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8 *Attorneys for Plaintiff*
9 FINJAN, INC.

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 FINJAN, INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16 ESET, LLC, a California Limited Liability
17 Corporation, and ESET SPOL. S.R.O., a Slovak
18 Republic Corporation,

19 Defendants.

Case No.:

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

1
2 Plaintiff Finjan, Inc. (“Finjan”) files this Complaint for Patent Infringement and Demand for
3 Jury Trial against ESET, LLC and ESET SPOL. S.R.O. (“Defendants” or “ESET”) and allege as
4 follows:

5
6 **THE PARTIES**

7 1. Finjan is a Delaware Corporation, with its principal place of business at 2000 University
8 Avenue, Suite 600, E. Palo Alto, California 94303.

9 2. ESET, LLC is a California Corporation with its principal place of business at 610 West
10 Ash Street, Suite 1700, San Diego, California 92101. ESET, LLC may be served through its agent for
11 service of process Andrew Lee at 610 West Ash Street, Suite 1700, San Diego, CA 92101. ESET, LLC
12 is also known as ESET North America.

13 3. ESET SPOL. S.R.O is a Slovak Republic Corporation with its principal place of
14 business at Aupark Tower, 16th Floor, Einsteinova 24, 851 01 Bratislava, Slovak Republic. Upon
15 information and belief, ESET, LLC is a wholly-owned subsidiary of ESET SPOL. S.R.O.
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17 **JURISDICTION AND VENUE**

18 4. This action arises under the Patent Act, 35 U.S.C. § 101 *et seq.* This Court has original
19 jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1338.

20 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b).

21 6. This Court has personal jurisdiction over Defendants. Upon information and belief,
22 Defendants do business in this District and have, and continues to, infringe and/or induce the
23 infringement in this District. In addition, the Court has personal jurisdiction over Defendants because
24 minimum contacts have been established with the forum and the exercise of jurisdiction would not
25 offend traditional notions of fair play and substantial justice.
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INTRADISTRICT ASSIGNMENT

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2 7. Pursuant to Local Rule 3-2(c), Intellectual Property Actions are assigned on a district-
3 wide basis.

FINJAN'S INNOVATIONS

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5 8. Finjan was founded in 1997 as a wholly-owned subsidiary of Finjan Software Ltd., an
6 Israeli corporation. Finjan was a pioneer in developing proactive security technologies capable of
7 detecting previously unknown and emerging online security threats recognized today under the
8 umbrella of “malware.” These technologies protect networks and endpoints by identifying suspicious
9 patterns and behaviors of content delivered over the Internet. Finjan has been awarded, and continues
10 to prosecute, numerous patents covering innovations in the United States and around the world
11 resulting directly from Finjan’s more than decades-long research and development efforts, supported
12 by a dozen inventors, and over \$65 million in R&D investments.

13
14 9. Finjan built and sold software, including application programming interfaces (APIs), and
15 appliances for network security using these patented technologies. These products and customers
16 continue to be supported by Finjan’s licensing partners. At its height, Finjan employed nearly 150
17 employees around the world building and selling security products and operating the Malicious Code
18 Research Center through which it frequently published research regarding network security and current
19 threats on the Internet. Finjan’s pioneering approach to online security drew equity investments from
20 two major software and technology companies, the first in 2005, followed by the second in 2006.
21 Through 2009, Finjan generated millions of dollars in product sales and related services and support
22 revenues. Finjan became a publicly traded company in June 2013, capitalized with \$30 million. After
23 Finjan’s obligations under the non-compete and confidentiality agreement expired in March 2015,
24 Finjan re-entered the development and production sector of secure products for the consumer market.
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1 10. On November 28, 2000, U.S. Patent No. 6,154,844 (“the ‘844 Patent”), entitled
2 SYSTEM AND METHOD FOR ATTACHING A DOWNLOADABLE SECURITY PROFILE TO A
3 DOWNLOADABLE, was issued to Shlomo Touboul and Nachshon Gal. A true and correct copy of
4 the ‘844 Patent is attached to this Complaint as Exhibit A and is incorporated by reference herein.

5 11. All rights, title, and interest in the ‘844 Patent have been assigned to Finjan, who is the
6 sole owner of the ‘844 Patent. Finjan has been the sole owner of the ‘844 Patent since its issuance.

7 12. The ‘844 Patent is generally directed towards computer networks, and more
8 particularly, provides a system that protects devices connected to the Internet from undesirable
9 operations from web-based content. One of the ways this is accomplished is by linking a security
10 profile to such web-based content to facilitate the protection of computers and networks from
11 malicious web-based content.

12 13. On October 12, 2004, U.S. Patent No. 6,804,780 (“the ‘780 Patent”), entitled SYSTEM
13 AND METHOD FOR PROTECTING A COMPUTER AND A NETWORK FROM HOSTILE
14 DOWNLOADABLES, was issued to Shlomo Touboul. A true and correct copy of the ‘780 Patent is
15 attached to this Complaint as Exhibit B and is incorporated by reference herein.

16 14. All rights, title, and interest in the ‘780 Patent have been assigned to Finjan, which is
17 the sole owner of the ‘780 Patent. Finjan has been the sole owner of the ‘780 Patent since its issuance.

18 15. The ‘780 Patent is generally directed towards methods and systems for generating a
19 Downloadable ID. By generating an identification for each examined Downloadable, the system may
20 allow for the Downloadable to be recognized without reevaluation. Such recognition increases
21 efficiency while also saving valuable resources, such as memory and computing power.

22 16. On July 5, 2011, U.S. Patent No. 7,975,305 (“the ‘305 Patent”), entitled METHOD
23 AND SYSTEM FOR ADAPTIVE RULE-BASED CONTENT SCANNERS FOR DESKTOP
24

1 COMPUTERS, was issued to Moshe Rubin, Moshe Matitya, Artem Melnick, Shlomo Touboul,
2 Alexander Yermakov and Amit Shaked. A true and correct copy of the '305 Patent is attached to this
3 Complaint as Exhibit C and is incorporated by reference herein.

4 17. All rights, title, and interest in the '305 Patent have been assigned to Finjan, who is the
5 sole owner of the '305 Patent. Finjan has been the sole owner of the '305 Patent since its issuance.

6 18. The '305 Patent is generally directed towards network security and, in particular, rule
7 based scanning of web-based content for exploits. One of the ways this is accomplished is by using
8 parser and analyzer rules to describe computer exploits as patterns of types of tokens. Additionally,
9 the system provides a way to keep these rules updated.

10 19. On December 13, 2011, U.S. Patent No. 8,079,086 ("the '086 Patent"), entitled
11 MALICIOUS MOBILE CODE RUNETIME MONITORING SYSTEM AND METHODS, was issued
12 to Yigal Mordechai Edery, Nimrod Itzhak Vered, David R Kroll and Shlomo Touboul. A true and
13 correct copy of the '086 Patent is attached hereto as Exhibit D and is incorporated herein.

14 20. All rights, title, and interest in the '086 Patent have been assigned to Finjan, who is the
15 sole owner of the '086 Patent. Finjan has been the sole owner of the '086 Patent since its issuance.

16 21. The '086 Patent is generally directed towards computer networks and, more
17 particularly, provides a system that protects devices connected to the Internet from undesirable
18 operations from web-based content. One of the ways this is accomplished is by creating a profile of
19 the web-based content and sending these profiles and corresponding web-content to another computer
20 for appropriate action.

21 22. On November 17, 2015, U.S. Patent No. 9,189,621 ("the '621 Patent"), entitled
22 MALICIOUS MOBILE CODE RUNETIME MONITORING SYSTEM AND METHODS, was issued
23

1 to Shlomo Touboul. A true and correct copy of the '621 Patent is attached hereto as Exhibit E and is
2 incorporated by reference herein.

3 23. All rights, title, and interest in the '621 Patent have been assigned to Finjan, who is the
4 sole owner of the '621 Patent. Finjan has been the sole owner of the '621 Patent since its issuance.

5 24. The '621 Patent is generally directed towards a system for determining whether a
6 downloadable is suspicious that includes a processor, a plurality of operating system probes, an
7 interrupter, a first comparator, and a response engine.

8 25. On December 22, 2015, U.S. Patent No. 9,219,755 ("the '755 Patent"), entitled
9 MALICIOUS MOBILE CODE RUNTIME MONITORING SYSTEM AND METHODS, was issued
10 to Shlomo Touboul. A true and correct copy of the '755 Patent is attached hereto as Exhibit F and is
11 incorporated by reference herein.

12 26. All rights, title, and interest in the '755 Patent have been assigned to Finjan, who is the
13 sole owner of the '755 Patent. Finjan has been the sole owner of the '755 Patent since its issuance.

14 27. The '755 Patent generally covers a system for reviewing an operating system call issued
15 by a downloadable that includes a processor, an operating system probe, a runtime environment
16 monitor, a response engine, a downloadable engine, a request broker, a file system probe and a
17 network system probe, and an event router.

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20 **ESET**

21 28. ESET makes, uses, sells, offers for sale, and/or imports into the United States and this
22 District products and services that utilize ESET ThreatSense ("ThreatSense"), ESET Advanced
23 Heuristic, ESET DNA Signature, Host-based Intrusion Prevention System (HIPS), and/or ESET
24 LiveGrid ("LiveGrid") technologies, including ESET's Home Protection, Small Office, and Business
25 product lines and ESET's Services.
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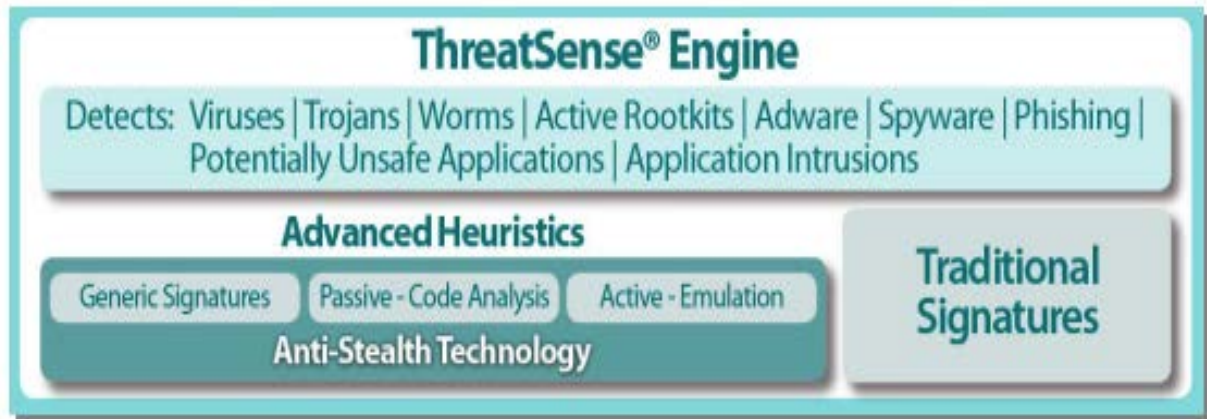
29. ESET’s Home Protection products are ESET Multi-Device Security, ESET NOD32 Antivirus (“NOD32”), ESET Smart Security, ESET Cyber Security, ESET Cyber Security Pro, ESET Mobile Security for Android, and ESET NOD32 Antivirus for Linux (collectively “Accused ESET Home Protection Products”), as described in <https://www.eset.com/int/home/>, attached hereto as Exhibit G.

30. ESET’s Small Office Protection products are ESET Multi-Device Home Office, ESET Small Office Security, and ESET Small Business Security Pack (collectively “Accused ESET Small Office Protection Products”), as described in <https://www.eset.com/us/products/soho/>, attached hereto as Exhibit H.

31. ESET’s Business Protection Products are ESET Endpoint Antivirus for Windows, ESET Endpoint Security for Windows, ESET Endpoint Antivirus for OS X, ESET Endpoint Security for OS X, ESET Endpoint Antivirus for Linux, ESET Endpoint Security for Android, ESET Mail Security for Microsoft Exchange Server, ESET Mail Security for Linux/BSD, ESET Mail Security for Kerio, ESET Mail Security for IBM Domino, ESET Gateway Security for Linux/BSD, ESET Gateway Security for Kerio, ESET File Security for Microsoft Windows Server, ESET File Security for Linux/BSD, and ESET Security for Virtual Environment (collectively “Accused ESET Business Protection Products”), as described in <https://www.eset.com/us/business/>, attached hereto as Exhibit I.

ThreatSense Engine

32. ThreatSense is an anti-virus or threat engine, which powers all of ESET’s products. The engine performs advanced heuristic threat detection capable of identifying and preventing never-seen before, zero-day computer threats from affecting a computer system. Shown below is diagram illustrating the operation of ThreatSense:

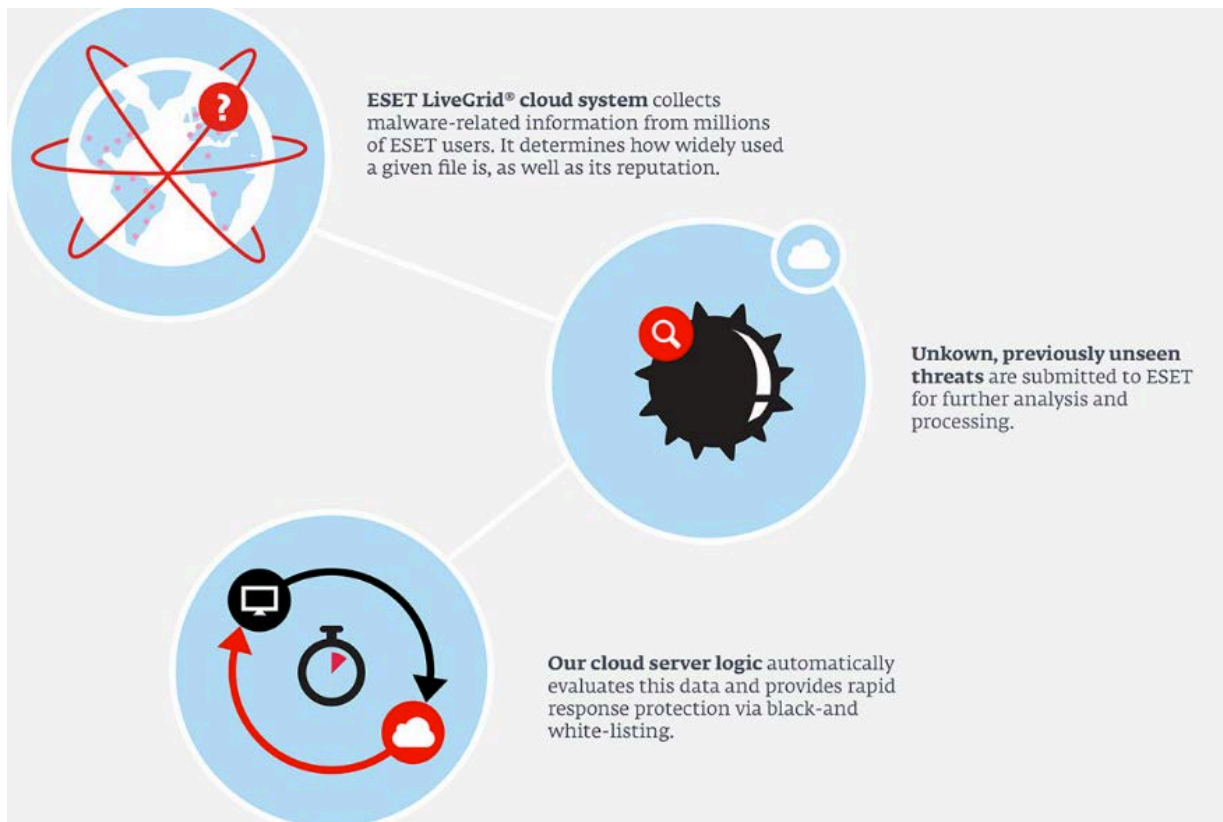


See ESET Nod32 Antivirus System Remote Administrator Overview at 4, available at http://www.download.eset.com/manuals/ra_ovw.pdf, attached hereto as Exhibit J.

33. ThreatSense can detect and prevent malicious content such as viruses, trojans, worms, adware, spyware, phishing attacks, riskware, application exploits and other forms of computer attacks. The detection and prevention mechanism is achieved by a combination of ThreatSense's active heuristics requiring analysis of emulated code and passive heuristics requiring code analysis. With active heuristics, ThreatSense can execute the code to see what it actually does and execution occurs in a controlled, protected environment to avoid damage. In particular, ThreatSense runs the code in a virtual environment and examines the behavior performed in and changes made to the virtual environment in detecting threats. With passive heuristics, ThreatSense analyzes a program as it is scanned, tracing through the instructions in a program using static code analysis before passing the code to the processor for execution. In this process, suspicious code can be analyzed to see what it appears to be designed to do by using rules that look for patterns, routines, or program calls that indicate malicious behavior. Malicious behaviors can be identified, listed, and stored. Such malicious behavior information can be delivered to LiveGrid, which is a cloud-based counterpart for ESET products. In addition, ThreatSense submits suspicious files to LiveGrid for further analyses and to create a downloadable security profile.

LiveGrid

34. LiveGrid is used by ESET's products to collect data by ESET users worldwide, including users in the United States and this District, for analysis and providing updates to ESET users. LiveGrid maintains a comprehensive threat database of zero-day threats identified by ESET's products and services. It collects malware-related information from millions of ESET users and determines how widely used a given file is, as well as its reputation – i.e., if it exhibits malicious behavior. In particular, malicious content along with other information is submitted and stored by the LiveGrid cloud database. See <http://static3.esetstatic.com/fileadmin/Images/INT/Docs/Other/ESET-Technology-Overview.pdf>, attached hereto as Exhibit K. Shown below is an illustration of the LiveGrid operation.



See <http://static4.esetstatic.com/fileadmin/Images/INT/Images/Article-Floated/ESET-Technology/Infographics/infographic-technology-livegrid.jpg>, attached hereto as Exhibit L.

Heuristics/DNA/Smart Signatures

1
2 35. ESET's Heuristics (also known as Advanced Heuristics, DNA, Smart Signatures) is
3 used by ESET's products to provide proactive detection capabilities by analyzing downloadables,
4 including JavaScript, to detect computer worms and Trojans using static analysis and emulation. In
5 detecting advanced threats, ESET also uses heuristics that can identify complex malicious code
6 patterns in web content. It helps identify exploits that are obfuscated and are not easily detected by
7 traditional virus signature matching. ESET's Heuristic technologies use a rule-based approach to
8 diagnose a potentially malicious file, including rules that detects whether a potentially malicious
9 program tries to copy itself, write on a disk, decrypt itself, binds to a networking port, or modifies files.
10 ESET uses the heuristics to feed additional information into LiveGrid. *See* ESET NOD32 Antivirus 9
11 User Guide, attached hereto as Exhibit M. In addition, ESET DNA and Smart Signatures use hashing
12 techniques to provide unique downloadable identification of potentially malicious malware. *See* ESET
13 Technology overview, available at
14 <https://static3.esetstatic.com/fileadmin/Images/INT/Docs/Other/ESET-Technology-Overview.pdf>,
15
16 attached hereto as Exhibit K.

HIPS

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19 36. ESET's HIPS technology monitors events within the operating system and reacts to
20 them according to customized set of rules. HIPS uses advanced behavioral analysis techniques to
21 monitor operating system calls such as running processes, files, and registry keys. *See* ESET NOD32
22 Antivirus 9 User Guide, attached hereto as Exhibit M; *see also*:
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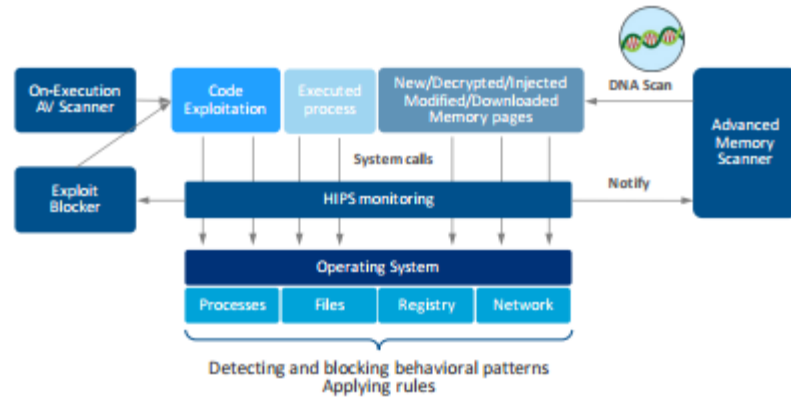


Fig.2: How ESET's behavioral detection works

See ESET Technology overview at 9, available at

<https://static3.esetstatic.com/fileadmin/Images/INT/Docs/Other/ESET-Technology-Overview.pdf>,

attached hereto as Exhibit K.

Exploit Blocker

37. Exploit blocker monitors the behavior of processes for suspicious activity that may indicate and exploit in applications such as web browsers, PDF readers, email clients and MS Office components. When Exploit Blocker identifies a suspicious process, it can stop the process and send information to the ESET Live cloud system. Additionally, there is also a Java Exploit Blocker, which is an extension of Exploit Blocker protection. The Java Exploit Blocker monitors Java looking for certain malicious or suspicious behaviors.



EXPLOIT BLOCKER

ESET technologies protect against various types of vulnerability on different levels: our scanning engine covers exploits that appear in malformed document files; Network Attack Protection targets the communication level; and finally, Exploit Blocker blocks the exploitation process itself.

1 See ESET Technology overview at 7, available at
2 <https://static3.esetstatic.com/fileadmin/Images/INT/Docs/Other/ESET-Technology-Overview.pdf>,
3 attached hereto as Exhibit K.

4 **ESET'S INFRINGEMENT OF FINJAN'S PATENTS**

5 38. Defendants have been and is now infringing the '844 Patent, '780 Patent, the '305
6 Patent, the '086 Patent, the '621 Patent, and the '755 Patent (collectively "the Patents-In-Suit") in this
7 judicial District, and elsewhere in the United States by, among other things, making, using, importing,
8 selling, and/or offering for sale the claimed system and methods on the Accused ESET's Home
9 Protection Products, Small Office Protection Products, Business Protection Products and Services.

10 39. In addition to directly infringing the Patents-In-Suit pursuant to 35 U.S.C. § 271(a),
11 either literally or under the doctrine of equivalents, or both, Defendants indirectly infringe all the
12 Patents-In-Suit by instructing, directing and/or requiring others, including its customers, purchasers,
13 users, and developers, to perform all or some of the steps of the method claims, either literally or under
14 the doctrine of equivalents, or both, of the Patents-In-Suit.
15

16 **COUNT I**

17 **(Direct Infringement of the '844 Patent pursuant to 35 U.S.C. § 271(a))**

18 40. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
19 allegations of the preceding paragraphs, as set forth above.

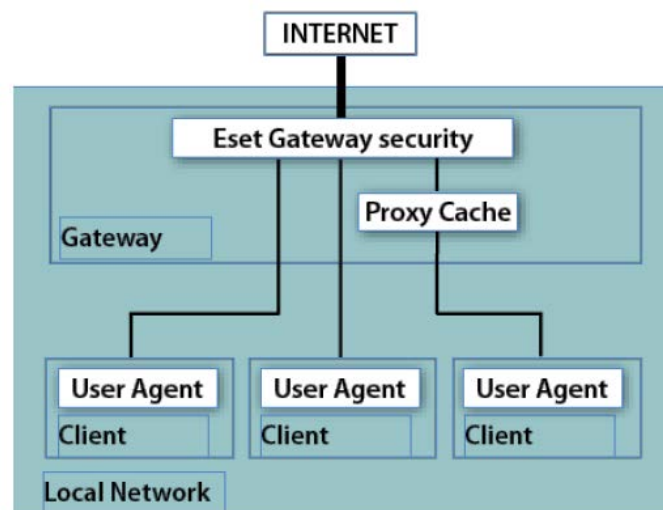
20 41. Defendants have infringed and continues to infringe claims 1-44 of the '844 Patent in
21 violation of 35 U.S.C. § 271(a).

22 42. Defendants' infringement is based upon literal infringement or infringement under the
23 doctrine of equivalents, or both.
24

25 43. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing
26 products and services have been without the permission, consent, authorization, or license of Finjan.
27

44. Defendants' infringement includes the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including Small Office Protection Products and Business Protection Products, which embody the patented invention of the '844 Patent. Such products include, ESET Small Business Security Pack, ESET Mail Security for Linux/BSD, ESET Mail Security for Kerio, ESET Gateway Security for Linux/BSD, and ESET Gateway Security for Kerio (collectively, the "'844 Accused Products").

45. The '844 Accused Products embody the patented invention of the '844 Patent and infringe the '844 Patent because they practice a method of receiving by an inspector a downloadable, generating by the inspector a first downloadable security profile that identifies suspicious code in the received downloadable and linking by the inspector the first downloadable security profile to the downloadable before a web server makes the downloadable available to web clients. For example, as shown below, ESET Gateway Security products, including ESET Gateway Security for Linux/BSD, and ESET Gateway Security for Kerio, provides gateway security to end users.



ESET Gateway Security Installation Manual and User Guide at 12, attached hereto as Exhibit N.

Incoming downloadables are received at the ESET Gateway, where they are either scanned there or submitted via Sample Submission System (a part of the ThreatSense technology). Using advanced

1 heuristics, a downloadable security profile is created and linked if the downloadable is unknown.
2 Similarly, ESET Mail Security products, such as ESET Small Business Security Pack, ESET Mail
3 Security for Linux/BSD, and ESET Mail Security for Kerio, have an email gateway that looks for
4 incoming downloadables and scans the downloadable using advanced heuristics and LiveGrid
5 technologies. In addition, ESET Mail Security products include Sample Submission System (a part of
6 the ThreatSense technology). Using advanced heuristics, a downloadable security profile is created
7 and linked if the downloadable is unknown.
8

9 46. As a result of Defendants' unlawful activities, Finjan has suffered and will continue to
10 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
11 to preliminary and/or permanent injunctive relief.

12 47. Defendants' infringement of the '844 Patent has injured and continues to injure Finjan
13 in an amount to be proven at trial.

14 48. Defendants are well aware of Finjan's patents, including the '844 Patent, and have
15 continued its infringing activity despite this knowledge. Finjan informed Defendants of its patent
16 portfolio and infringement on or about January 22, 2015, and have provided representative claim charts
17 specifically identifying how Defendant's products and services infringe Finjan patents. Finjan
18 attempted unsuccessfully to actively engage in good faith negotiations for over a year with Defendants
19 regarding Finjan's patent portfolio, including having a number of in-person and telephonic meetings
20 from October 2015 through April 2016 explaining claim element by element Defendants'
21 infringement.
22

23 49. Despite knowledge of Finjan's patent portfolio, being provided representative claim
24 charts of several Finjan patents, and engaging in technical meetings regarding infringement of
25 Defendants' products and services, Defendants have refused to enter into good faith discussions with
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1 Finjan, and have sold and continues to sell the accused products and services in complete disregard of
2 Finjan's patent rights. As such, Defendants have acted recklessly and continues to willfully, wantonly,
3 and deliberately engage in acts of infringement of the '844 Patent, justifying an award to Finjan of
4 increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. §
5 285.

6
7 **COUNT II**

8 **(Indirect Infringement of the '844 Patent pursuant to 35 U.S.C. § 271(b))**

9 50. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
10 allegations of the preceding paragraphs, as set forth above.

11 51. Defendants have induced and continues to induce infringement of one or more claims of
12 the '844 Patent under 35 U.S.C. § 271(b).

13 52. In addition to directly infringing the '844 Patent, Defendants indirectly infringe the '844
14 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including its
15 customers, purchasers, users, or developers, to perform one or more of the steps of the method claims,
16 either literally or under the doctrine of equivalents, of the '844 Patent, where all the steps of the
17 method claims are performed by either ESET, its customers, purchasers, users or developers, or some
18 combination thereof. Defendants knew or was willfully blind to the fact that it was inducing others,
19 including customers, purchasers, users or developers, to infringe by practicing, either themselves or in
20 conjunction with Defendants, one or more method claims of the '844 Patent, including claims 1-14 and
21 23-31.

22
23 53. Defendants knowingly and actively aided and abetted the direct infringement of the
24 '844 Patent by instructing and encouraging its customers, users and developers to use the '844
25 Accused Products. Such instructions and encouragement include but are not limited to, advising third
26 parties to use the '844 Accused Products in an infringing manner, providing a mechanism through
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1 which third parties may infringe the '844 Patent, specifically through the use of ESET's ThreatSense,
2 Advanced Heuristic, HIPS, DNA Signature, Exploit Blocker, and LiveGrid Technologies, advertising
3 and promoting the use of the '844 Accused Products in an infringing manner and distributing
4 guidelines and instructions to third parties on how to use the '844 Accused Products in an infringing
5 manner.

6 54. Defendants provides articles, videos and downloads which cover in depth aspects of
7 operating Defendants' offerings. See <http://www.eset.com/us/support/download/installation-videos/>,
8 attached hereto as Exhibit O.

9 55. Defendants updates and maintains an HTTP site with Defendants' quick start guides,
10 administration guides, user guides, and operating instructions which cover in depth aspects of
11 operating Defendants' offerings. See <http://support.eset.com/>, attached hereto as Exhibit P.

12
13 **COUNT III**

14 **(Direct Infringement of the '780 Patent pursuant to 35 U.S.C. § 271(a))**

15 56. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
16 allegations of the preceding paragraphs, as set forth above.

17 57. Defendants have infringed and continues to infringe claim 1-18 of the '780 Patent in
18 violation of 35 U.S.C. § 271(a).

19 58. Defendants' infringement is based upon literal infringement or, in the alternative,
20 infringement under the doctrine of equivalents.

21 59. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing
22 products and services have been without the permission, consent, authorization or license of Finjan.

23 60. Defendants' infringement includes the manufacture, use, sale, importation and/or offer
24 for sale of Defendants' products and services, including Home Protection Products, Small Office
25 Protection Products and Business Protection Products, which embody the patented invention of the
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1 ‘780 Patent. Such products include ESET Multi-Device Security, ESET NOD32 Antivirus, ESET
2 Smart Security, ESET Cyber Security, ESET Cyber Security Pro, ESET Mobile Security for Android,
3 ESET NOD32 Antivirus for Linux, ESET Multi-Device Home Office, ESET Small Office Security,
4 ESET Small Business Security Pack, ESET Endpoint Antivirus for Windows, ESET Endpoint
5 Security for Windows, ESET Endpoint Antivirus for OS X, ESET Endpoint Security for OS X, ESET
6 Endpoint Antivirus for Linux, ESET Endpoint Security for Android, ESET Mail Security for
7 Microsoft Exchange Server, ESET Mail Security for Linux/BSD, ESET Mail Security for Kerio,
8 ESET Mail Security for IBM Domino, ESET Gateway Security for Linux/BSD, ESET Gateway
9 Security for Kerio, ESET File Security for Microsoft Windows Server, ESET File Security for
10 Linux/BSD, and ESET Security for Virtual Environment (collectively, the “780 Accused Products”).

12 61. The ‘780 Accused Products embody the patented invention of the ‘780 Patent and
13 infringe the ‘780 Patent because they practice a method of obtaining a downloadable that includes
14 one or more references to software components required to be executed by the downloadable,
15 fetching at least one software component required to be executed by the downloadable, and
16 performing a hashing function on the downloadable and the fetched software components to generate
17 a downloadable ID. For example, NOD32 perform hash value lookups using ESET’s LiveGrid
18 technology. In creating that hash value, NOD32 obtains the software components required to be
19 executed and performs a hashing function on the downloadable and fetched software components.
20

21 62. As a result of Defendants’ unlawful activities, Finjan has suffered and will continue to
22 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
23 to preliminary and/or permanent injunctive relief.
24

25 63. Defendants’ infringement of the ‘780 Patent has injured and continues to injure Finjan
26 in an amount to be proven at trial.
27
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1 64. Defendants are well aware of Finjan's patents and has continued its infringing activity
2 despite this knowledge. Finjan attempted unsuccessfully to actively engage in good faith negotiations
3 for over a year with Defendants regarding Finjan's patent portfolio, including having a number of in-
4 person and telephonic meetings from October 2015 through April 2016 explaining claim element by
5 element Defendants' infringement. As such, Defendants have continued to willfully, wantonly, and
6 deliberately engage in acts of infringement of the '780 Patent, justifying an award to Finjan of
7 increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. §
8 285.

10 **COUNT IV**
11 **(Indirect Infringement of the '780 Patent pursuant to 35 U.S.C. § 271(b))**

12 65. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
13 allegations of the preceding paragraphs, as set forth above.

14 66. Defendants have induced and continues to induce infringement of at least claims 1-8
15 of the '780 Patent under 35 U.S.C. § 271(b).

16 67. In addition to directly infringing the '780 Patent, Defendants indirectly infringe the
17 '780 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
18 customers, users and developers, to perform some of the steps of the method claims, either literally or
19 under the doctrine of equivalents, of the '780 Patent, where all the steps of the method claims are
20 performed by either Defendants or their customers, users or developers, or some combination thereof.
21 Defendants knew or were willfully blind to the fact that it was inducing others, including customers,
22 users and developers, to infringe by practicing, either themselves or in conjunction with Defendants,
23 one or more method claims of the '780 Patent, including 1-8.

24 68. Defendants knowingly and actively aided and abetted the direct infringement of the
25 '780 Patent by instructing and encouraging its customers, users and developers to use the '780
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1 Accused Products. Such instructions and encouragement include but are not limited to, advising third
2 parties to use the '780 Accused Products in an infringing manner, providing a mechanism through
3 which third parties may infringe the '780 Patent, specifically through the use of ESET's ThreatSense,
4 Advanced Heuristic, HIPS, DNA Signature, Exploit Blocker, and LiveGrid Technologies, advertising
5 and promoting the use of the '780 Accused Products in an infringing manner and distributing
6 guidelines and instructions to third parties on how to use the '780 Accused Products in an infringing
7 manner.
8

9 69. Defendants provides articles, videos and downloads which cover in depth aspects of
10 operating Defendants' offerings. See <http://www.eset.com/us/support/download/installation-videos/>,
11 attached hereto as Exhibit O.

12 70. Defendants updates and maintains an HTTP site with Defendants' quick start guides,
13 administration guides, user guides, and operating instructions which cover in depth aspects of
14 operating Defendants' offerings. See <http://support.eset.com/>, attached hereto as Exhibit P.
15

16 **COUNT V**

17 **(Direct Infringement of the '305 Patent pursuant to 35 U.S.C. § 271(a))**

18 71. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
19 allegations of the preceding paragraphs, as set forth above.

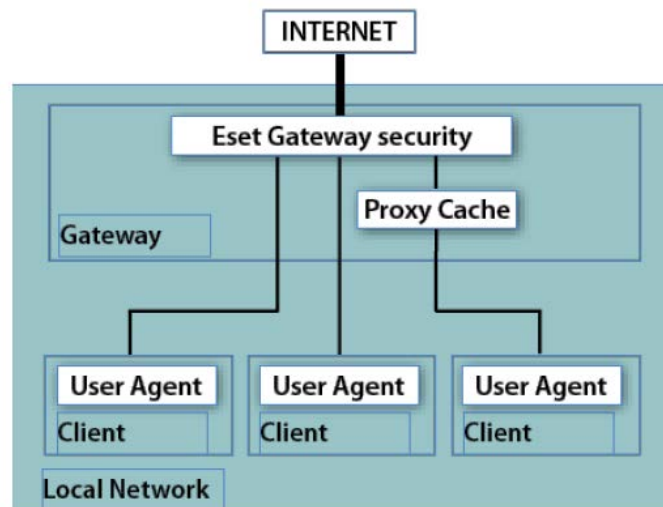
20 72. Defendants have infringed and continues to infringe claims 1- 25 of the '305 Patent in
21 violation of 35 U.S.C. § 271(a).

22 73. Defendants' infringement is based upon literal infringement or infringement under the
23 doctrine of equivalents, or both.

24 74. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing
25 products and services have been without the permission, consent, authorization, or license of Finjan.
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75. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including ESET Small Business Security Pack, ESET Mail Security for Linux/BSD, ESET Mail Security for Kerio, ESET Gateway Security for Linux/BSD, and ESET Gateway Security for Kerio (collectively, the "305 Accused Products").

76. The '305 Accused Products embody the patented invention of the '305 Patent and infringe the '3045 Patent because they practice a method of receiving incoming content from the Internet, selectively diverting content from its intended destination, scanning the content to recognize potential computer exploits using analyzer and parser rules, and updating those rules to incorporate new behavioral rules. For example, as shown below, ESET Gateway Security products, including ESET Gateway Security for Linux/BSD, and ESET Gateway Security for Kerio, provides gateway security to end users.



ESET Gateway Security Installation Manual and User Guide at 12, attached hereto as Exhibit N. Incoming downloadables are diverted at the gateway to be submitted via Sample Submission System (a part of the ThreatSense technology) and scanned. ESET Gateway products also use passive heuristics to look for patterns, routines of program calls that indicate malicious behavior and select those content

1 to be further scanned. The scanner uses advanced heuristics and analyzer and parser rules to determine
2 if the content is malicious. *See* ESET Heuristic Analysis – Detecting Unknown Viruses at 7, available
3 at [http://go.eset.com/us/resources/white-papers/HeurAnalysis\(Mar2007\)Online.pdf](http://go.eset.com/us/resources/white-papers/HeurAnalysis(Mar2007)Online.pdf), attached hereto as
4 Exhibit Q (“Heuristic analysis uses a rule-based approach.”). New rules are created and the analyzer
5 and parser rules database is updated. Similarly, ESET Mail Security products, such as ESET Small
6 Business Security Pack, ESET Mail Security for Linux/BSD, and ESET Mail Security for Kerio, have
7 an email gateway that looks for incoming content and scans the downloadable using advanced
8 heuristics and LiveGrid technologies. In addition, ESET Mail Security products include Sample
9 Submission System (a part of the ThreatSense technology). ESET Mail Security products use
10 advanced heuristics and analyzer and parser rules to determine if the content is malicious. New rules
11 are created when new malicious content is found and the analyzer and parser rules database is updated.

13 77. As a result of Defendants’ unlawful activities, Finjan has suffered and will continue to
14 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
15 to preliminary and/or permanent injunctive relief.
16

17 78. Defendants’ infringement of the ‘305 Patent has injured and continues to injure Finjan
18 in an amount to be proven at trial.

19 79. Defendants are well aware of Finjan’s patents, including the ‘305 Patent, and have
20 continued its infringing activity despite this knowledge. Finjan informed Defendants of its patent
21 portfolio and infringement on or about January 22, 2015, and have provided representative claim charts
22 specifically identifying how Defendant’s products and services infringe Finjan patents. Finjan
23 attempted unsuccessfully to actively engage in good faith negotiations for over a year with Defendants
24 regarding Finjan’s patent portfolio, including having a number of in-person and telephonic meetings
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1 from October 2015 through April 2016 explaining claim element by element Defendants'
2 infringement.

3 80. Despite knowledge of Finjan's patent portfolio, being provided representative claim
4 charts of several Finjan patents, and engaging in technical meetings regarding infringement of
5 Defendants' products and services, Defendants have refused to enter into good faith discussions with
6 Finjan, and have sold and continues to sell the accused products and services in complete disregard of
7 Finjan's patent rights. As such, Defendants have acted recklessly and continues to willfully, wantonly,
8 and deliberately engage in acts of infringement of the '305 Patent, justifying an award to Finjan of
9 increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. §
10 285.
11

12 COUNT VI

13 **(Indirect Infringement of the '305 Patent pursuant to 35 U.S.C. § 271(b))**

14 81. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
15 allegations of the preceding paragraphs, as set forth above.
16

17 82. Defendants have induced and continues to induce infringement of one or more method
18 claims of the '305 Patent under 35 U.S.C. § 271(b).
19

20 83. In addition to directly infringing the '305 Patent, Defendants indirectly infringe the '305
21 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
22 customers, purchasers, users and developers, to perform one or more of the steps of the method claims,
23 either literally or under the doctrine of equivalents, of the '305 Patent, where all the steps of the
24 method claims are performed by either ESET, its customers, purchasers, users or developers, or some
25 combination thereof. Defendants knew or was willfully blind to the fact that it was inducing others,
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1 including customers, purchasers, users or developers, to infringe by practicing, either themselves or in
2 conjunction with Defendants, one or more method claims of the '305 Patent, including 13-24.

3 84. Defendants knowingly and actively aided and abetted the direct infringement of the
4 '305 Patent by instructing and encouraging its customers, users and developers to use the '305
5 Accused Products. Such instructions and encouragement include but are not limited to, advising third
6 parties to use the '305 Accused Products in an infringing manner, providing a mechanism through
7 which third parties may infringe the '305 Patent, specifically through the use of ESET's ThreatSense,
8 Advanced Heuristic, HIPS, DNA Signature, Exploit Blocker, and LiveGrid Technologies, advertising
9 and promoting the use of the '305 Accused Products in an infringing manner and distributing
10 guidelines and instructions to third parties on how to use the '305 Accused Products in an infringing
11 manner.
12

13 85. Defendants knowingly and actively aided and abetted the direct infringement of the
14 '305 Patent by instructing and encouraging its customers, purchasers, users or developers to use the
15 '305 Accused Products. Such instructions and encouragement include, advising customers,
16 purchasers, users, and developers to use the '305 Accused Products in an infringing manner,
17 providing a mechanism and process through which customers, purchasers, users or developers may
18 infringe the '305 Patent, specifically through advertising and promoting the use of the '305 Accused
19 Products in an infringing manner and distributing guidelines and instructions to third parties on how
20 to use the '305 Accused Products in an infringing manner.
21

22 86. Defendants provides articles, videos and downloads which cover in depth aspects of
23 operating Defendants' offerings. See <http://www.eset.com/us/support/download/installation-videos/>,
24 attached hereto as Exhibit O.
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1 87. Defendants updates and maintains an HTTP site with Defendants' quick start guides,
2 administration guides, user guides, and operating instructions which cover in depth aspects of
3 operating Defendants' offerings. See <http://support.eset.com/>, attached hereto as Exhibit P.

4 **COUNT VII**

5 **(Direct Infringement of the '086 Patent pursuant to 35 U.S.C. § 271(a))**

6 88. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
7 allegations of the preceding paragraphs, as set forth above.

8 89. Defendants have infringed and continues to infringe claims 1-42 of the '086 Patent in
9 violation of 35 U.S.C. § 271(a).

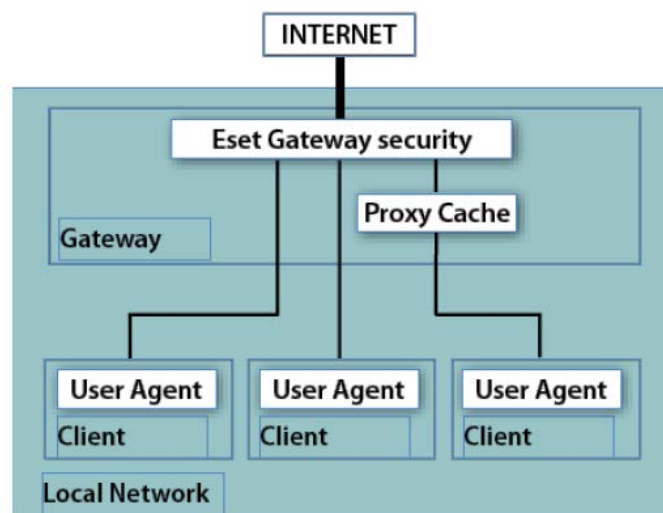
10 90. Defendants' infringement is based upon literal infringement or infringement under the
11 doctrine of equivalents, or both.

12 91. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing
13 products and services have been without the permission, consent, authorization, or license of Finjan.

14 92. Defendants' infringement includes, but is not limited to, the manufacture, use, sale,
15 importation and/or offer for sale of Defendant's products and services, including Home Protection
16 Products, Small Office Protection Products and Business Protection Products, which embody the
17 patented invention of the '086 Patent. Such products include ESET Multi-Device Security, ESET
18 NOD32 Antivirus, ESET Smart Security, ESET Cyber Security, ESET Cyber Security Pro, ESET
19 Mobile Security for Android, ESET NOD32 Antivirus for Linux, ESET Multi-Device Home Office,
20 ESET Small Office Security, ESET Small Business Security Pack, ESET Endpoint Antivirus for
21 Windows, ESET Endpoint Security for Windows, ESET Endpoint Antivirus for OS X, ESET Endpoint
22 Security for OS X, ESET Endpoint Antivirus for Linux, ESET Endpoint Security for Android, ESET
23 Mail Security for Microsoft Exchange Server, ESET Mail Security for Linux/BSD, ESET Mail
24 Security for Kerio, ESET Mail Security for IBM Domino, ESET Gateway Security for Linux/BSD,
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1 ESET Gateway Security for Kerio, ESET File Security for Microsoft Windows Server, ESET File
 2 Security for Linux/BSD, and ESET Security for Virtual Environment (collectively, the “’086 Accused
 3 Products”).

4 93. The ‘086 Accused Products embody the patented invention of the ‘086 Patent and
 5 infringe the ‘086 Patent because they practice a method of receiving by an inspector a downloadable,
 6 deriving by the inspector a security profile data that identifies suspicious computer operations in the
 7 received downloadable, appending by the security profile data to the downloadable, and transmitting
 8 the appended downloadable. For example, as shown below, ESET Gateway Security products,
 9 including ESET Gateway Security for Linux/BSD, and ESET Gateway Security for Kerio, provides
 10 gateway security to end users.
 11 gateway security to end users.



21 ESET Gateway Security Installation Manual and User Guide at 12, attached hereto as Exhibit N.

22 Incoming downloadables are received at the ESET Gateway, where they are either scanned there or
 23 submitted via Sample Submission System (a part of the ThreatSense technology). Using advanced
 24 heuristics, a security profile data is derived and appended to the downloadable if the downloadable is
 25 unknown. *See Understanding and Teaching Heuristics*, available at

26 http://www.welivesecurity.com/media_files/white-papers/Understanding_Heuristics.pdf, attached
 27

1 hereto as Exhibit R. Similarly, ESET Mail Security products, such as ESET Small Business Security
2 Pack, ESET Mail Security for Linux/BSD, and ESET Mail Security for Kerio, have an email gateway
3 that looks for incoming downloadables and scans the downloadable using advanced heuristics and
4 LiveGrid technologies. In addition, ESET Mail Security products include Sample Submission System
5 (a part of the ThreatSense technology). Using advanced heuristics, a security profile data is derived
6 and appended to the downloadable if the downloadable is unknown. In addition, NOD32 can receive
7 in the incoming downloadable and scan the downloadable using advanced heuristics creating a security
8 profile. That profile is appended to the downloadable and sent to a destination computer, such as
9 ESET's file submission server or ESET Virus Labs.
10

11 94. As a result of Defendants' unlawful activities, Finjan has suffered and will continue to
12 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
13 to preliminary and/or permanent injunctive relief.
14

15 95. Defendants' infringement of the '086 Patent has injured and continues to injure Finjan
16 in an amount to be proven at trial.
17

18 96. Defendants are well aware of Finjan's patents and has continued its infringing activity
19 despite this knowledge. Finjan attempted unsuccessfully to actively engage in good faith negotiations
20 for over a year with Defendants regarding Finjan's patent portfolio, including having a number of in-
21 person and telephonic meetings from October 2015 through April 2016 explaining claim element by
22 element Defendants' infringement. As such, Defendant have continued to willfully, wantonly, and
23 deliberately engage in acts of infringement of the '086 Patent, justifying an award to Finjan of
24 increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. §
25 285.
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COUNT VIII

(Indirect Infringement of the '086 Patent pursuant to 35 U.S.C. § 271(b))

1
2 97. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
3 allegations of the preceding paragraphs, as set forth above.
4

5 98. Defendants have induced and continues to induce infringement of one or more method
6 claims of the '086 Patent under 35 U.S.C. § 271(b).

7 99. In addition to directly infringing the '086 Patent, Defendants indirectly infringe the '086
8 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
9 customers, purchasers, users or developers, to perform one or more of the steps of the method claims,
10 either literally or under the doctrine of equivalents, of the '086 Patent, where all the steps of the
11 method claims are performed by either ESET, its customers, purchasers, users or developers, or some
12 combination thereof. Defendants knew or was willfully blind to the fact that it was inducing others,
13 including customers, users or developers, to infringe by practicing, either themselves or in conjunction
14 with Defendant, one or more method claims of the '086 Patent, including claims 1-8, 17-23, 31-32, 35-
15 36, 39, and 41.
16

17 100. Defendants knowingly and actively aided and abetted the direct infringement of the
18 '086 Patent by instructing and encouraging its customers, users and developers to use the '086
19 Accused Products. Such instructions and encouragement include but are not limited to, advising third
20 parties to use the '086 Accused Products in an infringing manner, providing a mechanism through
21 which third parties may infringe the '086 Patent, specifically through the use of ESET's ThreatSense,
22 Advanced Heuristic, HIPS, DNA Signature, Exploit Blocker, and LiveGrid Technologies, advertising
23 and promoting the use of the '086 Accused Products in an infringing manner and distributing
24 guidelines and instructions to third parties on how to use the '086 Accused Products in an infringing
25 manner.
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1 101. Defendants provides articles, videos and downloads which cover in depth aspects of
2 operating Defendants' offerings. See <http://www.eset.com/us/support/download/installation-videos/>,
3 attached hereto as Exhibit O.

4 102. Defendants updates and maintains an HTTP site with Defendants' quick start guides,
5 administration guides, user guides, and operating instructions which cover in depth aspects of
6 operating Defendants' offerings. See <http://support.eset.com/>, attached hereto as Exhibit P.

7
8 **COUNT IX**

9 **(Direct Infringement of the '621 Patent pursuant to 35 U.S.C. § 271(a))**

10 103. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
11 allegations of the preceding paragraphs, as set forth above.

12 104. Defendants have infringed and continues to infringe claims 1-16 of the '621 Patent in
13 violation of 35 U.S.C. § 271(a).

14 105. Defendants' infringement is based upon literal infringement or, in the alternative,
15 infringement under the doctrine of equivalents.

16 106. Defendants acts of making, using, importing, selling, and/or offering for sale
17 infringing products and services have been without the permission, consent, authorization or license
18 of Finjan.

19 107. Defendants' infringement includes, but is not limited to, the manufacture, use, sale,
20 importation and/or offer for sale of Defendants' products and services, including, ESET Multi-Device
21 Security, ESET NOD32 Antivirus, ESET Smart Security, ESET Cyber Security, ESET Cyber
22 Security Pro, ESET Mobile Security for Android, ESET NOD32 Antivirus for Linux, ESET Multi-
23 Device Home Office, ESET Small Office Security, ESET Small Business Security Pack, ESET
24 Endpoint Antivirus for Windows, ESET Endpoint Security for Windows, ESET Endpoint Antivirus
25 for OS X, ESET Endpoint Security for OS X, ESET Endpoint Antivirus for Linux, ESET Endpoint
26
27
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1 Security for Android, ESET Mail Security for Microsoft Exchange Server, ESET Mail Security for
2 Linux/BSD, ESET Mail Security for Kerio, ESET Mail Security for IBM Domino, ESET Gateway
3 Security for Linux/BSD, ESET Gateway Security for Kerio, ESET File Security for Microsoft
4 Windows Server, ESET File Security for Linux/BSD, and ESET Security for Virtual Environment
5 (collectively, the “’621 Accused Products”).

6 108. The ‘621 Accused Products embody the patented invention of the ‘621 Patent and
7 infringe the ‘621 Patent because they utilize and/or incorporate a system for reviewing an operating
8 system call issued by a downloadable, comprising at least one processor for accessing elements stored
9 in at least one memory associated with the at least one processor and for executing instructions
10 associated with the elements, the elements including a plurality of operating system probes for
11 monitoring substantially in parallel a plurality of subsystems of an operating system during runtime
12 for an event caused from a request made by a downloadable, wherein the plurality of subsystems
13 includes a network system, an interrupter for interrupting processing of the request, a comparator
14 coupled to the plurality of operating system probes for comparing information pertaining to the
15 downloadable against a predetermined security policy and a response engine for performing a
16 predetermined responsive action based on the comparison. For example, NOD32 uses emulation
17 techniques (and HIPS technology) to monitor the operating system subsystems during runtime of a
18 downloadable and a comparator for comparing the information about the downloadable to a security
19 policy and a response engine for responding to the comparison.

20 109. As a result of Defendant’s unlawful activities, Finjan has suffered and will continue to
21 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
22 to preliminary and/or permanent injunctive relief.
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1 110. Defendant's infringement of the '621 Patent has injured and continues to injure Finjan
2 in an amount to be proven at trial.

3 111. Defendants are well aware of Finjan's patents and has continued its infringing activity
4 despite this knowledge. Finjan attempted unsuccessfully to actively engage in good faith negotiations
5 for over a year with Defendants regarding Finjan's patent portfolio, including having a number of in-
6 person and telephonic meetings from October 2015 through April 2016 explaining claim element by
7 element Defendants' infringement. As such, Defendants have continued to willfully, wantonly, and
8 deliberately engage in acts of infringement of the '621 Patent, justifying an award to Finjan of
9 increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. §
10 285.
11

12 **COUNT X**

13 **(Induced Infringement of the '621 Patent pursuant to 35 U.S.C. § 271(b))**

14 112. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
15 allegations of the preceding paragraphs, as set forth above.

16 113. Defendants have induced and continues to induce infringement of claims 1-16 of the
17 '621 Patent under 35 U.S.C. § 271(b).

18 114. In addition to directly infringing the '621 Patent, Defendants indirectly infringe the
19 '621 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
20 its customers, users and developers, to directly infringe claims 1-16 of the '621 Patent, either literally
21 or under the doctrine of equivalents. Defendant knew or was willfully blind to the fact that it was
22 inducing others, including customers, users and developers, to infringe by practicing one or more
23 claims of the '621 Patent.
24

25 115. Defendants knowingly and actively aided and abetted the direct infringement of the
26 '621 Patent by instructing and encouraging its customers, users and developers to use the '621
27

1 Accused Products. Such instructions and encouragement include but are not limited to, advising third
2 parties to use the '621 Accused Products in an infringing manner, providing a mechanism through
3 which third parties may infringe the '621 Patent, specifically through the use of ESET's ThreatSense,
4 Advanced Heuristic, HIPS, DNA Signature, Exploit Blocker, and LiveGrid Technologies, advertising
5 and promoting the use of the '621 Accused Products in an infringing manner and distributing
6 guidelines and instructions to third parties on how to use the '621 Accused Products in an infringing
7 manner.
8

9 116. Defendants provides articles, videos and downloads which cover in depth aspects of
10 operating Defendants' offerings. See <http://www.eset.com/us/support/download/installation-videos/>,
11 attached hereto as Exhibit O.

12 117. Defendants updates and maintains an HTTP site with Defendants' quick start guides,
13 administration guides, user guides, and operating instructions which cover in depth aspects of
14 operating Defendants' offerings. See <http://support.eset.com/>, attached hereto as Exhibit P.
15

16 **COUNT XII**

17 **(Direct Infringement of the '755 Patent pursuant to 35 U.S.C. § 271(a))**

18 118. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
19 allegations of the preceding paragraphs, as set forth above.

20 119. Defendants have infringed and continues to infringe claims 1-8 of the '755 Patent in
21 violation of 35 U.S.C. § 271(a).

22 120. Defendants' infringement is based upon literal infringement or, in the alternative,
23 infringement under the doctrine of equivalents.

24 121. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing
25 products and services have been without the permission, consent, authorization or license of Finjan.
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1 122. Defendants' infringement includes, but is not limited to, the manufacture, use, sale,
2 importation and/or offer for sale of Defendant's products and services utilizing and/or incorporating
3 Home Protection Products, Small Office Protection Products and Business Protection Products, which
4 embody the patented invention of the '755 Patent. Such products include ESET Multi-Device
5 Security, ESET NOD32 Antivirus, ESET Smart Security, ESET Cyber Security, ESET Cyber
6 Security Pro, ESET Mobile Security for Android, ESET NOD32 Antivirus for Linux, ESET Multi-
7 Device Home Office, ESET Small Office Security, ESET Small Business Security Pack, ESET
8 Endpoint Antivirus for Windows, ESET Endpoint Security for Windows, ESET Endpoint Antivirus
9 for OS X, ESET Endpoint Security for OS X, ESET Endpoint Antivirus for Linux, ESET Endpoint
10 Security for Android, ESET Mail Security for Microsoft Exchange Server, ESET Mail Security for
11 Linux/BSD, ESET Mail Security for Kerio, ESET Mail Security for IBM Domino, ESET Gateway
12 Security for Linux/BSD, ESET Gateway Security for Kerio, ESET File Security for Microsoft
13 Windows Server, ESET File Security for Linux/BSD, and ESET Security for Virtual Environment
14 (collectively, the "755 Accused Products").
15
16

17 123. The '755 Accused Products embody the patented invention of the '755 Patent and
18 infringe the '755 Patent at least because they utilize and/or incorporate a system for reviewing an
19 operating system call issued by a downloadable, comprising at least one processor for accessing
20 elements stored in at least one memory associated with the at least one processor and for executing
21 instructions associated with the elements, the elements including: a downloadable engine for
22 intercepting a request message being issued by a downloadable to an operating system, wherein the
23 request message includes an extension call, a request broker for receiving a notification message from
24 the downloadable engine regarding the extension call, a file system probe and a network system
25 probe each being associated with an operating system function for receiving the request message from
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1 the downloadable engine, intercepting an operating system call being issued by the downloadable to
2 an operating system and associated with the operating system function and providing an event
3 message regarding the operating system call, a runtime environment monitor for receiving the
4 notification message and the event message and comparing the extension call and the operating
5 system call against a predetermined security policy before allowing the operating system to process
6 the extension call and the operating system call and a response engine for receiving a violation
7 message from the runtime environment monitor when one of the extension call and the operating
8 system call violate one or more rules of the predetermined security policy and blocking extension
9 calls and operating system calls that are forbidden according to the predetermined security policy, and
10 for allowing extension calls and operating system calls that are permitted according to the
11 predetermined security policy. For example, NOD32 uses emulation techniques (and HIPS
12 technology) to perform runtime monitoring the operating system subsystems during execution of a
13 downloadable. NOD32 monitors the downloadable for extension calls and operating system calls and
14 compares them to a security policy. If they violate a policy, NOD32 will block the extension call and
15 operating system calls.

18 124. As a result of Defendants' unlawful activities, Finjan has suffered and will continue to
19 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
20 to preliminary and/or permanent injunctive relief.

21 125. Defendants' infringement of the '755 Patent has injured and continues to injure Finjan
22 in an amount to be proven at trial.

24 126. Defendants are well aware of Finjan's patents and has continued its infringing activity
25 despite this knowledge. Finjan attempted unsuccessfully to actively engage in good faith negotiations
26 for over a year with Defendants regarding Finjan's patent portfolio, including having a number of in-

1 person and telephonic meetings from October 2015 through April 2016 explaining claim element by
2 element Defendants' infringement. As such, Defendants have continued to willfully, wantonly, and
3 deliberately engage in acts of infringement of the '755 Patent, justifying an award to Finjan of
4 increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. §
5 285.

6
7 **COUNT XIII**

8 **(Induced Infringement of the '755 Patent pursuant to 35 U.S.C. § 271(b))**

9 127. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
10 allegations of the preceding paragraphs, as set forth above.

11 128. Defendants have induced and continues to induce infringement of claims 1-8 of the
12 '755 Patent under 35 U.S.C. § 271(b).

13 129. In addition to directly infringing the '755 Patent, Defendants indirectly infringes the
14 '755 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
15 its customers, users and developers, to directly infringe claims 1-8 of the '755 Patent, either literally
16 or under the doctrine of equivalents. Defendants knew or was willfully blind to the fact that it was
17 inducing others, including customers, users and developers, to infringe by practicing one or more
18 claims of the '755 Patent.

19 130. Defendants knowingly and actively aided and abetted the direct infringement of the
20 '755 Patent by instructing and encouraging its customers, users and developers to use the '755
21 Accused Products. Such instructions and encouragement include but are not limited to, advising third
22 parties to use the '755 Accused Products in an infringing manner, providing a mechanism through
23 which third parties may infringe the '755 Patent, specifically through the use of ESET's ThreatSense,
24 Advanced Heuristic, HIPS, DNA Signature, Exploit Blocker, and LiveGrid Technologies, advertising
25 and promoting the use of the '755 Accused Products in an infringing manner and distributing
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1 guidelines and instructions to third parties on how to use the ‘755 Accused Products in an infringing
2 manner.

3 131. Defendants provides articles, videos and downloads which cover in depth aspects of
4 operating Defendants’ offerings. See <http://www.eset.com/us/support/download/installation-videos/>,
5 attached hereto as Exhibit O.

6 132. Defendants updates and maintains an HTTP site with Defendants’ quick start guides,
7 administration guides, user guides, and operating instructions which cover in depth aspects of
8 operating Defendants’ offerings. See <http://support.eset.com/>, attached hereto as Exhibit P.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Finjan prays for judgment and relief as follows:

12 A. An entry of judgment holding Defendants have infringed and is infringing the ‘844
13 Patent, the ‘780 Patent, the ‘305 Patent, the ‘086 Patent, the ‘621 Patent, and the ‘755 Patent; have
14 induced infringement and are inducing infringement of the ‘844 Patent, the ‘780 Patent, the ‘305
15 Patent, the ‘086 Patent, the ‘621 Patent, and the ‘755 Patent;

16
17 B. A preliminary and permanent injunction against Defendants and its officers,
18 employees, agents, servants, attorneys, instrumentalities, and/or those in privity with them, from
19 infringing the ‘844 Patent, the ‘780 Patent, the ‘305 Patent, the ‘086 Patent, the ‘621 Patent, and the
20 ‘755 Patent, or inducing the infringement of the ‘844 Patent, the ‘780 Patent, the ‘305 Patent, the ‘086
21 Patent, the ‘621 Patent, and the ‘755 Patent and for all further and proper injunctive relief pursuant to
22 35 U.S.C. § 283;

23
24 C. An award to Finjan of such damages as it shall prove at trial against Defendant that is
25 adequate to fully compensate Finjan for Defendant’s infringement of the ‘844 Patent, the ‘780 Patent,
26 the ‘305 Patent, the ‘086 Patent, the ‘621 Patent, and the ‘755 Patent, said damages to be no less than
27
28

1 a reasonable royalty, and on information and belief and based on publicly available information,
2 Finjan anticipates it will seek no less than \$44 million at trial;

3 D. A determination that Defendants' infringement has been willful, wanton, and
4 deliberate and that the damages against it be increased up to treble on this basis or for any other basis
5 within the Court's discretion;

6 E. A finding that this case is "exceptional" and an award to Finjan of its costs and
7 reasonable attorneys' fees, as provided by 35 U.S.C. § 285;

8 F. An accounting of all infringing sales and revenues, together with post judgment
9 interest and prejudgment interest from the first date of infringement of the '844 Patent, the '780
10 Patent, the '305 Patent, the '086 Patent, the '621 Patent, and the '755 Patent; and
11

12 G. Such further and other relief as the Court may deem proper and just.

13 Respectfully submitted,

14 Dated: July 1, 2016

15 /s/ Paul J. Andre

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DEMAND FOR JURY TRIAL

1
2 Finjan demands a jury trial on all issues so triable.

3 Respectfully submitted,

4 Dated: July 1, 2016

/s/ Paul J. Andre

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