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0	FINJAN, INC.	
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	IN THE UNITED ST	TATES DISTRICT COURT
13	FOR THE NORTHERN	DISTRICT OF CALIFORNIA
14		
15	SAN FRAN	CISCO DIVISION
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17	EDITANI DIC - Dalamana Camanatian	C N 2.17 05650 WILL
	FINJAN, INC., a Delaware Corporation,	Case No.: 3:17-cv-05659-WHA
18	Plaintiff,	PLAINTIFF FINJAN, INC. REPLY TO DEFENDANT JUNIPER NETWORKS, INC.
9	V.	LETTER TO COURT RE DKT. NO. 459
20		
21	JUNIPER NETWORKS, INC., a Delaware Corporation,	REDACTED VERSION OF DOCUMENT
22	Corporation,	SOUGHT TO BE SEALED
	Defendant.	
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I. INTRODUCTION

Finjan, Inc. ("Finjan") established that there are numerous material issues of triable fact that preclude a finding of summary judgment of noninfringement for nonmovant Juniper Networks, Inc. ("Juniper"). As set forth in Finjan's opening response (Dkt. No. 473-4)¹, Juniper infringes Claim 1 of the '154 Patent under the Court's new construction of "content processor" because the accused products all include content processors that process "modified content." Finjan provided evidence and an expert declaration (Dkt. No. 473-4) demonstrating that Juniper's products infringe under the Court's construction, establishing that summary judgment of noninfringement cannot be granted.

Juniper makes the preposterous claim that Finjan should have known of its new construction that contained the concept of "modified content" for the first time when it filed for its Motion for Summary Judgment ("Motion"), even though Juniper never identified such a construction in the case and only did so for the first time *after* Finjan had already filed its Motion. Juniper did not identify such a construction in the case because Juniper concocted this new construction solely for responding to Finjan's Motion for Summary Judgment, evident from the fact that it never advocated for such a construction in the case previously.

Indeed, Juniper put forward *three* different constructions for "content processor" before Finjan filed its Motion, and none of Juniper's proposed constructions stated that the content processor processes "modified content." Juniper first introduced the concept of "modified content" in its opposition to Finjan's Motion that Juniper filed on March 14, 2019, and which the Court used as the basis for deny infringement in its May 8, 2019 Order on Second Round of Early Motions for Summary Judgment. Dkt. No. 459 at 5-11 ("May 8, 2019 Order"). As such, Finjan and its expert *could not* have addressed this construction because *neither party* had advocated for such a construction until well after Finjan submitted its Motion and accompanying expert declaration. As such, triable issues of fact remain and Juniper's response should be disregarded.

¹ Finjan's corrected Response was filed on May 14, 2019. See Dkt. Nos. 473-4, 474.



II. ARGUMENT

A. <u>Juniper Infringes Claim 1 of the '154 Patent under the Court's Construction</u>

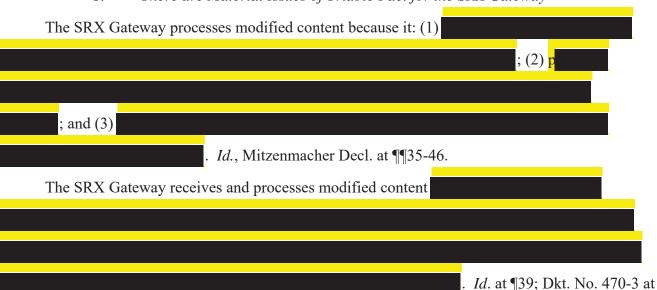
There are material issues of triable facts to be decided that preclude summary judgment of noninfringement because Juniper's accused products, the SRX Gateway, Sky ATP, and ATP Appliance (collectively, "Accused Products"), process modified content and therefore infringe Claim 1 of the '154 Patent under the Court's construction of "content processor" as a "processor that processes modified content." Dkt. No. 469-6, Mitzenmacher Decl. at ¶¶35-76. In fact, all of Juniper's

Accused Products

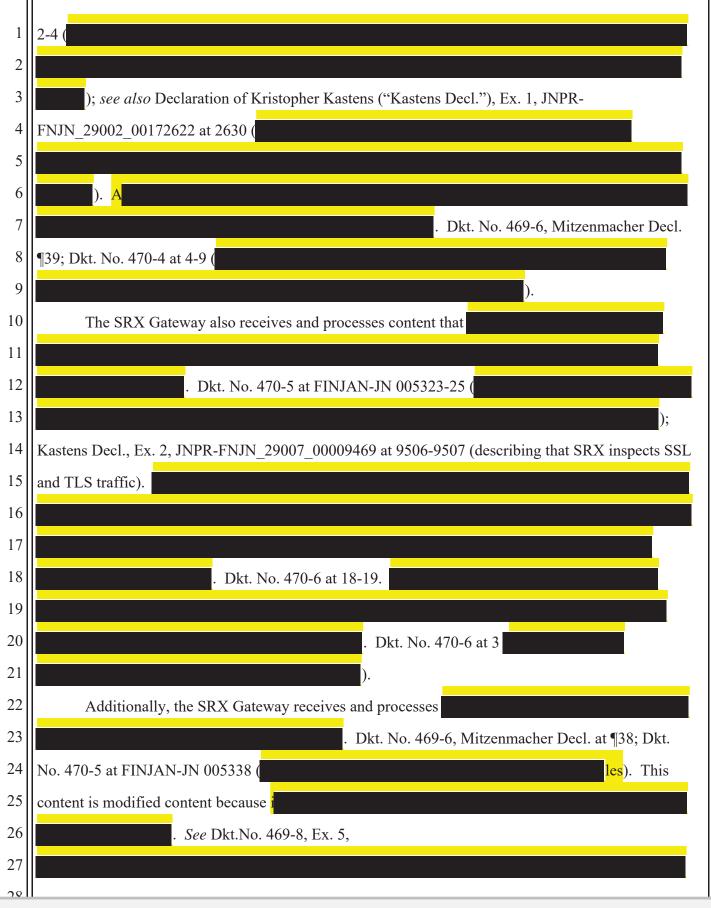
. Id. Additionally,

Juniper also infringes the "content processor" element under the doctrine of equivalents ("DOE"). *Id.*, at ¶¶110-111. Finjan has attached the declaration of Dr. Mitzenmacher in support of its position, who establishes that every element of Claim 1 of the '154 Patent is met under the Court's new construction of "content processor." *Id.* at ¶¶35-109. Dr. Mitzenmacher's declaration in response to the court's order to show cause is also completely consistent with the declaration he submitted in support of Finjan's Motion for Summary Judgment because modified content is a type of content, which Dr. Mitzenmacher did address in his previous testimony, even though he did not specifically use the word "modified."

1. There are Material Issues of Triable Fact for the SRX Gateway









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