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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

11 Finjan, Inc,
 12 Plaintiff,
 13 vs.
 14 AVG Technologies CZ, s.r.o., AVG
 Technologies USA, Inc., AVAST Software,
 15 Inc., and AVAST Software, s.r.o.,
 16 Defendants.

Case No.
**COMPLAINT FOR BREACH OF
 CONTRACT AND PATENT
 INFRINGEMENT**
 JURY TRIAL DEMANDED

1 Plaintiff Finjan, Inc. (“Finjan”) alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This is a complaint for breach of contract and patent infringement.

4 **PARTIES**

5 2. Finjan is a Delaware corporation with a principal place of business at 2000
6 University Avenue, Suite 600, Palo Alto, California, 94303. Finjan is a globally recognized
7 cybersecurity company that has invested millions of dollars in research and development creating
8 proactive behavior-based malware protection technology. Finjan’s patented technologies enable
9 behavior-based approaches to modern and next-generation malware and zero-day protection for
10 unknown attacks through techniques such as, for example, hashing, caching, sandboxing, and
11 transmitting mobile protection code through customized profiles. Finjan’s patented technologies
12 have been widely adopted, lauded in the industry, and assigned significant value by many of
13 Defendants’ peers and competitors who have entered into licensing agreements with Finjan for
14 those patented technologies.

15 3. On information and belief, Defendant AVG Technologies CZ, s.r.o. is a company
16 organized and existing under the laws of the Czech Republic. On information and belief, AVG
17 Technologies CZ, s.r.o. has a regular and established place of business at 149 Bluxome Street, San
18 Francisco, California, 94107. On information and belief, AVG Technologies CZ, s.r.o. makes,
19 uses, sells, and/or offers to sell in the United States, or imports into the United States, including in
20 this judicial district, cybersecurity products or processes that practice the inventions claimed in the
21 Finjan patents asserted in this complaint.

22 4. On information and belief, Defendant AVG Technologies USA, Inc. is a Delaware
23 corporation with a regular and established place of business at 149 Bluxome Street, San Francisco,
24 California, 94107. On information and belief, AVG Technologies USA, Inc. makes, uses, sells,
25 and/or offers to sell in the United States, or imports into the United States, including in this
26 judicial district, cybersecurity products or processes that practice the inventions claimed in the
27 Finjan patents asserted in this complaint. AVG Technologies CZ, s.r.o. and AVG Technologies
28 USA, Inc. are referred to collectively herein as “AVG.”

1 and 1338(a) because this is a complaint for infringement of United States patents. Additionally,
2 the Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because there is a
3 complete diversity of citizenship between Finjan and Defendants and the amount in controversy
4 exceeds \$75,000. The Court also has subject matter jurisdiction over this action under 28 U.S.C.
5 §§ 1331 and 1367 because Finjan alleges a federal law claim over which this Court has original
6 jurisdiction, and all other claims are so related to the claim within such original jurisdiction that
7 they form part of the same case or controversy within Article III of the United States Constitution.

8 11. This Court also has personal jurisdiction over each Defendant because Plaintiff’s
9 claims against each of them arises out of or relate to each of their purposeful contacts with
10 California, and the exercise of personal jurisdiction over each Defendant in this particular case
11 would comport with principles of fair play and substantial justice.

12 12. This Court also has personal jurisdiction over each Defendant because it has
13 engaged in systematic and continuous contacts with this State and this district by, *inter alia*,
14 regularly conducting and soliciting business in this State and this district, and deriving substantial
15 revenue from products and/or services provided to persons in this State and this district. For
16 example and without limitation, as noted above, each Defendant maintains a regular and
17 established place of business in this district.

18 13. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b)
19 because, on information and belief, Defendants have committed acts of patent infringement
20 complained of herein in this district, and thus a substantial part of the events or omissions giving
21 rise to the claims alleged herein occurred in this district, and because Defendants are each subject
22 to this Court’s personal jurisdiction with respect to the claims alleged herein.

23 **INTRADISTRICT ASSIGNMENT**

24 14. This action is an Intellectual Property Action subject to district-wide assignment
25 under Civil Local Rules 3-2(c) and 3-5(b).

26 **FIRST CAUSE OF ACTION**

27 **(Breach of Contract – Sham Transaction)**

28 **(Against AVAST)**

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15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

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20. [REDACTED]

[REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

23. Finjan has fully performed its obligations under the Agreement to the extent those obligations were not excused by AVAST's breaches thereof.

24. [REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

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[REDACTED]

26. As a direct and proximate result of AVAST’s breach of the Agreement, Finjan has suffered damages, in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)
(Against AVAST)

27. [REDACTED]

28. [REDACTED]

29. As a direct and proximate result of AVAST’s breach of the covenant of good faith and fair dealing, Finjan has suffered damages, in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Infringement of U.S. Patent No. 6,154,844)**(Against AVG and AVAST)**

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3 30. Finjan is the owner of all rights, title, and interest in United States Patent No.
4 6,154,844, entitled “System and Method for Attaching a Downloadable Security Profile to a
5 Downloadable,” which was duly and properly issued by the United States Patent and Trademark
6 Office (“USPTO”) on November 28, 2000 (“‘844 patent”). A copy of the ‘844 patent is attached
7 as Exhibit 2.

8 31. In violation of 35 U.S.C. § 271, AVG and AVAST have been directly infringing,
9 contributing to the infringement of, and/or inducing others to infringe the ‘844 patent by making,
10 using, selling, and/or offering to sell in the United States, or importing into the United States,
11 including in this judicial district, products or processes that practice the inventions claimed in the
12 ‘844 patent, including without limitation, claim 1 of the ‘844 patent by the AVG Antivirus, AVG
13 CloudCare, AVG Internet Security, and AVG Ultimate products. Each of these software products
14 performs the functions of (a) receiving by an inspector a Downloadable; (b) generating by the
15 inspector a first Downloadable security profile that identifies suspicious code in the received
16 Downloadable; and (c) linking by the inspector the first Downloadable security profile to the
17 Downloadable before a web server makes the Downloadable available to web clients. Defendants’
18 advertising, including through the AVG website, instructs users and customers how to operate
19 these products in a manner that infringes claim 1 of the ‘844 patent. Finjan provided Defendants
20 with claim charts detailing how Defendants infringe claim 1 of the ‘844 patent months before
21 filing this complaint.

22 32. AVG has known of its infringement of the ‘844 patent since no later than its receipt
23 of a letter from Finjan dated January 26, 2016, providing AVG with notice of AVG’s infringement
24 of the ‘844 patent. On information and belief, AVAST has also known of its infringement of the
25 ‘844 patent since no later than October 2016. Yet AVG and AVAST have continued to infringe
26 the ‘844 patent through the conduct described above. Accordingly, Defendants’ infringement of
27 the ‘844 patent has been willful.
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1 33. As a result of AVG and AVAST’s unlawful infringement of the ‘844 patent, Finjan
2 has suffered and will continue to suffer damage. Finjan is entitled to recover from AVG and
3 AVAST the damages suffered by Finjan as a result of their unlawful acts.

4 34. On information and belief, AVG and AVAST intend to continue their unlawful
5 infringing activity, and Finjan continues to and will continue to suffer irreparable harm – for
6 which there is no adequate remedy at law – from such unlawful infringing activities unless this
7 Court enjoins AVG and AVAST from further infringing activities.

8 **FOURTH CAUSE OF ACTION**

9 **(Infringement of U.S. Patent No. 7,930,299)**

10 **(Against AVG and AVAST)**

11 35. Finjan is the owner of all rights, title, and interest in United States Patent No.
12 7,930,299, entitled “System and Method for Appending Security Information to Search Engine
13 Results,” which was duly and properly issued by the USPTO on April 19, 2011 (“‘299 patent”). A
14 copy of the ‘299 patent is attached as Exhibit 3.

15 36. In violation of 35 U.S.C. § 271, AVG and AVAST have been directly infringing,
16 contributing to the infringement of, and/or inducing others to infringe the ‘299 patent by making,
17 using, selling, and/or offering to sell in the United States, or importing into the United States,
18 including in this judicial district, products or processes that practice the inventions claimed in the
19 ‘299 patent, including without limitation, claim 1 of the ‘299 patent by AVG Secure Search. This
20 software product performs the functions of (a) issuing to a search engine a search request for web
21 content, the search request having at least one designated search term; (b) receiving from the
22 search engine search results identifying web content that includes the at least one designated
23 search term; (c) generating a search results summary that presents the identified web content; (d)
24 issuing to a content scanner a request for assessment of at least a portion of the identified web
25 content, for potential security risks; (e) receiving from the content scanner assessments of potential
26 security risks of the at least a portion of the identified web content; and (f) dynamically generating
27 a combined search and security results summary comprising: (i) presenting the at least a portion of
28 the identified web content, subsequent to said generating a search results summary and prior to

1 completion of said receiving from the content scanner; (ii) dynamically updating the combined
2 search and security results summary, comprising presenting potential security risks of the
3 presented web content, after the assessments of potential security risks are received from the
4 content scanner; and (iii) displaying a warning of potential risk, subsequent to said presenting and
5 prior to said dynamically updating. Defendants’ advertising, including through the AVG website,
6 instructs users and customers how to operate this products in a manner that infringes claim 1 of the
7 ‘299 patent. Finjan provided Defendants with claim charts detailing how Defendants infringe
8 claim 1 of the ‘299 patent months before filing this complaint.

9 37. AVG has known of its infringement of the ‘299 patent since no later than its receipt
10 of a letter from Finjan dated January 26, 2016, providing AVG with notice of AVG’s infringement
11 of the ‘299 patent. On information and belief, AVAST has also known of its infringement of the
12 ‘299 patent since no later than October 2016. Yet AVG and AVAST have continued to infringe
13 the ‘299 patent through the conduct described above. Accordingly, Defendants’ infringement of
14 the ‘299 patent has been willful.

15 38. As a result of AVG and AVAST’s unlawful infringement of the ‘299 patent, Finjan
16 has suffered and will continue to suffer damage. Finjan is entitled to recover from AVG and
17 AVAST the damages suffered by Finjan as a result of their unlawful acts.

18 39. On information and belief, AVG and AVAST intend to continue their unlawful
19 infringing activity, and Finjan continues to and will continue to suffer irreparable harm – for
20 which there is no adequate remedy at law – from such unlawful infringing activities unless this
21 Court enjoins AVG and AVAST from further infringing activities.

22 **FIFTH CAUSE OF ACTION**

23 **(Infringement of U.S. Patent No. 7,975,305)**

24 **(Against AVG and AVAST)**

25 40. Finjan is the owner of all rights, title, and interest in United States Patent No.
26 7,975,305, entitled “Method and System for Adaptive Rule-Based Content Scanners for Desktop
27 Computers,” which was duly and properly issued by the USPTO on July 5, 2011 (“‘305 patent”).
28 A copy of the ‘305 patent is attached as Exhibit 4.

1 41. In violation of 35 U.S.C. § 271, AVG and AVAST have been directly infringing,
2 contributing to the infringement of, and/or inducing others to infringe the '305 patent by making,
3 using, selling, and/or offering to sell in the United States, or importing into the United States,
4 including in this judicial district, products or processes that practice the inventions claimed in the
5 '305 patent, including without limitation, claim 13 of the '305 patent by the AVG Ultimate, AVG
6 Antivirus, AVG CloudCare, and AVG Internet Security products. These software products
7 perform the functions of (a) receiving, at a computer, incoming content from the Internet on its
8 destination to an Internet application; (b) selectively diverting, by the computer, the received
9 incoming content from its intended destination; (c) scanning, by the computer, the selectively
10 diverted incoming content to recognize potential computer exploits therewithin, based on a
11 database of parser and analyzer rules corresponding to computer exploits, computer exploits being
12 portions of program code that are malicious, wherein the parser and analyzer rules describe
13 computer exploits as patterns of types of tokens, tokens being program code constructs, and types
14 of tokens comprising a punctuation type, an identifier type and a function type; and (d) updating
15 the database of parser and analyzer rules periodically to incorporate new behavioral rules that are
16 made available. Defendants' advertising, including through the AVG website, instructs users and
17 customers how to operate these products in a manner that infringe claim 1 of the '305 patent.
18 Finjan provided Defendants with claim charts detailing how Defendants infringe claim 1 of the
19 '305 patent months before filing this complaint.

20 42. AVG has known of its infringement of the '305 patent since no later than its receipt
21 of a letter from Finjan dated January 26, 2016, providing AVG with notice of AVG's infringement
22 of the '305 patent. On information and belief, AVAST has also known of its infringement of the
23 '305 patent since no later than October 2016. Yet AVG and AVAST have continued to infringe
24 the '305 patent through the conduct described above. Accordingly, Defendants' infringement of
25 the '305 patent has been willful.

26 43. As a result of AVG and AVAST's unlawful infringement of the '305 patent, Finjan
27 has suffered and will continue to suffer damage. Finjan is entitled to recover from AVG and
28 AVAST the damages suffered by Finjan as a result of their unlawful acts.

1 44. On information and belief, AVG and AVAST intend to continue their unlawful
2 infringing activity, and Finjan continues to and will continue to suffer irreparable harm – for
3 which there is no adequate remedy at law – from such unlawful infringing activities unless this
4 Court enjoins AVG and AVAST from further infringing activities.

5 **SIXTH CAUSE OF ACTION**

6 **(Infringement of U.S. Patent No. 8,079,086)**

7 **(Against AVG and AVAST)**

8 45. Finjan is the owner of all rights, title, and interest in United States Patent No.
9 8,079,086 entitled “Malicious Mobile Code Runtime Monitoring System and Methods,” which
10 was duly and properly issued by the USPTO on December 13, 2011 (“‘086 patent”). A copy of
11 the ‘086 patent is attached as Exhibit 5.

12 46. In violation of 35 U.S.C. § 271, AVG and AVAST have been directly infringing,
13 contributing to the infringement of, and/or inducing others to infringe the ‘086 patent by making,
14 using, selling, and/or offering to sell in the United States, or importing into the United States,
15 including in this judicial district, products or processes that practice the inventions claimed in the
16 ‘086 patent, including without limitation, claim 24 of the ‘086 patent by the AVG Ultimate, AVG
17 Antivirus, AVG CloudCare, and AVG Internet Security products. These software products
18 complete a system that comprises (a) a receiver for receiving an incoming Downloadable; (b) a
19 Downloadable scanner coupled with said receiver, for deriving security profile data for the
20 Downloadable, including a list of suspicious computer operations that may be attempted by the
21 Downloadable; and (c) a transmitter coupled with said receiver and with said Downloadable
22 scanner, for transmitting the Downloadable and a representation of the Downloadable security
23 profile data to a destination computer, via a transport protocol transmission. Defendants’
24 advertising, including through the AVG website, instructs users and customers how to operate
25 these products in a manner that infringe claim 24 of the ‘086 patent. Finjan provided Defendants
26 with claim charts detailing how Defendants infringe claim 24 of the ‘086 patent months before
27 filing this complaint.

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1 47. AVG has known of its infringement of the ‘086 patent since no later than its receipt
2 of a letter from Finjan dated January 26, 2016, providing AVG with notice of AVG’s infringement
3 of the ‘086 patent. On information and belief, AVAST has also known of its infringement of the
4 ‘086 patent since no later than October 2016. Yet AVG and AVAST have continued to infringe
5 the ‘086 patent through the conduct described above. Accordingly, Defendants’ infringement of
6 the ‘086 patent has been willful.

7 48. As a result of AVG and AVAST’s unlawful infringement of the ‘086 patent, Finjan
8 has suffered and will continue to suffer damage. Finjan is entitled to recover from AVG and
9 AVAST the damages suffered by Finjan as a result of their unlawful acts.

10 49. On information and belief, AVG and AVAST intend to continue their unlawful
11 infringing activity, and Finjan continues to and will continue to suffer irreparable harm – for
12 which there is no adequate remedy at law – from such unlawful infringing activities unless this
13 Court enjoins AVG and AVAST from further infringing activities.

14 **SEVENTH CAUSE OF ACTION**

15 **(Infringement of U.S. Patent No. 8,141,154)**

16 **(Against AVG and AVAST)**

17 50. Finjan is the owner of all rights, title, and interest in United States Patent No.
18 8,141,154 entitled “System and Method for Inspecting Dynamically Generated Executable Code,”
19 which was duly and properly issued by the USPTO on March 20, 2012 (“‘154 patent”). A copy of
20 the ‘154 patent is attached as Exhibit 6.

21 51. In violation of 35 U.S.C. § 271, AVG and AVAST have been directly infringing,
22 contributing to the infringement of, and/or inducing others to infringe the ‘154 patent by making,
23 using, selling, and/or offering to sell in the United States, or importing into the United States,
24 including in this judicial district, products or processes that practice the inventions claimed in the
25 ‘154 patent, including without limitation, claim 1 of the ‘154 patent by the AVG Antivirus, AVG
26 CloudCare, AVG Internet Security, and AVG Ultimate products. These software products
27 complete a system that comprises (a) a content processor (i) for processing content received over a
28 network, the content including a call to a first function, and the call including an input, and (ii) for

1 56. In violation of 35 U.S.C. § 271, AVG and AVAST have been directly infringing,
2 contributing to the infringement of, and/or inducing others to infringe the ‘494 patent by making,
3 using, selling, and/or offering to sell in the United States, or importing into the United States,
4 including in this judicial district, products or processes that practice the inventions claimed in the
5 ‘494 patent, including without limitation, claim 1 of the ‘494 patent by the AVG Antivirus, AVG
6 CloudCare, AVG Internet Security, and AVG Ultimate products. These software products
7 perform the functions of (a) receiving an incoming Downloadable; (b) deriving security profile
8 data for the Downloadable, including a list of suspicious computer operations that may be
9 attempted by the Downloadable; and (c) storing the Downloadable security profile data in a
10 database. Defendants’ advertising, including through the AVG website, instructs users and
11 customers how to operate these products in a manner that infringe claim 1 of the ‘494 patent.
12 Finjan provided Defendants with claim charts detailing how Defendants infringe claim 1 of the
13 ‘494 patent months before filing this complaint.

14 57. AVG has known of its infringement of the ‘494 patent since no later than its receipt
15 of a letter from Finjan dated January 26, 2015, providing AVG with notice of AVG’s infringement
16 of the ‘494 patent. On information and belief, AVAST has also known of its infringement of the
17 ‘494 patent since no later than October 2016. Yet AVG and AVAST have continued to infringe
18 the ‘494 patent through the conduct described above. Accordingly, Defendants’ infringement of
19 the ‘494 patent has been willful.

20 58. As a result of AVG and AVAST’s unlawful infringement of the ‘494 patent, Finjan
21 has suffered and will continue to suffer damage. Finjan is entitled to recover from AVG and
22 AVAST the damages suffered by Finjan as a result of their unlawful acts.

23 59. On information and belief, AVG and AVAST intend to continue their unlawful
24 infringing activity, and Finjan continues to and will continue to suffer irreparable harm – for
25 which there is no adequate remedy at law – from such unlawful infringing activities unless this
26 Court enjoins AVG and AVAST from further infringing activities.

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PRAYER FOR RELIEF

1 WHEREFORE, Finjan respectfully requests entry of judgment as follows:

2 A. That AVAST be ordered to pay to Finjan damages for its breach of the Agreement
3 according to proof;

4 B. That Finjan be granted pre-judgment and post-judgment interest on the damages
5 caused to it by reason of AVAST's breach of the Agreement;

6 C. That AVAST be ordered to pay to Finjan damages for its breach of the covenant of
7 good faith and fair dealing according to proof;

8 D. That Finjan be granted pre-judgment and post-judgment interest on the damages
9 caused to it by reason of AVAST's breach on the covenant of good faith and fair dealing;

10 E. [REDACTED]
11 [REDACTED];

12 F. That AVG and AVAST be declared to have infringed, induced others to infringe
13 and/or committed acts of contributory infringement with respect to the claims of the '844, '299,
14 '305, '086, '154, and '494 patents as alleged above;

15 G. That AVG, AVAST and their officers, agents, servants, employees, and all those
16 persons acting or attempting to act in active concert or in participation with them or acting on their
17 behalf be immediately, preliminarily and permanently enjoined from further infringement of the
18 '844, '299, '305, '086, '154, and '494 patents;

19 H. That AVG and AVAST be ordered to account for and pay to Finjan all damages
20 caused to it by reason of their infringement of the '844, '299, '305, '086, '154, and '494 patents
21 pursuant to 35 U.S.C. § 284, in an amount no less than \$15,460,000;

22 I. That AVG and AVAST be ordered to pay treble damages for willful infringement
23 of each of the '844, '299, '305, '086, '154, and '494 patents pursuant to 35 U.S.C. § 284;

24 J. That this case be declared "exceptional" under 35 U.S.C. § 285 and that Finjan be
25 awarded its attorneys' fees, expenses, and costs incurred in this action; and

26 K. That Finjan be granted pre-judgment and post-judgment interest on the damages
27 caused to them by reason of AVG and AVAST's infringement of the '844, '299, '305, '086, '154,
28 and '494 patents.

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DEMAND FOR JURY TRIAL

Finjan hereby demands a jury trial on all issues so triable.

Dated: January 19, 2017

FARELLA BRAUN + MARTEL LLP

By: /s/ John L. Cooper
John L. Cooper

Attorneys for Finjan