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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FINISAR CORPORATION,
Plaintiff,
v.
JDS UNIPHASE CORPORATION,
Defendant

No. C 08-3388 MMC

**ORDER DENYING WITHOUT
PREJUDICE STIPULATION AND JOINT
APPLICATION TO FILE DOCUMENTS
UNDER SEAL**

Before the Court is the parties "Stipulation and Joint Application to File Documents Under Seal Pursuant to Local Rule 79-5," filed September 25, 2008. By said document, the parties jointly request that defendant be afforded leave to file under seal the entirety of three declarations offered in support of defendant's motion for summary judgment, for the asserted reason that each such declaration "contain[s] confidential business information."

"A sealing order may issue only upon a request that establishes that the document, or portions thereof, is privileged or protectable as a trade secret or otherwise entitled to protection under the law." Civil L.R. 79-5(a). "The request must be narrowly tailored to seek sealing only of sealable material." *Id.* "A stipulation . . . will not suffice to allow the filing of documents under seal." *Id.*

Here, the parties fail to identify, even in a cursory manner, the reason why the three declarations contain confidential information. Because the declarations address, in part,

1 negotiations to amend a licensing agreement, it would appear that the parties are of the
2 view that at least certain aspects of those negotiations are confidential. In previous filings,
3 however, each of the parties has placed in the public record a number of factual assertions
4 regarding such negotiations. (See, e.g., Compl. ¶¶ 16-19, 24-27; Def.'s Mot. at 2:27 - 3:9,
5 7:6 - 8:11.) In any event, even if one or more of the subject declarations contains some
6 confidential information, either regarding the parties' negotiations or otherwise, a request to
7 seal must be "narrowly tailored," i.e., unless the entirety of the document is shown to be
8 sealable, defendant must file in the public record a redacted version thereof.

9 Accordingly, the stipulation and joint application is hereby DENIED, without prejudice
10 to the parties' filing a renewed stipulation, supported by a declaration or declarations
11 establishing why the material defendant seeks to file under seal is "privileged or protectable
12 as a trade secret or otherwise entitled to protection under the law,"¹ and, to the extent the
13 entirety of the document is not properly sealable, defendants' filing in the public record a
14 redacted version thereof. See Civil L.R. 79-5(a). Any such renewed stipulation or motion,
15 as well as redacted versions of the subject declarations, shall be filed no later than October
16 6, 2008.²

17 **IT IS SO ORDERED.**

18
19 Dated: September 29, 2008

20 
21 MAXINE M. CHESNEY
22 United States District Judge

23
24 _____
25 ¹In the event any or all of the material defendant seeks to file under seal has been
26 designated as confidential by plaintiff, defendant need only state such fact in a supporting
27 declaration, whereafter plaintiff must, within five days thereafter, file a declaration that
28 establishes why such material is properly sealable. See Civil L.R. 79-5(d).

²Defendant need not resubmit the originals or chambers copies of the subject
declarations; the Court will retain such documents pending submission of a renewed
stipulation or motion.