IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN LLC, a Delaware Limited Liability
Company,

                              Plaintiff,

          v.   C.A. No. 18-1519-MN

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

                              Defendants.

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

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Dated: November 13, 2020   **ATTORNEYS FOR
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I.   INTRODUCTION

Rapid7's answering brief fails to address the serious flaws Finjan identified in Dr. Becker's opinions. As explained in Finjan's opening brief in support of its Motion to Exclude Dr. Becker's opinions, (D.I. 202), Dr. Becker's calculation of "effective" royalty rates is based on unreliable data and unsupported inferences, making his royalty rate calculations arbitrary, and therefore confusing and unhelpful to the jury. Dr. Becker's opinions should be excluded.

Rapid7's arguments about Dr. Becker's analysis in *Cisco*, far from undermining Finjan's critiques, highlight Finjan's point. Rapid7 states that Dr. Becker's analysis in *Cisco* relies on "the ***exact same*** data and evidence" as does his analysis here. (D.I. 221 at 15, emphasis in original.) That Dr. Becker used the "exact same" data, and ███████████████████████ █████████████, proves the arbitrary nature of his calculations both here and in *Cisco*. And Rapid7 fails to ███, neither of which Finjan agrees with, and offers no explanation for the fact that, in most cases, ███ ██ ██████████████████████.

Nor does Rapid7 address the unreliability of the data underlying Dr. Becker's "effective" royalty rate calculations. Rapid7 asserts that all Dr. Becker did was ████████████████ ██████████████████████. (D.I. 221 at 2.) But that does not address Finjan's critique of Dr. Becker's analysis in its motion—that the numbers Dr. Becker used for his royalty base are without support in the record, and are ██████████████████████████████ ██. Nor does Rapid7 address Finjan's critique, discussed further below, that Dr. Becker's selection of certain licenses, and his choice to ignore other comparable licenses, is wholly without support.

Moreover, Rapid7's repeated assertions that Finjan's failure to challenge certain portions of Dr. Becker's analysis in its *Daubert* motion must mean Finjan agrees with those opinions is simply not true. To be clear, while Finjan did not point out every flaw in Dr. Becker's report in support of its motion to exclude, Finjan disagrees with Dr. Becker's analysis in its entirety. To the extent Dr. Becker is permitted to testify at trial at all, Finjan reserves the right to challenge any portion of his opinion, including portions not expressly challenged at this stage. Nor should Rapid7's attempts to use its brief as an additional brief in support of its motion to exclude the opinions of Mr. Parr be given any weight, as those attempts at misdirection merely highlight Rapid7's failure to put in a well-supported opinion from Dr. Becker. The serious flaws in Dr. Becker's analysis that Finjan points to in its motion warrant exclusion of Dr. Becker's opinions on damages here, and Finjan respectfully requests that its motion to exclude be granted.

II.   ARGUMENT

A.   Dr. Becker's Analysis in *Cisco* Highlights the Unreliability of His "Effective" Royalty Rate Calculations

Rapid7's answering brief attempts to save Dr. Becker's analysis by arguing that Dr. Becker made his calculations in *Cisco* based on the "exact same" data he used for his calculations here. (D.I. 221 at 15.) But that is exactly Finjan's point. Dr. Becker's analysis here used the "exact same" data he utilized in the *Cisco* case and ████████████████████ ████████████████████████████████ :

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