

1 PAUL ANDRE (State Bar No. 196585)
2 pandre@kramerlevin.com
3 LISA KOBIALKA (State Bar No. 191404)
4 lkobialka@kramerlevin.com
5 JAMES HANNAH (State Bar No. 237978)
6 jhannah@kramerlevin.com
7 KRISTOPHER KASTENS (State Bar No. 254797)
8 kkastens@kramerlevin.com
9 KRAMER LEVIN NAFTALIS & FRANKEL LLP
10 990 Marsh Road
11 Menlo Park, CA 94025
12 Telephone: (650) 752-1700
13 Facsimile: (650) 752-1800
14
15 *Attorneys for Plaintiff*
16 FINJAN, INC.

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

15 FINJAN, INC., a Delaware Corporation,
16 Plaintiff,
17 v.
18 JUNIPER NETWORKS, INC., a Delaware
19 Corporation,
20 Defendant.

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

**PLAINTIFF FINJAN, INC.'S REPLY IN
SUPPORT OF ITS SECOND MOTION FOR
EARLY SUMMARY JUDGMENT,
REGARDING INFRINGEMENT OF CLAIM 1
OF U.S. PATENT NO. 8,141,154**

Date: May 2, 2019
Time: 8:00 a.m.
Courtroom: Courtroom 12, 19th Floor
Before: Hon. William Alsup

23
24
25 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. CLAIM CONSTRUCTION.....	1
A. “Safe” Should be given its Plain and Ordinary Meaning	1
B. “Content processor” should be given its plain and ordinary meaning.....	2
III. JUNIPER INFRINGES CLAIM 1	4
A. SRX Infringes Claim 1.....	4
1. SRX Processes Content from a Network that has a Call to a First Function	4
2. SRX Invokes a Second Function with the Input.....	6
3. SRX Invokes a Second Function Only If Security Computer Indicates it is Safe.....	7
4. SRX Transmits when the first function is invoked.....	8
5. SRX Has a Receiver.....	10
B. Sky ATP Infringes Claim 1.....	10
1. Sky ATP invokes a second function with the input.....	11
2. Sky ATP Invokes a Second Function Only If the Reputation Server and Verdict Engines Indicate it is Safe.....	12
3. Sky ATP Transmits When the First Function is Invoked.....	13
C. The ATP Appliance Infringes Claim 1	13
1. Juniper’s Arguments About Release Versions Contradicts its Discovery	13
2. The ATP Appliance Invokes a Second Function with the Input	14
D. The Accused Products Infringe under DOE	15
E. Juniper’s Vague Invalidity Arguments Fail to Meet its Burden of Proof.....	15
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES**Page(s)****Federal Cases**

<i>Accent Packaging, Inc. v. Leggett & Platt, Inc.</i> , 707 F.3d 1318 (Fed. Cir. 2013).....	3
<i>Edwards Lifesciences LLC v. Cook Inc.</i> , 582 F.3d 1322 (Fed. Cir. 2009).....	2
<i>Finjan, Inc. v. Bitdefender Inc.</i> , No. 17-cv-04790-HSG, 2019 WL 634985 (N.D. Cal. Feb. 14, 2019).....	4
<i>Finjan, Inc. v. Secure Computing Corp.</i> , 626 F.3d 1197 (Fed. Cir. 2010).....	10
<i>Kenexa Brassing, Inc. v. Taleo Corp.</i> , 751 F.Supp.2d 735 (D. Del. 2010).....	14
<i>L & W, Inc. v. Shertech, Inc.</i> , 471 F.3d 1311 (Fed. Cir. 2006).....	14
<i>Paper Converting Machine Co. v. Magna-Graphics Corp.</i> , 745 F.2d 11 (Fed. Cir. 1984).....	14
<i>Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.</i> , 853 F.3d 1370 (Fed. Cir. 2017).....	1, 2
<i>SRI Int'l v. Matsushita Elec. Corp. of Am.</i> , 775 F.2d 1107 (Fed. Cir. 1985).....	3, 4
<i>SunTiger, Inc. v. Scientific Research Funding Group</i> , 189 F.3d 1327 (Fed. Cir. 1999).....	7
<i>Thorner v. Sony Computer Entm't Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	4

I. INTRODUCTION

Juniper, Inc.’s (“Juniper”) arguments are universally without merit and an attempt to distract from the true issue of whether Juniper infringes under a plain reading of Claim 1 of U.S. Patent No. 8,141,154 (Dkt. 369-3, “the ’154 Patent”).

II. CLAIM CONSTRUCTION

A. “Safe” Should be given its Plain and Ordinary Meaning

Finjan has always maintained that “safe” is a well-understood term that needs no construction. *See* Dkt. 176 at 20-21; Dkt. 187 at 15. Juniper’s proposed construction is wrong because there are numerous examples in the specification where safe does not take Juniper’s narrow interpretation, making Juniper’s reliance on *Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.*, 853 F.3d 1370 (Fed. Cir. 2017) incorrect. ‘154 Patent at 13:29-36 (sending a variable “name_of_function” “so that input inspector 275 can determine whether it is safe to invoke the specific original function with the input.”); *id.* at 13:10-13 (an “input inspector 275 determines that an input is riot safe ...”); *id.* at 11:59-63 (functions that are “normally considered to be safe” regardless of any client computer policy); *id.* at 9:29-35 (calls that are already “known to be safe,” which is necessarily determined before accessing any client computer policy).

Juniper also mischaracterized the specification for its argument for its construction of “safe.” Opp. at 6. Juniper discusses a single embodiment near the end of the specification that does not describe the inventions as whole, but shows that “safe” simply means a security computer returning an indicator that says “true.” ‘154 Patent at 14:64–15:3 (“If the indicator is true, indicating that it is safe for the client computer to invoke ...”). Therefore, even in the example identified by Juniper, the embodiment discloses that “safe” is just “true,” and therefore does not need to be limited in the manner Juniper suggests. *Id.* at 10:4-6 (safety indicator “may be a Boolean variable, or a variable with more than two settings that can carry additional safety inspection information”). Juniper also ignores that its proposed construction reads out embodiments from the specification that do not limit the determination of whether content is safe to any “security policy” or “client computer,” which is another exception to the rule stated in *Rembrandt*. *See, e.g.*, ‘154 Patent Abstract; *id.* at 5:18-25; 5:39-50; 6:4-26; *see also*

10:4-6 (discussing Boolean variables that can carry additional safety inspection information). Thus

both exceptions to the rule of interpreting “i.e.” as “definitional” apply here and Juniper’s construction should be rejected. *Rembrandt*, 853 F.3d at 1377.¹

B. “Content processor” should be given its plain and ordinary meaning

Finjan has also always maintained that “content processor” has its plain and ordinary meaning. Dkt. 176 at 17. Juniper, in its Opposition, however, changed both the term it seeks to construe and its proposed construction. First, Juniper truncates the term it seeks construe to just “content processor” from its previous identification of the entire 45 word element. Juniper then adds limitations to its proposed construction, including for the first time the limitations of a “client/user computer” and “modified content.” Juniper should not be permitted to change the terms it is construing and its construction of this term, in the middle of summary judgment, as it prejudices Finjan who relied on Juniper’s disclosed claim construction. Further, Juniper’s argument that its newly revised construction “reflects the plain and ordinary meaning” is nonsensical, because Juniper modifies two plain English words to limit both the location of processing (“client/user”) and the type of content processed (“modified”). Opposition (“Opp.”) at 6-7.² Juniper’s construction also makes no sense in the context of the claims because it would have the content processor processing both modified and unmodified content simultaneously: “a [processor on a client/user computer that processes modified content] (i) for processing content received over a network, the content including a call to a first function, and the call including an input, and (ii) for invoking a second function with the input, only if a security computer indicates that such invocation is safe.” (underlining added).

Juniper’s new limitation of “modified content” cannot apply because the ‘154 Patent provides an example where unmodified content is processed using a content processor, describing a “content processor” “for processing content received over a network.” ‘154 Patent at 7:22-23; *see also id.* at 6:4-14 (describing that “content” received for processing has the “original” function”). Any construction cannot read out this disclosed preferred embodiment. The specification also explains that

¹ Juniper’s reliance on *Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1333-34 (Fed. Cir. 2009) is also misplaced because there was an express disclaimer. By contrast, the ‘154 Patent gives more than one description of the word “safe” and makes no such disclaimer.

² Juniper’s argument that Finjan’s construction would make the term “superfluous” is equally

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.