

EXHIBIT 1

Kramer Levin



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Via E-mail (DCDotson@duanemorris.com)

David C. Dotson
Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, CA 30309-3929

Re: *Finjan, Inc. v. SonicWall, Inc.*, Case No. 5:17-cv-04467-BLF

Dear David:

We are in receipt of your July 11, 2018 letter (“Letter”) regarding Finjan’s Patent Local Rule 3-1 disclosures, which were served on April 10, 2018 (“Infringement Contentions”). Contrary to SonicWall’s assertions, Finjan’s Infringement Contentions provide notice of all of Finjan’s infringement theories. Furthermore, SonicWall’s own invalidity contentions, served on May 25, 2018 (“Invalidity Contentions”), are deficient because they do not provide any analysis for why certain claim elements are met, and are vastly less detailed than what Finjan provided in its Infringement Contentions.

Finjan’s Infringement Contentions Are Sufficient

Finjan’s Infringement Contentions provide 31 separate charts detailing how the accused products infringe the asserted patents, amounting to over 1,400 pages of contentions. The complaints that SonicWall raises with respect to Finjan’s infringement contentions are without merit. For example, your first complaint is that Appendix A-1 “do[es] not identify where SonicWall Gateways *alone* generate a threat report, which is alleged to be the claimed ‘Downloadable security profile.’” However, on page 7 of Appendix A-1, Finjan asserts that SonicWall’s Gateways alone generate a Downloadable security profile. *See Appendix A-1 at 7* (“[t]he below threat report was generated by a SonicWall Gateway and shows that the downloadable was determined to be malicious, in part because embedded code was found in the downloadable.”). Following this sentence—at the top of page 8—Finjan describes a threat report (downloadable security profile) generated by a SonicWall Gateway. In another example, you complain

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further that “the Infringement Contentions do not identify where the alleged Downloadable security profile, i.e., the threat report, ‘identifies suspicious code in the received Downloadable’ as expressly required by the claims.” The same proof at the top of page 8 shows that the threat report discovered embedded code (“embedded code found”), which is an identification of suspicious code. SonicWall’s other arguments that Finjan’s Infringement Contentions do not satisfy Local Rule 3-1 are similarly without merit.

SonicWall’s Invalidity Contentions

SonicWall’s Invalidity Contentions, on the other hand, do not comply with the Patent Local Rules, and are universally deficient because they provide no explanation for how each reference excerpt applies to its corresponding claim limitation. The Patent Local Rules require detailed disclosures of a party’s invalidity contentions. See Patent Local Rule 3-3. In fact, in this district “the level of specificity required by Rule 3-3(c) for invalidity contentions is the same as that required by Rule 3-1 for infringement contentions. Broad or general disclosures are insufficient.” *Slot Speaker Techs., Inc. v. Apple, Inc.*, No. 13-CV-01161-HSG(DMR), 2017 WL 235049, at *2 (N.D. Cal. Jan. 19, 2017) (internal quotations omitted) (granting plaintiff’s motion to strike defendant’s invalidity contentions for failure to satisfy Rule 3-3(c)). Instead of meeting this standard, for each claim limitation, SonicWall provides bare excerpts, quoted verbatim from an applied reference, without any explanation for the relevance excerpt. See, e.g., Invalidity Contentions, Exhibit A02. This is improper, and certainly inconsistent with the level of specificity that SonicWall asserted was required in its Letter. As such, SonicWall is required by the Local Rules to describe and explain how each disclosure discloses the claim element.

Proposed Compromise

In the spirit of resolving this issue without involving the Court, and given that fact discovery doesn’t end until May 2020, Finjan proposes that the parties agree to a schedule for mutual supplementation of contentions. Finjan proposes that it supplement its Infringement Contentions after the Court issues a claim construction order and Finjan has an opportunity to take 30(b)(6) depositions of SonicWall. While Finjan does not agree that the issues raised in SonicWall’s Letter have any merit, Finjan will attempt to supplement its Infringement Contentions to address these issues to the extent possible. Furthermore, Finjan will update its Infringement Contentions to reflect any documents that have been produced subsequent to Finjan’s initial Infringement Contentions. Similarly, SonicWall will then supplement its Invalidity Contentions within 45-days of Finjan serving its supplemental Infringement Contentions. In its supplement, SonicWall will



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specifically identify what in the prior art references it alleges meets each claim element, as required by the Local Rules. Let us know if SonicWall would like to discuss this proposed schedule.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kris Kastens', written over a printed name.

Kris Kastens

KK:jr