

1 PAUL ANDRE (State Bar No. 196585)
pandre@kramerlevin.com

2 LISA KOBIALKA (State Bar No. 191404)
lkobialka@kramerlevin.com

3 JAMES HANNAH (State Bar No. 237978)
jhannah@kramerlevin.com

4 KRISTOPHER KASTENS (State Bar No. 254797)
kkastens@kramerlevin.com

5 **KRAMER LEVIN NAFTALIS**
6 **& FRANKEL LLP**

7 990 Marsh Road
8 Menlo Park, CA 94025
9 Telephone: (650) 752-1700
10 Facsimile: (650) 752-1800

11 *Attorneys for Plaintiff*
12 FINJAN, INC.

IRELL & MANELLA LLP

Jonathan Kagan (166039)
jkagan@irell.com
Joshua Glucoft (301249)
jglucoft@irell.com
Casey Curran (305210)
ccurran@irell.com
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Telephone: (650)752-1700
Facsimile: (650)752-1800

Rebecca Carson (254105)
rcarson@irell.com
Kevin Wang (318024)
kwang@irell.com
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660
Telephone: (949)760-0991
Facsimile: (949)760-5200

Attorneys for Defendant
JUNIPER NETWORKS, INC.

13
14
15
16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 FINJAN, INC.,

20
21 Plaintiff,

22 v.

23 JUNIPER NETWORKS, INC.,

24 Defendant.

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

STIPULATED [PROPOSED]
PROTECTIVE ORDER [WITH]
COMPETING PROVISIONS]

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket
5 protections on all disclosures or responses to discovery and the protection it affords from public
6 disclosure and use extends only to the limited information or items that are entitled to confidential
7 treatment under the applicable legal principles. As set forth in Section 14.4 below, this Protective Order
8 does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth
9 the procedures that must be followed and the standards that will be applied when a party seeks
10 permission from the court to file material under seal.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
13 items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
15 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
16 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
18 their support staff).

19 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

21 2.5 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
24 CODE.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
26 manner in which it is generated, stored, or maintained (including, among other things, testimony,
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
28

1 in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
3 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
4 consultant in this action, (2) is not a past or current employee of a Party and (3) at the time of retention,
5 is not anticipated to become an employee of a Party or of a Party's competitor. These limitations do not
6 prevent Dr. Eric Cole from serving as an expert in this case based on the declaration he filed with the
7 Court on April 30, 2018 (Dkt. No. 76).

8 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
9 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-
10 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.
11 If a Producing Party designates non-technical, purely financial or license information as “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” the Receiving Party may challenge the non-
13 technical portions of that Information or Items as “CONFIDENTIAL” (defined in Section 2.2) under
14 Section 6 below.

15 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
16 sensitive “Confidential Information or Items” representing computer code (code that is compiled or
17 interpreted) and associated comments and revision histories, disclosure of which to another Party or
18 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
19 means.

20 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel
21 does not include Outside Counsel of Record or any other outside counsel.

22 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
23 not named as a Party to this action.

24 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
25 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
26 party or are affiliated with a law firm which has appeared on behalf of that party.

27 2.13 Party: any party to this action, including all of its officers, directors, employees,
28

1 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
3 this action.

4 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
5 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
6 retrieving data in any form or medium) and their employees and subcontractors.

7 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
9 CONFIDENTIAL – SOURCE CODE.”

10 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
11 Party.

12 3. SCOPE

13 The protections conferred by this Order cover not only Protected Material (as defined above), but
14 also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
15 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations
16 by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by
17 this Order do not cover the following information: (a) any information that is in the public domain at the
18 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
19 Receiving Party as a result of publication not involving a violation of this Order, including becoming
20 part of the public record through trial or otherwise; and (b) any information known to the Receiving
21 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality to the Designating Party.
23 Any use of Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
27 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
28

1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits
3 for filing any motions or applications for extension of time pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
6 Party that designates information or items for protection under this Order must take care to limit any
7 such designation to specific material that qualifies under the appropriate standards. To the extent it is
8 practical to do so, the Designating Party must designate for protection only those parts of material,
9 documents, items, or oral or written communications that qualify – so that other portions of the material,
10 documents, items, or communications for which protection is not warranted are not swept unjustifiably
11 within the ambit of this Order.

12 If it comes to a Designating Party’s attention that information or items that it designated for
13 protection do not qualify for protection at all or do not qualify for the level of protection initially
14 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
15 mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
22 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
23 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
24 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
25 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify
26 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
27 each portion, the level of protection being asserted.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.