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November 12, 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") writes in response to the Court's November 6, 2018 Notice Re Second Round of Early Motions for Summary Judgment. *See* Dkt. No. 219.

Juniper believes that, as each party has already selected the claim they believe is the strongest claim for them, a settlement of this case is likely after the parties have been able to fully litigate those claims and then engage in mediation or another form of alternative dispute resolution in an attempt to resolve their differences. Accordingly, Juniper respectfully requests that the Court delay commencement of a second round of early motions for summary judgment until the parties have completed litigating the first set of claims and engaged in a meaningful dispute resolution procedure.

The Court indicated in its first Amended Case Management Order (Dkt. 35) that the outcome of the initial claims selected by the parties might "warrant an injunction or sanctions, depending on which side prevails," Dkt. No. 35 at 4, and that "[t]he potential remedies [of an injunction or sanctions] will be litigated soon after the early motions for summary judgment are decided." *Id.* Juniper believes that the outcome of this motion practice could help facilitate the ultimate resolution of this case, as it will provide unambiguous guidance on each party's strongest claims. As parties in litigation may have unrealistic views of their own positions, Juniper believes this clear guidance from the Court can only help facilitate a realistic resolution of this matter. It would therefore be the most efficient use of the resources of the parties and the Court to schedule a dispute resolution procedure after final resolution of the claims currently in dispute, rather than proceed directly to another round of lengthy and complex motion practice on a set of less important claims. Accordingly, Juniper requests that the Court set a schedule for a sanctions/injunction hearing following the currently scheduled trial, and a date certain for the parties to complete a settlement procedure before scheduling a second round of early motions for summary judgment.

If the Court elects to proceed with a second round of summary judgment motions before resolving all issues relating to the first round, Juniper requests that the Court vacate or reset all pre-trial dates (including fact and expert discovery) in the first Amended Case Management Order (Dkt. 35). *See, e.g.*, Dkt. No. 35 at ¶ 6 (setting deadline for disclosure of opening expert reports under FRCP 26(a)(2) to be March 29, 2019, and requiring disclosure of opposition reports fourteen days after that and reply reports seven days thereafter). According to the current schedule set by the Court (*see* Dkt. No. 219), the opening, opposing, and reply expert report disclosure deadlines

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overlap significantly with the schedule for the second round of early motions for summary judgment:

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| February 14, 2019 | Early motions for summary judgment |
| March 14, 2019 | Oppositions to the early motions for summary judgment |
| March 29, 2019 | Opening expert reports |
| April 4, 2019 | Replies in support of early motions for summary judgment |
| April 13, 2019 | Opposition expert reports |
| April 20, 2019 | Reply expert reports |
| May 2, 2019 | Hearing on early motions for summary judgment |

This schedule would be unduly burdensome on both parties and their counsel.

Respectfully submitted,

/s/ Jonathan S. Kagan

Jonathan S. Kagan

IRELL & MANELLA LLP

Attorneys for Defendant

Juniper Networks, Inc.