

**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.)	
)	

**[CORRECTED] RENEWED MOTION OF NON-PARTY APPLE INC.’S
TO SEAL PORTIONS OF THE TRIAL TRANSCRIPT**

Non-party Apple Inc. (“Apple”), by and through its attorneys, hereby moves to seal certain limited portions of the trial transcript. 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 reiterated the request on May 2, 2023. This Renewed Motion incorporates and supersedes that filed by Apple on April 26, 2023 at Dkt. No. 491.

I. FACTUAL BACKGROUND

Non-party Apple Inc. sent a representative to this trial to confirm that the parties did not improperly disclose Apple confidential information during trial. Nevertheless, during the April 26, 2023, redirect examination of plaintiff Arendi S.A.R.L.’s (“Plaintiff”) damages expert, Mr. Roy Weinstein, Plaintiff’s counsel, Susman Godfrey, elicited, and Mr. Weinstein provided, 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. In addition, in a follow-up line of questioning, Plaintiff’s counsel, Seth Ard of Susman Godfrey, 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. 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 this litigation and the Apple Lawsuit.

In addition, Apple has now had the opportunity to review the sealed portions of the trial transcript and seeks to seal limited information in the Day 1 Transcript (April 24, 2023), the Day 3 Transcript (April 26, 2023), and the Day 6 Transcript (May 1, 2023). In addition, Apple seeks to seal Exhibit PX-66, the Apple Agreement, in its entirety.

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:

1. The Day 1 Transcript:
 - a. Page 164, line 22
 - b. Page 231, lines 13, 25
 - c. Page 232, line 2
 - d. Page 246, line 3
 - e. And any portions of indexes related to these redactions
2. The Day 3 Transcript:
 - a. Page 577, line 21
 - b. Page 578, line 11
 - c. Page 580, line 12
 - d. Page 591, line 22
 - e. Page 592, line 2
 - f. Page 622, line 4
 - g. Page 623, lines 21, 23
 - h. Page 624, line 7
 - i. Page 625, lines 6, 9
 - j. Page 641, lines 23, 24
 - k. Page 642, line 17
 - l. Corresponding portions of the Index
3. The Day 6 Transcript:
 - a. Page 1286, lines 5, 15, and 18
 - b. Page 1290, line 7
 - c. Page 1294, lines 11, 13, 15
 - d. Page 1295, line 2, 3, 12
 - e. Page 1326, lines 4, 6, 9, 10
 - f. And any portions of indexes related to these redactions
4. Exhibit PX-66 in its entirety

Concurrently herewith, Apple will lodge with the Court the redacted transcripts for the Court's review.

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 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 seal the portion of the information set forth in Section II(1) through (3), above, because each redaction listed either contains (i) confidential business information for Apple (*see*, (1)(a) through (d), (2)(a) through (d), 2(f) (2)(i), (3)(a) through (c), and (4)), (ii) contains information confidentially produced in litigation which, when coupled with the information contained in (i), can provide harmful insight into Apple’s litigation and patent licensing strategy (*see*, (2)(j) and (2)(k)), or (iii) contains a derivative of the information listed in (i) (*see* (2)(e), (2)(g), (2)(h), (3)(d), and (3)(e)).

As explained in the Declaration of Matthew R. Clements, filed at Docket Number 492, 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. (Dkt. No. 492, 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

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