

## **Glucoft, Josh**

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**From:** Song, Sharon  
**Sent:** Friday, September 28, 2018 11:40 AM  
**To:** ~Manes, Austin; ~Andre, Paul; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie  
**Cc:** Kagan, Jonathan; Carson, Rebecca; Curran, Casey; Glucoft, Josh; Wang, Kevin  
**Subject:** RE: Protective Order for exhibits in IPR Proceedings

Counsel,

Unless Finjan agrees to allow Juniper to use Finjan's discovery responses in the IPR proceedings by 5:00pm today, we will be moving the Court to amend the Protective Order to allow Juniper to use confidential information produced in the District Court case in the IPRs so long as those materials are sealed and protected. To the extent Austin is not available to confer today, please provide times this afternoon that another member of your team is available. We have been trying to meet and confer with you on this issue since Monday, and Finjan's attempt to delay the meet and confer process is inappropriate.

In addition, to the extent that this issue is not resolved by the time that Juniper files its IPR petitions, Juniper intends to inform the Board that Finjan is refusing to allow the Board to consider its highly relevant admissions on licensing issues in the parallel litigation that relate to secondary considerations.

Finally, pursuant to paragraph 6.2 of the Protective Order, Juniper challenges the confidentiality designation for the entirety Finjan's responses to Interrogatory Nos. 3, 4, and 6 included in Finjan's First Supplemental Objections and Responses to Juniper's First Set of Interrogatories. Finjan's information contained therein is not sensitive information that cannot be protected with less restrictive means. Further, the information includes non-technical or purely financial or license information that is not properly designated as "Highly Confidential – Attorneys' Eyes Only." Please let us know when you are available to meet and confer on this separate issue.

Best,

**Sharon S. Song**

Irell & Manella LLP

1800 Avenue of the Stars, Suite 900 | Los Angeles, CA 90067

310.203.7507 (direct) | [ssong@irell.com](mailto:ssong@irell.com)

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**From:** Manes, Austin [mailto:AManes@KRAMERLEVIN.com]  
**Sent:** Thursday, September 27, 2018 8:40 PM  
**To:** Song, Sharon; ~Andre, Paul; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie  
**Cc:** Kagan, Jonathan; Carson, Rebecca; Curran, Casey; Glucoft, Josh; Wang, Kevin  
**Subject:** RE: Protective Order for exhibits in IPR Proceedings

Sharon,

There is HC-AEO information throughout these Interrogatory responses and they were properly marked as such. Also, these Interrogatories seek information on marking, but you claim Juniper wants to present information on licensing. Those are two separate issues. If you're looking for information on Finjan's licensing or licenses, as you know from Finjan's production there is plenty of that information in Finjan's public filings that

Juniper can use without disclosing Finjan's confidential information. Finjan is also obligated to maintain the confidentiality of third party information pursuant to its licensing agreements and protective orders. To the extent we have received permission to produce third party confidential information, we have done so.

Further, the PO restricts the use of any confidential information for purposes outside this litigation, not just HC-AEO information. But to the extent you're challenging the HC-AEO designations, please expressly state so under paragraph 6.2 and identify which portions of this document you're challenging. I cannot tell from your email if you are actually making a challenge or, if so, what portions you'd like to challenge.

Finally, you only sent me this document yesterday afternoon. I am in court tomorrow, but I'd be happy to meet and confer with you on it next week. I note that under the PO we have 14 days to meet and confer from the date that you expressly challenge the designations in writing.

Austin

**Austin Manes**

Associate

Kramer Levin Naftalis & Frankel LLP  
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**From:** Song, Sharon <ssong@irell.com>

**Sent:** Thursday, September 27, 2018 1:03 PM

**To:** Manes, Austin <AManes@KRAMERLEVIN.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Kastens, Kris <KKastens@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Lee, Michael H. <MHLee@KRAMERLEVIN.com>; Martinez, Cristina <CMartinez@KRAMERLEVIN.com>; Nguyen, Stephanie <SNguyen@KRAMERLEVIN.com>

**Cc:** Kagan, Jonathan <JKagan@irell.com>; Carson, Rebecca <RCarson@irell.com>; Curran, Casey <ccurran@irell.com>; Glucoft, Josh <JGlucoft@irell.com>; Wang, Kevin <kwang@irell.com>

**Subject:** [EXTERNAL] RE: Protective Order for exhibits in IPR Proceedings

Austin,

In the past, Finjan has argued that its licensing of certain patents serves as a secondary consideration of non-obviousness. *See, e.g.*, IPR2018-00391, Paper 12 at 36-46. Finjan's interrogatory responses are highly relevant to rebutting any contention by Finjan that there is a nexus between Finjan's licenses and the patents-in-suit. As such, they are relevant to the obviousness analysis.

We also note that Finjan has specifically faulted past petitioners for purportedly failing to address the licensing evidence that Finjan produced to those petitioners in litigation. *See, e.g., id.* at 38 ("In the active litigation between Patent Owner and Petitioner, Patent Owner has provided Petitioner with substantial evidence related to secondary considerations of nonobviousness. Thus, there is simply no excuse for Petitioner's failure to address this critical portion of the obviousness analysis...."). In the event that Finjan does not allow Juniper to use the interrogatory responses, we intend to let the

refusing to permit those admissions to be considered by the Board. If Finjan relies on any purported secondary considerations of non-obviousness in its POPR, we will also seek leave from the Board for discovery on these issues, as well as authorization to file a pre-institution reply brief.

Finjan's unreasonable refusal to allow Juniper to use Finjan's interrogatory responses in the IPR is compounded by the fact that much of the material in the responses is not properly designated as confidential to Finjan. For example, information about Finjan's efforts (or lack thereof) to mark embodiments of the patents is not properly designated as "Confidential," much less "Highly Confidential – Attorneys' Eyes Only." Please provide us with a copy of the interrogatory responses that more particularly identifies Finjan's claims of confidentiality by noon tomorrow. In addition, we note that Finjan appears to be making improper use of the "Highly Confidential – Attorneys' Eyes Only" designation. The Protective Order defines "Highly Confidential – Attorneys' Eyes Only" as "extremely sensitive 'Confidential Information or Items,' disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means." Dkt. No. 149 at 2. It further notes that "[i]f a Producing Party designates non-technical, purely financial or license information as 'HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY' the Receiving Party may challenge the non-technical portions of that Information or Items as 'CONFIDENTIAL' (defined in Section 2.2) under Section 6 below." *Id.* As such, it is Juniper's position that none of Finjan's information is properly designated as Highly Confidential – Attorneys' Eyes Only.

If that Finjan maintains its improper confidentiality designations and refuses to provide a version highlighting the limited Finjan information that may be Confidential (and no Finjan information designated as Highly Confidential), we challenge Finjan's confidentiality designations under Paragraph 6 and specifically Paragraph 6.2 of the Protective Order.

We have been trying to confer with you about this since Monday. Please provide times today or tomorrow that you are available to confer.

Thanks,

**Sharon S. Song**

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**From:** Manes, Austin <[AManes@KRAMERLEVIN.com](mailto:AManes@KRAMERLEVIN.com)>

**Sent:** Thursday, September 27, 2018 10:41 AM

**To:** Song, Sharon <[ssong@irell.com](mailto:ssong@irell.com)>; ~Andre, Paul <[pandre@kramerlevin.com](mailto:pandre@kramerlevin.com)>; ~Hannah, James <[jhannah@kramerlevin.com](mailto:jhannah@kramerlevin.com)>; ~Hedvat, Shannon <[shedvat@kramerlevin.com](mailto:shedvat@kramerlevin.com)>; ~Kastens, Kristopher <[kkastens@kramerlevin.com](mailto:kkastens@kramerlevin.com)>; ~Kobialka, Lisa <[lkobialka@kramerlevin.com](mailto:lkobialka@kramerlevin.com)>; ~Lee, Michael <[mhlee@kramerlevin.com](mailto:mhlee@kramerlevin.com)>; ~Martinez, Cristina <[cmartinez@kramerlevin.com](mailto:cmartinez@kramerlevin.com)>; ~Nguyen, Stephanie <[SNguyen@KRAMERLEVIN.com](mailto:SNguyen@KRAMERLEVIN.com)>

**Cc:** Kagan, Jonathan <[JKagan@irell.com](mailto:JKagan@irell.com)>; Carson, Rebecca <[RCarson@irell.com](mailto:RCarson@irell.com)>; Curran, Casey <[ccurran@irell.com](mailto:ccurran@irell.com)>; Glucoft, Josh <[JGlucoft@irell.com](mailto:JGlucoft@irell.com)>; Wang, Kevin <[kwang@irell.com](mailto:kwang@irell.com)>

**Subject:** RE: Protective Order for exhibits in IPR Proceedings

Sharon,

We do not agree to Juniper's use of Finjan's Interrogatory Responses, which are marked highly confidential, for any proceedings outside this litigation. The parties agreed that any use of protected material was to be only

for "prosecuting, defending or attempting to settle" this litigation. Further, none of the interrogatories you attached are about prior art that would relate to any IPR proceedings, so we do not understand the request.

Austin

## Austin Manes

Associate

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**From:** Song, Sharon <[ssong@irell.com](mailto:ssong@irell.com)>  
**Sent:** Thursday, September 27, 2018 9:16 AM  
**To:** Manes, Austin <[AManes@KRAMERLEVIN.com](mailto:AManes@KRAMERLEVIN.com)>; Andre, Paul <[PAndre@KRAMERLEVIN.com](mailto:PAndre@KRAMERLEVIN.com)>; Hannah, James <[JHannah@KRAMERLEVIN.com](mailto:JHannah@KRAMERLEVIN.com)>; Hedvat, Shannon H. <[SHedvat@KRAMERLEVIN.com](mailto:SHedvat@KRAMERLEVIN.com)>; Kastens, Kris <[KKastens@KRAMERLEVIN.com](mailto:KKastens@KRAMERLEVIN.com)>; Kobialka, Lisa <[LKobialka@KRAMERLEVIN.com](mailto:LKobialka@KRAMERLEVIN.com)>; Lee, Michael H. <[MHLee@KRAMERLEVIN.com](mailto:MHLee@KRAMERLEVIN.com)>; Martinez, Cristina <[CMartinez@KRAMERLEVIN.com](mailto:CMartinez@KRAMERLEVIN.com)>; Nguyen, Stephanie <[SNguyen@KRAMERLEVIN.com](mailto:SNguyen@KRAMERLEVIN.com)>  
**Cc:** Kagan, Jonathan <[JKagan@irell.com](mailto:JKagan@irell.com)>; Carson, Rebecca <[RCarson@irell.com](mailto:RCarson@irell.com)>; Curran, Casey <[ccurran@irell.com](mailto:ccurran@irell.com)>; Glucoft, Josh <[JGlucoft@irell.com](mailto:JGlucoft@irell.com)>; Wang, Kevin <[kwang@irell.com](mailto:kwang@irell.com)>  
**Subject:** [EXTERNAL] RE: Protective Order for exhibits in IPR Proceedings

Austin,

I tried calling you regarding the below and left a voicemail yesterday evening. Please provide Juniper a response by noon today.

Best,

**Sharon S. Song**  
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**From:** Song, Sharon  
**Sent:** Tuesday, September 25, 2018 3:19 PM  
**To:** ~Manes, Austin; ~Andre, Paul; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie  
**Cc:** Kagan, Jonathan; Carson, Rebecca; Curran, Casey; Glucoft, Josh; Wang, Kevin  
**Subject:** RE: Protective Order for exhibits in IPR Proceedings

My apologies. The document we are requesting to use in our IPR petitions is attached.

Sharon S. Song

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**From:** Manes, Austin [<mailto:AManes@KRAMERLEVIN.com>]  
**Sent:** Tuesday, September 25, 2018 3:12 PM  
**To:** Song, Sharon; ~Andre, Paul; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie  
**Cc:** Kagan, Jonathan; Carson, Rebecca; Curran, Casey; Glucoft, Josh; Wang, Kevin  
**Subject:** RE: Protective Order for exhibits in IPR Proceedings

Sharon, I don't think you attached anything to the first email. Can you please resend?

**Austin Manes**  
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**From:** Song, Sharon <[ssong@irell.com](mailto:ssong@irell.com)>  
**Sent:** Tuesday, September 25, 2018 3:05 PM  
**To:** Andre, Paul <[PAAndre@KRAMERLEVIN.com](mailto:PAAndre@KRAMERLEVIN.com)>; Hannah, James <[JHannah@KRAMERLEVIN.com](mailto:JHannah@KRAMERLEVIN.com)>; Hedvat, Shannon H. <[SHedvat@KRAMERLEVIN.com](mailto:SHedvat@KRAMERLEVIN.com)>; Kastens, Kris <[KKastens@KRAMERLEVIN.com](mailto:KKastens@KRAMERLEVIN.com)>; Kobialka, Lisa <[LKobialka@KRAMERLEVIN.com](mailto:LKobialka@KRAMERLEVIN.com)>; Lee, Michael H. <[MHLee@KRAMERLEVIN.com](mailto:MHLee@KRAMERLEVIN.com)>; Manes, Austin <[AManes@KRAMERLEVIN.com](mailto:AManes@KRAMERLEVIN.com)>; Martinez, Cristina <[CMartinez@KRAMERLEVIN.com](mailto:CMartinez@KRAMERLEVIN.com)>; Nguyen, Stephanie <[SNguyen@KRAMERLEVIN.com](mailto:SNguyen@KRAMERLEVIN.com)>  
**Cc:** #Juniper/Finjan [Int] <[Juniper-Finjan@irell.com](mailto:Juniper-Finjan@irell.com)>  
**Subject:** [EXTERNAL] RE: Protective Order for exhibits in IPR Proceedings

Counsel,

Please respond to the below.

Best,

**Sharon S. Song**  
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