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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 IN PART AND
DENYING IN PART FINISAR
CORPORATION'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

[Re: ECF 743]

Before the Court is Plaintiff Finisar Corporation's ("Finisar") administrative motion to file under seal portions of its Opposition to Defendant Nistica, Inc.'s ("Nistica") Motion for Fees Under 35 U.S.C. § 285 and select exhibits in support thereof. ECF 743. For the reasons stated below, the motion is GRANTED IN PART and DENIED IN PART.

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-

1 5(d)(1)(A). “Reference to a stipulation or protective order that allows a party to designate certain
2 documents as confidential is not sufficient to establish that a document, or portions thereof, are
3 sealable.” *Id.*

4 **II. DISCUSSION**

5 The Court has reviewed Finisar’s sealing motion (ECF 743) and the parties’ declarations in
6 support thereof (ECF 743-1, 746). The Court finds the parties have articulated compelling reasons
7 and good cause to seal the submitted documents. The Court’s rulings on the sealing request are
8 set forth in the table below:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
743-4	Finisar’s Opposition to Nistica’s Motion for Fees Under 35 U.S.C. § 285	GRANTED as to highlighted portions.	Contains confidential information regarding Nistica’s business strategies, plans and technical information about Nistica’s products. Bennett Decl. ¶ 12, ECF 746. Contains the same confidential, proprietary, and sensitive information as Exhibits 1, 2, 4, 5, 7, 12, 13, 14, 15, 17, 20, 21, 24, 25, 27, 28, 29, and 31. Chao Decl. ¶ 14, ECF 743-1.
743-6	Ex. 1 to Lahav Decl. ISO Finisar’s Opposition to Nistica’s Motion for Fees Under 35 U.S.C. § 285, ECF 744-1 (“Lahav Decl.”)	GRANTED.	Contains Nistica’s confidential, proprietary and trade secret information about Nistica’s products and business/marketing strategies and plans. Bennett Decl. ¶ 2; Chao Decl. ¶ 2.
743-8	Ex. 2 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 3; Chao Decl. ¶ 3.
743-10	Ex. 4 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 3; Chao Decl. ¶ 3.
743-12	Ex. 5 to Lahav Decl.	DENIED without prejudice.	Denied because Finisar’s request is not narrowly tailored. However, because the document “contains confidential and proprietary technical information regarding Nistica’s products,” Bennett Decl. ¶ 4, Chao Decl. ¶ 4, Finisar may revise its request by re-filing redacted and un-redacted highlighted versions of this document indicating the portions that should be sealed.

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743-14	Ex. 7 to Lahav Decl.	DENIED without prejudice.	Denied because Finisar’s request is not narrowly tailored. However, because the document “contains confidential and proprietary technical information regarding Nistica’s products,” Bennett Decl. ¶ 5, Chao Decl. ¶ 5, Finisar may revise its request by re-filing redacted and un-redacted highlighted versions of this document indicating the portions that should be sealed.
743-16	Ex. 12 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 6; Chao Decl. ¶ 6.
743-18	Ex. 13 to Lahav Decl.	GRANTED.	Contains proprietary information belonging to a customer of Finisar, to which Finisar owes confidentiality obligations. Chao Decl. ¶ 7. The sensitive business information contained in these exhibits could cause significant competitive harm to Finisar if disclosed to the public. <i>Id.</i>
743-20	Ex. 14 to Lahav Decl.	GRANTED.	Contains proprietary information belonging to a customer of Finisar, to which Finisar owes confidentiality obligations. Chao Decl. ¶ 7. The sensitive business information contained in these exhibits could cause significant competitive harm to Finisar if disclosed to the public. <i>Id.</i>
743-22	Ex. 15 to Lahav Decl.	GRANTED.	Contains confidential information regarding Finisar’s business/marketing strategies and plans. Chao Decl. ¶ 8.
743-24	Ex. 17 to Lahav Decl.	DENIED without prejudice.	Denied because Finisar’s request is not narrowly tailored. However, because the document “contains confidential and proprietary technical information regarding Nistica’s products,” Bennett Decl. ¶ 7, Chao Decl. ¶ 9, Finisar may revise its request by re-filing redacted and un-redacted highlighted versions of this document indicating the portions that should be sealed.
743-26	Ex. 20 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 8; Chao Decl. ¶ 10.
743-28	Ex. 21 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 8; Chao Decl. ¶ 10.
743-30	Ex. 24 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 9; Chao Decl. ¶ 11.
743-32	Ex. 25 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 8; Chao Decl. ¶ 10.

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743-34	Ex. 27 to Lahav Decl.	GRANTED.	Contains confidential information regarding Nistica’s business/marketing strategies and plans. Bennett Decl. ¶ 10; Chao Decl. ¶ 12.
743-36	Ex. 28 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 8; Chao Decl. ¶ 10.
743-38	Ex. 29 to Lahav Decl.	GRANTED.	Contains confidential and proprietary technical information regarding Nistica’s products. Bennett Decl. ¶ 8; Chao Decl. ¶ 10.
743-40	Ex. 31 to Lahav Decl.	DENIED without prejudice.	Denied because Finisar’s request is not narrowly tailored. However, because the document “contains confidential and proprietary technical information regarding Nistica’s products,” Bennett Decl. ¶ 11, Chao Decl. ¶ 13, Finisar may revise its request by re-filing redacted and un-redacted highlighted versions of this document indicating the portions that should be sealed.

III. ORDER

For the foregoing reasons, Finisar’s sealing motion is GRANTED IN PART and DENIED IN PART. Under Civil Local Rule 79-5(e)(2), for any request that has been denied because the party designating a document as confidential or subject to a protective order has not provided sufficient reasons to seal, the submitting party must file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and no later than 10 days from the filing of this order.

IT IS SO ORDERED.

Dated: April 18, 2017


BETH LABSON FREEMAN
United States District Judge