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13 FINJAN LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 (SAN JOSE DIVISION)
17

18 FINJAN LLC, a Delaware Limited Liability
19 Company,

20 Plaintiff,

21 v.

22 SONICWALL, INC., a Delaware Corporation,

23 Defendant.
24

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

**PLAINTIFF FINJAN LLC'S MOTION TO
PRECLUDE TRIAL TESTIMONY
RELATING TO WRITTEN
DESCRIPTION**

Date: June 24, 2021

Time: 9:00 a.m.

Judge: Hon. Beth Labson Freeman

Dept: Courtroom 3, Fifth Floor

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26 **REDACTED VERSION OF DOCUMENT FILED**
27 **UNDER SEAL**
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TABLE OF CONTENTS

1

2 I. NOTICE OF MOTION 1

3 II. STATEMENT OF RELIEF BEING SOUGHT AND THE ISSUE TO BE

4 DECIDED 1

5 III. STATEMENT OF THE RELEVANT FACTS 1

6 A. Nature and Stage of the Case 1

7 B. The Written Description Opinions of SonicWall’s Technical Experts

8 are Based on Alternative Claim Constructions Purportedly Drawn

9 from Finjan’s Infringement Allegations, Not the Court’s

10 Constructions 1

11 C. At Deposition, SonicWall’s Technical Experts Confirmed Their

12 Reliance on Alternative Claim Constructions Derived From

13 Infringement Allegations 3

14 IV. ARGUMENT 4

15 A. Legal Standards 4

16 B. The Opinions’ Methodology of Comparing the Patents’ Disclosures

17 to Alternative Claim Constructions Derived From Infringement

18 Allegations is Improper Under *Daubert* and Rule 702 6

19 C. The Opinions Are Additionally Inadmissible Under Rule 403

20 Because They are Non-Probative and Would Promote Confusion

21 About the Claim Constructions the Jury Must Apply During Fact-

22 Finding 8

23 V. CONCLUSION 9

24

25

26

27

28

TABLE OF AUTHORITIES**Page(s)****Cases**

1		
2		
3	Cases	
4	<i>Ariad Pharms., Inc. v. Eli Lilly & Co.</i> ,	
5	598 F.3d 1336 (Fed. Cir. 2010) (en banc).....	6
6	<i>Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.</i> ,	
7	334 F.3d 1294 (Fed. Cir. 2003).....	7
8	<i>Coleman v. Home Depot, Inc.</i> ,	
9	306 F.3d 1333 (3d Cir. 2002).....	5
10	<i>CytoLogix Corp. v. Ventana Medical Sys., Inc.</i> ,	
11	424 F.3d 1168 (Fed. Cir. 2005).....	8, 9
12	<i>Energy Trans. Grp. v. William Demant Holding A/S</i> ,	
13	697 F.3d 1342 (Fed. Cir. 2012).....	6
14	<i>Every Penny Counts, Inc. v. American Express Co.</i> ,	
15	563 F.3d 1378 (Fed. Cir. 2009).....	5, 8, 9
16	<i>Koninklijke Philips Elecs. N.V. v. Cardiac Sci. Operating Co.</i> ,	
17	590 F.3d 1326 (Fed. Cir. 2010).....	7
18	<i>Markman v. Westview Instruments, Inc.</i> ,	
19	517 U.S. 370 (1996).....	5, 9
20	<i>O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.</i> ,	
21	521 F.3d 1351 (Fed. Cir. 2008).....	9
22	<i>Phillips v. AWH Corp.</i> ,	
23	415 F.3d 1303 (Fed. Cir. 2005) (en banc).....	5, 7
24	<i>SRI Int'l v. Matsushita Elec. Corp. of Am.</i> ,	
25	775 F.2d 1107 (Fed. Cir. 1985) (en banc).....	7
26	<i>Summit 6, LLC v. Samsung Elecs. Co.</i> ,	
27	802 F.3d 1283 (Fed. Cir. 2015).....	5
28	<i>Uniloc USA, Inc. v. Microsoft Corp.</i> ,	
	632 F.3d 1292 (Fed. Cir. 2011).....	5
	<i>United States v. Redlightning</i> ,	
	624 F.3d 1090 (9th Cir. 2010).....	5

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Statutes

35 U.S.C. § 112, ¶ 1.....5

Other Authorities

Fed. R. Evid. 403.....5

Fed. R. Evid. 702.....4

Fed. R. Evid. 703.....5

1 **I. NOTICE OF MOTION**

2 **NOTICE IS HEREBY GIVEN** that on June 24, 2021, at 9:00 a.m. PT or as soon as
3 counsel may be heard by the Honorable Beth Labson Freeman, Plaintiff Finjan LLC (“Finjan”)
4 will and hereby does move for an order precluding certain trial testimony from Aviel Rubin,
5 Ph.D.; Kevin Almeroth, Ph.D.; and Patrick McDaniel, Ph.D. (together, “the SonicWall Technical
6 Experts”).

7 **II. STATEMENT OF RELIEF BEING SOUGHT AND THE ISSUE TO BE DECIDED**

8 Finjan seeks an order precluding Drs. Rubin, Almeroth, and McDaniel from presenting at
9 trial any opinions that any asserted patent lacks sufficient written description for its asserted
10 claims, and/or that any asserted patent is invalid for that reason. The issue to be decided is
11 whether the SonicWall Technical Experts’ opinions on this issue comport with controlling law
12 requiring that the written description inquiry apply the claims as construed by the court, and not
13 alternative constructions purportedly gleaned from infringement contentions.

14 **III. STATEMENT OF THE RELEVANT FACTS**

15 **A. Nature and Stage of the Case**

16 This is a patent case. Finjan accuses Defendant SonicWall, Inc. (“SonicWall”) with
17 infringing eight Finjan patents. Discovery in this case closed in October 2020, and the Court has
18 scheduled trial to begin on May 3, 2021.

19 **B. The Written Description Opinions of SonicWall’s Technical Experts are Based**
20 **on Alternative Claim Constructions Purportedly Drawn from Finjan’s**
21 **Infringement Allegations, Not the Court’s Constructions**

22 In September 2020, SonicWall’s counsel served expert reports from each of the SonicWall
23 Technical Experts. Each of these reports contains opinions about the sufficiency of the written
24 description supporting Finjan’s claims.¹ Each of these opinions applies the same basic

25 _____
26 ¹ Exhibits (“Exh.”) are attached to the Declaration of Robert Courtney in Support of Finjan’s
27 Motion to Preclude Trial Testimony Relating to Written Description. The Rubin report addressed
28

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