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 JUNIPER NETWORKS, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FINJAN, INC.,

Plaintiff,

v.

JUNIPER NETWORKS, INC.,

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 – 19th Floor
 Judge: Hon. William Alsup

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

I. THE PARTIES

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

II. SUBSTANCE OF THE CLAIMS AND DEFENSES

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

Finjan’s Position

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

A system for managing Downloadables, comprising:

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

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

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

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

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

Juniper’s Position

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

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

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

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

performing a hashing function on the Downloadable and the fetched 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.

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