

EXHIBIT 1

(REDACTED VERSION OF
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1 IRELL & MANELLA LLP
 Jonathan S. Kagan (SBN 166039)
 2 jkagan@irell.com
 1800 Avenue of the Stars, Suite 900
 3 Los Angeles, California 90067-4276
 4 Telephone: (310) 277-1010
 Facsimile: (310) 203-7199
 5
 Rebecca Carson (SBN 254105)
 6 rcarson@irell.com
 Ingrid M. H. Petersen (SBN 313927)
 7 ipetersen@irell.com
 840 Newport Center Drive, Suite 400
 8 Newport Beach, California 92660-6324
 9 Telephone: (949) 760-0991
 Facsimile: (949) 760-5200
 10

11 *Attorneys for Defendant*
 JUNIPER NETWORKS, INC.

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

15	FINJAN, INC., a Delaware Corporation,)	Case No. 3:17-cv-05659-WHA
)	
16	Plaintiff,)	
)	
17	vs.)	DECLARATION OF JONATHAN S.
)	KAGAN IN SUPPORT OF
18	JUNIPER NETWORKS, INC., a Delaware)	REQUEST FOR FEES AND
	Corporation,)	EXPENSES
19)	
	Defendant.)	Submitted to the Special Master
20)	

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1 **DECLARATION OF JONATHAN S. KAGAN**

2
3 I, Jonathan S. Kagan, declare as follows:

4 1. I am an attorney at the law firm of Irell & Manella LLP, counsel of record for
5 Juniper Networks, Inc. in *Finjan, Inc. v. Juniper Networks, Inc.*, Case No. C 17-05659 WHA
6 (N.D. Cal.). I am a member in good standing of the State Bar of California. I have personal
7 knowledge of the facts set forth in this Declaration and, if called as a witness, could and would
8 testify competently to such facts under oath.

9 2. Pursuant to ¶¶ 2-3 of Judge Alsup’s Order re Attorney’s Fees and Costs and
10 Appointment of Special Master dated January 9, 2021, (the “Referral Order”) Defendant Juniper
11 Networks, Inc. (“Juniper”) hereby presents this detailed declaration setting forth the “itemized
12 accounting” of unreimbursed “Travel” and “Expert Witness Fees” expenses (Referral Order ¶ 2),
13 as well as a breakdown of “all attorney and paralegal time sought to be recovered.” (Referral
14 Order ¶ 3). As set forth in greater detail below, this declaration does not detail the full scope of
15 fees and expenses Juniper incurred in connection with Plaintiff Finjan, Inc.’s (“Finjan”) assertion
16 of U.S. Patent Nos. 8,677,494 (the “’494 Patent”) and 6,804,780 (the “’780 Patent”) against
17 Juniper.

18 **SCOPE OF DECLARATION**

19 3. Although Finjan asserted a total of 9 patents against Juniper at various times during
20 its three-year litigation campaign against Juniper, it litigated only three of those patents to a
21 conclusion: (1) the ’494 Patent; the ’780 Patent, and U.S. Patent No. 8,141,154 (the “’154
22 Patent”) (collectively, the “Adjudicated Patents”). Of these, the ’494 Patent consumed the vast
23 majority of legal work, as it was the subject of an early motion for summary judgment, a highly
24 contested (and ultimately successful) *Daubert* challenge to Finjan’s damages expert, and a week-
25 long jury trial on infringement. Following the jury trial, the parties began preparing immediately
26 for a second trial on the ’494 Patent relating to validity and enforceability issues. The Court then
27 postponed that trial, determining that all outstanding issues relating to the ’494 Patent could be
28 adjudicated at a later date—in a single trial that would also involve all of the remaining non-

1 adjudicated patents. Both of the other Adjudicated Patents were the subject of summary
2 proceedings: the '780 Patent was the subject of two summary judgment motions, and the '154
3 Patent was the subject of an additional summary judgment motion.

4 4. Pursuant to Judge Alsup's Order Re Request For Attorneys Fees dated January 9,
5 2021, ("Fees Order") this declaration includes only time entries related to Finjan's assertion of the
6 '494 and '780 Patents against Juniper. As discussed below, Juniper's initial submission to the
7 Court did not break down or allocate fees on a patent-by-patent basis. By providing this detailed,
8 line-by-line submission, the Special Master can verify time entries for the '154 Patent (and any
9 non-adjudicated patents) have been removed from Juniper's requests, and any entries involving
10 multiple patents have been apportioned so the full amount of those time entries is not being
11 charged to Finjan.

12 5. The records used to produce this declaration are all based on contemporaneous time
13 records that are prepared on a monthly basis and were submitted to Juniper for payment. These
14 time records are generally prepared within 30 days following the end of the month in which the
15 time was expended. Estimates and retroactively-created time records were not used to prepare this
16 declaration.

17 "BILLING JUDGMENT"

18 6. In an effort to avoid the expense and burden associated with a line-by-line review
19 of over three years of time entries in an aggressively-litigated case (including four summary
20 judgment motions, complex *Daubert* issues, and a full jury trial)—Juniper's initial fees
21 submission consisted of summaries of its time entries, organized by phase of the case, with a
22 generous amount of reductions to ensure its proposed recovery was fair. The reductions Juniper
23 proposed were:

- 24 a. Reducing the hourly rates sought for all attorneys below what Juniper
25 actually paid;
 - 26 b. Excluding fees for attorneys who were not core members of the case team,
27 such as attorneys who assisted with isolated tasks or projects in the case;
- 28

- 1 c. Omitting fees charged by non-attorneys, such as paralegals and other Irell &
- 2 Manella support staff, and seeking fees for attorney billers only;
- 3 d. Excluding fees related to *inter partes* review proceedings regarding Finjan's
- 4 patents;
- 5 e. Excluding fees related to settlement and mediation efforts;
- 6 f. Excluding fees related to preparing Juniper's pending motion for sanctions
- 7 (Dkt. 409);
- 8 g. Not seeking expert fees or any third party costs;
- 9 h. Exercising reasonable judgment to exclude time spent on administrative or
- 10 internal tasks, such as internal meetings between counsel; and
- 11 i. Exercising reasonable judgment to exclude supervisory time associated with
- 12 having junior attorneys take depositions and/or argue motions.

13 7. While Judge Alsup's Fees Order held that Juniper could recover its fees and costs
14 related to litigation of the '780 and '494, it also provided that Juniper could not recover fees and
15 costs relating to the '154 Patent (nor the non-adjudicated patents). This Order thus precluded the
16 summary procedure Juniper had suggested, as Juniper had not broken down its fees and expenses
17 by patent. Judge Alsup thus ordered Juniper to produce an itemized accounting of its "Travel" and
18 "Expert Witness Fees" (Referral Order ¶ 2), as well as a line-by-line breakdown of all recoverable
19 attorney and paralegal time (Referral Order ¶ 3).

20 8. The Referral Order also requires Juniper to provide proof that it exercised "billing
21 judgment" in this declaration, including "adjustments made to eliminate duplication, excess,
22 associate-turnover expense and so forth." (Referral Order ¶ 6).

23 9. In preparing this declaration, I personally reviewed each and every time entry
24 submitted, as well as many that were billed to Juniper but are not included in this submission. In
25 addition to writing off all time entries related only to the '154 Patent (or any non-adjudicated
26 patent), I also wrote off a significant number of entries where, in the exercise of my judgment,
27 there were inefficiencies in performing the tasks. In addition, I have continued to apply each of
28 the reductions described in ¶ 6, above, with the only exception being that I have included third

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