IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

SANDISK CORP.,

Plaintiff,

v.

OPINION AND ORDER

10-cv-243-bbc

KINGSTON TECHNOLOGY COMPANY, INC.,
and KINGSTON TECHNOLOGY CORP.,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

In this civil action, plaintiff Sandisk Corp sued defendants Kingston Technology Company, Inc. and Kingston Technology Corp. for patent infringement, and defendants filed counterclaims alleging that plaintiff's patent licensing program violated various antitrust and unfair competition laws. The parties filed a stipulated motion for protective order governing discovery, which Magistrate Judge Stephen Crocker granted. Dkt. #115. I granted summary judgment on plaintiff's infringement claims, dkt. #312, and, after trial, granted judgment in favor of plaintiff on defendants' antitrust counterclaims. Dkt. #487.

Now before the court are defendants' motions to redact the trial transcript, dkt. #485, and to seal the trial opinion, dkt. #490, in order to protect confidential business

information offered in testimony by defendants and third-party witnesses. Dkt ## 485, 490. Plaintiff opposed the motion to redact the trial transcripts but has not responded to the motion to redact the post trial opinion. Because defendants have not shown a compelling justification for redacting the transcript or opinion, I will deny the motions.

As I informed the parties during the final pretrial conference, dkt. #450, information presented at trial becomes part of the public record. In re Continental Illinois Securities Litigation, 732 F.2d 1302, 1308-16 (7th Cir. 1984). There is "a presumption of constitutional magnitude" that the records of judicial proceedings in civil cases should be open to public scrutiny in order "to monitor the functioning of our courts" and "help insure accuracy of the fact finding process." Id. at 1308-09. "When [litigants] call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials." Union Oil Co. of California v. Leavell, 220 F.3d 562, 567 (7th Cir. 2000). "[T]hose documents . . . that influence or underpin the judicial decision are open to public inspection unless they meet the definition of trade secrets or other categories of bona fide long-term confidentiality." United States v. Foster, 564 F.3d 852, 853 (7th Cir. 2009).

To redact a trial transcript, the moving party must show more than the "good cause" required for a discovery protective order. Continental Illinois, 732 F.2d at 1312-13. "[O]nce the evidence has become known to the members of the public . . . through their

attendance at a public session of court, it would take the most extraordinary circumstance to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence." Id. (quoting United States v. Myers, 635 F.2d 945, 952 (2d Cir. 1980)).

Defendants ask the court to redact the trial transcripts and the trial opinion to protect confidential business information from defendants and third-party witnesses PNY Technologies, Inc. and Edge Tech, Inc. However, the cat is already out of the bag. If defendants had moved to close the courtroom, the court could have considered at that time whether the information was confidential and taken steps to protect it. Instead, even after being warned, defendants voluntarily presented the evidence in open court. PNY's representative was not compelled to testify and did not object to testifying in open court, and neither PNY nor Edge Tech has filed a motion for a protective order. Defendants' argument that public release of the transcripts constitutes a disclosure that is different in character from testimony in open court is unpersuasive, particularly in light of the authority quoted above.

After offering this information voluntarily in open court, defendants have not met their burden to show that extraordinary circumstances warrant redacting the transcript or sealing the opinion. A review of defendants' proposed redactions suggests they believe that any specific information about their licenses, general business strategies, market shares, costs

and past quantity of sales is confidential. This request is overly broad. Defendants have not argued that the documents discussed at trial were entitled to legal confidentiality or explained how further disclosure of these facts would injure the parties or non-party witnesses.

Furthermore, these facts form the basis of defendants' antitrust claims and of the post trial opinion and thus implicate the central concern for public disclosure of judicial records. Foster, 564 F.3d at 853. These facts are also the type of general facts about a party's business that the Court of Appeals for the Seventh Circuit has stated are not protected from public disclosure. Leavell, 220 F.3d at 567 (litigant not entitled to protective order hiding "how much it agreed to pay for the construction of a pipeline, how many tons of coal its plant uses per day, and so on . . . from the curious (including its business rivals and customers)"). Therefore, I conclude that defendant has not show that extraordinary circumstances warrant redacting the trial transcripts or sealing the trial opinion.

ORDER

IT IS ORDERED that

1. The motion for redaction of the trial transcripts by defendants Kingston Technology Company, Inc. and Kingston Technology Corp., dkt #485, is DENIED;

2. Defendants' motion to reopen the case and seal the court's 3/27/12 opinion and

order, dkt. #490, is DENIED.

3. The clerk of court is directed to unseal the trial transcripts.

Entered this 5th day of April, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge