

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-81046-CIV-RYSKAMP/HOPKINS

INNOVATIVE BIOMETRIC  
TECHNOLOGY, LLC,

Plaintiff,

v.

LENOVO (UNITED STATES), INC., et al.,

Defendants,

and

AUTHENTEC, INC.,

Intervenor.

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**ORDER GRANTING TOSHIBA AMERICA INFORMATION SYSTEMS, INC.'S  
MOTION TO UNSEAL COURT ORDERS (DE 340, 357, AND 372)**

THIS CAUSE comes before the Court pursuant to Toshiba America Information Systems, Inc.'s ("Toshiba") motion to unseal court orders DE 340, 357 and 372, filed May 20, 2013 [DE 391]. Innovative Biometric Technology, LLC ("IBT") responded on June 5, 2013 [DE 393]. Toshiba replied on June 14, 2013 [DE 396]. This motion is ripe for adjudication.

Toshiba requests that this Court unseal its Order Granting Motion for Fees and Costs (DE 340), its Order Requiring Sharing of Unredacted Fees Records With Plaintiff (DE 357), and its Order Awarding Attorneys' Fees and Costs to Defendant Toshiba America Information Systems, Inc. (DE 372).

There is a presumption that the public has a right to access information contained in judicial documents. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)

Samsung Ex. 1325  
Samsung v. Rembrandt  
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(recognizing “a general right to inspect and copy public records and documents, including judicial records and documents.”) (citations omitted). This presumption has come to be known as the “common-law right of access.” *See, e.g., F.T.C. v. AbbVie Products LLC*, 713 F.3d 54, 62 (11th Cir. 2013) (“[T]he common-law right of access establishes a general presumption that criminal and civil actions should be conducted publicly and includes the right to inspect and copy public records and documents.”) (internal quotations and citations omitted); *Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013, 1015-16 (11th Cir. 1992) (acknowledging “the strong common law presumption in favor of access” and noting that “[a]bsent a showing of extraordinary circumstances set forth by the district court . . . the court file must remain accessible to the public.”). To override this presumption of access, a court must find “good cause” for sealing the document. *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1313 (11th Cir. 2001).

The designated orders do not contain confidential information, and there is no apparent reason, much less “good cause,” for sealing them. Although the parties’ motions underlying the orders included detailed financial data of Toshiba and Intervenor Authentec, Inc. (“Authentec”) and information from Exhibits marked confidential by IBT, the orders themselves do not contain that information. For Toshiba and Authentec, the orders merely reference the total amount of fees and hourly rates. Toshiba does not view this information as sufficiently confidential to warrant sealing, and Authentec does not oppose the unsealing of orders DE 340 and DE 357.

IBT’s response does not point to any piece of information in the three orders that IBT deems confidential. Rather, IBT’s attorneys are concerned about potential harm to their reputation based on statements critical of the positions IBT advanced in this matter. To the

extent IBT is concerned with its reputation, “simply showing that the information would harm the company’s reputation is not sufficient to overcome the strong common law presumption in favor of public access.” *Wilson v. American Motors Corp.*, 759 F.2d 1568, 1570-71 (11th Cir. 2008) (internal quotations and citations omitted).

These three orders are the entire basis of IBT’s recent appeal in this matter to the U.S. Court of Appeals for the Federal Circuit. DE 373-376. If the orders remain sealed, the appeal process will be significantly and unnecessarily burdened. The Federal Circuit recognizes the burden caused by confidentiality designations; Fed. Cir. R. 11(d) requires, prior to briefing or oral argument, that the parties review the record to identify portions of the record that can be unsealed, seek agreement on portions that can be unsealed, and move the district court to unseal portions where necessary. In this case, the three orders that IBT lists in its Notice of Appeal – DE 340, DE 357, and DE 372 – are entirely sealed. Absent de-designation, the parties will not be able to discuss *any* aspects of this Court’s decisions or the facts and rationale supporting the decisions without likewise making the discussion confidential. The parties would need to effectively designate the entire appellate briefing confidential.

The Federal Circuit disfavors over-designation of appeal proceedings and has imposed sanctions for over-use of confidentiality markings in briefs, noting that such use of markings “ignores the requirements of public access, deprives the public of necessary information, and hampers this court’s consideration and opinion writing.” *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1360 (Fed. Cir. 2011). Here, the burden of having all this Court’s rationale under seal would extend to oral argument, and would likely require closing the entirety of the argument. Toshiba would not otherwise expect that these proceedings would warrant closing the argument

because the parties filed redacted versions of the underlying motions that led to these orders which can be openly discussed in the appeal. The sealed orders pose a unique problem because, absent relief of this Court, the parties cannot publicly divulge *any* portion of the sealed orders without violating this Court's under seal designation. *See AbbVie Prods.*, 713 F.3d at 67 (recognizing the burden of sealed information on the appellate process due to the parties not "be[ing] able to discuss it openly in their briefing") (omission in original). It is hereby

ORDERED AND ADJUDGED that the motion to unseal the Order Granting Motion for Fees and Costs (DE 340), its Order Requiring Sharing of Unredacted Fees Records With Plaintiff (DE 357), and its Order Awarding Attorneys' Fees and Costs to Defendants Toshiba America Information Systems, Inc. (DE 372), filed May 20, 2013 [DE 391], is GRANTED. The aforementioned documents shall be UNSEALED.

DONE AND ORDERED at Chambers in West Palm Beach, Florida, this 27th day of June, 2013.

S/Kenneth L. Ryskamp  
KENNETH L. RYSKAMP  
UNITED STATES DISTRICT JUDGE