

## **Palo Alto Networks v. Finjan: Denying “Delayed” Motion to Seal IPR2016-00149, 150**

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*Takeaway: A party’s delay in bringing a motion to seal a publicly filed exhibit will likely cut against that party’s assertions of alleged prejudice associated with keeping the exhibit available to the public.*

In its [Decision](#), the Board denied Patent Owner’s opposed Motions to Seal Exhibits 1003 and 2003 in each of the ’149 and ’150 IPRs. The facts concerning the Exhibits subject to the Motions were not in dispute. Patent Owner argued that the Exhibits should be sealed as they were the subject of negotiations under FRE 408 and contained confidential business information.

Exhibits 1003 were filed by Petitioner over three months before Patent Owner’s Motion to have them sealed. The Exhibits are a claim chart labeled “Confidential” that apply claim 33 of the ’968 patent to Petitioner’s products. Patent Owner argued they were subject to FRE 408.

Exhibits 2003 are an e-mail communication in which Patent Owner transmitted the claim chart of Exhibits 1003 to Petitioner. They were also labeled “Confidential” and allegedly subject to FRE 408. The claim chart was sent to Petitioner in an attempt to engage in negotiations concerning the ’968 patent.

The Board found that Patent Owner had not carried its burden to show confidentiality sufficient to warrant sealing. The Board was unpersuaded that Patent Owner could suffer “significant competitive harm to the licensing parties as it would provide insight into the structure of their licensing deals, forcing them into an uneven bargaining position in future negotiations.” In particular, the Board found that “Patent Owner’s delay in moving to seal . . . suggests otherwise.” The Board concluded that no compelling reasons existed to overcome the “presumption that the record of [the Board’s] proceedings . . . shall be made available to the public.”

Finally, because Exhibits 2003 were only cited “for the purported date of e-mailing, a fact that is not in dispute,” the Board authorized Patent Owner to file a motion to have the Exhibits expunged.

***Palo Alto Networks, Inc. v. Finjan, Inc.*, IPR2016-00149**

Paper 12: Decision on Motions to Seal

Dated: May 16, 2016

Patent: 6,965,968 B1

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Before: James B. Arpin, Zhenyu Yang, and Charles J. Boudreau

Written by: Arpin

Related Proceedings: IPR2016-00150

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