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14
 15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN FRANCISCO DIVISION**

18	FINJAN, INC., a Delaware Corporation,)	Case No. 3:17-cv-05659-WHA
)	
19	Plaintiff,)	JUNIPER NETWORKS, INC.’S MOTION
)	IN LIMINE NO. 5 TO EXCLUDE
20	v.)	EVIDENCE AND ARGUMENT
)	CONTRARY TO EXISTING CLAIM
21	JUNIPER NETWORKS, INC., a Delaware)	CONSTRUCTIONS
	Corporation,)	
22)	Date: December 4, 2018
	Defendant.)	Time: 9:00 a.m.
23)	Courtroom: Courtroom 12, 19 th Floor
)	Before: Hon. William Alsup

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1 **I. INTRODUCTION**

2 Juniper respectfully requests an order precluding Finjan and its technical expert Dr. Eric
3 Cole from arguing for claim constructions that are inconsistent with this Court’s prior rulings on
4 claim constructions and/or constructions on which the parties have agreed. Specifically, Juniper
5 believes that Finjan may attempt to make the following two arguments that are inconsistent with
6 the existing claim constructions in this case: (1) the Court’s construction of “database manager”
7 necessarily or logically requires the existence of the claimed “database”; and (2) a “database
8 schema” is not a “description of a database to a database management system (DBMS) in the
9 language provided by the DBMS.”

10 **II. FACTUAL BACKGROUND**

11 Claim 10 of U.S. Patent No. 8,677,494 (“the ’494 Patent”) recites “a database manager . . .
12 for storing the Downloadable security profile data in a database.” In the Court’s Order on early
13 summary judgment, the Court construed the term “database manager” and found that the accused
14 products contain the claimed “database manager.” The Court also held, however, that there is a
15 genuine factual dispute about whether the accused products contain the claimed “database” as that
16 term is used in the ’494 Patent. Dkt. No. 189 at 15-17.

17 The parties agree that the term “database” is properly construed as “a collection of
18 interrelated data organized according to a database schema to serve one or more applications.”
19 Dkt. No. 189 at 16. Juniper has also agreed to the definition of “database schema” that Finjan
20 previously proposed in an *inter partes* review (IPR) of the ’494 Patent and that Dr. Cole adopted
21 in this case. Specifically, Finjan defined “database schema” as “a description of a database to a
22 database management system (DBMS) in the language provided by the DBMS.” Ex. 12,
23 IPR2015-01892, Paper 27 (Finjan’s Patent Owner’s Response) at 38-39 (quoting Medvidovic
24 Dec.).¹ Finjan’s technical expert in this case, Dr. Cole, confirmed this definition of “database
25 schema” when he was deposed on June 21, 2018. *See* Ex. 14 (6/21/18 Cole Depo. Tr.) at 115:17-
26 116:1 (“Q. Would you agree that a database schema is a description of a database to a database
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28 ¹ Finjan proposed the identical construction in a 2016 IPR involving the same claim. *See*
IPR2016-00159. Ex. 13, Paper 17 at 35 (quoting Medvidovic Dec.).

1 management system in the language provided by the database management system? THE
2 WITNESS: That would generally fit my understanding.”²). After Dr. Cole confirmed this
3 definition, Juniper and its technical expert in this case, Dr. Aviel Rubin, agreed to adopt Finjan’s
4 definition. *See* Dkt. No. 126-1 (Rubin Declaration) at ¶ 15 (“I have adopted the meaning of
5 ‘database schema’ articulated by Finjan’s experts Dr. Medvidovic and Dr. Cole.”).

6 Since the time this Court issued its claim construction Order on “database manager” and
7 Juniper adopted Finjan’s definition of “database schema,” Finjan has indicated that it will attempt
8 to make arguments contrary to both constructions. With respect to “database manager,” Dr. Cole
9 intends to argue that because “a ‘database manager’ was found to be present, it is *necessary* that a
10 ‘database’ is also present” (Ex. 1 (Cole Report) at ¶ 43), notwithstanding that this Court found
11 precisely the opposite—that the accused products have a “database manager” but there is a factual
12 dispute about whether they use a “database” as that term is construed in the ’494 Patent. With
13 respect to “database,” Dr. Cole’s testimony at his recent November 14, 2018 deposition suggests
14 that he intends to back away from Finjan’s previously proposed (and accepted) construction of
15 “database schema,” and he now intends to argue that a “database schema” can be *anything* that
16 “sets forth the structure of the data.” *See* Ex. 15 (11/14/18 Cole Depo. Tr.) at 181:22-182:2 (“Q.
17 What is your understanding of what a ‘database schema’ is? THE WITNESS: A schema basically
18 sets forth the structure of the data.”)

19 **III. ARGUMENT**

20 **A. Finjan Should Be Precluded From Offering Claim Construction Evidence** 21 **Inconsistent With The Court’s Construction Of “Database Manager.”**

22 This Court has held that there is a genuine factual dispute over whether the accused
23 products, which contain a “database manager,” also contain a “database,” as that term is used in
24 the ’494 Patent. Dkt. No. 189 at 16-17. Dr. Cole intends to argue, however, that “as a ‘database
25 manager’ was found to be present, it is *necessary* that a ‘database’ is also present,” and that
26 “[b]ased on the fact the Court held that the Accused Products include a database manager, it seems
27 only *logical* that the Accused Products also contain a database.” Ex. 1 (Cole Report) at ¶¶ 43, 84.

28 ² Objections by counsel have been omitted. All emphasis is added unless indicated otherwise.

1 In other words, Dr. Cole intends to argue that the presence of a “database manager” necessarily or
2 logically requires the use of a “database,” notwithstanding that this argument contradicts the
3 Court’s findings. Dr. Cole should not be permitted to misrepresent the Court’s claim construction
4 Order regarding the term “database manager.” *See Samsung Electronics Co., Ltd. v. Quanta*
5 *Computer, Inc.*, No. C-00-4524 VRW, 2006 WL 2850028, at *1 (N.D. Cal. Oct. 4, 2006) (noting
6 “the non-controversial proposition that the evidence and argument at trial should conform to the
7 court’s claim construction”).

8 Dr. Cole mischaracterizes the Court’s previous Order, claiming that the Court’s
9 construction of “database manager” necessarily or logically includes a “database.” The Court
10 made no such finding, and the fact that the Court ordered a trial to determine whether the accused
11 products (which the Court found contain a “database manager”) contain the claimed “database”
12 fully undermines Finjan’s argument. Finjan’s argument is thus improper, as a party may not
13 “advocate for interpretations that are inconsistent with the Court’s claim construction ruling.” *See*
14 *ActiveVideo Networks, Inc. v. Verizon Communications, Inc.*, No. 2:10cv248, 2011 WL 7036048,
15 at *2 (E.D. Va. July 5, 2011); *see also Fujifilm Corp. v. Motorola Mobility LLC*, No. , 2015 WL
16 12622055, at *4 (N.D. Cal. Mar. 19, 2015) (“Neither party shall make arguments inconsistent with
17 [] the claim construction order in this case”); Ex. 18 at 10-11 ((Dkt. No. 162, *Orthoarm, Inc. v.*
18 *Forestadent USA, Inc.*, Case No. 4:06-cv-00730-CAS (E.D. Mo. July 17, 2008)) (“[T]he jury
19 cannot be encouraged to depart from the Court’s claim construction. . . . [T]he evidence presented
20 at trial must be consistent with the Court’s Claim Construction Order. . . . [T]he Court [must] not
21 permit argument or evidence reflecting a claim construction other than the Court’s [] Claim
22 Construction Order.”).

23 **B. Finjan Should Be Precluded From Offering Claim Construction Evidence**
24 **Inconsistent With The Agreed Construction Of “Database.”**

25 The parties agree that the term “database” is properly construed as “a collection of
26 interrelated data organized according to a *database schema* to serve one or more applications.”
27 *See* Dkt. No. 189 at 16. In his June 28, 2018 declaration, Juniper’s expert, Dr. Rubin, expressly
28 adopted the definition of “database schema” that Finjan has used in multiple IPR proceedings and

1 that Dr. Cole had agreed was appropriate in this case—specifically that “database schema” means
2 “a description of a database to a database management system (DBMS) in the language provided
3 by the DBMS.” Ex. 12 (IPR2015-01892, Paper 27) at 38-39; Ex. 13 (IPR2016-00159, Paper 17)
4 at 35; Ex. 14 (6/21/18 Cole Depo. Tr.) at 115:17-116:1; and Dkt. No. 126-1 at ¶ 15.

5 After receiving Dr. Rubin’s June declaration, however, Dr. Cole suddenly reversed course.
6 Because the parties’ agreement for the definition of “database schema” was not enshrined in the
7 Court’s summary judgment Order, Dr. Cole felt free to ignore it. As he stated in his September 10
8 expert report, Dr. Cole did not feel bound by the agreed construction of “database schema”
9 because he “understand[s] that the Court has not adopted this construction *and that it is not*
10 *required by the claim.*”³ Ex. 1 (Cole Report) at ¶ 106. Then, at his second deposition, Dr. Cole
11 proposed a new and substantially broader definition for “database schema”; he now argued it is
12 anything that sets forth the structure of data. Ex. 15 (11/14/18 Cole Depo. Tr.) at 181:22-182:2
13 (“Q. What is your understanding of what a ‘database schema’ is? THE WITNESS: A schema
14 basically sets forth the structure of the data.”).

15 The Court should preclude Dr. Cole from introducing or discussing his newfound
16 understanding of “database schema” at the upcoming trial. The original construction of “database
17 schema” was proposed by Finjan, adopted by Dr. Cole, and then agreed to by Dr. Rubin. Any
18 attempt to back away from this construction now—or present multiple constructions of this term
19 to the jury—would certainly lead to jury confusion and is improper. *See SPX Corp. v. Bartec*
20 *USA*, No. 06-14888, 2008 WL 3850770, at *11 (E.D. Mich. Aug. 12, 2008) (“The Court finds that
21 evidence that would advance the defendants’ proposed claim construction inconsistent with that
22 declared by the Court and previously agreed to by the parties ought not be admitted.”).

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27 ³ There is no dispute that a “database” requires a “database schema.” *See* Ex. 1 (Cole Report at
28 ¶ 83) (“I have used the plain and ordinary meaning of the term ‘database,’ which refers to ‘a
collection of interrelated data organized according to a *database schema* to serve one or more
applications.”). The change in Dr. Cole’s position instead relates to what a “database schema” is.

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