

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.
Petitioner

v.

CISCO SYSTEMS, INC.
Patent Owner

Case IPR2016-00309
Patent 7,224,668

PATENT OWNER'S MOTION TO SEAL DOCUMENTS

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I. INTRODUCTION

In conjunction with filing its Patent Owner Response, Patent Owner, Cisco Systems Inc. (“Cisco”), also submits this Motion to Seal and to Enter the Default Protective Order. Pursuant to the Protective Order, Cisco moves to seal several exhibits filed in connection with its Patent Owner Response. Specifically, Cisco seeks to seal the entirety of: Exhibit 2008 (declaration of Wayne Ogozaly); Exhibit 2009 (Cisco CoPP Specification); Exhibit 2010 (declaration of Laurie Wall); Exhibit 2011 (Cisco e-bill); Exhibit 2012 (declaration of David J. Thibodeau); Exhibit 2046 (Cisco’s Guidelines for Patent Attorneys); and Exhibit 2047 (exemplary prior conception claim chart). Cisco also seeks to seal portions of the Patent Owner Response.

Pursuant to 37 C.F.R. § 42.54(a), Cisco’s counsel attempted in good faith to confer with Arista’s counsel in an attempt to resolve any dispute regarding the entry of the Default Protective Order. Arista’s counsel did not respond to Cisco’s request.

II. ARGUMENT

In determining whether to grant a Motion to Seal, the Board must find “good cause” and “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.” 37 C.F.R. § 42.54(a); 77 Fed. Reg. 48756, 48760 (Aug. 14,

2012). As laid out in the *Office Trial Practice Guide*, the Board 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. 48756, 48760 (Aug. 14, 2012).

Cisco has designated Exhibits 2008-2012, 2046, and 2047 as for “the Board and Parties’ Eyes Only.” The first group of exhibits (2009, 2011, 2046, and 2047) contains Cisco’s financial and technical confidential business information. The second group of exhibits (2008, 2010, and 2012) are declarations referencing Cisco’s confidential business information.

As detailed below, portions of the Patent Owner Response and the above-referenced exhibits contain confidential information that fall squarely under 37 C.F.R. § 42.54 (a)(7). Accordingly, good cause exists for sealing these documents and granting this Motion.

A. Exhibits 2009, 2011, 2046, and 2047—Documents containing Cisco’s financial and technical confidential business information

The Board has good cause to issue an order to protect Cisco from disclosing the entirety of Exhibits 2009, 2011, 2046, and 2047.

Exhibit 2009 details Cisco’s confidential research and development into routers and switches protecting against denial-of-service (DoS) attacks (hereinafter the “CoPP Spec”). The CoPP Spec discloses the invention contained in U.S. Patent

7,224,668 (“’668 Patent”), and also contains other non-public technical information and project considerations, such as Cisco’s internal testing related to control plane policing. Cisco would be harmed if this technical specification were made public, because the document contains Cisco’s secrets related to widely used technology in the networking space in which Cisco competes.

Exhibit 2047 is a claim chart mapping the contents of the CoPP Spec to the elements of claims 7, 23, and 59 of the ’668 Patent. This document is confidential business information for the same reasons as Exhibit 2009 above.

Exhibit 2011 is Cisco’s invoice from Hamilton, Brook, Smith & Reynolds, PC (“Hamilton Brook”) for fees and costs incurred during the preparation and prosecution of the ’668 Patent. Cisco’s expenditures related to the prosecution of the ’668 application—or any application—is highly confidential, and reveals Cisco’s legal procedures and financial commitments, which would be harmful if revealed to third parties who could use that information against Cisco in the competitive marketplace.

Exhibit 2046 is Cisco’s Guidelines for Patent Attorneys. The document instructs Cisco’s outside counsel on every element of patent preparation and prosecution including legal and financial considerations. Making these guidelines public would harm Cisco because it would give third parties valuable insight into Cisco’s proprietary legal procedures for prosecuting patent applications and would

provide a tutorial on how Cisco derives value and competitive advantage from its IP.

Consequently, disclosure of any of these Exhibits effectively grants third parties an opportunity to peer into Cisco's proprietary financial or technical information. Thus, disclosure would confer competitive advantages to third parties at Cisco's sole detriment.

B. Exhibits 2008, 2010, and 2012—Declarations referencing Cisco's internal confidential business information

Exhibit 2008 is R. Waynes Ogozaly's declaration. Exhibit 2008 reveals the confidential details of conception and reduction to practice of the '668 Patent. Exhibit 2008 also references the confidential information disclosed in Exhibits 2009 and 2011 and should remain confidential for the same reasons as discussed in detail in Part II.A.

Exhibit 2010 is Laurie Wall's declaration authenticating the CoPP Spec, Hamilton Brook Invoice, and patent prosecution guidelines. Exhibit 2010 explains how Cisco maintains its billing records, guidelines, and technical documents, which are kept confidential because exposure to third parties could result in significant competitive harm to Cisco. Exhibit 2010 also references the confidential Exhibits 2009 and 2011 and should remain confidential for the same reasons as discussed in detail in Part II.A.

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