

**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

**EXHIBITS A, B, D-H, AND J-N TO
DEFENDANTS' LETTER BRIEF TO
COMPEL PRODUCTION OF IBM
DOCUMENTS, WHICH WAS FILED
UNDER SEAL IN A SEPARATE TRANSACTION**

DATED: June 30, 2020

DUANE MORRIS LLP

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*COUNSEL FOR DEFENDANTS
DEFENDANTS RAPID7, INC. AND
RAPID7 LLC*

EXHIBIT A

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Thursday, April 30, 2020 1:53 PM
To: Gaudet, Matthew C.; Forte, Jennifer H.; Dotson, David C.; Jameson, Woody; Gibson, John R.; Gunther, Jarrad M.; Garellek, Jordana; Renck, Richard L.; Snedeker, Alice
Cc: Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; Hedvat, Shannon H.; Pymento, Julian; provner@potteranderson.com; 'Choa, Jonathan A.'
Subject: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

IBM consents to the production of the patent assignment agreement between IBM and Finjan on a "CONFIDENTIAL-- OUTSIDE COUNSEL ONLY" and ""HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" basis under the respective protective orders in the *Rapid7* and *SonicWall* cases, subject to Defendants' agreement that all electronic and physical copies of the agreement will be returned to Finjan or destroyed when the litigations are concluded. Please confirm Defendants' agreement, and Finjan will produce the document.

IBM objects to the production of documents related to the negotiation of the agreement as, at a minimum, non-responsive to Defendants' discovery requests and irrelevant to the claims and defenses in the litigations.

Regards,
Aaron

Aaron M. Frankel
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Bio

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EXHIBIT B

August 28, 2017



Finjan Announces Formation of New Subsidiary, Finjan Blue, Inc.

Finjan and IBM Enter Patent Acquisition and Development Agreement

EAST PALO ALTO, CA -- (Marketwired) -- 08/28/17 -- [Finjan Holdings](#), Inc. (NASDAQ: FNJN), a cybersecurity company, today announced that it has formed a new subsidiary, Finjan Blue, Inc., a Delaware corporation and wholly owned subsidiary of Finjan Holdings, which has entered into a patent acquisition and development agreement with IBM (NYSE: IBM), and includes pathways for the two companies to consider development efforts in the future. The Agreement, the terms of which are confidential, includes the transfer of select security-related patent assets and provides for the sharing of pertinent institutional knowledge and resources by IBM to Finjan Blue.

"Finjan returns to its roots with a business relationship it had with IBM nearly 20 years ago that included Finjan shipping its early enterprise appliance products on the IBM e-series chassis." said Phil Hartstein, President and CEO of Finjan Holdings. "This Agreement sets the foundation for us to work cooperatively with IBM now and into the future, bolsters our growth, and fits squarely within our strategic objectives."

A call to discuss Finjan's new subsidiary, Finjan Blue, Inc. will be held on Monday, August 28, 2017 at 1:30 p.m. PT/ 4:30 p.m. ET. Interested parties can dial in 1-855-327-6837. The call will also be webcasted on the IR section of Finjan's website <https://ir.finjan.com/ir-calendar>.

ABOUT FINJAN

Established nearly 20 years ago, Finjan is a globally recognized leader in cybersecurity. Finjan's inventions are embedded within a strong portfolio of patents focusing on software and hardware technologies capable of proactively detecting previously unknown and emerging threats on a real-time, behavior-based basis. Finjan continues to grow through investments in innovation, strategic acquisitions, and partnerships promoting economic advancement and job creation. For more information, please visit www.finjan.com. Finjan® is the registered trademark of Finjan Holdings, Inc.

Follow Finjan Holdings, Inc.:

Twitter: [@FinjanHoldings](#)

LinkedIn: linkedin.com/company/finjan

Facebook: facebook.com/finjanholdings

Cautionary Note Regarding Forward-Looking Statements

Except for historical information, the matters set forth herein that are forward-looking statements involve certain risks and uncertainties that could cause actual results to differ. Potential risks and uncertainties include, but are not limited to, Finjan's expectations and beliefs regarding Finjan's licensing program, the outcome of pending or future enforcement actions, the granting of Inter Partes Review (IPR) of our patents or an unfavorable determination pursuant to an IPR or other challenges at the USPTO of our patents, the enforceability of our patents, the cost of litigation, timing of redemption of shares of preferred stock, the unpredictability of our cash flows, our ability to expand our technology and patent portfolio, the continued use of our technologies in the market, our stock price, changes in the trading market for our securities, regulatory developments, general economic and market conditions, the market acceptance and successful business, technical and economic implementation of Finjan Holdings' intended operational plan; and the other risk factors set forth from time to time in our filings with the SEC, including our Annual Report on Form 10-K for the year ended December 31, 2016, and the Company's periodic filings with the SEC, copies of which are available free of charge at the SEC's website at www.sec.gov or upon request from Finjan Holdings, Inc. All forward-looking statements herein reflect our opinions only as of the date of this release. These statements are not guarantees of future performance and actual results could differ materially from our current expectations. Finjan Holdings undertakes no obligation, and expressly disclaims any obligation, to update forward-looking statements herein in light of new information or future events.

Finjan Contact:

Vanessa Winter | Finjan

Valter Pinto | KCSA Strategic Communications

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Source: Finjan Holdings, Inc.

EXHIBIT C

FILED UNDER SEAL

EXHIBIT D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN, INC.,
Plaintiff,
v.
CISCO SYSTEMS INC.,
Defendant.

Case No. 17-cv-00072-BLF (SVK)

*****FILED UNDER SEAL*****

**FINAL ORDER ON MOTIONS HEARD
ON JUNE 6, 2019**

Re: Dkt. Nos. 118, 209, 231, 243, 261

The Court heard oral argument on the following motions on June 6, 2019:

- ECF 188: Finjan’s Motion to Strike Cisco’s Further Updated Second Election of Asserted Prior Art;
- ECF 231: Finjan’s Motion for Leave to Supplement Infringement Contentions;
- ECF 209: Cisco’s Motion to Strike Finjan’s Second Supplemental Objections and Responses to Cisco’s Interrogatory No. 10 or, in the alternative, Leave to Amend to Assert Counterclaim for Breach of Contract;
- ECF 243: Joint discovery letter brief re deposition subpoena to non-party Neal Rubin; and
- ECF 261: Joint discovery letter brief re Finjan’s production of documents regarding relationship between IBM and Finjan/Finjan Blue.

In advance of the hearing, the Court issued tentative rulings and questions on the motions. ECF 271. This order contains the Court’s final rulings on the motions. After careful consideration of the parties’ submissions, statements at oral arguments, the case file, and relevant law, the Court ORDERS as follows:

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United States District Court
Northern District of California

United States District Court
Northern District of California

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**ECF 188: Finjan’s Motion to Strike
Cisco’s Further Updated Second Election of Asserted Prior Art**

Finjan moves to strike Cisco’s Further Updated Second Election of Asserted Prior Art on the grounds that it does not comply with the Court’s August 16, 2017 Order requiring a phased reduction in the number of asserted prior art references in this case. ECF188; *see also* ECF 70 (the “August 2017 Order”). Finjan’s motion is **GRANTED IN PART** and **DENIED IN PART**.

I. Background

Patent Local Rule 3-3 requires that after the patent holder serves a Disclosure of Asserted Claims and Infringement Contentions, the accused infringer must serve Invalidity Contentions. The Invalidity Contentions must contain, among other things, “[a] chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found.” Patent L.R. 3-3(c).

The Court’s August 2017 Order adopted the parties’ stipulation to streamline the case by imposing “phased limits on asserted claims, prior art and invalidity theories.” ECF 70 at 4. Specifically, after Cisco provided its Invalidity Contentions, Finjan was required to serve a Preliminary Election of Asserted Claims, selecting a limited number of claims from the claims Finjan had previously asserted in its Infringement Contentions. *Id.* Cisco was then required to serve a Preliminary Election of Asserted Prior Art, electing a limited number of prior art references from prior art previously asserted in its Invalidity Contentions. *Id.*

The second phase of elections required the parties to further reduce the number of asserted claims and prior art references by serving a Second Election of Asserted Claims (by Finjan), followed by a Second Election of Asserted Prior Art (by Cisco). *Id.*

On September 13, 2018, the Court issued an order approving the parties’ stipulation to further narrow the asserted claims and prior art in this case. ECF 140. Under that order, Cisco was required to serve a Third Election of Asserted Prior Art, which identified a limited number of invalidity theories from the subset of previously-identified prior art. *Id.* at 1.

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1 **II. Discussion**

2 Finjan’s current motion seeks to strike Cisco’s Second Election of Asserted Prior Art—
3 more precisely, Cisco’s Further Updated Second Election of Asserted Prior Art served on January
4 18, 2019 (for purposes of this Order, that document will be referred to as Cisco’s “Second
5 Election”). ECF 188.¹ The Second Election was served pursuant to the August 2017 Order,
6 which provided that this election “shall assert from the subset of prior art previously identified no
7 more than 6 prior art references per patent and no more than a total of 20 references across all
8 Patents-in-Suit.” ECF 70 at 4. The August 2017 Order clarified that “[a] prior art instrumentality
9 (such as a device or process) and associated references that describe that instrumentality shall
10 count as one reference, as shall the closely related work of a single prior artist.” *Id.* at n.3. Finjan
11 argues that Cisco’s Second Election does not comply with the August 2017 Order because Cisco
12 “chose to obfuscate the specific prior art products it is asserting against Finjan and added new
13 prior art references that Cisco failed to include in its Invalidity Contentions.” ECF 188 at 5.
14 Finjan’s specific disagreements with Cisco’s Second Election are discussed below.

15
16 1. **Cisco’s identification of multiple versions of software:** The Court’s tentative
17 ruling was that each version of software counts as one piece of prior art, and thus if Cisco wants
18 the identified software to count as only one piece of prior art, it must pick a single version of the
19 software to assert. ECF 271. At the hearing, Cisco agreed to update its election of software to
20 conform to the Court’s tentative ruling. Accordingly, the Court adopts its tentative ruling as its
21 final order on the issue of software versions.

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23 2. **Cisco’s identification of multiple versions of user manuals:** The Court’s final
24 order is that for an elected version of software, Cisco may identify a user manual that refers to that

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¹ Following Cisco’s service of its Second Election of Asserted Prior Art, the parties met and conferred on various issues. *See* ECF 188 at 3-4. As a result of those meet and confer efforts, Cisco subsequently served an Updated Second Election on December 14, 2018 and, following additional meet and confer efforts, a Further Updated Second Election of Asserted Prior Art on January 18, 2019. *Id.*; ECF 188-1 at ¶¶ 4-5.

1 specific software version as an “associated reference” under the August 2017 Order. For an
2 elected version of software, Cisco may not identify multiple user manuals across various operating
3 systems

4
5 **3. References that Finjan claims Cisco did not chart as part of its original**
6 **invalidity contentions:** As discussed above, Patent Local Rule 3-3(c) requires the accused
7 infringer to chart each alleged prior art reference. The Court therefore holds that only those
8 primary references that were charted in Cisco’s Invalidation Contentions are valid choices from
9 which Cisco may elect prior art in its narrowing elections. Finjan’s motion to strike argues that
10 Cisco did not chart the ’346 Chess patent, the ’035 Nash patent, or the ’348 Ji patent and that
11 therefore those references may not be included in Cisco’s election of prior art.

12 **a. ’346 Chess patent and ’035 Nash patent**

13 Cisco argues that it adequately charted the ’346 Chess patent the ’035 Nash patent because
14 the chart in its Invalidation Contentions for patent-in-suit 7,647,633, while not identifying these
15 patents specifically, cross-references Section III.C.3 of Cisco’s Invalidation Contentions cover
16 pleading. *See* ECF 195-3 at 8. However, Section III.C.3. of the Invalidation Contentions cover
17 pleading is 15 pages in length and covers at least five claim elements. *See* ECF 194-3 at 51-67.
18 Under the element “Determining if Downloadable-Information has Executable Code,” which itself
19 covers six pages, the Chess and Nash patents are mentioned, along with numerous other
20 references. *Id.* If the issue before the Court was purely a question of whether Finjan was on
21 notice of the Chess and Nash patents, Cisco’s manner of cross-referencing the cover pleading in
22 the ’633 chart might suffice. However, Patent Local Rule 3-3(c) requires prior art references to be
23 charted. Having failed to chart these references, Cisco cannot now elect them as prior art
24 references.

25 **b. ’348 Ji patent**

26 At the hearing, Finjan agreed with Cisco that the ’348 Ji patent was charted for certain
27 asserted claims. Accordingly, that patent can be elected by Cisco as a prior reference for any
28 claim for which it was charted.

ECF 231: Finjan’s Motion to Amend Infringement Contentions

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2 Finjan moves to amend its Infringement Contentions. ECF 231. Finjan’s motion is
3 **DENIED** for the reasons set forth below.

4 A plaintiff may amend its infringement contentions “only by order of the Court upon a
5 timely showing of good cause,” such as the “[r]ecent discovery of nonpublic information about the
6 Accused Instrumentality.” Patent L.R. 3-6. When determining whether to grant leave to amend,
7 the Court first considers whether the party seeking leave acted diligently. *Apple Inc. v. Samsung*
8 *Elects. Co.*, No. CF 12-00630 LHK, 2012 WL 5632618, at *2 (N.D. Cal. Nov. 15, 2012) (citation
9 omitted). The Court then considers whether the proposed amendment would unduly prejudice the
10 non-moving party. *Id.* (citation omitted).

11 In support of its motion, Finjan does not provide a redline of its existing infringement
12 contentions, claiming that redlines made the charts unwieldy. Instead, Finjan has prepared
13 “Supplemental Infringement Charts” and provided the chart for patent-in-suit 6,154,844 as an
14 exemplar. *See* ECF 230-14 (“exemplary example” of Supplemental Infringement Chart – *see* ECF
15 231-1 at ¶ 26). At the hearing, Finjan stated that the issues raised by this motion and Cisco’s
16 opposition fall into two categories: (1) Finjan’s identification of components that correspond to
17 previous contentions, and (2) Finjan’s assertion of Talos as a standalone infringing product.
18 However, the Supplemental Infringement Chart (hereinafter “SIC”) does not distinguish between
19 amendments to identify components and amendments that now assert Talos alone is an infringing
20 product.

1. Identification of components

21
22 Finjan argues that many of its proposed amendments to the Infringement Contentions
23 would simply add the name of a particular component (*e.g.*, ThreatBrain) to its previous
24 contentions regarding the associated functionality. Finjan argues that it learned the internal
25 codenames of various Cisco components only recently during deposition.
26

27 Cisco argues that (1) Finjan’s proposed amendments are not as simple as Finjan suggests,
28 and (2) most of the proposed amendments could have been “discovered” earlier in the litigation

1 through focused depositions. ECF 250. In particular, Cisco notes that the SIC, which is only for
2 the '844 patent, contains 47 proposed changes. Whereas some of the proposed amendments might
3 simply add the name of a component to functionality previously disclosed in Finjan's
4 Infringement Contentions, others appear to seek to link newly-identified components to
5 functionalities disclosed in the Infringement Contentions in a way that simply mirrors the claim
6 language.

7 It appears from the Court's careful review of the proposed SIC and the arguments
8 presented at the hearing that Finjan's proposed amendments to identify components are
9 significantly more complex and prejudicial than Finjan has portrayed them. First and foremost, as
10 described above, Finjan did not present its proposed amendments in the form of a redlined version
11 of its existing Infringement Contentions, but instead as an entirely new, separate document. At the
12 hearing, the Court pressed Finjan on its suggestion that it was merely inserting specific names for
13 a previously described functionality. If that were the case, it is not clear why Finjan's current
14 infringement contention charts could not be redlined to insert the purportedly recently discovered
15 name at the place where the functionality is presently described. Simply put, without a redline, the
16 Court is unable to determine that Finjan's proposed amendments are limited to clarifying the
17 existing contentions rather than expanding them. Thus, the Court is unable to conclude that Finjan
18 has carried its not insubstantial burden of showing diligence and lack of prejudice. Further,
19 creating an entirely new, separate document raises a specter that the parties and experts would
20 have to work with *two* operable infringement contention documents—the original Infringement
21 Contentions and a set of Supplemental Infringement Charts. There is no provision in the Local
22 Rules for this approach, and no other Court in this District has endorsed it.

23 Accordingly, Finjan's motion to amend its infringement contentions to add the
24 identification of components is **DENIED**. Finjan's showing of diligence is insufficient given the
25 apparent significance of its proposed amendment/supplementation which defy redlining its
26 existing contentions. An amendment/supplementation this extensive would disrupt the case
27 schedule at this point in the litigation.

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1 **2. Talos standalone infringement theory**

2 Finjan argues that it should be permitted to amend its Infringement Contentions to reflect
3 Talos, by itself, as an infringing product. In its brief, Finjan argues that its SIC merely “identifies
4 the relevant technological relationships among the Accused Products, such that there is no
5 ‘amendment’ to Finjan’s infringement claims against Cisco. In other words, the same grounds for
6 asserting infringement against the same Accused Products remain the same” ECF 230-4 at 9.
7 However, at the hearing Finjan admitted for the first time that its “standalone Talos” contention is
8 a new theory. Finjan argues that this new infringement theory arises from recent deposition
9 testimony of Cisco witness Matt Watchinski that Talos uses sandboxes and other allegedly
10 infringing features. *Id.* at 5.

11 It is too late for Finjan to add this new theory to its infringement contentions. The nature
12 and characteristics of Talos have long been the subject of discovery and argument between these
13 parties. *See* ECF 79, ECF 83, ECF 198, ECF 199, and ECF 200. Finjan argues that Cisco
14 misrepresented the nature of Talos not only to Finjan but to this Court, but a review of the
15 proffered evidence on this point is not persuasive. That evidence, including produced documents
16 and deposition testimony, indicates that enough of Talos’s functionality was revealed to Finjan to
17 enable it to seek discovery on these issues earlier. *See* ECF 249-62 (chart identifying previous
18 references to Talos). Moreover, in its Initial Disclosures, Cisco disclosed Stefan Buhlmann of Joe
19 Security as a witness “[k]nowledgeable regarding JoeBox (n/k/a Joe Sandbox) sandboxing” and
20 Mr. Watchinski as a witness with “information relating to Talos service.” ECF 250-44 at 3.

21 In sum, Finjan’s showing of diligence is insufficient given the significance of its proposed
22 amendment/supplementation, which would add a new infringement theory at this very late date in
23 the litigation. Accordingly, Finjan’s motion to amend its infringement contentions to add a
24 standalone Talos infringement theory is **DENIED**.

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1 **ECF 209: Cisco’s Motion to Strike Finjan’s Second Supplemental Response to**
2 **Interrogatory 10 or, in the alternative, Motion to Amend Counterclaim**

3 Cisco moves to strike Finjan’s second supplemental response and objections to
4 Interrogatory No. 10. That interrogatory seeks Finjan’s allegations regarding when Cisco received
5 actual or constructive notice of infringement of each patent-in-suit. The second supplemental
6 response adds allegations of notice arising from the parties’ pre-litigation licensing discussions,
7 which were covered by a non-disclosure agreement (“NDA”). Cisco argues that Finjan’s second
8 supplemental response should be stricken because the facts that were added to that response have
9 been in Finjan’s possession since it filed the lawsuit. Cisco also argues that if the interrogatory
10 response is not stricken, it should be granted leave to amend to assert a counterclaim for breach of
11 the parties’ NDA.

12 At the hearing, Finjan provided a timeline attempting to link its second supplemental
13 response to Interrogatory No. 10 on March 11, 2019 to a production of documents that occurred in
14 January to April 2019 in advance of the depositions of Finjan’s CEO and its former VP of
15 licensing. According to Finjan, documents regarding the parties’ pre-litigation licensing
16 discussions were in that document production. Finjan also argued that although it had included
17 allegations concerning the licensing discussions in its original complaint (which it later removed
18 from the complaint), those allegations related to willfulness, whereas Interrogatory No. 10 relates
19 to notice.

20 Finjan’s arguments miss the point. Finjan has known about the licensing discussions and
21 related documents it now, belatedly, points to as evidence of notice since before the lawsuit was
22 filed, as evidenced by the allegations regarding those discussions in its original complaint.
23 Although the focus of the interrogatory on notice may differ from the purpose for which Finjan
24 offered evidence of licensing discussions in its complaint, the underlying facts have nevertheless
25 been known to Finjan since the outset of the case. There simply is no good cause as to why Finjan
26 waited until its second supplemental response to assert facts in support of its position on notice.

27 Cisco’s motion to strike Finjan’s second supplemental response and objections to
28 Interrogatory No. 10 is therefore **GRANTED**.

1 **ECF 243: Joint Discovery Letter Brief re**
2 **Motion to Quash Deposition Subpoena to Neal Rubin**

3 At the hearing neither party challenged the Court’s tentative ruling that the request by
4 Cisco and non-party Neal Rubin to quash the deposition subpoena served by Finjan on Mr. Rubin
5 is **DENIED**. ECF 271 at 3. Accordingly, the Court adopts its tentative ruling as the final order on
6 this issue for the reasons discussed in the tentative ruling. *Id.*

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8 **ECF 261: Joint Discovery Letter Brief re**
9 **Cisco’s Motion to Compel Production of Documents re Finjan Blue**

10 Cisco asks the Court to compel Finjan to produce all documents that hit on Cisco’s email
11 search terms related to the patent acquisition and development agreement entered into between
12 Finjan subsidiary Finjan Blue, Inc. and IBM and the relationship between Finjan and IBM. ECF
13 261.

14 At the hearing, Finjan argued that it only intends to make one reference to IBM to explain
15 to the jury that Finjan has a subsidiary, Finjan Blue, that has or had a relationship with IBM.
16 Finjan said it might also use a demonstrative reflecting, among other things, its relationship with
17 IBM. Finjan argues that because it will offer only minimal references to IBM and Finjan Blue at
18 trial, in the context of explaining Finjan’s corporate structure, Cisco is not entitled to the discovery
19 it seeks and Finjan’s previous production of the Finjan’s agreement with IBM is sufficient.

20 According to Cisco, under Finjan’s agreement with IBM, Finjan purchased patents from
21 IBM and has the right to retain the inventors on an hourly basis to assist in patent prosecution and
22 enforcement. ECF 260-4 at 2. Cisco is concerned that Finjan will portray its relationship with
23 IBM as more extensive. Cisco argues that if Finjan intends to create a “halo effect” at trial by
24 mentioning the company’s relationship with IBM, Cisco must be given an opportunity to obtain
25 evidence to impeach that statement. Cisco has offered to forego discovery on this issue if Finjan
26 agrees not to reference its relationship with IBM at trial.

27 Cisco’s motion to compel discovery on this issue is **CONDITIONALLY GRANTED**.
28 The fact that Finjan may refer only briefly to IBM at trial does not mean that discovery on the

1 issue must be limited to the Finjan-IBM contract that Finjan has already produced. Cisco has
2 demonstrated why additional discovery is necessary to challenge statements Finjan may make at
3 trial regarding its relationship with IBM. Therefore, if Finjan intends to refer to its relationship
4 with IBM at trial, it must produce the requested documents. Within two (2) weeks, Finjan must
5 either product the requested documents or inform Cisco in writing that it will not refer to Finjan's
6 relationship with IBM at trial.

7 **SO ORDERED.**

8 Dated: June 11, 2019

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12 SUSAN VAN KEULEN
13 United States Magistrate Judge
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EXHIBIT E

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINJAN, INC., a Delaware Corporation,

Plaintiff,

v.

CISCO SYSTEMS, INC., a California
Corporation,

Defendant.

Case No.: 5:17-cv-00072-BLF-SVK

**CISCO SYSTEMS, INC.’S NOTICE
REGARDING FINJAN’S ELECTION
NOT TO PRODUCE DOCUMENTS
RE: IBM**

Judge: Hon. Beth Labson Freeman

1 WHEREAS, on May 11, 2019, Cisco Systems, Inc. (“Cisco”) requested the Court to compel
2 Finjan, Inc. (“Finjan”) to produce all documents that hit on Cisco’s email search terms related to the
3 patent acquisition and development agreement entered into between Finjan subsidiary Finjan Blue,
4 Inc. and IBM and the relationship between Finjan and IBM. (Dkt. 261)

5 WHEREAS, on June 11, 2019, the Court ordered Finjan to “either produce the requested
6 communications or inform Cisco in writing that it will not refer to Finjan’s relationship with IBM at
7 trial.” Final Order (Dkt. 274) at 11:4-6.

8 WHEREAS, the parties agreed to extend the deadline for Finjan to make the election set
9 forth in the Final Order from June 25, 2019 to July 8, 2019. (Dkt. 285 and 295).

10 Cisco hereby notifies the Court that, on July 8, 2019, Finjan elected not to produce the
11 requested communications and instead informed Cisco in writing that it will not refer to its
12 relationship with IBM at trial.

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1 Dated: July 11, 2019

Respectfully submitted,

2
3 /s/ Jennifer H. Forte

Jennifer H. Forte

4 Daniel T. McCloskey
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25 Joseph A. Powers (admitted *pro hac vice*)
26 Email: japowers@duanemorris.com
27 Jarrad M. Gunther (admitted *pro hac vice*)
28 jmgunther@duanemorris.com
30 South 17th Street
Philadelphia, PA 19103
Telephone: 215.979.1000
Facsimile: 215.979.1020

Attorneys for Defendant
CISCO SYSTEMS, INC.

ATTESTATION

1
2 I, Jennifer H. Forte, am the ECF User whose identification and password are being used to
3 file this Cisco Systems, Inc.'s Notice Regarding Finjan's Election Not to Produce Documents Re:
4 IBM. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that all signatories have concurred in
5 this filing.

6
7 Dated: July 11, 2019

8 /s/ Jennifer H. Forte

9 Jennifer H. Forte
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EXHIBIT F

From: Snedeker, Alice
Sent: Friday, May 29, 2020 10:35 AM
To: 'Jason Berrebi'; Frankel, Aaron
Cc: Forte, Jennifer H.; Gaudet, Matthew C.; Dotson, David C.; Jameson, Woody; Gibson, John R.; Gunther, Jarrad M.; Garellek, Jordana; Renck, Richard L.; Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; Hedvat, Shannon H.; Pymonto, Julian; provner@potteranderson.com; Choa, Jonathan A.
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Jason and Aaron,

To follow up on the meet and confer, SonicWall and Rapid7 are willing to work with Finjan and IBM by serving IBM subpoena(s) to obtain the information/testimony needed regarding the Finjan/IBM assignment agreements, as IBM proposed during our meet and confer. This potential compromise is subject to SonicWall and Rapid7 not waiving their rights to pursue the requested discovery from Finjan in the respective cases to the extent they are thwarted in their ability or are otherwise unable to obtain testimony/information on the topics related to the requested discovery through IBM's responses to the subpoena.

For the Rapid7 matter, this potential compromise is subject to Finjan agreeing to not challenge Rapid7's subpoena(s) to IBM and use of the resulting information due to fact discovery being closed in the Rapid7 matter or otherwise. If Finjan does not accept this compromise or does not stipulate to not raise IBM at all during trial, Rapid7 will move to compel Finjan, as previously discussed. Aaron, please confirm Finjan's position on this issue.

Thank you,

Alice E. Snedeker

Associate

Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Jason Berrebi
Sent: Monday, May 18, 2020 7:58 PM
To: Frankel, Aaron
Cc: Snedeker, Alice ; Forte, Jennifer H. ; Gaudet, Matthew C. ; Dotson, David C. ; Jameson, Woody ; Gibson, John R. ; Gunther, Jarrad M. ; Garellek, Jordana ; Renck, Richard L. ; Andre, Paul ; Kobialka, Lisa ; Hannah, James ; Lee, Hannah ; Hedvat, Shannon H. ; Pymonto, Julian ; provner@potteranderson.com; Choa, Jonathan A.
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm works

Sent from my iPhone

On May 18, 2020, at 7:23 PM, Frankel, Aaron <AFrankel@kramerlevin.com> wrote:

Alice,

Confirmed as to Finjan.

Jason – if 1:00 PM does not work, please let us know.

Regards,

Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.7793 F 212.715.8363

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From: Snedeker, Alice <AESnedeker@duanemorris.com>

Sent: Monday, May 18, 2020 1:34 PM

To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron – I'm writing to confirm our meet and confer, including Delaware local counsel, at 1pm ET tomorrow (Tuesday). We can use the below dial in.

877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker

Associate

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Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Snedeker, Alice
Sent: Friday, May 15, 2020 3:40 PM
To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm ET works for us.

Jason – Let us know if this time doesn't work for you.

Alice E. Snedeker

Associate

Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Friday, May 15, 2020 3:31 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

I just booked Tuesday at 11:00. 1:00 PM ET would work (or any time after).

Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.7793 F 212.715.8363

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Friday, May 15, 2020 3:28 PM
To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron and Jason,

Apologies for the delay; we're available on Tuesday at 11am. If that time doesn't work, please propose a time that does.

We can use this call bridge: 877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker
Associate

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1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Tuesday, May 12, 2020 4:50 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian

<JPymeto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.'
<jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

Finjan continues to not agree to the stipulation proposed by Rapid7.

I am copying Jason Berrebi, counsel for IBM. Mr. Berrebi has asked to participate in the meet and confer along with national and local counsel for the parties.

We are both available on Monday and Tuesday for a meet and confer.

Regards,
Aaron

Aaron M. Frankel
Partner

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T 212.715.7793 F 212.715.8363

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From: Snedeker, Alice <AESnedeker@duanemorris.com>

Sent: Tuesday, May 12, 2020 8:45 AM

To: Forte, Jennifer H. <JHForte@duanemorris.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymeto, Julian <JPymeto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Following up on the below email, I understand that you and Matt Gaudet previously had a meet and confer on this issue and the outstanding requirement is the local counsel meet and confer required in D. Del. Please let us know when you are available to meet and confer with local counsel in the Rapid7 case, assuming Finjan's silence indicates it will not agree to the attached stipulation.

If we are mistaken as to the meaning of Finjan's silence, please confirm we have permission to file the stipulation.

Thank you,

Alice E. Snedeker

Associate

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Atlanta, GA 30309-3929
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F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Forte, Jennifer H. <JHForte@duanemorris.com>

Sent: Friday, May 1, 2020 1:14 PM

To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C.

<MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

As you know, several months ago, we requested confirmation that Finjan would either produce all documents and email communications related to the IBM agreement or stipulate that Finjan will not mention IBM at trial. After months of email exchanges and phone calls on this issue, you represented that Finjan "intends to produce the IBM documents, and has started the process to do so." (See attached). Your email below suggests otherwise. This is the exact issue that was previously decided in the Finjan v. Cisco case. Judge van Keulen held that, despite IBM's objection, Finjan is required to either produce the requested documents or stipulate in writing that it will not mention IBM at trial.

By close of business today, please confirm that we can file the attached Stipulation in both the SonicWall and Rapid7 cases. Otherwise, we will proceed with the motion to compel.

Jennifer H. Forté

Associate

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Atlanta, GA 30309-3929
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F: +1 404 393 0357

jhforte@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Thursday, April 30, 2020 1:53 PM

To: Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Forte, Jennifer H.

<JHForte@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

IBM consents to the production of the patent assignment agreement between IBM and Finjan on a "CONFIDENTIAL-- OUTSIDE COUNSEL ONLY" and ""HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" basis under the respective protective orders in the *Rapid7* and *SonicWall* cases, subject to Defendants' agreement that all electronic and physical copies of the agreement will be returned to Finjan or destroyed when the litigations are concluded. Please confirm Defendants' agreement, and Finjan will produce the document.

IBM objects to the production of documents related to the negotiation of the agreement as, at a minimum, non-responsive to Defendants' discovery requests and irrelevant to the claims and defenses in the litigations.

Regards,
Aaron

Aaron M. Frankel
Partner

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afrankel@kramerlevin.com

[Bio](#)

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EXHIBIT G

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Friday, June 12, 2020 11:21 AM
To: Jason Berrebi; Snedeker, Alice
Cc: Dotson, David C.; Lee, Hannah; Choa, Jonathan A.; Garellek, Jordana; Hannah, James; Forte, Jennifer H.; Gunther, Jarrad M.; Pymonto, Julian; Gibson, John R.; Kobialka, Lisa; Gaudet, Matthew C.; Andre, Paul; provner@potteranderson.com; Renck, Richard L.; Hedvat, Shannon H.; Jameson, Woody
Subject: RE: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

Further to our meet and confer, with respect to the *SonicWall* case, Finjan reiterates that it does not object to producing non-privileged, responsive documents regarding its negotiations with IBM, and is only withholding those documents at the direction of IBM. The notice of subpoena that SonicWall served yesterday indicates the Cisco will be taking the deposition. We assume the reference to Cisco is a typographical error, but please confirm the discovery is for the *SonicWall* case only.

As to the *Rapid7* case, Finjan does not consent to the service of a subpoena or further fact depositions at this late stage of the case, long after the close of fact discovery.

Regards,
Aaron

Aaron M. Frankel
Partner
Kramer Levin Naftalis & Frankel LLP
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From: Frankel, Aaron
Sent: Friday, June 5, 2020 5:13 PM
To: Jason Berrebi ; Snedeker, Alice
Cc: Dotson, David C. ; Lee, Hannah ; Choa, Jonathan A. ; Garellek, Jordana ; Hannah, James ; Forte, Jennifer H. ; Gunther, Jarrad M. ; Pymonto, Julian ; Gibson, John R. ; Kobialka, Lisa ; Gaudet, Matthew C. ; Andre, Paul ; provner@potteranderson.com; Renck, Richard L. ; Hedvat, Shannon H. ; Jameson, Woody
Subject: RE: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

We are confirmed for 4:00 PM ET then. We will start with the IBM issues so you can drop off.

Regards,
Aaron

From: Jason Berrebi <Jason.Berrebi@ibm.com>
Sent: Friday, June 5, 2020 4:41 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>
Cc: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Dotson, David C. <DCDotson@duanemorris.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Choa, Jonathan A. <jchoa@potteranderson.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; Gibson, John R. <JRGibson@duanemorris.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; provner@potteranderson.com; Renck, Richard L. <RLRenck@duanemorris.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Jameson, Woody <WJameson@duanemorris.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

4pm Tuesday, June 9, works for IBM. Hopefully we can discuss the IBM portion first and then I can drop off.

Best regards and have a great weekend,
Jason

JASON BERREBI
Senior Attorney - Corporate Litigation

Phone: 914-765-2241 | **Tie-Line:** 251-2241
E-mail: Jason.Berrebi@ibm.com
1 North Castle Dr. | Armonk, NY 10504-1785

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this e-mail in error, please delete it from your system without
copying it and notify me of the misdirection by reply e-mail.*

▼ "Snedeker, Alice" ---06/05/2020 04:38:26 PM---Aaron, Assuming IBM is available on Tuesday, we are available to discuss at 4pm ET. We'll use the in

From: "Snedeker, Alice" <AESnedeker@duanemorris.com>
To: "Frankel, Aaron" <AFrankel@KRAMERLEVIN.com>, "Jason Berrebi" <Jason.Berrebi@ibm.com>
Cc: "Forte, Jennifer H." <JHForte@duanemorris.com>, "Gaudet, Matthew C." <MCGaudet@duanemorris.com>, "Dotson, David C." <DCDotson@duanemorris.com>, "Jameson, Woody" <WJameson@duanemorris.com>, "Gibson, John R." <JRGibson@duanemorris.com>, "Gunther, Jarrad M." <JMGunther@duanemorris.com>, "Garellek, Jordana" <JGarellek@duanemorris.com>, "Renck, Richard L." <RLRenck@duanemorris.com>, "Andre, Paul" <PAndre@KRAMERLEVIN.com>, "Kobialka, Lisa" <LKobialka@KRAMERLEVIN.com>, "Hannah, James" <JHannah@KRAMERLEVIN.com>, "Lee, Hannah" <HLee@KRAMERLEVIN.com>, "Hedvat, Shannon H." <SHedvat@KRAMERLEVIN.com>, "Pymonto, Julian" <JPymonto@KRAMERLEVIN.com>, "provner@potteranderson.com" <provner@potteranderson.com>, "Choa, Jonathan A." <jchoa@potteranderson.com>
Date: 06/05/2020 04:38 PM
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Assuming IBM is available on Tuesday, we are available to discuss at 4pm ET. We'll use the information provided below.

As for the other issues specific to SonicWall only, we will email you separately.

Alice E. Snedeker

Associate

Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Friday, June 5, 2020 9:28 AM

To: Snedeker, Alice <AESnedeker@duanemorris.com>; 'Jason Berrebi' <Jason.Berrebi@ibm.com>

Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

We are available on Tuesday for a meet and confer at noon and from 3:00-6:00 PM ET. Please let us know the best time for you.

In addition to the IBM issue, please be prepared to confer on the following:

- When SonicWall will produce emails
- Production of updated price lists
- If the spreadsheets produced as SonicWall-Finjan_00260539 and SonicWall-Finjan_00260540 include complete revenue data and the source of the spreadsheets.
- Scheduling and topics for the depositions of Dmitriy Ayrapetov, Graham Carter, Senthil Cheetancheri, Alex Dubrovsky, John Gmuender, Matt Neiderman, Bob Van Kirk and Frank Yao.
- Confirming the date for the deposition of Eric Hawkes and that your firm represents Mr. Hawkes

We can use this LoopUp dial-in for the call:

To be dialed in: <https://meet.loopup.com/FIGJcYk>

Or, if you are offline:

Guest Dial-in Code: 2705643#

USA: +1 (855) 633-2066

Regards,

Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas, New York, New York 10036

T 212.715.7793 F 212.715.8363

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Wednesday, June 3, 2020 12:07 PM

To: Snedeker, Alice <AESnedeker@duanemorris.com>; 'Jason Berrebi' <Jason.Berrebi@ibm.com>

Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>;

Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>;

Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>;

Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre,

Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah,

James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon

H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>;

provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

We are conferring with Finjan on this issue.

We suggest a call on Tuesday to work through the proposed compromise resolution.

Regards,

Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Friday, May 29, 2020 10:35 AM
To: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Jason and Aaron,

To follow up on the meet and confer, SonicWall and Rapid7 are willing to work with Finjan and IBM by serving IBM subpoena(s) to obtain the information/testimony needed regarding the Finjan/IBM assignment agreements, as IBM proposed during our meet and confer. This potential compromise is subject to SonicWall and Rapid7 not waiving their rights to pursue the requested discovery from Finjan in the respective cases to the extent they are thwarted in their ability or are otherwise unable to obtain testimony/information on the topics related to the requested discovery through IBM's responses to the subpoena.

For the Rapid7 matter, this potential compromise is subject to Finjan agreeing to not challenge Rapid7's subpoena(s) to IBM and use of the resulting information due to fact discovery being closed in the Rapid7 matter or otherwise. If Finjan does not accept this compromise or does not stipulate to not raise IBM at all during trial, Rapid7 will move to compel Finjan, as previously discussed. Aaron, please confirm Finjan's position on this issue.

Thank you,

Alice E. Snedeker
Associate

Duane Morris LLP
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Atlanta, GA 30309-3929

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F: +1 404 521 4129

AESnedeker@duanemorris.com

www.duanemorris.com

From: Jason Berrebi <Jason.Berrebi@ibm.com>

Sent: Monday, May 18, 2020 7:58 PM

To: Frankel, Aaron <AFrankel@kramerlevin.com>

Cc: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAAndre@kramerlevin.com>; Kobiialka, Lisa <LKobiialka@kramerlevin.com>; Hannah, James <JHannah@kramerlevin.com>; Lee, Hannah <HLee@kramerlevin.com>; Hedvat, Shannon H. <SHedvat@kramerlevin.com>; Pymonto, Julian <JPymonto@kramerlevin.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm works

Sent from my iPhone

On May 18, 2020, at 7:23 PM, Frankel, Aaron <AFrankel@kramerlevin.com> wrote:

Alice,

Confirmed as to Finjan.

Jason – if 1:00 PM does not work, please let us know.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>

Sent: Monday, May 18, 2020 1:34 PM

To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron – I'm writing to confirm our meet and confer, including Delaware local counsel, at 1pm ET tomorrow (Tuesday). We can use the below dial in.

877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker
Associate

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Atlanta, GA 30309-3929
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F: +1 404 521 4129

AESnedeker@duanemorris.com
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From: Snedeker, Alice
Sent: Friday, May 15, 2020 3:40 PM
To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm ET works for us.

Jason – Let us know if this time doesn't work for you.

Alice E. Snedeker
Associate

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Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Friday, May 15, 2020 3:31 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

I just booked Tuesday at 11:00. 1:00 PM ET would work (or any time after).

Aaron

Aaron M. Frankel
Partner

Kramer Levin Naftalis & Frankel LLP
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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Friday, May 15, 2020 3:28 PM
To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron and Jason,

Apologies for the delay; we're available on Tuesday at 11am. If that time doesn't work, please propose a time that does.

We can use this call bridge: 877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker
Associate

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Atlanta, GA 30309-3929
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AESnedeker@duanemorris.com
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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Tuesday, May 12, 2020 4:50 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

Finjan continues to not agree to the stipulation proposed by Rapid7.

I am copying Jason Berrebi, counsel for IBM. Mr. Berrebi has asked to participate in the meet and confer along with national and local counsel for the parties.

We are both available on Monday and Tuesday for a meet and confer.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>

Sent: Tuesday, May 12, 2020 8:45 AM

To: Forte, Jennifer H. <JHForte@duanemorris.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Following up on the below email, I understand that you and Matt Gaudet previously had a meet and confer on this issue and the outstanding requirement is the local counsel meet and confer required in D. Del. Please let us know when you are available to meet and confer with local counsel in the Rapid7 case, assuming Finjan's silence indicates it will not agree to the attached stipulation.

If we are mistaken as to the meaning of Finjan's silence, please confirm we have permission to file the stipulation.

Thank you,

Alice E. Snedeker
Associate

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From: Forte, Jennifer H. <JHForte@duanemorris.com>
Sent: Friday, May 1, 2020 1:14 PM
To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>
Cc: Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

As you know, several months ago, we requested confirmation that Finjan would either produce all documents and email communications related to the IBM agreement or stipulate that Finjan will not mention IBM at trial. After months of email exchanges and phone calls on this issue, you represented that Finjan "intends to produce the IBM documents, and has started the process to do so." (See attached). Your email below suggests otherwise. This is the exact issue that was previously decided in the Finjan v. Cisco case. Judge van Keulen held that, despite IBM's objection, Finjan is required to either produce the requested documents or stipulate in writing that it will not mention IBM at trial.

By close of business today, please confirm that we can file the attached Stipulation in both the SonicWall and Rapid7 cases. Otherwise, we will proceed with the motion to compel.

Jennifer H. Forté
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jhforte@duanemorris.com

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Thursday, April 30, 2020 1:53 PM

To: Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Forte, Jennifer H.

<JHforte@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson,

Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>;

Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana

<JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker,

Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa

<LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>;

Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H.

<SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>;

provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

IBM consents to the production of the patent assignment agreement between IBM and Finjan on a "CONFIDENTIAL-- OUTSIDE COUNSEL ONLY" and ""HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" basis under the respective protective orders in the *Rapid7* and *SonicWall* cases, subject to Defendants' agreement that all electronic and physical copies of the agreement will be returned to Finjan or destroyed when the litigations are concluded. Please confirm Defendants' agreement, and Finjan will produce the document.

IBM objects to the production of documents related to the negotiation of the agreement as, at a minimum, non-responsive to Defendants' discovery requests and irrelevant to the claims and defenses in the litigations.

Regards,

Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP

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afrankel@kramerlevin.com

[Bio](#)

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EXHIBIT H

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

May 9, 2019

VIA ELECTRONIC FILING

The Honorable Judge Susan van Keulen
Federal Court of the Northern District of California
San Jose Division
Courtroom 6, 4th Floor
280 S. First Street
San Jose, CA 95113

Re: *Finjan, Inc. v. Cisco Systems, Inc.*, Case No. 5:17-cv-00072-BLF-SVK
Joint Discovery Letter

Dear Magistrate Judge van Keulen,

The Parties dispute whether Finjan should be compelled to produce all documents that hit on Cisco's email search terms related to the patent acquisition and development agreement entered into between its wholly owned subsidiary, Finjan Blue, Inc., and IBM and the relationship between Finjan and IBM. The parties met and conferred on this issue on May 3, May 6 and May 7, 2019. The close of fact discovery was April 18, 2019, 19 days ago, and the close of expert discovery is September 17, 2019, in 132 days.

I. Cisco's Position

Pursuant to the agreement reached at the April 19 discovery hearing (4/19/19 Tr. 6:17-25), Cisco provided Finjan with modified search terms to reduce the number of hits Finjan considered to be false positives. Cisco also requested that Finjan identify any other terms that Finjan believed hit on a large number of false positives. *Id.* In response, Finjan identified four categories of documents that Finjan would continue to withhold on relevancy grounds. 4/30/19 H. Lee Email. Cisco disputes that it is proper to conduct a "relevance" review on ESI hits, but in the interest of compromise Cisco reached an agreement that Finjan could withhold document hits that fell into three of the four categories of documents identified by Finjan. One issue remains in dispute, however. Specifically, Finjan refuses to produce the documents (emails and attachments) that hit on Cisco's search terms related to the agreement and purported relationship between Finjan's wholly owned subsidiary, Finjan Blue, Inc., and IBM.

To resolve this dispute, Cisco offered to withdraw this aspect of the motion if Finjan would stipulate that neither party would mention Finjan's relationship with IBM at trial. Finjan refused the offer and "reserve[d] the right to mention its relationship with IBM at trial." 5/6/19 H. Lee Email. In the past, Finjan has told several juries that it has a full-blown, ongoing business relationship with IBM, as if it included product development. In its portion of the letter brief below, it states that it will refer to IBM as an example of a "business relationship[] with other well-known companies in the industry to develop and engage in research and licensing efforts." At the same time, Finjan is withholding from discovery the specific email communications and attachments related to that very relationship that would allow Cisco to fully test the proposition that the relationship with IBM was anything other than a patent purchase. This is prejudicial to Cisco, and there is no basis for Finjan to withhold documents relating to its negotiations or other interactions with IBM, especially given that these materials have already been collected.

From what Cisco has seen, Finjan's characterizations of its relationship with IBM are incorrect; instead, it appears that Finjan simply purchased patents from IBM and has the right to retain the inventors on an hourly basis to assist in patent prosecution and enforcement. By way of background, in August of 2017, Finjan formed Finjan Blue, Inc. and announced that it had entered into "a patent acquisition and development agreement with IBM." See press release available at <https://www.finjan.com/news-media/press-releases/detail/719/finjan-announces-information-of-new-subsiary-finjan-blue> ("Press Release"). The Agreement includes the transfer of "select security-related patent assets" from IBM to Finjan. *Id.* [REDACTED]

[REDACTED] In addition, Finjan claims that the Agreement "sets the foundation for [Finjan] to work cooperatively with IBM now and into the future, bolsters our growth, and fits squarely within our strategic objectives." See Press Release. Finjan's witnesses' characterization of its relationship with IBM in press releases and in litigation is at odds with the documents that Cisco has seen to date, and Cisco is entitled to fully discover the emails regarding negotiations and other documents that hit on its search terms to challenge these characterizations at trial. Finjan uses inflammatory language in its portion of the letter suggesting Cisco should be exempt from discovery because it thinks Cisco will attack it as a "troll". Nonsense. The point is that Finjan cannot present facts to the jury that are incorrect but shield Cisco from taking discovery on those facts.

Finjan's witnesses have also testified that the IBM relationship is essentially the only active project that Gary Moore (its current Board member who was a former Cisco executive) is currently involved in for Finjan, in return for the approximately 2% of Finjan's entire stock value that they paid him to join the Board. Finjan has identified Mr. Moore as a person with relevant information to the case. Cisco does not believe that Mr. Moore is relevant to this case, but if Finjan is going to tell the jury that a former Cisco executive is on its Board, then Cisco was entitled to depose him to find out what he is doing for Finjan and why he joined the Board. Indeed, Finjan declined Cisco's offer to agree that no one would reference Mr. Moore at trial. If, in fact, there are no emails from Mr. Moore relating to IBM, and if, in fact, the "relationship" is simply a patent purchase, then it is evidence of another point: Finjan gave Mr. Moore 2% of its stock to be able to tell the public (and the jury) that a former Cisco executive is on its Board (again Finjan has reserved its right to discuss him at trial).

In addition, these documents may be relevant to damages as IBM is both a licensee/covenant recipient from Finjan as well as a seller to Finjan of patents in the security space. Finjan's argument that this production is overly burdensome is contradicted by the fact that it has already identified, collected and reviewed these documents in response to Cisco's ESI search terms. Simply producing these documents is not burdensome. Further, if the documents contain the confidential information of IBM, the Stipulated Protective Order provides that Finjan must simply provide notice of the production to IBM and produce the documents within 14 days absent IBM submitting an objection or seeking a protective order. Dkt. No. 97 at ¶ 11(b). Likewise, Finjan's argument that Cisco waited too long to file this motion is backwards: Cisco had no idea that Finjan was withholding IBM-related ESI until shortly before it filed this motion.

Finally, Finjan's "horse trade" argument makes no sense. Cisco does not think that IBM or Mr. Moore are relevant to this case. Cisco thus offered – and still offers – to exclude reference to them in return for not conducting discovery on them. But what cannot happen is

that Finjan presents an incorrect, self-serving description of Mr. Moore and his reasons for joining the Finjan Board, nor an inaccurate description of its relationship with IBM as if it were actually engaged in “research” with IBM, while denying Cisco discovery on those assertions.

II. Cisco’s Proposed Resolution:

Finjan should produce all non-privileged documents (emails or attachments) related to Finjan Agreement and relationship with IBM that hit on Cisco’s search terms.

III. Finjan’s Position and Proposed Resolution

Cisco remains intent on pursuing the production of irrelevant information that are hitting on its broad ESI search terms¹. By seeking the production of all e-mails hits related to an IBM Patent Assignment and Support Agreement (“Agreement”), Cisco seeks to unduly burden Finjan to produce thousands of pages of highly confidential information concerning a business transaction unrelated to the issues in this case. Telling that Cisco’s pursuit of this e-mail discovery is a prejudicial waste of time and resources, Cisco deposed Finjan’s President about the Agreement, and Finjan produced the executed Agreement to Cisco on March 13, 2019. For over a month, despite twice having the opportunity to bring a motion before the close of fact discovery at the scheduled discovery hearings, it did not. If the subject matter of this Agreement was important to the case as Cisco now contends, it would have sought to compel the production of related documents when it had the opportunity to do so. Cisco also has known of Finjan’s prior trial testimony regarding IBM since the beginning of the case. Now, Cisco brings its motion simply to harass, without any real expectation that the e-mails it seeks are relevant.

By way of background, Finjan Blue, a subsidiary of Finjan Holdings (neither of which is a party to the case), was formed to support the development and licensing efforts related to IBM patents (none of which are at issue here). Under the Agreement, IBM assigned patents to Finjan Blue for the purpose of future development efforts and for the sharing of institutional knowledge and resources by IBM to Finjan Blue. None of the patents IBM assigned to Finjan Blue are asserted in this case. Beyond the mere fact that these patents generally relate to security because IBM and Finjan are involved in that general market, Cisco has not explained how those patents have any relationship to the technologies at issue in this case. [REDACTED]

At trial, it is expected that Cisco will attempt to attack Finjan’s credibility or reputation. Finjan intends to defend itself by presenting a brief statement about its business and who it is, including its relationships within the cyber industry, which includes its relationship with IBM. Finjan will not introduce the Agreement as evidence of damages, nor does not intend to go into other details of the terms of the Agreement. In the most recent trial involving Finjan, Inc.’s patents, Finjan’s CEO mentioned the existence of the Agreement in four lines of his testimony. Finjan expects that the testimony in the upcoming trial in this case will be similar in substance. All that Finjan wishes to establish by this testimony is that it is not a “patent troll” as Cisco will

¹ Cisco ESI search terms were: (license* /25 (patent* OR portfolio); value OR valued OR valuation w/ 25 (patent* OR portfolio* OR tech*).

argue at trial and has business relationships with other well-known companies in the industry to develop and engage in research and licensing efforts. Cisco cannot attack the credibility of Finjan as a legitimate business, while also tying Finjan's hands behind its back. Indeed, this is not the first time Cisco has tried to prevent Finjan from defending its corporate integrity at trial. Mr. Moore, Cisco's former President, is a member of Finjan's Board. Cisco threatened to take his deposition and said that it would not do so only if Finjan agreed not to mention him at trial. Cisco's tactic was not innocent horse-trading but rather a clear abuse of discovery, because if the discovery was relevant, why would they be so willing to forego it if Finjan would simply not mention Mr. Moore? Cisco engages in the same abusive tactic here by demanding Finjan pay the burden and cost of irrelevant discovery or otherwise agree to not tell the jury about its relationships with industry leaders such as IBM.

Cisco tries to argue that it needs the production of the e-mails regarding IBM to uncover whether Mr. Moore was substantively involved in the relationship with IBM, or whether he was not. Whether he did or did not has absolutely nothing to do with Cisco's liability for patent infringement in this case. Mr. Moore has been and was involved in other substantive matters for Finjan, despite Cisco's characterization otherwise. Moreover, when Cisco deposed Mr. Moore, Cisco had the opportunity to ask him about IBM and ask for relevant documents. Finjan's limited testimony is not a basis for Cisco to dig deep into Finjan's confidential internal company documents and make it produce thousands of pages of irrelevant and confidential information.

The burden of reviewing and producing these communications is significant, contrary to Cisco's characterization. For any of the e-mails that hit on Cisco's broad search terms that relate to IBM, Finjan will need to review the thousands of pages of communications and log anything privileged, which is especially burdensome given that one of the e-mail custodians is Finjan's Chief Legal Officer. In addition, many of the communications that Cisco seeks are subject to a confidentiality agreement with IBM, and Finjan does not have IBM's consent to produce confidential documents². *See, e.g.*, Fed. R. Civ. P. 26(b)(1) (discovery is to be proportional to the needs of the case considering...the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit); *Bulletin Marketing LLC v. Google LLC*, No. 17-cv-7211-BLF, 2018 WL 5310805, at *2 (N.D. Cal. Oct. 25, 2018) (denying motion to compel when discovery sought was not relevant); *Space Data Corp. v. Google LLC*, No. 16-cv-3260 BLF, 2018 WL 3054797, at *1 (N.D. Cal. June 11, 2018) (denying motion to compel when burden outweighs likely benefit).

Because Cisco's motion is nothing more than abusive, a fishing expedition, and harassment to cause Finjan to spend unjustified and significant time and resources in producing thousands of irrelevant, and highly confidential documents, and force Finjan to refrain from defending its credibility, it respectfully requests that the Court deny Cisco's motion.

² Finjan disputes that it is required to obtain consent from IBM to produce these documents, as it does not agree that Cisco's ESI search terms are valid discovery requests subject to the Protective Order. Finjan should not be wedged between Cisco and IBM to shield Cisco - a known IBM Partner - from the awkward situation of demanding IBM to produce its confidential information when such information is clearly, at best, tangentially relevant. If Cisco believes this discovery is relevant, it should have served IBM with a subpoena during fact discovery.

Dated: May 9, 2019

**KRAMER LEVIN NAFTALIS
& FRANKEL LLP**

By: /s/ Hannah Lee
Paul J. Andre (SBN 196585)
Lisa Kobialka (SBN 191404)
James Hannah (SBN 237978)
Hannah Lee (SBN 253197)
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Attorneys for Plaintiff
FINJAN, INC.

Respectfully Submitted,

DUANE MORRIS LLP

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30 South 17th Street
Philadelphia, PA 19103

Attorneys for Defendant
CISCO SYSTEMS, INC.

ATTESTATION

I, Patrick S. Salceda, am the ECF user whose identification and password are being used to file this Joint Discovery Letter. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that the other signatory to this document, Hannah Lee, has concurred in this filing.

Dated: May 9, 2019

/s/ Patrick S. Salceda
Patrick S. Salceda

DM2\9836567.2

EXHIBIT I

FILED UNDER SEAL

EXHIBIT J

Dotson, David C.

From: Phillips, Cintia H.
Sent: Thursday, January 23, 2020 3:18 PM
To: afrankel@kramerlevin.com; jchoa@potteranderson.com; Kobialka, Lisa; Andre, Paul; provner@potteranderson.com
Cc: Dotson, David C.; Garellek, Jordana; Gaudet, Matthew C.; Gibson, John R.; Gunther, Jarrad M.; Jameson, Woody; Parker, Carolyn A.; Phillips, Cintia H.; Renck, Richard L.; Ryan, Peggy A.
Subject: Finjan v. Rapid7 - Rapid7's Requested ESI Search Terms
Attachments: 1.23.2020 - Rapid7's Requested ESI Search Terms.pdf

Counsel:

Please find attached Rapid7's Requested ESI Search Terms.

Thanks,

Cintia H. Phillips
Paralegal

Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801-1659
P: +1 302 657 4909
F: +1 302 397 2382

CHPhillips@duanemorris.com
www.duanemorris.com

EXHIBIT K

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Wednesday, April 8, 2020 2:35 PM
To: Gaudet, Matthew C.; Forte, Jennifer H.
Subject: RE: IBM follow-up

Matt,

Finjan intends to produce the IBM documents, and has started the process to do so.

Regards,
Aaron

Aaron M. Frankel
Partner
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas New York, New York 10036
T 212.715.7793 F 212.715.8363

afrankel@kramerlevin.com <mailto:AFrankel@KRAMERLEVIN.com> Bio <<http://www.kramerlevin.com/AFrankel>>

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-----Original Message-----

From: Gaudet, Matthew C. <MCGaudet@duanemorris.com>
Sent: Monday, April 6, 2020 3:16 PM
To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>
Subject: [EXTERNAL] IBM follow-up

Aaron: following up on our call several weeks ago, pls let us know your client's decision re IBM docs, i.e., either stipulating or producing - thx,

Matt

Sent from my iPad

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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EXHIBIT L

From: Jason Berrebi <Jason.Berrebi@ibm.com>
Sent: Friday, June 12, 2020 12:26 PM
To: AFrankel@KRAMERLEVIN.com
Cc: Snedeker, Alice; Dotson, David C.; HLee@KRAMERLEVIN.com; jchoa@potteranderson.com; Garellek, Jordana; JHannah@KRAMERLEVIN.com; Forte, Jennifer H.; Gunther, Jarrad M.; JPymonto@KRAMERLEVIN.com; Gibson, John R.; LKobialka@KRAMERLEVIN.com; Gaudet, Matthew C.; PAndre@KRAMERLEVIN.com; provner@potteranderson.com; Renck, Richard L.; SHedvat@KRAMERLEVIN.com; Jameson, Woody
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron - Just to make sure everyone fully understands the timing here. You reached out to IBM to put us on notice of the possible production of IBM materials on April 27. When did Finjan first become aware of the the defendant's requests for these materials in the Rapid 7 matter? When was the close of fact discovery in the Rapid 7 matter?
Thanks in advance for these details,
Jason

Jason Berrebi
Counsel, IP & Corporate Litigation
1 North Castle Drive, Armonk, New York 10504
Phone: (914) 765-2241
T/L: 251-2241

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----- Original message -----

From: "Frankel, Aaron"
To: Jason Berrebi , "Snedeker, Alice"
Cc: "Dotson, David C." , "Lee, Hannah" , "Choa, Jonathan A." , "Garellek, Jordana" , "Hannah, James" , "Forte, Jennifer H." , "Gunther, Jarrad M." , "Pymonto, Julian" , "Gibson, John R." , "Kobialka, Lisa" , "Gaudet, Matthew C." , "Andre, Paul" , "provner@potteranderson.com" , "Renck, Richard L." , "Hedvat, Shannon H." , "Jameson, Woody"
Subject: RE: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents
Date: Fri, Jun 12, 2020 11:21 AM

Counsel:

Further to our meet and confer, with respect to the *SonicWall* case, Finjan reiterates that it does not object to producing non-privileged, responsive documents regarding its negotiations with IBM, and is only withholding those documents at the direction of IBM. The notice of subpoena that SonicWall served yesterday indicates the Cisco will be taking the deposition. We assume the reference to Cisco is a typographical error, but please confirm the discovery is for the *SonicWall* case only.

As to the *Rapid7* case, Finjan does not consent to the service of a subpoena or further fact depositions at this late stage of the case, long after the close of fact discovery.

Regards,

Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas, New York, New York 10036

T 212.715.7793 F 212.715.8363

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From: Frankel, Aaron
Sent: Friday, June 5, 2020 5:13 PM
To: Jason Berrebi ; Snedeker, Alice
Cc: Dotson, David C. ; Lee, Hannah ; Choa, Jonathan A. ; Garellek, Jordana ; Hannah, James ; Forte, Jennifer H. ; Gunther, Jarrad M. ; Pymonto, Julian ; Gibson, John R. ; Kobialka, Lisa ; Gaudet, Matthew C. ; Andre, Paul ; provner@potteranderson.com; Renck, Richard L. ; Hedvat, Shannon H. ; Jameson, Woody
Subject: RE: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents
We are confirmed for 4:00 PM ET then. We will start with the IBM issues so you can drop off.
Regards,
Aaron

From: Jason Berrebi <Jason.Berrebi@ibm.com>
Sent: Friday, June 5, 2020 4:41 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>
Cc: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Dotson, David C. <DCDotson@duanemorris.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Choa, Jonathan A. <jchoa@potteranderson.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; Gibson, John R. <JRGibson@duanemorris.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; provner@potteranderson.com; Renck, Richard L. <RLRenck@duanemorris.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Jameson, Woody <WJameson@duanemorris.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

4pm Tuesday, June 9, works for IBM. Hopefully we can discuss the IBM portion first and then I can drop off.

Best regards and have a great weekend,
Jason

JASON BERREBI
Senior Attorney - Corporate Litigation

Phone: 914-765-2241 | **Tie-Line:** 251-2241
E-mail: Jason.Berrebi@ibm.com
1 North Castle Dr. | Armonk, NY 10504-1785

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this e-mail in error, please delete it from your system without
copying it and notify me of the misdirection by reply e-mail.*

"Snedeker, Alice" ---06/05/2020 04:38:26 PM---Aaron, Assuming IBM is available on Tuesday, we are available to discuss at 4pm ET. We'll use the in

From: "Snedeker, Alice" <AESnedeker@duanemorris.com>
To: "Frankel, Aaron" <AFrankel@KRAMERLEVIN.com>, 'Jason Berrebi' <Jason.Berrebi@ibm.com>
Cc: "Forte, Jennifer H." <JHForte@duanemorris.com>, "Gaudet, Matthew C." <MCGaudet@duanemorris.com>, "Dotson, David C." <DCDotson@duanemorris.com>, "Jameson, Woody" <WJameson@duanemorris.com>, "Gibson, John R." <JRGibson@duanemorris.com>, "Gunther, Jarrad M." <JMGunther@duanemorris.com>, "Garellek, Jordana" <JGarellek@duanemorris.com>, "Renck, Richard L." <RLRenck@duanemorris.com>, "Andre, Paul"

<PAndre@KRAMERLEVIN.com>, "Kobialka, Lisa" <LKobialka@KRAMERLEVIN.com>, "Hannah, James" <JHannah@KRAMERLEVIN.com>, "Lee, Hannah" <HLee@KRAMERLEVIN.com>, "Hedvat, Shannon H." <SHedvat@KRAMERLEVIN.com>, "Pymento, Julian" <JPymento@KRAMERLEVIN.com>, "provner@potteranderson.com" <provner@potteranderson.com>, "Choa, Jonathan A." <jchoa@potteranderson.com>
Date: 06/05/2020 04:38 PM
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Assuming IBM is available on Tuesday, we are available to discuss at 4pm ET. We'll use the information provided below.

As for the other issues specific to SonicWall only, we will email you separately.

Alice E. Snedeker
Associate

Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Friday, June 5, 2020 9:28 AM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; 'Jason Berrebi' <Jason.Berrebi@ibm.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

We are available on Tuesday for a meet and confer at noon and from 3:00-6:00 PM ET. Please let us know the best time for you.

In addition to the IBM issue, please be prepared to confer on the following:

- When SonicWall will produce emails
- Production of updated price lists
- If the spreadsheets produced as SonicWall-Finjan_00260539 and SonicWall-Finjan_00260540 include complete revenue data and the source of the spreadsheets.
- Scheduling and topics for the depositions of Dmitriy Ayrapetov, Graham Carter, Senthil Cheetancheri, Alex Dubrovsky, John Gmuender, Matt Neiderman, Bob Van Kirk and Frank Yao.
- Confirming the date for the deposition of Eric Hawkes and that your firm represents Mr. Hawkes

We can use this LoopUp dial-in for the call:

To be dialed in: <https://meet.loopup.com/FIGJcYk>
Or, if you are offline:
Guest Dial-in Code: 2705643#

USA: +1 (855) 633-2066

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Wednesday, June 3, 2020 12:07 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; 'Jason Berrebi' <Jason.Berrebi@ibm.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

We are conferring with Finjan on this issue.

We suggest a call on Tuesday to work through the proposed compromise resolution.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Friday, May 29, 2020 10:35 AM

To: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com;
Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Jason and Aaron,

To follow up on the meet and confer, SonicWall and Rapid7 are willing to work with Finjan and IBM by serving IBM subpoena(s) to obtain the information/testimony needed regarding the Finjan/IBM assignment agreements, as IBM proposed during our meet and confer. This potential compromise is subject to SonicWall and Rapid7 not waiving their rights to pursue the requested discovery from Finjan in the respective cases to the extent they are thwarted in their ability or are otherwise unable to obtain testimony/information on the topics related to the requested discovery through IBM's responses to the subpoena.

For the Rapid7 matter, this potential compromise is subject to Finjan agreeing to not challenge Rapid7's subpoena(s) to IBM and use of the resulting information due to fact discovery being closed in the Rapid7 matter or otherwise. If Finjan does not accept this compromise or does not stipulate to not raise IBM at all during trial, Rapid7 will move to compel Finjan, as previously discussed. Aaron, please confirm Finjan's position on this issue.

Thank you,

Alice E. Snedeker
Associate

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1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
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F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Jason Berrebi <Jason.Berrebi@ibm.com>
Sent: Monday, May 18, 2020 7:58 PM
To: Frankel, Aaron <AFrankel@kramerlevin.com>
Cc: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@kramerlevin.com>; Kobialka, Lisa <LKobialka@kramerlevin.com>; Hannah, James <JHannah@kramerlevin.com>; Lee, Hannah <HLee@kramerlevin.com>; Hedvat, Shannon H. <SHedvat@kramerlevin.com>; Pymonto, Julian <JPymonto@kramerlevin.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm works

Sent from my iPhone

On May 18, 2020, at 7:23 PM, Frankel, Aaron <AFrankel@kramerlevin.com> wrote:

Alice,

Confirmed as to Finjan.

Jason – if 1:00 PM does not work, please let us know.

Regards,
Aaron

Aaron M. Frankel
Partner

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.7793 F 212.715.8363

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Monday, May 18, 2020 1:34 PM
To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron – I'm writing to confirm our meet and confer, including Delaware local counsel, at 1pm ET tomorrow (Tuesday). We can use the below dial in.

877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker
Associate

Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Snedeker, Alice
Sent: Friday, May 15, 2020 3:40 PM
To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm ET works for us.

Jason – Let us know if this time doesn't work for you.

Alice E. Snedeker

Associate

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F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Friday, May 15, 2020 3:31 PM

To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

I just booked Tuesday at 11:00. 1:00 PM ET would work (or any time after).

Aaron

Aaron M. Frankel
Partner

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.7793 F 212.715.8363

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From: Snedeker, Alice <AESnedeker@duanemorris.com>

Sent: Friday, May 15, 2020 3:28 PM

To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian

<JPymeto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron and Jason,

Apologies for the delay; we're available on Tuesday at 11am. If that time doesn't work, please propose a time that does.

We can use this call bridge: 877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker
Associate

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Atlanta, GA 30309-3929
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F: +1 404 521 4129

AESnedeker@duanemorris.com
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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Tuesday, May 12, 2020 4:50 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymeto, Julian <JPymeto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

Finjan continues to not agree to the stipulation proposed by Rapid7.

I am copying Jason Berrebi, counsel for IBM. Mr. Berrebi has asked to participate in the meet and confer along with national and local counsel for the parties.

We are both available on Monday and Tuesday for a meet and confer.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Tuesday, May 12, 2020 8:45 AM
To: Forte, Jennifer H. <JHForte@duanemorris.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
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Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Following up on the below email, I understand that you and Matt Gaudet previously had a meet and confer on this issue and the outstanding requirement is the local counsel meet and confer required in D. Del. Please let us know when you are available to meet and confer with local counsel in the Rapid7 case, assuming Finjan's silence indicates it will not agree to the attached stipulation.

If we are mistaken as to the meaning of Finjan's silence, please confirm we have permission to file the stipulation.

Thank you,

Alice E. Snedeker
Associate

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Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Forte, Jennifer H. <JHForte@duanemorris.com>
Sent: Friday, May 1, 2020 1:14 PM
To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>
Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

As you know, several months ago, we requested confirmation that Finjan would either produce all documents and email communications related to the IBM agreement or stipulate that Finjan will not mention IBM at trial. After months of email exchanges and phone calls on this issue, you represented that Finjan "intends to produce the IBM documents, and has started the process to do so." (See attached). Your email below suggests otherwise. This is the exact issue that was previously decided in the Finjan v. Cisco case. Judge van Keulen held that, despite IBM's objection, Finjan is required to either produce the requested documents or stipulate in writing that it will not mention IBM at trial.

By close of business today, please confirm that we can file the attached Stipulation in both the SonicWall and Rapid7 cases. Otherwise, we will proceed with the motion to compel.

Jennifer H. Forté
Associate

Duane Morris LLP
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Atlanta, GA 30309-3929
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F: +1 404 393 0357

jhforte@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Thursday, April 30, 2020 1:53 PM

To: Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Forte, Jennifer H. <JHForté@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

IBM consents to the production of the patent assignment agreement between IBM and Finjan on a "CONFIDENTIAL-- OUTSIDE COUNSEL ONLY" and "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" basis under the respective protective orders in the *Rapid7* and *SonicWall* cases, subject to Defendants' agreement that all electronic and physical copies of the agreement will be returned to Finjan or destroyed when the litigations are concluded. Please confirm Defendants' agreement, and Finjan will produce the document.

IBM objects to the production of documents related to the negotiation of the agreement as, at a minimum, non-responsive to Defendants' discovery requests and irrelevant to the claims and defenses in the litigations.

Regards,
Aaron

Aaron M. Frankel
Partner

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.7793 F 212.715.8363
afrankel@kramerlevin.com

[Bio](#)

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EXHIBIT M

Dotson, David C.

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Tuesday, May 12, 2020 4:50 PM
To: Snedeker, Alice; Forte, Jennifer H.; Gaudet, Matthew C.; Dotson, David C.; Jameson, Woody; Gibson, John R.; Gunther, Jarrad M.; Garellek, Jordana; Renck, Richard L.
Cc: Jason Berrebi; Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; Hedvat, Shannon H.; Pymonto, Julian; provner@potteranderson.com; 'Choa, Jonathan A.'
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

Finjan continues to not agree to the stipulation proposed by Rapid7.

I am copying Jason Berrebi, counsel for IBM. Mr. Berrebi has asked to participate in the meet and confer along with national and local counsel for the parties.

We are both available on Monday and Tuesday for a meet and confer.

Regards,
Aaron

Aaron M. Frankel
Partner

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Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

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Thank you,

Alice E. Snedeker

Associate

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From: Forte, Jennifer H. <JHForte@duanemorris.com>

Sent: Friday, May 1, 2020 1:14 PM

To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

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Jennifer H. Forté

Associate

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Atlanta, GA 30309-3929
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F: +1 404 393 0357

jhforte@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Thursday, April 30, 2020 1:53 PM

To: Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

IBM consents to the production of the patent assignment agreement between IBM and Finjan on a "CONFIDENTIAL-- OUTSIDE COUNSEL ONLY" and ""HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" basis under the respective protective orders in the *Rapid7* and *SonicWall* cases, subject to Defendants' agreement that all electronic and physical copies of the agreement will be returned to Finjan or destroyed when the litigations are concluded. Please confirm Defendants' agreement, and Finjan will produce the document.

IBM objects to the production of documents related to the negotiation of the agreement as, at a minimum, non-responsive to Defendants' discovery requests and irrelevant to the claims and defenses in the litigations.

Regards,
Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP
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T 212.715.7793 F 212.715.8363
afrankel@kramerlevin.com

Bio

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EXHIBIT N

From: Dotson, David C.
Sent: Friday, June 12, 2020 12:55 PM
To: 'Jason Berrebi'; AFrankel@KRAMERLEVIN.com
Cc: Snedeker, Alice; HLee@KRAMERLEVIN.com; jchoa@potteranderson.com; Garellek, Jordana; JHannah@KRAMERLEVIN.com; Forte, Jennifer H.; Gunther, Jarrad M.; JPymonto@KRAMERLEVIN.com; Gibson, John R.; LKobialka@KRAMERLEVIN.com; Gaudet, Matthew C.; PAndre@KRAMERLEVIN.com; provner@potteranderson.com; Renck, Richard L.; SHedvat@KRAMERLEVIN.com; Jameson, Woody
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Rapid7 served its email discovery requests (to say nothing of its Requests for Production) on Finjan January 23, 2020, well before the March 13, 2020 close of fact discovery. It appears Finjan did not even reach out to IBM until *after* the close of fact discovery (April 27), and Finjan did not ultimately make its email production – which failed to include the IBM-related correspondence you have confirmed is in Finjan’s possession – until May 13, 2020 (after repeated requests by Rapid7). Thus, Finjan’s complaints about the close of fact discovery on this issue are not well taken.

In view of Finjan’s position, we will ask Richard to coordinate with Phil in scheduling a discovery conference with the Court so that we can proceed with a motion to compel.

Thanks,
David

From: Jason Berrebi
Sent: Friday, June 12, 2020 12:26 PM
To: AFrankel@KRAMERLEVIN.com
Cc: Snedeker, Alice ; Dotson, David C. ; HLee@KRAMERLEVIN.com; jchoa@potteranderson.com; Garellek, Jordana ; JHannah@KRAMERLEVIN.com; Forte, Jennifer H. ; Gunther, Jarrad M. ; JPymonto@KRAMERLEVIN.com; Gibson, John R. ; LKobialka@KRAMERLEVIN.com; Gaudet, Matthew C. ; PAndre@KRAMERLEVIN.com; provner@potteranderson.com; Renck, Richard L. ; SHedvat@KRAMERLEVIN.com; Jameson, Woody
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron - Just to make sure everyone fully understands the timing here. You reached out to IBM to put us on notice of the possible production of IBM materials on April 27. When did Finjan first become aware of the the defendant's requests for these materials in the Rapid 7 matter? When was the close of fact discovery in the Rapid 7 matter?

Thanks in advance for these details,
Jason

Jason Berrebi
Counsel, IP & Corporate Litigation
1 North Castle Drive, Armonk, New York 10504
Phone: (914) 765-2241
T/L: 251-2241

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received this e-mail in error, please delete it from your system without copying it and notify me of the misdirection by reply e-mail.

----- Original message -----

From: "Frankel, Aaron" <AFrankel@KRAMERLEVIN.com>
To: Jason Berrebi <Jason.Berrebi@ibm.com>, "Snedeker, Alice" <AESnedeker@duanemorris.com>
Cc: "Dotson, David C." <DCDotson@duanemorris.com>, "Lee, Hannah" <HLee@KRAMERLEVIN.com>, "Choa, Jonathan A." <jchoa@potteranderson.com>, "Garellek, Jordana" <JGarellek@duanemorris.com>, "Hannah, James" <JHannah@KRAMERLEVIN.com>, "Forte, Jennifer H." <JHForte@duanemorris.com>, "Gunther, Jarrad M." <JMGunther@duanemorris.com>, "Pymento, Julian" <JPymento@KRAMERLEVIN.com>, "Gibson, John R." <JRGibson@duanemorris.com>, "Kobialka, Lisa" <LKobialka@KRAMERLEVIN.com>, "Gaudet, Matthew C." <MCGaudet@duanemorris.com>, "Andre, Paul" <PAndre@KRAMERLEVIN.com>, "provner@potteranderson.com" <provner@potteranderson.com>, "Renck, Richard L." <RLRenck@duanemorris.com>, "Hedvat, Shannon H." <SHedvat@KRAMERLEVIN.com>, "Jameson, Woody" <WJameson@duanemorris.com>
Subject: RE: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents
Date: Fri, Jun 12, 2020 11:21 AM
Counsel:

Further to our meet and confer, with respect to the *SonicWall* case, Finjan reiterates that it does not object to producing non-privileged, responsive documents regarding its negotiations with IBM, and is only withholding those documents at the direction of IBM. The notice of subpoena that SonicWall served yesterday indicates the Cisco will be taking the deposition. We assume the reference to Cisco is a typographical error, but please confirm the discovery is for the *SonicWall* case only.

As to the *Rapid7* case, Finjan does not consent to the service of a subpoena or further fact depositions at this late stage of the case, long after the close of fact discovery.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Frankel, Aaron
Sent: Friday, June 5, 2020 5:13 PM
To: Jason Berrebi <Jason.Berrebi@ibm.com>; Snedeker, Alice <AESnedeker@duanemorris.com>
Cc: Dotson, David C. <DCDotson@duanemorris.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Choa, Jonathan A. <jchoa@potteranderson.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; Gibson, John R. <JRGibson@duanemorris.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; provner@potteranderson.com; Renck, Richard L. <RLRenck@duanemorris.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Jameson, Woody <WJameson@duanemorris.com>
Subject: RE: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

We are confirmed for 4:00 PM ET then. We will start with the IBM issues so you can drop off.

Regards,
Aaron

From: Jason Berrebi <Jason.Berrebi@ibm.com>
Sent: Friday, June 5, 2020 4:41 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>
Cc: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Dotson, David C. <DCDotson@duanemorris.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Choa, Jonathan A. <jchoa@potteranderson.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Pymiento, Julian <JPymiento@KRAMERLEVIN.com>; Gibson, John R. <JRGibson@duanemorris.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; provner@potteranderson.com; Renck, Richard L. <RLRenck@duanemorris.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Jameson, Woody <WJameson@duanemorris.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

4pm Tuesday, June 9, works for IBM. Hopefully we can discuss the IBM portion first and then I can drop off.

Best regards and have a great weekend,
Jason

JASON BERREBI
Senior Attorney - Corporate Litigation

Phone: 914-765-2241 | Tie-Line: 251-2241
E-mail: Jason.Berrebi@bm.com
1 North Castle Dr. | Armonk, NY 10504-1785

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▼ "Snedeker, Alice" ---06/05/2020 04:38:26 PM---Aaron, Assuming IBM is available on Tuesday, we are available to discuss at 4pm ET. We'll use the in

From: "Snedeker, Alice" <AESnedeker@duanemorris.com>
To: "Frankel, Aaron" <AFrankel@KRAMERLEVIN.com>, 'Jason Berrebi' <Jason.Berrebi@ibm.com>
Cc: "Forte, Jennifer H." <JHForte@duanemorris.com>, "Gaudet, Matthew C." <MCGaudet@duanemorris.com>, "Dotson, David C." <DCDotson@duanemorris.com>, "Jameson, Woody" <WJameson@duanemorris.com>, "Gibson, John R." <JRGibson@duanemorris.com>, "Gunther, Jarrad M." <JMGunther@duanemorris.com>, "Garellek, Jordana" <JGarellek@duanemorris.com>, "Renck, Richard L." <RLRenck@duanemorris.com>, "Andre, Paul" <PAndre@KRAMERLEVIN.com>, "Kobialka, Lisa" <LKobialka@KRAMERLEVIN.com>, "Hannah, James" <JHannah@KRAMERLEVIN.com>, "Lee, Hannah" <HLee@KRAMERLEVIN.com>, "Hedvat, Shannon H." <SHedvat@KRAMERLEVIN.com>, "Pymiento, Julian" <JPymiento@KRAMERLEVIN.com>, "provner@potteranderson.com" <provner@potteranderson.com>, "Choa, Jonathan A." <jchoa@potteranderson.com>
Date: 06/05/2020 04:38 PM
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Assuming IBM is available on Tuesday, we are available to discuss at 4pm ET. We'll use the information provided below.

As for the other issues specific to SonicWall only, we will email you separately.

Alice E. Snedeker

Associate

Duane Morris LLP
1075 Peachtree Street NE, Suite 2000
Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Friday, June 5, 2020 9:28 AM

To: Snedeker, Alice <AESnedeker@duanemorris.com>; 'Jason Berrebi' <Jason.Berrebi@ibm.com>

Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C.

<DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R.

<JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana

<JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>;

Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah

<JLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian

<JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

We are available on Tuesday for a meet and confer at noon and from 3:00-6:00 PM ET. Please let us know the best time for you.

In addition to the IBM issue, please be prepared to confer on the following:

- When SonicWall will produce emails
- Production of updated price lists
- If the spreadsheets produced as SonicWall-Finjan_00260539 and SonicWall-Finjan_00260540 include complete revenue data and the source of the spreadsheets.
- Scheduling and topics for the depositions of Dmitry Ayrapetov, Graham Carter, Senthil Cheetancheri, Alex Dubrovsky, John Gmuender, Matt Neiderman, Bob Van Kirk and Frank Yao.
- Confirming the date for the deposition of Eric Hawkes and that your firm represents Mr. Hawkes

We can use this LoopUp dial-in for the call:

To be dialed in: <https://meet.loopup.com/FIGJcYk>

Or, if you are offline:

Guest Dial-in Code: 2705643#

USA: +1 (855) 633-2066

Regards,
Aaron

Aaron M. Frankel
Partner

Kramer Levin Naftalis & Frankel LLP
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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Wednesday, June 3, 2020 12:07 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; 'Jason Berrebi' <Jason.Berrebi@ibm.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

We are conferring with Finjan on this issue.

We suggest a call on Tuesday to work through the proposed compromise resolution.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Friday, May 29, 2020 10:35 AM
To: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Cc: Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Jason and Aaron,

To follow up on the meet and confer, SonicWall and Rapid7 are willing to work with Finjan and IBM by serving IBM subpoena(s) to

obtain the information/testimony needed regarding the Finjan/IBM assignment agreements, as IBM proposed during our meet and confer. This potential compromise is subject to SonicWall and Rapid7 not waiving their rights to pursue the requested discovery from Finjan in the respective cases to the extent they are thwarted in their ability or are otherwise unable to obtain testimony/information on the topics related to the requested discovery through IBM's responses to the subpoena.

For the Rapid7 matter, this potential compromise is subject to Finjan agreeing to not challenge Rapid7's subpoena(s) to IBM and use of the resulting information due to fact discovery being closed in the Rapid7 matter or otherwise. If Finjan does not accept this compromise or does not stipulate to not raise IBM at all during trial, Rapid7 will move to compel Finjan, as previously discussed. Aaron, please confirm Finjan's position on this issue.

Thank you,

Alice E. Snedeker

Associate

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F: +1 404 521 4129

AESnedeker@duanemorris.com
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From: Jason Berrebi <Jason.Berrebi@ibm.com>

Sent: Monday, May 18, 2020 7:58 PM

To: Frankel, Aaron <AFrankel@kramerlevin.com>

Cc: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C.

<MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody

<WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M.

<JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L.

<RLRenck@duanemorris.com>; Andre, Paul <PAAndre@kramerlevin.com>; Kobialka, Lisa <LKobialka@kramerlevin.com>; Hannah,

James <JHannah@kramerlevin.com>; Lee, Hannah <HLee@kramerlevin.com>; Hedvat, Shannon H. <SHedvat@kramerlevin.com>;

Pymento, Julian <JPymeto@kramerlevin.com>; provner@potteranderson.com; Choa, Jonathan A. <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm works

Sent from my iPhone

On May 18, 2020, at 7:23 PM, Frankel, Aaron <AFrankel@kramerlevin.com> wrote:

Alice,

Confirmed as to Finjan.

Jason – if 1:00 PM does not work, please let us know.

Regards,
Aaron

Aaron M. Frankel

Partner

Kramer Levin Naftalis & Frankel LLP

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From: Snedeker, Alice <AESnedeker@duanemorris.com>

Sent: Monday, May 18, 2020 1:34 PM

To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: 'Jason Berrebi' <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron – I'm writing to confirm our meet and confer, including Delaware local counsel, at 1pm ET tomorrow (Tuesday). We can use the below dial in.

877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker

Associate

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Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

AESnedeker@duanemorris.com
www.duanemorris.com

From: Snedeker, Alice

Sent: Friday, May 15, 2020 3:40 PM

To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>

Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

1pm ET works for us.

Jason – Let us know if this time doesn't work for you.

Alice E. Snedeker

Associate

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Atlanta, GA 30309-3929
P: +1 404 253 6989
F: +1 404 521 4129

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Friday, May 15, 2020 3:31 PM

To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

I just booked Tuesday at 11:00. 1:00 PM ET would work (or any time after).

Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Friday, May 15, 2020 3:28 PM
To: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymonto, Julian <JPymonto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron and Jason,

Apologies for the delay; we're available on Tuesday at 11am. If that time doesn't work, please propose a time that does.

We can use this call bridge: 877-211-3621, PC: 918-517-3329

Thank you,

Alice E. Snedeker
Associate

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>
Sent: Tuesday, May 12, 2020 4:50 PM
To: Snedeker, Alice <AESnedeker@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Jason Berrebi <Jason.Berrebi@ibm.com>; Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Alice,

Finjan continues to not agree to the stipulation proposed by Rapid7.

I am copying Jason Berrebi, counsel for IBM. Mr. Berrebi has asked to participate in the meet and confer along with national and local counsel for the parties.

We are both available on Monday and Tuesday for a meet and confer.

Regards,
Aaron

Aaron M. Frankel
Partner

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From: Snedeker, Alice <AESnedeker@duanemorris.com>
Sent: Tuesday, May 12, 2020 8:45 AM
To: Forte, Jennifer H. <JHForte@duanemorris.com>; Frankel, Aaron <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>
Cc: Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymento@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>
Subject: [EXTERNAL] RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

Following up on the below email, I understand that you and Matt Gaudet previously had a meet and confer on this issue and the outstanding requirement is the local counsel meet and confer required in D. Del. Please let us know when you are available to meet and confer with local counsel in the Rapid7 case, assuming Finjan's silence indicates it will not agree to the attached stipulation.

If we are mistaken as to the meaning of Finjan's silence, please confirm we have permission to file the stipulation.

Thank you,

Alice E. Snedeker

Associate

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From: Forte, Jennifer H. <JHForte@duanemorris.com>

Sent: Friday, May 1, 2020 1:14 PM

To: 'Frankel, Aaron' <AFrankel@KRAMERLEVIN.com>; Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymeto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: RE: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Aaron,

As you know, several months ago, we requested confirmation that Finjan would either produce all documents and email communications related to the IBM agreement or stipulate that Finjan will not mention IBM at trial. After months of email exchanges and phone calls on this issue, you represented that Finjan "intends to produce the IBM documents, and has started the process to do so." (See attached). Your email below suggests otherwise. This is the exact issue that was previously decided in the Finjan v. Cisco case. Judge van Keulen held that, despite IBM's objection, Finjan is required to either produce the requested documents or stipulate in writing that it will not mention IBM at trial.

By close of business today, please confirm that we can file the attached Stipulation in both the SonicWall and Rapid7 cases. Otherwise, we will proceed with the motion to compel.

Jennifer H. Forté

Associate

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From: Frankel, Aaron <AFrankel@KRAMERLEVIN.com>

Sent: Thursday, April 30, 2020 1:53 PM

To: Gaudet, Matthew C. <MCGaudet@duanemorris.com>; Forte, Jennifer H. <JHForte@duanemorris.com>; Dotson, David C. <DCDotson@duanemorris.com>; Jameson, Woody <WJameson@duanemorris.com>; Gibson, John R. <JRGibson@duanemorris.com>; Gunther, Jarrad M. <JMGunther@duanemorris.com>; Garellek, Jordana <JGarellek@duanemorris.com>; Renck, Richard L. <RLRenck@duanemorris.com>; Snedeker, Alice <AESnedeker@duanemorris.com>

Cc: Andre, Paul <PAndre@KRAMERLEVIN.com>; Kobialka, Lisa <LKobialka@KRAMERLEVIN.com>; Hannah, James <JHannah@KRAMERLEVIN.com>; Lee, Hannah <HLee@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Pymento, Julian <JPymeto@KRAMERLEVIN.com>; provner@potteranderson.com; 'Choa, Jonathan A.' <jchoa@potteranderson.com>

Subject: Finjan/Rapid7; Finjan/SonicWall: IBM Documents

Counsel:

IBM consents to the production of the patent assignment agreement between IBM and Finjan on a "CONFIDENTIAL-- OUTSIDE COUNSEL ONLY" and "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" basis under the respective protective orders in the *Rapid7* and *SonicWall* cases, subject to Defendants' agreement that all electronic and physical copies of the agreement will be returned to Finjan or destroyed when the litigations are concluded. Please confirm Defendants' agreement, and Finjan will produce the document.

IBM objects to the production of documents related to the negotiation of the agreement as, at a minimum, non-responsive to Defendants' discovery requests and irrelevant to the claims and defenses in the litigations.

Regards,
Aaron

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Partner

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Bio

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