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November 8, 2018

Honorable William Alsup
U.S. District Court, Northern District of California
San Francisco Courthouse
Courtroom 12 – 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

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

Dear Judge Alsup:

Plaintiff Finjan, Inc. (“Finjan”) respectfully requests permission to file *Daubert* motions according to the same schedule that the Court set for Juniper Networks, Inc. (“Juniper”). Specifically, Finjan requests permission to file opening *Daubert* motions on **November 12**, requiring Juniper to file its opposition on **November 19** at noon, and requiring Finjan to file its reply on **November 23** at noon. *See* Dkt. 215 (setting the same schedule for Juniper).

On October 26, 2018, the Court denied the parties’ stipulation to an amended briefing schedule for *Daubert* motions (Dkt. 213). After Juniper filed a letter brief requesting reconsideration (Dkt. 214), the Court set a briefing schedule for Juniper’s motions but did not provide a schedule for Finjan’s motions (Dkt. 215). Juniper has since refused to stipulate to allow Finjan to file *Daubert* motions on the same schedule.

Yesterday, Juniper filed two separate “rebuttal” damages reports, one from Dr. Ugone (Juniper’s damages expert) and one from Dr. Rubin (Juniper’s technical expert). These reports contain many deficiencies that call for *Daubert* motions, as set forth below:

Deficiencies in Dr. Ugone’s Report:

- Unreliable methodology based on reliance on uncomparable Juniper licenses, including software licenses, as “reasonableness check” and a lump sum picked from thin air.
- Based on insufficient or incorrect facts, including (1) using the wrong royalty base for the accused product revenues, yielding a difference for just United States accused product revenues of over \$140M, (2) no facts for improper reliance on

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historic data from "free" licenses, especially because Juniper previously submitted a sworn declaration to the Court stating that Juniper did not perform historic tracking of free licenses, (3) no basis for his tracking of SRX Products using serial numbers (4) no facts to support effective royalty rates based on certain Finjan licenses.

- Reliance on information not disclosed during discovery or disclosed days before Ugone's report, including (1) costs associated with servers, (2) alleged non-infringing alternatives or use of the alternatives as a "constrain[t] on royalty payment" (3) portion of Amazon invoices associated with certain accounts, (4) individuals not disclosed in his report referred to just as "juniper personnel."

Deficiencies in Dr. Rubin's Report:

- Dr. Rubin provides opinions that are not relevant to the December 10th trial, including: (1) challenges to validity of Claim 10 under 35 U.S.C. §§102 and 103; (2) arguing the claim is abstract; and (3) inequitable conduct and prosecution laches.
- Dr. Rubin applies the incorrect legal standard for whether there is an "inventive concept" in Claim 10 of the '494 Patent.

Given these deficiencies and Juniper's delays in disclosure, it would be inequitable to allow Juniper to file *Daubert* motions but not allow Finjan to do the same. Thus, Finjan respectfully requests a briefing schedule to file its *Daubert* motions identical to the schedule and page limits that the Court provided for Juniper at Dkt. 215.

Sincerely,

Paul J. Andre
Counsel for Plaintiff Finjan, Inc.