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October 26, 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:

Defendant Juniper Networks, Inc. ("Juniper") respectfully requests the Court reconsider in part its October 26, 2018 Order Denying Stipulated Request To Modify Scheduling Order concerning a briefing schedule for *Daubert* motions.

Juniper agrees with the Court that experts should have been available at an earlier date. However, the requested briefing schedule is the result of Finjan, Inc.'s ("Finjan") delay in making its expert available for deposition. Particularly given the absurd position Finjan's damages expert has expressed (*i.e.*, a minimum of \$55.5 million in damages for an expired patent ***with less than \$2 million in total sales of the accused products during the relevant damages period***), Finjan should not be allowed to prejudice Juniper's ability to exclude this testimony.

On September 12, 2018, the day after opening expert reports were served, Juniper requested dates to depose Finjan's damages expert, Mr. Kevin M. Arst, and for a Rule 30(b)(6) witness on Finjan's licensing practices, which are a subject of the damages experts' reports. The earliest date Finjan offered for its 30(b)(6) witness was November 2, 2018, despite Juniper's efforts to secure an earlier date, and it did not provide a firm date for Mr. Arst's deposition. Because of this delay, the parties agreed that Juniper's rebuttal damages report would not be due until November 7, 2018. Finjan then agreed to provide Mr. Arst for deposition on November 9, 2018.

Because Finjan has delayed the date of Mr. Arst's deposition until November 9, Juniper is not able comply with the standard briefing schedule set by Local Rule 7-2 for a *Daubert* motion. Given the positions Mr. Arst has taken in his report, a *Daubert* motion is particularly appropriate in this case. Mr. Arst has opined that the appropriate range of damages for Juniper's alleged infringement of Claim 10 of the '494 Patent is from \$55.5 million to \$64.7 million, even though the relevant patent expired before Finjan filed this lawsuit, and the relevant damages period is roughly 14 months. During that time period, Juniper sold less than \$2 million in total revenue (not profits) of the accused products. Thus, Mr. Arst's proposed damages result in a royalty rate of roughly 3,000% or higher.

It would be inequitable to allow Finjan's delay to preclude Juniper's *Daubert* motion, particularly in light of the absurd nature of Mr. Arst's report. Juniper is cognizant of the Court's need to have sufficient time with a full set of briefing and proposes the following revised schedule govern Juniper's *Daubert* motion:

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Juniper's Opening Brief: November 12, 2018
Finjan's Opposition: November 21, 2018
Juniper's Reply: November 26, 2018
Hearing: December 4, 2018 at 9:00 AM (Pretrial Conference)

Alternatively, Juniper is amenable to any briefing schedule that works most agreeably with the Court's calendar.

Respectfully submitted,

/s/ Jonathan S. Kagan

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