

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARENDI S.A.R.L.,

Plaintiff,

v.

LG ELECTRONICS, INC., LG ELECTRONICS
USA, INC. and LG ELECTRONICS
MOBILECOMM U.S.A., INC.,

Defendants.

C.A. No. 12-1595-LPS

ARENDI S.A.R.L.,

Plaintiff,

v.

BLACKBERRY LIMITED and BLACKBERRY
CORPORATION,

Defendants.

C.A. No. 12-1597-LPS

ARENDI S.A.R.L.,

Plaintiff,

v.

MOTOROLA MOBILITY LLC
f/k/a MOTOROLA MOBILITY, INC.,

Defendant.

C.A. No. 12-1601-LPS

ARENDI S.A.R.L.,

Plaintiff,

v.

SONY MOBILE COMMUNICATIONS (USA)
INC. f/k/a SONY ERICSSON MOBILE
COMMUNICATIONS (USA) INC.,
SONY CORPORATION and
SONY CORPORATION OF AMERICA,

Defendants.

C.A. No. 12-1602-LPS

ARENDI S.A.R.L., Plaintiff, v. GOOGLE LLC, Defendant.	C.A. No. 13-919-LPS
ARENDI S.A.R.L., Plaintiff, v. OATH HOLDINGS INC., and OATH INC., Defendants.	C.A. No. 13-920-LPS Original Version: April 7, 2022 Public Version: April 19, 2022

MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES’ PROPOSED REDACTIONS

Pursuant to the Court’s Order, dated March 31, 2022 (D.I. 349 in 12-1595), the parties respectfully submit the following memorandum of law in support of their limited proposed redactions to the sealed Memorandum Opinion regarding pending motions regarding damages (D.I. 348 in 12-1595). A copy of the proposed redactions with highlights is attached hereto as Exhibit A. A copy of the proposed redactions with the redactions applied is attached hereto as Exhibit B.

I. LEGAL STANDARDS

“Courts have ‘inherent equitable power’ to grant orders of confidentiality upon a showing of good cause.” *EEOC v. Kronos Inc.*, 620 F.3d 287, 302 (3d Cir. 2010) (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785–86 (3d Cir. 1994)). Good cause is established by a showing that “disclosure will work a clearly defined and serious injury to the party seeking closure.” *Id.* (quoting *Pansy*, 23 F.3d at 786). “Assessing whether good cause exists . . . generally involves a balancing process, in which courts weigh the harm of disclosing information against the importance of

disclosure to the public.” *Mosaid Techs. Inc. v. LSI Corp.*, 878 F. Supp. 2d 503, 508 (D. Del. 2012) (citing *Pansy*, 23 F.3d at 787). The Court may consider several factors, which are “neither mandatory nor exhaustive,” including “(1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose; (3) whether disclosure will cause embarrassment to a party; (4) whether the information to be disclosed is important to public health and safety; (5) whether sharing the information among litigants will promote fairness and efficiency; (6) whether the party benefitting from the order is a public entity or official; and (7) whether the case involves issues important to the public.” *Id.* at 508 n.2 (citing *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)).

In applying those factors, courts “typically permit redacting information in licensing agreements or other documents that relates to trade secrets or confidential technologies.” *Mosaid*, 878 F. Supp. 2d at 511; *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 166 (3d Cir. 1993) (“We too have explained that the presence of trade secrets in court records weighs against the right of access, although we have framed the inquiry as whether the need for secrecy outweighs the presumption of access that normally attaches to such documents.”). Sealing is particularly appropriate to protect confidential research and development work. *See, e.g., Joint Stock Soc. v. UDV N. Am., Inc.*, 104 F. Supp. 2d 390, 396 (D. Del. 2000) (sealing was proper where the “overwhelming majority of these documents contained ‘legitimate trade secrets or other proprietary information,’ such as “vodka formulas, consumer research studies, strategic plans, potential advertising and marketing campaigns or financial information”); *accord In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 667 (D. N.J. 2004) (sealing was proper to protect information relating to “the parties’ products, research and development, processes, secret chemical formulas, the parties’ suppliers”).

II. ARGUMENT

The Court should maintain the confidential treatment of the content the parties have proposed redacting from the Court's opinions because it consists of information which is properly protected under the Agreed Protective Order this Court entered on September 10, 2013. *See Arendi S.A.R.L. v. Google LLC*, C.A. No. 13-919-LPS, D.I. 16-1. The Protective Order provides, in pertinent part, that "Confidential Information" means "all documents, testimony, transcripts, information or other material formally or informally produced or disclosed in connection with this action . . . that the Producing Part considers to comprise confidential, proprietary, or commercially sensitive information." *Id.* at ¶6(C)(1). Moreover, the Protective Order included language where the parties "acknowledge[d] that this Order does not confer blanket protections on all disclosures," and that "[d]esignations under this Order shall be made with care and shall not be made absent a good faith belief that the designated material satisfie[d] the criteria [set forth therein]." *Id.* at ¶1(C).

The information the parties seek to redact consists of information regarding the existence or contents of confidential license agreements that are subject to contractual confidentiality obligations to third parties. Public disclosure of this information could lead to injury in the form of liability for breach of contractual confidentiality obligations. *See Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 166 (3d Cir. 1993) ("Documents containing . . . confidential business information may be protected from disclosure."). In contrast to the parties' substantial private interest in redacting such information, there is no strong public interest weighing in favor of disclosure, such as the subject information being "important to public health and safety." *Mosaid*, 878 F. Supp. 2d at 508 n.2.

III. CONCLUSION

For the reasons stated above, the parties respectfully submit that good cause exists for the Court to permit the narrow and limited redactions requested by the parties, and that any harm outweighs the public's interest in this information. The parties further respectfully request that the redactions in the form attached as Exhibit B be docketed by the Court.

Dated: April 7, 2022

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