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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FINJAN, INC., a Delaware Corporation, Plaintiff, vs. JUNIPER NETWORKS, INC., a Delaware Corporation, Defendant.	Case No. 3:17-cv-05659-WHA **DEFENDANT JUNIPER NETWORKS, INC.'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT REGARDING CLAIM 1 OF U.S. PATENT NO. 8,141,154**

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I. INTRODUCTION

This Court should deny Finjan's motion for summary judgment. But the Court likely knew that before it even started reading this opposition. Parties seeking summary judgment generally provide a clear, concise legal theory based on a defined set of undisputed facts. Finjan, however, did not do this; its motion presented a variety of confusing and facially deficient legal theories based on a convoluted (and easily disputed) set of facts. Why? Because Finjan knows full well that it is not entitled to summary judgment on Claim 1 of the '154 Patent, and it is simply trying to again use this Court's "showdown" procedure (improperly) to get claims involving Juniper's SRX products before a jury on an expedited basis. Indeed, Finjan cares so little about prevailing on this motion that it did not even bother to have its infringement expert—Dr. Michael Mitzenmacher (or his staff)—review the computer containing Juniper's source code while preparing his declaration on the '154 Patent. This Court should reject Finjan's abuse of the "showdown" procedure.

As this Court may recall, during the first round of summary judgment motions Finjan advanced a clear theory of infringement (albeit one the jury ultimately rejected). By being clear, though, Finjan revealed that its infringement arguments are directed against Juniper's Sky ATP product (alone or in combination with the SRX) but not the SRX alone. This strategy thus created a major issue for Finjan, as revenues for Sky ATP are minimal. Finjan tried to overcome this problem by sneaking revenue information for the SRX alone into the case through its damages expert and evidence. This Court was not fooled, however; first it struck Finjan's damages expert, and later it ruled Finjan was not entitled to any damages.

This time, Finjan is using a different tactic to bring SRX-alone evidence into the case. Rather than presenting a clear infringement case (which would reveal that Finjan has no case against any of the accused products, much less the SRX alone), Finjan has presented an infringement theory so convoluted that—it hopes—the Court will simply allow it to present an SRX-alone theory to a jury. This cynical strategy should fail. Not only is it an abuse of the summary judgment process, but (as discussed below) the undisputed evidence establishes that Finjan cannot establish a plausible case of infringement against the SRX alone.

Moreover, when one is finally able to divine Finjan's infringement theories, it becomes clear

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