

1 IRELL & MANELLA LLP
Jonathan S. Kagan (SBN 166039)
2 jkagan@irell.com
Alan Heinrich (SBN 212782)
3 aheinrich@irell.com
Joshua Glucoft (SBN 301249)
4 jglucoft@irell.com
1800 Avenue of the Stars, Suite 900
5 Los Angeles, California 90067-4276
Telephone: (310) 277-1010
6 Facsimile: (310) 203-7199

7 Rebecca Carson (SBN 254105)
rcarson@irell.com
8 Ingrid Petersen (SBN 313927)
ipetersen@irell.com
9 Kevin Wang (SBN 318024)
kwang@irell.com
10 840 Newport Center Drive, Suite 400
Newport Beach, California 92660-6324
11 Telephone: (949) 760-0991
Facsimile: (949) 760-5200

12 *Attorneys for Defendant*
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,) **DEFENDANT JUNIPER NETWORKS,**
20 vs.) **INC.’S REPLY TO FINJAN’S RESPONSE**
21) **TO ORDER TO SHOW CAUSE**
JUNIPER NETWORKS, INC., a Delaware)
22 Corporation,)
23 Defendant.)
24)
25)
26)
27)
28)

1 **I. INTRODUCTION**

2 In its original summary judgment briefing, Finjan argued that the Court could and should
3 resolve Juniper's alleged infringement of the '154 Patent on summary judgment because "there is
4 no genuine dispute as to any material fact." Dkt. 368-4 at 8. Now that Finjan has lost the dispositive
5 claim construction issue, however, it suddenly claims that there are myriad factual disputes making
6 summary judgment inappropriate. Finjan was right the first time.

7 Finjan's attempt to manufacture 11th hour factual disputes fail because Finjan has not—and
8 cannot—identify any "modified content" within the meaning of the claim. Instead, Finjan attempts
9 to gin up new meanings of "modified content" that are completely divorced from the claim language
10 and the disclosures of the '154 Patent. Moreover, Finjan's allegation that Juniper somehow
11 sandbagged Finjan with a new construction is a desperate attempt at revisionist history. Indeed, it
12 was *Finjan* that sandbagged Juniper by departing from its infringement contentions and introducing
13 new theories for the first time on summary judgment (as detailed in Juniper's motion to strike those
14 contentions). In short, Finjan has not identified a legitimate reason why the Court should not enter
15 summary judgment in Juniper's favor on Claim 1 of the '154 Patent given the Court's construction
16 of "content processor."

17 **II. ARGUMENT**

18 **A. Finjan Has Not Raised A Genuine Factual Dispute That Would Preclude**
19 **Summary Judgment In Juniper's Favor.**

20 **1. Finjan Has Not Identified Any Evidence That The Accused Products**
21 **Process "Modified Content" Within The Meaning Of Claim 1.**

22 As explained in the parties summary judgment papers, the accused Juniper products do not
23 process "modified content" as required by the '154 Patent. Finjan's initial response to this
24 undisputed fact was to try to read the "modified content" requirement out of its patent. Having failed
25 to convince the Court to do so, Finjan now tries to salvage its infringement case by *redefining* the
26 meaning of "modified content" to include "original content," which was explicitly distinguished by
27 both this Court and the PTAB. Dkt. 459 at 7 (noting that "the substitute function exists only after
28 the original content is modified at the gateway computer"); Dkt. 390-19 at 9-10 (PTAB
distinguishing between "original," "modified" and "dynamically generated" content). In particular,

1 Finjan claims that the accused products process “modified content” because they process (1) content
2 that has been compromised by hackers at some point *before* it is requested by the client/end user,
3 (2) content that has been encrypted *before* it is sent from a server to the end user, (3) content that
4 has been compressed (*e.g.*, in a zip file) *before* being sent to the end user, and (4) content that has
5 been “buffered and chunked” for purposes of processing it.

6 None of the categories of “content” identified by Finjan actually constitute “modified
7 content” within the meaning of the ’154 Patent. As the Court noted, the content processed by the
8 “content processor” includes a

9 “‘first function’ [that] clearly involves the ‘substitute function,’ which
10 sends the content’s input to the security computer for inspection once
11 invoked. According to the specification, the substitute function exists
12 only after the original content is modified at the gateway computer
(*see, e.g.*, ’154 patent at 9:13-28). Accordingly, the claimed ‘content’
necessarily refers to modified content.”

13 Dkt. 459 at 7 (citing *Palo Alto Networks, Inc. v. Finjan, Inc.*, 752 F. App’x 1017, 1018 (Fed. Cir.
14 2018); *Finjan, Inc. v. Cisco Systems, Inc.*, 2018 WL 3537142, at *20-23 (N.D. Cal. July 23, 2018)).
15 Indeed, the ’154 patent explains that “the present invention operates by replacing original function
16 calls with substitute function calls within the content, at a gateway computer, prior to the content
17 being received at the client computer.” ’154 Patent at 4:55-60.

18 Finjan has not alleged that any of the accused products process content that has been modified
19 by inserting a “substitute function” that sends the input to a security computer for inspection when
20 it is invoked. In fact, the accused products do no such thing. *See* Dkt. 468 (Juniper’s Response to
21 Order to Show Cause). Finjan’s theories regarding hacked, encrypted or compressed content involve
22 content that is altered or prepared at the server hosting that content *before* it is sent to the client and
23 *before* it even reaches the gateway. Thus, this type of content is the “original content,” not the
24 “modified content.” *See* Dkt. 390-19 at 9 (“First, there is the ‘original content’ that is scanned and
25 modified *at the gateway computer.*”) (emphasis added).

26 Finjan’s theory involving “buffered” or “chunked” content also fails because the content is
27 simply being broken into pieces for processing, not “modified.” Relatedly, Finjan argues that Sky
28 ATP and ATP Appliance receive “modified” content because the SRX or ATP Appliance collector

1 “replaces the get request with its own, and its own ip address.” Dkt. 474 at 6, 9. But the “get request”
2 and “ip address” are not even part of the “content” that Sky ATP or ATP Appliance processes, much
3 less a “substitute function” that would comprise “modified content” within the meaning of Claim 1.
4 Rather, this is simply location information that tells Sky ATP or ATP Appliance where to send the
5 results of the analysis. Finjan’s argument that the ATP Appliance processes “modified” content
6 because it processes the original content along with “metadata” similarly falls flat. Dkt. 474 at 8.
7 Creating “metadata” to help process a file does not constitute “modification” of the content of that
8 file because there is no alteration of the functions contained within the content. Rather, the metadata
9 simply adds information to aid in the processing of the original functions contained in the original
10 content.

11 Because Finjan has not and cannot identify any evidence that the accused products actually
12 process “modified content,” its new infringement theories fail as a matter of law and the Court should
13 entered summary judgment in favor of Juniper.

14 **2. Finjan Has Not Identified Any Evidence That The Content It Alleges Is**
15 **“Modified” Would Satisfy The Other Claim Elements.**

16 Even if the categories of content identified by Finjan could be considered “modified
17 content”—which they cannot—Finjan has not identified any infringement scenario involving that
18 content that would satisfy the other limitations of Claim 1. Indeed, Finjan presented an infringement
19 theory where the “first function” is an “http function” that uses a “URL” or “IP Address” as an input.
20 Dkt. 368-4 at 10, 16 and 20. Finjan offers no explanation for how the new “content” that it identifies
21 contains any alleged “first function” nor how it would meet the requirement that a “second function”
22 is invoked with the input only if the security computer indicates that it is safe. Indeed, to the extent
23 Finjan is now arguing that the SRX replaces the “get request” and “IP address,” then Finjan is
24 admitting that the “content” that it pointed to in its infringement theory never actually gets sent to
25 the “security computer” (i.e., Sky ATP or ATP Appliance). Nor does Finjan address the remainder
26 of Juniper’s non-infringement arguments, which are equally applicable to Finjan’s new theories.

27 Moreover, as the Court acknowledged in its Order, “Juniper makes a strong argument for the
28 proposition that the content processor resides on the *client* computer.” Dkt. 459 at n.2. There is no

1 dispute that the accused products are not “client/user computer,” and therefore fail to meet the
2 “content processor” limitation for this separate reason. As such, the accused products would still
3 not infringe Claim 1 of the ’154 Patent as a matter of law for the reasons set forth in Juniper’s
4 opposition, including because the alleged “content processor” is not located on a client/user
5 computer.

6 3. Juniper Does Not Infringe Under the Doctrine of Equivalents.

7 Finjan also claims that Juniper infringes under the doctrine of equivalents (“DOE”), but fails
8 to show how the accused products perform the same function in the same way to obtain the same
9 result. *First*, Finjan claims that the accused products infringe under DOE because they process
10 content that was received from the internet that has been modified on the server. Yet, this is precisely
11 the “original content” described by the PTAB and fundamentally distinct from the claimed content,
12 which is the modified content that had an original function call replaced by a substitute function.
13 Indeed, the PTAB explained “[t]he *claimed* content cannot refer to the ‘original content’ that is
14 received by the gateway and over the Internet because that content, according to the Specification,
15 would be capable of generating the undetected dynamically generated malicious content from which
16 the client computer is to be protected.” Dkt. 390-19 at 10 (emphasis in original). Equivocating
17 between these distinct concepts is entirely improper. As such, Finjan’s new infringement scenario
18 does not perform the same function in the same way to obtain the same result. Moreover, Finjan’s
19 theory that simply processing original content could read on Claim 1 would undoubtedly ensnare
20 the prior art that is discussed in the ’154 Patent itself. ’154 Patent at 1:65-2:16 (discussing prior art
21 that performs behavioral analysis on original content at the gateway).

22 *Second*, Finjan alleges that the accused products “effectively modify the content so that
23 functions included in the content to obtain further content (*e.g.*, denoted by an http:// command or
24 an iframe command) are replaced by functions which instead send the input to a security computer
25 so that the security computer can return an indicator whether it is safe to invoke a second function
26 with the input.” Dkt. 469-3 at 10. Yet, the only thing Finjan cites for support is its expert’s
27 declaration, which is an almost verbatim regurgitation of Finjan’s attorney arguments with literally
28

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