

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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  
AMENDED ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
PORTIONS OF ITS REPLY TO  
MOTION FOR FEES AND SELECT  
EXHIBITS**

Before the Court is Defendant Nistica, Inc.’s (“Nistica”) amended administrative motion to file under seal portions of its Reply to its Motion for Fees Under 35 U.S.C. § 285 and select exhibits to the Declaration of Jennifer D. Bennett in Support thereof. ECF 754. This amended motion modifies Nistica’s original sealing motion, which was filed on April 13, 2017. ECF 747. For the reasons stated below, the amended motion at ECF 754 is GRANTED and the original motion at ECF 747 is TERMINATED AS MOOT.

**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

1 only of sealable material.” Civil L.R. 79-5(b). A party moving to seal a document in whole or in  
 2 part must file a declaration establishing that the identified material is “sealable.” Civ. L.R. 79-  
 3 5(d)(1)(A). “Reference to a stipulation or protective order that allows a party to designate certain  
 4 documents as confidential is not sufficient to establish that a document, or portions thereof, are  
 5 sealable.” *Id.*

6 **II. DISCUSSION**

7 The Court has reviewed Nistica’s amended sealing motion (ECF 754), its declaration in  
 8 support thereof (ECF 754-1), and its declaration in support of its original sealing motion (ECF  
 9 747-1). The Court finds that Nistica has articulated compelling reasons and good cause to seal the  
 10 submitted documents. The Court’s rulings on the sealing request are set forth in the table below:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
747-4	Nistica’s Reply to its Motion for Fees Under 35 U.S.C. § 285	GRANTED as to highlighted portions.	Contains confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 2, ECF 747-1.
747-5	Ex. 2 to Bennett Decl. ISO Nistica’s Reply to its Motion for Fees Under 35 U.S.C. § 285, ECF 744-1 (“Bennett Decl.”)	GRANTED.	Contains Nistica’s confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.
747-6	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. ¶ 3.
747-7	Ex. 5 to Bennett Decl.	GRANTED.	Contains Nistica’s confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.
747-8	Ex. 6 to Bennett Decl.	GRANTED.	Contains Nistica’s confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.
747-9	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. ¶ 3.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

747-10	Ex. 8 to Bennett Decl.	GRANTED.	Contains Nistica's confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.
747-11	Ex. 9 to Bennett Decl.	GRANTED.	Contains Nistica's confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.
747-12	Ex. 10 to Bennett Decl.	GRANTED.	Contains Nistica's confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.
747-13	Ex. 11 to Bennett Decl.	GRANTED.	Contains Nistica's confidential, trade secret and proprietary product information relating to its accused products and development projects. Kramer Decl. ¶ 3.

**III. ORDER**

For the foregoing reasons, Nistica's amended sealing motion at ECF 754 is GRANTED.  
Nistica's original sealing motion at ECF 747 is TERMINATED AS MOOT.

**IT IS SO ORDERED.**

Dated: April 25, 2017

  
BETH LABSON FREEMAN  
United States District Judge