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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

17 FINJAN, INC., a Delaware Corporation,

18 Plaintiff,

19 v.

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

22 Defendant.

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

**PLAINTIFF FINJAN, INC.’S OPPOSITION
TO DEFENDANT JUNIPER NETWORKS,
INC.’S MOTION TO STRIKE THEORIES
FROM FINJAN’S MOTION FOR SUMMARY
JUDGMENT, AND MOTION TO AMEND**

Date: May 2, 2019

Time: 8:00 a.m.

Judge: Hon. William Alsup

Courtroom: 12, 19th Floor

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1 **I. INTRODUCTION**

2 Defendant Juniper Network's Motion to Strike Finjan's Motion for Summary Judgment (Dkt.
3 No. 391, "Motion") should not even be considered as it is procedurally improper and makes no sense
4 in light of the unorthodox case schedule. Juniper is seeking to strike a summary judgment, not
5 Finjan's Infringement Contentions, suggesting that Finjan should have either (i) somehow had
6 Juniper's confidential information when it served its March 2018 Infringement Contentions, which
7 Finjan could not have since Juniper produced such discovery recently in the past few months, and (ii)
8 sought to supplement its Infringement Contentions serially as discovery is continuing. That argument,
9 however, ignores the realities of this case and the "showdown" procedures. Discovery is still ongoing,
10 even today. Finjan should not be required (and is, in fact, not required) to seek to supplement its
11 Infringement Contentions every time new evidence during discovery is disclosed patent by patent,
12 particularly as the parties are addressing individual claims of Finjan's Asserted Patents through
13 multiple "showdowns." To do so is neither judicially efficient nor appropriate and motion practice
14 would be endless. Today, Finjan is still undertaking discovery into Juniper's infringement of U.S.
15 Patent No. 8,141,154 ("the '154 Patent). Thus, Juniper's Motion to strike Finjan's infringement
16 positions and evidence, while discovery (and even claim construction) has yet to be completed, is
17 unsound in light of the Court's case schedule addressing individual patent claims in separate
18 individual "showdowns."

19 Moreover, there is nothing new in Finjan's Motion for Summary Judgment. Juniper's Motion
20 hinges on the untenable position that Finjan's Motion for Summary Judgment does not use, word-for-
21 word, the same language in its Infringement Contentions. For example, Juniper argues that Finjan did
22 not disclose an "http" function as the "first function" in the claims, even though it concedes that
23 Finjan's Infringement Contentions refers to the "http" function in connection with the "first function"
24 of the content processor. Thus, Juniper's infirm argument amounts to Finjan never alleged
25 infringement based on the "http" function because the exact "http://" prefix was not used in the
26 Infringement Contentions, even though it agrees that Finjan identified the "http" function in its
27

1 Infringement Contentions. Because Finjan’s Motion for Summary Judgment conforms to the
2 infringement allegations in its Infringement Contentions, Juniper’s Motion should be denied.

3 **II. BACKGROUND**

4 The parties are currently in fact discovery for the case, and there is currently no cutoff date for
5 the end of fact discovery. Dkt. Nos. 35, 348. Furthermore, the parties have briefed claim construction
6 for terms for the ‘154 Patent, both in briefing according to the claim construction schedule (Dkt. Nos.
7 219, 35, 191, and 193), as well as in their respective briefs for the ’154 Patent (Dkt. Nos. 369 and
8 390). According to the showdown procedure established by the Court, the parties recently finished a
9 trial in December on a single asserted claim, with post-trial briefing on this trial completed in
10 February. The parties began the second showdown procedure on January 24, 2019, with opening
11 briefs file on February 14th, and oppositions briefs were filed on March 14th. Finjan elected and
12 briefed Claim 1 of the ‘154 Patent for this second round of the showdown procedure.

13 Juniper continues to provide new discovery in this case. First, it only made the source code for
14 the ATP Appliance accessible starting in December, as it was before loaded on the source code review
15 computer but was inaccessible because Juniper did not install the correct software to review the code.
16 Declaration of Kristopher Kastens in Support of Finjan’s Opposition to Juniper’s Motion to Strike
17 (“Kastens Decl.”) filed herewith, Ex. A at p. 1. Similarly, Juniper recently provided critical discovery
18 into its [REDACTED]
19 [REDACTED] despite Finjan requesting this information over a year ago. *Id.*, Ex. C at
20 p. 10 (RFP No. 38); *id.*, Ex. D at p. 6 (RFP Nos. 87-91).

21 Claim 1 of the ‘154 Patent covers a system for protecting a computer from dynamically
22 generated malicious content using a content processor, a transmitter, and a receiver. The content
23 processor is capable of “(i) processing content received over a network, the content including a call to
24 a first function, and the call including input, and (ii) for invoking a second function with the input,
25 only if a security computer indicates that invocation is safe.”

26 Finjan’s Infringement Contentions for Claim 1 of the ‘154 Patent allege infringement based on
27 a number of different content processors, transmitters and receivers contained in Juniper’s SRX
28

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