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10 FINJAN, INC.

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

15 FINJAN, INC., a Delaware Corporation,

16 Plaintiff,

17 v.

18 JUNIPER NETWORKS, INC., a Delaware
19 Corporation,

20 Defendant.

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

**PLAINTIFF FINJAN, INC.'S MOTION FOR
JUDGMENT AS A MATTER OF LAW AT
THE CLOSE OF DEFENDANT'S CASE**

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 NOTICE IS HEREBY GIVEN that as soon as the matter may be heard by the Court, Finjan,
4 Inc. (“Finjan”) will and hereby does move the Court for an order granting judgment as a matter of law.
5 This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the trial
6 record, the pleadings and papers on file, and any evidence and argument presented to the Court.

7 **I. INTRODUCTION AND RELIEF REQUESTED**

8 Pursuant to the Federal Rule of Civil Procedure 50(a), Finjan moves for judgment as a matter
9 of law (“JMOL”) in Finjan’s favor as to Defendant Juniper Network, Inc.’s (“Juniper’s”) claims for
10 non-infringement, invalidity challenges under 35 U.S.C. § 101 (“Section 101”), and infirm damages
11 rebuttal.¹ Juniper has failed to present legally sufficient evidence that would allow a reasonable
12 factfinder to conclude that Juniper’s accused (1) SRX Gateways with SkyATP and (2) Sky ATP by
13 itself do not infringe Claim 10 of the ‘494 Patent (“Claim 10”). Finjan also moves for judgment as a
14 matter of law as to no patent invalidity of Claim 10 pursuant to Section 101 because Juniper has not
15 shown by clear and convincing evidence that Claim 10 is invalid. Finally, to ensure a complete
16 reservation of rights, Finjan addresses the insufficiencies of the evidence for Juniper’s damages
17 rebuttal.

18 **II. LEGAL STANDARD**

19 A court may grant judgment as a matter of law when “a party has been fully heard on an issue
20 during a jury trial and the court finds that a reasonable jury would not have a legally sufficient
21 evidentiary basis to find for the party on that issue . . .” Fed. R. Civ. P. 50(a)(1); *MediaTek Inc. v.*
22 *Freescale Semiconductor, Inc.*, No. 11-CV-5341 YGR, 2014 WL 4643947, at *1 (N.D. Cal. Sept. 17,
23 2014) (granting motion for judgment of matter of law under Rule 50(a) of direct infringement). Finjan
24 presented legally sufficient evidence at trial such that no reasonable jury could find that Juniper’s

25
26
27 ¹ Finjan is making this Motion pursuant to the Court’s deadline set forth on December 13, 2018, which
28 required Finjan to make this motion before Juniper closed its case. Given the timing of this filing,
29 Finjan reserves all rights to address issues that may arise once Juniper closes its case.

1 accused systems do not infringe Claim 10 of the '494 Patent and that Claim 10 is invalid under Section
2 101.

3 **III. ARGUMENT**

4 **A. FINJAN IS ENTITLED TO JUDGMENT AS A MATTER OF LAW THAT** 5 **JUNIPER INFRINGES CLAIM 10**

6 As a preliminary matter, the Court already found in summary judgment that Juniper infringes
7 every element of Claim 10 of the '494 Patent, except for the database element, which requires “a
8 database manager coupled with said Downloadable scanner, for storing the Downloadable security
9 profile data in a database.” Dkt. No. 185 4–18; '494 Patent, Claim 10. No reasonable jury could find
10 that (1) SRX Gateway and SkyATP and (2) SkyATP (the “Accused Products”) do not literally infringe
11 the “database” element of Claim 10 of the '494 Patent given the abundant evidence Finjan presented.
12 Fed. R. Civ. P. 50(a)(1)(a court may grant a motion for judgment as a matter of law (“JMOL”) against
13 a party on an issue where the party “has been fully heard on an issue during a jury trial and the court
14 finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on
15 that issue.”); *Volterra Semiconductor Corp. v. Primarion, Inc.*, 799 F. Supp. 2d 1092, 1098 (N.D. Cal.
16 2011) (citing *McGonigle v. Combs*, 968 F.2d 810, 816 (9th Cir. 1992) (JMOL is properly granted
17 “when the evidence permits only one reasonable conclusion as to the verdict.”) (citation omitted)).
18 Finjan presented substantial evidence that the Accused Products include a ResultsDB, which is “a
19 collection of interrelated data organized according to a database schema to serve one or more
20 applications,” including through the testimony of its expert, Dr. Cole, whose opinions were based on
21 Juniper’s internal source code, internal confidential technical documents, marketing materials, and
22 testimony of Juniper’s key engineers. Dkt. 224 at 1.

23 **1. The ResultsDB Exists**

24 Juniper failed to rebut Finjan’s uncontested evidence on whether the “database” element was
25 met. Nothing could be further from the truth, and Finjan showed numerous document establishing that
26 the ResultsDB is in fact very real, and used extensively by Juniper. Trial Tr. 440:18 - 444:4; Trial Ex.
27 78 @ FINJAN-JN 0044763 (Page 20); Trial Ex. 94 at JNPR-FNJN_29018_00963212 (Page 10),
28

1 JNPR-FNJJN_29018_00963213 (Page 11); Trial Ex. 99 @ 115; Trial Ex 92 @ JNPR-
2 FNJJN_29017_00553166 (Page 20) & JNPR-FNJJN_29017_00553178 (Page 32); Ex 99 (Page 8).

3 Juniper's expert, Dr. Rubin, said that there was no such thing as the ResultsDB, arguing that
4 Juniper's employees did not know what they meant when they discussed a database. However, Dr.
5 Rubin failed to rebut Dr. Cole's substantial evidence that it was a database, including numerous source
6 code citations. In fact, Dr. Rubin acknowledged that there was a database, including a collection of
7 interrelated data that was organized according to a schema. Dr. Rubin also completely ignored Dr.
8 Cole's infringement allegations that the ResultsDB was the infringing database and denied its
9 existence.

10 Dr. Rubin's testimony also conflicted with the parties' agreed upon construction of "a
11 collection of interrelated data organized according to a database schema to serve one or more
12 applications," which is focused on a "collection of data," and would include all collections of data that
13 meet these requirements.

14 Based on this substantial evidence and the lack of evidence from Juniper, Finjan is entitled to
15 JMOL that SRX Gateway and SkyATP and SkyATP literally infringe Claim 10.

16 **2. The ResultsDB Has a Database Schema**

17 Juniper's argument that the RDB schema cannot be a database schema, also defines all logic
18 and is unsupported by evidence. Finjan put in overwhelming evidence of this element through Dr.
19 Cole and his supporting documents. Trial Tr. 463:10-466:12; Ex 99 @ 8; Ex 399 @ JNPR-
20 FNJJN_29032_00590607 (Page 36); Ex 65 @ JNPR-FNJJN_29030_00553972 (Page 1), JNPR-
21 FNJJN_29030_00553972; Ex 99 @ 78; Ex 99 @ 297. Dr. Rubin did not present arguments that
22 conflict with this, but instead made an arbitrary distinction between a JSON Schema and a Key
23 Schema, which he admitted were used in the ResultsDB, but he argues are not "database schemas."
24 Dr. Rubin's argument also conflicts with the parties' agreed upon claim construction.

1 **B. FINJAN IS ENTITLED TO JUDGMENT AS A MATTER OF LAW THAT THE**
2 **‘494 PATENT IS VALID**

3 The Court should order a directed verdict in favor of Finjan on the issue of 35 U.S.C. § 101
4 because the ‘494 Patent is presumed valid and Juniper put on insufficient evidence to establish by clear
5 and convincing evidence that Claim 10 of the ‘494 Patent, either as individual elements or as an
6 ordered combination, was well-understood, routine, and conventional at the time of the invention. *CLS*
7 *Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, at 1304-05 (2013) (“Because we believe the
8 presumption of validity applies to all challenges to patentability, including those under Section 101 and
9 the exceptions thereto, we find that any attack on an issued patent based on a challenge to the
10 eligibility of the subject matter must be proven by clear and convincing evidence.”).

11 Juniper put on a *de facto* obviousness case (under 35 U.S.C. § 103) against Claim 10, relying
12 on prior art that Dr. Rubin did not even attempt to show was well known at the time. Juniper’s reliance
13 on concurrent patent applications and a few obscure research papers is insufficient as a matter of law
14 because “well-understood, routine, and conventional goes beyond what was simply known in the prior
15 art. The mere fact that something is disclosed in a piece of prior art, for example, does not mean it was
16 well-understood, routine, and conventional.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir.
17 2018); *Exergen Corp. v. Kaz USA, Inc.*, 725 F. App’x 959, 965-66 (Fed. Cir. 2018) (“Something is not
18 well-understood, routine, and conventional merely because it is disclosed in a prior art reference.”);
19 *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 16-cv-02787-WHO, 2018 WL 4904895, at *35 (N.D.
20 Cal. Sept. 25, 2018) (“But ‘[t]he mere fact that something is disclosed in a piece of prior art, for
21 example, does not mean it was well-understood, routine, and conventional.”). Indeed, patent
22 applications are generally not well-understood, routine, and conventional at the time they are
23 filed. The same can be said of technical research papers. Juniper has the burden to prove *by clear-*
24 *and-convincing evidence* that Claim 10’s elements, both individually and as an ordered combination,
25 were well-understood, routine, *and* conventional at the time. *Berkheimer v. HP Inc.*, 881 F.3d 1360,
26 1368 (Fed. Cir. 2018) (“The question of whether a claim element or combination of elements is well-
27 understood, routine and conventional to a skilled artisan in the relevant field is a question of fact. Any
28 fact, such as this one, that is pertinent to the invalidity conclusion must be proven by clear and

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