

PACIFIC BIOSCIENCES OF CALIFORNIA, INC., Plaintiff,

v.

**OXFORD NANOPORE TECHNOLOGIES, INC. and OXFORD NANOPORE
TECHNOLOGIES, LTD., Defendants**

C.A. Nos. 17-275-LPS, 17-1353-LPS

United States District Court, D. Delaware

Nov 04, 2019

Counsel

Pacific Biosciences of California, Inc., Plaintiff, represented by Brian E. Farnan, Farnan LLP, Derek C. Walter, Weil, Gotshal & Manges LLP, pro hac vice, Doug W. McClellan, Weil, Gotshal & Manges LLP, pro hac vice, Edward R. Reines, Weil, Gotshal & Manges LLP, pro hac vice & Michael J. Farnan, Farnan LLP.

Oxford Nanopore Technologies, Inc., Defendant, represented by David G. Wille, Baker Botts, pro hac vice, Elizabeth Durham Flannery, Baker Botts, pro hac vice, Jack B. Blumenfeld, Morris, Nichols, Arsht & Tunnell LLP, Jennifer Ying, Morris, Nichols, Arsht & Tunnell LLP & Johnson Kuncheria, Baker Botts, pro hac vice.

Oxford Nanopore Technologies, Ltd., Defendant, represented by Jack B. Blumenfeld, Morris, Nichols, Arsht & Tunnell LLP & Jennifer Ying, Morris, Nichols, Arsht & Tunnell LLP.

Oxford Nanopore Technologies, Inc., Counter Claimant, represented by David G. Wille, Baker Botts, pro hac vice, Elizabeth Durham Flannery, Baker Botts, pro hac vice, Jack B. Blumenfeld, Morris, Nichols, Arsht & Tunnell LLP, Johnson Kuncheria, Baker Botts, pro hac vice & Jennifer Ying, Morris, Nichols, Arsht & Tunnell LLP.

Pacific Biosciences of California, Inc., Counter Defendant, represented by Brian E. Farnan, Farnan LLP, Derek C. Walter, Weil, Gotshal & Manges LLP, pro hac vice, Edward R. Reines, Weil, Gotshal & Manges LLP, pro hac vice & Michael J. Farnan, Farnan LLP.

Hall, Jennifer L., United States Magistrate Judge

ORDER

Having reviewed Defendants' Motion to Redact Portions of the August 14, 2019 Discovery Teleconference (the "Motion") (C.A. No. 17-275 D.I. 340; C.A. No. 17-1353 D.I. 371) and the related submissions (C.A. No. 17-275 D.I. 341, 359; C.A. No. 17-1353 D.I. 372, 390), the Court DENIES the motion. The public has an interest in understanding judicial proceedings, even if they have a limited interest in documents submitted in connection with discovery dispute proceedings.

Delaware Display Grp. LLC v. LG Elecs. Inc., 221 F. Supp. 3d 495, 497 (D. Del. 2016). Accordingly, although there is no presumptive right of public access to discovery motions and supporting documents filed with the court, see *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 165 (3d Cir. 1993), the public does have a right of access to hearing transcripts. See, e.g., *Newman v. Gen. Motors Corp.*, C.A. No. 02-135 (KSH), 2008 WL 5451019, at *6 (D.N.J. Dec. 31, 2008); see also *In re Vitamins Antitrust Litig.*, 357 F. Supp. 2d 50, 51-52 (D.D.C. 2004).

"[T]he party seeking the closure of a hearing or the sealing of part of the judicial record bears the burden of showing 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." *Softview LLC v. Apple Inc.*, No. 10-389, 2012

WL 3061027, at *9 (D. Del. Jul. 26, 2012); see also *In re Avandia Mktg., Sales Practices and Prods. Liab. Litig.*, 924 F.3d 662, 672-73 (3d Cir. 2019).^[1] In this case, Defendants have failed to meet their burden to show that disclosure of the unredacted transcript would work a "clearly defined and serious injury" upon them. *Id.* I have also reviewed each of the proposed redactions, and I think that it is unlikely that the particular information at issue is capable of working the kind of serious injury contemplated by the rule. For example, the proposed redactions do not contain trade secrets, scientific data, strategic plans, or financial information. And merely stating that the proposed redactions contain discussions of documents marked "Confidential" or "Highly Confidential" is insufficient to support a motion to redact a transcript of a judicial proceeding. See *Mosaid Techs. Inc. v. LSI Corp.*, 878 F. Supp. 2d 503, 507-510 (D. Del. 2012). Finally, any minimal potential harm that disclosure might cause is outweighed by the public interest in having access to judicial proceedings. See, e.g., *In re Avandia*, 924 F.3d at 672-73; *Littlejohn v. Bic Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988).

For these reasons, Defendants' Motion to Redact Portions of the August 14, 2019 Discovery Teleconference is DENIED.

IT IS SO ORDERED.

^[1] Defendants cite the *Pansy* factors in support of redacting the transcript. See C.A. No. 17-275 D.I. 340; C.A. No. 17-1353 D.I. 371; *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787 (3d Cir. 1994). The *Pansy* factors, however, govern the appropriateness of a protective order, not the sealing of judicial proceedings. *In re Avandia*, 924 F.3d at 675-76 (rejecting application of *Pansy* factors to proceedings subject to the presumptive right of public access).

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