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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CELLULAR COMMUNICATIONS EQUIPMENT LLC,

Plaintiff,

vs.

HTC CORPORATION, et al.,

Respondents

Case No. 15-cv-2373-JAH-MDD

PENDING IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

CASE NO. 6:13-CV-00507-KNM (CONSOLIDATED LEAD CASE)

THIRD PARTIES ACACIA RESEARCH CORPORATION'S APPLICATION TO FILE UNDER SEAL EXHIBITS F, G, H AND I TO THE DECLARATION OF JESSICA L. MULLEN IN SUPPORT OF OPPOSITION TO AT&T MOBILITY LLC'S MOTION TO COMPEL

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD: pursuant to the parties' Agreed Protective Order in the underlying patent case *Cellular Communications Equipment LLC v. HTC Corporation, et al.*, Civil Action No. 6:13-cv-507 pending in the Eastern District of Texas (the "Patent Litigation"), Third Party Acacia Research Corporation ("ARC"), hereby respectfully applies for an order allowing ARC to file under seal, **Exhibits F, G, H, and I** to the Declaration of Jessica L. Mullen In Support Of ARC's Opposition To AT&T Mobility LLC's Motion To Compel (the "Mullen Declaration").

ARC files this application because, as detailed below, the documents at issue have been designated "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" under the Agreed Protective Order issued in the Patent Litigation.

ARGUMENT

Courts have "broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." *Phillips Ex rel. Estates of Bryd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original). Further, "[w]hen a court grants a protective order for information produced during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Id.* at 1213; *Rich v. Hewlett-Packard Co.*, No. C06-03361-JF, 2009 U.S. Dist. LEXIS 64033, at *4 (N.D. Cal. July 20, 2009) (same).

The Agreed Protective Order in the Patent Litigation allows any party or third party producing information may designate information "CONFIDENTIAL" if the producing party has a good faith belief that such discovery material constitutes or contains confidential information or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" if the producing party has a good faith belief that

such discovery material constitutes or contains, among other things, proprietary financial, business, or technical data, commercially sensitive competitive information or trade secrets, damages related information, and/or licenses and licensing documentation, the disclosure of which could cause harm to the business or competitive position of the producing party. (Declaration of Jessica Mullen ISO Motion To File Under Seal, Ex. A at 4-5.) Under the Agreed Protective Order, the parties have agreed to file documents designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" under seal. (*Id*. at 1, 19, 21.)

Good cause exists to permit ARC to file under seal Exhibits F, G, H, and I to the Mullen Declaration. Exhibits F, G, H, and I are agreements that Plaintiff Cellular Communications Equipment LLC has produced in the Patent Litigation designated "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the Agreed Protective Order (the "Agreements"). Further, the Agreements contain highly confidential business and proprietary information. Moreover, Exhibit F to the Mullen Declaration contains an express confidentiality provision to limit its disclosure, which reflects the parties' mutual, contemporaneous belief and understanding of the confidential and proprietary information contained in the agreement. (Mullen Decl., Ex. F § 10.)

CONCLUSION

Given the existence of the Agreed Protective Order in the Patent Litigation and Plaintiff's designation of the information pursuant to the Agreed Protective Order, ARC respectfully requests that the Court grant its motion to file the Agreements attached as Exhibits F, G, H, and I to the Declaration of Jessica L. Mullen In Support Of ARC's Opposition To AT&T Mobility LLC's Motion To Compel under seal.

DATED: December 7, 2015

STRADLING YOCCA CARLSON & RAUTH, P.C.

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