

1 PAUL ANDRE (State Bar No. 196585)  
pandre@kramerlevin.com  
2 LISA KOBIALKA (State Bar No. 191404)  
lkobialka@kramerlevin.com  
3 JAMES HANNAH (State Bar No. 237978)  
jhannah@kramerlevin.com  
4 KRAMER LEVIN NAFTALIS & FRANKEL LLP  
5 990 Marsh Road  
6 Menlo Park, CA 94025  
7 Telephone: (650) 752-1700  
8 Facsimile: (650) 752-1800

8 *Attorneys for Plaintiff*  
9 FINJAN, INC.

10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

14 FINJAN, INC., a Delaware Corporation,

15 Plaintiff,

16 v.

17 BLUE COAT SYSTEMS LLC, a Delaware  
18 Corporation,

19 Defendant.  
20

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

**PLAINTIFF'S FINJAN INC.'S  
OPPOSITION TO BLUE COAT'S  
MOTION IN LIMINE NO. 1 REGARDING  
DAUBERT OF DR. CHRISTINE MEYER**

Date: October 5, 2017

Time: 1:30 pm

Place: Courtroom 3, 5<sup>th</sup> Floor

Judge: Hon. Beth Labson Freeman

21  
22  
23 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**  
24  
25  
26  
27  
28

1 Dr. Meyer used reliable methodology and sufficient data to support her damages opinions and  
2 Blue Coat's motion amounts to nothing more than a disagreement with Dr. Meyer's damages opinions  
3 that can be tested on cross-examination. Blue Coat's requested wholesale exclusion of Dr. Meyer is  
4 inappropriate because she disclosed a sound method and basis for her calculations. *Micro Chem., Inc.*  
5 *v. Lextron, Inc.*, 317 F.3d 1387, 1391-92 (Fed. Cir. 2003).

6 **I. ARGUMENT**

7 **A. DR. MEYER CALCULATED DAMAGES FOR EACH ASSERTED PATENT**

8 Blue Coat's argument regarding purported "double-counting"<sup>1</sup> is based on the demonstrably  
9 false assumption that Finjan asserted the same patents against the exact same features of Blue Coat's  
10 GIN/Webpulse<sup>2</sup> in this case and in *Blue Coat I* and that GIN/Webpulse has not changed since *Blue*  
11 *Coat I*. With respect to GIN/Webpulse alone, the '844 Patent is the only patent in common between  
12 *Blue Coat I* and this case. The remaining Asserted Patents against GIN/Webpulse here are the '408,  
13 '494, '621 and '086 Patents, which were not asserted in *Blue Coat I*, and cover different claimed  
14 inventions and time periods of infringement and damages, than the '844 Patent in *Blue Coat I*. Dkt.  
15 No. 305-9, Declaration of Robin L. Brewer ("Brewer Decl."), Ex. 1 at ¶ 51. Thus, the jury's award of  
16 damages in *Blue Coat I* did not address and could not cover damages for Blue Coat's infringement  
17 with GIN/Webpulse of the 408, '494, '621, and '086 Patents in this case. Any suggestion to the  
18 contrary is an issue for cross-examination.

19 Blue Coat presented a misleading and inaccurate table of 11 features, which is not based on  
20 the record evidence and for which Blue Coat cites no support. Motion at 2:24-3:5. Contrary to the  
21 claims made in the chart, Finjan did not assert infringement of the following features with respect to

---

23 <sup>1</sup> It is undisputed that among the Asserted Patents in this case, Dr. Meyer did not "double-count"  
24 features. Blue Coat's contention is only that Dr. Meyer "double-counted" features in Webpulse  
25 between this case and *Blue Coat I*. The Court's Order in the *Sophos* case concerned the issue of  
counting the exact same features multiple times when those features were covered by multiple patents  
to get to a royalty base that exceeded the total possible value, which Dr. Meyer did not do here.

26 <sup>2</sup> Blue Coat's WebPulse Service is also known as the "Global Intelligence Network" (GIN) and  
27 includes the architecture for Blue Coat's URL and file analysis service. Declaration of Hannah Lee  
("Lee Opp. Decl.") filed herewith, Ex. 1 at 15:7-16:14; *id.*, Ex. 2 at 28:8-21.

1 the '844 Patent in *Blue Coat I*: [REDACTED]

2 [REDACTED] Thus, the jury could not have awarded damages for these features.  
3 Lee Opp. Decl., Ex. 3, *Blue Coat I* Trial Tr. at 454:7-676:5; 712:13-741:17; *see also* Dkt. No. 181,  
4 Order on Blue Coat's Motion to Strike Infringement Contentions (denying Blue Coat's motion to  
5 strike Finjan's infringement contentions against Webpulse as it included new sandboxing technology  
6 that did not exist in *Blue Coat I* relating to FRS). With respect to the remaining features, namely  
7 [REDACTED] these features are  
8 different from the technology discussed in *Blue Coat I*, because Blue Coat added new and different  
9 functionality to GIN/Webpulse over the past two years. Specifically, in 2015, Blue Coat released  
10 "WebPulse 2.0" that added different functionality, including a new version of [REDACTED]  
11 [REDACTED] Lee Opp. Decl., Ex. 4  
12 at 77:21-78:24, 165:2-9, Lee Opp. Decl., Ex. 1 at 20:13-25:20; *id.* Ex. 5 at BC2-1884393-402 at  
13 1884399, *id.*, Ex. 6, BC2-0031071-121 at 0031112-21, *id.*, Ex. 7, BC2-0195111-12. Given that these  
14 infringing features of GIN/Webpulse were not accused in the first case, *Blue Coat I* could not cover  
15 damages in this case because the jury's damages verdict in *Blue Coat I* was not based on the new  
16 features. Because GIN/Webpulse is now a different product, the use of the same brand name does not  
17 support Blue Coat's *Daubert* motion.

18 Further, the '494, '086 and '408 Patents cover different aspects of GIN/Webpulse than the  
19 '844 Patent. For example, the '494 Patent's asserted claims recites specific limitations, such as a  
20 "database", "database manager", and a "downloadable scanner," which are not in the claims of the  
21 '844 Patent. Similarly, the asserted claims of the '086 Patent recite limitations such as "transmitting  
22 the Downloadable" and the '408 Patent recites limitations such as "dynamically building..a parse  
23 tree," all specific limitations not in the claims of the '844 Patent. Thus, the GIN/Webpulse  
24 components that infringe the '086, '408 and '494 Patents include more than just DRTR itself (the  
25 basis for damages for infringement of the '844 Patent in *Blue Coat I*), and includes other components  
26 such as [REDACTED] *See, e.g.*, Lee Opp. Decl., Ex. 8 at ¶ 1129; *id.* Ex.  
27 9 at ¶¶ 118, 953, 1028, 1029, 1107, 1108; *id.*, Ex. 10 at ¶¶ 515-518, 582, 664. Ultimately, Dr.

1 Meyer's methodology of calculating damages for Blue Coat's infringement of the '408, '494, '621,  
2 and '086 Patents based upon GIN/Webpulse is reliable as she examined the infringing features  
3 specific for each asserted patent. For these newly asserted patents, she assessed a royalty on those  
4 features which involve different infringing technology from what was at issue in *Blue Coat I*. Thus,  
5 the issues that Blue Coat raises are ones for cross-examination, but not *Daubert*.

6 **B. GIN REVENUES WERE BASED ON BLUE COAT'S ACTUAL REVENUES**

7 Blue Coat mischaracterizes Dr. Meyer's methodology to argue she "inflated" GIN/Webpulse  
8 revenue and did not use "actual" revenues. Dr. Meyer, in fact, relied upon a document Blue Coat  
9 produced [REDACTED]  
10 [REDACTED] Brewer Decl., Ex. 3. Blue Coat does not dispute the accuracy of the  
11 fiscal year 2016 actual revenue numbers reported [REDACTED] that  
12 Blue Coat's Vice-President of Finance, Mr. Dildine, authenticated as showing actual revenues. Lee  
13 Opp. Decl., Ex. 11 at 102:3-104:1; 107:9-108:9; *id.*, Ex. 12 at 144:4-6; Brewer Decl., Ex. 3 at BC2-  
14 1888582. Dr. Meyer relied upon [REDACTED] to calculate a royalty base for  
15 GIN/Webpulse, and thus, her methodology is reliable. Brewer Decl., Ex. 1, ¶ 134; Lee Opp. Decl. Ex.  
16 13 at Exhibits 5A-5C. Blue Coat's concerns that Dr. Meyer should have used [REDACTED] with an  
17 inexplicably lower royalty base that Blue Coat argues is more appropriate<sup>3</sup>, can be addressed on cross-  
18 examination. As Dr. Meyer explained at her deposition, she did not find it reliable to mix and match  
19 different sources of information to calculate revenues using different documents when Blue Coat's VP  
20 of Finance validated [REDACTED] Lee  
21 Opp. Decl., Ex. 12 at 144:4-145:24; *id.*, Ex. 11 at 102:3-104:1; 107:9-108:9. Because Dr. Meyer  
22 sufficiently explained the basis for her opinions, there are no grounds to challenge the basis and  
23 reliability of her opinions regarding the "GIN" revenues, other than on cross-examination.

24 In addition, Dr. Meyer properly included worldwide revenues of GIN/Webpulse. It is  
25

26 <sup>3</sup> Blue Coat argues that separate Webfilter revenues should have been used as they were in *Blue Coat I*,  
27 but the damages expert in the previous case did not have [REDACTED]  
28 [REDACTED]

1 undisputed that Blue Coat's GIN/Webpulse is developed in Draper, Utah, [REDACTED]  
2 [REDACTED] and that updates presently are pushed out of  
3 its Draper facility. *See* Lee Opp. Decl., Ex. 14 at 203-24; *see also* Lee Opp. Decl., Ex. 4 at 63:20-  
4 64:2; 233:21-234:18. Blue Coat did not contest these facts in *Blue Coat I*, and recent testimony  
5 confirms the circumstances have not changed now. *Id.*; *Blue Coat I*, Dkt. No. 543 at 9-10. Because  
6 Blue Coat develops and maintains GIN/Webpulse from the United States, including pushing updates  
7 for worldwide use, Dr. Meyer included worldwide sales in her damages calculation for the domestic  
8 infringement of GIN/Webpulse. *See NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1317  
9 (Fed. Cir. 2005) (infringement occurs "where control of the system is exercised and beneficial use of  
10 the system obtained"). Blue Coat's cited cases are inapposite as they concern situations where chips  
11 were made and sold outside the U.S. *See Broadcom Corp. v. Emulex Corp.*, No. 09-cv-1058-JVS  
12 (ANx), 2011 WL 13130705, at \*7 (C.D. Cal. Aug. 10, 2011) ("product is made and sold outside" the  
13 U.S.); *see also Lake Cherokee Hard Drive Techs., L.L.C. v. Marvell Semiconductor, Inc.*, 964  
14 F.Supp.2d 653, 656-57 (E.D. Tex. 2013) ("parties agree that the accused chips are currently, and  
15 always have been manufactured outside" the U.S.); *Ziptronix, Inc. v. OmniVision Techs., Inc.*, 71  
16 F.Supp.3d 1090, 1096 (N.D. Cal. 2014) (undisputed the accused wafers are manufactured and  
17 delivered in Taiwan). Thus, Dr. Meyer's opinions regarding worldwide GIN/Webpulse revenues are  
18 proper and reliable.

19 **C. THERE IS SUPPORT FOR DR. MEYER'S ROYALTY RATE OF 8-16%**

20 While Blue Coat disagrees with Dr. Meyer's royalty rate of 8-16%, numerous pieces of  
21 evidence support these rates, as discussed in Dr. Meyer's report. Brewer Decl., Ex. 1 at ¶¶ 8, 71, 79,  
22 84, 87, 91, 93, 98, 113, 115-17, 119, 121-23, 171; Lee Opp. Decl., Ex. 15 (Meyer Supp. Rpt., ¶113  
23 errata). Thus, Blue Coat can cross examine her regarding the 6-8% rate from *Blue Coat I*, but has no  
24 grounds to exclude her opinion. Specifically, Dr. Meyer details the basis for the 8-16% in her report:  
25 jury verdicts from the *Blue Coat I* (2015), *Sophos* (2016), and *Secure Computing* cases (2008) based  
26 on evidence of an 8-16% royalty rate, Finjan's current licensing practices, Blue Coat's continued use  
27 of Finjan's technology after *Blue Coat I* on the same and related patents, and Finjan's past licenses  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.