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10 FINJAN, INC.

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 FINJAN, INC., a Delaware Corporation,

15 Plaintiff,

16 v.

17 JUNIPER NETWORKS, INC., a Delaware
18 Corporation,

19 Defendant.

Case No.: 17-cv-05659-WHA

**PLAINTIFF FINJAN, INC.'S
ADMINISTRATIVE MOTION TO EXTEND
THE DEADLINE FOR FINJAN'S REPLY**

1 **I. INTRODUCTION**

2 Plaintiff Finjan, Inc. (“Finjan”) respectfully requests the Court to extend the deadline for Finjan
3 to file its Reply Summary Judgment brief for the ‘154 Patent (“Reply Brief”) by two (2) business days
4 such that the Reply Brief would be due on April 8, 2019.

5 Currently, the Reply Brief is due on April 4, 2019 and the summary judgment motion hearing is
6 set for May 2, 2019. Dkt. 219. Juniper raised several allegations and source code citations for the first
7 time in its opposition to Finjan’s summary judgment motion for the ‘154 Patent. Juniper’s opposition
8 was supported by three declarations: one by attorney Rebecca Carson, one by Juniper employee Frank
9 Jas, and one by their expert, Dr. Rubin. In order to adequately address the allegations in Juniper’s
10 opposition, Finjan asked Juniper to provide dates where either Mr. Jas or Dr. Rubin would be available
11 for a deposition. Declaration of Kristopher Kastens filed herewith (“Kastens Decl.”), Ex. A. Juniper
12 offered Dr. Rubin for deposition on either Saturday, March 30, or else at 11 a.m. on Tuesday, April 2.
13 *Id.*, at 3. Unable to accept the Saturday, March 30 date on such short notice, Finjan explained that it
14 could accept the 11 a.m., April 2 date on the condition that Juniper agree to extend the deadline by two
15 business days so that Finjan can have sufficient time to receive the transcript from the deposition of Dr.
16 Rubin and use it for the Reply Brief. *Id.*, at 1. Juniper would not agree to the extension, stating that
17 two business days which necessarily assumes that a rough transcript will be available for two business
18 days, was enough time to review the transcript and use it in its reply brief. Because Juniper is
19 unwilling to work with Finjan on scheduling, Finjan is forced to bring this motion. *Id.*

20 Finjan’s need to address the new allegations set forth in Juniper’s opposition and Juniper’s
21 unwillingness to negotiate a reasonable timeframe in which to address this information constitutes
22 good cause for the Court to make this reasonable accommodation to the scheduling order.
23 Furthermore, granting this motion will not prejudice Juniper in any way, as Juniper and the Court will
24 still have 24 days to review the Reply Brief before the Summary Judgment hearing takes place. For
25 these reasons, Finjan’s administrative motion to extend the deadline for the Reply Brief should be
26 granted.

1 **II. ARGUMENT**

2 Federal Rule of Civil Procedure 16 gives this Court the authority to modify the summary
3 judgment schedule upon Finjan's showing of good cause. Fed. R. Civ. P. 16(b)(4). In determining
4 whether good cause exists, the Court should focus on Finjan's diligence in bringing this motion to
5 modify the schedule. *See Johnson v. Mammoth Recreations, Inc., Inc.*, 975 F.2d 604, 609 (9th Cir.
6 1992)(the standard for good cause to amend a scheduling order primarily considers the diligence of the
7 party seeking amendment of the schedule, and may be granted if the schedule cannot reasonably be
8 met despite the diligence of the party seeking extension.)(citing Fed. R. Civ. P. 16 advisory
9 committee's notes (1983 amendment)).

10 Finjan has been diligent in bringing this motion and trying to obtain the discovery needed with
11 enough time to file its reply to the motion for summary judgment on the Court's schedule. Finjan
12 immediately met and conferred with Juniper after receiving the only dates that Juniper was willing to
13 make Dr. Rubin available. When Finjan realized that it was not going to be able to resolve the
14 scheduling concerns it had in terms of taking Dr. Rubin's deposition and having enough time to
15 prepare a reply on March 21, Finjan brought this motion.

16 Finjan's request for a two day extension should be granted because Juniper's position that there
17 will be enough time to incorporate the deposition transcript ignores reality. Juniper unilaterally
18 imposed a start time of 11 a.m. for the April 2 deposition, which means the deposition could last into
19 the evening. Often times it can take up to a day to receive the rough transcript of a deposition. If that
20 happens, Finjan would not have enough time to review the transcript, incorporate it into the Reply
21 Brief, and finalize the Reply Brief before the April 4 filing deadline. Finjan brings this motion the day
22 after it became aware that Juniper's inability to compromise would render Finjan unable to comply
23 with the schedule. Therefore, Finjan has been diligent in seeking to modify the deadline and good
24 cause has been shown.

25 Additionally, Juniper will not be prejudiced because it will still have ample time to analyze the
26 Reply Brief prior to the hearing. Granting Finjan an extension of two (2) business days will make the
27 Reply Brief due on April 8, giving Juniper 24 days to review it before the hearing on May 2. This

1 extension will not modify or affect any other deadlines in the case schedule, and therefore, Juniper
2 cannot demonstrate how it will be prejudiced by the Court granting this modest extension. Therefore,
3 there are no reasons to deny the two (2) business days extension, and Finjan's motion should be
4 granted

5 **III. CONCLUSION**

6 For these reasons, the Court should grant Finjan's administrative motion to extend the deadline
7 for the Reply Brief by two (2) business days.

8 Respectfully submitted,

9 Dated: March 22, 2019

/s/ Kristopher Kastens

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