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15 JUNIPER NETWORKS, INC.

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

19 FINJAN, INC., a Delaware Corporation, ) Case No. 3:17-cv-05659-WHA  
20 )  
Plaintiff, ) **DEFENDANT JUNIPER NETWORKS,**  
21 ) **INC.’S OPPOSITION TO PLAINTIFF**  
vs. ) **FINJAN INC.’S MOTION IN LIMINE**  
22 ) **NO. 2 TO EXCLUDE IMPROPER**  
JUNIPER NETWORKS, INC., a Delaware ) **CLAIM CONSTRUCTION TESTIMONY**  
23 Corporation, )  
24 Defendant. )  
Date: December 4, 2018  
Time: 9:00 a.m.  
Courtroom: Courtroom 12, 19th Floor  
25 Before: Hon. William Alsup  
26 )  
27 )  
28 )

1           **A. Introduction**

2           Finjan’s motion to preclude Dr. Rubin from introducing claim construction evidence to the  
3 jury in this case should be denied because Dr. Rubin intends to submit no such evidence. Contrary  
4 to Finjan’s argument, neither Dr. Rubin’s expert report nor his expected testimony includes any  
5 evidence contrary to the agreed construction of “database” including the embedded term “database  
6 schema.” Rather, Dr. Rubin intends only to apply agreed constructions to the accused products.  
7 Dr. Rubin’s opinion is that the accused products do not satisfy the requirements of “database” (as  
8 that term is used in the ‘494 Patent), *not* that the construction of “database” should be modified in  
9 any way. Accordingly, while Juniper agrees with the basic premise of Finjan’s motion—that the  
10 parties should not argue claim construction to the jury—Finjan’s motion should be denied because  
11 Dr. Rubin’s testimony is limited to the application of the agreed constructions.

12           **B. Dr. Rubin’s Analysis Applies the Agreed Constructions of “Database” and  
13 “Database Schema.”**

14           Dr. Rubin’s analysis and expected testimony use only the agreed constructions of  
15 “database” and “database schema.” As Dr. Rubin explains in his rebuttal report, the construction  
16 of “database” he applies is “a collection of interrelated data organized according to a database  
17 schema to serve one or more applications.” *See* Ex. 8 (Rubin Rebuttal Report) at, *e.g.*, ¶ 28. This  
18 is the same construction that Finjan’s expert, Dr. Cole, used in his analysis. Ex. 9 (Cole Report) at  
19 ¶ 83. While the term “database schema” does not appear in the claim language itself—and was  
20 thus not expressly identified by the parties as requiring construction—Dr. Rubin used the  
21 definition of this term previously proposed by Finjan and adopted by Dr. Cole. Specifically,  
22 Finjan proposed in a prior *inter partes* review (IPR) of the ‘494 Patent that the definition of  
23 “database schema” is “a description of a database to a database management system (DBMS) in  
24 the language provided by the DBMS.” Ex. 10, IPR2015-01892, Paper 27 (Finjan’s Patent  
25 Owner’s Response) at 38-39 (quoting Medvidovic Dec.).<sup>1</sup> Finjan’s technical expert in this case,  
26 Dr. Cole, confirmed that this is the proper definition of “database schema” during his June 21,

27 \_\_\_\_\_  
28 <sup>1</sup> Finjan again proposed the identical construction in another IPR involving the same claim. *See*  
Ex. 11, IPR2016-00159, Paper 17 at 35 (quoting Medvidovic Dec.).

1 2018 deposition in this case. *See* Ex. 12 (6/21/18 Cole Depo. Tr.) at 115:17-116:1 (“Q. Would  
2 you agree that a database schema is a description of a database to a database management system  
3 in the language provided by the database management system? THE WITNESS: That would  
4 generally fit my understanding.”<sup>2</sup>). After Dr. Cole confirmed this definition (and rather than  
5 initiate a battle over the interpretation of words in an agreed claim construction), Dr. Rubin simply  
6 adopted Finjan’s proposed definition for his analysis. *See* Dkt. No. 126-1 (Rubin Dec.) at ¶ 15 (“I  
7 have adopted the meaning of ‘database schema’ articulated by Finjan’s experts Dr. Medvidovic  
8 and Dr. Cole.”). Dr. Rubin continued to use Finjan’s proposed construction of “database schema”  
9 in his expert rebuttal report. Ex. 8 (Rubin Rebuttal Report) at ¶¶ 137-38. Because Dr. Rubin  
10 adopted Finjan’s proposed construction, he has never argued for a different construction.

11 As discussed below, Dr. Rubin’s conclusion that the accused products do not satisfy the  
12 “database” limitation is based on his application of the agreed construction to the accused  
13 products, not an argument for a different construction. Ex. 8 (Rubin Rebuttal Report) at ¶ 28 (“I  
14 have applied this construction in my analysis.”) and ¶ 99 (“Dr. Cole’s [opinion] ignores the  
15 following important points: ... [T]o satisfy the claim language, the ‘database’ must meet the  
16 agreed construction of ‘database’ which is ‘a collection of interrelated data organized according to  
17 a database schema to serve one or more applications.’”).

18 Finjan’s entire motion appears to be based on a misreading or misunderstanding of Dr.  
19 Rubin’s expert rebuttal report and associated demonstratives. Specifically, Finjan asserts that Dr.  
20 Rubin intends to argue against the agreed construction for “database” (and the term “database  
21 schema” included within that agreed construction) rather than apply the constructions to which the  
22 parties have agreed. While Dr. Rubin’s opinion is that the accused products do not contain a  
23 “database” as that term is used in the ‘494 Patent, that opinion is in fact based on the agreed  
24 construction of “database,” as discussed in further detail below.

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<sup>2</sup> Objections by counsel have been omitted. All emphasis is added unless indicated otherwise.

1                   **1. Alleged Improper Construction Numbers 1, 3, 6, and 7**

2                   Finjan argues that Dr. Rubin proposes four constructions that are all allegedly improper  
3 because they limit a claim term to the singular form of that term. Specifically, Finjan alleges the  
4 following four improprieties:

- 5                   • **Alleged Improper Construction 1:** “a database” should be additionally construed as  
6 requiring only a single database.
- 7                   • **Alleged Improper Construction 3:** “a table” should be additionally construed as requiring  
8 only a single table.
- 9                   • **Alleged Improper Construction 6:** “[a]<sup>3</sup> database schema” should be additionally  
10 construed as requiring only a single database schema.
- 11                  • **Alleged Improper Construction 7:** “the language provided by the DBMS” should be  
12 additionally construed as requiring only a single language.

13 Finjan MIL No. 2 at 2-3. Finjan’s arguments are plain wrong.

- 14                  • **Alleged Improper Construction 1—“A Database”:** Juniper admits that there are  
15 “databases” in the accused products, but that is not sufficient to infringe Claim 10; Claim  
16 10 requires that an infringing “database” store Downloadable security profile data  
17 including a list of suspicious computer operations that may be attempted by the  
18 Downloadable. Instead of identifying a database that actually satisfies the requirements of  
19 Claim 10, Finjan’s technical expert Dr. Cole artificially combines one “database” in the  
20 accused products that does *not* store a list of suspicious computer operations—the MySQL  
21 database—with two other distinct components in the accused product—DynamoDB and  
22 S3—to create what Dr. Cole calls “ResultsDB Database,” a non-existent, abstract  
23 amalgamation of distinct components that Dr. Cole alleges “*acts as a single unified*  
24 *database.*” Ex. 9 (Cole Report) at ¶¶ 82, 94. Dr. Rubin explains that Dr. Cole’s  
25 “ResultsDB Database” is not really “single unified database” as he claims. Neither Juniper  
26

27 <sup>3</sup> Although Finjan’s MIL uses the term “*the* database schema” (Finjan MIL No. 2 at 6), this  
28 appears to be a typo because the agreed construction of database requires that the data be  
“organized according to *a* database schema,” which is also reflected later in Finjan’s motion. *See*  
*id.* at p. 6 (“Dr. Rubin’s incorrect construction of ‘*a* database schema’”).

1 nor Dr. Rubin contend that the system of Claim 10 cannot be comprised of multiple  
2 databases as long as at least one of those databases actually stores Downloadable security  
3 profile data including a list of suspicious computer operations that may be attempted by the  
4 Downloadable, as required by the claim language.

- 5 • **Alleged Improper Construction 3—“A Table”:** Dr. Rubin never opines that the claimed  
6 database must be limited to one single table. Rather, it is Dr. Cole who identifies one  
7 component of his artificial “ResultsDB Database” (DynamoDB) as being in the form of a  
8 table but is silent on the other two components (MySQL and S3). Dr. Rubin simply rebuts  
9 Dr. Cole’s opinion reliance on a table by pointing out that Dr. Cole fails to identify a table  
10 in the other two components underlying the accused “ResultsDB Database.” See Rubin  
11 Rebuttal Report at ¶ 158 (“The code [cited by Dr. Cole] says nothing at all about *whether*  
12 *the S3 or MySQL components are organized as tables, so even if portions of DynamoDB*  
13 *are organized as a table*, that does not mean that ... ‘ResultsDB Database’ is in the form  
14 of a table.”). In other words, Dr. Rubin is merely pointing out that Dr. Cole’s own analysis  
15 does not lead to the conclusion he would like to draw. But even if Dr. Rubin had opined  
16 that “a table” was limited to one table, such an interpretation would be supported by  
17 Finjan’s own argument during IPR that the difference between the prior art and the claimed  
18 database was that the claimed database is “a database that takes the form of a table, where  
19 only one table can be used for each database.” Ex. 10 (IPR2015-01892, Paper 27) at 38.
- 20 • **Alleged Improper Construction 6—“A Database Schema”:** Dr. Rubin never opines that  
21 “a database schema” must be limited to one single database schema; rather, Dr. Rubin  
22 rebuts Dr. Cole’s opinion based on the fact that *none* of the “schemas” identified by Dr.  
23 Cole<sup>4</sup> actually organize all of the data in Dr. Cole’s “ResultsDB Database.” Dr. Rubin  
24 explains that much of the data in this “database” is not organized according to any database  
25 scheme: “The agreed construction of ‘database’ requires that the data be ‘organized  
26  
27

28 <sup>4</sup> Juniper does not admit that the “schemas” identified by Dr. Cole are “database schemas.”

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