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September 7, 2018

Hon. William Alsup
U.S. District Court
Northern District of California

Re: *Finjan, Inc. v. Juniper Networks, Inc.*, Case No. 3:17-cv-05659-WHA

Dear Judge Alsup:

Juniper writes to request clarification of an ambiguity regarding the scope of the upcoming trial in this matter, currently scheduled for December 10, 2018. Juniper has conferred with counsel for Finjan, who indicated that clarification was needed.

The Court's first Amended Case Management Order (Dkt. 35) of February 23 notes that, in conjunction with the early summary judgment proceedings, "[i]f issues of fact prevent summary judgment, then we will have a trial on the disputed points soon thereafter." Dkt. 35 at 4. On August 31, this Court issued an order that effectively denied summary judgment and identified four disputed issues that remained for trial. Dkt. 189 at 20-21 (Order Granting in Part Early Motion for Summary Judgment on '494 Patent). This order states:

[T]he following issues will be decided at trial: (1) whether the accused products meet the "database" limitation; (2) Juniper's Section 101 invalidity defense; (3) Juniper's Section 287 defense on damages; and (4) the extent of damages. A separate order will address the trial schedule.

The first Amended Case Management Order (Dkt. 35) indicated that trial on all remaining issues would occur in July 2019. On September 4, 2018, the Court issued its "separate order" addressing the first trial schedule, the Third Amended Case Management Order (Dkt. 193). While Juniper understood that the purpose of the Third Amended Case Management Order was to set forth the first trial schedule, not to alter the scope of the first trial, Finjan suggested that because the order says it "superseded all previous case management orders," Finjan understands this Third Amended Case Management Order to remove the limitations on the scope of the trial that the Court set forth in its first Amended Case Management Order of February 23. Thus, Finjan indicated that it believed the December trial was no longer limited to the issues set forth in this Court's early summary judgment order and would now include all issues in dispute in this case, including infringement and validity for all seven patents-in-suit.

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Given the ambiguity identified by Finjan, Juniper respectfully requests clarification whether the scope of the December 2018 trial is limited to the issues the Court enumerated in its August 31 early summary judgment order (Dkt. 189 at 20-21) or will be expanded to encompass all remaining issues for all seven asserted patents in this case (thus eliminating the July 2019 trial on all remaining issues).

Respectfully submitted,
/s/ Jonathan Kagan
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