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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 (OAKLAND DIVISION)

FINJAN LLC, a Delaware Limited Liability  
 Company,

Plaintiff,

v.

QUALYS INC., a Delaware Corporation,

Defendant.

Case No. 4:18-cv-07229-YGR (TSH)

**FINJAN LLC'S OPPOSITION TO  
 QUALYS INC.'S MOTION TO STRIKE  
 PLAINTIFF FINJAN LLC'S  
 INFRINGEMENT CONTENTIONS**

DATE: 12/08/2020  
 TIME: 2:00 PM  
 JUDGE: Hon. Yvonne Gonzalez Rogers  
 PLACE: Courtroom 1, 4<sup>th</sup> Floor

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**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

1  
2  
3  
4 *Avago Techs., Inc. v. IPtronics Inc.*,  
5 No. 5:10-CV-02863-EJD, 2015 WL 4647923 (N.D. Cal. 2015).....3  
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14 *France Telecom, S.A. v. Marvell Semiconductor, Inc.*,  
15 2013 WL 1878912 (N.D. Cal. May 3, 2013) .....4  
16 *Microsoft Corp. v. AT & T Corp.*,  
17 550 U.S. 437 (2007).....8  
18 *Rates Tech., Inc. v. Mediatrix Telecom, Inc.*,  
19 688 F.3d 742 (Fed. Cir. 2012).....10  
20 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*,  
21 442 F.3d 741 (9th Cir. 2006).....10  
22 *Shared Memory Graphics LLC v. Apple, Inc.*,  
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24 *SpeedTrack, Inc. v. Amazon.com, Inc.*,  
25 No. 4:09-cv-04479-JSW (KAW), 2018 WL 3328423 (N.D. Cal. Jul.  
6, 2018).....4  
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1 *United Access Techs., LLC v. Centurytel Broadband Servs., LLC*,  
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3 **Other Authorities**

4 Cloud Computing, WIKIPEDIA,  
5 [https://en.wikipedia.org/wiki/Cloud\\_computing#Architecture](https://en.wikipedia.org/wiki/Cloud_computing#Architecture) (last  
6 visited Nov. 12, 2020).....8

7 F.C.R. 36 .....*passim*

8 Network Interface, WIKIPEDIA,  
9 [https://en.wikipedia.org/wiki/Network\\_interface](https://en.wikipedia.org/wiki/Network_interface) (last visited Nov.  
10 12, 2020).....7

11 Patent L.R. 3-1 ..... 1, 3, 4

12 Software, WIKIPEDIA, <https://en.wikipedia.org/wiki/Software> (last  
13 visited Nov. 12, 2020).....8

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1 **I. INTRODUCTION**

2 Qualys, Inc.’s (“Qualys”) motion to strike Finjan, LLC’s (“Finjan”) infringement  
3 contentions (Dkt. No. 126, “Mot.”) should be denied. First, Qualys’ motion incorrectly argues that  
4 Finjan failed to identify hardware components that correspond to the “receiver” and “transmitter”  
5 limitations of the asserted claims. Finjan expressly identified physical components that satisfy these  
6 limitations in its infringement contentions, and Qualys’ argument takes an overly myopic view of  
7 Finjan’s infringement theories. Second, Qualys’ motion is not simply a motion to strike, but another  
8 attempted summary judgment motion seeking to resolve disputed factual issues premised on Qualys’  
9 interpretation of the claim construction order. Third, Qualys’ motion incorrectly argues that  
10 collateral estoppel resolves an open claim construction issue, but collateral estoppel does not apply  
11 here because the Federal Circuit’s Rule 36 affirmance did not resolve the underlying claim  
12 construction dispute. For these reasons and those explained below, Finjan respectfully requests the  
13 Court deny Qualys’ motion.

14 **II. FACTUAL BACKGROUND**

15 Finjan’s complaint alleges that Qualys infringes U.S. Patent Nos. 8,677,494 (the “’494  
16 Patent”), 6,154,844 (the “’844 Patent”), 8,141,154 (the “’154 Patent”), 6,965,968 (the “’968  
17 Patent”), 7,418,731 (the “’731 Patent”), 7,975,305 (the “’305 Patent”), and 8,225,408 (the “’408  
18 Patent”). On April 19, 2019, Finjan served its Patent L.R. 3-1 Disclosure of Asserted Claims and  
19 Infringement Contentions (“Infringement Contentions”). *See generally* Dkt. No. 126-12 (Ex. 11 to  
20 Mot.). Finjan’s Infringement Contentions identified various accused products within Qualys’ cloud  
21 platform. On October 30, 2020, Qualys moved to strike Finjan’s Infringement Contentions  
22 concerning the ’154, ’408, ’494, and ’968 patents (the “patents at issue”). *See, generally*, Mot.<sup>1</sup>

23 The patents at issue are generally directed towards network security and, in particular, to  
24 detecting and safely processing vulnerable and malicious web-content. Each of the patents at issue  
25 claim either a “receiver” and/or a “transmitter” for receiving and transmitting information (*e.g.*,  
26 downloadable web-content, computer code, and security indicators) over a network. During  
27

28 \_\_\_\_\_  
29 <sup>1</sup> Footnote 3 of Qualys’ motion suggests the parties agreed to narrow the scope of the case. Finjan

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