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1 **I. INTRODUCTION**

2 Juniper Networks, Inc.'s ("Juniper's") Motion for Judgment as a Matter of Law (Dkt.
3 No. 352) should be granted. The arguments raised in Finjan, Inc.'s (Finjan's) Opposition (Dkt.
4 No. 357) are unpersuasive and do not change the fact that Finjan simply failed to meet its burden to
5 establish notice under 35 U.S.C. § 287.

6 Contrary to Finjan's contention, Juniper's Motion is procedurally proper as Finjan's
7 compliance with 35 U.S.C. § 287 remains a live issue. Finjan is currently asking the Court to enter
8 a judgment as a matter of law on the issue of infringement, and is also seeking a new trial on
9 damages. In the alternative, Finjan requests that the issues of infringement and damages be certified
10 for interlocutory appeal while the remainder of the case is stayed. To the extent that the Court grants
11 any of Finjan's requests, a ruling on Juniper's Motion will ensure that the appellate court has a
12 complete record for review. Even if the Court denies Finjan's co-pending motion in full, however,
13 the issues raised in Juniper's Motion remain relevant to the resolution of this litigation. For example,
14 Finjan has indicated that it intends to pursue its claims under the '494 Patent against additional
15 Juniper products. In addition, Finjan's failure to comply with the constructive notice requirements
16 of § 287 and its failure to identify Sky ATP as an accused product in any pre-suit correspondence to
17 Juniper infects its claim for damages under the other six patents-in-suit in this case. A ruling on
18 Juniper's Motion would narrow the issues that need to be litigated with respect to Finjan's remaining
19 claims.

20 Substantively, Finjan's arguments also fall flat. No reasonable jury could find that Finjan and
21 its licensees marked substantially all of the products that embody the '494 Patent, as required to
22 demonstrate constructive notice. Finjan's primary argument is that Juniper did not meet its burden
23 of production to identify unmarked products. But this argument is belied by Finjan's own stipulation
24 at trial that Juniper did in fact meet its burden of production under *Arctic Cat*, and is also contrary
25 to the evidentiary record. Finjan's opposition brief fails to identify any evidence that its '494
26 licensees marked their products with the '494 Patent, much less evidence that they marked
27 substantially all of those products. Similarly, Finjan introduced no evidence that it made any, let
28 alone reasonable, efforts to ensure its licensees complied with 35 U.S.C. § 287.

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