United States District Court
For the Northern District of California

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6   IN THE UNITED STATES DISTRICT COURT

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8   FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10   FINJAN, INC.,   No. C 17-05659 WHA

11   Plaintiff,

12   v.   **ORDER ON ADMINISTRATIVE**
                                                      MOTIONS TO FILE UNDER SEAL
13   JUNIPER NETWORKS, INC.,

14   Defendant.
                                               /
15

16   Both parties have filed administrative motions to file under seal various briefs,

17   declarations, exhibits, and portions thereof submitted in connection with the second motion for

18   early summary judgment (Dkt. Nos. 368, 370, 389, 392, 396, 407, 414, 416). In our circuit,

19   courts start with a "strong presumption in favor of access" when deciding whether to seal

20   records. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation

21   omitted). To seal records in connection with a "dispositive" motion, or one "more than

22   tangentially related to the merits of a case," requires "compelling reasons supported by specific

23   factual findings that outweigh the general history of access and the public policies favoring

24   disclosure." *See id.* at 1178–79 (quotations and citations omitted); *see also Ctr. for Auto Safety*

25   *v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016).

26   Civil Local Rule 79-5 requires that administrative motions to file under seal be

27   accompanied by "[a] declaration establishing that the document sought to be filed under seal,

28   or portions thereof, are sealable." For example, "[t]he publication of materials that could result

in infringement upon trade secrets has long been considered a factor that would overcome [the]

1   strong presumption" in favor of access and provide compelling reasons for sealing. *Apple Inc.*

2   *v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011). Compelling reasons may also warrant

3   sealing for "sources of business information that might harm a litigant's competitive standing,"

4   especially where the public has "minimal interest" in the information because it "is not

5   necessary to the public's understanding of the case." *See Nixon v. Warner Commc'ns, Inc.*,

6   435 U.S. 589, 598 (1978); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1221–22

7   (Fed. Cir. 2013) (applying the law of our circuit). Furthermore, Civil Local Rule 79-5(b)

8   requires administrative motions to file under seal to "be narrowly tailored to seek sealing only

9   of sealable material."

10   With the foregoing principles in mind, the Court rules as follows. The parties shall file

11   unredacted versions of the relevant documents in comport with this order by **JUNE 7**.

12   *   *   *

13   **1.   FINJAN'S MOTION FOR SUMMARY JUDGMENT RE CLAIM 1 OF
              THE '154 PATENT (DKT. NO. 368).**

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DOCUMENT SOUGHT TO BE SEALED	**REQUESTED PORTION TO BE SEALED**	**RULING**	**REASONING**
Finjan, Inc.'s Second Motion for Early Summary Judgment Re Claim 1 of the '154 patent	Highlighted portions	**DENIED WITHOUT PREJUDICE.**	Juniper states that the highlighted portions at pages 4–6 and 9–25 "reflect the technical underpinnings and development of Juniper's highly proprietary software and contain much information that Juniper maintains as trade secrets" (Dkt. No. 373 ¶ 4). But the portions Juniper seeks to seal (which amount to at least half the brief) are clearly overbroad, particularly in light of the rulings below (where Juniper does not seek to seal similar information (*see, e.g.*, Dkt. No. 389)). Juniper has until **MAY 31** to file a narrowly tailored motion to seal, failing which Finjan shall file the unredacted version of this document by June 7.

Exhibits 2–6, 9–12, 14, 16, 18–20	Entirety	**GRANTED.**	Juniper states that these exhibits contain "highly confidential documents or source code" and that these documents "have never been made public and contain information related to the technical underpinnings and development of Juniper's highly proprietary software — which includes much information that Juniper maintains as trade secrets" (Dkt. No. 373 ¶ 3)
Mitzenmacher Declaration	Highlighted portions	**DENIED WITHOUT PREJUDICE.**	Juniper states that the highlighted portions at pages 4–33 of the Mitzenmacher declaration "reflect the technical underpinnings and development of Juniper's highly proprietary software and contain much information that Juniper maintains as trade secrets" (Dkt. No. 373 ¶ 4). Again, the portions Juniper seeks to seal (nearly the whole declaration) is clearly overbroad, particularly in light of the rulings below (where Juniper does not seek to seal similar information (*see, e.g.*, Dkt. No. 389)). Juniper has until **MAY 31** to file a narrowly tailored motion to seal, failing which Finjan shall file the unredacted version of this document by June 7.

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1 2.   **JUNIPER'S MOTION FOR SUMMARY JUDGMENT RE CLAIM 9 OF
2 THE '780 PATENT (DKT. NO. 370).**

DOCUMENT SOUGHT TO BE SEALED	REQUESTED PORTION TO BE SEALED	RULING	REASONING
Juniper's Motion for Summary Judgment	Highlighted portions	**DENIED.**	Finjan claims that this highlighted portion at p. 24, ll. 15–16, contains "confidential business and licensing practices — specifically the identification of Finjan's licensing practices and negotiations"; that if "such provisions were made public, it could negatively impact Finjan's bargaining positions in future licensing negotiations with competitors"; and "no public interest will be served by disclosing this information publicly" (Dkt. No. 375 ¶¶ 3–4). To the contrary, this portion goes directly to the issue of constructive notice, which is of strong public interest. Finjan's general assertion of potential public harm is insufficient to state compelling reason to seal this information.
Exhibit 6	Highlighted portions	**DENIED.**	Finjan claims that this highlighted portions at p. 48 ll. 2–25 and p. 49 ll. 1–19, contain confidential business and licensing practices (Dkt. No. 375 ¶¶ 3, 5). Denied for the same reasons stated above.
Exhibit 8	Highlighted portions	**DENIED.**	No supporting declaration filed as required under Civil Local Rule 79-5(e) (*see* Dkt. No. 375 ¶ 3).
Exhibit 9	Highlighted portions	**DENIED.**	Finjan claims that this highlighted portions at p. 88 ll. 3–4, contain confidential business and licensing practices(Dkt. No. 375 ¶¶ 3,6). Denied for the same reasons stated above.

Rubin Declaration	Highlighted portions	**GRANTED.**	Juniper states that the highlighted portions contain "confidential information that relate to the technical underpinnings and development of Juniper's highly proprietary software — which includes much information that Juniper maintains as trade secrets" (Dkt. No. 370-1 ¶ 9).

3. JUNIPER'S OPPOSITION TO FINJAN'S MOTION FOR SUMMARY JUDGMENT RE CLAIM 1 OF THE '154 PATENT (DKT. NO. 389).

DOCUMENT SOUGHT TO BE SEALED	REQUESTED PORTION TO BE SEALED	RULING	REASONING
Juniper's Opposition to Finjan's Motion for Summary Judgment	Portions of 20:11, 14; 28:10–15, 20; 30:22–28; 31:9, 32:16–17; 34:3–5, 6, 8–9; 35:1–6; 39:6–10, 13	**GRANTED.**	Juniper states that the highlighted portions contains confidential source code, which are Juniper's trade secrets (Dkt. No. 389-1 ¶¶ 8–12).
Exhibit B	Portions of 65:10; 66:1; 69:23; 78:5; 112:10, 24; 113:1, 11; 158:21; 159:3–4	**GRANTED.**	Juniper states that the highlighted portions contains confidential source code, which are Juniper's trade secrets (Dkt. No. 389-1 ¶¶ 8–12).
Exhibit J	Entirety	**GRANTED.**	Juniper states that the document contains confidential source code, which are Juniper's trade secrets (Dkt. No. 389-1 ¶¶ 8–12).
Rubin Declaration	Portions of ¶¶ 29, 31, 34–36, 54–56, 60–61, 73, 78, 85, 92–93, 98, 102–03, 116; footnote 2	**GRANTED.**	Juniper states that the highlighted portions contains confidential source code, which are Juniper's trade secrets (Dkt. No. 389-1 ¶¶ 8–12).
Jas Declaration	Portions of ¶¶ 7–9	**GRANTED.**	Juniper states that the highlighted portions contains confidential source code, which are Juniper's trade secrets (Dkt. No. 389-1 ¶¶ 8–12).

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