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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN FRANCISCO DIVISION**

18 FINJAN, INC., a Delaware Corporation, 19 Plaintiff, 20 vs. 21 JUNIPER NETWORKS, INC., a Delaware 22 Corporation, 23 Defendant. 24	Case No. 3:17-cv-05659-WHA **JUNIPER NETWORKS, INC.'S OPPOSITION TO FINJAN, INC.'S MOTION FOR JUDGMENT AS A MATTER OF LAW (DKT. NO. 322)** Judge: Hon. William Alsup

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Juniper respectfully requests that the Court deny Finjan's unfounded motion for
3 judgment as a matter of law. Dkt. No. 322. Juniper has substantial evidence that could support
4 a reasonable jury finding in its favor on all issues. *See also* Dkt. No. 323 (Juniper's motion for
5 judgment as a matter of law demonstrating that Finjan failed to carry even its initial burden of
6 proof on the issues discussed below).

7 A court may not enter judgment as a matter of law ("JMOL") unless "a party has been
8 fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury
9 to find for a party on that issue." Fed. R. Civ. P. 50(a). Moreover, a court "must draw all
10 reasonable inferences in favor of the nonmoving party, and it may not make credibility
11 determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530
12 U.S. 133, 150 (2000). Indeed, "[c]redibility determinations, the weighing of the evidence, and
13 the drawing of legitimate inferences from the facts are jury functions, not those of a
14 judge." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). "Judgment as a
15 matter of law is appropriate when the evidence presented at trial permits only
16 one reasonable conclusion." *Torres v. City of Los Angeles*, 548 F.3d 1197, 1206 (9th Cir.
17 2008). In other words, a "motion for a judgment as a matter of law is properly granted only if
18 no reasonable juror could find in the non-moving party's favor." *Id.*

19 **A. Invalidity**

20 As the Court's Final Pretrial Order states, the parties stipulated that the Court will decide the
21 issue of Section 101 invalidity. Dkt. No. 301 ¶ 4. Thus, the issue of Section 101 invalidity is not a
22 proper subject of a motion for JMOL under Fed. R. Civ. P. 50(a)(1), which is directed to issues tried
23 to the jury. FRCP 50(a)(1) ("If a party has been fully heard on an issue during a jury trial and the
24 court finds that a ***reasonable jury*** would not have a legally sufficient evidentiary basis to find for
25 the party on that issue…." (emphasis added)). Instead, such findings are governed by Fed. R. Civ.
26 P. 52. A Rule 50(a) motion is particularly inappropriate at this juncture before Juniper has even
27 rested its case in chief. To the extent the Court is interested in proper briefing under FRCP 52 after
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1 trial to contextualize the evidence reviewed by the Court, Juniper is happy to provide such briefing
2 after the close of evidence.
3 In any event, as the Court observed, "[e]veryone knows, who's done any coding, that if you
4 go through a lot of trouble to derive a number and there's even a small chance you're ever going to
5 need it again, you ought to save it rather than require the computer to go through that stuff again."
6 Trial Tr. Vol. 4 at 633:17-23. Considering the elements of Claim 10 both individually and as an
7 ordered combination, Claim 10 of the '494 Patent is a "simple thing," *id.*, that Juniper has shown
8 lacks an inventive concept through the testimony of its technical expert, Dr. Aviel Rubin. *Id.* at,
9 *e.g.*, 717-732; *id.* at 722:13-15 ("[Q.] Were scanners well known in the art as of 1996? A. Yes.
10 They were very well known"); *id.* at 729:13-22 ("[Q.] Was it known to couple scanners to receivers?
11 A. Yes. The only way that you can scan something that comes from the Internet is to have a receiver
12 to receive it unless you wrote it yourself . . . Q. And did the [prior art] references that we looked at,
13 did they include receivers? A. Yes."); *id.* at 729:23-730:1 ("Q. All right. Let's turn to the last
14 addition here in Claim 10, the database manager. Were database managers well known in the art?
15 A. Yes, very well known"). Dr. Rubin further explained that the ordered combination of the
16 elements of Claim 10 lack an inventive concept because "there's really only one order that makes
17 any sense," given that "[a]ny way that you try to put those steps in another order, it wouldn't work."
18 *Id.* at 732:14-25.
19 The evidence introduced at trial further confirms that everything Finjan touts as allegedly
20 inventive was well known, routine, and conventional. In particular, Finjan claimed that it pioneered
21 the concept of behavioral analysis. *See* Trial Tr. Vol. 1 at 161:1-4 ("You're going to hear that
22 industry companies, companies that follow the industry, industry reports, like IDG and Gartner's,
23 they credit Finjan with being the pioneers, the innovators, the inventors of behavior-based
24 technology."). But Finjan fails to address prior art such as Stang from 1995 (Trial Ex. 1069 at 6)
25 (excerpted and highlighting added):
26 **HISTORY OF THE IDEA**
27 The idea of behavior blocking is not entirely new. Andy Hopkins was one of the first to offer a behavior
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1
…

2
Smart behavior blocking has been in use worldwide for several years. Developed by RE Solutions in

3 Nor does Finjan address prior art like Swimmer which the USPTO found taught all of the limitations 4 of Claim 1, the substantially similar method counterpart to the system of Claim 10, which in its very 5 title shows that it is directed to behavior-based technology:

6
DYNAMIC DETECTION AND CLASSIFICATION OF
7
COMPUTER VIRUSES USING GENERAL BEHAVIOUR
PATTERNS

8
Morton Swimmer

9 Ex. 1070 at 2 (excerpted). *See also, e.g.*, Trial Ex. 2197 (describing a static scanner that generates 10 a list of suspicious computer operations by examining hexadecimal search patterns); Trial Ex. 1552 11 (describing a scanner that generates a list of suspicious computer operations after determining 12 whether a decoded macro includes a virus); Trial Ex. 1241 (supporting the fact that database 13 managers were well known, well understood, routine and conventional at the time before the 14 invention).

15 Accordingly, when the Court ultimately determines the issue of Section 101 invalidity, it 16 should find that Claim 10 of the '494 Patent is invalid.

17 **B. Damages**

18 In patent cases, "the burden of proving damages falls on the patentee and the patentee must 19 show his damages by evidence." *Promega Corp. v. Life Techs. Corp.*, 875 F.3d 651, 660 (Fed. Cir. 20 2017), *cert. denied,* 139 S. Ct. 156 (2018) (internal citations and quotation marks omitted). In this 21 case, Finjan failed to present legally sufficient evidence of (1) a royalty base, (2) apportionment, or 22 even (3) a royalty rate. *See* Dkt. No. 323 at 1-5 (Juniper briefing demonstrating that Finjan has 23 failed to carry its burden). As such, Juniper had no damages case to rebut. Moreover, Juniper 24 presented the testimony of its damages expert Dr. Keith R. Ugone, who analyzed a substantial 25 amount of information to arrive at his opinion. *See* Trial Tr. Vol. 4 at 797-820, *including at* 801:21- 26 802:8 (Dr. Ugone providing an overview of everything he reviewed in forming his opinion). Dr. 27 Ugone's testimony, which the Court already found was properly admissible notwithstanding

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Finjan's motion to exclude Dr. Ugone for failure to rely on "sufficient facts or data" under FRE 702(b) (*see* Dkt. No. 231 at 11), is more than sufficient to refute any negligible evidence offered by Finjan. *See* Dkt. No. 283 at 10-11 (Court denying Finjan's motion to exclude Dr. Ugone).

C. Notice

When Juniper satisfied its burden of production by serving a notice on Finjan identifying specific unmarked patented articles subject to 35 U.S.C. § 287(a), it became Finjan's "burden to prove the products identified do not practice the patented invention." *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d 1350, 1365 (Fed. Cir. 2017). Finjan failed to meet that burden and did not present evidence legally sufficient to show either constructive or actual notice as required under § 287. *See* Dkt. No. 323 at 5-8.

D. Infringement

1. A Reasonable Jury Could Find that "ResultsDB Database" Is Only An Interface, Not a "Database."

A reasonable jury could find that "ResultsDB" is merely an ***interface*** to certain underlying storage components—namely, MySQL, DynamoDB, and S3—and not a "database." As shown by the diagram drawn by Dr. Cole, "ResultsDB" is actually comprised of "ResultsDB API" (short for **A**pplication **P**rogramming **I**nterface) and an assortment of distinct underlying storage components where the data is actually stored:

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