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 FINJAN LLC

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 (OAKLAND DIVISION)

20
 21 FINJAN LLC, a Delaware Limited Liability
 Company,

22
 23 Plaintiff,

24 v.

25 QUALYS INC., a Delaware Corporation,

26 Defendant.
 27
 28

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

**PLAINTIFF FINJAN LLC'S
 OPPOSITION TO QUALYS INC.'S
 MOTION TO STRIKE PORTIONS OF
 PLAINTIFF'S INFRINGEMENT AND
 DAMAGES EXPERT REPORTS**

**[REDACTED VERSION OF DOCUMENT
 SOUGHT TO BE SEALED]**

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 JUDGE: Hon. Yvonne Gonzalez Rogers

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1 **I. INTRODUCTION**

2 Qualys, Inc.'s ("Qualys") motion to strike the expert report of Dr. Nenad Medvidovic on
3 U.S. Pat. No. 8,225,408 (Dkt. No. 156, "Mot.") should be denied. The purpose of infringement
4 contentions is to put the accused infringer on notice of the patent owner's infringement
5 allegations. Finjan's contentions do this.

6 Qualys puts forth six arguments for striking technical analysis in Dr. Medvidovic's report.
7 The first concerns whether Finjan's infringement contentions accuse "Cloud Agents." Qualys
8 argues that the word "Cloud Agent" does not appear in Finjan's infringement charts. But Finjan
9 identified "Cloud Agents" in its infringement contentions as an accused product, and identified
10 how Qualys's accused products (including Cloud Agents) received data from different sources.
11 Second, Qualys argues that Dr. Medvidovic's theory for the "dynamic building . . ." of an XML
12 like data structure and "dynamic detection . . ." using that XML like data structure was not
13 disclosed in Finjan's contentions. Finjan disclosed that very theory, however, even annotating the
14 exemplary evidence to highlight Qualys's use of an XML data structure for both of these
15 limitations. Qualys's third and fourth arguments are that Finjan did not disclose Dr. Medvidovic's
16 theory for claim 29 or for the "receiving . . ." limitation of claim 1, respectively. Qualys's
17 arguments are based on a misinterpretation of Finjan's infringement contentions and Dr.
18 Medvidovic's expert opinions. Fifth, Qualys seeks to strike Finjan's doctrine of equivalents
19 theory. But unlike the boilerplate reservation of rights language this District has struck in other
20 cases, Finjan's contentions set forth a specific theory as to how Qualys's products satisfy the
21 function-way-result test. Finally, Qualys asks the Court to strike Dr. Medvidovic's opinions on
22 the date of first infringement, but Dr. Medvidovic does not offer an opinion on any such date.
23 Rather, Dr. Medvidovic provides the underlying technical analysis of the accused products, from
24 which Finjan's damages expert determined a date of first infringement—a date which Qualys is
25 *not* seeking to strike.

26 As to the damages issue (the "foreign sales" item), Qualys's motion tries to characterize
27 two discovery orders as effectively entering summary judgment against the inclusion of Qualys's
28 non-U.S. sales in the damages base at trial. The Court entered no such judgment. What the Court

1 did was make findings about the types of theories Finjan’s infringement contentions did and did
2 not disclose. The “foreign sales” items in the Reports were guided by, and are consistent with,
3 those findings—a point Qualys effectively concedes by failing to identify even one inconsistency
4 between the reports and the contentions as to foreign sales.

5 The Court should reject Qualys’s attempt to gain a windfall at trial through
6 misinterpretation of Finjan’s contentions and the Court’s past orders.

7 **II. BACKGROUND**

8 **A. Finjan’s Infringement Contentions**

9 Finjan served its infringement contentions on April 19, 2019. In those contentions, Finjan
10 set forth its theories of infringement for the ’408 Patent. At a high level, Finjan showed that the
11 Qualys products receive program code from a number of different sources. Exh. A [408 Inf chart]
12 at 2. The Qualys products identify specific programming languages in that received code (*id.* at 5)
13 and then scan that code for vulnerabilities, including analyzing it against rules stored in a Qualys
14 database. *Id.* at 7. The Qualys products then build a parse tree using functionality for building
15 XML like structures (*id.* at 15) and perform vulnerability scans using the information from that
16 tree structure. *Id.* at 16. Finally, the Qualys products present these potential exploits on a user
17 interface. *Id.* at 17.

18 Dr. Medvidovic followed that same theory, adding evidence that Finjan learned during
19 discovery. Exh. B [Medvidovic Op.] at ¶¶ 158-161. For example, Dr. Medvidovic identified the
20 database of vulnerabilities as [REDACTED] *Id.* ¶ 136. He further identified specific features that
21 made use of the [REDACTED]
22 [REDACTED]
23 [REDACTED] Dr. Medvidovic
24 also cited deposition testimony from Qualys’s engineers explaining how all of these limitations
25 were satisfied. *See, e.g., Id.* at ¶¶ 184-195, 282-296, 305-309.

26 **B. Qualys’s Complaints**

27 Qualys did not complain about any defects when Finjan served its contentions. Rather,
28 Qualys waited until there were three months left in discovery—fifteen months *after* Finjan served

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