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7
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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11 Finjan, Inc,

12 Plaintiff,

13 vs.

14 AVG Technologies CZ, s.r.o., AVG
Technologies USA, Inc., AVAST Software,
15 Inc., and AVAST Software, s.r.o.,

16 Defendants.

Case No.

**COMPLAINT FOR BREACH OF
CONTRACT AND PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

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1 Plaintiff Finjan, Inc. (“Finjan”) alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This is a complaint for breach of contract and patent infringement.

4 **PARTIES**

5 2. Finjan is a Delaware corporation with a principal place of business at 2000
6 University Avenue, Suite 600, Palo Alto, California, 94303. Finjan is a globally recognized
7 cybersecurity company that has invested millions of dollars in research and development creating
8 proactive behavior-based malware protection technology. Finjan’s patented technologies enable
9 behavior-based approaches to modern and next-generation malware and zero-day protection for
10 unknown attacks through techniques such as, for example, hashing, caching, sandboxing, and
11 transmitting mobile protection code through customized profiles. Finjan’s patented technologies
12 have been widely adopted, lauded in the industry, and assigned significant value by many of
13 Defendants’ peers and competitors who have entered into licensing agreements with Finjan for
14 those patented technologies.

15 3. On information and belief, Defendant AVG Technologies CZ, s.r.o. is a company
16 organized and existing under the laws of the Czech Republic. On information and belief, AVG
17 Technologies CZ, s.r.o. has a regular and established place of business at 149 Bluxome Street, San
18 Francisco, California, 94107. On information and belief, AVG Technologies CZ, s.r.o. makes,
19 uses, sells, and/or offers to sell in the United States, or imports into the United States, including in
20 this judicial district, cybersecurity products or processes that practice the inventions claimed in the
21 Finjan patents asserted in this complaint.

22 4. On information and belief, Defendant AVG Technologies USA, Inc. is a Delaware
23 corporation with a regular and established place of business at 149 Bluxome Street, San Francisco,
24 California, 94107. On information and belief, AVG Technologies USA, Inc. makes, uses, sells,
25 and/or offers to sell in the United States, or imports into the United States, including in this
26 judicial district, cybersecurity products or processes that practice the inventions claimed in the
27 Finjan patents asserted in this complaint. AVG Technologies CZ, s.r.o. and AVG Technologies
28 USA, Inc. are referred to collectively herein as “AVG.”

1 5. On information and belief, Defendant AVAST Software, s.r.o., is a company
2 organized and existing under the laws of the Czech Republic. On information and belief, AVAST
3 Software, s.r.o. has a regular and established place of business at 2625 Broadway, Redwood City,
4 California, 94063. On information and belief, AVAST Software, s.r.o. makes, uses, sells, and/or
5 offers to sell in the United States, or imports into the United States, including in this judicial
6 district, cybersecurity products or processes that practice the inventions claimed in the Finjan
7 patents asserted in this complaint.

8 6. On information and belief, Defendant AVAST Software, Inc. is a Delaware
9 corporation with a regular and established place of business at 255 Shoreline Drive, Suite 515,
10 Redwood City, California 94065. On information and belief, AVAST Software, Inc. makes, uses,
11 sells, and/or offers to sell in the United States, or imports into the United States, including in this
12 judicial district, cybersecurity products or processes that practice the inventions claimed in the
13 Finjan patents asserted in this complaint. AVAST Software, s.r.o. and AVAST Software, Inc. are
14 referred to collectively herein as “AVAST.”

15 7. On information and belief, AVAST publicly announced its offer to acquire AVG
16 no later than July 7, 2016. On information and belief, AVAST completed its acquisition of AVG
17 for \$1.3 billion no later than September 30, 2016, including the AVG products and services that
18 are accused of patent infringement in this complaint. On information and belief, AVAST and
19 AVG have been operating as a single company since no later than October 3, 2016.

20 8. Prior to AVAST’S acquisition of AVG, Finjan was in active license negotiations
21 with AVG for the Finjan patents asserted in this complaint. Those negotiations commenced in
22 January 2016 and were suspended around the time AVAST announced its intent to acquire AVG
23 in July 2016. The Finjan-AVG negotiations spanned over a five month period.

24 9. No later than October 2016, AVAST took over the licensing negotiations relating
25 to AVG’s products that infringe the Finjan patents asserted in this complaint. Finjan and AVAST
26 have been negotiating without success for over 100 days.

JURISDICTION AND VENUE

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28 10. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331

1 and 1338(a) because this is a complaint for infringement of United States patents. Additionally,
2 the Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because there is a
3 complete diversity of citizenship between Finjan and Defendants and the amount in controversy
4 exceeds \$75,000. The Court also has subject matter jurisdiction over this action under 28 U.S.C.
5 §§ 1331 and 1367 because Finjan alleges a federal law claim over which this Court has original
6 jurisdiction, and all other claims are so related to the claim within such original jurisdiction that
7 they form part of the same case or controversy within Article III of the United States Constitution.

8 11. This Court also has personal jurisdiction over each Defendant because Plaintiff's
9 claims against each of them arises out of or relate to each of their purposeful contacts with
10 California, and the exercise of personal jurisdiction over each Defendant in this particular case
11 would comport with principles of fair play and substantial justice.

12 12. This Court also has personal jurisdiction over each Defendant because it has
13 engaged in systematic and continuous contacts with this State and this district by, *inter alia*,
14 regularly conducting and soliciting business in this State and this district, and deriving substantial
15 revenue from products and/or services provided to persons in this State and this district. For
16 example and without limitation, as noted above, each Defendant maintains a regular and
17 established place of business in this district.

18 13. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b)
19 because, on information and belief, Defendants have committed acts of patent infringement
20 complained of herein in this district, and thus a substantial part of the events or omissions giving
21 rise to the claims alleged herein occurred in this district, and because Defendants are each subject
22 to this Court's personal jurisdiction with respect to the claims alleged herein.

23 **INTRADISTRICT ASSIGNMENT**

24 14. This action is an Intellectual Property Action subject to district-wide assignment
25 under Civil Local Rules 3-2(c) and 3-5(b).

26 **FIRST CAUSE OF ACTION**

27 **(Breach of Contract – Sham Transaction)**

28 **(Against AVAST)**

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