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] REDACTED

FINJAN LLC'S RESPONSE TO RAPID7'S MOTION FOR REARGUMENT

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Dated: October 30, 2020

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The Court was correct to deny the request in Rapid7's letter brief in the first instance, and Rapid7's Motion for Reargument ("Motion") should be denied. There are genuine factual disputes between the parties, which were laid out in Finjan's letter brief and are elaborated upon here, that preclude summary judgment on infringement in this matter. Rapid7's Motion for Reargument misstates the record before the Court, obfuscates the issues on infringement, and fails to articulate a reason for reargument that falls within those permitted by the Local Rules. Moreover, Rapid7's motion is, at its heart, a disagreement with the Court's letter briefing procedure generally. It attempts to undermine that procedure by pointing to different matters involving Finjan, which involved different patents and different accused products, and which have no bearing on infringement here. For these reasons, the reasons articulated in Finjan's letter brief (D.I. 196), and below, Finjan respectfully requests that Rapid7's Motion be denied.

I. NATURE AND STAGE OF THE PROCEEDINGS

Pursuant to the Court's scheduling order, the parties each filed letter briefs seeking permission to move for summary judgment on October 2, 2020, and each party filed responsive letter briefs on those issues on October 9, 2020. (D.I. 191, 192, 196, 197.) The Court denied both parties' requests in an oral order issued on October 13, 2020. (D.I. 198.) On Tuesday, October 27, 2020, Rapid7 filed a motion for reargument of the Court's October 13 order pursuant to D. Del. L.R. 7.1.5. (D.I. 209.) On October 29, 2020, the Court issued an oral order, ordering Finjan to respond to Rapid7's Motion, and in particular, to respond to specific portions of that Motion, by October 30, 2020. (D.I. 210.)

II. ARGUMENT

Rapid7's Motion for Reargument should be denied. As laid out in Finjan's Letter Brief (D.I. 196), there are genuine factual disputes between the parties regarding infringement that preclude summary judgment. Finjan's experts' opinions are neither "unsupported" nor

"conclusory," but instead present a detailed analysis of infringement. The genuine factual disputes between Finjan's experts and Rapid7's experts must be presented to a jury for resolution. In the sections that follow, Finjan specifically addresses the particular portions of Rapid7's Motion that were identified by the Court.

A. Finjan's Citation of Expert Opinions Regarding the '289 Patent Was Exemplary, and There Are Significant Factual Disputes Between the Parties

Rapid7's arguments regarding the '289 Patent (Section III.B) obfuscate the factual disputes between the parties by pointing to an erroneous citation made by ***both*** Finjan and Rapid7. In its response to the arguments made by Rapid7 in its opening brief, Finjan cited Dr. Mitzenmacher's opening report, and specifically to paragraphs 588, 589, and 552 in a "*see, e.g.*" citation. (D.I. 196 at 5.) While Rapid7 is correct that one of these paragraphs—paragraph 552—was struck by the Special Master's Order (*see* D.I. 190 at 5-8), Rapid7 omits that it too cited to that ***same*** paragraph, first, in its opening letter brief. (*See* D.I. 191 at 5 ("Finjan alleges that the claimed "input modifier" is the Nexpose Scan engine and AppSpider scan engine. Ex. H, Mitz. Rep. ¶¶ 531, 552.").) This was a mutual mistake, commenced by Rapid7. Finjan apologizes to the Court for exacerbating the mistake, but it plainly gives Rapid7 no basis for reargument. As discussed further below, the evidentiary record—including the other paragraphs of Dr. Mitzenmacher's report Finjan cited—amply demonstrates a factual dispute about whether Rapid7 infringes the '289 patent, without reference to that one specific paragraph in that single "*See, e.g.*" cite.

The remainder of Rapid7's argument about the '289 patent, all of which is made below a heading regarding Finjan's citation to the stricken portion of Dr. Mitzenmacher's report (Section III.D.2), concerns evidence that was not stricken. Instead, it relates to a factual dispute between the parties over whether the claimed "substitute function" is satisfied by [redacted]. An examination of the record here shows there is a

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