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Attorneys for Plaintiff
FINJAN LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(SAN JOSE DIVISION)

| | |
|---|---|
| FINJAN LLC, a Delaware Limited Liability Company,<br><br>Plaintiff,<br><br>v.<br><br>SONICWALL, INC., a Delaware Corporation,<br><br>Defendant. | Case No. 5:17-cv-04467-BLF (VKD)<br><br>**PLAINTIFF FINJAN LLC'S MOTION TO PRECLUDE TRIAL TESTIMONY RELATING TO WRITTEN DESCRIPTION**<br><br>Date: June 24, 2021<br>Time: 9:00 a.m.<br>Judge: Hon. Beth Labson Freeman<br>Dept: Courtroom 3, Fifth Floor |

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## I. NOTICE OF MOTION

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

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

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

## III. STATEMENT OF THE RELEVANT FACTS

### A. Nature and Stage of the Case

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

### B. The Written Description Opinions of SonicWall's Technical Experts are Based on Alternative Claim Constructions Purportedly Drawn from Finjan's Infringement Allegations, Not the Court's Constructions

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

[1] Exhibits ("Exh.") are attached to the Declaration of Robert Courtney in Support of Finjan's Motion to Preclude Trial Testimony Relating to Written Description. The Rubin report addressed

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