Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN, INC., a Delaware Corporation, Plaintiff, v. RAPID7, INC., a Delaware Corporation and RAPID7 LLC, a Delaware Limited Liability Company, Defendants.	)	C.A. No. 18-1519-MN

JOINT CLAIM CONSTRUCTION BRIEF (TERMS 1-20)

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Response to Office Action dated October 5, 2011, at 138. In contrast, various claims of the '289 Patent include an express requirement that the content is modified. *See, e.g.*, Ex. A-4 ('289 Patent, at Claim 1) ("modifying the content…." "transmitting the modified content…"). The express inclusion of this limitation in the '289 Patent claims confirms it should not be read into the claims of the '154 Patent that do not include (and, in fact, removed) this limitation. *Andersen Corp.*, 474 F.3d at 1369.

2. Defendants' Responsive Statement

Rapid7's proposed construction was adopted by the *Juniper II* Court. *Juniper II*, 387 F.Supp.3d at 1013 ("this order construes the term 'content processor' as 'a processor that processes modified content.'").

As noted above in connection with Term 5, the Federal Circuit has explained that the asserted claims of the '154 Patent "recit[e] a system or software program that executes a substitute function," which is the claimed "first function". *Palo Alto Networks*, 752 F. Appx. at 1018. The "first function" sends its input to the security computer for inspection once invoked. Ex. A-3, cl. 1 ("transmitting the input to the security computer for inspection, when the first function is invoked"); *Juniper II*, 387 F.Supp.3d at 1011 ("The claimed 'first function' then clearly involves the 'substitute function,' which sends the content's input to the security computer for inspection once invoked."). This call to a substitute function only exists after the original content is modified at a gateway device to include it. Ex. A-3 at 9:13-28 ("Content modifier 265 preferably modifies original content received by gateway computer 205, and produces modified content, which includes a layer of protection to combat dynamically generated malicious code."). Thus, the claimed "content" received by the claimed "content processor" is necessarily modified content since the claims require it to "include[] a call to a first function". *Id.* at cl. 1, 6.

Indeed, as noted above, the "present invention" described in the '154 Patent makes this clear. *Id.* at 4:55-60 ("the present invention operates by replacing original function calls with substitute function calls within the content, at a gateway computer, prior to the content being received at the client computer.").

Finjan's argument that it amended a claim during prosecution to cure an antecedent basis defect is irrelevant. The antecedent must use the same terminology, and Finjan curing an infirmity in the claim language does not dictate the construction of "content processor". Moreover, Finjan's attempt to rely on the '289 Patent ignores the context of the claims. Claim 1 of the '289 Patent is directed to a gateway computer ("receiving at a gateway computer…"), while the asserted claims of the '154 Patent are directed to a client computer that receives modified content (*i.e.*, from a gateway computer), as set forth above.

Indeed, as the *Juniper II* Court found (acknowledging a prior analysis by the PTAB), the context of the claims in the '154 Patent plainly requires that the "content processor" receive content that has been modified:

> the '154 patent specification to refers to 'three categories of content':
>
> > First, there is the "original content" that is scanned and modified at the gateway computer. Second, there is *the "modified content" transmitted to, and received by, the client computer*. Third is the "dynamically generated malicious content" that is generated at runtime and, thus, is undetected by the gateway computer in the "original content."
>
> The PTAB further noted that "[n]otwithstanding the variety of content described in the Specification, the term 'content' is recited broadly in all challenged claims as 'content including a call to a first function' " (*ibid.*). It then explained that (*id.* at 10 (first emphasis and alteration in original, second emphasis added)):
>
> > Because the recited "first function" is the substituted function whose input is verified, the *claimed* "content," in the context of the surrounding claim language, must refer to the *modified content received at the client computer*. *See id.* at 17:39–40 ("transmitting the input [of the first function call] to the security computer for inspection, when the first function is invoked"). The claimed content cannot refer to the "original content" that is received by the gateway computer and over the Internet because that content, according to the

> Specification, would be capable of generating the undetected dynamically generated malicious content from which the client computer is to be protected.
>
> As such, the PTAB concluded that the claimed "content" refers to "data or information, *which has been modified* and is received over a network" (*id*. at 14 (emphasis added)). This order agrees with the PTAB's understanding to the extent that it found that the claimed "content" "has been modified." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389 (1996) (claims are to be construed "in a way that comports with the instrument as a whole").

Juniper II, 387 F.Supp.3d at 1011-12. Thus, the claimed "content processor" receives modified content.

3. Plaintiff's Reply Statement

The only dispute between the parties is if a construction is necessary to limit the term to processing "modified" content, which is a rehash of the dispute over Term 5. Rapid7 argues the content must be modified because the first and second function must be different, which is incorrect for the reasons discussed above. Rapid7 ignores the *Proofpoint* Order, which explicitly rejects its proposal that the content must be modified and the two other decisions (*Bitdefender* and *Symantec*), noted in Finjan's Opening Brief, that found no construction was necessary for this term. Instead, Rapid7 asks the Court to follow the Federal Circuit's *Palo Alto Networks* decision and the *Juniper II* Order.

As discussed above, the Federal Circuit opinion upon which Rapid7 relies states in relevant part only that "the 'first function' is the inspection step in which the content is assessed for safety, and the 'second function' is when, having been deemed safe, the content is actually run." Ex. F-10 at 3. This fact is undisputed and does *not* require that the second function is different — i.e., the security computer can inspect the first function and confirm it is safe, and then the receiving computer can safely run the same, non-inspected function.

The *Juniper II* Order relies on the statement in the specification that "Content modifier 265 ***preferably*** modifies original content received by the gateway computer 205, and produces

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