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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

17 FINJAN, INC., a Delaware Corporation,

18 Plaintiff,

19 v.

20 JUNIPER NETWORKS, INC., a Delaware
21 Corporation,

22 Defendant.

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

**PLAINTIFF FINJAN, INC. REPLY TO
DEFENDANT JUNIPER NETWORKS, INC.
LETTER TO COURT RE DKT. NO. 459**

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TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. ARGUMENT 2

 A. JUNIPER INFRINGES CLAIM 1 OF THE ‘154 PATENT UNDER THE COURT’S CONSTRUCTION..... 2

 1. THERE ARE MATERIAL ISSUES OF TRIABLE FACT FOR THE SRX GATEWAY 2

 2. THERE ARE MATERIAL ISSUES OF TRIABLE FACT FOR SKY ATP 4

 3. THERE ARE MATERIAL ISSUES OF TRIABLE FACT FOR THE ATP APPLIANCE..... 7

 4. THERE ARE MATERIAL ISSUES OF TRIABLE FACT ON WHETHER JUNIPER INFRINGES UNDER DOE..... 9

 B. JUNIPER MISREPRESENTS THE RECORD..... 11

 C. JUNIPER MISCONSTRUES ITS OWN EXPERT’S TESTIMONY 13

III. CONCLUSION 14

1 **I. INTRODUCTION**

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

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

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

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

1 **II. ARGUMENT**

2 A. Juniper Infringes Claim 1 of the ‘154 Patent under the Court’s Construction

3 There are material issues of triable facts to be decided that preclude summary judgment of
 4 noninfringement because Juniper’s accused products, the SRX Gateway, Sky ATP, and ATP
 5 Appliance (collectively, “Accused Products”), process modified content and therefore infringe Claim
 6 1 of the ‘154 Patent under the Court’s construction of “content processor” as a “processor that
 7 processes modified content.” Dkt. No. 469-6, Mitzenmacher Decl. at ¶¶35-76. In fact, all of Juniper’s
 8 Accused Products [REDACTED]
 9 [REDACTED]. *Id.* Additionally,
 10 Juniper also infringes the “content processor” element under the doctrine of equivalents (“DOE”). *Id.*,
 11 at ¶¶110-111. Finjan has attached the declaration of Dr. Mitzenmacher in support of its position, who
 12 establishes that every element of Claim 1 of the ‘154 Patent is met under the Court’s new construction
 13 of “content processor.” *Id.* at ¶¶35-109. Dr. Mitzenmacher’s declaration in response to the court’s
 14 order to show cause is also completely consistent with the declaration he submitted in support of
 15 Finjan’s Motion for Summary Judgment because modified content is a type of content, which Dr.
 16 Mitzenmacher did address in his previous testimony, even though he did not specifically use the word
 17 “modified.”

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

19 The SRX Gateway processes modified content because it: (1) [REDACTED]
 20 [REDACTED]; (2) [REDACTED]
 21 [REDACTED]
 22 [REDACTED]; and (3) [REDACTED]
 23 [REDACTED]. *Id.*, Mitzenmacher Decl. at ¶¶35-46.

24 The SRX Gateway receives and processes modified content [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]. *Id.* at ¶39; Dkt. No. 470-3 at
 28

1 2-4 ([REDACTED]

2 [REDACTED]

3 [REDACTED]); *see also* Declaration of Kristopher Kastens (“Kastens Decl.”), Ex. 1, JNPR-

4 FNJN_29002_00172622 at 2630 ([REDACTED]

5 [REDACTED]

6 [REDACTED]). A [REDACTED]

7 [REDACTED]. Dkt. No. 469-6, Mitzenmacher Decl.

8 ¶39; Dkt. No. 470-4 at 4-9 ([REDACTED]

9 [REDACTED]).

10 The SRX Gateway also receives and processes content that [REDACTED]

11 [REDACTED]

12 [REDACTED]. Dkt. No. 470-5 at FINJAN-JN 005323-25 ([REDACTED]

13 [REDACTED]);

14 Kastens Decl., Ex. 2, JNPR-FNJN_29007_00009469 at 9506-9507 (describing that SRX inspects SSL

15 and TLS traffic). [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]. Dkt. No. 470-6 at 18-19. [REDACTED]

19 [REDACTED]

20 [REDACTED]. Dkt. No. 470-6 at 3 [REDACTED]

21 [REDACTED]).

22 Additionally, the SRX Gateway receives and processes [REDACTED]

23 [REDACTED]. Dkt. No. 469-6, Mitzenmacher Decl. at ¶38; Dkt.

24 No. 470-5 at FINJAN-JN 005338 ([REDACTED] les). This

25 content is modified content because [REDACTED]

26 [REDACTED]. *See* Dkt.No. 469-8, Ex. 5,

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

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