

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 FOR ENTRY OF THE DEFAULT
PROTECTIVE ORDER AND TO SEAL PATENT OWNER'S RESPONSE
AND 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 for entry of the Default Protective Order and to seal portions of its Patent Owner Response and certain Exhibits (collectively referred to herein as the “Subject Exhibits”) to Finjan’s Patent Owner Response which are identified below:

Filing/Exhibit	Content	Section	Confidential Information¹
	Patent Owner’s Response	Redacted portion on pages 40-41	Contains highly confidential information regarding licensing practices
Exhibit 2012	Declaration of Phil Hartstein in Support of Patent Owner’s Response	¶ 5	Contains highly confidential information regarding licensing practices
		¶ 7	Contains highly confidential information regarding licensing practices

¹ Further details regarding the confidential information regarding each of the filings and exhibits identified in this chart are explained *infra* at § I. A copy of the Default Protective Order is concurrently filed herewith and attached hereto as Exhibit 2026.

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)(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, 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.

Finjan's Patent Owner Response and the Subject Exhibits contain confidential information requiring that they be designated as "PROTECTIVE ORDER MATERIAL" under Default Protective Order (attached hereto as Exhibit

2026). The Patent Owner Response and Subject Exhibits each contain highly confidential information of Finjan and third parties. Specifically, each discuss and reveal 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 Patent Owner Response and each of the Subject Exhibits 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 Patent Owner Response and Subject Exhibits 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 Patent Owner Response and the Subject Exhibits 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 Petitioner regarding the scope of the Default Protective Order. Petitioner does 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 2026. Petitioner does 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 Finjan's Patent Owner Response and the Subject Exhibits from public disclosure.

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