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JUNIPER NETWORKS, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

18 FINJAN, INC., a Delaware Corporation,

19 Plaintiff,

20 v.

21 JUNIPER NETWORKS, INC., a Delaware
22 Corporation,

23 Defendant.
24
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Case No.: 3:17-cv-05659-WHA

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Date: February 22, 2018
Time: 11:00 a.m.
Location: Courtroom 12, 19th Floor

Date Complaint Filed: September 29, 2017

Trial Date: None Set

1 Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, Patent Local Rule 2-
2 1, the Standing Order for All Judges of the Northern District of California – Contents of Joint Case
3 Management Statement, Judge Alsup’s Supplemental Order regarding Case Management Conferences,
4 and the November 6, 2017 Clerk’s Notice Scheduling Initial Case Management Conference On
5 Reassignment (Dkt. No. 13), the parties to the above-titled action, Plaintiff Finjan, Inc. (“Finjan”) and
6 Defendant Juniper Networks, Inc. (“Juniper”), jointly submit this Case Management Statement and
7 Proposed Order.

8 **1. Jurisdiction and Service**

9 This is an action for patent infringement arising under 35 U.S.C. § 101 *et seq.* The Court has
10 subject matter jurisdiction over actions for patent infringement pursuant to 28 U.S.C. §§ 1331, 1338(a),
11 2201, and 2202. Notwithstanding the forgoing, Juniper avers that it lacks information at this stage of
12 the litigation to determine whether Finjan has sufficient rights in the patents-in-suit to confer subject
13 matter jurisdiction in this case.

14 Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b). No
15 issues exist regarding personal jurisdiction, venue or service.

16 **2. Facts**

17 **(a) Finjan’s Statement**

18 Finjan filed its original complaint (the “Complaint”) in this action on September 29, 2017.
19 Finjan alleges that Juniper directly infringes U.S. Patent Nos.: 6,154,844 (“the ‘844 Patent”);
20 6,804,780 (“the ‘780 Patent”); 7,613,926 (“the ‘926 Patent”); 7,647,633 (“the ‘633 Patent”); 8,141,154
21 (“the ‘154 Patent”); 8,677,494 (“the ‘494 Patent”), 7,975,305 (“the ‘305 Patent”); and 8,225,408 (“the
22 ‘408 Patent”) (collectively the “Patents-in-Suit”) by making, using, selling, offering for sale and/or
23 importing its: SRX Series Services Gateways (including Defendant’s SRX Gateway appliances, vSRX
24 Virtual Firewall, and cSRX Container Firewall); Sky Advanced Threat Protection (“Sky ATP”); Junos
25 Space Security Director; and Contrail products. The foregoing products and services are collectively
26 referred to herein as the “Accused Products.”
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1 Finjan contends it holds all rights, title, and interest in the Patents-in-Suit. Finjan seeks
2 damages and injunctive relief for the alleged infringement, as well as a finding that this case is
3 exceptional.

4 Counsel for Juniper contacted Finjan on October 30, 2017, requesting an extension of Juniper's
5 time to respond to the Complaint. The parties filed a joint stipulation on November 8, 2017, extending
6 the time for Juniper to respond until December 22, 2017. The Court granted that stipulation by Order
7 dated November 9, 2017 (Dkt. No. 16).

8 **(b) Juniper's Statement**

9 Juniper is a leading provider of networking and network security products. Finjan has sued a
10 number of technology companies, including Juniper, for alleged infringement of patents related to
11 network security, including the Patents-in-Suit. Juniper contests Finjan's allegations that Juniper
12 infringes the Patents-in-Suit. Juniper also alleges that the Patents-in-Suit are invalid and
13 unenforceable. This case is in its early stages and Juniper's assessment of Finjan's allegations and of
14 the Patents-in-Suit is still ongoing.

15 On December 22, 2017, Juniper filed a motion to dismiss the allegations of indirect
16 infringement and willfulness in Finjan's complaint. On February 1, 2018, the Court granted Juniper's
17 motion after hearing argument and ordered Finjan to seek leave before Finjan could file an amended
18 complaint. Dkt. No. 28. Finjan has informed Juniper that Finjan does not intend to seek leave to
19 amend its Complaint to resolve the deficiencies in its willful and induced infringement claims.

20 **3. Legal Issues**

21 The principal disputed legal issues are:

- 22
- 23 • Whether Juniper has infringed or not infringed any claim of the Patents-in-Suit under 35
U.S.C. § 271;
 - 24 • Whether the Patents-in-Suit are invalid;
 - 25 • Whether the Patents-in-Suit are unenforceable;
 - 26 • The proper construction of any disputed claim terms;
- 27
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- 1 • Whether Finjan is entitled to recover damages as a result of the alleged infringement of any
2 or all of the Patents-in-Suit, and if so, the amount (35 U.S.C. §§ 284, 287);
- 3 • Whether Finjan is entitled to injunctive relief to prevent alleged irreparable harm as a result
4 of the alleged continuing infringement of any or all of the Patents-in-Suit (35 U.S.C. § 283);
- 5 • Whether this case is exceptional (35 U.S.C. § 285), entitling either party to its reasonable
6 attorneys' fees;
- 7 • Whether Finjan's claims are barred, in whole or in part, by the defenses advanced by
8 Juniper;
- 9 • Whether Juniper is entitled to equitable relief.

9 **4. Motions and/or Pending Matters**

10 (a) Pending Motions

11 Pursuant to Federal Rule of Civil Procedure 12(b), Juniper filed a motion to dismiss Finjan's
12 claims of indirect infringement and willful infringement. *See* Dkt. No. 23. This Court heard oral
13 argument related to Juniper's motion to dismiss on February 1, 2018. The Court granted Juniper's
14 motion with a written Order to follow.

15 (b) Anticipated Motions

16 Finjan and Juniper anticipate moving for summary judgment and may file other dispositive and
17 non-dispositive motions as appropriate, as the case progresses.

18 The parties anticipate filing a joint motion for a protective order governing the confidentiality
19 of information and the review of source code in this matter. The parties also anticipate filing a
20 Stipulated Order Regarding Discovery of ESI ("ESI Order").

21 **5. Amendment of Pleadings**

22 Other than with respect to allegations dismissed by the Court pursuant to Juniper's Motion to
23 Dismiss (Dkt. No. 30), the parties agree that the deadline for joining parties and amending the
24 pleadings without leave of Court should be May 4, 2018, and that otherwise the parties may only
25 amend the pleadings upon a showing of good cause, or upon being granted leave to amend by the
26 Court.

27 Given Finjan's representation that it does not intend to file a motion for leave to amend its
28

1 Complaint, Juniper has agreed to file an answer and counterclaims in response to Finjan’s complaint
2 no later than 14 days after the Court order on Juniper’s Motion to Dismiss (Dkt. No. 30). Given that
3 this litigation is in its early stages, Juniper submits that it is unable to determine the extent to which
4 proposed pleading amendments may be submitted.

5 **6. Evidence Preservation**

6 The parties have reviewed the Northern District of California’s Guidelines for the Discovery of
7 Electronically Stored Information (“ESI”) and the Checklist for Rule 26(f) Meet and Confer Regarding
8 ESI, including those portions related to evidence preservation. The parties confirm that they have met
9 and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to
10 preserve electronic and hardcopy evidence relevant to the issues reasonably evident in this action.

11 The parties anticipate addressing further agreement regarding ESI in the parties’ ESI Order.

12 **7. Initial Disclosures**

13 The parties agree to exchange initial disclosures pursuant to Rule 26(a) on March 30, 2018.
14 Each party reserves its right to amend such disclosures as discovery progresses.

15 **8. Discovery**

16 No discovery has been taken to date, and, at this time, the parties have not identified any
17 discovery disputes. Pursuant to Rule 26(f) and paragraph 8 of the Standing Order for All Judges of the
18 Northern District of California – Contents of Joint Case Management Statement, the parties propose
19 the following discovery plan:

- 20 (a) **Changes to the timing, form, or requirement for disclosures under Rule**
21 **26(a), including a statement of when initial disclosures were made or will be**
22 **made.**

23 As noted above, the parties agree to exchange initial disclosures pursuant to Rule 26(a) on
24 March 30, 2018. The parties’ proposals regarding the timing for expert disclosures under Rule
25 26(a)(2) and pretrial disclosures under Rule 26(a)(3) are set forth in the proposed schedule at Section
26 17 (Appendix A) below.
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