

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

E2INTERACTIVE, INC. and
INTERACTIVE COMMUNICATIONS
INTERNATIONAL, INC.,

OPINION AND ORDER

09-cv-629-slc

Plaintiffs,

v.

BLACKHAWK NETWORK, INC.,

Defendant.

Following a six-day trial in this patent lawsuit, a jury found that defendant Blackhawk Network, Inc. infringed plaintiff InComm's U.S. Patent No. 7,578,439 (the '439 patent) and awarded InComm \$3,475,159.95 in reasonable royalties. Two motions relating to the trial transcripts and exhibits are now before the court.

I. Motion to Seal

Blackhawk has moved to seal portions of the trial transcript and several trial exhibits on the ground that they contain either proprietary information about Blackhawk's BLAST source code or sensitive financial and pricing information. *See* dkts. 492 (motion) and 493, Exh. 1 (proposed order identifying items to be sealed). InComm responds that it does not object to sealing the most of the documents and testimony that Blackhawk identifies. Dkt. 495. However, it asserts that Blackhawk has not shown good cause for sealing the following testimony and exhibits because they do not contain proprietary details of Blackhawk's source code:

- Volume 2-B pages 82-83
- Volume 2-C pages 51-53
- Volume 3-A pages 66-67, 69:12-70:15
- Volume 3-B page 74
- Volume 4-A pages 75:16-77:2, 107, 119-120

- Plaintiff's Exhibit 2
- Plaintiff's Exhibit 4

With respect to the above-cited testimony, InComm maintains that

While some of the testimony may touch on functionality that is necessarily performed by the code that runs Blackhawk's system, it does so in only a very general way that would not cause any sort of competitive harm to Blackhawk if it were not shielded from the public. The lack of harm to Blackhawk is underscored by the fact that, according to Blackhawk, the RapTransactionValidator code at issue has not only been removed, but in fact served no purpose when it was operational.

Dkt. 495 at 3-4.

I have reviewed the testimony and agree that it does not cite specific lines of code. However, it does reference how certain aspects of BLAST function, and in most cases, specifically how the source code is set to "all." Although Blackhawk may not be using such functioning, it still constitutes proprietary information that Blackhawk is entitled to protect. As a result, I will seal the requested portions of the trial transcript.

Trial Exhibits 2 and 4 are "use cases" for two proposed functions of BLAST: Validate RAP and Validate Transactions. InComm argues that because the documents discuss technology that Blackhawk has never used (and will never use because Blackhawk claims to have removed the code for the Transaction Validator functionality), Blackhawk would not suffer any competitive harm if these exhibits were not sealed. Although Blackhawk has never used the technology described in the use documents, the documents constitute confidential and proprietary work product, including details on Blackhawk's testing of the functionality of the technology. Therefore, I will seal these exhibits.

The following passages in the trial transcript and trial exhibits will be sealed:

TRANSCRIPT

PASSAGES

February 22, 2012, Volume 2-B

50:4-51:21; 53:6-55:8; 61:4-63:7; 64:6-65:8;
65:23-66:20; 67:8-68:11; 68:23-69:1;

72:11-74:8;

82:16-83:11; 88:10-89:13; 89:17-25; 93:1-12

February 22, 2012, Volume 2-C

51:10-53:16

February 22, 2012, Volume 2-D

3:19-24

February 23, 2012, Volume 3-A

19:18-23:8; 32:16-34:24; 35:16-36:8;
56:19-57:8; 58:5-61:18; 62:1-67:10;
69:12-70:15; 72:7-24

February 23, 2012, Volume 3-B

22:15-19; 32:13-33:22

February 23, 2012, Volume 3-B

37:7-15; 37:23-38:22; 41:12-14; 41:23-43:21;
44:1-4; 49:21-50:21; 51:8-52:13; 53:4-57:16;
66:15-68:7; 73:25-74:6; 74:15-75:1; 75:5-11

February 24, 2012, Volume 4-A

37:1-39:9; 39:24-40:9; 75:16-77:2; 91:25-92:21;
93:9-13; 101:17-102:12; 107:14-22;
119:17-120:9

February 24, 2012, Volume 4-B

9:24-13:7; 15:4-12; 16:6-18:7; 22:17-22;
39:4-17; 40:1-2; 42:4-14

February 27, 2012, Volume 5-C

33:17-34:9; 37:3-9; 37:15-17

February 27, 2012, Volume 5-D

36:17-37:4

February 28, 2012, Volume 6-A

62:5-63:10; 63:20-64:7; 71:15-21; 72:3-13

February 28, 2012, Volume 6-B

48:13-25

February 28, 2012, Volume 6-D

15:6-18; 33:14-16

ADMITTED EXHIBIT NUMBERS

2	48	555
4	68	634
6	92	674
11	101	676
12	103	678
13	114	681
20	116	777
21	143	872
22	166	888
25	168	897
26	171	966
27	440	
28	442	
42	468	
47	469	

II. Request for Sealed Documents

On August 17, 2012, the court received a letter from a third party, Litigation Presentation, Inc. (LPI), requesting copies of an invoice submitted by InComm in support of its bill of costs (dkt. 476) and copies of the demonstrable exhibits used by InComm at trial. *See* dkt. 511. LPI believes that its former employee, Katherine Kulow, in conjunction with Courtroom Sidekicks, LLC or Core Legal Concepts, LLC, prepared InComm's demonstrable exhibits for trial. LPI is currently in a legal dispute with Kulow and Core Legal Concepts over whether Kulow was subject to restrictive covenants and used trade secret information and copyrighted materials belonging to LPI.

Neither party in the instant case has responded to LPI's request. However, the court has reviewed the invoices submitted in support of InComm's bill of costs and has determined that no invoice exists from Kulow, Core Legal Concepts or Courtroom Sidekicks. Because it appears that the information that LPI seeks does not exist, its request will be denied.

ORDER

IT IS ORDERED that

- (1) Defendant Blackhawk's motion to seal portions of the trial transcript and trial exhibits, dkt. 492, is GRANTED. The clerk of court is directed to seal the trial transcript passages and exhibits identified in this order.
- (2) Movant Litigation Presentation, Inc.'s motion for copies of sealed documents (dkt. 511) is DENIED.

Entered this 12th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge