

1 IRELL & MANELLA LLP  
Jonathan S. Kagan (SBN 166039)  
2 jkagan@irell.com  
Alan Heinrich (SBN 212782)  
3 Joshua P. Glucoft (SBN 301249)  
jglucoft@irell.com  
4 1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067-4276  
5 Telephone: (310) 277-1010  
Facsimile: (310) 203-7199

6  
7 Rebecca L. Carson (SBN 254105)  
rcarson@irell.com  
Ingrid M. H. Petersen (SBN 313927)  
8 ipetersen@irell.com  
Kevin Wang (SBN 318024)  
9 kwang@irell.com  
840 Newport Center Drive, Suite 400  
10 Newport Beach, California 92660-6324  
Telephone: (949) 760-0991  
11 Facsimile: (949) 760-5200

12 *Attorneys for Defendant*  
JUNIPER NETWORKS, INC.

13  
14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 FINJAN, INC., ) Case No. 3:17-cv-05659-WHA  
18 )  
Plaintiff, ) **DEFENDANT JUNIPER NETWORKS,**  
19 ) **INC.'S ADMINISTRATIVE MOTION TO**  
vs. ) **FILE UNDER SEAL**  
20 )  
JUNIPER NETWORKS, INC., ) Judge: Hon. William Alsup  
21 )  
Defendant. )  
22 )  
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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Civil Local Rules 7-11 and 79-5, Defendant Juniper Networks, Inc. (“Juniper”) respectfully moves to file under seal the following:

Document	Portion to Be Sealed	Basis for Sealing	Designating Party
Mitzenmacher Declaration in support of Finjan, Inc.’s Second Motion for Early Summary Judgment Re Claim 1 of the ’154 Patent (Dkt. No. 368)	Portions of 10:26-27; 13:15-17, 20-21, 24-25; 15:22-24; 16:25-26, 28; 17:6, 9, 11-13; 20:4-7, 10-14, 16-24; 21:1, 3-11; 23:12-13, 16, 24; 24:13-15, 20, 22, 24-25; 25:1-6, 11-18, 22-28; 26:1, 5-9, 14, 17-19, 21-27; 27:1-4; 28:9-10, 13-28; 29:1-2, 4-5, 7-15; 30:10-11; 31:3, 14, 18-21, 24-25; 32:10-12, 14-16, 18-23, 25-26, 28; 33:1	Confidential Source Code	Juniper

This motion is based upon this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Kevin Wang (the “Sealing Declaration”); other evidence and arguments that the Court may consider; and all other matters of which the Court may take judicial notice.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Civil Local Rules 7-11 and 79-5 and in response to the Court’s May 29, 2019 Order (Dkt. No. 492) regarding Dkt. No. 368, Juniper hereby brings this administrative motion to file under seal Finjan’s disclosure of Juniper’s confidential source code in the Mitzenmacher Declaration filed in support of Finjan, Inc.’s Second Motion for Early Summary Judgment Re Claim 1 of the ’154 Patent.

It is well established that the right to inspect and copy judicial records is not absolute but rather is subject to a number of exceptions to guard against harmful use of sensitive materials. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006). Because the documents relate to a motion for summary judgment, the “compelling reasons” standard applies. *Id.*

1 at 1179. “‘Compelling reasons’ sufficient to outweigh the public’s interest in disclosure exist when  
2 court records might become a vehicle for improper purposes such as the use of records to gratify  
3 private spite, promote public scandal, circulate libelous statements, or release trade secrets.”  
4 *Demaree v. Pederson*, 887 F.3d 870, 884 (9th Cir. 2018) (internal quotations and alterations omitted)  
5 (quoting *Kamakana*, 447 F.3d at 1179). Under Ninth Circuit law, trade secrets are “any formula,  
6 pattern, device or compilation of information which is used in one’s business, and which gives him  
7 an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec.*  
8 *Arts, Inc.*, 298 Fed. App’x 568, 569 (9th Cir. 2008) (quoting RESTATEMENT (FIRST) OF TORTS § 757  
9 cmt. b); *see also Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972).

10 Civil Local Rule 79-5 supplements the “compelling reasons” standard. Under this rule, a  
11 party seeking to file under seal must submit “a request that establishes that the document, or portions  
12 thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the  
13 law.” *Id.* Additionally, “[t]he request must be narrowly tailored to seek sealing only of sealable  
14 material.” *Id.*

15 Courts within the Northern District of California have concluded that “[c]onfidential source  
16 code clearly meets the definition of a trade secret . . . [and therefore] meets the ‘compelling reasons’  
17 standard.” *Fed. Trade Comm’n v. DIRECTV, Inc.*, No. 15-CV-01129-HSG, 2017 WL 840379, at  
18 \*2 (N.D. Cal. Mar. 3, 2017) (second alteration in original) (quoting *Apple, Inc. v. Samsung Elecs.*  
19 *Co.*, No. 11-CV-01846-LHK, 2012 WL 6115623, at \*2 (N.D. Cal. Dec. 10, 2012), *rev’d on other*  
20 *grounds, Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013)); *see also*  
21 *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2017 WL 1036652, at \*3 (N.D. Cal. Mar. 17, 2017).

22 There are “compelling reasons” for sealing the redacted portions of the Mitzenmacher  
23 Declaration because it discloses Juniper’s confidential source code—the computerized instructions  
24 describing exactly how Juniper’s products work.

25 For its source code, Juniper has accumulated significant research and development costs,  
26 and this sensitive trade secret is the foundation of Juniper’s highly proprietary software. By  
27 permitting competitors to receive this information without also spending development costs, public  
28 disclosure of Juniper’s source code would materially impair Juniper’s intellectual property rights

1 and business positioning.

2           Because the disclosure of Juniper's source code would cause serious competitive  
3 consequences, Juniper takes numerous measures to maintain the secrecy of this information. The  
4 protective order in this action, for instance, details the significant lengths Juniper has taken to protect  
5 its source code. As the protective order describes, "[t]he source code shall be made available for  
6 inspection on a PC which may be a laptop PC and which may be provided without USB ports." Dkt.  
7 No. 149 at 13. Additionally, "[t]he secured computer may be placed in a secured room without  
8 Internet access or network access to other computers, and the Receiving Party shall not copy,  
9 remove, or otherwise transfer any portion of the source code onto any recordable media or  
10 recordable device." *Id.* Juniper has also implemented strict screening procedures for visitors at its  
11 engineering campus.

12           Perhaps most importantly, publicly exposing the source code presents a security risk.  
13 Because the source code is at the center of Juniper's network security products, permitting the  
14 disclosure of the source code could significantly harm the users of Juniper's products.

15           Accordingly, "compelling reasons" exist for sealing the disclosure of Juniper's highly  
16 confidential source code, and by seeking to seal only the portions that contain the source code,  
17 Juniper's request is narrowly tailored. In light of the foregoing reasons, Juniper respectfully requests  
18 that the Court issue an order sealing the disclosure of Juniper's source code in the documents  
19 identified above.

20 Dated: May 31, 2019

Respectfully submitted,

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By:           /s/ Kevin Wang            
Kevin Wang  
*Attorney for Defendant*  
Juniper Networks, Inc.

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