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16 *Attorneys for Defendant*
 17 QUALYS INC.

18 **IN THE UNITED STATES DISTRICT COURT**
 19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 20 **OAKLAND DIVISION**

21 FINJAN LLC,

22 Plaintiff,

23 v.

24 QUALYS INC.,

25 Defendant.

) CASE NO.: 4:18-cv-07229-YGR (TSH)
)
) **QUALYS'S SEPARATE STATEMENT**
) **OF UNDISPUTED MATERIAL FACTS**
) **IN SUPPORT OF ITS MOTION FOR**
) **SUMMARY JUDGMENT**
) **Judge: Hon. Yvonne Gonzalez Rogers**
) **Date: July 6, 2021**
) **Time: 2:00 P.M.**
) **Location: Courtroom 1, 4th Floor¹**

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28 ¹ Per the Court's Notice regarding Civil Law and Motion Calendars and its Order at D.I. 48, hearings are via Zoom videoconference

1 Pursuant to the Court's Standing Order in Civil Cases, Defendant Qualys Inc. ("Qualys")
 2 submits the following statement of material facts as to which there is no genuine issue:

Issue No.	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3 4 5 Issue 1 6 (Finjan has 7 failed to 8 provide 9 evidence of 10 infringement 11 of the '408 12 Patent)	5 <u>Fact 1</u> : Finjan asserts claims 1, 3-8, 6 22, 23, and 35 of the '408 Patent. 7 Ex. 29 (Finjan's Infringement 8 Contentions) at 1-2 (asserting claims 9 1, 3-8, 22, 23, 29, and 35 of '408 10 Patent); D.I. 187 at 2 (order re 11 dismissal of claim 29 of '408 12 Patent).	
10 Issue 1 11 12 13 14 15 16 17 18	10 <u>Fact 2</u> : Claims 1 and 23 of the '408 11 Patent recite "a computer-processor 12 based" method wherein one step is 13 "receiving by a computer" and 14 subsequent steps are performed "by 15 the computer" recited in the 16 receiving step while claims 22 and 17 35 recite "program code for causing 18 a computer to perform" each of the 19 recited steps. 20 Ex. 1 ('408 Patent) at 19:45-20:7 21 (claim 1), 22:1-27 (claim 23), 21:42- 22 67 (claim 22), and 24:7-31 (claim 23 35).	
19 Issue 1 20 21 22	19 <u>Fact 3</u> : The 2002 edition of the 20 Microsoft Computer dictionary 21 defines a "computer" as "any device 22 capable of processing information to 23 produce a desired result." 24 Ex. 8 (Microsoft Computer 25 Dictionary) at 118.	
23 Issue 1 24 25 26 27 28	23 <u>Fact 4</u> : In <i>Finjan v. Sonicwall</i> , Finjan 24 accused a defendant of infringing the 25 '408 Patent based on a theory 26 involving multiple discrete 27 computing devices, and the Court 28 addressed the question of "with respect to the '408 Patent, can the receiving, determining, instantiating, identifying, dynamically building, dynamically detecting, and	

1		indicating be performed by different computers?”	
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3		Ex. 11 (Sonicwall Order) at p.20, ll.10-11.	
4	Issue 1	<u>Fact 5</u> : In <i>Finjan v. Sonicwall</i> , the court found “as a matter of law that the recited steps in claims 1 and 22 of the ’408 Patent must be performed by the same computer” and on that basis entered summary judgment of no infringement as to the ’408 Patent.	
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9		Ex. 11 (Sonicwall Order) at 24.	
10	Issue 1	<u>Fact 6</u> : The “Qualys cloud platform” comprises multiple different computers, including scanners deployed in a customer’s network, cloud agent software installed on customer endpoint devices, and servers operated by Qualys at various locations throughout the world.	
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16		Ex. 4 (Medvidovic Rpt.) at ¶¶ 87, 88, 89, 91, 92, 93, 95, 96-102.	
17	Issue 1	<u>Fact 7</u> : The asserted claims of the ’408 claims each require “dynamically detecting ... [patterns or combinations] of nodes in the parse tree which are indicators of potential exploits” and “indicating, by the computer, the presence of potential exploits within the incoming stream.”	
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23		Ex. 1 (’408 Patent) at 20:1-7 (claim 1), 21:62-67 (claim 22), 22:20-27 (claim 23), and 24:24-31 (claim 35).	
24	Issue 1	<u>Fact 8</u> : In an IPR proceeding, Finjan’s expert, Dr. Medvidovic, wrote that a “key feature that distinguishes the ’408 Patent from the prior art is its focus on detecting exploits ‘being portions of program code that are malicious,’ rather than	
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1		simply recognizing previously known malware.”	
2		Ex. 16 (Medvidovic IPR Decl.) ¶ 49.	
3	Issue 1	<u>Fact 9</u> : In a Patent Owner Response in an IPR Proceeding, Finjan wrote “Detecting individual exploits, particularly using the behavior-based scanning techniques disclosed in the ‘408 Patent, facilitates the ‘zero-day’ recognition of malicious code, even if it is surrounded by otherwise benign and/or not previously encountered code, based only on the behavior associated with the exploit. This is the reason the independent claims of the ‘408 Patent recite dynamically detecting patterns or combinations ‘of nodes in the parse tree which are indicators of potential exploits.’”	
4		Ex. 23 (Patent Owner Response) at 39-40.	
5	Issue 1	<u>Fact 10</u> : The asserted claims of the ‘408 patent requires, among other limitations, three temporally overlapping steps: (1) “receiving incoming content,” (2) “dynamically building,” and (3) “dynamically detecting.”	
6		Ex. 1 (‘408 Patent) at 19:45-20:7 (claim 1), 21:42-67 (claim 22), 22:1-27 (claim 23), and 24:7-31 (claim 35).	
7	Issue 1	<u>Fact 11</u> : In an IPR proceeding, Finjan noted three temporally overlapping steps: (1) “receiving incoming content,” (2) “dynamically building,” and (3) “dynamically detecting” of the asserted claims of the ‘408 Patent and that these temporal limitations distinguish the ‘408 Patent over the prior art.	
8		Ex. 23 (Patent Owner Statement) at 2.	
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1	Issue 1	<u>Fact 12</u> : Finjan’s infringement theory for the ’408 Patent is based on multiple scanner appliance’s operating in parallel.	
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4		Ex. 4 (Medvidovic Rpt.) ¶ 284,	
5		¶ 309; Ex. 12 (Medvidovic Tr.)	
6		163:1-3, 178:16-20, 213:21-22,	
7		222:7-8, 285:4-6.	
8	Issue 1	<u>Fact 13</u> : The asserted claims of the ’408 Patent require the temporally overlapping steps must be performed with respect to <u>the</u> incoming stream (<i>i.e.</i> , the same incoming stream).	
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10		Ex. 1 (’408 Patent) at 19:47-48,	
11		(claim 1: “receiving, by a computer,	
12		<i>an incoming stream</i> of program	
13		code); 19:64-65 (claim 1:	
14		“dynamically building, by the	
15		computer <i>while</i> said receiving	
16		receives <i>the incoming stream</i> , a	
17		parse tree.”); 21:45 (claim 22:	
18		“receiving an incoming stream of	
19		program code”); 21:59-60 (claim 22:	
20		“dynamically building, while said	
21		receiving receives the incoming	
22		stream”); 22:10-11 (claim 23:	
23	Issue 1	“receiving, by a computer, an	
24		incoming stream of program code),	
25		22:15-16 (claim 23: “dynamically	
26		building, while said receiving	
27		receives the incoming stream”);	
28		24:17 (claim 35: “receiving an	
		incoming stream of program code”);	
		24:20-21 (claim 35: “dynamically	
		building, while said receiving	
		receives the incoming stream”).	
	Issue 1	<u>Fact 14</u> : In an IPR proceeding involving the ’408 Patent, Finjan’s expert, Dr. Medvidovic, stated that “the incoming stream” recited by the claims “refers to the stream from which the parse tree is being built”.	
		Ex. 16 (Medvidovic IPR Decl.) ¶ 99.	
	Issue 1	<u>Fact 15</u> : In an IPR proceeding involving the ’408 Patent, Finjan’s	

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