

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN LLC, a Delaware Limited Liability
Company,

Plaintiff,

v.

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

Defendants.

C.A. No. 18-1519-MN


REDACTED

**FINJAN LLC'S OPENING BRIEF SUPPORTING ITS
MOTION TO PRECLUDE TRIAL TESTIMONY OF RAPID7'S DAMAGES
EXPERT STEPHEN BECKER**

Proshanto Mukherji
Fish & Richardson P.C.
One Marina Park Drive
Boston, MA 02210
(617) 542-5070
mukherji@fr.com

FISH & RICHARDSON P.C.
Susan E. Morrison (#4690)
222 Delaware Avenue, 17th Floor
Wilmington, DE 19801
(302) 652-5070
morrison@fr.com

Lawrence Jarvis
Fish & Richardson P.C.
1180 Peachtree Street NE, 21st Floor
Atlanta, GA 30309
(404) 892-5005
jarvis@fr.com

Juanita R. Brooks
Roger Denning
Jason W. Wolff
12860 El Camino Real, Suite 400
San Diego, CA 92130
(858) 678-5070
brooks@fr.com
denning@fr.com
wolff@fr.com

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**ATTORNEYS FOR
PLAINTIFF FINJAN LLC**

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I. NATURE AND STAGE OF THE PROCEEDINGS

This is a patent case. Plaintiff Finjan LLC accuses Defendants Rapid7, Inc. and Rapid7 LLC with infringing seven Finjan patents. Discovery in this case closed on September 24, 2020, and the Court has scheduled a 6-day jury trial to begin on February 22, 2021.

II. SUMMARY OF ARGUMENT

1. Rapid7's expert Dr. Stephen Becker engages in a damages analysis that is based on unreliable data and speculation, and therefore he should not be permitted to offer testimony on it at trial. After discussing twenty-two licenses between Finjan and various third parties, [REDACTED] [REDACTED] Dr. Becker arbitrarily selects only eight for his continued analysis. Dr. Becker makes that selection even though he acknowledged that licenses he excluded from his analysis had similar characteristics to those he included.

2. Dr. Becker then compounds that error by engaging in speculation regarding an "effective" royalty rate in the eight licenses he selects. [REDACTED]

[REDACTED] And Dr. Becker is forced to make further assumptions and calculations based on [REDACTED] [REDACTED], leading to an unreliable and speculative revenue base, and thus an unreliable and speculative "effective" royalty rate. Dr. Becker's analysis is therefore improper under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and should be excluded.

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