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10 *Attorneys for Defendant*
 11 QUALYS INC.

12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **OAKLAND DIVISION**

16	FINJAN LLC)	CASE NO.: 4:18-cv-07229-YGR (TSH)
)	
17	Plaintiff,)	QUALYS INC.’S RESPONSE TO FINJAN
)	LLC’S LETTER BRIEF REQUESTING
18	v.)	PRE-FILING CONFERENCE FOR
)	PROPOSED MOTION FOR SUMMARY
19	QUALYS INC.,)	JUDGMENT
)	
20	Defendant.)	Hon. Yvonne Gonzalez Rogers
)	
21)	Date: March 26, 2021
)	Time: 2:00 PM
22)	Location: Zoom Teleconference¹
)	

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 28 ¹ Per the Court’s Notice regarding Civil Law and Motion Calendars and its Order at D.I. 48

1 Dear Judge Gonzalez Rogers:

2 Finjan's request to file a motion for summary judgment regarding the prior art status for
3 the listed four references in Finjan's letter² should be denied as there are genuine issues of material
4 fact to be resolved.

5 With respect to the first three references – DSAVT, Mounji, and Thomson – Finjan
6 acknowledges that Qualys's librarian expert, Dr. Sylvia Hall-Ellis, is an experienced librarian who
7 timely rendered an opinion that the references were publicly accessible as of the applicable dates.
8 Such expert testimony creates a genuine issue of material fact as to the public accessibility of these
9 references. If anything, Finjan appears to take issue with Dr. Hall-Ellis's methodology for
10 rendering her opinion. Although Qualys believes her methodology to be sound, Finjan's request
11 to file a motion for summary judgment on the issue should be denied as its arguments are more
12 appropriate for a *Daubert* motion.

13 With respect to the SurfinGate Fax, Qualys does not contend that it is a printed publication
14 for prior art purposes. Rather, Qualys contends that the SurfinGate Fax is one (of many) pieces of
15 evidence showing an on-sale bar as to three asserted patents. Other evidence includes a
16 contemporaneously filed third-party patent referencing the product, deposition testimony, and
17 other Finjan documents. Finjan has not sought leave to file summary judgment that the SurfinGate
18 product is not prior art. As such, Finjan's proposed motion does resolve any actual defense at issue
19 in this case and should be denied.

20 Respectfully submitted,

21 WILSON SONSINI GOODRICH & ROSATI

22 Dated: March 22, 2021

23 By: /s/ Ryan Smith

24 Ryan Smith

25 *Counsel for*
26 QUALYS INC.

27 ² The four invalidity references are as follows: (1) "DSAVT," a user manual titled *Dr.*
28 *Solomon's Anti-Virus Toolkit for Windows and DOS*; (2) "Mounji," a published technical report;
technology (3) "Thomson," a published research paper; and (4) "SurfinGate Fax," a fax that describes Finjan