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17 BLUE COAT SYSTEMS LLC

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

21 FINJAN, INC., a Delaware Corporation,
22 Plaintiff,
23 v.
24 BLUE COAT SYSTEMS LLC, a Delaware
25 Corporation,
26 Defendant.

Case No.: 15-cv-03295-BLF-SVK

**[PROPOSED] JOINT PRETRIAL
STATEMENT AND ORDER**

Date: October 5, 2017
Time: 1:30 pm
Place: Courtroom 3, 5th Floor
Judge: Hon. Beth Labson Freeman

1 Pursuant to Paragraph B of the Court’s Standing Order re Final Pretrial Conference – Jury
2 Trial, plaintiff Finjan, Inc. (“Finjan”) and defendant Blue Coat Systems LLC (“Blue Coat”)
3 (collectively, “Parties”) hereby submit the Joint Pretrial Statement and Order.

4 **I. THE ACTION**

5 **A. The Parties**

6 The Parties to this action are Finjan, a Delaware corporation with its principal place of
7 business at 2000 University Ave., Ste. 600, East Palo Alto, California 94303, and Blue Coat, a
8 Delaware limited liability company with its principal place of business at 350 Ellis Street,
9 Mountain View, California 94043.

10 **B. Substance of the Action**

11 This is an action for patent infringement, and the jurisdiction of the court arises under the
12 Patent Act, 35 U.S.C. § 271 et. seq.

13 Finjan alleges that Blue Coat directly infringes pursuant to 35 U.S.C. § 271(a) the
14 following U.S. patents:

- 15 ▪ U.S. Patent No. 6,154,844 (“the ’844 patent”), entitled “System and Method for
16 Attaching a Downloadable Security Profile to a Downloadable”;
- 17 ▪ U.S. Patent No. 6,965,968 (“the ’968 patent”), entitled “Policy Based Caching”;
- 18 ▪ U.S. Patent No. 7,418,731 (“the ’731 patent”), entitled “Method and System for
19 Caching at Secure Gateways”;
- 20 ▪ U.S. Patent No. 8,079,086 (“the ’086 Patent”), entitled “Malicious Mobile Code
21 Runtime Monitoring System and Methods”;
- 22 ▪ U.S. Patent No. 8,225,408 (“the ’408 patent”), entitled “Method and System for
23 Adaptive Rule-Based Content Scanners”;
- 24 ▪ U.S. Patent No. 8,677,494 (“the ’494 patent”), entitled “Malicious Mobile Code
25 Runtime Monitoring System and Methods”;
- 26 ▪ U.S. Patent No. 9,189,621 (“the ’621 patent”), entitled “Malicious Mobile Code
27 Runtime Monitoring System and Methods”; and
- 28 ▪ U.S. Patent No. 9,219,755 (“the ’755 patent”), entitled “Malicious Mobile Code
Runtime Monitoring System and Methods.”

Collectively, these patents are referred to as the “asserted patents.” Finjan alleges
infringement of claims 1, 7, and 15 of the ’844 patent, claim 1 of the ’968 patent, claims 1 and 2
of the ’731 patent, claim 24 of the ’086 patent, claim 22 of the ’408 patent, claims 10, 14, and 16

1 of the '494 patent, claims 1 and 10 of the '621 patent, and claim 3 of the '755 patent (collectively,
2 "asserted claims"). To the extent Blue Coat claims it does not practice any specific element
3 literally, Finjan has asserted that Blue Coat directly infringes the asserted claims of the '844,
4 '968, '731, '494, '086, and '621 patents under the doctrine of equivalents.

5 Finjan alleges that the following Blue Coat products, methods and/or services infringe:
6 ProxySG,¹ Content Analysis System ("CAS"), Advanced Secure Gateway ("ASG"), Malware
7 Analysis Appliance ("MAA") for which the cloud-based service is called "MAS," Web Security
8 Service ("WSS"), Global Intelligence Network ("GIN"), WebPulse,² and Security Analytics
9 ("SA") (collectively, "accused products").

10 Specifically, Finjan alleges that:

- 11 1. WebPulse/GIN; WSS with WebPulse/GIN; WSS with MAS; and/or ASG with
12 MAA infringes, literally or under the doctrine of equivalents, claims 1, 7, and 15
13 of the '844 patent;
- 14 2. ASG with MAA; WSS with WebPulse/GIN; and/or WSS with MAS infringes,
15 literally or under the doctrine of equivalents, claim 1 of the '968 patent;
- 16 3. ASG with MAA; WSS with WebPulse/GIN; and/or WSS with MAS infringes,
17 literally or under the doctrine of equivalents, claims 1 and 2 of the '731 patent;
- 18 4. WebPulse/GIN; WSS with WebPulse/GIN; and/or WSS with MAS infringes,
19 literally or under the doctrine of equivalents, claim 24 of the '086 patent;
- 20 5. WebPulse/GIN; and/or WSS with WebPulse/GIN directly infringes claim 22 of the
21 '408 patent;
- 22 6. WebPulse/GIN; WSS with WebPulse/GIN; WSS with MAS; ASG with MAA;
23 ProxySG and CAS with MAA; and/or SA with MAA infringes, literally or under
24 the doctrine of equivalents, claims 10, 14, and 16 of the '494 patent;
- 25 7. WebPulse/GIN; WSS with MAS; ProxySG and CAS with MAA; and/or ASG with
26

27 ¹ ProxySG includes the Secure Web Gateway Virtual Appliance, the virtual version of ProxySG.

28 ² Finjan refers to GIN and WebPulse collectively as "WebPulse/GIN." Blue Coat does not agree that WebPulse/GIN is a product.

1 MAA infringes, literally or under the doctrine of equivalents, claims 1 and 10 of
2 the '621 patent; and

3 8. ProxySG and CAS with MAA; and/or ASG with MAA directly infringes claim 3
4 of the '755 patent.

5 Blue Coat denies infringement of any of the asserted claims of the asserted patents and
6 denies that Finjan is entitled to any damages. Blue Coat also alleges that the asserted claims of
7 the '086, '408, '621, and '755 patents are invalid based on the following theories:

8 1. The combination of “Dynamic Detection and Classification of Computer Viruses
9 Using General Behavior Patterns” (“Swimmer”) and U.S. Patent No. 5,983,348
10 (“Ji '348”) renders obvious claim 24 of the '086 patent pursuant to 35 U.S.C. §
11 103;

12 2. The combination of U.S. Patent No. 5,860,011 (“Kolawa”) and U.S. Patent No.
13 6,128,774 (“Necula '774”) renders obvious claim 22 of the '408 patent pursuant to
14 35 U.S.C. § 103;

15 3. The combination of Kolawa, U.S. Patent No. 7,398,553 (“Li”), and U.S. Patent
16 No. 7,636,945 (“Chandnani”) renders obvious claim 22 of the '408 patent pursuant
17 to 35 U.S.C. § 103;

18 4. The combination of U.S. Patent No. 5,951,698 (“Chen '698”), U.S. Patent No.
19 5,623,600 (“Ji '600”), and “A Secure Environment for Untrusted Helper
20 Applications (Confining the Wily Hacker)” (“Goldberg”) renders obvious claims 1
21 and 10 of the '621 patent pursuant to 35 U.S.C. § 103; and

22 5. The combination of Goldberg and Chen '698 renders obvious claim 3 of the '755
23 patent pursuant to 35 U.S.C. § 103.

24 6. In response to Blue Coat’s counterclaims for a declaration of noninfringement and
25 invalidity of the asserted patents, Finjan asserted failure to state a claim, waiver,
26 collateral estoppel and reserved defenses relating to Blue Coat’s counterclaims.
27 Dkt. No. 171.

28

C. Relief Sought

Finjan's Position

As set forth in Finjan's Amended Complaint and Rule 26(a)(1) disclosures, Finjan seeks monetary and equitable relief. Finjan is seeking a reasonable royalty for Blue Coat's infringement and, separately, injunctive relief for future infringement. Finjan also seeks an accounting of past damages for infringement up to the date of the payment, along with prejudgment and post-judgment interest. Finjan also seeks a declaratory judgment that Blue Coat infringes all asserted claims and that each and every asserted claim is valid and enforceable. Finjan's Amended Complaint identifies the following points of relief:

- an entry of judgment that Blue Coat is infringing the asserted patents;
- an entry of judgment that claims 1, 7, and 13 of the '844 patent, claims 1 and 2 of the '731 patent, and claim 1 of the '968 patent are valid;
- an injunction to stop Blue Coat and those in privity with Blue Coat from infringing the asserted patents;
- an award of damages in the form of a reasonable royalty;
- a finding that Blue Coat's infringement has been willful, wanton, and deliberate and that Finjan is entitled to trebled damages on this basis;
- a finding the case is exceptional;
- an award of Finjan's costs and reasonable attorneys' fees permitted under 35 U.S.C. § 285;
- an accounting of Blue Coat's infringing sales and revenues, along with prejudgment and post-judgment interest from the first date of infringement to the present³; and
- an injunction to stop future infringement; and
- any further relief that the Court may deem proper and just.

³ Blue Coat has improperly refused to produce revenue information for the accused products after December 1, 2016. Finjan reserves the right to supplement its damages analysis upon receipt of this information.

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