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November 16, 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 to request that the Court order Finjan to comply with paragraph 2(f) of the Guidelines for Trial and Final Pretrial Conference in Civil Jury Cases Before the Honorable William Alsup. Paragraph 2(f) requests that the parties limit motions to “five or fewer motions per side” and notes that “[e]ach motion should address a single topic.”

On November 14, 2018, Finjan served four motions *in limine*, two of which violate the single topic requirement. For example, Finjan’s Motion *in Limine* No. 4 (Attached as Exhibit A) purports to seek to preclude “any argument or evidence regarding irrelevant information.” It then addresses three separate topics under the following headings:

- “Evidence and Arguments Regarding Juniper’s Patents,”
- “Evidence and Arguments Regarding Irrelevant Proceedings” which addresses pending Finjan lawsuits and PTAB proceedings, and
- “Statements that Finjan is a Non-Practicing Entity or ‘Patent Troll.’”

Similarly, Finjan’s Motion in Limine No. 3 (Attached as Exhibit B) broadly seeks to preclude Juniper and Dr. Rubin “from providing opinions that are irrelevant,” and then addresses five separate topics under the following subheadings:

- “Juniper Should be Excluded from Providing Opinions that Claim 10 is Abstract Because the Court Has Already Decided This,”
- “Prejudicial and Legally Irrelevant Arguments Regarding the Prosecution History,”
- “Dr. Rubin Should Be Excluded From Providing Opinions of Anticipation and Obviousness in the Guise of Damages or § 101 Analysis,”
- “Dr. Rubin Should Be Excluded from Relying Documents or Systems that Cannot Establish what was “Well-known, Routine, and Conventional,” and
- “Evidence and Argument Regarding Piecemeal Portions of Claim Elements Should Be Excluded.”

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Juniper requested that Finjan re-serve proper motions that comply with the Court's single topic rule, but Finjan rejected Juniper's request and refused to make anyone available to meet and confer until Monday. Exhibit C. Given that Juniper's responses to Finjan's motions are due next Friday (i.e., the day after Thanksgiving), Juniper requests that the Court direct Finjan to comply with Paragraph 2(f) by re-serving motions that address a single topic no later than noon tomorrow (November 17, 2018).

Respectfully submitted,

/s/ Rebecca L. Carson

Rebecca L. Carson  
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Juniper Networks, Inc.

# EXHIBIT A

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12 FINJAN, INC.

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 FINJAN, INC., a Delaware Corporation,

17 Plaintiff,

18 v.

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

21 Defendant.

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

22 **PLAINTIFF'S FINJAN INC.'S MOTION**  
23 ***IN LIMINE* NO. 4 TO PRECLUDE**  
24 **DISCUSSION OF IRRELEVANT AND**  
25 **PREJUDICIAL INFORMATION**

26 Date: December 4, 2018  
27 Time: 9:00 a.m.  
28 Courtroom: Courtroom 12, 19th Floor  
29 Before: Hon. William Alsup

## INTRODUCTION

Pursuant to Federal Rules of Evidence 401 and 403 Finjan moves to exclude from trial any argument or evidence regarding irrelevant information. Specifically, Finjan moves to exclude evidence and arguments regarding Juniper's patents, irrelevant legal proceedings, or the use of pejorative terms against Finjan.

### A. Evidence and Arguments Regarding Juniper's Patents

The Court should preclude Juniper from presenting any argument or evidence regarding any Juniper patents or patent applications, because such evidence provides zero probative value to any of the claims or defenses that will be tried in this case. *See* Fed. R. Evid. 401-403; *Conceptus, Inc. v. Hologic, Inc.*, No. C 09-02280 WHA, 2011 WL 13152795, at \*3 (N.D. Cal. Sept. 27, 2011) (Judge Alsup granting plaintiff's motion *in limine* "to exclude evidence, testimony, and argument concerning [defendant's] patents ... subject to a specific offer of proof at trial and a specific showing of relevance and probativeness."). The only patents that are relevant to this trial include the asserted '494 Patent and the patents in the licenses to be presented at trial. Juniper's own patents have no bearing on any theory of validity, infringement, or damages in this case. The fact that Juniper may have rights to other patents does not immunize its products from infringing the '494 Patent. *See Bio-Tech. Gen. Corp. v. Genentech, Inc.*, 80 F.3d 1553, 1559 (Fed. Cir. 1996) ("[T]he existence of one's own patent does not constitute a defense to infringement of someone else's patent. It is elementary that a patent grants only the right to exclude others and confers no right on its holder to make, use, or sell.") (citation omitted).

Moreover, such evidence should be precluded because any probative value (*e.g.*, company background) would be substantially outweighed by its risk of unfair prejudice and the strong potential to mislead the jury into thinking that Juniper's products cannot infringe. *See* Fed. R. Evid. 403. For example, the jury could infer that the accused Juniper products do not infringe Finjan's '494 Patent merely because Juniper already owns patents that may touch on other aspects of the accused products. *See* Declaration of Kristopher Kastens filed herewith, Ex. 16 at 2, *Therasense, Inc. v. Noca Biomed. Corp.*, No. C 04-02123 WHA, Order *In Limine* Excluding Reference to '299 Patent (N.D. Cal. July

21, 2008) (Judge Alsup excluding all references to a patent with low probative value in order to avoid

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