

1 Juanita R. Brooks (CA SBN 75934) brooks@fr.com
Roger A. Denning (CA SBN 228998) denning@fr.com
2 Jason W. Wolff (CA SBN 215819) wolff@fr.com
John-Paul Fryckman (CA SBN 317591) fryckman@fr.com
3 K. Nicole Williams (CA291900) nwilliams@fr.com
FISH & RICHARDSON P.C.
4 12860 El Camino Real, Suite 400
San Diego, CA 92130
5 Telephone: (858) 678-5070 / Fax: (858) 678-5099

6 Proshanto Mukherji (*Pro Hac Vice*) mukherji@fr.com
FISH & RICHARDSON P.C.
7 One Marina Park Drive
Boston, MA 02210
8 Phone: (617) 542-5070/ Fax: (617) 542-5906

9 Robert Courtney (CA SNB 248392) courtney@fr.com
FISH & RICHARDSON P.C.
10 3200 RBC Plaza
60 South Sixth Street
11 Minneapolis, MN 55402
Phone: (612) 335-5070 / Fax: (612) 288-9696

12 Attorneys for Plaintiff
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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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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