IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHCR 22

Originating Claim No 773 of 2024 (Summons No 3464 of 2025)

Between

Salutica Allied Solutions Sdn Bhd

… *Claimant*

And

Apple South Asia Pte. Ltd.

… *Defendant*

Counterclaim of Defendant

Between

Apple South Asia Pte. Ltd.

… *Claimant in Counterclaim*

And

Salutica Allied Solutions Sdn Bhd

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Intellectual Property — Patents and inventions — Infringement — Formation of confidentiality club — Whether access to documents be restricted to solicitors and experts]
[Intellectual Property — Patents and inventions — Infringement — Formation of confidentiality club — Whether a restrictive covenant be imposed on solicitors and experts]

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v
Apple South Asia Pte. Ltd.

[2026] SGHCR 22

General Division of the High Court — Originating Claim No 773 of 2024
(Summons No 3464 of 2025)
Assistant Registrar Kenneth Choo
9 January and 30 March 2026

30 June 2026

Assistant Registrar Kenneth Choo:

Introduction

1 The defendant, in seeking protection for its secret process alleged to infringe the claimant's patent, took out this application ("the Application") for a confidentiality club to be formed for the disclosure of confidential documents and confidential information by the defendant on terms to be agreed. The claimant did not, in principle, oppose the formation of a confidentiality club but ultimately objected to two specific terms proposed by the defendant: (a) the defendant contended *inter alia* that disclosure of the more highly confidential documents should be limited to solicitors and experts, but resisted disclosure to the claimant's own officers or employees; and (b) the defendant also pushed for a restrictive covenant that precluded the claimant's solicitors and experts from being involved in certain patent applications for a period of time. I granted the

Application, ruling in favour of the defendant for the first issue and in favour of the claimant for the second.

2 An appeal has since been filed against my decision in part, and I now provide my full written grounds.

Facts

The parties and their pleaded cases

3 The claimant ("Salutica") is a company incorporated in Malaysia in 1990. Salutica pleaded that it is in the business of, *inter alia*, developing and manufacturing various Bluetooth consumer electronics and technologies including, but not limited to, Bluetooth trackers and wireless tire pressure monitoring systems. It was undisputed that Mr Joshua Lim, Salutica's Chief Executive Officer, and Mr Joel Lim, Salutica's alternate director, are substantial shareholders of Salutica and/or its parent company, Salutica Berhad.

4 The defendant ("Apple") is a company incorporated in Singapore in 1989. Apple pleaded that it is engaged in the sale of pc hardware, accessories, software, consumer electronics and telecom products. Apple's parent company is Apple Inc., which is an American multinational company that designs, manufactures and markets smartphones, personal computers, tablets, wearables and accessories, and sells a variety of related services. Most notable for its iPhone, Mac, iPad and wearable devices, Apple Inc. also operates major current platforms such as the App Store, Apple Music and Apple TV.

5 Salutica is the registered proprietor of Singapore Patent No. 11201504174W titled "A System And Method For Transmitting, Storing

Receiving And/Or Retrieving Identification Information Or Data And/Or Pairing Information Or Data Between Accessories Or Associated Products And Smart Electronic Devices Into And/Or From Any Distinct Server Or Storage Media" ("the Patent"). The Patent provides that the alleged invention allows a user to transmit and/or store all pairing information between secondary smart electronic devices and existing primary devices, into a distinct server or storage media, and enables such pairing information to be retrieved and/or received into such substitute or other primary devices which will then circumvent the need of reinitiating the pairing process.

6 On 30 September 2024, Salutica commenced this suit ("the Suit") against Apple, claiming that Apple had infringed the Patent. Apple denies Salutica's allegations of infringement and has filed a counterclaim for, *inter alia*, revocation of the Patent.

Background to the Application

7 The parties conducted the first round of voluntary production and exchange of documents on 18 March 2025.

8 On 30 May 2025, Salutica's solicitors, Premier Law LLC ("PL"), wrote to Apple's solicitors, Drew & Napier LLC ("Drew"), and requested for 34 categories of documents.

9 By way of a letter dated 21 July 2025 from Drew to PL, Apple rejected all of Salutica's requests. According to Apple, Salutica had failed to explain how the requested documents were material to the issues in the Suit, and the scope of the requested documents were in any case manifestly disproportionate. Hence, Apple held the view that Salutica was not entitled to any of the

documents requested. Apple nevertheless stated that, in the interests of moving the matter forward, it had obtained documents relating to the alleged infringing system and alleged methods of infringement as set out in Salutica's Particulars of Infringement dated 30 September 2024 ("Confidential Documents"). Apple further indicated that it would be prepared to disclose such documents "strictly on condition that such disclosure is subject to an appropriate confidentiality order and with the appropriate confidentiality undertakings".

10 Thereafter, the parties engaged in negotiations on the terms governing the formation of a confidentiality club and how the Confidential Documents should be handled. The parties however could not agree on several key terms. As a result, Apple filed the Application on 26 November 2025.

11 During the first hearing of the Application on 9 January 2026, PL and Drew submitted on the following contested terms:

(a) The form of the confidentiality club, i.e. whether by an order of court or by way of deed;

(b) The members of the confidentiality club;

(c) The prosecution bar;

(d) The right to dispute the confidential nature of the documents;

(e) The process for redactions;

(f) The indemnity clause and rights to relief; and

(g) The jurisdiction clause in the personal undertakings.

12 By the end of the first hearing, it became apparent that many of the contested terms could be resolved if parties were given some time for negotiations. I therefore afforded the parties time to confer and directed that they write in by 26 January 2026 on whether the Application could be resolved and if not, to state the issues that remained in contention.

13 The parties requested for an extension of time on 26 January 2026 and, subsequently, for a further extension on 2 February 2026. On 13 February 2026, Drew updated that parties have managed to agree on most terms save for the issues on members of the confidentiality club, the proposed prosecution bar and costs. In the circumstances, the parties had to proceed with the Application.

14 At the parties' request, I directed them to file their brief further submissions on their latest positions in respect of the remaining issues by 4 March 2026 and fixed a second hearing on 30 March 2026. At the conclusion of this second hearing, I rendered my decision and provided brief reasons.

Parties' submissions

15 Apple asserted that the Confidential Documents are technical documents that relate to its proprietary technology. This technology relates to a process that Apple developed that allows Apple users to easily connect their Apple devices to their Apple accessories as long as they are signed into the same Apple ID ("the Feature"). According to Apple, the Confidential Documents include:

> (a) presentation slides which demonstrate how Apple products and accessories connect to each other, and the information that is transmitted between Apple products and accessories; and

(b) documents (used by Apple for internal collaboration and knowledge management) which elaborate on how Apple products and accessories connect to each other.

16 Apple further stated that the Confidential Documents reveal, to a certain extent, confidential information about the structure, function and operation of Apple's technologies and, in particular, how Apple implements the Feature that Salutica alleges infringed the Patent. Apple emphasised that the Confidential Documents are not accessible to the public or to its employees generally. These documents are apparently only accessible by its authorised employees.

17 Apple also claimed that there are security concerns if the Confidential Documents are disclosed to third parties. Exposing Apple's technology makes it vulnerable to exploitation and abuse. This would not only cause Apple to suffer severe consequences but will also impact Apple's customers who use and depend on the security of Apple devices. According to Apple, there are over two billion active Apple devices worldwide.

18 Exposing Apple's technology to third parties could also allow the latter to exploit and profit from Apple's extensive investment in its own research and development. In particular, Apple highlighted that Salutica is a manufacturer of consumer electronics and lifestyle electronic products; it therefore has the potential, capability, and the commercial impetus to exploit Apple's proprietary technology to Apple's detriment.

19 Apple argued that it was made a defendant in the Suit, *ie*, this was not a claim that Apple commenced. Apple agreed to produce the Confidential Documents to discharge its disclosure obligations. Apple contended that but for

the Suit, Salutica would not have had access to such information relating to Apple's proprietary technology.

20 As regards the members of the confidentiality club, Apple proposed the following two-tier confidentiality regime:

(a) The first tier would have access to Restricted Confidential Documents ("RCD"), which are defined by Apple as documents that reveal the process used to pair Apple devices signed into the same iCloud account with the Apple accessories but do not include documents that reveal only a pairing between the Apple devices and the Apple accessories using standard public Bluetooth. Access would be restricted to external eyes only ("EEO"), i.e., external counsel and external experts. In this case, this would mean PL and Salutica's expert, Mr Joseph Bakalor ("Mr Bakalor"). Salutica's representatives are not allowed access to documents in this tier.

(b) The second tier would have access to General Confidential Documents ("GCD"), which are essentially the other confidential documents that Apple proposed to disclose that are not RCD. Apple's latest position was that, subject to Apple's approval, two designated employees of Salutica, including either Mr Joel Lim or Mr Joshua Lim, may have access to GCD. Apple's prior position was that neither of them ought to have access to any Confidential Documents (RCD or GCD), because of the significant vested interest they each have in the Suit and their roles as key strategic decision makers for Salutica, in particular, their power to control and dictate what products Salutica manufactures and what features and/or technologies are included in those products, which exponentially increases the risk of, and the harm from, any misuse.

21 Apple's proposed confidentiality order did provide for a mechanism for Salutica to apply to court to challenge Apple's designation of any document.

22 Apple relied on recent English authorities to argue that EEO confidentiality orders are increasingly common in modern patent litigation because the Courts have recognised that highly confidential information is deserving of stricter protection. Apple also exhibited in its supporting affidavit examples of protective orders it had obtained in other jurisdictions that contained an EEO tier.

23 Apple further referred to parallel proceedings that Salutica commenced against Apple's related company in Malaysia ("Apple Malaysia") in Civil Suit No: WA-22IP-1-01/2022 ("Malaysia Proceedings"). Apple argued that the Malaysia High Court excluded Salutica's representatives from access because the Court there was of the view that the only persons that required access to Apple's confidential information for the purposes of the patent infringement and patent invalidation claims were Salutica's Malaysian solicitors and its expert, and that limiting disclosure to only its Malaysian solicitors and its expert would not prejudice Salutica in any way from presenting its case. Apple stated that Salutica was able to proceed to trial in the Malaysian Proceedings.

24 As regards the prosecution bar as against PL and Mr Bakalor, Apple proposed that they shall undertake "up until the expiry of six months after the conclusion of the Suit (including appeals), not to engage, advise, or be involved in any way in the drafting, prosecution and/or acquisition of any patents or

patent applications (or equivalent property rights) or in any proceeding before any patent office, foreign or domestic, that relate to the pairing or connection of multiple wireless devices for communication via Bluetooth, except that this prohibition shall not apply to any existing patents or patent applications as at the date of this Order that (i) have been filed in the name of [Salutica's] External Expert, or (ii) where [Salutica's] External Expert is named as an inventor".

25 Apple maintained that the Confidential Documents relate to Apple's highly valuable and sensitive internal processes, designs and systems and that once such information is learned, it cannot be unlearned. Apple therefore reasoned that the prosecution bar is required to reduce the risk of misuse (deliberate or subconscious) for persons who are involved in the drafting of patents that fall within the narrow scope of the prosecution bar. It would prevent the damaging consequence of Apple being sued with a patent that was drafted by a person with knowledge of Apple's confidential information. Apple had also exhibited in its supporting affidavit examples of protective orders it had obtained in other jurisdictions that Apple claimed contained prosecution bars on terms far stricter than what was proposed to Salutica.

26 In principle, Salutica did not oppose the establishment of a confidentiality club. Instead, Salutica's objections pertained to the two specific terms proposed by Apple.

27 At the outset, Salutica urged this court to take note of the following:

(a) If the Confidential Documents comprise of presentation slides or documents used for internal team collaboration, they are unlikely to be technical in nature. They are more likely to consist of training or instructional material as opposed to actual technical evidence; and

(b) Some of the information contained in the Confidential Documents *may* already be in the public domain. In its supporting affidavit, Salutica referred to certain online articles where various independent third parties have attempted to reverse engineer the Feature. Salutica also averred that in the Malaysian Proceedings, the reports filed by Apple Malaysia's expert were not sealed or subject to any confidentiality regime. Accordingly, Salutica suggested that it may be that at least some aspects of the information that Apple claimed were confidential, *may* already be in the public domain.

Salutica argued that in view of the above points, there was little justification for onerous clauses to be included in the confidentiality club order.

28 Salutica objected to the proposed two-tier confidentiality regime and maintained that Mr Joel Lim ought to have access to all the Confidential Documents (without any distinction between GCD and RCD) because:

(a) Salutica primarily relied on authorities such as *Warner-Lambert Co v Glaxo Laboratories Limited* [1975] RPC 354 ("*Warner-Lambert*") and *Roussel Uclaf v Imperial Chemical Industries pls* [1990] RPC 45 ("*Roussel*") to argue that Apple had not met the threshold required to exclude Salutica's representatives from access to the Confidential Documents;

(b) Salutica's counsel will not be able to take instructions, and Salutica's conduct of the Suit will be severely prejudiced;

(c) Salutica does not compete commercially with Apple; and

(d) the Confidential Documents are not likely to be so technical that Salutica's representatives cannot form a view of their own on them.

29 On balance, Salutica submitted that there was no need for the prosecution bar when its purported benefits are weighed against the potential prejudice to Salutica, PL and Mr Bakalor. Salutica contended that:

(a) the proposed wording of the prosecution bar is overly broad;

(b) as a restrictive covenant against PL and Mr Bakalor, it might have an adverse effect on Salutica's ability to conduct the Suit; and

(c) it is unnecessary as it does not add anything to Apple's objective of preventing misuse of its confidential information.

Issues to be determined

30 The two issues left for my determination were:

(a) whether the two-tier confidentiality regime should be granted; and

(b) whether the prosecution bar should be granted.

The applicable law relating to confidentiality clubs

31 The starting point is O 11 r 9 of the Rules of Court 2021 ("ROC"), which reads:

> **Confidential documents (O. 11, r. 9)**
>
> 9.—(1) A party who is required by any order made by the Court under this Order to produce documents may not withhold or

> object to the production of any document on the ground that the document is confidential.
>
> (2) A confidential document does not lose its confidentiality even if it was disclosed or taken inadvertently or unlawfully by anyone.

It is clear from O 11 r 9(2) that whilst confidentiality is not a bar to disclosure, confidentiality is not lost or waived if confidential documents are disclosed.

32 Further, it is trite that the Riddick principle provides that a party that obtains discovery may only use the discovered documents, and the information obtained therefrom, for the purpose of pursuing the action in respect of which discovery is obtained, and not for any other improper or collateral purposes. This principle finds expression in O 11 r 10 of the ROC which states that any document produced under O 11 or by compulsion of law in court proceedings must not be relied on in other proceedings unless the party who produced the document consents or the Court otherwise approves. In most cases, the rule in O 11 r 9(2) and the Riddick principle give adequate protection against misuse of disclosable documents. It is, however, not uncommon in intellectual property litigation cases for highly confidential documents to be subject to more restrictive measures designed to prevent such documents from being used for collateral purposes or entering the public domain.

33 Indeed, in intellectual property litigation cases where disclosable documents include trade secrets or other confidential information, a tension arises between the competing interests of the receiving party in having the fullest access to material documents against the interests of the disclosing party in protecting their confidential information. This problem is not new. It is common for courts to allow confidentiality clubs to be formed where the persons who may inspect such confidential documents are limited or restricted.

34 In *Warner-Lambert*, the defendants asserted that their process for the manufacture of a pharmaceutical "Betnovate" that was alleged to infringe the plaintiffs' patents was a trade secret of commercial value. They contended that disclosure should be limited to counsel, solicitors, a patent agent and an independent technical expert, but resisted disclosure to the plaintiffs' own officers or employees. The English Court of Appeal decided that the documents should also be disclosed to the principle executive officer of the plaintiffs but not to American counsel nor to an Italian expert. The judgment of Buckley LJ in that case, reported more than five decades ago, became the leading authority as to the correct approach to the problem described above. Having reviewed the authorities, Buckley LJ held (at 358):

> "None of these cases purports to lay down a form of order suitable for universal use. Nor, I think, does any of them indicate that the court might not in appropriate circumstances at a later stage in the action have directed disclosure to a wider class of persons or on different terms. In my judgement, the court must in each case decide what measure of disclosure should be made, and to whom, and upon what terms, having regard to the particular circumstances of the case, bearing in mind that, if a case for disclosure is made out, the applicant should have as full a degree of appropriate disclosure as will be consistent with adequate protection of any trade secret of the respondent."

35 Buckley LJ identified three other relevant factors influencing the extent and terms of disclosure (at 360). First, because it was impossible to tell from the product itself what process had been used to make it, policing of the misuse of the information would be virtually impossible. Second, this was particularly so where those to whom the process is disclosed might not be resident within the jurisdiction of the court. These two factors should make the court particularly careful not to expose the defendant to any unnecessary risk of their trade secrets leaking to any competitors. The third factor is the extent to which the receiving

party can be expected to contribute to the running of the action if the confidential documents is disclosed to that party, and how this factor may vary as the action progresses. Buckley LJ explained the rationale as follows:

> If, however, the case were one of so esoterically technical a character that even with the help of his expert advisers the party himself could really form no view of his own upon the matter in question but would be bound to act merely upon advice on the technical aspects, disclosure to him of the facts underlying the advice might serve little or no useful purpose. In such a case a court might well be justified in directing disclosure of allegedly secret material only to expert or professional agents of the party seeking discovery on terms they should not, without further order, pass on any information so obtained to the party himself or anyone else, but should merely advise him in the light of the information so obtained. Even so, if the action were to go to trial, it would seem that sooner or later the party would be bound to learn the facts, unintelligible though they might be to him, unless the very exceptional course were taken of excluding him from part of the hearing. Even where the information is of a kind the significance of which the party would himself be able to understand, it may nevertheless be just to exclude him, at any rate during the interlocutory stages of the action, from knowing it if he is a trade competitor of his opponent.

36 The third factor was similarly explained in *Roussel*, where Aldous J held (at 49):

> Each case has to be decided on its own facts and the broad principle must be that the court has the task of deciding how justice can be achieved taking into account the rights and needs of the parties. The object to be achieved is that the applicant should have as full a degree of disclosure as will be consistent with adequate protection of the secret. In so doing, the court will be careful not to expose a party to any unnecessary risk of its trade secrets leaking to or being used by competitors. What is necessary or unnecessary will depend upon the nature of the secret, the position of the parties and the extent of the disclosure ordered. However, it would be exceptional to prevent a party from access to information which would play a substantial part in the case as such would mean that the party would be unable to hear a substantial part of the case, would be unable to understand the reasons for the advice given to him and, in some cases, the reasons for the judgment. Thus what

> disclosure is necessary entails not only practical matters arising in the conduct of a case but also the general position that a party should know the case he has to meet, should hear matters given in evidence and understand the reasons for the judgment.

37 In *Roussel*, the defendant was seeking protection for a secret process for the manufacture of a chemical used as an insecticide, of which process was alleged to infringe the plaintiff's patent. Aldous J authorised disclosure to one person with sufficient technical expertise in the plaintiff's organisation. The confidential documents in question "were at the heart of an important part of the plaintiff's case". It was held that somebody in the plaintiff should have an opportunity to understand that part of the case and assist their independent advisers. Further, it was the right time procedurally since the case had reached the stage where the notice of experiments had to be finalised. Nevertheless, Aldous J imposed stringent precautions "to safeguard the defendants against any unnecessary risk of dissemination of their process". He limited the disclosure (a) to one person within the plaintiff's organisation, and (b) ordered that that person should not be involved in the parallel French litigation. One reason for the latter condition was the difficulty of obtaining satisfactory compensation if there was misuse abroad. He also required an undertaking from the plaintiffs that they would pay the defendants any sum which the court decided was due as a result of wrongful disclosure of the secret process. Aldous J's orders were affirmed by the English Court of Appeal.

38 *Roussel* was an early example of the establishment of a "confidentiality club" to address concerns surrounding the misuse of confidential information. Some two decades later, the applicable principles on confidentiality clubs were summarised in the subsequent English High Court decision in *IPCom GmbH & Co KG v HTC Europe Co. Limited and others* [2013] EWHC 52 (Pat) ("*IPCom*

1"), in which Floyd J referred to the judgment of Lord Dyson JSC in *Al Rawi v Security Service (Liberty intervening)* [2011] UKSC 34, [2012] 1 AC 531, [2012] 1 All ER ("*Al Rawi*") at [12]:

> … trials are conducted on the basis of the principle of natural justice. There are a number of strands to this. A party has a right to know the case against him and evidence on which it is based. He is entitled to have the opportunity to respond to any such evidence and to any submissions made by the other side. The other side may not advance contentions or adduce evidence of which he is kept in ignorance.

39 Lord Dyson however qualified at [64] of *Al Rawi* that there was a recognised exception to this rule:

> Similarly, where the whole object of the proceedings is to protect a commercial interest, full disclosure may not be possible if it would render the proceedings futile. This problem occurs in intellectual property proceedings. It is commonplace to deal with the issue of disclosure by establishing 'confidentiality rings' of persons who may see certain confidential material which is withheld from one or more of the parties to the litigation at least in its initial stages. Such claims by their very nature raise special problems which require exceptional solutions. I am not aware of a case in which a court has approved a trial of such a case proceeding in circumstances where one party was denied access to evidence which was being relied on at the trial by the other party.

40 *IPCom 1* involved Fair, Reasonable And Non-Discriminatory ("FRAND") licensing and the application before Floyd J was concerned with whether particular individuals in IPCom should be permitted to inspect confidential licensing documents disclosed in the action by third parties pursuant to orders of the court. Floyd J held that access to the licensing documents in question was to be limited to only external experts, English lawyers, and Dr Sedlmaier (an external German lawyer with right of audience before the English Court). Floyd J excluded Mr Frohwitter and Mr Schoeller

(the two persons who ran IPCom) from having access to the licensing documents because *inter alia*:

(a) The case was still at the interim stage and it was not clear what part, if any, the documents would play in the case.

(b) The fact that the order may affect the interests of third parties is of importance. Both were very concerned that their confidential agreements could fall into the hands of IPCom.

(c) The confidential information, once given to Messrs Frohwitter and Schoeller cannot be unlearned by them. Floyd J stated that whilst not inevitable, there is a real risk that it will prove of value in licensing IPCom's portfolio, and they will not in practical reality be able to avoid its use. Indeed, Floyd J at [34] stated that he took into consideration the fact that IPCom's entire business was concerned with licensing patents and it was not a case in which the individuals within the party would not be unable to understand the documents or make contributions to the case. It seemed to him that it contributed to the risk that the documents would give IPCom an unfair advantage in the marketplace.

(d) Floyd J did not accept that it was necessary in order to do justice, at that stage at least, for the individuals within IPCom's internal management team to conduct the free-ranging review of the disclosure documents.

41 Notably, in *IPCom 1* at [31(i)] and [32(iii)], Floyd J described secret processes as belonging to the "high end of the scale" of confidentiality, which once learned, could not be unlearned. Another factor that Floyd J took into

account in *IPCom 1* was the structure and organisation of the receiving party. At [33], Floyd J opined that:

> This is an unusual case, at least in the field of patent litigation in this country, in that IPCom is a very small company in terms of personnel. In a larger corporation than IPCom there would be individuals who could be given the confidential information at the interim stage on the basis that they did not play any part in commercial negotiations. That does not mean that IPCom should be treated differently in the end. But it does mean that the balance has to be struck in a different way at this stage.

42 After *IPCom 1* came the case of *IPCom GmbH & Co KG v HTC Europe Co. Limited and others* [2013] EWHC 2880 (Ch) ("*IPCom 2*"), which concerned the protection to be afforded to third party confidential computer source codes. The third parties in this case regarded the information as "the crown jewels" of their intellectual property assets. Roth J, at [47], said that he was sympathetic to the third parties' position such that a particularly tight confidentiality club should be imposed as regards these particular documents. The above show that the nature of the confidential material concerned and the potential for misuse would govern the degree of restrictions in the confidentiality club. After having heard arguments regarding the scope of the confidentiality club, Roth J at [48] ordered that the confidentiality club be restricted at that stage to one or two nominated experts and to identified individuals in IPCom's external English lawyers. Roth J however excluded Dr Sedlmaier because he did not think it was appropriate to include Dr Sedlmaier within the club. Roth J stated that as a foreign lawyer, Dr Sedlmaier was not an officer of the court; and he worked for the Frohwitter law firm of which one of the principals is Mr Frohwitter (who was one of the two who ran IPCom).

43 In *TQ Delta LLC v Zyxel Communications UK Ltd and another* [2018] EWHC 1515 (Ch); [2018] Bus LR 1544 ("*TQ Delta*"), Henry Carr J refused to

order an EEO confidentiality tier. He held at [21] that the authorities established that it would be exceptional to limit access to documents in the case to external eyes only, so that no representative from the receiving party that is subject to the restriction can see and understand those documents. Save for exceptional circumstances, Carr J disagreed with an external eyes tier approach, which he described as not "requir[ing] justification for the restriction by reference to individual documents. It enables one party to decide to exclude all representatives of the opposite party from access to *any* document that it chooses, and places the onus on the party seeking access to apply to court to obtain it". Nevertheless, Carr J observed that:

(a) Parties may choose to agree an external eyes only tier.

(b) Confidentiality club agreements are often essential in intellectual property cases, which cases require disclosure of confidential information. In such cases, a regime for disclosure which limits access to sensitive documents to specific individuals within one of the parties, in order to protect confidentiality, is now commonplace.

(c) Redactions to documents can be made to exclude material which is confidential and irrelevant to the dispute.

(d) External eyes only access to individual documents of peripheral relevance, whose disclosure would be damaging, may be justified in specific cases (*IPCom 1* was cited as an example).

(e) In certain exceptional cases, it was possible that external eyes only access to specific documents of greater relevance might be justified, at least at an interim stage.

(f) However, in the absence of exceptional circumstances, each party must be able to see and discuss with its lawyers the relevant parts of the key documents in the case.

44 Recently, the English Court of Appeal (Floyd LJ, with the agreement of Males and Lewis LJJ) took the opportunity to review the state of the law in relation to confidentiality clubs, in *OnePlus Technology (Shenzhen) Co., Ltd and other companies v Mitsubishi Electric Corp and another company* [2020] EWCA Civ 1562 ("*OnePlus*"). The case involved appeals concerned with the disclosure and inspection of commercially confidential agreements in the context of litigation about FRAND terms in a standard essential telecommunications patent case. It is noteworthy that Floyd LJ in *OnePlus* at [34] referred to Carr J's dicta in *TQ Delta* and said that:

> I agree that an external eyes only tier is exceptional. I also agree that it is wrong to place the onus on the receiving party to establish that a document is non-confidential. I do not agree, however, that an approach where *prima facie* highly confidential documents are first disclosed on an external eyes only basis is wrong in principle. The authorities establish that staged or progressive disclosure of confidential information is permissible.

45 Floyd LJ canvassed all relevant authorities and the following non-exhaustive list of key principles were distilled (in *OnePlus* at [39]):

(a) In managing the disclosure of highly confidential information in intellectual property litigation, the court must balance the interests of the receiving party in having the fullest possible access to relevant documents against the interests of the disclosing party, or third parties, in the preservation of their confidential commercial and technical information.

(b) An arrangement under which an officer or employee of the receiving party gains no access at all to documents of importance at trial will be exceptionally rare, if indeed it can happen at all.

(c) There is no universal form of order suitable for use in every case, or even at every stage of the same case.

(d) The court must be alert to the fact that restricting disclosure to external eyes only at any stage is exceptional.

(e) If an external eyes only tier is created for initial disclosure, the court should remember that the onus remains on the disclosing party throughout to justify that designation for the documents so designated.

(f) Different types of information may require different degrees of protection, according to their value and potential for misuse. The protection to be afforded to a secret process may be greater than the protection to be afforded to commercial licences where the potential for misuse is less obvious.

(g) Difficulties of policing misuse are also relevant.

(h) The extent to which a party may be expected to contribute to the case based on a document is relevant.

(i) The role which the documents will play in the action is also a material consideration.

(j) The structure and organisation of the receiving party is a factor which feeds into the way the confidential information has to be handled.

Whether the two-tier confidentiality regime should be granted

46 As stated earlier at [27], Salutica argued that there was little justification for onerous clauses to be included in the confidentiality club order because (a) the Confidential Documents, comprising of presentation slides or documents used for internal team collaboration, are unlikely to be technical in nature; and (b) some of the information contained in the Confidential Documents *may* already be in the public domain. I did not agree.

47 First, in my view, it would be speculative to conclude that just because the Confidential Documents were in the form of presentation slides or documents used for internal team collaboration, they would more likely consist of training or instructional material as opposed to actual technical evidence. Salutica had not shown any basis that Apple's averments in its supporting affidavit deposed to by Apple's authorised representative, Mr Andrew Stein, (that the Confidential Documents are technical documents that relate to its proprietary technology on how the Feature operates) were untrue.

48 I turn to Salutica's reliance on certain online articles (where various independent third parties have attempted to reverse engineer the Feature) and the reports filed by Apple Malaysia's expert, Dr Tal Lavian, (in the Malaysian Proceedings that were not sealed or subject to any confidentiality regime) to suggest that at least some aspects of the information that Apple claimed were confidential, may already be in the public domain. In this regard, it is important to carefully review Salutica's supporting affidavit deposed to by Mr Joshua Lim.

49 It is undisputed that Apple does not publicise information regarding how its proprietary technology works. Indeed, Mr Joshua Lim stated in his affidavit

stated that "Apple does not publicly publish in detail what information is transmitted or retrieved between the Apple Smart Device and iCloud that enables the Feature to operate" (at paragraph 11). The upshot is, even though Mr Lim's affidavit exhibited the three articles, there is nothing in the affidavit that definitively states that the articles are in fact correct nor does it state that Apple had confirmed the accuracy of the articles.

50 Mr Joshua Lim also referred to specific pages in Dr Lavian's reports at paragraph 21 of his affidavit, which is reproduced as follows:

> In Dr Lavian's Reports, Dr Lavian sets out and discusses the tests he purportedly conducted using various Apple devices and accessories.
>
> a. At paragraph 58 of Dr Lavian's Expert Report, Dr Lavian describes these tests as utilising tools and methodology to "*[trace] the data and information exchanged between Apple-branded Bluetooth device and Apple-branded smart electronic devices*".
>
> b. At paragraph 93 of Dr Lavian's Rebuttal Report, Dr Lavian further states that "[*t]he tests were designed to track the nature and direction of data transmitted to iCloud during device interactions*".
>
> c. Dr Lavian also sets out in both Dr Lavian's Expert Report (at paragraph 117 and Figure F-25) and Dr Lavian's Rebuttal Report (at paragraphs 93 and 95) his purported findings as to the data and information being shared between the Apple-branded smart electronic devices and the iCloud server.
>
> [emphasis in original]

51 After reviewing Dr Lavian's reports exhibited in Mr Joshua Lim's affidavit, I was satisfied that the said reports recorded the tests and experiments that Dr Lavian conducted on Apple devices and non-Apple devices to show non-infringement in the Malaysian Proceedings and that the reports did not contain Apple's confidential information on how the Feature operated. Quite clearly, if the reports did contain such confidential information, Mr Joshua Lim would

have deposed so in his affidavit. Tellingly, he stopped short of stating so in paragraph 21 of his affidavit reproduced above.

52 Indeed, at paragraph 23 of his affidavit, Mr Joshua Lim could only "pause to say that [Salutica] is not taking the position that any of the Articles or Dr Lavian's reports correctly or conclusively sets out what information is being transferred to and retrieved from iCloud by Apple Smart Devices". Based on the evidence contained in Mr Joshua Lim's affidavit or lack thereof, the fact of the matter is that Salutica could *not* take such a position. Accordingly, I gave little weight to Salutica's submission that at least some aspects of the information that Apple claimed were confidential, *may* already be in the public domain.

53 In the same vein, one of the grounds that Salutica put forth to object to the two-tier confidentiality regime was that the Confidential Documents are not likely to be so technical that Salutica's representatives could not form a view of their own on them. Even if they do not contain source code, it would be speculative to assume that the Confidential Documents are unlikely to contain technical content. Salutica had proposed Mr Joshua Lim and Mr Joel Lim as its representatives to be included in the confidentiality club and stated that they are likely to be able to comprehend the Confidential Documents. In his affidavit at paragraph 46, Mr Joshua Lim deposed that:

> … Although a lawyer by training, I have worked at [Salutica] in a non-legal capacity for almost 7 years. I was appointed as [Salutica's] deputy Chief Executive Officer ("CEO") in July 2018 and thereafter as [Salutica's] CEO from March 2020. During this period, I have gained a reasonably decent understanding of the technical aspects of the products that [Salutica] develops and sells. This includes the products that use Bluetooth connections. Additionally, Joel and I were intimately involved in the Malaysian Proceedings. As a result, we now some (sic) knowledge of the manner which Apple devices connect with

> accessories and to iCloud. This is through the tests that [Salutica] carried out in Malaysia in support of its case, and from reading the reports of each party's expert. It is therefore incorrect to say that Joel and I would not understand the Documents … I am reasonably sure that Joel and I will understand their contents, if necessary, with the help of Mr Bakalor.

54 I had no doubt that both Mr Joshua Lim and Mr Joel Lim had acquired a certain level of technical knowledge from their years working in Salutica as well as from their involvement in the Malaysian Proceedings. It would however be a stretch to suggest that they had acquired such a proficient level of technical expertise such that they would be qualified as experts in the field. Further, Mr Joshua Lim's affidavit did not state that either Mr Joshua Lim or Mr Joel Lim was the inventor of the Patent. Moreover, as I have stated earlier, the tests and experiments carried out in the Malaysian Proceedings did not reveal Apple's confidential information on how the Feature operated. Accordingly, this would, at Salutica's highest case, be a neutral point as I was unable to predict if Mr Joshua Lim and Mr Joel Lim would be able to understand the RCD especially since it was also uncertain as to whether the Confidential Documents contained technical data and information on the Feature.

55 Another ground in support of Salutica's objection to the two-tier confidentiality regime was that, as set out in its supporting affidavit, Salutica does not compete commercially with Apple because:

(a) Apple Inc. has a current approximate market capitalisation of some four trillion USD. Salutica is a subsidiary of Salutica Berhad whose current market capitalisation is around 89 million MYR. Salutica is not a company on the scale of Apple's principal competitors.

(b) Salutica does not compete meaningfully with Apple in the consumer goods space, or in any other category of electronics.

(c) Salutica does not currently manufacture products for any other major competitor of Apple in the consumer electronic space.

(d) Salutica does not operate an app store, offer any streaming music services or any payment services.

(e) The Salutica group is carrying out a "strategic pivot" from a consumer-electronics business to one that is more diversified, with a push into servers for data processing centres. The group is actively expanding into the automotive and medical sectors and reducing its dependency on lifestyle electronic products.

56 In response, Apple referred to Salutica's company profile contained in Salutica Berhad's website that stated: "Salutica specializes in designing, developing and manufacturing consumer and business electronic product development like Bluetooth stereo headsets, smart watches and precision light guides for optical touch screen system. Salutica is primarily an original design manufacturer, and its clients include major American, European, and Japanese electronics and information technology companies". Apple argued that Salutica is exactly the type of entity that can exploit Apple's confidential information to Apple's detriment. Salutica's business model is Business-to-Business ("B2B") and not Business-to-Consumer ("B2C"). B2B involves companies selling products or services to other companies whilst B2C involves companies selling directly to individual end-users.

57 In this regard, Apple made two points. First, once in Salutica's hands, the potential spread of Apple's confidential information could be very wide and across multiple jurisdictions. Second, it would be very difficult, if not impossible, to detect and trace any misuse, given that Salutica's main customer base as an OEM manufacturer is not end-users but companies. I accepted both points and noted, in particular, that, based on the authorities, difficulties of policing misuse would be a relevant factor for this Court's consideration.

58 I also agreed with Apple that it was not so much the point that Salutica does not compete meaningfully with Apple in the consumer goods space or commercially at the same scale as Apple. I accepted Apple's submission that the key point was whether Salutica can exploit the confidential information now or in the future. In Mr Joshua Lim's affidavit, Salutica does not dispute that it manufactures Bluetooth stereo headsets and smart watches — products in the same business spaces as the relevant Apple products (in particular, the Apple AirPods and Apple Watches). This meant that there remained a risk that Salutica could manufacture Bluetooth stereo headsets and smart watches with the Feature.

59 I further agreed with Apple that Mr Joshua Lim's averments in his affidavit (that (a) Salutica does not *currently* manufacture products for any other major competitor of Apple in the consumer electronic space; and (b) that the Salutica group is carrying out a "strategic pivot" from a consumer-electronics based business to one that is more diversified) would be cold comfort to Apple. Mr Lim, in his affidavit, did not conclusively state that: (a) Salutica is no longer offering consumer electronics and lifestyle electronic products, which will include Bluetooth headsets and smartwatches; or that (b) Salutica or its affiliates will never pivot back to a consumer-electronic based business.

60 The next ground in support of Salutica's objection to the two-tier confidentiality regime was that its counsel would not be able to take instructions, and Salutica's conduct of the Suit would be severely prejudiced. In Mr Joshua Lim's affidavit, he explained that under the terms of the confidentiality club, Salutica's counsel would not be able to explain the contents of the RCD to Salutica, and this would include the implications of the RCD on Salutica's case, and whether they expose weaknesses in its position. Mr Lim added that this would place Salutica in the untenable position of potentially maintaining the Suit and incurring costs without ever being made aware of adverse evidence. In its written submissions dated 6 January 2026, Salutica submitted that such an outcome would not only be contrary to the principles of natural justice but would also undermine the efficient use of court resources and the expeditious resolution of proceedings set out in O 3 r 1 of the ROC (at paragraph 31).

61 Apple responded with the following three points:

(a) In every case that Apple had cited where EEO was ordered, the parties and/or the Court would have considered that an EEO order would mean that the solicitors would not be able to discuss any of the confidential information with their clients and take instructions. Despite that, the Court in those cases still saw it fit to make an EEO order because the alleged prejudice suffered by the solicitors being unable to take instructions cannot outweigh the actual prejudice suffered by the disclosing party once the receiving party's representatives have sight of the confidential information.

(b) In patent matters concerning issues of technical infringement, the Court hears evidence from only experts. It makes no sense why it is necessary for any of Salutica's representatives to have access to the RCD so that they can give instructions. A vague reference to "instructions" is simply not enough.

(c) In the Malaysian Proceedings, Salutica's representatives were also entirely excluded from the confidentiality club. Despite this, Salutica was perfectly able to proceed to trial in Malaysia on that basis. There is no reason why Salutica cannot do the same in Singapore.

62 In respect of this point, I favoured Apple's submissions over those of Salutica's. It is appropriate at this juncture to reiterate Floyd LJ's dicta in *OnePlus* where he disagreed with Carr J in *TQ Delta* that "an approach where *prima facie* highly confidential documents are *first* disclosed on an external eyes only basis is wrong in principle" [emphasis added]. Floyd LJ stated that the "authorities establish that staged or progressive disclosure of confidential information is permissible". Likewise, in *Warner-Lambert*, Buckley LJ held that in a highly technical case where the party could not form a view of his own even with the help of his expert, the "court might well be justified in directing disclosure of allegedly secret material only to expert or professional agents of the party seeking discovery on terms they should not, without further order, pass on any information so obtained to the party himself or anyone else, but *should merely advise him in the light of the information so obtained*" [emphasis added]. Clearly, Buckley LJ held the view that the EEO will still be able to advise the party accordingly even if the EEO cannot convey the confidential information to the party. Buckley LJ went on to state (at 360):

> Even where the information is of a kind the significance of which the party would himself be able to understand, it may nevertheless be just to exclude him, at any rate *during the interlocutory stages of the action*, from knowing it if he is a trade competitor of his opponent". [emphasis added]

63 Lord Dyson JSC in *Al Rawi* similarly stated that "trials are conducted on the basis of the principle of natural justice" but qualified that there was a recognised exception in that it was "commonplace to deal with the issue of disclosure by establishing 'confidentiality rings' of persons who may see certain confidential material which is withheld from one or more of the parties to the litigation *at least in its initial stages*" [emphasis added]. The authorities discussed above demonstrate that in exceptional cases, it was possible that an EEO tier/ access to specific documents of greater relevance might be justified, at least at an early stage of the action. I was of the view that this was one such exceptional case.

64 From Apple's perspective, the whole point of this entire exercise was to disclose the Confidential Documents to the EEO so that the EEO can determine that the process that Apple uses to operate the Feature is different from that in the Patent. The EEO (comprising of PL and Salutica's expert, Mr Bakalor) can then provide Salutica with their opinion on whether the Feature infringed the Patent. In my view, this opinion can be provided to Salutica without revealing any confidential information on Apple's proprietary technology. If the opinion states no infringement, Salutica can then decide whether to withdraw the Suit. If the opinion says otherwise, the proceedings will simply continue and as it progresses towards trial, there will "*sooner or later*" be "*a staged or progressive disclosure of confidential information*" (see *Warner-Lambert* at 360), *eg*, upon Salutica's application for a variation of the confidentiality club order. Given that parties have only completed the voluntary production of documents, this case is still in its early stages. In view of the above, Salutica's arguments on any alleged breach of the rules of natural justice or prejudice suffered by Salutica in the conduct of the Suit would fall away. Hence, contrary to Salutica's submission,

I held the view that proceeding with the two-tier confidentiality regime could achieve the following Ideals as set out in O 3 r 1 of the ROC:

(a) expeditious proceedings;

(b) efficient use of court resources; and

(c) fair and practical results suited to the needs of the parties.

65 The last ground in support of Salutica's objection to the two-tier confidentiality regime was that, based on the authorities, Apple had not met the threshold required to exclude Salutica's representatives from access to the Confidential Documents. In its further submissions dated 4 March 2026, Salutica added that based on the English authorities, a party's representative should be granted access unless (a) the documents are of peripheral relevance to issues in the party's case, or (b) the information is highly technical and/or disclosure may be damaging, such as source code. Salutica submitted that as it is not in dispute that the Confidential Documents are material to the heart of Salutica's case, and the disclosure of source code had expressly been excluded, the authorities are clear that Salutica's representatives should be given access.

66 The cases are clear. There is no universal order suitable for every case. Each case must be decided on its own facts and circumstances. In managing the disclosure of highly confidential information in intellectual property litigation, the court must balance the interests of the receiving party (in this case, Salutica) in having the fullest possible access to relevant documents against the interests of the disclosing party (Apple), or third parties, preserving their confidential commercial and technical information. I set out below the factors that tilted the

balance in favour of Apple's proposed two-tier confidentiality regime. I am guided by the list of key principles espoused in *OnePlus* at [45] above.

67 First, it is common ground that the type of information in question in this case pertains to Apple's secret process on how the Feature operates. As Floyd J (as he then was) stated in *IPCom 1*, secret processes belong to the "high end of the scale" of confidentiality. The protection to be afforded to a secret process ought to be greater than the protection to be afforded to other types of confidential information where the potential for misuse is less obvious.

68 Second, I considered both Apple's interests as well as the interests of other third parties. Any leakage (inadvertent or otherwise) of Apple's technology would make it vulnerable to exploitation and misuse. I found Apple's submission on security concerns to be forceful. If a party learns about how Apple products connect to Apple accessories, they could exploit the information which increases the risk to Apple devices' security protocols. That would not only cause Apple to suffer severe consequences but also pose a threat to Apple's customers (billions worldwide) who use, rely and depend on the security of Apple devices. In today's context where online scams and cyber-hacks are increasingly prevalent, security for one's mobile phone or devices cannot be overstated. This is therefore an important factor that I gave due weight to. Salutica did not provide any meaningful rebuttal to this point.

69 Third, I mentioned earlier at [57] above that I accepted the point on difficulties in policing misuse as it would be very difficult, if not impossible, to detect and trace any misuse, given that Salutica's B2B business model deals with companies, and not end-users. This was particularly so where the receiving party to whom the process is disclosed might not be resident within the

jurisdiction of the court. Indeed, according to Salutica Berhad's website, Salutica is a Malaysian company headquartered in the city of Ipoh, Perak. These two factors, according to Buckley LJ in *Warner-Lambert*, should make the court particularly careful not to expose the defendant to any unnecessary risk of their trade secrets leaking to any competitors.

70 Fourth, I came to the view that neither Mr Joel Lim nor Mr Joshua Lim ought to have access to RCD *via* the EEO tier, because I agreed with Apple that both of them have a significant vested interest in the Suit and have direct control over Salutica's business. Confidential information, once learned, cannot be unlearned. It would be too much of a risk to expect that they can shut out completely from their minds anything learned from the RCD. However, having either Mr Joel Lim or Mr Joshua Lim or both included in the second GCD tier would, in my view, be a suitable compromise. Any alleged prejudice to Salutica would be significantly mitigated. Either executive would at least have access to the GCD and would arguably be able to understand the big picture as the proceedings progress. This is not a situation in which an officer or employee of the receiving party gains no access at all to documents.

71 Fifth, if an external eyes only tier is created for initial disclosure, the onus remains on Apple throughout to justify that designation for the documents (RCD or GCD) so designated. As stated earlier, the proposed confidentiality order did provide for a mechanism for Salutica to apply to court to challenge Apple's designation of any document. In my view, there would be sufficient safeguards in place.

72 Sixth, the case is still at an early stage. It was not clear what part, if any, the Confidential Documents would play in the case. There was also no guarantee

it would go to trial. To allow inspection and full access of the Confidential Documents (including RCD) to Salutica's representatives could inflict unnecessary harm on Apple and Apple users.

73 Finally, the structure and organisation of Salutica is a factor in favour of the two-tier confidentiality regime. According to Salutica Berhad's website, Salutica has approximately 550 employees and has a Build-Up Area of 30,023 square meters. Its parent, Salutica Berhad, was listed on the ACE Market on 18 May 2016 before it transferred to the Main Market of Bursa Malaysia Securities Berhad on 24 March 2017. From the foregoing, Salutica is by no means a small company. In this regard, apart from Mr Joshua Lim and Mr Joel Lim, Salutica did <u>not</u> suggest any other names to be its designated representatives for inclusion into the confidentiality club. In other words, my consideration was restricted to Salutica's Mr Joshua Lim and Mr Joel Lim only.

74 In light of the above, I concluded that this was an exceptional case which justified imposing a two-tier confidentiality regime at this early stage at least, *ie*, access to RCD should be limited to EEO only and access to GCD should be limited to EEO and either Mr Joel Lim or Mr Joshua Lim, as per Apple's latest proposal.

Whether the prosecution bar should be granted

75 The following passage in Douglas Campbell KC et al., *Terrell on the Law of Patents* (20th ed, Sweet & Maxwell 2024) at paragraph 21-384 (on additional restrictions such as prosecution bars) is instructive:

> From time to time a party seeks to impose additional restrictions on members of confidentiality clubs. For example, that the club member cannot participate in parallel proceedings in other jurisdictions, or cannot work in, file or prosecute

> patents in a particular field for a period of time. Such restrictions must be justified and whether they will be granted will depend on all the circumstances.

76 Accordingly, confidentiality orders must not impose greater restrictions than are necessary to protect the confidentiality of the documents concerned. The court must therefore carefully examine a claim that a document is so confidential that it justifies particular restrictions: the greater the restrictions sought, the more careful must be the scrutiny of the justification advanced for them.

77 Apple maintained that the prosecution bar is reasonable and necessary. In support, Apple adduced an additional authority, *Magnesium Elektron Ltd v Neo Chemicals & Oxides (Europe) Ltd and others* [2017] EWHC 2957 (Pat) ("*Magnesium Elektron*"), after the first hearing. *Magnesium Elektron* was a patent infringement matter relating to rare-earth mixed oxides ("REMO") where the English High Court ordered that the claimant's expert, Professor Chirstopher Hardacre, be permitted access to the defendant's confidential information on condition that he provide a confidentiality undertaking. One of the key terms of the confidentiality undertaking was that Professor Hardacre would not be allowed to work with the claimant (or its affiliated companies) in the field of REMO for a period of five years (see generally, *Magnesium Elektron* at [231] to [237]).

78 Apple submitted that *Magnesium Elektron* is a clear example of how the Court is willing to impose a restrictive covenant on recipients of confidential information. It was further submitted that the Court has to "balance the interests of enabling litigants to pursue genuine cases and instructing appropriately qualified experts to do so against the interests in preserving confidential

information of a party unwillingly required to disclose it for the purpose of the litigation" (*Magnesium Elektron* at [233]).

79 Apple claimed that all the factors fall in favour of the prosecution bar being ordered:

(a) Apples relied on the highly confidential nature of the Confidential Documents, as discussed above.

(b) Apple submitted that Salutica had described its expert, Mr Bakalor, in its Expert Witness Template filed on 15 October 2025, as being presently the President and Chief Technology Officer of onceLabs LLC, a software development consultancy. His work experience at onceLabs LLC was described as the provision of "architectural guidance, technical leadership and consulting", "system design and implementation", "engineering lead" and delivering solutions. In Mr Joshua Lim's affidavit, he also described Mr Bakalor's work as involving the "carrying out (among other things) of consulting and implantation of wireless pairing and connection technologies". Apple surmised that none of these appear to deal directly with the drafting, prosecution or acquisition of patents. To the best of the Apple's knowledge, none of the solicitors from PL involved in the Suit have an active patent prosecution practice. There was also no evidence that PL was or will be involved in "due diligence exercises for an unrelated client acquiring patents relating to the connection of multiple wireless communications". Apple submitted that, therefore, the risk (if any) of PL's day to day work being affected by the prosecution bar would be negligible.

(c) Apple submitted that the duration of the prosecution bar proposed (being "up to the expiry of six months after the conclusion of the Suit, including appeals") is reasonable. Apple stated that this period is far shorter than the five-year period ordered in *Magnesium Elektron*.

80 The exact wording of Apple's latest proposed prosecution bar is set out in [24] above. Salutica noted that since the first hearing, Apple had further narrowed the restrictive covenant *inter alia* to covering "the pairing or connection of multiple wireless devices for communication *via Bluetooth*" [emphasis added]. Salutica asserted that the revised wording is still too broad. The intention of the restrictive covenant appears to prevent the specified persons in the EEO from filing and obtaining, or enabling a third party to obtain, a patent application claiming part of or all of Apple's confidential information. Salutica stated that the specific method used by Apple that allegedly infringes the Patent involves the transmission and retrieval of specific information to and from iCloud which is Apple's proprietary cloud storage. Salutica contended that the current wording of the restrictive covenant does not even mention of any use of iCloud or any cloud storage for connection.

81 As the restrictive covenant is overly broad, PL or Mr Bakalor might have to turn down future work even if the said work might have nothing to do with the Feature, and Salutica was therefore concerned that the restrictive covenant may cause one or both of PL or Mr Bakalor to have to reconsider their involvement in the Suit. Salutica also contended that any breach on the part of PL or Mr Bakalor would be easily detectable without the use of a restrictive covenant. All patent applications have to be published before grant. Salutica submitted that Apple would easily find out and would be able to take any action necessary to protect its rights. Salutica therefore asserted that it is highly

unlikely that either PL or Mr Bakalor will draft and file a patent containing Apple's confidential information when such a flagrant breach would be so easily detected.

82 Lastly, Salutica argued that *Magnesium Elektron* does not assist Apple. Apple contended that in *Magnesium Elektron*, the parties had agreed on the imposition of a restrictive covenant; the Court was only asked to determine whether a wider or narrower restriction was more appropriate (*Magnesium Elektron* at [234]) and the question as to whether it was appropriate in principle to impose a restrictive covenant in the first place was not considered by the Court. Salutica also stated that the restrictive covenant permitted in *Magnesium Elektron* was narrow; it restricted the expert in that case from working with specified parties in a specific field. Salutica added that, in contrast, the restrictive covenant proposed by Apple would prevent the specified persons from working with any party in relation to a subject matter that goes beyond what Apple claimed was its confidential information.

83 In this regard, I agreed with Salutica's submissions. I would just add that I considered Apple's specific submissions at [79(b)] above to be double-edged. To explain, if none of Mr Bakalor's existing work appear to deal directly with the drafting, prosecution or acquisition of patents and if none of the solicitors from PL have an active patent prosecution practice, these would then beg the question of why it would even be necessary to impose a prosecution bar.

84 In the premises, I found that, all in all, there was no need for the proposed prosecution bar as it was unnecessary and overly broad.

Costs

85 I made no order as to costs because:

(a) In respect of the five issues that were resolved, the parties attended the first hearing, went away for further negotiations and managed to resolve those issues on their own. Accordingly, I found that the appropriate costs order in that regard would be for Salutica and Apple to bear their own respective costs; and

(b) Both of the contested issues were novel and equally important. There was also some overlap in terms of the highly confidential nature of the Confidential Documents. As I had ruled in favour of each party on one of the two contested issues, I found that the appropriate order would be for each party to bear its own costs and I so ordered.

Conclusion

86 For all the above reasons, I granted the Application to the extent that the confidentiality club be formed on agreed terms:

(a) With the proposed two-tier confidentiality regime, *ie*, access to RCD should be limited to EEO only and access to GCD should be limited to EEO and either Salutica's Mr Joel Lim or Mr Joshua Lim; and

(b) Without the proposed prosecution bar.

Kenneth Choo
Assistant Registrar

Lauw Yu An, Nicholas Lynwood, Ching Pu Fang and Kwek Shu En, Annabel (Premier Law LLC) for the claimant;
Tony Yeo Soo Mong, Javier Yeo and Loo Fang Hui (Drew & Napier LLC) for the defendant.