

1 George C. Lombardi (*pro hac vice*)  
glombardi@winston.com  
2 WINSTON & STRAWN LLP  
35 West Wacker Drive  
3 Chicago, IL 60601-9703  
Telephone: (312) 558-5600  
4 Facsimile: (312) 558-5700

Dustin J. Edwards (*pro hac vice*)  
dedwards@winston.com  
WINSTON & STRAWN LLP  
800 Capitol St., Suite 2400  
Houston, TX 77002-2925  
Telephone: (713) 651-2600  
Facsimile: (713) 651-2700

5 E. Danielle T. Williams (*pro hac vice*)  
dwilliams@winston.com  
6 WINSTON & STRAWN LLP  
300 South Tryon Street, 16th Floor  
7 Charlotte, NC 28202  
Telephone: (704) 350-7700  
8 Facsimile: (704) 350-7800

Diana Hughes Leiden (SBN: 267606)  
dhleiden@winston.com  
WINSTON & STRAWN LLP  
333 S. Grand Avenue, 38th Floor  
Los Angeles, CA 90071-1543  
Telephone: (213) 615-1700  
Facsimile: (213) 615-1750

9 Michael S. Elkin (*pro hac vice*)  
melkin@winston.com  
10 WINSTON & STRAWN LLP  
200 Park Avenue  
11 New York, NY 10166  
Telephone: (212) 294-6700  
12 Facsimile: (212) 294-4700

13 *Attorneys for Defendants*  
14 BANK OF AMERICA  
CORPORATION  
and BANK OF AMERICA, N.A.

16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 NantWorks, LLC, a Delaware limited  
19 liability company, and NANT  
HOLDINGS IP, LLC, a Delaware  
20 limited liability company,

21 Plaintiffs,

22 vs.

23 BANK OF AMERICA  
CORPORATION, a Delaware  
24 corporation, and BANK OF AMERICA,  
N.A., a national banking association,

25 Defendants.  
26  
27  
28

**Case No. 2:20-CV-7872-GW-PVC**

**DEFENDANTS' UNOPPOSED  
APPLICATION TO FILE  
DOCUMENTS UNDER SEAL**

Local Rule 79-5.2.2(b)

[Filed concurrently with Declaration of  
Dustin Edwards and Proposed Order]

1 TO THE COURT, PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that, pursuant to Local Rule 79-5.2.2.(b),  
 3 Defendants, Bank of America Corporation and Bank of America, N.A. (collectively,  
 4 “Defendants” or “Bank of America”), hereby request that this Court enter an order  
 5 permitting them to file under seal the materials described below that are filed in  
 6 connection with Defendants’ Motion to for Partial Summary Judgment of Invalidity  
 7 Under 35 U.S.C. § 101 for U.S. Patent No. 7,899,252 (the “Motion”):

Document Description	Nature of Information to be Sealed
9 Exhibit 3 to the Declaration of Dustin 10 Edwards in Support of the Motion: 11 Excerpts of the Transcript of the April 12 11, 2024 Deposition of Dan Schonfeld.	Designated by Defendants as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. No. 210).
14 Exhibit 6 to the Declaration of Dustin 15 Edwards in Support of the Motion: 16 Excerpts of Expert Report of Dan 17 Schonfeld, Ph.D., Regarding the 18 Infringement of the Asserted Claims, 19 attached as Exhibit 1 to the April 10, 20 2024 Deposition of Dan Schonfeld, 21 Ph.D.	Designated by Plaintiffs as “CONTAINS HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. Nos. 102, 210), and contains excerpts of documents designated by Bank of America and third-party Mitek as “Highly Confidential – Attorneys’ Eyes Only.” Plaintiffs and Mitek do not oppose sealing this exhibit in its entirety.
24 Exhibit 9 to the Declaration of Dustin 25 Edwards in Support of the Motion: 26 Excerpts of Expert Report of Expert 27 Report of Nathaniel Polish, Ph.D.	Designated by Defendants as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the parties’ stipulated protective order (Dkt. No.

Document Description	Nature of Information to be Sealed
Regarding Invalidity of Certain Claims.	210).
Exhibit 10 to the Declaration of Dustin Edwards in Support of the Motion: Excerpts of Rebuttal Expert Report of Dan Schonfeld, Ph.D., Regarding the Infringement of the Asserted Claims, attached as Exhibit 2 to the April 10, 2024 Deposition of Dan Schonfeld, Ph.D.	Designated by Plaintiffs as “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” under the parties’ stipulated protective orders (Dkt. No. 210).

### I. Background

As set forth in the Declaration of Dustin J. Edwards in Support of Plaintiffs’ Application to File Under Seal submitted herewith, Defendants make this application because the foregoing documents are marked and designated as “Confidential” or “Highly Confidential – Attorneys Eyes Only” and/or “Highly Confidential – Source Code” as follows pursuant to the parties’ Stipulated Protective Order (Dkt. No. 210). *See* Declaration of Dustin J. Edwards (the “Edwards Decl.”), ¶¶ 2–8 Defendants make this application because materials nos. 3, 6, 9, and 10 contain information that is “Confidential,” “Highly Confidential – Attorneys Eyes Only,” and/or “Highly Confidential – Source Code” of Bank of America. As required by Local Rule 79-5.2.2(b), counsel for Plaintiffs and Defendants conferred about Defendants’ filing these materials to limit, if not entirely avoid, the necessity of this Application. *Id.*, ¶ 2. Plaintiffs’ counsel does not oppose filing the entirety of these materials under seal.

The Edwards declaration sets forth the information Defendants seek to file under seal, the basis for the Application, and good cause to seal Bank of America confidential information. *Id.*, ¶¶ 1–7. Due to the sensitive nature of the information in the foregoing

1 materials, good cause exists to approve Bank of America’s application to file these  
2 materials under seal pursuant to Local Rule 79-5.2.2(a), and, pursuant to Local Rule 79-  
3 5.2.2(b)(i).

## 4 **II. Good Cause Exists to File Materials Under Seal**

5 The decision to seal records is left to the discretion of the District Court.  
6 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*  
7 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). Rule 26(c)(1)(G) of the Federal  
8 Rules of Civil Procedure allows parties, upon a showing of “good cause,” to file under  
9 seal documents containing “confidential . . . commercial information.” *See also IMAX*  
10 *Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that  
11 confidential and proprietary business information is “to be filed under seal.”); *Sun*  
12 *Microsystems Inc. v. Network Appliance*, No. C-08-01641 EDL, 2009 WL 5125817, at  
13 \*9 (N.D. Cal. Dec. 21, 2009) (granting sealing requests because the documents “contain  
14 confidential [business] information, much of which has been designated as Confidential  
15 or Highly Confidential under the parties’ stipulated protective order, that could cause  
16 competitive harm if disclosed.”); *In re Adobe Systems, Inc. Securities Litigation Master*  
17 *File*, 141 F.R.D. 155, 161-162 (N.D. Cal. 1992) (“Protective orders and filings under  
18 seal are the primary means by which the courts ensure full disclosure of relevant  
19 information, while still preserving the parties’ (and third parties’) legitimate expectation  
20 that confidential business information, proprietary technology and trade secrets will not  
21 be publicly disseminated.”).

22 Bank of America respectfully requests that the Court grant its application to file  
23 under seal the foregoing materials on the grounds that the foregoing materials nos. 3, 6,  
24 9, and 10 contain Bank of America’s confidential information, specifically, non-public  
25 details about Bank of America’s vendors and non-public, proprietary details related to  
26 the design and functionality of Bank of America’s mobile check deposit. Edwards  
27 Decl., ¶ 8. Accordingly, Bank of America has an important interest in maintaining the  
28 confidentiality of this information, and any public interest in its disclosure is rebutted.

1 See, e.g., *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)  
2 (differentiating dispositive motions by explaining that, for such motions, “the private  
3 interests of the litigants are not the only weights on the scale”). If such information  
4 were made public, competitors of Bank of America and its vendors would gain access  
5 to Bank of America’s business practices, such as its product development, and technical  
6 details regarding the design and functionality of its products. Edwards Decl., ¶ 7. Bank  
7 of America does not share this type of information publicly because it could  
8 significantly harm Bank of America’s competitive standing and is subject to contractual  
9 obligations of confidentiality to its vendor. *Id.*

10 Accordingly, Defendants respectfully request that the Court grant the Application  
11 to File the aforementioned documents under seal.

12  
13 Dated: May 3, 2024

Respectfully submitted,

14 WINSTON & STRAWN LLP

15  
16 By: /s/ E. Dustin J. Edwards

George C. Lombardi (*pro hac vice*)

Michael S. Elkin (*pro hac vice*)

17 E. Danielle T. Williams (*pro hac vice*)

18 Dustin J. Edwards (*pro hac vice*)

Diana Hughes Leiden

19 *Attorneys for Defendants*

20 BANK OF AMERICA CORPORATION

and BANK OF AMERICA, N.A.