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13 *Attorneys for Defendant*  
 14 JUNIPER NETWORKS, INC.

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

19	FINJAN, INC.,	)	Case No. 3:17-cv-05659-WHA
		)	
20	Plaintiff,	)	<b>DEFENDANT JUNIPER NETWORKS,</b>
		)	<b>INC.'S ADMINISTRATIVE MOTION TO</b>
21	v.	)	<b>DEFER PATENT LOCAL RULE 4</b>
		)	
22	JUNIPER NETWORKS, INC.,	)	
		)	
23	Defendant.	)	Hon. William H, Alsup

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1           **NOTICE OF ADMINISTRATIVE MOTION AND ADMINISTRATIVE MOTION**

2           TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3           PLEASE TAKE NOTICE THAT pursuant to Civil Local Rules 7-11 and 6-3, Defendant  
4 Juniper Networks, Inc. (“Juniper”) respectfully moves the Court for an Order deferring the start of  
5 Patent Local Rule 4 until January 11, 2019.

6           This motion is based on this Notice of Motion, the Memorandum of Points and Authorities  
7 below, the Declaration of Joshua Glucoft (“Glucoft Dec.”) filed herewith, all documents in the  
8 Court’s file, and such other written or oral argument as may be presented at or before the time this  
9 motion is heard or considered by the Court.

10          The parties have met and conferred regarding this issue but were unable to reach  
11 agreement. *See* Glucoft Dec. at ¶ 3.

12                           **MEMORANDUM OF POINTS AND AUTHORITIES**

13          To improve efficiency, the Court has set a unique schedule for this matter, setting the case  
14 for early summary judgment with a trial on any remaining factual issues to follow shortly after the  
15 early summary judgment hearing. Dkt. No. 35 at ¶ 11 (Case Management Order). On the current  
16 schedule, two patent claims will be fully adjudicated (by summary judgment or trial) by August of  
17 2018, with any remaining patent claims adjudicated on or before the larger trial set for July of  
18 2019. *Id.* at ¶¶ 11, 14. This accelerated schedule makes it impossible for the parties to follow the  
19 Court’s usual procedure of citing portions of the claim construction briefing in summary judgment  
20 papers because all of the early summary judgment papers will be filed before opening claim  
21 construction briefing is due under Patent L.R. 4. *See* Dkt. No. 35 at ¶¶ 11, 20. The parties will  
22 therefore need to brief claim construction issues for the first two patent claims as part of early  
23 summary judgment briefing, not in separate claim construction briefs per Patent L.R. 4.

24          Claim construction issues for the remaining claims, however, will be presented in separate  
25 claim construction briefs pursuant to Patent L.R. 4. The question presented by this motion is  
26 simply whether it would be more efficient to: (A) simultaneously prepare for trial on any fact  
27 issues remaining after early summary judgment on the first two patent claims while also briefing  
28 claim construction on all other patent claims, or (B) defer claim construction on all other patent

1 claims until after the first two claims are adjudicated and the parties have had the opportunity to  
2 consider the outcome of that adjudication in settlement discussions. Juniper suggests that the  
3 latter approach is more efficient. Under the current schedule, the parties will prepare claim  
4 construction briefs in August of 2018 on four patents not at issue in early summary judgment, just  
5 as they are preparing for trial on any issues not resolved by early summary judgment. *See* Dkt.  
6 No. 35 at ¶ 11. Even in the best of circumstances, claim construction briefing is involved and time  
7 consuming; it will be particularly burdensome if (as under the current schedule) the parties are  
8 expected to prepare briefs while in the midst of trial preparation.

9 In addition, the claim construction briefing might be rendered completely unnecessary if,  
10 as is likely, the outcome of early summary judgment on the first two patent claims impacts the  
11 parties' opinions of the strength of their positions and thus their appetite for settlement. Giving  
12 the parties a "reality check" will almost certainly increase prospects for settlement. Indeed, one of  
13 the primary motivations underlying the early adjudication procedure in this case was to defer work  
14 that might not be necessary after the parties received feedback on the strength of their claims. *See*  
15 Dkt. No. 35 at ¶ 11 (early summary judgment will serve to "indicat[e] the relative strengths (or  
16 weaknesses) of both sides' positions"). Conducting claim construction briefing before the parties  
17 have received this feedback—much less digested it and had the opportunity to participate in  
18 meaningful settlement discussions—would undermine these efficiency advantages.

19 In light of the above, Juniper proposes deferring the start of Patent Local Rule 4 until  
20 January 11, 2019, a date that would cause claim construction discovery to close on the same date  
21 as fact discovery. *See* Dkt. No. 35 at ¶ 4.

22 Dated: April 11, 2018

Respectfully submitted,

23 IRELL & MANELLA LLP

24 By: /s/ Joshua Glucoft  
25 Joshua Glucoft  
26 *Attorneys for Defendant*  
27 Juniper Networks, Inc.  
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