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19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

22 OPENTV, INC., NAGRAVISION S.A., and  
NAGRA FRANCE S.A.S.

23 Plaintiffs,

24 v.

25 APPLE INC.,

26 Defendant.

CASE NO. 5:15-cv-02008-EJD (NMC)

**PLAINTIFFS' ADMINISTRATIVE  
MOTION TO PARTIALLY FILE  
UNDER SEAL DEFENDANT'S  
MOTION TO PRECLUDE AND  
CERTAIN SUPPORTING EXHIBIT**

1 Pursuant to Civil Local Rules 7-11 and 79-5(b) and (d), Plaintiffs OpenTV, Inc., NagraVision  
2 S.A., and Nagra France S.A.S. (collectively “OpenTV”) hereby respond to Apple’s prior motion to  
3 seal (ECF No. 84) and hereby moves the Court for leave to partially file under seal (1) Defendant’s  
4 Motion to Preclude Reliance on Certain Invention Dates and to Strike Certain Allegations (ECF No.  
5 85) (“Apple’s Motion”), and (2) Exhibit 7 to the Declaration of Melody Drummond Hansen in  
6 Support of Defendant’s Motion (“Hansen Exhibit 7”). Specifically, OpenTV moves to file under  
7 seal:

8 1. The same portions of Apple’s Motion that Apple highlighted/redacted for sealing  
9 (i.e., the portions of Apple’s Motion that Apple highlighted/redacted at pages 6, 7, 9, and 12 of  
10 Apple’s Motion), because they contain confidential OpenTV information, and

11 2. Specific portions of Hansen Exhibit 7 that disclose OpenTV confidential and  
12 proprietary information, although Apple had requested that the entire document be sealed based on  
13 its confidential designation. OpenTV is lodging herewith a highlighted version of Hansen Exhibit 7,  
14 which highlights the portions of Hansen Exhibit 7 that OpenTV requests be sealed, and OpenTV is  
15 also publicly filing a corresponding redacted version of Hansen Exhibit 7 along with this motion to  
16 partially seal.

17 Although Apple also requested sealing of Hansen Exhibits 2 and 8 (because they contain  
18 OpenTV information), OpenTV is not requesting that those Exhibits be sealed.

19 This motion to seal by OpenTV is supported by a concurrently filed Declaration of Brian  
20 Platt Responding to Apple’s Motion to Seal and in Support of Plaintiffs’ Administrative Motion to  
21 Partially File Under Seal Defendant’s Motion to Preclude and Certain Supporting Exhibit (“Platt  
22 Declaration”). As explained in the Platt Declaration, pages 6, 7, 9, and 12 of Apple’s Motion, as well  
23 as the portions of Hansen Exhibit 7 highlighted by OpenTV and lodged herewith disclose a  
24 confidential and proprietary development date for the invention that led to U.S. Patent No. 7,725,740  
25 (“the ’740 patent”). As attested in the Platt Declaration, the development date for the invention that  
26 led to ’740 patent is confidential and proprietary information belonging to OpenTV that concerns the  
27 domain of security modules. Disclosure of the date when such a security system was developed and  
28 potentially incorporated into certain OpenTV’s products and related information would provide

1 would-be hackers with information about the security protocols present (or not present) in certain  
2 OpenTV products that would otherwise remain secret. Such disclosure would weaken the strong  
3 security protocols that OpenTV has worked to develop and market to its customers as part of its  
4 competitive advantage over its competitors in the marketplace. Platt Dec. ¶ 5.

5 Although there is a general presumption of public access to dispositive motions (and papers  
6 and exhibits supporting them), *e.g.*, *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d  
7 1206, 1213 (9th Cir. 2002), that presumption “do[es] not apply with equal force to non-dispositive  
8 materials.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006) (citing  
9 *Phillips*, 307 F.3d at 1213). “The application of a strong presumption of access to sealed records, not  
10 directly relevant to the merits of the case, would eviscerate the broad power of the district court to  
11 fashion protective orders.” *Id.* (internal quotations omitted). “***In short, ‘good cause’ suffices to***  
12 ***warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.***”  
13 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (emphasis added); *see*  
14 *also Kamakana*, 447 F.3d. at 1180 (same, citing *Foltz*); *see also OpenTV, Inc. v. Apple Inc.*, Case  
15 No. 14-cv-01622-HSG, Order Granting Administrative Motion To Seal (DI 168).

16 Here, Apple’s Motion and Hansen Exhibit 7 were submitted on a non-dispositive issue, and  
17 the Platt Declaration satisfies the good cause requirement to seal the portions of Apple’s Motion and  
18 Hansen Exhibit 7 requested by OpenTV here and in the Platt Declaration.<sup>1</sup> *See In re Wachovia Corp.*  
19 *“Pick a Payment” Mortgage Marketing and Sales Practices Litigation*, Case No. 3:09-cv-02015-  
20 RS-PSG, 2013 WL 6200008, \*2 (N.D. Cal. Nov. 27, 2013) (granting motion to seal under Civil L.R.  
21 79-5, citing declaration attesting to the risk of “competitive disadvantage” if a motion to seal were  
22 not granted). OpenTV’s highlights/redactions of the exhibit are also narrowly tailored to seek sealing  
23 of only sealable material per Civil L.R. 79-5(b). Accordingly, OpenTV respectfully requests that its  
24 motion to partially seal Apple’s Motion and corresponding Hansen Exhibit 7 be granted.

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<sup>1</sup> The Platt Declaration also satisfies the more demanding standard for dispositive motions.

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Respectfully submitted,

Dated: April 18, 2016

FINNEGAN, HENDERSON, FARABOW,  
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