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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.,)
17 Plaintiff,)
18 vs.)
19 JUNIPER NETWORKS, INC.,)
20 Defendant.)
21 _____)

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

**DECLARATION OF INGRID PETERSEN
IN SUPPORT OF JUNIPER NETWORKS,
INC.'S ADMINISTRATIVE MOTION TO
FILE UNDER SEAL**

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DECLARATION OF INGRID PETERSEN

I, Ingrid Petersen, declare as follows:

1. I am an attorney at the law firm of Irell & Manella LLP, counsel of record for Juniper Networks, Inc. (“Juniper”) in the above-captioned matter. I am a member in good standing of the State Bar of California and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I submit this declaration in support of Juniper’s April 11, 2019, Administrative Motion to File Under Seal.

3. Attached as Exhibit A is a true and correct copy of a chart of documents that Juniper requests the Court to seal or redact from Juniper’s filings.

4. Attached as Exhibit B is a true and correct copy of a chart of documents that Juniper requests the Court to seal or redact from Finjan’s filings.

5. I am informed and believe that the right of the public to inspect and copy public records “is not absolute” and that a court may seal confidential information disclosed during the course of a legal proceeding. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

6. I understand that “compelling reasons” exist to seal a record when it might “become a vehicle for improper purposes,” such as the “release of trade secrets.” *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Nixon*, 435 U.S. at 1179).

7. It is my understanding that the Ninth Circuit has defined trade secrets as “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 Fed. App’x 568, 569 (9th Cir. 2008) (quoting RESTATEMENT (FIRST) OF TORTS § 757 cmt. b); *see also Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972).

8. I also understand that Civil Local Rule 79-5 supplements the “compelling reasons” standard. Under this rule, a party seeking to file under seal must submit “a request that establishes that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise

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1 entitled to protection under the law.” *Id.* Additionally, “[t]he request must be narrowly tailored to
2 seek sealing only of sealable material.” *Id.*

3 9. I am further informed that courts within the Northern District of California have
4 concluded that “[c]onfidential source code clearly meets the definition of a trade secret . . . [and
5 therefore] meets the ‘compelling reasons’ standard.” *Fed. Trade Comm’n v. DIRECTV, Inc.*, No.
6 15-CV-01129-HSG, 2017 WL 840379, at *2 (N.D. Cal. Mar. 3, 2017) (second alteration in original)
7 (quoting *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 6115623, at *2 (N.D.
8 Cal. Dec. 10, 2012), *rev’d on other grounds, Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214
9 (Fed. Cir. 2013)); *see also Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2017 WL 1036652, at
10 *3 (N.D. Cal. Mar. 17, 2017).

11 10. It is my understanding that several of the documents in Exhibits A and B disclose
12 Juniper’s confidential source code—the computerized instructions describing exactly how Juniper’s
13 products work.

14 11. Additionally, I believe that Juniper has accumulated significant research and
15 development costs, and this sensitive trade secret is the foundation of Juniper’s highly proprietary
16 software. By permitting competitors to receive this information without also spending development
17 costs, public disclosure of Juniper’s source code would materially impair Juniper’s intellectual
18 property rights and business positioning.

19 12. I am informed and believe that the disclosure of Juniper’s source code would cause
20 serious competitive consequences and that Juniper takes numerous measures to maintain the secrecy
21 of this information. It is also my understanding that the protective order in this action, for instance,
22 details the significant lengths Juniper has taken to protect its source code. As the protective order
23 describes, “[t]he source code shall be made available for inspection on a PC which may be a laptop
24 PC and which may be provided without USB ports.” Dkt. No. 149 at 13. Additionally, “[t]he
25 secured computer may be placed in a secured room without Internet access or network access to
26 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion
27 of the source code onto any recordable media or recordable device.” *Id.* Juniper has also
28 implemented strict screening procedures for visitors at its engineering campus.

1 13. Also, I am informed and believe that publicly exposing the source code presents a
2 security risk. Because the source code is at the center of Juniper’s network security products,
3 permitting the disclosure of the source code could significantly harm the users of Juniper’s products.

4 14. I am informed and believe that some of Juniper’s source code was disclosed at trial.
5 However, I believe that Juniper seeks only to seal or redact the source code that the parties did not
6 publicly disclose.

7 15. Additionally, it is my understanding that the Ninth Circuit has determined that
8 confidential terms of patent license agreements, such as “pricing terms, royalty rates, and guaranteed
9 minimum payment terms,” satisfy the “compelling reasons” standard. *Elec. Arts*, 298 F. App’x. at
10 569-70 (holding district court erred by refusing to seal confidential licensing information under the
11 “compelling reasons” standard). As the Ninth Circuit noted, this information “plainly falls within
12 the definition of ‘trade secrets.’” *Id.* at 569.

13 16. I am informed and believe that several documents within Exhibits A and B contain
14 terms from Juniper’s confidential license agreements. And it is my understanding that these
15 documents disclose specific details such as pricing, types of payments, and scope of licenses.
16 Because the parties did not reveal these granular details at trial, they are still confidential. Should
17 third parties have access to this information, I am informed and believe that Juniper will enter
18 potential negotiations at a disadvantage.

19 17. Also, I understand that several documents in Exhibits A and B contain discussions
20 between Finjan and Cyphort regarding patent licensing/settlement negotiations. These discussions
21 fall under the protection of Federal Rule of Evidence 408 and the Nondisclosure Agreement between
22 Finjan and Cyphort.

23 18. I, therefore, believe that “compelling reasons” exist for sealing the documents
24 contained within Exhibits A and B. And by seeking to seal only the portions that contain the source
25 code, license agreements, or confidential negotiations, Juniper’s request is narrowly tailored.

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Executed this 11th day of April 2019, at Newport Beach, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Ingrid Petersen

Ingrid Petersen