entire Document	Granted, as this document discloses
451-17	Software's		excerpts of the deposition testimony of
	Response in		Malcolm K. Beyer, Jr., the corporate
	Opposition to		witness of AGIS. Mr. Beyer's
	Defendants'		testimony includes information
	Motion for		regarding confidential settlement
	Summary		discussions and/or negotiations
	Judgment		between AGIS Software and Google.
			Revealing the identity and nature of
			settlement discussions and/or
			negotiations with AGIS would be
			harmful if its contents became known
			to competitors of the parties, would
			cause parties harm, and also violate the Fed. R. Evid. 408. <i>See Powertech</i>
			Tech., Inc. v. Tessera, Inc., 2013 WL
l			12324116, at *19 (N.D.Cal.
			Apr. 15, 2013) (granting a motion to
			seal a draft license agreement with a
			third party). Rubino Decl. ¶ 4.
ECF	Ex. DD to AGIS	Entire Document	Granted, as this document discloses
451-18	Software's		excerpts of the deposition testimony of
	Response in		Malcolm K. Beyer, Jr., the corporate
	Opposition to		witness of AGIS. Mr. Beyer's
	Defendants'		testimony includes information
	Motion for		regarding confidential settlement
1	Summary		discussions and/or negotiations
	Judgment		between AGIS Software and Google.
			Revealing the identity and nature of settlement discussions and/or
			negotiations with AGIS would be
			harmful if its contents became known
			to competitors of the parties, would
			cause parties harm, and also violate the
			Fed. R. Evid. 408. See Powertech
			<i>Tech., Inc. v. Tessera, Inc.,</i> 2013 WL
			12324116, at *19 (N.D.Cal. Apr. 15, 2013) (granting a motion to
			seal a draft license agreement with a
			third party). Rubino Decl. ¶ 4.
ECF	Ex. TT to AGIS	Entire Document	Granted, as this document discloses
451-19	Software's		excerpts of the deposition testimony of
	Response in		Malcolm K. Beyer, Jr., the corporate
	Opposition to		witness of AGIS. Mr. Beyer's
	Defendants'		testimony includes information
	Motion for		regarding confidential settlement
	Summary		discussions and/or negotiations

1			Judgment		between AGIS Software and Google. Revealing the identity and nature of
2					settlement discussions and/or
					negotiations with AGIS would be
3					harmful if its contents became known to competitors of the parties, would
4					cause parties harm, and also violate the
5					Fed. R. Evid. 408. See Powertech
5					Tech., Inc. v. Tessera, Inc., 2013 WL
6					12324116, at *19 (N.D.Cal. Apr. 15, 2013) (granting a motion to
7					seal a draft license agreement with a
					third party). Rubino Decl. ¶ 4.
8		ECF	Ex. UU to AGIS	Entire Document	Granted, as this document discloses
9		451-20	Software's Response in		excerpts of the deposition testimony of Malcolm K. Beyer, Jr., the corporate
10			Opposition to		witness of AGIS. Mr. Beyer's
11			Defendants' Motion for		testimony includes information regarding confidential settlement
			Summary		discussions and/or negotiations
12			Judgment		between AGIS Software and Google.
13					Revealing the identity and nature of
14					settlement discussions and/or negotiations with AGIS would be
14					harmful if its contents became known
15					to competitors of the parties, would
16					cause parties harm, and also violate the Fed. R. Evid. 408. <i>See Powertech</i>
17					Tech., Inc. v. Tessera, Inc., 2013 WL
17					12324116, at *19 (N.D.Cal.
18					Apr. 15, 2013) (granting a motion to
19					seal a draft license agreement with a third party). Rubino Decl. ¶ 4.
20		ECF	Ex. VV to AGIS	Entire Document	Granted, as this document discloses
21		451-21	Software's Response in		excerpts of the deposition testimony of Malcolm K. Beyer, Jr., the corporate
21			Opposition to		witness of AGIS. Mr. Beyer's
22			Defendants'		testimony includes information
23			Motion for Summary		regarding confidential settlement discussions and/or negotiations
24			Judgment		between AGIS Software and Google.
24			-		Revealing the identity and nature of
25					settlement discussions and/or negotiations with AGIS would be
26					harmful if its contents became known
					to competitors of the parties, would
27					cause parties harm, and also violate the Γ_{rel}
28	Ĺ				Fed. R. Evid. 408. See Powertech
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1				<i>Tech., Inc. v. Tessera, Inc.</i> , 2013 WL 12324116, at *19 (N.D.Cal.
2				Apr. 15, 2013) (granting a motion to
2				seal a draft license agreement with a
3				third party). Rubino Decl. ¶ 4.
4	ECF	Ex. WW to	Entire Document	Granted, as this document discloses
4	451-22	AGIS		excerpts of the deposition testimony of
5		Software's		Malcolm K. Beyer, Jr., the corporate
-		Response in Opposition to		witness of AGIS. Mr. Beyer's testimony includes information
6		Defendants'		regarding confidential settlement
7		Motion for		discussions and/or negotiations
		Summary		between AGIS Software and Google.
8		Judgment		Revealing the identity and nature of
9				settlement discussions and/or
				negotiations with AGIS would be
10				harmful if its contents became known
11				to competitors of the parties, would cause parties harm, and also violate the
11				Fed. R. Evid. 408. <i>See Powertech</i>
12				Tech., Inc. v. Tessera, Inc., 2013 WL
13				12324116, at *19 (N.D.Cal. Apr. 15,
15				2013) (granting a motion to seal a draft
14				license agreement with a third party).
15				Rubino Decl. ¶ 4.
15	ECF	Ex. BBB to	Entire Document	Granted, as this document discloses
16	451-23	AGIS Software's		excerpts of the deposition testimony of Andrew Lookingbill, the corporate
17		Response in		witness of Waze Mobile Limited. Mr.
17		Opposition to		Lookingbill's testimony includes
18		Defendants'		information regarding the corporate
10		Motion for		structure and/or identities of
19		Summary		employees of Defendants, which
20		Judgment		Defendants have designated highly
	ECF	Ex. CCC to	Entire Document	confidential.Granted, as this document discloses
21	ЕСГ 451-24	AGIS	Entire Document	excerpts of the deposition testimony of
22	7,51-27	Software's		Micah Mason, the corporate witness of
		Response in		Defendants. Mr. Mason's testimony
23		Opposition to		includes information regarding the
24		Defendants'		technical functionality of the Accused
2.		Motion for		Products, and contents of documents
25		Summary		and source code of the Accused
26		Judgment		Products, which Defendants have
20	ECF	Ex. DDD to	Entire Document	designated highly confidential. Granted, as this document discloses
27	451-25	AGIS		excerpts of the deposition testimony of
20		Software's		Matt Secor, the corporate witness of
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	Response in Opposition to Defendants' Motion for Summary Judgment	Defendants. Mr. Secor's testimony includes information regarding the technical functionality of the Accused Products, and contents of documents and source code of the Accused Products, which Defendants have designated highly confidential.
III.	ORDER	
	For the foregoing reasons, IT IS I	HEREBY ORDERED that AGIS's Motion to Seal at EC
No. 45	1 is GRANTED.	
Dated:	September 6, 2023	kanmineenen
		BETH LABSON FREEMAN
		United States District Judge
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