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13 *Attorneys for Plaintiff*
 14 FINJAN, INC.

15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
 17 **SAN DIEGO DIVISION**

18 FINJAN, INC., a Delaware Corporation,
 19
 20 Plaintiff,

21 v.

22 ESET, LLC, a California Limited
 23 Liability Corporation, and ESET SPOL.
 24 S.R.O., a Slovak Republic Corporation,
 25
 26 Defendants.

27 ESET, LLC, a California Limited
 28 Liability Corporation, and ESET SPOL.
 29 S.R.O., a Slovak Republic Corporation,
 30
 31 Counterclaim-Plaintiffs,

32 v.

33 FINJAN, INC., a Delaware Corporation,
 34
 35 Counterclaim-Defendant.

Case No. 3:17-cv-00183-CAB-BGS

PRETRIAL ORDER

Trial Date: March 9, 2020
 Time: TBD
 Courtroom: 4C

1 Following pretrial proceedings pursuant to Fed. R. Civ. P. 16 and Civil Local
2 Rule 16.1.f.6, **IT IS SO ORDERED:**

3 **NATURE OF THE CASE**

4 This is an action for patent infringement. The patents at issue are U.S. Patent
5 Nos. 6,154,844 (the "'844 Patent"), 6,804,780 (the "'780 Patent"), 8,079,086 (the "'086
6 Patent"), 9,189,621 (the "'621 Patent"), and 9,219,755 (the "'755 Patent") (collectively,
7 the Asserted Patents). The Asserted Patents generally relate to the field of cyber
8 security, and more specifically to defending against cyber security attacks. Plaintiff
9 Finjan, Inc. (hereinafter, "Finjan") owns the Asserted Patents and alleges that certain of
10 Defendants ESET, LLC's and ESET spol. s.r.o.'s (collectively, "ESET") products
11 infringed claims 1, 7, 11, 15, and 16 of the '844 Patent, claims 9, 13, and 18 of the '780
12 Patent, claims 1-2, 9, 10, 24, and 42 of the '086 Patent, claims 1, 5-7, 10-11, and 13-14
13 of the '621 Patent, and claims 3 and 5-8 of the '755 Patent (the "Asserted Claims").
14 Finjan has the burden of proving that the accused products infringed these claims by a
15 preponderance of the evidence.

16 ESET denies that the accused products infringed any of the Asserted Claims.
17 ESET also alleges that all of the Asserted Claims are invalid. ESET has the burden of
18 proving that the Asserted Claims are invalid by clear and convincing evidence.

19 **CAUSES OF ACTION**

20 **I. Finjan's Causes of Action**

21 Finjan filed its Complaint [Doc. No. 1] on July 1, 2016 originally alleging
22 thirteen counts of patent infringement, including:

- 23 • **Count 1:** Direct Infringement of the '844 Patent pursuant to
24 35 U.S.C. § 271(a);
- 25 • **Count 2:** Induced Infringement of the '844 Patent pursuant to
26 35 U.S.C. § 271(b);

- 1 • **Count 3:** Direct Infringement of the '780 Patent pursuant to
2 35 U.S.C. § 271(a);
- 3 • **Count 4:** Induced Infringement of the '780 Patent pursuant to
4 35 U.S.C. § 271(b);
- 5 • **Count 5:** Direct Infringement of the '305 Patent pursuant to
6 35 U.S.C. § 271(a);¹
- 7 • **Count 6:** Induced Infringement of the '305 Patent pursuant to
8 35 U.S.C. § 271(b);
- 9 • **Count 7:** Direct Infringement of the '086 Patent pursuant to
10 35 U.S.C. § 271(a);
- 11 • **Count 8:** Induced Infringement of the '086 Patent pursuant to
12 35 U.S.C. § 271(b);
- 13 • **Count 9:** Direct Infringement of the '621 Patent pursuant to
14 35 U.S.C. § 271(a);
- 15 • **Count 10:** Induced Infringement of the '621 Patent pursuant to
16 35 U.S.C. § 271(b);
- 17 • **Count 12:** Direct Infringement of the '755 Patent pursuant to
18 35 U.S.C. § 271(a);
- 19 • **Count 13:** Induced Infringement of the '755 Patent pursuant to
20 35 U.S.C. § 271(b).

21 Finjan alleges that the following ESET products infringe claims 1, 7, 11, 15, and
22 16 of the '844 Patent directly (literally or under the doctrine of equivalents) (Count 1) or
23 by inducement (Count 2)²:

24 ¹ The '305 Patent is currently stayed pending a final resolution on ESET's *inter partes*
25 review petition and will not be adjudicated in this trial. *See* Dkt. No. 447.

26 ² ESET objects to Finjan's claim that any ESET products infringe (present tense) the
27 Asserted Patents, as all Asserted Patents have expired (and thus all claims for
28 infringement should be in the past tense).

- 1 • The “**844 Cloud Products**” which collectively include LiveGrid
2 Reputation System, LiveGrid Feedback System, ThreatSense.Net,
3 Cloud Malware Protection System (“CMPS”), Enterprise Cloud
4 Malware Protection System (“ECMPS”), LiveGrid Cloud, ESET
5 Dynamic Threat Defense (“EDTD”), and Threat Intelligence;³
- 6 • The “**844 Gateway Products**” which collectively include the ESET
7 Small Business Security Pack products, ESET Mail Security for
8 Linux/BSD, ESET Mail Security for Kerio, ESET Gateway Security
9 for Linux/BSD, and ESET Gateway Security for Kerio and ESET
10 Security for Virtual Environment, and ESET Virtualization Security
11 (per Host, per Processor and per VM).

12 Finjan alleges that the following ESET products infringe claims 9, 13, and 18 of
13 the ’780 Patent directly (literally or under the doctrine of equivalents) (Count 3) or
14 indirectly (Count 4), and claims 1, 2, 9, 10, 24, and 42 of the ’086 Patent directly
15 (literally or under the doctrine of equivalents) (Count 7) or by inducement (Count 8):

- 16 • The “**780/’086 Cloud Products**” which collectively include
17 LiveGrid Reputation System, LiveGrid Feedback System,
18 ThreatSense.Net, Cloud Malware Protection System (“CMPS”),
19 Enterprise Cloud Malware Protection System (“ECMPS”), LiveGrid
20 Cloud, ESET Dynamic Threat Defense (“EDTD”), and Threat
21 Intelligence;
- 22 • The “**780/’086 Endpoint Products**” which collectively include (N)
23 ESET Multi-Device Security Pack, (N+N) ESET Multi-Device
24 Security Pack, ESET NOD32 Antivirus, ESET Smart Security, ESET
25 Internet Security, ESET Smart Security Premium, ESET Multi-Device
26 Home Office, ESET Small Office Security Pack, ESET Small
27 Business Security Pack, ESET Endpoint Antivirus for Windows,

28 ³ ESET objects to Finjan’s various groupings of ESET’s products in this portion of the
29 Pretrial Order because (1) these backend services are not “products” and (2) some of
these services, specifically ECMPS, EDTD, and Threat Intelligence were not released
prior to expiration of the Asserted Patents. In addition, other listed “products” are not
products but marketing bundles of other products. “ESET Multi-Device Home Office”
is one such marketed bundle but does not consist of any actual products, instead it offers
licenses to a number of other products that can be used.

1 ESET Endpoint Security for Windows, ESET Cyber Security, ESET
 2 Cyber Security Pro, ESET Endpoint Antivirus for Mac OS X, ESET
 3 Endpoint Security for Mac OS X, ESET NOD32 Antivirus for Linux,
 4 and ESET Endpoint Antivirus for Linux, ESET Internet Security, and
 ESET Security for Virtual Environment;

- 5 • The **“’780/’086 Server Products”** which collectively include ESET
 6 Mail Security for Microsoft Exchange Server, ESET File Security for
 7 Microsoft Windows Server, ESET Security for Microsoft SharePoint
 8 Server, ESET Security for Virtual Environment, ESET Mail Security
 9 for IBM Domino, ESET Mail Security for Kerio, ESET Gateway
 Security for Kerio, ESET Gateway Security for Linux/BSD, ESET
 Mail Security for Linux/BSD, and ESET File Security for Linux/BSD.

10 Finjan alleges that the following ESET products infringe claims 1, 5-7, 10-11, and
 11 13-14 of the ’621 Patent directly (literally or under the doctrine of equivalents) (Count
 12 9) or by inducement (Count 10), and claims 3 and 5-8 of the ’755 Patent directly
 13 (literally or under the doctrine of equivalents) (Count 12) or by inducement (Count 13):

- 14 • The **“’621 Cloud Products”⁴** which collectively include all ESET
 15 products that operate on Windows, LiveGrid Reputation System,
 16 LiveGrid Feedback System, ThreatSense.Net, Cloud Malware
 Protection System, and Threat Intelligence;
- 17 • The **“’621/’755 Endpoint Products”** which collectively include all
 18 ESET products that operate on Windows, ESET Multi-Device
 19 Security, ESET NOD32 Antivirus, ESET Smart Security, ESET
 20 Internet Security, ESET Smart Security Premium, ESET Multi-Device
 21 Home Office, ESET Small Office Security Pack, ESET Small
 22 Business Security Pack, ESET Endpoint Antivirus for Windows,
 ESET Endpoint Security for Windows, ESET Cyber Security, ESET
 23 Cyber Security Pro, ESET Multi-Device Security, ESET Multi-
 Device Home Office, and ESET Security for Virtual Environment;
- 24 • The **“’621/’755 Windows and Domino Server Products”** which
 25 collectively all ESET products that operate on Windows, including
 26 ESET Mail Security for Microsoft Exchange Server, ESET File

27 ⁴ The ’621 Cloud Products are not asserted against the ’755 Patent.
 28

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