

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

10 Attorneys for Plaintiff
FINJAN, INC.

11
12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**
16

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 FOR SANCTIONS**

Date: May 2, 2019

Time: 8:00 a.m.

Judge: Hon. William Alsup

Courtroom: 12, 19th Floor

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

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARGUMENT	1
I. SANCTIONS ARE NOT APPROPRIATE	1
II. CLAIM 10 OF THE ‘494 PATENT PROPERLY WENT TO TRIAL	2
A. Finjan Presented Good Faith Evidence of Notice	3
1. Finjan Presented Substantial Evidence of Actual Notice, Which Juniper Failed to Rebut.	3
2. Finjan Presented Substantial Evidence of Constructive Notice, Which Juniper Failed to Rebut.	8
3. Juniper Has No Basis to Seek Sanctions on the Issue of Notice	10
B. Finjan Presented Well-Supported Damages Claims	11
III. FINJAN HAD A GOOD FAITH BASIS FOR ASSERTING INFRINGEMENT OF CLAIM 1 OF THE ‘780 PATENT	17
A. Finjan’s Claim Construction Positions Are Consistent with its Prosecution and Prior Litigation of the ‘780 Patent.	17
B. The ‘780 Patent is Valid and Directed to Patentable Subject Matter under 35 U.S.C. § 101	20
C. Finjan Properly Presented Multiple Claims Regarding How Juniper Infringes in its Infringement Contentions.	21
IV. FINJAN HAS ACTED REASONABLY AND MADE NO FALSE STATEMENTS	22
A. Finjan Preserved Its § 282 Objection to Juniper’s Failure to Serve a § 282 Disclosure.	22
B. Finjan Reasonably Claimed Work Product Protection over Mr. Garland’s Impressions of the Call with Mr. Coonan.	24
CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

Cases

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

24/7 Customer, Inc. v. LivePerson, Inc.,
No. 15-cv-02897-JST, 2017 WL 2311272 (N.D. Cal. May 25, 2017) 20

Amsted Indus. Inc. v. Buckeye Steel Castings Co.,
24 F.3d 178 (Fed. Cir. 1994)..... 4

Arctic Cat, Inc. v. Bombardier Recreational Prods. Inc.,
876 F.3d 1350 (Fed. Cir. 2017)..... 9, 10

Estate of Blas ex. rel. Chargualaf v. Winkler,
792 F.2d 858 (9th Cir. 1986) 2

Douglas Dynamics, LLC v. Buyers Prods. Co.,
717 F.3d 1336 (Fed. Cir. 2013)..... 11

Ericsson, Inc. v. D-Link Sys., Inc.,
773 F.3d 1201 (Fed. Cir. 2014)..... 12

Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v. Mega systems, LLC,
350 F.3d 1327 (Fed. Cir. 2003)..... 23

Finjan, Inc. v. BitDefender, Inc.,
No. 4:17-cv-04790-HSG, 2019 WL 634985 (N.D. Cal. Feb. 14, 2019)..... 17, 18

Finjan, Inc. v. Blue Coat Sys., Inc.,
879 F.3d 1299 (Fed. Cir. 2018)..... 15

Finjan, Inc. v. Blue Coat Sys., Inc.,
No. 13-cv-03999-BLF, 2014 WL 5361976 (N.D. Cal. Oct. 20, 2014)..... 17

Finjan, Inc. v. Blue Coat Sys., Inc.,
No. 13-cv-03999-BLF, 2015 WL 3630000 (N.D. Cal. June 2, 2015)..... 17, 18

Finjan, Inc. v. Cisco, Inc.,
No. 5:17-cv-00072-BLF, 2018 WL 3537142 (N.D. Cal. July 23, 2018)..... 17

Finjan, Inc. v. ESET, LLC,
No. 17-cv-00183-CAB-(BGS), 2017 WL 5501338 (S.D. Cal. Nov. 14, 2017) 17

Finjan, Inc. v. Secure Computing Corp.,
626 F.3d 1197 (Fed. Cir. 2010)..... 11

Finjan, Inc. v. Sophos, Inc.,
244 F. Supp. 3d 1016 (N.D. Cal. 2017) 17

1 *Fink v. Gomez*,
 239 F.3d 989 (9th Cir. 2001) 2

2

3 *Funai Elec. Co. v. Daewoo Elecs. Corp.*,
 616 F.3d 1357 (Fed. Cir. 2010)..... 4

4

5 *Intellectual Ventures I LLC v. Erie Indemnity Co.*,
 200 F. Supp. 3d 565 (W.D. Penn. 2016)..... 20

6 *Intellectual Ventures I LLC v. Symantec Corp.*,
 100 F. Supp. 3d 371 (D. Del. 2015)..... 21

7

8 *Kearney v. Salomon Smith Barney, Inc.*,
 39 Cal. 4th 95 (2006) 7

9

10 *In re Keegan Management Co., Sec. Litig.*,
 78 F.3d 431 (9th Cir.1996) 2

11 *LaFarge Corp. v. No. 1 Contracting Corp.*,
 No. 3:CV-06-2315, 2008 WL 2120518 (M.D. Pa. May 19, 2008)..... 22

12

13 *Lans v. Digital Equip. Corp.*,
 252 F.3d 1320 (Fed. Cir. 2001)..... 3

14

15 *Maxwell v. J. Baker, Inc.*,
 86 F.3d 1098 (Fed. Cir. 1996)..... 3, 8

16 *Minks v. Polaris Indus., Inc.*,
 546 F.3d 1364 (Fed. Cir. 2008)..... 4

17

18 *Monsanto Co. v. Ralph*,
 382 F.3d 1374 (Fed. Cir. 2004)..... 11

19 *Palo Alto Networks, Inc. v. Finjan, Inc.*,
 Case IPR2016-00165, Paper No. 7 (P.T.A.B. April 21, 2016)..... 17

20

21 *Prism Techs. LLC v. Sprint Spectrum L.P.*,
 849 F.3d 1360 (Fed. Cir. 2017)..... 11

22

23 *Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.*,
 853 F.3d 1370 (Fed. Cir. 2017)..... 3, 8

24 *SRI Int'l, Inc. v. Advanced Tech. Labs., Inc.*,
 127 F.3d 1462 (Fed. Cir. 1997)..... 3, 4

25

26 *Symantec Corp. v. Zscaler, Inc.*
 No. 17-cv-04426-JST, 2018 WL 1456678 (N.D. Cal. Mar. 23, 2018)..... 20

27

28 *Uniboard Aktiebolag v. Acer Am. Corp.*,
 118 F. Supp. 2d 19 (D.D.C. 2000) 4, 9

1 *Versata Software, Inc. v. SAP Am., Inc.*,
 2 717 F.3d 1255 (Fed. Cir. 2013)..... 12

3 *Viola Sportswear, Inc. v. Mimun*,
 4 574 F. Supp. 619 (E.D.N.Y. 1983) 22

5 **Federal Statutes**

6 28 U.S.C. § 1927..... 1, 2, 25

7 35 U.S.C. § 101..... 20, 23

8 35 U.S.C. § 271..... 3

9 35 U.S.C. § 282..... 22, 23, 24

10 35 U.S.C. § 284..... 3

11 35 U.S.C. § 287..... 3, 9

12 35 U.S.C. § 287(a) 3, 4

13 **State Statutes**

14 Cal. Bus. & Prof. Code § 17200 *et seq.* 7

15 Cal. Pen. Code § 632..... 7

16 **Rules**

17 Federal Rules of Civil Procedure 50..... 2

18 Federal Rules of Civil Procedure 60..... 1

19

20

21

22

23

24

25

26

27

28

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.