

# EXHIBIT 11

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**From:** Carson, Rebecca <[RCarson@irell.com](mailto:RCarson@irell.com)>  
**Sent:** Sunday, November 25, 2018 10:15 AM  
**To:** Manes, Austin <[AManes@KRAMERLEVIN.com](mailto:AManes@KRAMERLEVIN.com)>  
**Cc:** Glucoft, Josh <[JGlucoft@irell.com](mailto:JGlucoft@irell.com)>; Andre, Paul <[PAAndre@KRAMERLEVIN.com](mailto:PAAndre@KRAMERLEVIN.com)>; Caire, Yuridia <[YCaire@KRAMERLEVIN.com](mailto:YCaire@KRAMERLEVIN.com)>; Hannah, James <[JHannah@KRAMERLEVIN.com](mailto:JHannah@KRAMERLEVIN.com)>; Hedvat, Shannon H. <[SHedvat@KRAMERLEVIN.com](mailto:SHedvat@KRAMERLEVIN.com)>; Kastens, Kris <[KKastens@KRAMERLEVIN.com](mailto:KKastens@KRAMERLEVIN.com)>; Kobialka, Lisa <[LKobialka@KRAMERLEVIN.com](mailto:LKobialka@KRAMERLEVIN.com)>; Lee, Hannah <[HLee@KRAMERLEVIN.com](mailto:HLee@KRAMERLEVIN.com)>; Lee, Michael H. <[MHLee@KRAMERLEVIN.com](mailto:MHLee@KRAMERLEVIN.com)>; Martinez, Cristina <[CMartinez@KRAMERLEVIN.com](mailto:CMartinez@KRAMERLEVIN.com)>; Nguyen, Stephanie <[SNguyen@KRAMERLEVIN.com](mailto:SNguyen@KRAMERLEVIN.com)>; Xu, Linda <[LXu@KRAMERLEVIN.com](mailto:LXu@KRAMERLEVIN.com)>; Kagan, Jonathan <[JKagan@irell.com](mailto:JKagan@irell.com)>; Curran, Casey <[ccurran@irell.com](mailto:ccurran@irell.com)>; Song, Sharon <[ssong@irell.com](mailto:ssong@irell.com)>; Wang, Kevin <[kwang@irell.com](mailto:kwang@irell.com)>; Holland, Eileen <[EHolland@irell.com](mailto:EHolland@irell.com)>  
**Subject:** RE: [EXTERNAL] RE: Objections and Exhibit List

Hi Austin,

Your quotation of the “may give notice” language ignores the rest of the statute. Section 287 makes clear that it only applies to patentees who make or sell patented articles in the United States (or who have licensees who do so). Thus, the actual notice requirement only comes into play if the patentee (or its licensees) sell such products and did not mark them. The full language of the statute is:

**(a) Patentees, and persons making, offering for sale, or selling within the United States any patented article for or under them, or importing any patented article into the United States,** may give notice to the public that the same is patented, either by fixing thereon the word “patent” or the abbreviation “pat.,” together with the number of the patent, or by fixing thereon the word “patent” or the abbreviation “pat.” together with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented article with the number of the patent, or when, from the character of the article, this can not be done, by fixing to it, or to the

package wherein one or more of them is contained, a label containing a like notice. **In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice.** Filing of an action for infringement shall constitute such notice.

If Finjan is conceding that it had to provide Juniper with actual notice (which it seems like it is), then I don't see how it is not also conceding that it or its licensees sold patented articles that were not marked. If you are still having trouble understanding the statute, I'd be happy to jump on a call to explain it to you.

Regards,  
Rebecca

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**From:** Manes, Austin [<mailto:AManes@KRAMERLEVIN.com>]

**Sent:** Sunday, November 25, 2018 9:52 AM

**To:** Carson, Rebecca

**Cc:** Glucoft, Josh; ~Andre, Paul; ~Caire, Yuridia; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Hannah; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie; ~Xu, Linjun; Kagan, Jonathan; Curran, Casey; Song, Sharon; Wang, Kevin; Holland, Eileen

**Subject:** RE: [EXTERNAL] RE: Objections and Exhibit List

Rebecca,

Section 287 states only that a patentee "may give notice to the public" by marking. It does not require marking and your misstatements about an obligation to mark are incorrect.

If you have any caselaw or other legal authority to the contrary, please let me know. So far you've based your position only on Section 287 and it appears your interpretation is contrary to the plain language of the statute.

Austin

Austin Manes

Associate

Kramer Levin Naftalis & Frankel LLP  
990 Marsh Road, Menlo Park, California 94025  
T 650.752.1718

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**From:** Carson, Rebecca <[RCarson@irell.com](mailto:RCarson@irell.com)>

**Sent:** Sunday, November 25, 2018 8:42 AM

**To:** Manes, Austin <[AManes@KRAMERLEVIN.com](mailto:AManes@KRAMERLEVIN.com)>

**Cc:** Glucoft, Josh <[JGlucoft@irell.com](mailto:JGlucoft@irell.com)>; Andre, Paul <[PAndre@KRAMERLEVIN.com](mailto:PAndre@KRAMERLEVIN.com)>; Caire, Yuridia <[YCaire@KRAMERLEVIN.com](mailto:YCaire@KRAMERLEVIN.com)>; Hannah, James <[JHannah@KRAMERLEVIN.com](mailto:JHannah@KRAMERLEVIN.com)>; Hedvat, Shannon H. <[SHedvat@KRAMERLEVIN.com](mailto:SHedvat@KRAMERLEVIN.com)>; Kastens, Kris <[KKastens@KRAMERLEVIN.com](mailto:KKastens@KRAMERLEVIN.com)>; Kobialka, Lisa <[LKobialka@KRAMERLEVIN.com](mailto:LKobialka@KRAMERLEVIN.com)>; Lee, Hannah <[HLee@KRAMERLEVIN.com](mailto:HLee@KRAMERLEVIN.com)>; Lee, Michael H. <[MHLee@KRAMERLEVIN.com](mailto:MHLee@KRAMERLEVIN.com)>; Martinez, Cristina <[CMartinez@KRAMERLEVIN.com](mailto:CMartinez@KRAMERLEVIN.com)>; Nguyen, Stephanie <[SNguyen@KRAMERLEVIN.com](mailto:SNguyen@KRAMERLEVIN.com)>; Xu, Linda <[LXu@KRAMERLEVIN.com](mailto:LXu@KRAMERLEVIN.com)>; Kagan, Jonathan <[JKagan@irell.com](mailto:JKagan@irell.com)>; Curran, Casey <[ccurran@irell.com](mailto:ccurran@irell.com)>; Song, Sharon <[ssong@irell.com](mailto:ssong@irell.com)>; Wang, Kevin <[kwang@irell.com](mailto:kwang@irell.com)>; Holland, Eileen <[EHolland@irell.com](mailto:EHolland@irell.com)>

**Subject:** RE: [EXTERNAL] RE: Objections and Exhibit List

Austin,

Please provide a response to my email below. This will impact the pretrial order, verdict form, and jury instructions, so we need to know Finjan's position on this issue immediately.

Regards,  
Rebecca

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**From:** Carson, Rebecca

**Sent:** Saturday, November 24, 2018 6:10 PM

**To:** ~Manes, Austin

**Cc:** Glucoft, Josh; ~Andre, Paul; ~Caire, Yuridia; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Hannah; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie; ~Xu, Linjun; Kagan, Jonathan; Curran, Casey; Song, Sharon; Wang, Kevin; Holland, Eileen

**Subject:** RE: [EXTERNAL] RE: Objections and Exhibit List

Austin,

The notice provisions of Section 287 apply to patentees who sell products that embody the patent (or whose licensees sell products that embody the patents). If Finjan is conceding that it was required to provide actual notice, then it is necessarily conceding that it or its licensees had an obligation to mark and they did not do so. This was an issue that was raised on summary judgment, and which Finjan previously disputed. If Finjan is now conceding the issue, then it needs to be memorialized in a stipulation. Otherwise, it will need to be tried.

Regards,  
Rebecca

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**From:** Manes, Austin [<mailto:AManes@KRAMERLEVIN.com>]

**Sent:** Saturday, November 24, 2018 6:03 PM

**To:** Carson, Rebecca

**Cc:** Glucoft, Josh; ~Andre, Paul; ~Caire, Yuridia; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Hannah; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie; ~Xu, Linjun; Kagan, Jonathan; Curran, Casey; Song, Sharon; Wang, Kevin; Holland, Eileen

**Subject:** Re: [EXTERNAL] RE: Objections and Exhibit List

Rebecca,

We don't understand your issue. What law is Juniper relying on that makes constructive notice an issue when actual notice is asserted?

Austin

Austin Manes  
Associate

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On Nov 24, 2018, at 3:32 PM, Carson, Rebecca <[RCarson@irell.com](mailto:RCarson@irell.com)> wrote:

Austin:

We will need to try the issue of constructive notice if Finjan is not willing to stipulate that it did not comply with the marking requirements. Please let us know by the end of today whether Finjan would prefer to stipulate or try the issue so that we can make the appropriate adjustments to the joint filings.

Thanks,  
Rebecca

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**From:** Manes, Austin [<mailto:AManes@KRAMERLEVIN.com>]  
**Sent:** Saturday, November 24, 2018 2:44 PM  
**To:** Glucoft, Josh; ~Andre, Paul; ~Caire, Yuridia; ~Hannah, James; ~Hedvat, Shannon; ~Kastens, Kristopher; ~Kobialka, Lisa; ~Lee, Hannah; ~Lee, Michael; ~Martinez, Cristina; ~Nguyen, Stephanie; ~Xu, Linjun  
**Cc:** Kagan, Jonathan; Carson, Rebecca; Curran, Casey; Song, Sharon; Wang, Kevin; Holland, Eileen  
**Subject:** RE: Objections and Exhibit List

Counsel:

Finjan's redlines to the latest pretrial order are attached, along with a clean version of the jury instructions. We made edits only to Finjan's disputed instructions. We accept all of Juniper's latest redlines to the voir dire questions and the parties are filing competing verdict forms, so those last two documents should be done.

Finjan's exhibit list, which is part of the pretrial order, is attached. We added 17 exhibits from recent depositions at the end. We will send our objections to Juniper's updated exhibit list separately.

Thanks,  
Austin

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