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   FINJAN, INC.
10

11   IN THE UNITED STATES DISTRICT COURT

12   FOR THE NORTHERN DISTRICT OF CALIFORNIA

13   SAN FRANCISCO DIVISION

14

15 FINJAN, INC., a Delaware Corporation,   Case No.: 3:17-cv-05659-WHA

16   Plaintiff,   **PLAINTIFF FINJAN, INC.'S REPLY CLAIM
                                                 CONSTRUCTION BRIEF FOR U.S. PATENT
17   v.   NO. 7,418,731**

18 JUNIPER NETWORKS, INC., a Delaware   Date: TBD
19 Corporation,   Time: 8:00 a.m.
                                                 Courtroom: Courtroom 12, 19th Floor
20   Defendant.   Before: Hon. William Alsup

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I.   INTRODUCTION

The Court should adopt the plain and ordinary meaning for the terms "cache," "future access" and "restrictions" because those skilled in the art, the Court, and even laypersons can readily understand their meaning. Juniper's proposed constructions, on the other hand, import limitations from the specification. For the term "cache," Juniper relies heavily on extrinsic evidence instead to support its proposed construction, despite the fact that the extrinsic evidence conflicts with the use of the term in U.S. Patent No. 7,418,731 (Dkt. No. 347-2, "the '731 Patent"). For the remainder of the terms, Juniper is unable to identify any instance where the applicant acted as a lexicographer or clearly disavowed claim scope, such that there is no basis to deviate from the plain and ordinary meaning of the terms. Accordingly, the Court should adopt the plain and ordinary meaning of the terms at issue.

II.   ARGUMENT

Term 1.   "cache" (Claims 1, 17)

Finjan's Proposed Construction	Juniper's Proposed Construction
No construction necessary – Plain and ordinary meaning.	high-speed memory used to temporarily store duplicated data for quick access

The Court should adopt the plain and ordinary meaning of "cache," which as used throughout the '731 Patent, describes "memory for storing data, at least temporarily." Dkt. No. 347, Finjan's Opening Brief ("Opening Br.") at 2-3. The plain and ordinary meaning applies to uses of the term "cache" in various contexts, including when used for a "file cache," a "security profile cache," and a "security policy cache," which are all generally described as memory for storing data. *Id.* For example, the '731 Patent describes how the "file cache" can store data in the form of files that are retrieved from the Internet for later use. '731 Patent, at 4:18-19 ("storing the retrieved file within the file cache"). The '731 Patent also describes a "security profile cache" that allows for the storage of data in the form of security profiles that were generated for the files, so that these security profiles could be reused for as long as necessary. *Id.* at 9:43-45 ("the gateway computer stores the corresponding security profiles that it derived within its security profile cache."). Finally, the '731 Patent describes how data in the form of policies can be stored in a "policy cache" so that it can be

1   retrieved to make policy decisions. *Id.* at 2:65-67 ("retrieving a security policy for the intranet

2   computer from a security policy cache …"). The '731 Patent contemplates storing information in a

3   cache for different lengths of time, including examples involving temporary storage with "purg[ing]"

4   of information periodically to save space, and other examples that are more permanent and do not

5   require periodic purging of data. Opening Br. at 3 (citing '731 Patent, at 8:17-19, 8:40-45). As such,

6   the plain of ordinary meaning of cache as "memory for storing data, at least temporarily" is consistent

7   with how the term is used throughout the specification of the '731 Patent.

8   Juniper's proposed construction cannot be adopted because it conflicts with how the term is

9   used in the specification. Juniper's claim that the plain and ordinary meaning of "cache" must be

10 limited to "high-speed memory used to temporarily store duplicated data for quick access" is incorrect.

11 The lack of support for Juniper's proposed construction is made apparent by the fact that Juniper is

12 forced to rely primarily on extrinsic evidence in order to justify its proposed construction, which is at

13 odds with the disclosure of the '731 Patent. Dkt. No. 349, Juniper's Reply Brief ("Resp.") at 2-3.

14 Furthermore, it is notable that Juniper cannot rely on a single definition in support of its proposed

15 construction, but strings together a hodge-podge of different constructions in an attempt to import new

16 and unsupported limitations into the claims. For example, Juniper relies on some definitions that

17 compare a "cache" with other forms of memory, and describe the cache as being faster than these other

18 memory options. *Id.* However, the '731 Patent does not reference the cache as operating more quickly

19 in relation to other types of memory. At no point in the specification does the '731 Patent describe that

20 any of the caches used—"file cache," "security profile cache," or "policy cache," —is serving as a

21 faster alternative to some other type of memory for storing these files. Instead, the '731 Patent

22 describes storing the files retrieved from the Internet in the file cache, storing the profiles generated in

23 the profile cache, and the policies used in a policy cache. Accordingly, to inject terms such as "high-

24 speed" and "quick access" is completely unsupported by anything in the specification.

25   Further, for these same reasons, the specification of the '731 Patent does not support that the

26 data stored in the cache is "duplicated data," as the specification does not describe the caches storing

27 data in different types of memory on the system, *i.e.*, data that is "duplicated." Instead, Juniper

1   incorrectly argues that the following description of the '731 Patent describes "duplicated data": "At

2   step 260 the gateway computer retrieves a security policy for the intranet client computer that

3   requested the web page at step 205." Resp. at 6 n.3 (citing '731 Patent, at 9:55-57). However, this is

4   not a reference to data that is duplicated, but the data is simply being retrieved from the "policy cache"

5   so that it can be applied. As this limitation is unsupported by the specification, Juniper is therefore

6   once again forced to rely on importing limitations found in extrinsic evidence for its proposed

7   construction. Resp. at 2 (citing Dkt. No. 249-2, Declaration of Rebecca Carson ("Carson Decl."), Ex.

8   1). However, again, nowhere in the specification does the '731 Patent describe the data being

9   "duplicated" on the system, and as such, Juniper's proposed limitation should be rejected.

10   Juniper next argues that the PTAB's adopted construction of the related term, "file cache,"

11   should be given no weight because the petitioner did not argue for another construction of the term.

12   Resp. at 3. Juniper's suggestion that the PTAB would somehow construe a term in a way that is

13   inconsistent with the '731 Patent or how a person of ordinary skill in the art would understand the term

14   is unfounded. *Id.* That the PTAB readily accepted Finjan's understanding of the term as the

15   appropriate understanding of the term is evidence that it is an appropriate plain and ordinary meaning.[1]

16   The PTAB includes those knowledgeable in the art, and they would not adopt a construction as the

17   meaning of the term if that understanding was not consistent with the plain and ordinary meaning of

18   the term.

19   Further, the portions of the specification which Finjan provide support a plain and ordinary

20   meaning that encompasses storing a file on a temporary and up to a permanent, or close to permanent,

21   basis. In particular, Finjan cited to portions of the intrinsic record that the "profile cache" can store a

22   security profile for a long as needed, and this cache does not require routine purging, and therefore is

23   not limited to "temporary" storage of data as suggested by Juniper. '731 Patent, at 8:41-43 ("the

24   security profile of the purged content need not be purged from security profile cache 150."). Juniper's

25   identification of other portions of the '731 Patent are not contrary to Finjan's plain and ordinary

26   _____

27   [1] The PTAB adopted the same construction as Finjan, except the PTAB substituted "holding" for
    "storing" of the data. Dkt. No. 347-3, Declaration of Kristopher Kastens, Ex. 2 at 6. Finjan believes
    that both "storing" and "holding" are consistent with the plain and ordinary meaning of the term.

meaning of the term, as Finjan's identification of the plain and ordinary meaning encompasses how

the term is used throughout the specification of the '731 Patent. This is consistent with embodiments

that the '731 Patent describes caches which are managed … "in order to appropriately purge items

from cache when cache memory is full and new items arrive for storage," and also those, which as

described above, do not require "purging." Juniper's citation only demonstrates that the '731 Patent

contemplates that purging items from a cache is possible—not that it is required to do so. Resp. at 5

(citing '731 Patent, at 8:11-16). This is aligned with the plain and ordinary meaning proposed by

Finjan, which includes caches that are periodically purged, and those that are not.

Finally, Finjan's statements in the *Blue Coat* action are not contrary to the plain and ordinary

meaning Finjan proposes in this case. Resp. at 6. There, Finjan was merely describing that the cache

can be temporary storage which is consistent with the plain and ordinary construction of "memory for

storing data, at least temporarily."

Accordingly, the Court should reject Juniper's proposed construction which is based on

subjective terms and extrinsic evidence that contradicts the intrinsic record.

Term 2.   "a file cache for storing files that have been scanned by the scanner for future access" (Claim 1)

Finjan's Proposed Construction	Juniper's Proposed Construction
No construction necessary – Plain and ordinary meaning.	a file cache for storing files that have been scanned by the scanner for use in response to subsequent requests by a client to an Internet server

The only portion of this term that Juniper is actually seeking to construe is what "future access"

means in the context of the claims. However, "future access" is written in plain English and does not

require additional construction deviating from the plain and ordinary meaning. Opening Br. at 5. This

term is simply understood as something that can be accessed in the future, which is exactly also how

the term is used in the claims. '731 Patent, Claims 1, 17.

Juniper's proposed construction takes these two basic words and rewrites them in a way that

deviates from the plain reading of the claim language and which excludes preferred embodiments from

the specification. Opening Br. at 5-6. Juniper does not dispute that its proposed construction is

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