IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARENDI S.A.R.L.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 13-919-JLH
	)	
GOOGLE LLC,	)	
	)	
Defendant.	)	
	)	

NON-PARTY APPLE INC.'S REQUEST TO SEAL PORTIONS OF THE TRIAL TRANSCRIPT FROM APRIL 26, 2023

Non-party Apple Inc. ("Apple"), by and through its attorneys, hereby moves to seal certain limited portions of the trial transcript that the Court conditionally sealed by oral order at trial on April 26, 2023.[1] Apple does not seek to redact entire pages of the transcript, but instead seeks to redact very minimal specifics from the publicly-available transcript.

Apple alerted the Court to this request during trial on April 26, 2023, and pursuant to D. Del. L.R. 7.1.1, Apple conferred with Plaintiff and Defendant regarding whether they opposed this request to seal. (*See* 4/26 PM Transcript at 7:4-21.) Both parties indicated that they did not. (*Id.*)

I.   FACTUAL BACKGROUND

During the April 26, 2023, redirect examination of plaintiff Arendi S.A.R.L.'s ("Plaintiff") damages expert, Mr. Roy Weinstein, Plaintiff elicited, and Mr. Weinstein provided,

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[1] In a forthcoming motion, Apple will also request sealing of other portions of the trial transcript from sealed portions of testimony to which Apple currently does not have access.

certain testimony that contained Apple confidential business information in open court, without requesting that the courtroom be sealed.

In particular, Mr. Weinstein testified regarding his analysis of the Settlement and License Agreement effective September 13, 2021 between Apple and Plaintiff, Onebutton S.A.R.L., Violette Heger-Hedløy, and Atle Hedløy (the "Apple Agreement"), and disclosed the amount of the license payment in the Apple Agreement. (*See* 4/26/23 Tr. at 126:23-127:8.) In addition, in a follow-up line of questioning, Plaintiff's counsel, Seth Ard, disclosed the total amount of damages Mr. Weinstein opined would be owed to Plaintiff should Plaintiff have prevailed in its prior lawsuit against Apple, *Arendi S.A.R.L. v. Apple Inc.*, C.A. No. 1:12-cv-01596 (D. Del.) (the "Apple Lawsuit"), and elicited testimony from Mr. Weinstein regarding his damages analysis with respect to Apple in the Apple Lawsuit. (*See id.* at 127:9-128:6.) Plaintiff did not request to seal the courtroom before eliciting such testimony about the Apple Agreement or the Apple Lawsuit, and did not seek any corrective measures after the fact of such testimony, despite being asked to do so by counsel for Apple.

The above-described testimony, elicited and provided in open court, violates Plaintiff's confidentiality obligations to Apple set forth in Section 7 of the Apple Agreement, which requires Plaintiff to keep the specifics of the agreement strictly confidential with certain exceptions, none of which were met here. (*See* PX0066, Apple Agreement, Section 7.1.) The above-described testimony also violates Plaintiff's obligations under the Protective Order entered in the Apple Lawsuit.

II.   INFORMATION TO BE SEALED

Apple respectfully requests the transcript be sealed consistent with the Rules and the law of this Court and the Third Circuit. Specifically, with respect to the portion of the trial transcript to which Apple has access, it requests sealing of the following:

a)   The dollar amount set forth in Page 127, Line 1;

b)   The dollar amount set forth in Page 127, Line 2; and

c)   The dollar amount set forth in Page 127, Line 20.[2]

III.   LEGAL STANDARD

While the public has a common law right of access to judicial proceedings, that right is "not absolute." *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988). The "strong common law presumption of access must be balanced against the factors militating against access." *Id.* at 678 (internal quotations and citation omitted). This Court, thus, has discretion to limit or deny access to court records. *See id.*

The party seeking protection must demonstrate that "the material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure." *In re Avandia Mrktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d. Cir. 2019). In determining whether the Court may seal portions of the trial transcript, it "must articulate the compelling, countervailing interests to be protected, make specific findings as to the effects of disclosure, and provide an opportunity for interested third parties to be heard. *Id.* at 672- 673. Courts routinely protect settlement agreements and their terms from public disclosure. *Amgen Inc. v. Amneal Pharmaceuticals LLC*, No. 16-853, 2021

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[2] References to the transcript are to the real-time version of the trial transcript. For an avoidance of doubt, the redactions pertain to the questions and testimony between 12:34pm and 12:36pm on April 26, 2023.

WL 4133516, *5 (D. Del. Sept. 10, 2021) ("Courts protect settlement agreements when public

disclosure will reveal a signatory's "business and litigation strategies to competitors undermining

its future bargaining positions.") (*citing Volkswagen Grp. of Am., Inc. v. N. Am. Auto. Serv., Inc.*,

Case No. 20-15319, 2020 WL 9211151, at *2 (D.N.J. Nov. 30, 2020) (granting motion to seal

settlement agreements)); *Takeda Pharms. U.S.A., Inc. v. Mylan Pharms., Inc.*, No. 19-2216, 2019

WL 6910264, at *2 (D. Del. Dec. 19, 2019) (permitting sealing of information from confidential

settlement and license agreement); *Kaleo, Inc. v. Adamis Pharms. Corp.*, C.A. No. 19-917, 2019

WL 11680196, at *2 (D. Del. July 16, 2019) (permitting sealing of licensing information

"because this information provides subsequent licensees insight into the factors beyond the

financial terms that Adamis considers during licensing.");*Genentech, Inc. v. Amgen, Inc.*, No. 17-

1407, 2020 WL 9432700, at *6 (D. Del. Sept. 2, 2020) (recommending continued sealing of

settlement agreements because disclosure "could place the parties at a demonstrable

disadvantage in navigating and negotiating other litigation contests with competitors in the same

pharmaceutical space"), *R&R adopted*, 2020 WL 9432702 (D. Del. Oct. 1, 2020).

IV.   ARGUMENT

Apple requests that the Court conditionally seal the portion of the information set forth in

Section II(a) through (c), above, because (b) contains confidential business information for

Apple, and (a) and (c) contain information confidentially produced in litigation which, when

coupled with the information contained in (b), can provide harmful insight into Apple's litigation

and patent licensing strategy.

As explained in the Declaration of Matthew R. Clements, filed concurrently herewith, the

amount of the Apple Agreement is among Apple's most highly sensitive and protected business

information, and Apple would be seriously harmed if licensors and/or Apple competitors had

open access to this information. (Declaration of Matthew R. Clements in support of Motion to Seal ("Clements Decl.") ¶¶ 4, 5.) Apple would be harmed in its many active and ongoing negotiations with various patent licensors and litigants if the amount and terms of the Apple Agreement were publicly known. (*Id.* ¶ 5.) Apple would also be harmed if its competitors, such as Google, had this level of insight into the non-public and confidential resolution of negotiations with a patent licensor such as Arendi. (*Id.* ¶ 6.)

Moreover, Apple expends significant time and resources to maintain the confidentiality and nonpublic nature of the Apple Agreement and similar documents and information. (*Id.* ¶ 8.) Even within Apple, the Apple Agreement is not disseminated or accessible except to a small group of Apple employees who maintain its confidentiality. (*Id.* ¶ 9.) Disclosure of information produced in another litigation in connection with the amount that Apple settled that litigation for would also harm Apple in its negotiations with litigants and patent holders in the future. (*Id.* ¶ 10.)

That Apple is a non-party further supports maintaining information about the Apple Agreement. *See United States v. Dentsply Int'l, Inc.*, 187 F.R.D. 152, 160 n.7 (D. Del. 1999) ("The risk of injury to the owner of confidential information is presumably greater where the owner was never in a position to accept or reject the risk of disclosure of confidential information. . . . [T]he nonparty has never undertaken the risks of disclosure."). Apple's request is essential to protect Apple as a non-party. Apple therefore requests to seal the portions of the transcript described in Section II(a) through (c), above.

V.   CONCLUSION

For these reasons, Apple respectfully requests that the Court exercise its power to seal here, where Apple, a non-party to this case, risks harm from further dissemination of its license

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