IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

IP INNOVATION L.L.C. and
TECHNOLOGY LICENSING CORP.,

Plaintiffs,

v.

RED HAT, INC. and
NOVELL, INC.,

Defendants.

Case No. 2:07-cv-447 (RRR)

Jury Trial Demanded

ORDER DENYING DEFENDANTS' MOTION FOR REDACTIONS TO THE TRIAL TRANSCRIPT

Red Hat, Inc. and Novell, Inc. (collectively, "Defendants") move to redact portions of the trial transcript and the admitted trial exhibits that contain information relating to third-party license agreements. (Document No. 254.) Specifically, Defendants seek to redact Xerox Corporation's ("Xerox") license agreements to the patents-in-suit with Central Point Software, Inc., Hewlett-Packard Company, Silicon Graphics, Inc., and Microsoft Corporation, and related damages testimony. IP Innovation L.L.C. and Technology Licensing Corporation oppose the motion.

Courts have "recognize[d] a general right to inspect and copy . . . judicial records and documents." *Nixon v. Warner Commc'ns.*, 435 U.S. 589, 597 (1978). "Public access [to judicial records] serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better

perception of its fairness." *SEC v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) (alterations in original). However, the public's right of access is not absolute. *Nixon*, 435 U.S. at 597. "Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Id.* at 598. To determine whether to allow redactions to the trial transcript and the admitted trial exhibits, this court must balance the public's right of access to judicial records against the interests favoring non-disclosure. *See Van Waeyenberghe*, 990 F.2d at 850.

This court finds that the public should have access to the contested portions of the trial transcript and the admitted trial exhibits. In recent years, the U.S. Court of Appeals for the Federal Circuit has expressed increased interest in patent damages methodologies and the probative value of prior license agreements. *See, e.g.*, *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 868-73 (Fed. Cir. 2010); *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1323-39 (Fed. Cir. 2009). The trial testimony in this case highlighted the parties' differing damages methodologies and treatments of prior license agreements to the patents-in-suit. Public access to such testimony provides the public with a more complete understanding of the damages methodology in this patent infringement case. This court's rulings on damages issues and its discussions with the damages experts regarding the license agreements may also be relevant to future litigants in preparing their damages cases.

Furthermore, disclosure of the prior license agreements to the patents-in-suit would present minimal harm to Xerox, particularly because the patents-in-suit have already expired. Defendants made no effort to prevent the testimony at issue by requesting to close the courtroom, and they do not explain why public access to transcripts of publicly-given testimony will

adversely impact Xerox now. Defendants do not offer sufficiently strong reasons to demonstrate that Xerox's license agreements should be hidden from the public.

Accordingly, this court **DENIES** Defendants' Motion for Redactions to the Trial Transcript.

It is SO ORDERED.

SIGNED this 20th day of September, 2010.

RANDALL R. RADER
UNITED STATES CIRCUIT JUDGE
(sitting by designation)