

1 PAUL J. ANDRE (State Bar No. 196585)  
 2 pandre@kramerlevin.com  
 3 LISA KOBIALKA (State Bar No. 191404)  
 4 lkobialka@kramerlevin.com  
 5 JAMES HANNAH (State Bar No. 237978)  
 6 jhannah@kramerlevin.com  
 7 KRISTOPHER KASTENS (State Bar No. 254797)  
 8 kkastens@kramerlevin.com  
 9 KRAMER LEVIN NAFTALIS & FRANKEL LLP  
 10 990 Marsh Road  
 11 Menlo Park, CA 94025  
 12 Telephone: (650) 752-1700  
 13 Facsimile: (650) 752-1800

14 *Attorneys for Plaintiff*  
 15 FINJAN, INC.

IRELL & MANELLA LLP  
 Jonathan S. Kagan (SBN 166039)  
 jkagan@irell.com  
 Joshua Glucoft (SBN 301249)  
 jglucoft@irell.com  
 Casey Curran (SBN 305210)  
 ccurran@irell.com  
 Sharon Song (SBN 313535)  
 ssong@irell.com  
 1800 Avenue of the Stars, Suite 900  
 Los Angeles, California 90067-4276  
 Telephone: (310) 277-1010  
 Facsimile: (310) 203-7199

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

*Attorneys for Defendant*  
 JUNIPER NETWORKS, INC.

16 **IN THE UNITED STATES DISTRICT COURT**  
 17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 18 **SAN FRANCISCO DIVISION**

19  
 20 FINJAN, INC.,  
 21  
 22 Plaintiff,  
 23  
 24 v.  
 25 JUNIPER NETWORKS, INC.,  
 26  
 27 Defendant.

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

**[PROPOSED] JOINT FINAL PRETRIAL ORDER**

Trial Date: December 10, 2018  
 Time: 7:30 a.m.  
 Place: Courtroom 12 – 19<sup>th</sup> Floor  
 Judge: Hon. William Alsup

1 Pursuant to Paragraph 2 of the Court’s Guidelines for Trial and Final Pretrial Conference  
2 in Civil Jury Cases, plaintiff Finjan, Inc. (“Finjan”) and defendant Juniper Networks, Inc.  
3 (“Juniper”) (collectively, “Parties”) hereby submit this Joint Proposed Final Pretrial Order.

#### 4 **I. THE PARTIES**

5 The Parties to this action are Finjan, a Delaware corporation with its principal place of  
6 business at 2000 University Ave., Ste. 600, East Palo Alto, California 94303, and Juniper, a  
7 Delaware corporation with its principal place of business at 1133 Innovation Way, Sunnyvale,  
8 California 94089.

#### 9 **II. SUBSTANCE OF THE CLAIMS AND DEFENSES**

10 This is an action for patent infringement arising under the Patent Act, 35 U.S.C. § 101 et.  
11 seq. The Court has original jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and  
12 1338(a). In the case at large, pursuant to 35 U.S.C. § 271(a), Finjan alleges that Juniper directly  
13 infringes the following Finjan patents: U.S. Patent No. 6,154,844 (“the ’844 patent”); U.S. Patent  
14 No. 6,804,780 (“the ’780 patent”); U.S. Patent No. 7,418,731 (“the ’731 patent”); U.S. Patent No.  
15 7,613,926 (“the ’926 Patent”); U.S. Patent No. 7,647,633 (“the ’633 Patent”); U.S. Patent No.  
16 8,141,154 (“the ’154 Patent”); U.S. Patent No. 8,677,494 (“the ’494 Patent”). Collectively, these  
17 patents are referred to as the “Asserted Patents.” However, as described below, the trial set for  
18 December 10, 2018 only concerns the ’494 Patent (the “’494 Trial”). The parties agree to meet  
19 and confer in good faith to determine if the issues can be further narrowed for trial.

#### 20 **Finjan’s Position**

21 By its February 23, 2018 Order, the Court instituted early summary judgment proceedings  
22 in this action. Dkt. 35. Specifically, the Court ordered: “By **JUNE 7, 2018**, each side shall select  
23 one asserted claim — presumably the strongest case for infringement and the strongest case for  
24 noninfringement or invalidity, respectively — and file an early motion for summary judgment on  
25 that claim...” Pursuant to this order, Finjan selected Claim 10 of the ’494 Patent (“Claim 10”).  
26 Claim 10 reads as follows:

27 A system for managing Downloadables, comprising:

28 a receiver for receiving an incoming Downloadable;

1 a Downloadable scanner coupled with said receiver, for deriving  
2 security profile data for the Downloadable, including a list of  
3 suspicious computer operations that may be attempted by the  
Downloadable; and

4 a database manager coupled with said Downloadable scanner, for  
5 storing the Downloadable security profile data in a database.

6 On August 31, 2018, the Court granted in part Finjan’s motion for summary judgment of  
7 infringement of Claim 10 of the ‘494 Patent. Dkt. 189. Specifically, the Court found that  
8 “(1) Juniper’s SRX Gateways used in combination with Sky ATP; and (2) Sky ATP alone” meet  
9 the first two limitations of Claim 10, but found factual disputes exist for “whether the accused  
10 system includes a ‘database’ within the meaning of Claim 10.” Dkt. 189 at 16. The Court held:  
11 “Factual disputes regarding whether ResultsDB constitutes a ‘database’ — either literally or  
12 under the doctrine of equivalents — while thin, preclude a determination one way or the other on  
13 the record provided with the degree of certainty required for summary judgment, particularly  
14 when viewing the record in light most favorable to Juniper. This issue will have to be tried to a  
jury.”

15 The Court also found the following:

- 16 1. The Court found that the Accused Products meet the preamble of Claim 10 of the  
17 ‘494 Patent, which reads “A system for managing Downloadables, comprising.”
- 18 2. The Court found that the Accused Products meet the first element of Claim 10 of  
19 the ‘494 Patent, which reads “a receiver for receiving an incoming  
20 Downloadable.”
- 21 3. The Court found that the Accused Products meet the second element of Claim 10  
22 of the ‘494 Patent, which reads “a Downloadable scanner coupled with said  
23 receiver, for deriving security profile data for the Downloadable, including a list of  
24 suspicious computer operations that may be attempted by the Downloadable.”
- 25 4. The Court found that except for whether there was a “database,” the Accused  
26 Products meet the third element of Claim 10 of the ‘494 Patent, which reads “a  
27 database manager coupled with said Downloadable scanner for storing the  
28

1 Downloadable security profile data in a database,” limitation of the third element  
2 of Claim 10 of the ‘494 Patent.

3 5. The Court found that “Sky ATP stores results in three different storage solutions  
4 provided by Amazon: (1) DynamoDB, (2) S3, and (3) MySQL (Dkt. No. 126 at  
5 26). ResultsDB management is an interface overlaying these three storage  
6 components.”

7 The Court, therefore, ordered a trial on four issues related to Finjan’s motion for summary  
8 judgment of infringement of Claim 10, to include: “(1) whether the accused products meet the  
9 ‘database’ limitation; (2) Juniper’s Section 101 invalidity defense; (3) Juniper’s Section 287  
10 defense on damages; and (4) the extent of damages.” Dkt. 189.

11 Finjan provided Juniper notice of the ‘494 Patent and that Juniper’s SRX Gateway in  
12 combination with Sky ATP and Sky ATP alone infringed the ‘494 Patent since at least November  
13 24, 2015.

#### 14 **Juniper’s Position**

15 By its February 23, 2018 Order, the Court instituted early summary judgment proceedings  
16 in this action. Dkt. 35. Specifically, the Court ordered: “By **JUNE 7, 2018**, each side shall select  
17 one asserted claim — presumably the strongest case for infringement and the strongest case for  
18 noninfringement or invalidity, respectively — and file an early motion for summary judgment on  
19 that claim...” Pursuant to this order, Juniper selected Claim 1 of the ‘780 Patent (“Claim 1”).  
20 Claim 1 reads as follows:

21 A computer-based method for generating a Downloadable ID to identify a Downloadable,  
22 comprising:

23 obtaining a Downloadable that includes one or more references to  
24 software components required to be executed by the Downloadable;

25 fetching at least one software component identified by the one or  
26 more references; and

27 performing a hashing function on the Downloadable and the fetched  
28 software components to generate a Downloadable ID.

On August 9, 2018, the Court granted in full Juniper’s motion for summary judgment of non-  
infringement. Dkt. 180. Specifically, the Court found that “Finjan has not shown that the SRX

1 and Sky ATP perform a hashing function on the downloadable *together with* its fetched software  
2 components.” Dkt. 180 at 10.

3 Also pursuant to the Court’s February 23, 2018 Order, Finjan selected Claim 10 of the  
4 ‘494 Patent (“Claim 10”). Claim 10 reads as follows:

5 A system for managing Downloadables, comprising:

6 receiver for receiving an incoming Downloadable;

7 a Downloadable scanner coupled with said receiver, for deriving  
8 security profile data for the Downloadable, including a list of  
9 suspicious computer operations that may be attempted by the  
Downloadable; and

10 a database manager coupled with said Downloadable scanner, for  
11 storing the Downloadable security profile data in a database.

12 On August 31, 2018, the Court found that factual disputes preclude fully granting Finjan’s motion  
13 for summary judgment of infringement of Claim 10 of the ‘494 Patent. Dkt. 189. Specifically,  
14 the Court stated: “Factual disputes regarding whether ResultsDB constitutes a ‘database’ — either  
15 literally or under the doctrine of equivalents — while thin, preclude a determination one way or  
16 the other on the record provided with the degree of certainty required for summary judgment,  
17 particularly when viewing the record in light most favorable to Juniper. This issue will have to be  
18 tried to a jury.”

19 Regarding Juniper’s 35 U.S.C. § 101 invalidity argument, the Court found that “Claim 10  
20 of the ‘494 Patent does not itself recite any step beyond the mere identification of suspicious  
21 operations within a received Downloadable (and then storing the information somewhere). It  
22 stops short of claiming any non-fundamental, routine step, such as comparing the security profile  
23 with the access control list or any kind of protective measure. As such, Claim 10 is directed to an  
24 abstract idea rather than an improvement on computer functionality.” Dkt. 189 at 19. The Court  
25 further held that “[a]t this juncture, this order will postpone on reaching the issue of whether  
26 Claim 10 survives under *Alice* step two. Rather, the Court will wait to have the benefit of the trial  
27 record before determining whether Claim 10 contains an inventive concept such that it is patent  
28 eligible.” Dkt. 189 at 19.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.