

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
8 Telephone: (650) 752-1700
9 Facsimile: (650) 752-1800
10 *Attorneys for Plaintiff*
11 FINJAN, INC.

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

16 FINJAN, INC., a Delaware Corporation,

17 Plaintiff,

18 v.

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

22 Defendant.

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

**PLAINTIFF'S FINJAN INC.'S NOTICE
OF SUPPLEMENTAL AUTHORITY**

1 We write to provide relevant supplemental authority and request additional briefing regarding
2 the issues of patent eligibility of Claim 10 of the '494 Patent pursuant to 35 U.S.C. § 101. The Federal
3 Circuit issued a precedential opinion this morning that is relevant to the issue of patentability under 35
4 U.S.C. § 101 that may impact the upcoming trial on December 10, 2018. In *Ancora Technologies, Inc.*
5 *v. HTC America, Inc.*, No. 18-1404, Dkt. 39 (Fed. Cir. Nov. 16, 2018) (attached hereto), the Court
6 again recognized the patent eligibility of Finjan's inventive approach to malware detection:

7 In *Finjan*, we held that claims to a "behavior-based virus scan" were a specific
8 improvement in computer functionality and hence not directed to an abstract
9 idea. 879 F.3d at 1304. The claimed technique of scanning enabled "more
10 flexible and nuanced virus filtering" and detection of potentially dangerous
11 code. *Id.* The claims thus were directed to "a non-abstract improvement in
computer functionality" having the benefit of achieving greater computer
security. *Id.* at 1305.

12 *Ancora Technologies, Inc.*, slip op. at 9 (citing *Finjan, Inc. v. Blue Coat System, Inc.*, 879 F.3d
13 1299, 1304-05)(Fed. Cir. 2018)).

14 Improving security—here, against a computer's unauthorized use of a
15 program—can be a non-abstract computer-functionality improvement if done by
16 a specific technique that departs from earlier approaches to solve a specific
computer problem. See *Finjan*, 879 F.3d at 1304–05.

17 *Id.*, slip op. at 10.

18 Moreover, the Court augmented its precedent regarding the "overlaps between some step one
19 and step two considerations, *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed.
20 Cir. 2016), that [its] conclusion that the specific improvement in this case passes muster at step one is
21 indirectly reinforced by some of [its] holdings under step two." *Id.*, slip op. at 11-12.

22 We submit that *Ancora* is relevant to this case because, in accordance with the Court's Order
23 Granting in Part Early Motion for Summary Judgment on '494 Patent, dated August 24, 2018, the
24 parties are preparing to go to trial on *Alice* step two issues.

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DATED: November 16, 2018

Respectfully submitted,

By: /s/ Paul J. Andre

Paul J. Andre (State Bar No. 196585)
Lisa Kobialka (State Bar No. 191404)
James Hannah (State Bar No. 237978)
Kristopher Kastens (State Bar No. 254797)
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 752-1700
pandre@kramerlevin.com
lkobialka@kramerlevin.com
jhannah@kramerlevin.com
kkastens@kramerlevin.com

Attorneys for Plaintiff
FINJAN, INC.