

**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.

Case No. 1:18-cv-01519-MN

**DECLARATION OF AARON M. FRANKEL IN SUPPORT OF
PLAINTIFF FINJAN, INC.'S OPPOSITION TO DEFENDANTS RAPID7, INC.
AND RAPID7 LLC'S MOTION TO EXTEND CASE SCHEDULE**

OF COUNSEL:

Paul J. Andre
Lisa Kobialka
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700
pandre@kramerlevin.com
lkobialka@kramerlevin.com

Aaron M. Frankel
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100
afrankel@kramerlevin.com

Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
POTTER ANDERSON & CORROON LLP
1313 North Market Street 6th Floor
Wilmington, DE 19801
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

Attorneys for Plaintiff
FINJAN, INC.

Dated: June 12, 2020

I, Aaron M. Frankel, declare as follows:

1. I am an attorney with the law firm Kramer Levin Naftalis & Frankel LLP, counsel of record for Finjan, Inc. (“Finjan”) for the above referenced matter. I have personal knowledge of the facts stated herein and can testify competently to those facts. I make this declaration in support of Plaintiff Finjan, Inc.’s Opposition to Defendants Rapid 7, Inc. and Rapid 7 LLC’s Motion to Extend Case Schedule (“Motion”).

2. As a compromise proposal to further extend the expert discovery period without jeopardizing the trial date, Finjan suggested that the parties mutually agree to forgo summary judgment, which would have freed up over three months. Rapid7 declined the offer.

3. Notwithstanding the logistical challenges created by COVID-19, our group is advancing its various cases by conducting remote depositions, hearings, meetings, and trials. We are also conducting remote source code reviews in multiple cases, relying on various secure technologies to do so.

4. The same counsel representing Rapid7 in this action recently presented Drs. Kevin Almeroth and Steven Becker as expert witnesses at trial (by Zoom videoconference) in *Centripetal Networks Inc. v. Cisco Systems Inc.*, 2:18-cv-00094 (E.D. Va.). Rapid7 is also using Drs. Kevin Almeroth and Steven Becker as experts in this action.

5. Attached hereto as Exhibit 1 is a true and correct copy of a Rapid7 webpage entitled “Recent Releases” for Nexpose, available at <https://help.rapid7.com/nexpose/en-us/release-notes/>, last accessed on June 8, 2020.

6. Attached hereto as Exhibit 2 is a true and correct copy of a Rapid7 webpage entitled “Recent Releases” for Metasploit, available at <https://help.rapid7.com/metasploit/release-notes/>, last accessed on June 8, 2020.

7. Attached hereto as Exhibit 3 is a true and correct copy of a Rapid7 webpage entitled “Recent Releases” for Appspider, available at <https://help.rapid7.com/appspider/release-notes/>, last accessed on June 8, 2020.

8. Attached hereto as Exhibit 4 is a true and correct copy of the docket text for the Order Denying Joint Motion for Extension of Time from *BPI Sports, LLC v. ThermoLife Int’l, LLC*, 19-cv-60505 (S.D. Fla. Mar. 18, 2020).

9. Attached hereto as Exhibit 5 is a true and correct copy of a webpage entitled “Cisco Patent Trial Kicks Off Over Zoom Without a Hitch,” available at <https://www.law360.com/articles/1269331/cisco-patent-trial-kicks-off-over-zoom-without-a-hitch>, last accessed on June 11, 2020.

10. Attached hereto as Exhibit 6 is a true and correct copy of the Order Granting in Part Defendants’ Opposed Motion to Extend Case Schedule from *Orthopaedic Hospital v. DJO Global, Inc. and DJO Finance, LLC*, Case No. 3:19-cv-00970-JLS-AHG, Dkt. No. 66 (S.D. Cal. May 28, 2020).

11. Attached hereto as Exhibit 7 is a true and correct copy of the Order from *Uniloc USA, Inc. v. Big Fish Games, Inc.*, 2:16-cv-00741-RWS (E.D. Tex. Apr. 30, 2020).

12. Attached hereto as Exhibit 8 is a true and correct copy of a webpage entitled “Strategies for Remote Source Code Review,” available at <https://www.law360.com/articles/1265185/strategies-for-remote-source-code-review>, last accessed on June 11, 2020.

13. Attached as Exhibit 9 is a true and correct copy of the Stipulation and Proposed Order Amending ¶¶ 37-46 (Disclosure and Review of Source Code) of the Protective Order from

Fraunhofer-Gesellschaft Zur Forderung Der Angew Andten Forschung E.V. v. Sirius XM Radio Inc., C.A. No. 17-184-JFB-SRF, D.I. 253 (D. Del. May 21, 2020).

14. Attached as Exhibit 10 is a true and correct copy of the Order re: Source Code Review from *Bot M8 LLC v. Sony Corp. of Am., et al.*, No. 19-cv-07027 WHA, Dkt. No. 131 (N.D. Cal. Mar. 26, 2020).

15. Attached as Exhibit 11 is a true and correct copy of the Order Granting Joint Motion to Amend and Supplement the Protective Order from *In the Matter of Certain Wearable Monitoring Devices, Systems, and Components Thereof*, Inv. No. 337-TA-1190, U.S. I.T.C. (Apr. 28, 2020).

16. Attached as Exhibit 12 is a true and correct copy of a webpage entitled Reopening Massachusetts: Baker-Polito Administration Initiates Transition to Second Phase of Four-Phase Approach, available at <https://www.mass.gov/news/reopening-massachusetts-baker-polito-administration-initiates-transition-to-second-phase-of>, last accessed on June 11, 2020.

17. Attached as Exhibit 13 is a true and correct copy of the Order from *SAS Institute Inc. v. World Programming Limited, Luminex Software, Inc.*, 2:18-cv-00295-JRG (E.D. Tex. May 22, 2020).

I declare under penalty of perjury of the United States of America that the foregoing is true and correct. Executed on June 12, 2020, in Allendale, New Jersey.

By: /s/ Aaron M. Frankel
Aaron M. Frankel