

1 PAUL J. ANDRE (State Bar No. 196585)  
2 pandre@kramerlevin.com  
3 LISA KOBIALKA (State Bar No. 191404)  
4 lkobialka@kramerlevin.com  
5 JAMES HANNAH (State Bar No. 237978)  
6 jhannah@kramerlevin.com  
7 KRISTOPHER KASTENS (State Bar No. 254797)  
8 kkastens@kramerlevin.com  
9 KRAMER LEVIN NAFTALIS & FRANKEL LLP  
10 990 Marsh Road  
11 Menlo Park, CA 94025  
12 Telephone: (650) 752-1700  
13 Facsimile: (650) 752-1800

14 *Attorneys for Plaintiff*  
15 FINJAN, INC.

16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN FRANCISCO DIVISION**

19 FINJAN, INC., a Delaware Corporation,

20 Plaintiff,

21 v.

22 JUNIPER NETWORKS, INC., a Delaware  
23 Corporation,

24 Defendant.

Case No.: 3:17-cv-05659-WHA

**PLAINTIFF FINJAN, INC.'S LETTER  
BRIEF REGARDING MOTION TO  
COMPEL**

1 Dear Judge William Alsup,

2 Plaintiff Finjan, Inc. (“Finjan”) submits the following motion to compel Juniper Networks, Inc.  
3 (“Juniper”) to provide focused discovery responsive to Finjan’s Requests for Production (“RFPs”)  
4 regarding the Accused Products: Sky Advanced Threat Protection (“Sky ATP”) and the Advanced  
5 Threat Prevention Appliance (“ATP Appliance”). On April 3, 2018, the parties met and conferred by  
6 telephone over the issues identified in this motion to compel.

7 **I. INTRODUCTION**

8 The Court should compel Juniper to produce a tailored set of confidential, technical documents  
9 for Sky ATP and the ATP Appliance by April 13, 2018, which Finjan needs for its Motion for  
10 Summary Judgment to be filed on June 7, 2018, under the Court’s expedited schedule. Dkt. No. 35 at  
11 4. To date, Juniper has not produced a single internal technical document for any accused product and  
12 did not produce any documents with its February 28, 2018, Initial Disclosures. While Juniper refuses  
13 to produce any internal design and development documents for the Sky ATP for another month, it is  
14 entirely refusing to provide any discovery into the ATP Appliance. Given the expedited schedule,  
15 Juniper should be compelled to produce these technical documents by April 13, 2018, so that Finjan  
16 has adequate time to prepare its case.

17 **II. DOCUMENTS RELATING TO SKY ATP**

18 Finjan is seeking confidential, internal design documents, such as design specifications, wiki  
19 pages, API guides, and flow charts, regarding the malware inspection pipeline, dynamic analysis, and  
20 static analysis for Sky ATP. *See* Ex. 1 (2/23/18 RFPs), RFP No. 37 (malware inspection pipeline); No.  
21 38 (dynamic analysis); No. 39 (static analysis). Such confidential, technical documentation regarding  
22 the design, development, and operation of Sky ATP is relevant and time sensitive as Sky ATP is one of  
23 the accused products under the Court’s expedited schedule. Dkt. No. 35 at 4. Finjan diligently sought  
24 this discovery since it served these document requests on February 23, 2018. *See* Ex. 1 (2/23/18  
25 RFPs).

26 Despite its relevance, Juniper is seeking to further delay its production, representing during the  
27 April 3rd meet and confer that it would provide a “substantial” production of technical documents by  
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1 April 13th, but this production would not include any documents related to Sky ATP. Such production  
2 would take another “few weeks” after that with no specific deadline. Finjan cannot wait this long for  
3 Juniper’s technical documents on Sky ATP, which has been at issue from the outset of the case. Under  
4 Juniper’s proposed production schedule, Finjan will not have sufficient time to: (1) follow up on the  
5 confidential information produced, including new information that these documents will certainly  
6 provide, (2) seek and take depositions with all the appropriate Sky ATP documents, and (3) prepare its  
7 summary judgment motion with such discovery. Thus, Juniper should be compelled to produce  
8 responsive documents by April 13th.

### 9 **III. DOCUMENTS RELATING TO THE ATP APPLIANCE**

10 Juniper is refusing to provide any discovery into the ATP Appliance, claiming it is not at issue  
11 in the case because the words “ATP Appliance” were not used in the complaint. However, Juniper  
12 acknowledges that Finjan sought discovery of the ATP Appliance in its February 23rd RFPs and  
13 provided infringement charts for the ATP Appliance in its infringement contentions, which were  
14 served on March 8, 2018. *See* Ex. 1, Definitions at ¶6 (defining “Accused Instrumentalities” to include  
15 ATP Appliance); *id.* at RFP Nos. 11–17. Finjan is seeking confidential technical documents regarding  
16 the dynamic (also called sandboxing) and static analysis for the ATP Appliance and all source code for  
17 the ATP Appliance by April 13th. Again, this material is time sensitive because the ATP Appliance is  
18 accused of infringing both claims that are part of the expedited summary judgment procedure  
19 beginning in two months.

20 Juniper’s refusal to provide documents is intended to delay discovery. First, the technology of  
21 “ATP Appliance” was identified in the complaint as Sky ATP, which offers the same type of dynamic  
22 analysis through sandboxing functionality as the ATP Appliance, and Sky ATP and the ATP  
23 Appliance are the only products in Juniper’s ATP product line. *Compare* Dkt. No. 1 at ¶¶46, 49  
24 (describing sandboxing functionality) *with* Ex. 2 (ATP Appliance Datasheet describing sandbox  
25 functionality). Finjan could not have used the exact ATP Appliance name in its complaint because  
26 Juniper acquired the product when it completed its purchase of another company, Cyphort, Inc., shortly  
27 before Finjan served its complaint. Juniper did not advertise this product under its current name until  
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1 approximately mid-December 2017. *Compare* Ex. 3 (10/3/2017 Wayback Machine printout showing  
2 only Sky ATP) *with* Ex. 4 (12/14/17 Wayback Machine printout showing Sky ATP and ATP  
3 Appliance). Second, Juniper will agree to Finjan amending its complaint to add the words “ATP  
4 Appliance” and provide discovery on the product as long as Finjan agrees *not* to include the ATP  
5 Appliance in the expedited summary judgment motion due in April. Third, to date, Juniper has not  
6 produced a single internal technical document on any accused product. These facts highlight Juniper’s  
7 attempts to delay discovery.

8 To the extent that Finjan needs to amend its complaint to specifically use the ATP Appliance  
9 name, which it will do shortly if this does not get resolved, Finjan requests that Juniper provide  
10 discovery into the ATP Appliance until Finjan’s motion to amend can be heard, as Finjan has good  
11 cause to amend. Indeed, amendment of Finjan’s complaint to specifically name the ATP Appliance is  
12 timely because Juniper did not list the ATP Appliance on its website until after Finjan filed its  
13 complaint. *Finjan, Inc. v. Proofpoint, Inc.*, No. 13-cv-05808-BLF, 2014 WL 6386727, at \*1 (N.D.  
14 Cal. Nov. 14, 2014) (granting leave to amend).

15 Further evidence of such good cause includes the fact that Finjan does not seek to amend its  
16 pleadings in bad faith, and seeking to amend is not the result of undue delay, as Juniper just began  
17 listing the product on its website a few months ago. *Oracle Am., Inc. v. Hewlett Packard Enter. Co.*,  
18 No. 16-cv-01393-JST, 2017 WL 3149297, at \*3-4 (N.D. Cal. Jul. 25, 2017) (granting motion to amend  
19 despite a delay of over six months delay); *see also Space Data Corp. v. X*, No. 16-cv-03260-BLF, 2017  
20 WL 3007078, at \*3 (N.D. Cal. Jul. 14, 2017). Juniper is not prejudiced because this case is still in its  
21 early stages, no depositions have been taken, and Juniper knew that Finjan was seeking discovery  
22 specifically into the ATP Appliance, which utilizes the same technology as Sky ATP, since being  
23 served with Finjan’s February 23rd RFPs which included the ATP Appliance as an accused product.  
24 Juniper’s willingness to stipulate to an amendment to Finjan’s complaint further demonstrates no  
25 prejudice. Finally, Finjan’s infringement contentions demonstrate that its claim of infringement  
26 against the ATP Appliance is not futile. As such, Juniper should be compelled to provide discovery  
27 into the ATP Appliance.

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Respectfully submitted,

Dated: April 6, 2018

By: /s/ Kristopher Kastens  
Paul J. Andre  
Lisa Kobialka  
James Hannah  
Kristopher Kastens  
KRAMER LEVIN NAFTALIS  
& FRANKEL LLP  
990 Marsh Road  
Menlo Park, CA 94025  
Telephone: (650) 752-1700  
Facsimile: (650) 752-1800  
[pandre@kramerlevin.com](mailto:pandre@kramerlevin.com)  
[lkobialka@kramerlevin.com](mailto:lkobialka@kramerlevin.com)  
[jhannah@kramerlevin.com](mailto:jhannah@kramerlevin.com)  
[kkastens@kramerlevin.com](mailto:kkastens@kramerlevin.com)

*Counsel for Plaintiff*  
FINJAN, INC.