

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner

v.

FINJAN, INC.,
Patent Owner

Patent No. 8,141,154

Inter Partes Review No. IPR2016-00151

**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION FOR
ENTRY OF THE DEFAULT PROTECTIVE ORDER AND TO SEAL
PATENT OWNER RESPONSE AND CERTAIN EXHIBITS UNDER 37
C.F.R. §§ 42.14 AND 42.54**

In accordance with 37 C.F.R. § 42.64, Petitioner hereby opposes Patent Owner's Motion for Entry of the Default Protective Order and to Seal Patent Owner Response and Exhibits 2007, 2008, 2010, 2011, and 2035 filed on August 31, 2016 in the above-captioned proceeding.

Patent Owner requests that a large and significant portion of these proceedings be hidden from the public, but the Motion to Seal only provides conclusory, vague, and threadbare assertions of confidentiality in support of such an expansive concealment of the record. A Motion to Seal must include facts and reasoning necessary for its meaningful consideration. *See Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, Case IPR2014-00736, pg. 2-3 (PTAB April 14, 2015) (Paper 38). Patent Owner fails to meet this standard and thus fails to meet its burden of persuasion. Petitioner requests that the Board decline to seal the Patent Owner response and other exhibits as requested thus maintaining the public availability of these proceedings.

A. Burden of Persuasion

There is a strong public policy interest in making all information filed in an *inter partes* review publically available. *See* 35 U.S.C. §316(a). In light of this policy, the Board has required that motions to seal be pled under a heightened burden of persuasion. Specifically, a Motion to Seal must provide particular information with respect to the information alleged to be confidential. *See LG*

Electronics Inc. v. ATI Technologies ULC, IPR2015-00325, pg. 4 (PTAB April 14, 2016) (Paper 63). First, the Board has required that the movant identify not just the information believed to be confidential and sought to be sealed, but also identify the need to rely on the allegedly confidential information. *Id.* Second, the movant must explain what adverse consequences and harm would result from public disclosure of each item of information sought to be sealed. *Id.* Third, the movant must balance all three: (1) the public's interest in maintaining a complete and understandable record, (2) the harm to a party, by disclosure of the supposedly confidential information, and (3) the need to rely specifically on the information at issue. *Id.* As discussed in detail below, Patent Owner's Motion to Seal either fails completely to address the above requirements or provides sparse and conclusory analysis, making meaningful consideration on the basis of the motion impossible.

B. Analysis

Patent Owner's Motion to Seal fails to adequately address any of the elements required in order to meet its burden of persuasion. Specifically, Patent Owner fails to identify with any particularity what material it regards as confidential or why it needs to rely on such information. It only conclusory states that there would be adverse consequences if the unidentified confidential information were to be made public without providing any reasoning. Finally,

Patent Owner fails to meaningfully balance the public's interest in maintaining a complete and understandable record.

First, Patent Owner does not particularly identify the information it believes is confidential, nor does it identify the need to rely on the allegedly confidential information as required under its burden of persuasion. Patent Owner alleges that its entire Patent Owner Response as well as the subject exhibits contains “highly confidential information of a third party¹,” but never identifies what information it considers confidential. *See* Motion at 2. For instance, Patent Owner seeks to have the entirety of its response sealed without identifying any specific portions of the Patent Owner response allegedly containing any confidential information. Patent Owner fails to engage in the required analysis with respect to the other exhibits it seeks to seal. Patent Owner points to a chart provided in their motion (reproduced below with annotation) and alleges that the chart outlines the confidential information in each exhibit. However, as shown below, Patent Owner's chart does nothing more than circularly repeat the allegation that each exhibit and the response contain highly confidential information; the chart provides no identification of said information.

¹ The “third party” that Patent Owner Finjan, Inc. refers to is Finjan Software, Ltd.

Filing/Exhibit	Content	Confidential Information
Paper __	Patent Owner Response	Contains highly confidential information regarding internal research and development efforts of a third party.
Exhibit 2007	Email Chain Re: Invention Disclosure	Contains highly confidential information regarding internal research and development efforts of a third party.
Exhibit 2008	Email Chain Re: Filing U.S. Patent Application No. 11/298,475	Contains highly confidential information regarding internal research and development efforts of a third party.
Exhibit 2010	Declaration of Dr. Marc Berger, Ph.D.	Contains highly confidential information regarding internal research and development efforts of a third party.
Exhibit 2011	Declaration of Yuval Ben-Itzhak	Contains highly confidential information regarding internal research and development efforts of a third party.
Exhibit 2035	Declaration of Dr. Nenad Medvidovic	Contains highly confidential information regarding internal research and development efforts of a third party.

Unsurprisingly, because it does not identify the specific information it regards as confidential, Patent Owner does not explain why it must rely on the “confidential” information as required under its burden of persuasion.

Second, with respect to the requirement that the movant explain what adverse consequences and harm would result from public disclosure, Patent Owner merely provides conclusory statements. For instance, Patent Owner without explanation alleges that public disclosure of the response and exhibits “would allow competitors to access information that would significantly harm its successor entities competitive position in the marketplace.” Motion at 3. Such vague

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