

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC. and
BLUE COAT SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2016-00159¹
U.S. Patent No. 8,677,494

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

¹ Case IPR2016-01174 has been joined with this proceeding.

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner, Finjan, Inc., (“Finjan”) hereby moves for entry of the Default Protective Order and to seal a certain Exhibit (referred to herein as the “Subject Exhibit”) which is identified below:

Filing/Exhibit	Content	Confidential Information
Exhibit 2048	Supplemental Declaration of S.H. Michael Kim, redacted portions at ¶ 8	Contains highly confidential information regarding Finjan’s confidential business and licensing practices, and other financial information.

I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (Paper 34 at 4-5, Mar. 14, 2013). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). In particular:

The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.

* * *

Confidential Information: The rules identify 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.

35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54; Office Trial and Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

The Subject Exhibit contains confidential information requiring that it be designated as “PROTECTIVE ORDER MATERIAL” under the Default Protective Order (attached hereto as Exhibit 2049). The Subject Exhibit contains highly confidential information and in particular, discusses and reveals confidential information regarding highly confidential internal information relating to Finjan’s licensing practices. The confidential information disclosed in the Subject Exhibit is also outlined in the chart above.

The sealing of the foregoing is of particular importance because the public disclosure of such “truly sensitive information” would impact Finjan’s competitive position in the market. In particular, the exposure of Finjan’s internal licensing efforts and strategies would allow competitors to access information that would significantly harm its successor entities competitive position in the marketplace.

Furthermore, and notwithstanding the foregoing, granting this Motion would not prejudice nor impact this underlying proceeding. The public’s interest in accessing the information requiring that the Subject Exhibit be sealed for the purposes of the patentability of the challenged claims is unquestionably

outweighed by the prejudicial effect and competitive harm of disclosing the above described confidential business information.

II. CERTIFICATION OF NON-PUBLICATION

To the best of Finjan's knowledge, the confidential information contained in the Subject Exhibit has not been made publically available.

III. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54

Finjan, in good faith, met and conferred with Petitioners regarding the scope of the Default Protective Order. Petitioners do not object to the entry of the Default Protective Order.

IV. PROPOSED PROTECTIVE ORDER

Finjan proposes that the Default Protective Order found in Appendix B of the Trial Practice Guide be entered. A copy of the Default Protective Order is concurrently filed herewith and attached hereto as Exhibit 2049. Petitioners do not object to the entry of the Default Protective Order.

V. CONCLUSION AND RELIEF REQUESTED

Accordingly, good cause exists to warrant entry of the Default Protective Order and to seal the Subject Exhibit from public disclosure.

Respectfully submitted,

Dated: January 24, 2017

/James Hannah/

James Hannah (Reg. No. 56,369)
Kramer Levin Naftalis & Frankel LLP
990 Marsh Road
Menlo Park, CA 94025
Tel: 650.752.1700 Fax: 650.752.1800

Jeffrey H. Price (Reg. No. 69,141)
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Tel: 212.715.7502 Fax: 212.715.8000

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Attorneys for Patent Owner

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