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

14
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 OPPOSITION
TO DEFENDANT JUNIPER NETWORKS,
INC.’S MOTION TO EXCLUDE THE
TESTIMONY OF MR. KEVIN M. ARST**

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

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1 **I. STATEMENT OF ISSUE TO BE DECIDED**

2 Plaintiff Finjan, Inc. ("Finjan") requests the denial of Juniper Networks, Inc.'s ("Juniper")
3 Motion To Exclude the Testimony of Mr. Kevin M. Arst (Dkt. No. 230 ("Motion")), who presented
4 reliable and well-founded opinions regarding the reasonable royalty for Juniper's infringement of
5 Claim 10 of Finjan's U.S. Patent No. 8,677,494 (the "494 Patent").

6 **II. INTRODUCTION**

7 The Court should deny Juniper's Motion to exclude the testimony of Mr. Arst because
8 Juniper's criticisms of Mr. Arst's opinion relate to factual issues, not methodological flaws. There is
9 no challenge to his cost savings approach, which is rooted in Federal Circuit law, but rather that the
10 "results" of Mr. Arst's analysis is wrong. This criticism, however, is predicated on a false fact about
11 the amount of accused revenues at issue, which is about [REDACTED] in the United States. These
12 revenues do not even address the significant benefits that Juniper received from its infringement.
13 Juniper's issues, when viewed in light of his actual opinion, reveal that Juniper is merely raising
14 factual issues that can be properly addressed on cross examination.

15 **III. SUMMARY OF ARST OPINION AND RELEVANT FACTS**

16 Mr. Arst's methodologically sound cost-savings opinion for Juniper's infringement for the
17 technology Juniper used, sold and offered for sale in (1) SkyATP and (2) SRX with SkyATP products
18 is founded upon the relevant facts specific to this case. Key facts that Juniper ignores include, but are
19 not limited to, (1) Juniper's essential need for the patented technology, (2) the extensive benefits
20 Juniper received across Juniper's entire network from its infringement, and (3) how the negotiations
21 taking place during the hypothetical negotiation were against the backdrop of widespread industry
22 infringement, all analyzed within view of Finjan's historical licensing practices. Dkt. No. 228-7,¹ Arst
23 Rpt. at 45; *see also* Dkt. No. 97-4, Finjan's MSJ at 24-25. Mr. Arst relies upon Dr. Cole's, Finjan's
24 technical expert, explanation regarding how Juniper and Juniper's customers enjoyed many technical
25 and economic benefits from Juniper's infringement. Dkt. No. 228-7, Arst Rpt. at p. 23-27, 30-32, 49;

26 _____
27 ¹ A copy of Mr. Arst's Report is attached as Exhibit 1 to Juniper's Motion to Exclude Mr. Arst, filed
28 on November 12, 2018.

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