

1 PAUL J. ANDRE (State Bar No. 196585)
2 pandre@kramerlevin.com
3 LISA KOBIALKA (State Bar No. 191404)
4 lkobialka@kramerlevin.com
5 JAMES HANNAH (State Bar No. 237978)
6 jhannah@kramerlevin.com
7 KRISTOPHER KASTENS (State Bar No. 254797)
8 kkastens@kramerlevin.com
9 KRAMER LEVIN NAFTALIS & FRANKEL LLP
10 990 Marsh Road
11 Menlo Park, CA 94025
12 Telephone: (650) 752-1700
13 Facsimile: (650) 752-1800
14
15 *Attorneys for Plaintiff*
16 FINJAN, INC.

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 FINJAN, INC., a Delaware Corporation,

16 Plaintiff,

17 v.

18 JUNIPER NETWORKS, INC., a Delaware
19 Corporation,

20 Defendant.
21
22
23
24
25
26
27
28

Case No.: 3:17-cv-05659-WHA

**PLAINTIFF FINJAN, INC.'S
ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL**

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 26(c), Civil Local Rules 7-11 and 79-5, Plaintiff, Finjan, Inc. (“Finjan”), brings this Administrative Motion to File Under Seal. There are compelling reasons to file the following documents identified below under seal, because they contain (1) confidential information of Juniper Networks, Inc. (“Juniper”), (2) the parties’ licensing/settlement negotiations that are within the ambit of Rule 408 of the Federal Rules of Evidence; and (3) confidential terms in license/settlement agreements between Finjan and Finjan’s licensees. *See* Declaration of A. Manes in support of Finjan’s Administrative Motion (“Manes Decl.”).

II. ARGUMENT

Finjan’s Administrative Motion to File Documents Under Seal should be granted because there are compelling reasons as identified below to seal the portions of the documents identified below:

Documents sought to be sealed	Portions sought to be sealed	Designating party	Reasons for sealing
Plaintiff Finjan Inc.’s Opposition to Juniper’s Motion for Summary Judgment (“Opposition”)	Highlighted portions at p. 5, ll. 3-6, 25-27; p. 6, ll. 1-18; p. 14, ll. 27-28; p. 15, ll. 13-28; p. 16, ll. 1-5, 15-17, 20-23; p. 17, ll. 13-20; p. 18, ll. 2-6, 9-15; p. 19, ll. 2-19, 25-27; p. 20, ll. 1-6, 11-27; p. 21, ll. 1-23; p. 22, ll. 23-27; p. 23, l. 1; p. 35, ll. 14-22; p. 36, ll. 1-11; p. 37, ll. 8-27; p. 38, ll. 1-2; p. 39, ll. 22-24; p. 40, ll. 5-15.	Juniper and/or Finjan	The highlighted portions contain (1) Juniper’s confidential information; (2) the parties’ licensing/settlement negotiations that are within the ambit of Rule 408 of the Federal Rules of Evidence; (3) confidential terms in license/settlement agreements between Finjan and Finjan’s licensees. <i>See</i> Manes Decl. at ¶ 3; <i>see also</i> below.
Declaration of Dr. Michael Mitzenmacher in Support of Finjan’s Opposition (“Mitz Decl.”)	Highlighted portions at p. 14, l. 20 – p. 15, l. 10; p. 15, l. 13 – p. 16, l. 10; p. 16, l. 27 – p. 17, l. 25; p. 18, ll. 20-21; p. 18, l. 26 – p. 19, l. 4; p. 19, ll. 7-21; p. 20, l. 13- p. 21, l. 15; p. 22, l. 10 – p. 23, l. 14; p. 25, ll. 16-24; p. 26, l. 9 – p. 27, l. 20; p. 27, l.	Juniper	The highlighted portions contain Juniper’s confidential information. <i>See</i> Manes Decl. at ¶ 4; <i>see also</i> below.

	22 – p. 28, l. 8; p. 28, ll. 10-23; p. 29, l. 16 – p. 32, l. 2; p. 32, ll. 8-13; p. 33, ll. 9-16; p. 33, ll. 22-24		
Declaration of Kristopher Kastens in Support of Opposition (“Kastens Decl.”)	Highlighted portions at p.1, l. 14; p. 2, ll. 8-9, 14, 27.	Juniper	The highlighted portions contain Juniper’s confidential information. <i>See</i> Manes Decl. at ¶ 5; <i>see also</i> below.
Exs. 2, 4, 5, 7, 12, 14-17, 19, 21-22, 46, 49 to Kastens Decl.	Entirety	Juniper	Identified exhibits contain Juniper’s confidential information. <i>See</i> Manes Decl. at ¶ 6; <i>see also</i> below.
Exs. 25-34, 36-40, 42-43 to Kastens Decl.	Entirety	Finjan	Identified exhibits contain (1) the parties’ licensing/settlement negotiations that are within the ambit of Rule 408 of the Federal Rules of Evidence; (2) confidential terms in license/settlement agreements between Finjan and Finjan’s licensees. <i>See</i> Manes Decl. at ¶ 7; <i>see also</i> below.

As set forth in the accompanying Declaration of Austin Manes in support of Finjan’s Administrative Motion to File under Seal, the above identified documents contain confidential information of Juniper, Finjan and/or third parties and should be sealed. Such confidential information includes: (1) Juniper’s confidential information; (2) Finjan’s information concerning confidential settlement negotiation subject to the Rule 408; (3) terms in confidential settlement agreements with Finjan’s licensees.

Portions of documents containing information that Juniper has designated as “Confidential,” “Highly Confidential – Attorneys’ Eyes Only,” or “Highly Confidential – Source Code” should be sealed because the prejudice to Juniper from the disclosure of this information to its competitors would likely outweigh any benefit of disclosing the information to the public. *See Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (“We conclude that Apple and Samsung have such an interest because they could suffer competitive harm if this information is made public, and the district court erred

1 by concluding otherwise. In particular, it seems clear that if Apple's and Samsung's suppliers have access
2 to their profit, cost, and margin data, it could give the suppliers an advantage in contract negotiations,
3 which they could use to extract price increases for components.”).

4 Similarly, highly confidential information related to the parties’ patent licensing/settlement
5 negotiations as well as Finjan and its third party licensees’ confidential terms of license/settlement
6 agreements should also be sealed because such information is within the ambit of Federal Rules of
7 Evidence Rule 408. Such licensing/settlement negotiations and confidential terms of license/settlement
8 agreements are specific to the unique financial and business circumstances of the negotiating parties at
9 that specific timeframe. Thus, there will be substantial prejudice to the parties and third parties’
10 respective business interests if the confidential license/settlement negotiations and/or confidential terms
11 of license/settlement agreements are disclosed publicly. Third parties may wrongfully attempt to utilize
12 the information disclosed in these negotiations or agreements for their advantage in other negotiations
13 with these parties, which can have an inappropriate and disproportionate impact on discussions around
14 future licensing matters for the parties. *See Thomas v. Magnachip Semiconductor Corp.*, No. 14-CV-
15 01160-JST, 2016 WL 3879193, at *7 (N.D. Cal. July 18, 2016) (finding compelling reason to seal
16 settlement agreement to avoid third parties from leveraging the information to negotiate special treatment
17 by the litigating parties).

18 Finally, the portions sought to be sealed here are narrowly tailored to include only “sealable
19 material,” as set forth in the accompanying Declaration of Austin Manes. To comply with Civil Local
20 Rule 79-5, Finjan has filed publicly the non-confidential portions of above identified documents.
21 Attached hereto are redacted and unredacted versions of the same documents.

22 **III. CONCLUSION**

23 For the foregoing reasons, Finjan respectfully requests that the Court grant its Administrative
24 Motion to File Documents Under Seal.

Respectfully submitted,

Dated: June 28, 2018

By: /s/ Kristopher Kastens

Paul J. Andre (State Bar No. 196585)

Lisa Kobialka (State Bar No. 191404)

James Hannah (State Bar No. 237978)

Kristopher Kastens (State Bar No. 254797)

KRAMER LEVIN NAFTALIS

& FRANKEL LLP

990 Marsh Road

Menlo Park, CA 94025

Telephone: (650) 752-1700

Facsimile: (650) 752-1800

pandre@kramerlevin.com

lkobialka@kramerlevin.com

jhannah@kramerlevin.com

kkastens@kramerlevin.com

Attorneys for Plaintiff

FINJAN, INC.