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15		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.,	Case No.: 3:17-cv-05659-WHA
21 22	Plaintiff,	JOINT [PROPOSED] JURY INSTRUCTIONS
23	v.	Trial Date: December 10, 2019
24	JUNIPER NETWORKS, INC.,	Trial Date: December 10, 2018 Time: 7:30 a.m. Place: Courtroom 12 – 19 th Floor
25	Defendant.	Judge: Hon. William Alsup
26	Detendant.	
27	REDACTED VERSION OF DOC	CUMENT SOUGHT TO BE SEALED
28		





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STIPULATED INSTRUCTION NO. 1. RE WHAT A PATENT IS AND HOW ONE IS OBTAINED

This case involves a dispute relating to a United States patent. Before summarizing the positions of the parties and the legal issues involved in the dispute, let me take a moment to explain what a patent is and how one is obtained.

Patents are granted by the United States Patent and Trademark Office (sometimes called "the PTO"). A valid United States patent gives the patent holder the right to prevent others from making, using, offering to sell, or selling the patented invention within the United States, or from importing it into the United States, during the term of the patent without the patent holder's permission. A violation of the patent holder's rights is called infringement. The patent holder may try to enforce a patent against persons believed to be infringers by means of a lawsuit filed in federal court.

To obtain a patent one must file an application with the PTO. The process of obtaining a patent is called patent prosecution. The PTO is an agency of the federal government and employs trained patent examiners who review applications for patents. The application includes what is called a "specification," which must contain a written description of the claimed invention telling what the invention is, how it works, how to make it and how to use it so others skilled in the field will know how to make or use it. The specification concludes with one or more numbered sentences. These are the patent "claims." When the patent is eventually granted by the PTO, the claims define the boundaries of its protection and give notice to the public of those boundaries.

After the applicant files the application, a PTO patent examiner reviews the patent application to determine whether the claims are patentable and whether the specification adequately describes the invention claimed. In examining a patent application, the patent examiner reviews information about the state of the technology at the time the application was filed. As part of that effort, the patent examiner searches for and reviews information that is publicly available, submitted by the applicant, or both. That information is called "prior art." Prior art is defined by law, and I will give you at a later time specific instructions as to what constitutes prior art. However, in general, prior art includes things that existed before the claimed

Case 3:17-cy-05659-WHA Document 277 Filed 11/28/18 Page 4 of 61 Yellow Highlight indicates changed or added language to a model instruction. Strikethrough indicates deleted language from model instruction. Optional instructions and basic changes such as inserting party name is not indicated. invention, that were publicly known, or used in a publicly accessible way in this countries.

invention, that were publicly known, or used in a publicly accessible way in this country, or that were patented or described in a publication in any country. The patent examiner considers, among other things, whether each claim defines an invention that is new, useful, and not obvious in view of the prior art. A patent lists the prior art that the examiner considered; this list is called the "cited references."

After the prior art search and examination of the application, the patent examiner then informs the applicant in writing what the examiner has found and whether any claim is patentable, and thus will be "allowed." This writing from the patent examiner is called an "office action." If the examiner rejects the claims, the applicant has an opportunity to respond and sometimes changes the claims or submits new claims. This process, which takes place only between the examiner and the patent applicant, may go back and forth for some time until the examiner is satisfied that the application and claims meet the requirements for a patent. Sometimes, patents are issued after appeals with the PTO or to a court. The papers generated during this time of communicating back and forth between the patent examiner and the applicant make up what is called the "prosecution history." All of this material becomes available to the public no later than the date when the patent issues.

The fact that the PTO grants a patent does not necessarily mean that any invention claimed in the patent, in fact, deserves the protection of a patent. For example, the PTO may not have had available to it all the information that will be presented to you. A person accused of infringement has the right to argue here in federal court that a claimed invention in the patent is invalid because it does not meet the requirements for a patent.

23 N.D. Cal. Model Patent Jury Instructions A.1, Rev. Aug. 2017 (updated Jan. 2018).



Case 3:17-cy-05659-WHA Document 277 Filed 11/28/18 Page 5 of 61 Yellow Highlight indicates changed or added language to a model instruction. Strikethrough indicates deleted language from model instruction. Optional instructions and basic changes such as inserting party name is not indicated. STIPULATED INSTRUCTION NO. 2. RE PATENT AT ISSUE The court should show the jury the patent at issue and point out the parts including the specification, drawings and claims including the claims at issue.] You have been given the patent at issue: U.S. Patent Number 8,677,494. The drawings of the patent are included on pages 7-16 of the patent. The specification consists of columns 1 through 21 at line 17. The patent claims are listed from column 21, line 18 through the end of column 22. The only claim that is at issue in this trial is claim 10. N.D. Cal. Model Patent Jury Instructions A.2, Rev. Aug. 2017 (updated Jan. 2018).



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