PAUL J. ANDRE (State Bar No. 196585)
pandre@kramerlevin.com
LISA KOBIALKA (State Bar No. 191404)
lkobialka@kramerlevin.com
JAMES HANNAH (State Bar No. 237978)
jhannah@kramerlevin.com
AUSTIN MANES (State Bar No. 284065)
amanes@kramerlevin.com
KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 752-1700
Facsimile: (650) 752-1800

Attorneys for Plaintiff
FINJAN, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

FINJAN, INC.,

Plaintiff,

v.

QUALYS INC.,

Defendant.

Case No.: 4:18-cv-07229-YGR

PLAINTIFF FINJAN, INC.'S REPLY CLAIM CONSTRUCTION BRIEF

Date: May 1, 2020[1]
Time: 10:00 AM
Place: Courtroom 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

[1] Subject to the Court's March 13, 2020 Order (Dkt. No. 48) suspending in-person appearances

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I. INTRODUCTION

The claim terms before the Court do not require construction because each and every one of them have a plain and ordinary meaning that is well-known to a person of ordinary skill in the art of computer science ("POSITA"). Qualys does not dispute this dispositive fact. Instead, for Terms 1-8, Qualys asks the Court to turn the claim construction process on its head by reading limitations from the specification into the claims. Reading limitations into the claims is the rare exception, not the rule, and requires a showing that the meaning of the terms is unclear to a POSITA (which Qualys does not even attempt to show) or that the inventors redefined the meaning of the terms (which Qualys fails to show).

For Terms 9 and 10, Qualys argues that the Court should deem "receiver" and "transmitter" to be means-plus-function elements. Qualys fails to overcome the heavy presumption against doing so because the applicant drafted the claims without using "means for" wording. Moreover, these terms have well-known structural meanings to POSITAs, precluding a finding that they are means-plus-function elements. Qualys ignores that all courts to previously construe these terms did so without finding them to be means-plus-function elements, and there is no reason for the Court to do so here.

Thus, the Court should reject Qualys' invitation to rewrite the claims, and instead give them their undisputed plain and ordinary meanings as the applicants intended.

II. ARGUMENT

A. Terms in the '408 Patent

Term 1. "instantiating, by the computer, a scanner for the specific programming language" (Claim 1)

Finjan's Proposed Construction	Qualys' Proposed Construction
No construction necessary – Plain and ordinary meaning.	substituting specific data, instructions, or both into a scanner to make it usable for scanning the specific programming language

Term 1 needs no further construction because it has a clear, plain and ordinary meaning to a POSITA — creating an instance of a scanner. Dkt. No. 42, Finjan's Opening Brief ("Br.") at 3-5; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). Qualys concedes that the term has a plain and ordinary meaning, fails to show that the '408 Patent uses the term in a way that is

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