

1 PAUL ANDRE (State Bar No. 196585)  
 pandre@kramerlevin.com  
 2 LISA KOBIALKA (State Bar No. 191404)  
 lkobialka@kramerlevin.com  
 3 JAMES HANNAH (State Bar No. 237978)  
 jhannah@kramerlevin.com  
 4 KRISTOPHER KASTENS (State Bar No. 254797)  
 kkastens@kramerlevin.com  
 5 KRAMER LEVIN NAFTALIS & FRANKEL LLP  
 6 990 Marsh Road  
 7 Menlo Park, CA 94025  
 Telephone: (650) 752-1700  
 8 Facsimile: (650) 752-1800

9 *Attorneys for Plaintiff*  
 FINJAN, INC.

11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

15 FINJAN, INC., a Delaware Corporation,

16 Plaintiff,

17 v.

18 JUNIPER NETWORKS, INC., a Delaware  
 19 Corporation,

20 Defendant.

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

**PLAINTIFF FINJAN, INC.’S NOTICE OF  
 MOTION AND MOTION TO EXCLUDE  
 OPINIONS OF DEFENDANT’S DAMAGES  
 EXPERT DR. KEITH R. UGONE;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

Date: November 29, 2018  
 Time: 8:00 a.m.  
 Courtroom: Courtroom 12, 19th Floor  
 Before: Hon. William Alsup

23  
 24 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**  
 25  
 26  
 27  
 28

**TABLE OF CONTENTS**

**Page**

1

2

3 NOTICE OF MOTION AND MOTION ..... 1

4 STATEMENT OF RELIEF SOUGHT ..... 1

5 STATEMENT OF ISSUES ..... 1

6 I. INTRODUCTION ..... 1

7 II. DR. UGONE’S ANALYSIS OF THE PARTIES’ PRIOR SOFTWARE AND PATENT

8 LICENSE AGREEMENTS IS UNRELIABLE..... 2

9 A. Dr. Ugone’s Opinions Based on Juniper’s Non-Comparable Agreements are

10 Unreliable..... 3

11 1. Juniper’s [REDACTED] is Not Comparable

12 to the Hypothetical License. .... 4

13 2. Juniper’s Prior Patent Agreements are Not Comparable to the

14 Hypothetical License. .... 6

15 B. Dr. Ugone’s Opinions Based on Finjan’s Prior License Agreements are

16 Unreliable..... 7

17 III. DR. UGONE’S OPINIONS REGARDING THE ROYALTY BASE ARE

18 UNRELIABLE ..... 9

19 IV. DR. UGONE IMPERMISSIBLY USED JUNIPER’S ACTUAL REVENUES AS A

20 CAP ON DAMAGES IN VIOLATION OF FEDERAL CIRCUIT PRECEDENT ..... 12

21 V. DR. UGONE’S OPINIONS REGARDING THE COST OF PURPORTED NON-

22 INFRINGING ALTERNATIVES IS CONTRARY TO LAW AND UNRELIABLE ..... 14

23

24

25

26

27

28 VI. CONCLUSION..... 15

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

1

2

3

4

5 *Acceleration Bay LLC v. Activision Blizzard Inc.*,

6 Civ A. No. 1:16-cv-00453-RGA, Dkt. No. 620 (D. Del. Oct. 30, 2018)..... 4

7 *Accentra, Inc. v. Staples, Inc.*,

8 No. CV-07-5862 ABC, 2010 WL 8450890 (C.D. Cal. Sept. 22, 2010) ..... 15

9 *Aqua Shield v. Inter Pool Cover Team*,

10 774 F.3d 766 (Fed. Cir. 2014)..... 13

11 *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*,

12 876 F.3d 1350 (Fed. Cir. 2017)..... 13

13 *DataQuill Ltd. v. High Tech Computer Corp.*,

14 887 F.Supp.2d 999 (S.D. Cal. 2011)..... 3

15 *Daubert v. Merrell Dow Pharms., Inc.*,

16 509 U.S. 579 (1993)..... 1

17 *Douglas Dynamics, LLC v. Buyers Prods. Co.*,

18 717 F.3d 1336 (Fed. Cir. 2013)..... 12, 13

19 *Finjan, Inc. v. Secure Computing Corp.*,

20 626 F.3d 1197 (Fed. Cir. 2010)..... 10

21 *Finjan, Inc. v. Sophos, Inc.*,

22 244 F. Supp. 3d 1016 (N.D. Cal. 2017) ..... 8

23 *Golight, Inc. v. Wal-Mart Stores, Inc.*,

24 355 F.3d 1327 (Fed. Cir. 2004)..... 13

25 *General Elec. Co. v. Joiner*,

26 522 U.S. 136 (1997)..... 12

27 *Georgia-Pacific Corp. v. U.S. Plywood Corp.*,

28 318 F. Supp. 1116 (S.D.N.Y. 1970)..... 2

29 *Golden Bridge Tech. v. Apple Inc.*,

30 No. 5:12-cv-04882-PSG, 2014 WL 2194501 (N.D. Cal. May 18, 2014)..... 12

*Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*,

No. 12-cv-03844-JST, 2015 WL 1476399 (N.D. Cal. Mar. 31, 2015)..... 15

1 *Integra Lifescience I, Ltd. v. Merk KgaA*,  
 331 F.3d 860 (Fed. Cir. 2003)..... 3

2 *LaserDynamics, Inc. v. Quanta Computer, Inc.*,  
 3 694 F.3d 51 (Fed. Cir. 2012)..... 6, 8

4 *Lucent Techs. Inc., v. Gateway, Inc.*,  
 5 580 F.3d 1301 (Fed. Cir. 2009)..... 9

6 *M2M Sols. LLC v. Motorola Sols., Inc.*,  
 No. 12-33-RGA, 2016 WL 767900 (D. Del. Feb. 25, 2016)..... 3

7 *Mars, Inc. v. Coin Acceptors, Inc.*,  
 8 527 F.3d 1359 (Fed. Cir. 2008)..... 14

9 *MediaTek Inc. v. Freescale Semiconductor, Inc.*,  
 No. 11-cv-5341 YGR, 2014 WL 2854890 (N.D. Cal. June 20, 2014) ..... 11

10 *NetAirus Techs., LLC v. Apple, Inc.*,  
 11 No. LA CV10-03257-JAK (Ex), 2013 WL 11237200 (C.D. Cal. Oct. 23, 2013)..... 3

12 *Odetics, Inc. v. Storage Tech. Corp.*,  
 13 185 F.3d 1259 (Fed. Cir. 1999)..... 8

14 *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*,  
 15 711 F.3d 1348 (Fed. Cir. 2013)..... 11

16 *ResQNet.com, Inc. v. Lansa, Inc.*,  
 594 F.3d 860 (Fed. Cir. 2010)..... 4, 5, 6

17 *Spectralytics, Inc. v. Cordis Corp.*,  
 18 650 F. Supp. 2d 900 (D. Minn. 2009)..... 14

19 *Sprint Commc’ns Co. L.P. v. Comcast IP Holdings, LLC*,  
 No. 12-1013-RGA, 2015 WL 456154 (D. Del. Jan. 30, 2015)..... 3

20 *Uniloc USA, Inc. v. Microsoft Corp.*,  
 21 632 F.3d 1292 (Fed. Cir. 2011)..... 3

22 *Wordtech Sys., Inc. v. Integrated Network Solutions, Inc.*,  
 23 609 F.3d 1308 (Fed. Cir. 2010)..... 3

24 **Other Authorities**

25 Federal Rules of Civil Procedure 26(a)(2)..... 12

26 Federal Rules of Evidence 702 ..... 1, 11

27

28

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 NOTICE IS HEREBY GIVEN that on November 29, 2018, at 8:00 a.m., or as soon thereafter  
4 as counsel may be heard by the Honorable William Alsup in Courtroom 12, 19th Floor, located at 450  
5 Golden Gate Avenue, San Francisco, California 94102, Plaintiff Finjan, Inc. (“Finjan”) will and hereby  
6 does move the Court for an order granting Finjan’s Motion to Exclude Opinions of Defendant’s  
7 Damages Expert Keith R. Ugone.

8 This motion is based on this Notice of Motion, the following Memorandum of Points and  
9 Authorities, the Declaration of Cristina Martinez filed herewith and exhibits attached thereto, the  
10 proposed order submitted herewith, the pleadings and papers on file in this action, any evidence and  
11 argument presented to the Court at or before the hearing on this motion, and all matters of which the  
12 Court may take judicial notice.

13 **STATEMENT OF RELIEF SOUGHT**

14 Finjan seeks an Order excluding the opinions of Juniper’s damages expert, Dr. Keith R. Ugone.  
15 regarding the reasonable royalty Juniper owes to Finjan as a result of its infringement of Finjan’s U.S.  
16 Patent No. 8,677,494 (the “ ‘494 Patent”).

17 **STATEMENT OF ISSUES**

18 Whether the Court should exclude the opinions of Juniper’s damages expert, Dr. Keith R.  
19 Ugone, regarding the amount of the reasonably royalty Juniper owes to Finjan based on his flawed  
20 analysis of purported value indicators, as unreliable, lacking foundation and methodologically flawed  
21 pursuant to Fed. R. Evid. 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993).

22 **I. INTRODUCTION**

23 Plaintiff Finjan, Inc. (“Finjan”) respectfully requests the Court, pursuant to Fed. R. Evid. 702  
24 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993), preclude defendant Juniper  
25 Network Inc.’s (“Juniper”) expert, Dr. Keith Ugone, from offering at trial unreliable and arbitrary  
26  
27  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.