

1 PAUL J. ANDRE (State Bar No. 196585)
pandre@kramerlevin.com
2 LISA KOBIALKA (State Bar No. 191404)
lkobialka@kramerlevin.com
3 JAMES HANNAH (State Bar No. 237978)
jhannah@kramerlevin.com
4 KRISTOPHER KASTENS (State Bar No. 254797)
kkastens@kramerlevin.com
5 KRAMER LEVIN NAFTALIS
6 & FRANKEL LLP
7 990 Marsh Road
8 Menlo Park, CA 94025
9 Telephone: (650) 752-1700
10 Facsimile: (650) 752-1800

Attorneys for Plaintiff
11 FINJAN, INC.

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**
16

17 FINJAN, INC., a Delaware Corporation,

18 Plaintiff,

19 v.

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

22 Defendant.
23

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

**PLAINTIFF FINJAN, INC.’S OPPOSITION
TO DEFENDANT JUNIPER NETWORKS
INC.’S RENEWED MOTION FOR
JUDGMENT AS A MATTER OF LAW**

Date: February 14, 2019
Time: 8:00 a.m.
Judge: Hon. William Alsup
Courtroom: 12, 19th Floor

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1 **I. INTRODUCTION**

2 Juniper's Motion for Judgment as a Matter of Law (Dkt. No. 352, "Motion") should be denied
3 because it is procedurally improper and motion is premised on its misreading of the law as Juniper
4 invents requirements for notice that is contrary to Federal Circuit law, such as mandating that both
5 actual and constructive notice must be analyzed in every case and that actual notice must always be in
6 writing, which is not a requirement for infringement pursuant to 35 U.S.C. § 271(a). Further, Finjan
7 provided substantial evidence with testimony and documents, demonstrating that Finjan provided
8 notice to Juniper regarding its infringement of the '494 Patent.

9 For actual notice, Finjan presented the un rebutted testimony of its licensing director, Mr.
10 Garland, who established that he notified Juniper's Director of Intellectual property, Mr. Scott Coonan,
11 of the specific patent and products at issue in this case. Additionally, the deposition testimony of Mr.
12 Coonan confirmed that such actual notice was presented, as well as Juniper's transcript and audio
13 recording of the call. Given the actual notice, issues of constructive notice are moot. Nonetheless,
14 Juniper advocates that Finjan's licensees were required to mark products. Juniper's arguments on
15 constructive notice, however, are riddled with infirmities and is not based on the law. The evidence at
16 trial was that Finjan established that the licensees and Finjan who practiced its patents before the
17 expiration of the '494 Patent marked their products. Thus, a reasonable jury could find that Finjan
18 gave Juniper notice of the '494 Patent.

19 **II. ARGUMENT**

20 **A. Juniper Did Not Present A Proper Post Trial Motion Under Rule 50 of the Federal**
21 **Rules of Civil Procedure.**

22 Despite citing to Rule 50 for its post-trial motion (Motion at 1-2), Juniper failed to present a
23 proper issue for such a motion and does not attempt to meet its burden under Rule 50(b) regarding the
24 issue of notice. Since the jury found for Juniper on ultimate issue of infringement, ancillary issues
25 related to Finjan's claim of infringement are moot and not properly raised in a 50(b) motion. *See Lyon*
26 *Dev. Co. v. Bus. Men's Assur. Co. of Am.*, 76 F.3d 1118, 1122 (10th Cir. 1996) (holding Rule 50(b)
27 "does not permit a party in whose favor the verdict was rendered to renew its motion because 'a jury
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