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11
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12 JUNIPER NETWORKS, INC.

13
                 UNITED STATES DISTRICT COURT
14
              NORTHERN DISTRICT OF CALIFORNIA
15
                   SAN FRANCISCO DIVISION
16
   FINJAN, INC.,   )   Case No. 3:17-cv-05659-WHA
17   )
              Plaintiff,   )   **DECLARATION OF INGRID PETERSEN**
18   )   **IN SUPPORT OF JUNIPER NETWORKS,**
         vs.   )   **INC.'S ADMINISTRATIVE MOTION TO**
19   )   **FILE UNDER SEAL**
   JUNIPER NETWORKS, INC.,   )
20   )
              Defendant.   )
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1   **DECLARATION OF INGRID PETERSEN**

2   I, Ingrid Petersen, declare as follows:

3   1.   I am an attorney at the law firm of Irell & Manella LLP, counsel of record for Juniper

4   Networks, Inc. ("Juniper") in the above-captioned matter. I am a member in good standing of the

5   State Bar of California and have been admitted to practice before this Court. I have personal

6   knowledge of the facts set forth in this Declaration and, if called as a witness, could and would

7   testify competently to such facts under oath.

8   2.   I submit this declaration in support of Juniper's March 14, 2019, Administrative

9   Motion to File Under Seal.

10   3.   I am informed and believe that the right of the public to inspect and copy public

11   records "is not absolute" and that a court may seal confidential information disclosed during the

12   course of a legal proceeding. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

13   4.   Because Juniper's opposition concerns a dispositive motion, I understand that

14   Juniper needs to show a "compelling reason" for sealing a court record. *See Kamakana v. City &*

15   *Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). "Compelling reasons" exist to seal a record

16   when it might "become a vehicle for improper purposes," such as the "release of trade secrets." *Id.*

17   (quoting *Nixon*, 435 U.S. at 1179).

18   5.   It is my understanding that the Ninth Circuit has defined trade secrets as "any

19   formula, pattern, device or compilation of information which is used in one's business, and which

20   gives him an opportunity to obtain an advantage over competitors who do not know or use it." *In*

21   *re Elec. Arts, Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008) (quoting RESTATEMENT (FIRST) OF

22   TORTS § 757 cmt. b); *see also Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972).

23   6.   I also understand that Civil Local Rule 79-5 supplements the "compelling reasons"

24   standard. Under this rule, a party seeking to file under seal must submit "a request that establishes

25   that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise

26   entitled to protection under the law." *Id.* Additionally, "[t]he request must be narrowly tailored to

27   seek sealing only of sealable material." *Id.*

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7.   I am further informed that courts within the Northern District of California have concluded that "[c]onfidential source code clearly meets the definition of a trade secret . . . [and therefore] meets the 'compelling reasons' standard." *Fed. Trade Comm'n v. DIRECTV, Inc.*, No. 15-CV-01129-HSG, 2017 WL 840379, at *2 (N.D. Cal. Mar. 3, 2017) (second alteration in original) (quoting *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 6115623, at *2 (N.D. Cal. Dec. 10, 2012), *rev'd on other grounds*, *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013)); *see also Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2017 WL 1036652, at *3 (N.D. Cal. Mar. 17, 2017).

8.   I am informed and believe that there are "compelling reasons" for sealing the following:

Document	Portion to Be Sealed	Basis for Sealing	Designating Party
Juniper's Opposition to Finjan's Motion for Summary Judgment Regarding Infringement of Claim 1 of U.S. Patent No. 8,141,154 (the "Brief")	Portions of 20:11, 14; 28:10–15, 20; 30:22, 23, 24–28; 31:9, 32:16, 17; 34:3, 4, 5, 6, 8, 9; 35:1–6; 39:6–10, 13	Confidential Source Code	Juniper
Exhibit B to the Brief (excerpts of Michael D. Mitzenmacher's deposition)	Portions of 65:10; 66:1; 69:23; 78:5; 112:10, 24; 113:1, 11; 158: 21; 159:3, 4	Confidential Source Code	Juniper
Exhibit J to the Brief (excerpts of Juniper's source code)	Entire Exhibit	Confidential Source Code	Juniper
Declaration of Aviel D. Rubin in support of the Brief (the "Rubin Declaration")	Portions of ¶¶ 29, 31, 34, 35, 36, 54, 55, 56, 60, 61, 73, 78, 85, 92, 93, 98, 102, 103, 116; portions of footnote 2	Confidential Source Code	Juniper
Declaration of Frank Jas (the "Jas Declaration")	Portions of ¶¶ 7, 8, 9	Confidential Source Code	Juniper

9.   It is my understanding that the above documents disclose Juniper's confidential source code—the computerized instructions describing exactly how Juniper's products work.

10.   Additionally, I believe that Juniper has accumulated significant research and development costs, and this sensitive trade secret is the foundation of Juniper's highly proprietary

1   software. By permitting competitors to receive this information without also spending development

2   costs, public disclosure of Juniper's source code would materially impair Juniper's intellectual

3   property rights and business positioning.

4   11.   I am informed and believe that the disclosure of Juniper's source code would cause

5   serious competitive consequences and that Juniper takes numerous measures to maintain the secrecy

6   of this information. It is also my understanding that the protective order in this action, for instance,

7   details the significant lengths Juniper has taken to protect its source code. As the protective order

8   describes, "[t]he source code shall be made available for inspection on a PC which may be a laptop

9   PC and which may be provided without USB ports." Dkt. No. 149 at 13. Additionally, "[t]he

10   secured computer may be placed in a secured room without Internet access or network access to

11   other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion

12   of the source code onto any recordable media or recordable device." *Id.* Juniper has also

13   implemented strict screening procedures for visitors at its engineering campus.

14   12.   Also, I am informed and believe that publicly exposing the source code presents a

15   security risk. Because the source code is at the center of Juniper's network security products,

16   permitting the disclosure of the source code could significantly harm the users of Juniper's products.

17   13.   I, therefore, believe that "compelling reasons" exist for sealing the disclosure of

18   Juniper's highly confidential source code, and by seeking to seal only the portions that contain the

19   source code, Juniper's request is narrowly tailored.

20   Executed on March 14, 2019, at Newport Beach, California.

21   I declare under penalty of perjury under the laws of the United States of America that the

22   foregoing is true and correct to the best of my knowledge.

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24   */s/ Ingrid Petersen*
                                                Ingrid Petersen
25   *Attorney for Defendant*
                                                Juniper Networks, Inc.
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