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13 JUNIPER NETWORKS, INC.

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 FINJAN, INC., a Delaware Corporation,) Case No. 3:17-cv-05659-WHA
19 Plaintiff,)
20 vs.) **DEFENDANT JUNIPER NETWORKS,**
21 JUNIPER NETWORKS, INC., a Delaware) **INC.'S REPLY IN SUPPORT OF**
Corporation,) **MOTION FOR SANCTIONS**
22 Defendant.)
23)
24)
25)
26)
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28)

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

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1 This Court has been very clear that the outcome of the first round of the “Patent Showdown”
2 could have serious consequences for one party or the other, as it could “warrant an injunction or
3 sanctions.” This Court warned Juniper of potential injunctive relief—if it lost—but explained
4 “you’re going to get sanctions against them [Finjan] if it warrants sanctions” and Finjan “will have
5 to pay that right off the bat”—“[c]ould be hundreds of thousands of dollar for having brought a bogus
6 claim against Juniper.” Dkt. 44 (2/22/18 Hr’g Tr. at 6). Now that the first round is over with a
7 complete victory for Juniper on both the claim it selected and on the claim Finjan identified as its
8 strongest, it has become clear that Finjan’s claims were “bogus” from the start, and Juniper requests
9 that the Court exercise its inherent powers to sanction Finjan.

10 Juniper did not bring this Motion merely because it prevailed on both Finjan’s strongest and
11 weakest claims. Rather, it became clear during the litigation that Finjan had asserted these claims—
12 and continued litigating them through conclusion—by using legal gamesmanship that unreasonably
13 multiplied the proceedings, drove up Juniper’s legal costs, and wasted this Court’s time. Contrary to
14 Finjan’s assertion, this was not simply a “hard-fought litigation” waged with good-faith tactics. To
15 the contrary, during the course of the litigation Finjan demonstrated that it would baldly disregard
16 binding legal precedent on damages, try to disavow its own statements to the PTAB, and even present
17 false statements from its employees, under oath, to support its allegations of pre-suit notice. Finjan
18 has also repeatedly played “hide the ball” by forcing Juniper to brief infringement claims that it would
19 not even oppose. Finjan further multiplied the proceedings by filing motions containing
20 demonstrably false statements (*e.g.*, Finjan’s § 282 motion) and by asserting and maintaining legally
21 indefensible positions that require Juniper to obtain Court intervention (*e.g.*, Finjan’s unsupported
22 privilege claims). Finjan provides no excuse for its pattern of unreasonable conduct during the first
23 round of the “Patent Showdown.” Instead, it simply rehashes the same legally unsound arguments
24 that it made during the earlier proceedings and claims that the Court got it wrong.

25 Finjan tries to excuse its own poor conduct by making allegations of improper conduct by
26 Juniper. First, these allegations—even if true (and they are not)—do nothing to justify Finjan’s
27 record of conduct designed to drive up the cost of this litigation. Second, Finjan’s claim that Juniper
28 produced “evidence that Sky ATP uses [REDACTED] for the “first time in

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