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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FINISAR CORPORATION,
Plaintiff,
v.
NISTICA, INC.,
Defendant.

Case No. 13-cv-03345-BLF

**ORDER GRANTING NISTICA INC.'S
ADMINISTRATIVE MOTION TO
SEAL PORTIONS OF ITS MOTION
FOR FEES AND SELECT EXHIBITS**

[Re: ECF 736]

Before the Court is Nistica’s administrative motion to file under seal portions of its Motion for Fees Under 35 U.S.C. § 285 and select exhibits in support thereof. ECF 736. For the reasons stated below, the motion is GRANTED.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are “more than tangentially related to the merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at 1097.

In addition, sealing motions filed in this district must be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). A party moving to seal a document in whole or in part must file a declaration establishing that the identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A). “Reference to a stipulation or protective order that allows a party to designate certain

1 documents as confidential is not sufficient to establish that a document, or portions thereof, are
2 sealable.” *Id.*

3 **II. DISCUSSION**

4 The Court has reviewed Nistica’s sealing motion (ECF 736) and the parties’ declarations in
5 support thereof (ECF 736-1, 740, 741). The Court finds the parties have articulated compelling
6 reasons and good cause to seal the submitted documents. The Court’s rulings on the sealing
7 request are set forth in the table below:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
736-4	Nistica’s Motion for Fees Under 35 U.S.C. § 285	GRANTED as to highlighted portions.	Contains confidential, trade secret and proprietary product information relating to Nistica’s accused products and development projects. Kramer Decl. ¶ 2, ECF 736-1. Also contains confidential information regarding Finisar’s business strategies and plans. Chao Decl. ¶ 2, ECF 741.
736-5	Ex. 1 to Bennett Decl. ISO Nistica’s Motion for Fees Under 35 U.S.C. § 285, ECF 737-1 (“Bennett Decl.”)	GRANTED.	Contains confidential, proprietary, and trade secret information about Finisar’s products and business/marketing strategies and plans. Chao Decl. ¶ 3.
736-6	Ex. 2 to Bennett Decl.	GRANTED.	Contains confidential, proprietary, and trade secret information about Finisar’s products and business/marketing strategies and plans. Chao Decl. ¶ 3.
736-7	Ex. 3 to Bennett Decl.	GRANTED.	Contains Nistica’s confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 4. Also contains excerpts of trial transcripts and contain confidential information regarding Finisar’s business strategies and plans. Chao Decl. ¶ 4.
736-8	Ex. 4 to Bennett Decl.	GRANTED.	Contains confidential technical information relating to third-party specification requirements. Rossetti Decl. ¶ 4, ECF 740. Also contains confidential, proprietary, and trade secret information about Finisar’s products. Chao Decl. ¶ 5.

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736-9	Ex. 5 to Bennett Decl.	GRANTED.	Contains confidential communications and technical information relating to third-party products. Rossetti Decl. ¶ 5. Also contains confidential, proprietary, and trade secret information about Finisar’s products and business/marketing strategies and plans. Chao Decl. ¶ 3.
736-10	Ex. 6 to Bennett Decl.	GRANTED.	Contains confidential, proprietary, and trade secret information about Finisar’s products and business/marketing strategies and plans. Chao Decl. ¶ 3.
736-11	Ex. 7 to Bennett Decl.	GRANTED.	Contains Nistica’s confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 4. Also contains excerpts of trial transcripts and contain confidential information regarding Finisar’s business strategies and plans. Chao Decl. ¶ 4.
736-12	Ex. 9 to Bennett Decl.	GRANTED.	Contains confidential information regarding Finisar’s business and litigation strategies and plans. Chao Decl. ¶ 6.
736-13	Ex. 10 to Bennett Decl.	GRANTED.	Contains confidential information regarding Finisar’s business/marketing strategies and plans. Chao Decl. ¶ 7.
736-14, 736-15, 736-16	Ex. 11 to Bennett Decl.	GRANTED.	Contains confidential technical information relating to third-party products. Rossetti Decl. ¶ 6; Chao Decl. ¶ 8.
736-17	Ex. 12 to Bennett Decl.	GRANTED.	Contains confidential technical information relating to third-party products. Rossetti Decl. ¶ 7; Chao Decl. ¶ 8.
736-18	Ex. 13 to Bennett Decl.	GRANTED.	Contains confidential technical information relating to third-party products. Rossetti Decl. ¶ 8; Chao Decl. ¶ 8.
736-19	Ex. 15 to Bennett Decl.	GRANTED.	Correspondence between the parties providing detail regarding Nistica’s products and Finisar’s infringement theories relating to the confidential technical details of those products. Kramer Decl. ¶ 4.
736-20	Ex. 17 to Bennett Decl.	GRANTED.	Contains confidential, proprietary, and trade secret information about Finisar’s products and business/marketing strategies and plans. Chao Decl. ¶ 3.
736-21	Ex. 18 to Bennett Decl.	GRANTED.	Contains confidential, proprietary, and trade secret information about Finisar’s products and business/marketing strategies and plans. Chao Decl. ¶ 3.

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736-22	Ex. 19 to Bennett Decl.	GRANTED.	Contains confidential, proprietary, and trade secret information about Finisar's products and business/marketing strategies and plans. Chao Decl. ¶ 3.
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III. ORDER

For the foregoing reasons, Nistica's sealing motion at ECF 736 is GRANTED.

IT IS SO ORDERED.

Dated: April 3, 2017


BETH LABSON FREEMAN
United States District Judge