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14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 FINJAN, INC., a Delaware Corporation,
19 Plaintiff,
20 vs.
21 JUNIPER NETWORKS, INC., a Delaware
Corporation,
22 Defendant.
23

Case No. 3:17-cv-05659-WHA

**DEFENDANT JUNIPER NETWORKS,
INC.'S REPLY ISO MOTION FOR
SUMMARY JUDGMENT REGARDING
CLAIM 1 OF U.S. PATENT NO. 6,804,780**

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1 Finjan’s case against Claim 1 of the ’780 Patent is a lost cause. The undisputed factual
 2 record supports summary judgment on four separate issues: (1) Juniper’s SRX devices do not
 3 infringe; (2) Juniper’s Sky ATP service does not infringe; (3) Claim 1 is patent ineligible under
 4 § 101; and (4) Finjan’s failure to comply with § 287 bars any pre-suit damages.

5 Finjan did not oppose Juniper’s motion for summary judgment of non-infringement on the
 6 SRX alone. Moreover, Finjan’s infringement theory for Sky ATP does not rest on any disputed
 7 issue of fact. Instead, Finjan simply asks this Court to adopt contorted claim constructions that are
 8 inconsistent with the intrinsic record. Because claim construction is a matter of law, these issues
 9 should also be resolved on summary judgment. Finjan’s infringement theory also conflicts with its
 10 position on Juniper’s § 101 challenge. Finally, Finjan’s failure to comply with the marking
 11 requirements of § 287 or provide notice that it believed Juniper’s Sky ATP service infringed the
 12 ’780 Patent during pre-lawsuit discussions limits Finjan’s maximum damages period to less than
 13 two months, even if damages were available (and they are not).

I. FINJAN’S CLAIM CONSTRUCTIONS IGNORE THE INTRINSIC RECORD

Claim Term	Juniper’s Proposal	Finjan’s Proposal
software components <i>required</i> to be executed by the Downloadable	software components that are <i>needed</i> to execute the Downloadable	software components <i>referenced</i> by a Downloadable for execution

17 Finjan’s proposal for this term improperly seeks to recapture claim scope that Finjan ceded
 18 during a series of amendments made to overcome prior art cited by the Examiner, and water down
 19 the claim requirement that software components be “required” to merely being “referenced.”

20 During prosecution, Finjan expressly added the “required” limitation to avoid the Apperson
 21 prior art. The Examiner noted that Apperson taught references to software components (i.e.,
 22 “privileges or privilege categories”) that the Downloadable “*may* try to perform on the client
 23 machine.” Ex. 2 at 3. To avoid this art, Finjan added a limitation that the components must not
 24 only be referenced, but also “*required*” by the downloaded file, stating “the present invention
 25 fetches software components *required* by the Downloadable, and performs a hashing function on
 26 the Downloadable together with its fetched components.” Dkt. 96-6 at 4. Finjan cannot now ignore
 27 the “required” limitation added during prosecution; the components that are required by the
 28

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