

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
 3 John-Paul Fryckman (CA 317591) fryckman@fr.com
 K. Nicole Williams (CA291900) nwilliams@fr.com
 4 FISH & RICHARDSON P.C.
 12860 El Camino Real, Ste. 400
 5 San Diego, CA 92130
 Telephone: (858) 678-5070 / Fax: (858) 678-5099
 6

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

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

13 Attorneys for Plaintiff
 14 FINJAN LLC

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

18 FINJAN LLC., a Delaware Limited Liability
 19 Company,

20 Plaintiff,

21 v.

22 SONICWALL, INC., a Delaware Corporation,

23 Defendant.
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 25
 26
 27
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Case No. 5:17-cv-04467-BLF (VKD)

PLAINTIFF FINJAN LLC'S MOTION *IN LIMINE* NO. 5 TO PRECLUDE EVIDENCE OF OTHER PENDING PROCEEDINGS INVOLVING FINJAN

Date: March 18, 2021
 Time: 1:30 PM
 Hon. Beth Labson Freeman
 Ctrm: 3, 5th Floor

1 **I. INTRODUCTION**

2 Pursuant to Federal Rules of Evidence 401, 402, 403, and 611, Finjan LLC (“Finjan”)
3 respectfully requests that the Court exclude from presentation to the jury at trial any discussion of
4 other pending proceedings—namely, proceedings that have not reached final disposition or remain
5 on appeal—involving Finjan and Finjan’s patents (the “Pending Proceedings”). This court granted
6 similar motions *in limine* in *Finjan, Inc. v. Blue Coat Sys.*, Case No. 15-03295, D.I. 404 at 4–5 (N.D.
7 Cal. Oct. 18, 2017) (“*Bluecoat*”). In *Finjan v. Cisco Sys.*, Case No. 17-00072, D.I. 660 at 1–2 (N.D.
8 Cal. June 5, 2020) (“*Cisco*”), this Court excluded all mention of pending IPRs, *id.* at 2, and allowed
9 mention of pending litigation only for the very limited purpose of “cross examin[ing] Finjan’s
10 experts on their work and associated compensation for Finjan in other pending lawsuits,” *id.*, and
11 not for purposes such as criticizing Finjan or its litigation practices. *Id.*

12 The Court should exclude evidence and argument regarding the Pending Proceedings
13 because preliminary results in those proceedings are irrelevant and also carry a substantial risk the
14 jury will be confused as to the specifics of Finjan’s claims against SonicWall and its accused
15 products, and/or that the jury will perceive Finjan negatively because of its involvement in other
16 litigations. Thus, any discussion of the Pending Proceedings would be unduly prejudicial to Finjan
17 given the risk of confusing the jury and/or encouraging it to decide the issues before it based on
18 irrelevant factors. At a minimum, the court should follow *Cisco* in excluding pending IPRs entirely
19 and limit evidence of pending litigations solely to the question of expert witness compensation.

20 **II. ARGUMENT**

21 The Court should preclude SonicWall from presenting any argument or evidence regarding
22 Pending Proceedings involving Finjan and its patent portfolio as it did in *Bluecoat*. *First*, the mere
23 existence of these proceedings (and the substance/outcome of any interlocutory rulings) has no
24 bearing or relevance to the issues here, *i.e.*, the Pending Proceedings do not have “any tendency to

1 are multiple co-pending proceedings involving Finjan and patents in its portfolio, but not SonicWall
2 or its accused products. There have been no final decisions on the merits of the claims or defenses
3 in these proceedings, and fact discovery has yet to close in some of them.

4 *Second*, given the non-final nature of the co-pending proceedings, any alleged probative
5 value would be far outweighed by the significant risk of prejudice and confusion. *See* Fed. R. Evid.
6 403. For example, introducing evidence of Pending Proceedings carries a substantial risk the jury
7 will be confused as to the specifics of Finjan’s claims against SonicWall and its accused products.
8 *See, e.g., Callaway Golf Co. v. Acushnet Co.*, 576 F.3d 1331, 1343 (Fed. Cir. 2009) (“[T]he
9 prejudicial nature of evidence concerning the ongoing parallel re-examination proceeding
10 outweighed whatever marginal probative or corrective value it might have had”); *Wonderland*
11 *NurseryGoods Co. v. Thorley Indus., LLC*, No. CIV.A. 12-196, 2014 WL 289446, at *2 (W.D. Pa.
12 Jan. 22, 2014) (“the probative value of the existence of other litigation and disputes is substantially
13 outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, and
14 undue delay.”); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md-01819
15 CW, 2010 WL 10086747, at *2 (N.D. Cal. Dec. 16, 2010) (granting motion *in limine* to exclude
16 reference to party’s other litigation, finding “[s]uch evidence does not appear relevant”); *In re*
17 *Homestore.com, Inc. Sec. Litig.*, No. CV 01-11115, 2011 WL 291176, at *1 (C.D. Cal. Jan. 25,
18 2011) (excluding evidence of other litigations due to irrelevance).

19 *Third*, as this court recognized in *Cisco*, introducing evidence of other pending litigations
20 also carries a substantial risk that the jury will perceive Finjan negatively simply because it is
21 involved in other litigations. *Cisco*, D.I. 660 at 1–2 (“The Court also excludes any characterization
22 of Finjan as litigious by discussing details of Finjan’s ongoing lawsuits”). Finjan has a lawful
23 right to seek redress for infringement of its patents against SonicWall, regardless of the existence of
24 other proceedings, and any evidence or argument seeking to paint Finjan as overly litigious is highly

1 Apr. 13, 2011) (the slight probative value of plaintiff’s litigation history was “outweighed by the
2 substantial danger of jury bias against the chronic litigant”).

3 Finjan submits that, in light of these considerations, the court was correct in *Blue Coat* to
4 exclude all evidence of pending proceedings, subject to revision if SonicWall can make a showing
5 at trial that, in light of evidence or argument presented at trial, justice requires permitting specific
6 evidence of specific pending litigation be admitted. *Blue Coat*, D.I. 404 at 4–5. However, if the
7 Court were to find, as in *Cisco*, that the suggestion of expert-witness bias arising from the fact that
8 the parties compensated their experts for their work in those cases can outweigh these
9 considerations, then Finjan asks that the court at least follow its decision in that case and: (1) exclude
10 all mention of pending IPRs, *id.* at 2, and (2) allow mention of pending litigation only for the very
11 limited purpose of “cross examin[ing] Finjan’s experts on their work and associated compensation
12 for Finjan in other pending lawsuits.” *Id.* Specifically, Cisco should not be permitted to introduce
13 evidence regarding the substance of pending litigation or use such litigation to expressly or
14 implicitly criticize Finjan’s business or litigation practices. *Id.*

15 III. CONCLUSION

16 Based on the foregoing reasons, Finjan respectfully requests the Court grant its Motion *in*
17 *Limine* No. 5.

18 Respectfully Submitted,

19 Dated: March 4, 2021

20 By: /s/ Proshanto Mukherji

Juanita R. Brooks (CA SBN 75934)

brooks@fr.com

21 Roger A. Denning (CA SBN 228998)

denning@fr.com

22 Jason W. Wolff (CA SBN 215819)

wolff@fr.com

John-Paul Fryckman (CA 317591)

fryckman@fr.com

23 K. Nicole Williams (CA 291900)

nwilliams@fr.com

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12860 El Camino Real, Ste. 400

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mukherji@fr.com
FISH & RICHARDSON P.C.
One Marina Park Drive
Boston, MA 02210
Phone: (617) 542-5070/ Fax: (617) 542-5906

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

Attorneys for Plaintiff
FINJAN LLC

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