

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2016-00151
Patent 8,141,154 B2

Before, THOMAS L. GIANNETTI, MIRIAM L. QUINN, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

QUINN, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Motion to Seal and Entry of Protective Order
37 C.F.R. § 42.14 and 42.54

Finjan, Inc. (“Patent Owner”) filed a Motion for Entry of the Default Protective Order and to Seal Patent Owner’s Response and Exhibits 2007, 2008, 2010, 2011, and 2035. Paper 20 (“Patent Owner’s Motion,” “Mot.”), 1. Petitioner opposes Patent Owner’s Motion. Paper 23 (“Petitioner’s Opposition,” “Opp.”). Having reviewed the Motion, the documents sought to be sealed, Petitioner’s Opposition, and Patent Owner’s Reply,¹ we deny the Motion.

“There is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. The moving party bears the burden of showing that there is good cause for the relief requested, including why the information is appropriate to be filed under seal. 37 C.F.R. §§ 42.20, 42.54. The *Office Patent Trial Practice Guide* notes that 37 C.F.R. § 42.54 identifies confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 77 Fed. Reg. at 48,760. Until a motion to seal is decided, documents filed with the motion shall be sealed provisionally. 37 C.F.R. § 42.14.

¹ Paper 29 (“Reply”).

I. ALLEGED GOOD CAUSE

Patent Owner argues that the Patent Owner Response and identified exhibits contain “highly confidential information regarding internal research and development efforts of a third party.” Mot. 1. Patent Owner, however, fails to identify with specificity which portions of these documents disclose the alleged internal research and development efforts and who is the third party.² The exhibits subject to the Motion all appear to pertain, directly or tangentially, to Patent Owner’s efforts to show invention of the ’154 patent’s subject matter before the patent’s filing date.

Patent Owner’s Motion does not provide a particularized showing, for each document, as to what specific content constitutes the alleged confidential research and development. In this regard, we find that Patent Owner has failed to address why the public interest does not outweigh its alleged interest in protecting the alleged confidential information. This failure is particularly troubling with respect to the requested sealing of Patent Owner Response in its entirety. This Response is not limited to discussing evidence on the issue of prior making of the invention. The request for the Patent Owner Response to be filed entirely under seal is unavailing, especially when there is no showing that the information sought

² This statement in the Motion is confusing as it insinuates that Finjan Software is a third party. However, in the Reply, Patent Owner argues that Eitan Law Group is the third party. Reply 1. It is not apparent how the law firm’s email stating that the patent application was filed constitutes “information regarding internal research and development efforts of a third party.”

to be sealed constitutes “confidential research, development, or commercial information.”

As stated above, there is a presumption that the record of our proceedings, including documents and things, shall be made available to the public. 37 C.F.R. § 42.14. *See also Apple Inc. v. Samsung Electronics Co. Ltd.*, 727 F.3d 1214, 1221 (Fed. Cir. 2013)(courts have recognized a general right to inspect and copy public records and documents). Accordingly, Patent Owner bears the burden of showing that the information sought to be sealed is worthy of protection. Nowhere in Patent Owner’s Motion do we find any compelling reason to overcome this presumption.

Patent Owner’s claim of confidentiality is not supported by any credible evidence. Alleging that the information is in “internal documents” not made public is insufficient. The information may have been derived from non-public documents, but that alone does not make the information confidential research, development, or commercial information.

Patent Owner’s characterization of the information as “truly sensitive” or “research and development efforts and strategies” also is not persuasive. Patent Owner does not even attempt to show how the two already redacted emails, between the inventor and the prosecuting attorney (exhibits 2007 and 2008), reveal “research and development efforts and strategies.” Even under a generous view of Patent Owner’s claim of confidentiality, the emails, which are devoid of any substantive discussions, at best, are routine communications made in connection with the filing of the ’154 patent. We find no discussion, substance, or inference that could be drawn from the

contents regarding efforts and strategies in connection with research and development at Finjan.

In its Reply, Patent Owner makes a general allegation that there is no need for dissemination to the public of “personally identifiable information of individuals.” Reply 2. We are not persuaded by this assertion. Patent Owner has not identified what information arguably constitutes “personally identifiable information.” Patent Owner discloses no particular individuals whose personally identifiable information is in jeopardy of disclosure, or why this information is *per se* protectable without a showing of harm or even a further argument. Nor do we find that Patent Owner has addressed why it believes it has “standing” to seek protection for information from alleged “third parties.”

The whole request is very confusing, conclusory, and feebly tied to the Board’s requirements that the movant show with particularity the reasons for seeking information to be filed under seal. *See LG Electronics, Inc. v. ATI Technologies ULC* (PTAB April, 14 2016) (Paper 63) (addressing the requirement of identifying the information believed to be confidential, explaining the harm that would result from the disclosure, and balancing the needs of the party with the need for a complete public record).

II. DISCUSSION OF ALLEGED HARM

Patent Owner argues that “allowing competitors to access such confidential information would significantly harm Finjan’s competitive position in the marketplace.” Reply 2. The explanation provided for this alleged harm is generic, and circles back to the assertion of the information as “relating to Finjan’s research and development strategies and competitive

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.