PAUL ANDRE (State Bar No. 196585)
pandre@kramerlevin.com
LISA KOBIALKA (State Bar No. 191404)
lkobialka@kramerlevin.com
JAMES HANNAH (State Bar No. 237978)
jhannah@kramerlevin.com
KRISTOPHER KASTENS (State Bar No. 254797)
kkastens@kramerlevin.com
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 752-1700
Facsimile: (650) 752-1800

Attorneys for Plaintiff
FINJAN, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FINJAN, INC., a Delaware Corporation, Plaintiff, v. JUNIPER NETWORKS, INC., a Delaware Corporation, Defendant.	Case No.: 3:17-cv-05659-WHA **DECLARATION OF DR. MICHAEL MITZENMACHER IN SUPPORT OF PLAINTIFF FINJAN, INC.'S OPPOSITION TO DEFENDANT JUNIPER NETWORKS, INC.'S MOTION FOR SUMMARY JUDGMENT** Date: July 26, 2018 Time: 8:00 a.m. Courtroom: Courtroom 12, 19th Floor Before: Hon. William Alsup

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

I, Michael Mitzenmacher, hereby declare that:

1. I have been asked by Plaintiff Finjan, Inc. ("Finjan") to testify as an expert witness in the above referenced action. As part of my work in this action, I have been asked by Finjan to provide a declaration as to if Defendant Juniper Networks, Inc. ("Juniper" or "Defendant") infringes Claim 1 of U.S. Patent No. 6,804,780 (the "'780 Patent"). I expect to testify at trial in these actions regarding the opinions set forth in this report (the "Report"), as well as on any other issues for which I have submitted or will submit an expert report in this action. I relied on the documents cited herein, including the '780 Patent, the file history of the '780 Patent, the source code review computer, source code printouts, the deposition transcripts of Tenorio, Manthena, Nagarajan, and Manocha, as well as exhibits thereto, Finjan's Infringement Contentions, and Juniper's Discovery Responses.

I. BACKGROUND, EXPERIENCE AND QUALIFICATIONS

2. I am currently employed as a Professor of Computer Science at Harvard University. Specifically, I am the Thomas J. Watson, Sr. Professor of Computer Science in the School of Engineering and Applied Sciences. I joined the faculty of Harvard as an Assistant Professor in January 1999. I was promoted to Associate Professor in 2002 and to Professor in 2005. In 2010, I began a three-year term as Area Dean, which is essentially equivalent to what other schools call Department Chair, of Computer Science, and held that position through June 2013.

3. I received my undergraduate degree in Mathematics and Computer Science from Harvard College in 1991. I received a Certificate of Advanced Study in Mathematics from Cambridge University in 1992. I received a Ph.D. in Computer Science from the University of California at Berkeley in 1996. From August 1996 to January 1999, I was employed as a Research Scientist at Digital Systems Research Center.

4. I have published over 200 research papers in computer science conferences and journals, many of which have explored algorithms and data structures for communication networks and data transmission. I am listed as an inventor or co-inventor on 19 issued patents, and am the co-author of a textbook entitled "Probability and Computing" published by Cambridge University Press.

5. The field of endeavor at issue in this case is networking security — in particular, the design and operation of systems to protect clients from malware from sources on the Internet. Much of

my work involves issues relating to networking and/or network security. I regularly serve on program committees for conferences in networking, algorithms, and communication. For example, I have served on the program committee multiple times for the SIGCOMM conference, which is described on the conference homepage as follows: "SIGCOMM is the flagship annual conference of the ACM Special Interest Group on Data Communication (SIGCOMM) on the applications, technologies, architectures, and protocols for computer communication." Similarly, I have served several times on the Program Committee for NSDI, the USENIX Symposium on Networked Systems Design and Implementation. I have written papers on networking that have been published in the IEEE/ACM Transactions on Computer Networking, the SIGCOMM conference, the INFOCOM conference, and other major venues for networking research. My graduate course entitled "Algorithms at the end of the wire" covers many subjects at the intersection of networking and algorithms.

A. Compensation

6. My rate of compensation for my work in this case is $750 per hour plus any direct expenses incurred. My compensation is based solely on the amount of time that I devote to activity related to this case and is in no way affected by any opinions that I render. I receive no other compensation from work on this action. My compensation is not dependent on the outcome of this matter.

II. LEGAL STANDARDS

7. Counsel for Finjan has informed me of the following legal standards that I have used as a framework in forming my opinions contained herein.

B. Infringement

8. I have been informed that claim construction is a legal issue for the Court to decide. I also understand that the Court has not issued a claim construction order in this case. As such, I have applied the plain and ordinary meaning of all terms, unless specifically identified below.

9. I have been informed that infringement is determined on a claim by claim basis. I have been further informed that literal infringement is found if an accused product, system or method meets each and every element of a single claim. I have been informed that direct infringement is found if a party or its agents make, use, sell, or offer to sell a product or system that contains all elements of a

claimed system or perform all of the steps of a claimed method.

10. I have been informed that in the case of direct infringement of a system claim, a party can be found to use a patented system even if the party does not exercise physical or direct control over every element of the system. For elements that are not subject to the physical or direct control of the party, I have been informed that the party is still deemed to be using that component or part of the patented system when (1) it puts the component into service, i.e., causes it to work for its intended purpose and (2) receives the benefit of that purpose. For example, if a company queries a third-party's database, thereby causing the database to run a query and return a result to the company, the company is deemed to have used the database for infringement purposes by putting it into service (causing it to run the query) and receiving the benefit of that operation (the result of the query), even though the company does not own or control the database.

11. I have been informed that infringement under the doctrine of equivalents is found if an accused product, system or process contains parts or steps that are identical or equivalent to each and every element of a single claim. A part or step is equivalent if a person of ordinary skill in the art would conclude that the differences between the product or method step and the claim element were not substantial at the time of infringement. I have been further informed that one common test to determine if the difference between a component or method step and a claim element is not substantial is asking if the component or step performs substantially the same function, in substantially the same way, to achieve substantially the same result.

12. I have been informed that in the case of direct infringement of a multinational system claim where elements of such system are located in multiple countries, a party can be found to use the patented system in the United States if the place where control of the accused system is exercised and where beneficial use of the system is obtained are both within the United States. For example, if the accused system is controlled by a device in the United States that generates requests sent to the accused system and the benefit of the accused system is obtained by the company or person using the device in the United States, the company is deemed to have used the accused system for infringement purposes in the United States even though the accused system has some elements located outside the United States.

A. Person of Ordinary Skill in the Art ("POSITA")

13. Based on review of the '780 Patent and consideration of the abovementioned factors, it is my opinion that a POSITA at the time of the invention of the '780 Patent would be a person with a Bachelor's degree in computer science or a related academic field, and either (1) two or more years of industry experience and/or (2) an advanced degree in computer science or a related academic field. In forming my opinions in this declaration, I have considered the issues from the perspective of a hypothetical POSITA. My opinion would not change if a somewhat lower or higher level of skill were adopted. In particular, while it appears that Dr. Rubin has suggested slightly more experience and/or education for a POSITA in his declaration (¶ 20), I believe my opinions herein would be the same under either definition.

III. SUMMARY OF DECLARATION

14. I have been asked by counsel for Finjan to consider if Juniper infringes Claim 1 of the '780 Patent and to consider the opinions set forth by Juniper's expert, Dr. Aviel Rubin, in support of Juniper's Motion for Summary Judgment (Dkt. 95-10, "Rubin Decl."). In particular, I have been asked by counsel for Finjan to consider whether the SRX Gateway with Sky ATP infringe Claim 1 of the '780 Patent. I assumed that Claim 1 of the '780 Patent is valid and enforceable. I have not considered any issues related to damages associated with this infringement.

15. The language of Claim 1 of the '780 Patent is set forth below.

> A computer-based method for generating a Downloadable ID to identify a Downloadable, comprising:
>
> obtaining a Downloadable that includes one or more references to software components required to be executed by the Downloadable;
>
> fetching at least one software component identified by the one or more references; and
>
> performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID.

IV. RESPONSE TO DR. RUBIN'S DECLARATION

16. While I provide more detailed descriptions below regarding why I disagree with Dr. Rubin's opinions, I discuss here certain aspects of Dr. Rubin's Declaration that are incorrect and/or

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.