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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FINJAN, INC.,  
Plaintiff,  
v.  
CHECK POINT SOFTWARE  
TECHNOLOGIES, INC., et al.,  
Defendants.

Case No. [18-cv-02621-WHO](#)

**ORDER GRANTING MOTION TO  
STRIKE INFRINGEMENT  
CONTENTIONS IN PART; GRANTING  
MOTION TO STRIKE ATTORNEY  
DECLARATION; GRANTING  
MOTION TO AMEND INVALIDITY  
CONTENTIONS; GRANTING  
MOTIONS TO SEAL**

Re: Dkt. Nos. 125, 126, 129, 130, 131, 137,  
138, 139, 141, 163, 166, 172, 177, 178

Defendants Check Point Software Technologies, Inc. and Check Point Software Technologies Ltd. (collectively “Check Point”) move to strike Plaintiff Finjan, Inc.’s (“Finjan”) infringement contentions for the second time. I previously granted Check Point’s motion to strike Finjan’s infringement contentions in part and gave Finjan leave to amend its contentions to comply with my Order Re Case Narrowing and Infringement Contentions (the “Narrowing Order”) [Dkt. No. 29] and the Patent Local Rules. Order Granting Motion to Strike in Part; Granting Motions to Seal; Granting Motion to Amend Claim Construction Schedule (the “IC Order”) [Dkt No. 84]. Although Finjan’s amended infringement contentions (“AICs”) are more complete, I agree with Check Point that they are still deficient and violate the IC Order, Narrowing Order, and the Patent Local Rules. I will grant Check Point’s motion to strike the AICs.

Check Point also filed two other motions that I will grant. First, I will strike the declaration of Finjan’s attorney, Linjun Xu, attached to Finjan’s opposition to the previous motion to strike, because much of it was made without personal knowledge. Second, I will allow Check

1 Point to amend its invalidity contentions because its motion was unopposed.

## 2 BACKGROUND

3 In September 2018, I received briefing from the parties on how to manage this litigation in  
4 compliance with Federal Rule of Civil Procedure 1’s mandate of a “just, speedy, and inexpensive  
5 determination of this action[.]” Narrowing Order. I then ordered Finjan to serve its infringement  
6 contentions under specifications that largely follow the provisions of this District’s Patent Local  
7 Rules as well as the guidance provided in the since withdrawn 2013 Model Order from the Federal  
8 Circuit. Narrowing Order. Finjan was instructed to “include pinpoint source code citations . . .  
9 accompanied by the document production required by Patent Local Rule 3-2” and to also:

10 (i) avoid open-ended citations to “exemplary” products and use of the  
11 terms “such as” and “for example”; (ii) set forth any infringement  
12 theories based on the doctrine of equivalents with limitation-by-  
13 limitation analyses; and (iii) for any indirect theories of infringement,  
14 identify the alleged direct infringement, the alleged acts of  
15 inducement or contribution to that infringement, and the relationship  
16 between them.

14 *Id.* at 2.

15 On November 2, 2018, Finjan served its infringement contentions on Check Point, which  
16 then moved to strike the infringement contentions, arguing that they violated my Narrowing Order  
17 and the Patent Local Rules. Check Point’s Motion to Enforce Court Order and Strike  
18 Infringement Contentions at 1-3, 15-24 [Dkt. No. 55]. I largely agreed that Finjan’s infringement  
19 contentions failed to comply in the IC Order, and made several rulings that I summarize below.

20 First, I required Finjan to organize its infringement contentions by the underlying  
21 instrumentalities rather than into five groups of products, because that would assist both the parties  
22 and me in determining precisely how Check Point’s products do or do not infringe Finjan’s patents  
23 and to aid Finjan’s efforts to provide specific source code citations. *Id.* at 7. Finjan was ordered  
24 to specify any combinations of the underlying instrumentalities that it believed were infringing.  
25 *Id.* Although it might be true that Check Point sells its products to consumers in bundles, I  
26 reasoned that separating out infringement contentions by the underlying instrumentalities would  
27 be consistent with the purpose of Patent Local Rules because it would make the litigation process

1 Second, I ordered Finjan to provide pinpoint source code citations that show “where and  
2 how each limitation of each asserted claim is found within each Accused Instrumentality” as  
3 required by the Patent Local Rules. *Id.* at 12. In doing so, I rejected Finjan’s arguments that its  
4 infringement contentions were sufficient to disclose its infringement theories because they  
5 provided an overall infringement analysis that included both source code citations and public  
6 information. *Id.* at 7-12. I noted that many of the same sets of source code within the same  
7 product category were cited across different claims of different patents. *Id.*

8 Third, I held that Finjan’s infringement contentions impermissibly contained open-ended  
9 citations to exemplary products in violation of the Narrowing Order. *Id.* at 13-14. I found that  
10 Finjan’s citation to numerous releases of Check Point’s products were ambiguous and that it was  
11 unclear which releases applied to which products in the voluminous list cited by Finjan. *Id.* I then  
12 denied Check Point’s motion to strike and ordered Finjan to serve amended infringement  
13 contentions that were in accordance with my IC Order, Narrowing Order, and Patent Local Rules.  
14 *Id.* at 15.

15 Finjan has now served its amended infringement contentions (“AICs”) and Check Point  
16 argues that they are deficient in largely the same ways as before. Defendant Check Point Software  
17 Technologies, Inc. and Check Point Software Technologies, LTD.’s Motion to Strike Amended  
18 Infringement Contentions (“AIC MTS”) [Dkt. No. 125-4].

### 19 LEGAL STANDARD

20 Patent Local Rule 3-1 requires:

21 [A] party claiming patent infringement shall serve on all parties a ‘Disclosure of  
22 Asserted Claims and Infringement Contentions[]’ . . . [which] shall contain the  
23 following information:

24 (a) Each claim of each patent in suit that is allegedly infringed by each opposing  
25 party, including for each claim the applicable statutory subsections of 35 U.S.C. §  
26 271 asserted;

26 (b) Separately for each asserted claim, each accused apparatus, product, device,  
27 process, method, act, or other instrumentality (“Accused Instrumentality”) of each  
28 opposing party of which the party is aware. This identification shall be as specific  
as possible. Each product, device, and apparatus shall be identified by name or

1 known, or by any product, device, or apparatus which, when used, allegedly results  
2 in the practice of the claimed method or process;

3 (c) A chart identifying specifically where each limitation of each asserted claim is  
4 found within each Accused Instrumentality, including for each limitation that such  
5 party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s),  
6 act(s), or material(s) in the Accused Instrumentality that performs the claimed  
7 function.

8 (d) For each claim which is alleged to have been indirectly infringed, an  
9 identification of any direct infringement and a description of the acts of the alleged  
10 indirect infringer that contribute to or are inducing that direct infringement. Insofar  
11 as alleged direct infringement is based on joint acts of multiple parties, the role of  
12 each such party in the direct infringement must be described.

13 (e) Whether each limitation of each asserted claim is alleged to be literally present  
14 or present under the doctrine of equivalents in the Accused Instrumentality.

15 “The overriding principle of the Patent Local Rules is that they are designed [to] make the parties  
16 more efficient, to streamline the litigation process, and to articulate with specificity the claims and  
17 theory of a plaintiff’s infringement claims.” *Bender v. Maxim Integrated Prods.*, No. 09-cv-  
18 01152-SI, 2010 WL 1135762, at \*2 (N.D. Cal. Mar. 22, 2010) (alteration in original) (internal  
19 citation omitted). Patent Local Rule 3-1 is intended to require the plaintiff “to crystallize its  
20 theories of the case early in the litigation and to adhere to those theories once disclosed.” *Bender*  
21 *v. Advanced Micro Devices, Inc.*, No. 09-cv-1149-EMC, 2010 WL 363341, at \*1 (N.D. Cal. Feb.  
22 1, 2010). It “takes the place of a series of interrogatories that defendants would likely have  
23 propounded had the patent local rules not provided for streamlined discovery.” *Network Caching*  
24 *Tech., LLC v. Novell, Inc.*, No. 01-cv-2079-VRW, 2002 WL 32126128, at \*4 (N.D. Cal. Aug. 13,  
25 2002).

26 “[A]ll courts agree that the degree of specificity under Local Rule 3-1 must be sufficient to  
27 provide reasonable notice to the defendant why the plaintiff believes it has a ‘reasonable chance of  
28 proving infringement.’” *Shared Memory Graphics LLC v. Apple, Inc.*, 812 F. Supp. 2d 1022,  
29 1025 (N.D. Cal. 2010) (quoting *View Eng’g, Inc. v. Robotic Vision Sys., Inc.*, 208 F.3d 981, 986  
30 (Fed. Cir. 2000)). The local rules do not “require the disclosure of specific evidence nor do they  
require a plaintiff to prove its infringement case . . . a patentee must nevertheless disclose what in  
each accused instrumentality it contends practices each and every limitation of each asserted claim

1 to the extent appropriate information is reasonably available to it.” *DCG Sys. v. Checkpoint*  
 2 *Techs., LLC*, No. 11-cv-03792-PSG, 2012 WL 1309161, at \*2 (N.D. Cal. Apr. 16, 2012).

### 3 DISCUSSION

#### 4 I. MOTION TO STRIKE INFRINGEMENT CONTENTIONS

##### 5 A. Grouping

6 Check Point claims that Finjan has violated the directives contained in the IC Order by  
 7 renaming its “groups” of products as the instrumentalities themselves and then referring to the  
 8 actual products in the groups as “features.” AIC MTS at 15-18. Check Point states that within  
 9 each group, Finjan’s infringements charts remain directed to a handful of individual products and  
 10 services but provide no infringement theories for most of the groups. *Id.* at 16.

11 Check Point identifies Finjan’s charts as purporting to describe infringement theories on  
 12 the following actual products:

- 13 • Network Security Products: IPS, Anti-Bot, Anti-Virus, Threat Emulation, Threat  
 14 Extraction.
- 15 • Endpoint Security: Threat Emulation, Threat Extraction, AntiPhishing (zero  
 16 phishing), Anti-Ransomware, Anti-Bot, Forensics, Anti-Exploit, Anti-Virus, Anti-  
 17 Malware, SmartEvent.
- 18 • ZoneAlarm: Advanced Firewall, OSFirewall, Threat Emulation, Browser  
 19 Protection.
- 20 • ThreatCloud: Threat Emulation.
- 21 • CloudGuard: CloudGuard SaaS.
- 22 • Sandblast Mobile.

23 *Id.* at 16-17. It asks that I strike the remaining contentions from the AICs. *Id.*

##### 24 1. Blade Architecture

25 As an example, Check Point considers Finjan’s accusation of its “Blade Architecture” as  
 26 infringing the ‘968 Patent. *Id.* at 17. According to Check Point, Finjan’s definition of its Blade  
 27 Architecture is overbroad and encompasses 24 different products that Finjan refers to as features,

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