

EXHIBIT 6



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VIA EMAIL ONLY

Ms. Lisa Kobialka
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Re: *Finjan Inc. v. Qualys, Inc.*, N.D. Ca. Case No. 4:18-cv-07229-YGR

Dear Counsel:

We write to address deficiencies, detailed below, in Plaintiff Finjan, Inc.'s ("Finjan") Patent L.R. 3-1 infringement contentions. In short, several of Finjan's infringement theories now appear seem to be clearly precluded considering the Court's June 11, 2020 Claim Construction Order ("Markman Order" or "the Order") (Dkt. No. 74). Additionally, many of Finjan's theories are facially deficient because they fail to state "specifically where and how each limitation of each asserted claim is found within each Accused Instrumentality." Patent L.R. 3-1(c). Qualys requests that Finjan immediately withdraw all such precluded and deficient theories.

I. Theories Precluded by the Markman Order.

Several of Finjan's infringement theories are now precluded by the Markman Order. Please agree to withdraw all such theories.

A. Term 1, "instantiating, by the computer, a scanner for the specific programming language" ('408 Patent)

This term is present in Claims 1, 3-8, and 22. The Court construed this term to mean "generating or requesting a scanner that can scan the programming language by providing a generic scanner instance with language specific data, rules, or both." Markman Order at 9. However, for the claims in which this term is present, Finjan fails to provide a contention for this limitation whatsoever, much less one that satisfies the Court's construction:

The database of each Accused Product, as part of the Qualys Cloud computing environment, stores parser and analyzer rules that enables each Accused Product's respective scanner to scan and identify "vulnerabilities" (computer exploits) based on malicious content downloaded from a source computer, such as the Internet in a variety of languages.

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The parser and analyzer rules describe computer exploits as patterns of types of tokens because they enable the identification of malicious code expressed in different computer languages that are included within suspicious files. The patterns of types of tokens provided by the parser and analyzer rules enable each respective scanner to identify exploits through parsing of html files and extracting suspicious JavaScripts, PDFs, visual basic scripts, ActiveX components during static, dynamic, and behavior analysis.

Infringement Contentions, Appendix F, at 6-13. Finjan's contention addresses the existence of parser and analyzer rules but fails to identify any structure or functionality regarding the instantiation limitation, much less one that satisfies the Court's construction. Accordingly, please confirm that Finjan will withdraw its contentions for Claims 1, 3-8 and 22 of the '408 Patent.

B. Term 2, "dynamically generating a policy index." ('968 Patent)

Claims 26, 32, and 33 of the '968 Patent each recite "dynamically generating a policy index." The Court construed this term to mean "adding allowability information to a policy index in response to user requests for cached and non-cached content." Markman Order at 13.

Finjan fails to provide a contention that addresses this contention. For Claims 26 and 32, Finjan states the following:

As shown below, the Accused Products generate a policy index that relates cached contents to policies using WAS remediation technology and WAF security policies to identify allowable content. See also the analysis provided above in 1(b).

WAF Policy
Create Policy, Update Policy, Delete Policy
These functions relate to Qualys' Web Application Firewall® and as such are not discussed in this article.

WAF Event
Activate WAF Event, Update WAF Event
These functions relate to Qualys' Web Application Firewall® and as such are not discussed in this article.

WAF Deployment
Manage WAFs
This function relates to Qualys' Web Application Firewall® and as such is not discussed in this article.

WAS Remediation
Update Findings: Whether users are permitted to modify the vulnerabilities detected by Web Application scans.
Retreat vulnerabilities and sensitive content: Determine whether users are permitted to re-run scans from reports.
Ignore findings: Determine whether users are permitted to suppress findings from reports.

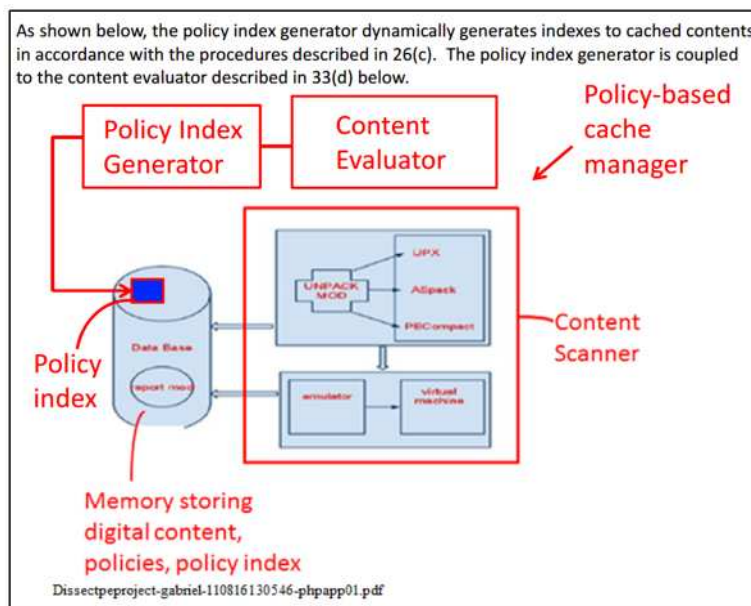
<https://community.qualys.com/docs/DOC-5786-was-permissions-explained>

Generates policy index that relates cached contents and policies

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Infringement Contentions, Appendix B, at 56, 63. Similarly, for Claim 33, Finjan's contention states:



Id. at 70. None of these contentions identify any structure or functionality for adding allowability information to a policy index *in response to user requests*. Indeed, Finjan's contentions identify only two products for this element: Web Application Firewall (WAF) and Web Application Scanning (WAS). These products protect and scan server-side web elements, and do not function based on user requests. Finjan cannot in good faith continue to assert these claims against Qualys. Please confirm that Finjan will withdraw its contentions for Claims 26, 32, and 33 of the '968 Patent.

C. Term 5, "incoming files from the Internet" ('731 Patent)

Claims 1 and 2 of the '731 Patent include the limitation of "incoming files from the Internet." The Court construed this term to mean "files requested by an intranet computer from the Internet." Markman Order at 17-19. However, Finjan's Contention Nos. 1 and 2 for this limitation fail to identify any structure or functionality whereby the files being scanned were first requested by an intranet computer. *See* Infringement Contentions, Appendix C, at 3-17. Only Contention No. 3 provides a contention for a client device (*i.e.* an intranet computer) to request content from the Internet. *See id.* at 18. Accordingly, please confirm that Finjan will withdraw Contention Nos. 1 and 2 for Claims 1 and 2 of the '731 Patent.

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D. Term 6, “web client” (’844 Patent)

Each asserted claim for the ’844 Patent requires the presence of a “web client.” The Court construed “web client” to mean “an application on the end-user’s computer that requests a downloadable from the web server.” Markman Order at 20. Finjan’s infringement contentions, however, fail to identify any structure for an end-user computer that requests a downloadable from a web server, nor does Finjan identify any structure or functionality for making such a request from a web client to a web server. *See* Infringement Contentions, Appendix A, at 27-29, 47-49, 54, 57, 64, 70, 72, 78, 80. Indeed, the accused devices operate independently of any web client content requests, and Finjan cannot maintain its infringement contentions for the ’844 Patent in good faith. Therefore, please confirm that Finjan will withdraw its infringement contentions for this patent.

E. Term 7, “a content processor” (’154 Patent)

Claims 1 and 2 of the ’154 both require a “content processor.” The Court’s construction of this term requires the claimed “content processor” to be located “on the protected computer.” *See* Markman Order at 21-24.

In light of the Court’s construction, Finjan cannot in good faith continue to assert Contentions 1-8 for these claims. Contention 1 for this claim states that the content processor is an “Internet Gateway,” which is **not** the computer being protected.¹ *See* Infringement Contentions, Appendix E, at 3. Contentions 2-3 and 5-8 merely identify Qualys’s Software-as-a-Service products such as VM (Contention 2), TP (Contention 3), Container Security (Contention 5), WAF (Contention 6), WAS (Contention 7), and Compliance Monitoring (Contention 8). *See id.* at 15-16, 18-21. For these contentions, however, Finjan has not identified any structure of functionality that it contends is physically located on the client computer. *See id.* at 3, 15-16, 18-21. Finally, although Contention No. 4 recites a software product (Cloud Agent) that can be installed on a computer being protected (such as a client device), Finjan does not allege in its contentions that Qualys makes, uses, sells, offers to sell, or imports such a computer. Moreover, Finjan does not allege indirect infringement for these claims. Consequently, none of Finjan’s contentions for these claims can survive and must be withdrawn.

F. Terms 9 and 10, “transmitter” and “receiver” (’154, ’494, and ’968 Patents)

In the Markman Order, the Court unequivocally stated that the claimed transmitters and receivers of the ’154, ’494, and ’968 Patents each require both hard and software structural components:

¹ Additionally, as noted for Terms 9 and 10, Finjan has alleged only direct infringement for the ’154 Patent but has not identified anything other than third-party gateways.

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