

1 IRELL & MANELLA LLP
Jonathan S. Kagan (SBN 166039)
2 jkagan@irell.com
Alan Heinrich (SBN 212782)
3 aheinrich@irell.com
Joshua P. Glucoft (SBN 301249)
4 jglucoft@irell.com
Casey Curran (SBN 305210)
5 ccurran@irell.com
Sharon Song (SBN 313535)
6 ssong@irell.com
1800 Avenue of the Stars, Suite 900
7 Los Angeles, California 90067-4276
Telephone: (310) 277-1010
8 Facsimile: (310) 203-7199

9 Rebecca L. Carson (SBN 254105)
rcarson@irell.com
10 Kevin Wang (SBN 318024)
kwang@irell.com
11 840 Newport Center Drive, Suite 400
Newport Beach, California 92660-6324
12 Telephone: (949) 760-0991
Facsimile: (949) 760-5200

13 *Attorneys for Defendant*
14 JUNIPER NETWORKS, INC.

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 FINJAN, INC.,) Case No. 3:17-cv-05659-WHA
19 Plaintiff,) **JUNIPER NETWORKS, INC.’S**
20 vs.) **OPPOSITION TO FINJAN, INC.’S**
21 JUNIPER NETWORKS, INC.,) **MOTION TO EXCLUDE OPINIONS OF**
22 Defendant.) **DAMAGES EXPERT DR. KEITH R.**
23) **UGONE**
24) Date: Nov. 29, 2018
Time: 8:00 AM
Courtroom: Courtroom 12, 19th Floor
Before: Hon. William Alsup

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1 Juniper’s damages expert, Dr. Keith Ugone, has offered a sound damages opinion tied to
2 Finjan’s claim that “(1) Juniper’s SRX Gateways used in combination with Sky ATP, and (2) Sky
3 ATP alone (‘Accused Products’)” infringe Claim 10 of the ’494 Patent. Dkt. 98 (Finjan’s MSJ) at
4 1-2.¹ Juniper’s revenues for the Accused Products during the damages period are less than \$1.8
5 million. Dr. Ugone has opined that a reasonable royalty for this alleged infringement is a lump sum
6 payment of \$100,000, which is in line with Finjan’s own licensing policy. Finjan raises no colorable
7 basis on which to exclude Dr. Ugone’s opinion.

8 Finjan faults Dr. Ugone for not including revenues for SRX devices that could not and were
9 not “used in combination with Sky ATP” during the relevant damages period in his damages base.
10 Mot. at 9-12. Finjan’s argument is backwards: Dr. Ugone would have erred if he had included these
11 revenues in his analysis because, while Finjan has accused “Sky ATP alone” of infringement, Finjan
12 has never accused SRX alone of infringement. Rather, it has accused only those SRX devices “used
13 in combination with Sky ATP” of infringement. Dkt. 98 at 1-2.

14 Presumably because it learned that the vast majority of SRX devices were not “used in
15 combination with Sky ATP”—and are thus properly excluded from the damages royalty base—
16 Finjan has been trying to artificially inflate the damages royalty base. For example, Finjan’s
17 damages expert, Mr. Arst, served an “errata” adding over \$119 million to his already-inflated
18 damages base in response to a request from Finjan’s General Counsel, who is neither an economic
19 nor technical expert. *See infra* at Section III.A.2. Finjan’s counsel also directed its technical expert
20 to advance at deposition a new theory of infringement—that SRX devices alone infringe the ’494
21 Patent—contrary to his position in his expert report. *See infra* at Section III.A.2. That Dr. Ugone
22 used as his damages base actual revenues for the Accused Products Finjan identified is not error.

23 Finjan’s other complaints fail to raise a colorable ground for exclusion:

- 24 • Finjan disagrees with Dr. Ugone’s identification and analysis of comparable licenses. Mot.
25 at 2-9. But Dr. Ugone properly relied on Juniper’s technical expert, Dr. Aviel Rubin, who
26 opined on the technical comparability of these licenses. Dr. Ugone properly accounts for the

27
28 ¹ In support of its Motion, Finjan submitted 62 pages worth of attachments (not including Dr. Ugone’s report) in violation of the Court’s 50 page limit. *See* Dkt. 225.

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