1

DUANE MORRIS LLP
D. Stuart Bartow (SBN 233107)
Email: DSBartow@duanemorris.com
Nicole E. Grigg (SBN 307733)
Email: NEGrigg@duanemorris.com
2475 Hanover Street
Palo Alto, CA 94304-1194
Tel.: 650.847.4150
Fax: 650.847.4151

DUANE MORRIS LLP
Joseph A. Powers
Admitted *Pro Hac Vice*
japowers@duanemorris.com
Jarrad M. Gunther
Admitted *Pro Hac Vice*
jmgunther@duanemorris.com
30 South 17th Street
Philadelphia, PA 19103
Telephone: 215.979.1000
Facsimile: 215.979.1020

Attorneys for Defendant
SONICWALL INC.

DUANE MORRIS LLP
Matthew C. Gaudet
Admitted *Pro Hac Vice*
mcgaudet@duanemorris.com
Robin L. McGrath
Admitted *Pro Hac Vice*
rlmcgrath@duanemorris.com
David C. Dotson
Admitted *Pro Hac Vice*
dcdotson@duanemorris.com
Jennifer H. Forte
Admitted *Pro Hac Vice*
jhforte@duanemorris.com
1075 Peachtree Street, Ste. 2000
Atlanta, GA 30309
Telephone: 404.253.6900
Facsimile: 404.253.6901

(Complete list of counsel for Defendant
on signature page)

2

3

4

5

6

7

8

9

10

11

12

13

14

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

15

16

17

FINJAN LLC., a Delaware Limited Liability Company,

Plaintiff,

vs.

SONICWALL, INC., a Delaware Corporation

Defendant.

18

19

20

21

Case No. 5:17-cv-04467-BLF (VKD)

DEFENDANT SONICWALL INC.'S NOTICE OF MOTION AND ADMINISTRATIVE MOTION FOR LEAVE FOR ADDITIONAL PAGES FOR MOTION FOR SUMMARY JUDGMENT

22

23

24

25

26

27

28

I.   **INTRODUCTION**

Pursuant to Civil L.R. 7-11, defendant SonicWall, Inc. ("SonicWall") brings this Administrative Motion to respectfully request permission to exceed the page limitation set forth in this Court's Standing Order Re Civil Cases, Section IV.A.1, concerning motions under Federal Rule of Civil Procedure 56. Specifically, SonicWall requests the Court increase the page limit for SonicWall's opening brief (and, correspondingly, Finjan's responsive brief) by 10 pages (for a total of 35 pages each) and increase the page limit for SonicWall's reply brief by 5 pages (for a total of 20 pages). Finjan opposes this motion.

SonicWall seeks this increase given the specific issues, previewed below, that should be addressed on the ten patents-at-issue, particularly in view of the history of Finjan litigation in which summary judgment has proven to be a valuable tool to streamline issues for the jury. The specific issues that SonicWall seeks to present in its summary judgment motion are identified below.

II.   **BACKGROUND**

This case involves twenty asserted claims from ten asserted patents: claims 15, 16, 41, and 43 of U.S. Patent No. 6,154,844 ("'844 Patent"); claims 10 and 14 of U.S. Patent No. 8,677,494 ("'494 Patent"); claim 9 of U.S. Patent No. 7,058,822 ("'822 Patent"); claim 9 of U.S. Patent No. 6,804,780 ("'780 Patent"); claim 1 of U.S. Patent No. 6,965,968 ("'968 Patent"); claims 22 and 25 of U.S. Patent No. 7,613,926 ("'926 Patent"); claims 1, 8, and 14 of U.S. Patent No. 7,647,633 ("'633 Patent"); claims 11 and 12 (which both depend from claim 1) of U.S. Patent No. 7,975,305 ("'305 Patent"); claim 1 of U.S. Patent No. 8,141,154 ("'154 Patent"); and claims 1 and 22 of U.S. Patent No. 8,225,408 ("'408 Patent"). The twenty asserted claims exceeds the standard of sixteen asserted claims set forth in *The Federal Circuit's Model Order Limiting Excess Patent Claims and Prior Art*. *See* Dkt. 56 at 19-20 (adopting Plaintiff's position for twenty asserted claims).

Finjan asserts these ten patents against seven different product groups and combinations of product groups: (1) Gateways; (2) Email Security products; (3) Capture ATP; (4) Gateways + Capture ATP; (5) Gateways + WXA; (6) Email Security products + Capture ATP; and (7) Capture Client + Capture ATP. The Court asked the parties to voluntarily use a "representative product"

1

1   procedure in order to simplify the proof, both for trial and summary judgment. SonicWall was in

2   favor of this, but Finjan's proposal did not designate any products whose resolution – one way or the

3   other – would be agreed to resolve other products. Following a meet-and-confer in which SonicWall

4   requested again that Finjan propose "representative products" whose resolution – one way or the

5   other – would then control the resolution of other designated products, Finjan declined.

6   **III.   ARGUMENT**

7   SonicWall is mindful that the mere number of asserted patents, by itself, is not cause to

8   modify the Court's Standing Order. SonicWall respectfully submits that additional pages are

9   justified here because there are seven sets of specific issues that SonicWall intends to raise on

10 various patents and product combinations, and because the merits of many of these issues have

11 already been confirmed by the granting of at least partial summary judgment by this and other

12 Courts. Given the likely success of these issues on summary judgment – and the resulting

13 crystallization of the issues for the jury – SonicWall seeks an increase in pages to have a full

14 opportunity to brief the issues. On average, the ten-page increase would give SonicWall five pages

15 per issue. It still would require extreme efficiency to brief these issues in 35 pages – and, of course,

16 some of these issues will take more pages to brief, and some less – but this increase would at least

17 make it possible to present these issues to the Court in a manner that is appropriate for resolution.

18 This also will avoid a scenario where SonicWall is not able to fairly narrow the issues for trial

19 simply because of Finjan's unusually large assertion of patents and product combinations.

20   SonicWall intends to file a motion for partial summary judgment on the following issues.

21   1. Non-infringement of the '154 Patent. Regarding SonicWall's Capture ATP, Gateways,

22 Gateways + Capture ATP, Email Security, Email Security + Capture ATP, and Capture Client +

23 Capture ATP, Finjan alleges that the "call to a first function (i.e., substitute function)" recited in

24 claim 1 is met by functions within the content as it was originally created, not any substitute

25 function. This Court granted Cisco summary judgment on essentially this same issue. *Finjan, Inc.*

26 *v. Cisco Systems, Inc.*, 17-cv-00072-BLF (N.D. Cal. March 20, 2020), Dkt. No. 499, at 6-11.

27 SonicWall thus intends to move on the same issue here.

28

2

1   2. Non-infringement of the '633 and '822 Patents. The Court granted partial relief on

2 summary judgment motions on issues in both the '633 and '822 Patents in the Blue Coat case, and

3 the '633 Patent in the Cisco case. In this case, for all accused products, SonicWall intends to file a

4 motion for summary judgment concerning all asserted claims that the product features Finjan

5 accuses are not mobile protection code because they do not do runtime monitoring or interception of

6 code operations, and concerning claims 1 and 8 of the '633 Patent, and claim 9 of the '822 Patent

7 that Finjan has failed to demonstrate the *transmission* of what Finjan alleges is mobile protection

8 code. In the Cisco case, the Court noted the transmission requirement is expressly set forth in claims

9 1 and 8 of the '633 Patent, *Cisco*, 17-cv-00072-BLF, Dkt. No. 499, at 15. Further, Finjan's

10 infringement allegations for claim 14 of the '633 Patent exclusively identify components of Capture

11 ATP for all of the claim limitations, and thus Finjan does not actually set forth evidence of

12 infringement by the products (e.g., Gateways, Email Security, and Capture Client) that are accused

13 in combination with Capture ATP.

14   3. Non-infringement of the '305 and '408 Patents. With respect to the asserted claims of the

15 '305 and '408 Patents, Finjan's infringement allegations against Capture ATP, Gateways + Capture

16 ATP, and Email Security + Capture ATP span multiple computers despite the claims requiring all of

17 the elements to be found within a single computer. *See* '305 Patent, cl. 1 ("A security system for

18 scanning content within a computer, comprising: a network interface, housed within a computer…a

19 database of parser and analyzer rules corresponding to computer exploits, stored within the

20 computer…."); '408 Patent, cl. 1 ("…receiving, by a computer, an incoming stream of program

21 code; determining, by the computer…; instantiating, by the computer…; identifying, by the

22 computer…; dynamically building, by the computer…; dynamically detecting, by the computer…;

23 and indicating, by the computer…."), cl. 22 ("A non-transitory computer-readable storage medium

24 storing program code for causing a computer to perform the steps of…"). Finjan also fails to

25 identify any evidence of "selectively diverting incoming content from its intended destination to said

26 rule-based scanner" being performed by what Finjan identified as the network traffic probe, as

27 required by claims 11 and 12 (via claim 1) of the '305 Patent to support its infringement allegations

28

3

1 concerning Capture ATP. Finjan identifies the "controller server" within Capture ATP as the

2 claimed network traffic probe, but the controller server does not perform any selective diverting.

3   4. Non-infringement of the '926 Patent. SonicWall intends to move for summary judgment

4 that Finjan has failed to demonstrate that the accused products (Capture ATP, Gateways + Capture

5 ATP, and Email Security + Capture ATP) include "a transmitter…for transmitting the incoming

6 Downloadable and a representation of the retrieved Downloadable security profile data to a

7 destination computer" as required by asserted claims 22 and 25 of the '926 Patent. Finjan points to

8 Capture ATP as the component that has the transmitter for transmitting, yet it has failed to identify

9 any evidence that Capture ATP ever transmits the Downloadable anywhere much less does so with a

10 representation of retrieved Downloadable security profile data. SonicWall's motion is case

11 dispositive for the '926 Patent given Finjan's failure of proof on this claim element.

12   5. Accusations of infringement by a product combination that was not released until after the

13 expiration of the '926, '844, and '494 Patents. Finjan accuses a combination of SonicWall's Email

14 Security products and Capture ATP as infringing the asserted claims of the '926, '844, and '494

15 Patents. However, none of SonicWall's Email Security products were integrated with Capture ATP

16 until after the '926, '844, and '494 Patents expired. Thus, this issue is ripe for summary judgment.

17   6. Non-infringement based on the "Downloadable" term in the '926, '780, '494, and '844

18 Patents. Finjan has a number of infringement allegations based solely on SonicWall's Gateway

19 products. Claims 22 and 25 of the '926 Patent, claim 9 of the '780 Patent, claims 41 and 43 of the

20 '844 Patent, and claims 10 and 14 of the '494 Patent all require a "Downloadable" to be received or

21 obtained. The Court construed "Downloadable" as "an executable application program, which is

22 downloaded from a source computer and run on the destination computer." SonicWall intends to

23 move for summary judgment of non-infringement of these claims because SonicWall's Gateways

24 analyzes individual internet protocol ("IP") packets as they pass through the firewalls, without ever

25 reassembling the data carried by those IP packets into a file (unlike most gateway products in the

26 marketplace sold by other vendors). An IP packet by itself – i.e., the thing that SonicWall's

27 Gateways actually analyze – is not executable. Conversely, a file (which is comprised of data

28

4

DOCKET ALARM

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.