

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2018-00391
Patent 7,647,633

**PATENT OWNER'S MOTION TO SEAL CERTAIN EXHIBITS UNDER 37
C.F.R. §§ 42.14 AND 42.54**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Finjan, Inc., (“Finjan”) hereby moves to seal portions of certain exhibits (collectively referred to herein as the “Subject Exhibit”) to Finjan’s Opposition to Motion to Exclude which are identified below:

Filing/Exhibit	Content	Section	Confidential Information¹
Exhibit 2036	Supplemental Declaration of Phil Hartstein in Support of Patent Owner’s Response	¶¶ 11, 12, 13	Contains highly confidential information regarding licensing practices
		¶ 15	Contains highly confidential information regarding licensing practices

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 Techs., LLC*, IPR2012-00001 (Paper 34 at 4-5)(P.T.A.B. Mar. 14, 2013) and *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, Case IPR2014-00440 (Papers 46, 47, 49) (P.T.A.B. Apr. 6, 14,

¹ Further details regarding the confidential information regarding each of the exhibits identified in this chart are explained *infra* at § I. A copy of the proposed Default Protective Order previously had been filed as Exhibit 2026 as part of Patent Owner’s Motion for Entry of Protective Order. *See* Paper No. 13.

and 17, 2015). 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.

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

The Subject Exhibit contain confidential information requiring that they be designated as “PROTECTIVE ORDER MATERIAL” under Default Protective Order (*see* Exhibit 2026). The Subject Exhibit contains highly confidential information of Finjan and third parties. Specifically, it discusses and reveals confidential information regarding Finjan’s and/or third party’s licensing practices including highly sensitive information relating to such licenses. The confidential information disclosed in the Subject Exhibit is 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 and third

party's competitive position in the market. In particular, information regarding certain licenses, and the development efforts and strategies at Finjan, would allow competitors to access information that would significantly harm Finjan's 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 limited identified portions of 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 of third party.

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 previously met and conferred with Petitioner regarding the scope of the Default Protective Order. Petitioner did 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 was previously filed as Exhibit 2026. Petitioner did not object to the entry of the Default Protective Order. *See* Paper No. 13.

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: February 13, 2019

/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: 212.715.8000

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: 212.715.8302

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Attorneys for Patent Owner

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