

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FINJAN, INC., a Delaware Corporation,

Plaintiff,

v.

RAPID7, INC., a Delaware Corporation  
and RAPID7 LLC, a Delaware Limited  
Liability Company,

Defendants.

C.A. No. 1:18-cv-01519-MN

Jury Trial Demanded

**OPENING BRIEF IN SUPPORT OF MOTION TO EXTEND CASE SCHEDULE**

Dated: June 4, 2020

***OF COUNSEL:***

L. Norwood Jameson

Matthew C. Gaudet

David C. Dotson

**DUANE MORRIS LLP**

1075 Peachtree Street NE, Suite 2000

Atlanta, GA 30309

Tel.: (404) 253-6900

Fax: (404) 253-6901

wjameson@duanemorris.com

mCGaudet@duanemorris.com

dcdotson@duanemorris.com

Jordana Garellek

**DUANE MORRIS LLP**

Duane Morris LLP

1540 Broadway

New York, NY 10036-4086

Tel.: (212) 471-1829

Fax: (212) 214-0889

jgarellek@duanemorris.com

Richard L. Renck (No. 3893)

**DUANE MORRIS LLP**

222 Delaware Avenue,

Suite 1600

Wilmington, DE 19801-1659

Tel.: (302) 657-4900

Fax: (302) 657-4901

RLRenck@duanemorris.com

*Counsel for Defendants*

*Rapid7, Inc. and Rapid7 LLC*

*\*admitted pro hac vice*

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## I. NATURE AND STAGE OF THE PROCEEDINGS

This is a patent infringement matter that was filed October 1, 2018, in which Plaintiff, Finjan, Inc. (“Finjan”) has sued Defendants Rapid7, Inc. and Rapid7 LLC (collectively “Rapid7”) for infringement of seven United States Patents. D.I. 1. Fact discovery has closed, and the Parties’ Opening Expert Reports are currently due June 15, 2020, with Rebuttal Expert Reports due July 17, 2020. D.I. 139. Expert discovery currently closes September 1, 2020. *Id.*

## II. SUMMARY OF ARGUMENT

1. Rapid7 respectfully requests that the Court extend the remaining deadlines in this matter, starting with Rebuttal Expert Reports and including the trial date, as a result of complications resulting from the ongoing COVID-19 pandemic. Rapid7’s proposed deadlines are as follows:

Deadline	Current Date	Rapid7’s Proposal
Opening/Burden of Proof Expert Reports	6/15/20	same
Rebuttal Expert Reports	7/17/20	11/13/20
Reply Expert Reports	8/10/20	12/9/20
Close of expert discovery	9/1/20	1/15/21
Opening letter briefs seeking permission to file summary judgment motions	9/4/20	1/22/21
Answering letter briefs regarding requests to file motions for summary judgment	7 days after opening letter brief	7 days after opening letter brief
Case Dispositive Motions (if permitted) and Daubert Motions	9/25/20	2/19/21
Joint Proposed final pretrial order	2/1/21	6/14/21
Pre-trial Conference	2/08/21 – 2 PM	6/21/21 (or at the Court’s convenience)
Trial – 6-day Jury	2/22/21 – 9:30 AM	6/28/21 (or at the Court’s convenience)

2. Good cause exists for extending the deadlines, as explained herein, and there is no prejudice to Finjan.

### III. STATEMENT OF FACTS

The Parties have twice stipulated to extend the expert report and expert discovery deadlines in this case in view of the COVID-19 pandemic and resulting shelter in place laws. D.I. 132, 138. The reason for the stipulations included the fact that Rapid7's facilities had been closed through June 1, 2020, as the Parties noted in the stipulations: "[t]he COVID-19 pandemic and resulting shelter in place laws have created further substantial impediments to the ability of the Parties and their experts to complete expert reports on the current schedule. This includes the inability for experts to travel to access Defendants' source code, as Defendants' facilities are currently closed through June 1, 2020." D.I. 138 at 1.

Rapid7 has now extended the general closure of its facilities and the related travel ban for its employees through August 2020 in view of the COVID-19 pandemic. Ex. 1, Rapid7 Return to Workplace Town Hall Update at 2-4.<sup>1</sup> Rapid7's headquarters are in Boston, MA, as are the stand-alone, non-networked source code review computers created for this matter pursuant to the Court's Protective Order. D.I. 33 at ¶ 8.1(a), (b). The state of Massachusetts presently instructs "all travelers arriving to Massachusetts . . . to self-quarantine for 14 days." Ex. 2, Mass.gov Travel Information related to COVID-19 at 1. Further illustrating the approach of the state of Massachusetts, the District of Massachusetts also recently issued a Second Supplemental Order Concerning Jury Trials and Related Proceedings continuing all jury trials in the District of Massachusetts scheduled on or before September 8, 2020 in view of the COVID-19 pandemic.

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<sup>1</sup> The term "Moose" in Ex. 1 refers to Rapid7's employees.

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