

EXHIBIT D

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 14 JUNIPER NETWORKS, INC.

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 FIFTH SUPPLEMENTAL
21	JUNIPER NETWORKS, INC., a Delaware)	RESPONSE TO PLAINTIFF FINJAN,
22	Corporation,)	INC.'S SECOND SET OF
23	Defendant.)	INTERROGATORIES (NO. 5)
)	HIGHLY CONFIDENTIAL—
)	ATTORNEYS' EYES ONLY

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1 Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Juniper Network, Inc.
2 (“Juniper”) hereby submits the following fourth supplemented objections and responses
3 (collectively, the “Fourth Supplemented Responses”) to the Second Set of Interrogatories (the
4 “Interrogatories”) by Defendant Finjan, Inc. (“Finjan”).

5 **PRELIMINARY STATEMENT**

6 Juniper has not completed discovery in this action and has not completed preparation for
7 trial. These Fourth Supplemented Responses, while based on diligent inquiry and investigation by
8 Juniper, necessarily reflect only the current state of Juniper’s knowledge, understanding, and belief
9 based upon the information reasonably available to Juniper at this time. Juniper anticipates that
10 further facts and information may be discovered. Without in any way obligating itself to do so,
11 Juniper reserves the right to modify, supplement, revise, or amend these Fourth Supplemented
12 Responses and to correct any errors or omissions which may be contained herein in light of the
13 information that Juniper may subsequently obtain or discover. Furthermore, these Fourth
14 Supplemented Responses are provided without prejudice to Juniper’s use or reliance on, at trial,
15 hearing, or otherwise, subsequently discovered facts or information or facts or information omitted
16 from these responses. The following Fourth Supplemented Responses are given without prejudice
17 to Juniper’s right to produce evidence of any subsequently discovered fact. Juniper accordingly
18 reserves the right to change any and all responses herein as additional facts are ascertained, analyses
19 are performed, legal research is completed, and contentions are investigated. This introductory
20 statement shall apply to each and every Response given herein and shall be incorporated by
21 reference as though set forth in each Response appearing below.

22 **GENERAL OBJECTIONS**

23 These objections are hereby incorporated, as though set forth in full, into the response to
24 each and every Interrogatory. Juniper reserves the right to make additional objections as may be
25 appropriate and nothing contained herein shall be in any way construed as a waiver of any such
26 objection. Juniper has not yet completed its investigation of the facts pertaining to this action, its
27 discovery, or its preparation for trial. Juniper’s objections and responses as set forth below are made
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1 without prejudice to Juniper’s right to assert any additional or supplemental objections or responses
2 if Juniper discovers additional grounds for such objections or responses.

3 By making this Fourth Supplemented Response, Juniper does not concede that any of the
4 requested information is proportional to the needs of the case, relevant, properly discoverable, or
5 admissible, and Juniper reserves its right to object to discovery into the subject matter addressed in
6 any information produced and to the introduction of such information into evidence.

7 Juniper makes the following general objections (collectively, the “General Objections”) to
8 each Interrogatory contained within Finjan’s Interrogatories. The assertion of the same, similar, or
9 additional objections or the provision of responses to the requests does not constitute a waiver any
10 of Juniper’s objections as set forth below:

11 1. Juniper objects to the definition of “Accused Instrumentalities” as including all
12 “products and services identified in Finjan’s Infringement Contentions,” particularly Spotlight
13 Secure Threat Intelligence Platform. That product was not identified in the operative complaint and
14 it is therefore not part of this case. *See id.*; *see also Richtek Tech. Corp. v. uPi Semiconductor Corp.*,
15 2016 WL 1718135, at *2 (N.D. Cal. Apr. 29, 2016) (Alsup, J.) (“[T]he filing of a complaint sets the
16 cut-off date for the scope of a case, subject to the possibility of supplementation. Nevertheless, for
17 some time, patent owners have made open-ended allegations in their complaint that do not
18 specifically identify the accused products and used amendments to their infringement contentions
19 to expand the scope of the case to encompass products . . . without the need to file a supplemental
20 complaint—essentially sneaking new products into the case through the back door of infringement
21 contentions.”). Juniper also objects to the definition of “Accused Instrumentalities” to the extent
22 that it purports to include previous or contemplated versions, revision, releases, or continuations of
23 any Juniper products or services other than those specifically identified (including by model
24 number) in Finjan’s Infringement Contentions and also in the operative complaint. To the extent
25 applicable, Juniper will interpret each and every Interrogatory as limited to only those
26 instrumentalities specifically identified in both the operative complaint *and* Finjan’s Infringement
27 Contentions and also made, used, sold, offered for sale, or imported into the U.S. within the statutory
28 damages period.

1 2. Juniper objects to the Interrogatories, including but not limited to the Instructions
2 and Definitions, to the extent they are inconsistent with, seek to impose obligations not required by,
3 or seek to expand the scope of permissible discovery under the Federal Rules of Civil Procedure,
4 the Federal Rules of Evidence, the Local Rules of the Northern District of California, any Order of
5 the Court, or any agreement between the parties, specifically including the parties' agreement set
6 forth in the Joint Case Management Statement and the stipulation regarding discovery of ESI.
7 Juniper will not identify the Interrogatory in response to which any document is being produced for
8 any Interrogatory. Juniper will furnish only information in the direct possession, custody, or control
9 of Juniper Networks, Inc. Juniper will not state if Juniper cannot fully respond to the following
10 Interrogatories after exercising due diligence to secure the information requested; specify the portion
11 of each Interrogatory that cannot be responded to fully and completely; state what efforts were made
12 to obtain the requested information or the facts relied upon that support the contention that the
13 Interrogatory cannot be answered fully and completely; or state what knowledge, information, or
14 belief Juniper has concerning the unanswered portion of any such Interrogatory.

15 3. Juniper objects to the Interrogatories to the extent they seek information or
16 documents that are subject to the attorney-client privilege, that evidence or constitute attorney work
17 product, that are the subject of confidentiality agreements with third parties, that are the subject of
18 a protective order in any separate proceeding, or that otherwise are not discoverable or are the
19 subject of any other privilege, whether based upon statute or recognized at common law, specifically
20 including documents protected by the common interest privilege and/or joint defense agreements.¹
21 Juniper further specifically objects to the Instructions in the Interrogatories as imposing an undue
22 burden that is not proportional to the needs of the case with respect to the stated demands for the
23 contents of a privilege log, including because the Instructions demand information not reasonably
24 necessary for the purposes of assessing privilege, such as "the number of pages in such document."
25 Documents withheld under such an objection will be listed on a "privilege log" pursuant to
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27 _____
28 ¹ Any production of privileged information (whether "inadvertent" or otherwise) is governed
by the parties' agreement set forth in the Joint Case Management Statement (*see* Dkt. No. 31 at p.
5-6) and as set forth in the parties' stipulation regarding discovery of ESI (*see* Dkt. No. 87 at ¶ 14).

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