

**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

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**MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES' PROPOSED
REDACTIONS**

Pursuant to the Court's Order, dated March 31, 2022 (D.I. 351 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 (D.I. 350 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 opinion 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 Party 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 identities and testimony of third-party deponents whose deposition transcripts have been designated confidential by Apple Inc. (“Apple”), a former defendant in a related case. The parties understand that public disclosure of this information could lead to injury via disclosure of sensitive Apple information, including information about the operation of its Apple Data Detector, LiveDoc, and Newton systems and its developers of those systems. *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.”); *Gabapentin*, 312 F. Supp. 2d at 658 (sealing summary judgment papers that contained information about “the parties’ products, research and development, processes, secret chemical formulas, [and] the parties’ suppliers”). In contrast to the

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. Any countervailing public interest is outweighed by the interest in maintaining the confidentiality of the proposed redacted information, which provides good cause for the proposed redactions. *See Pansy*, 23 F.3d at 788 (“[I]f a case involves private litigants, and concerns matters of little legitimate public interest, that should be a factor weighing in favor of granting or maintaining an order of confidentiality.”).

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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