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7 *Attorneys for Defendant*
8 FINJAN, INC.

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 FINJAN, INC., a Delaware Corporation,
14 Plaintiff,
15 v.
16 FIREEYE, INC., a Delaware Corporation,
17 Defendant.

Case No.: 4:13-cv-03133-SBA

**SECOND AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

1
2 Plaintiff Finjan, Inc. (“Finjan”) files this First Amended Complaint for Patent Infringement
3 and Jury Demand against Defendant FireEye, Inc. (“Defendant” or “FireEye”) and alleges as follows:

4 **THE PARTIES**

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

7 2. FireEye is a Delaware corporation with its principal place of business at 1440
8 McCarthy Blvd., Milpitas, California 95035.

9 **JURISDICTION AND VENUE**

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

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

13 5. This Court has personal jurisdiction over Defendant. Upon information and belief,
14 Defendant does business in this District and has, and continues to, infringe and/or induce the
15 infringement in this District. FireEye also markets its products primarily in and from this District.
16 Currently, FireEye availed itself of the jurisdiction of Northern California in the *Fortinet, Inc. v.*
17 *FireEye, Inc.*, 5:13-cv-2496 (EJD) (PSG), case. In addition, the Court has personal jurisdiction over
18 Defendant because it has established minimum contacts with the forum and the exercise of
19 jurisdiction would not offend traditional notions of fair play and substantial justice.

20 **FINJAN’S INNOVATIONS**

21 6. Finjan was founded in 1997 as a wholly-owned subsidiary of Finjan Software Ltd., an
22 Israeli corporation. In 1998, Finjan moved its headquarters to San Jose, California. Finjan was a pioneer
23 in developing proactive security technologies capable of detecting previously unknown and emerging
24 online security threats recognized today under the umbrella of “malware.” These technologies protect
25 networks and endpoints by identifying suspicious patterns and behaviors of content delivered over the
26 Internet. Finjan has been awarded, and continues to prosecute, numerous patents covering innovations in
27 the United States and around the world resulting directly from Finjan’s more than decades-long research

1 and development efforts, supported by a dozen inventors, and over \$65 million in R&D investments.

2 7. Finjan built and sold software, including application program interfaces (APIs), and
3 appliances for network security using these patented technologies. These products and related customers
4 continue to be supported by Finjan's licensing partners. At its height, Finjan employed nearly 150
5 employees around the world building and selling security products and operating the Malicious Code
6 Research Center through which it frequently published research regarding network security and current
7 threats on the Internet. Finjan's pioneering approach to online security drew equity investments from two
8 major software and technology companies, the first in 2005, followed by the second in 2006. Finjan
9 generated millions of dollars in product sales and related services and support revenues through 2009
10 when it spun off certain hardware and technology assets in a merger. Pursuant to this merger, Finjan was
11 bound to a non-compete and confidentiality agreement, under which it could not make or sell a competing
12 product or disclose the existence of the non-compete clause. Finjan became a publicly traded company in
13 June 2013, capitalized with \$30 million. After Finjan's obligations under the non-compete and
14 confidentiality agreement expired in March 2015, Finjan re-entered the development and production
15 sector of secure mobile products for the consumer market.

16 8. On October 12, 2004, U.S. Patent No. 6,804,780 ("the '780 Patent"), entitled
17 SYSTEM AND METHOD FOR PROTECTING A COMPUTER AND A NETWORK FROM
18 HOSTILE DOWNLOADABLES, was issued to Shlomo Touboul. A true and correct copy of the
19 '780 Patent is attached to this Complaint as Exhibit A and is incorporated by reference herein.

20 9. All rights, title, and interest in the '780 Patent have been assigned to Finjan, which is
21 the sole owner of the '780 Patent. Finjan has been the sole owner of the '780 Patent since its
22 issuance.

23 10. The '780 Patent is generally directed towards methods and systems for generating a
24 Downloadable ID. By generating an identification for each examined Downloadable, the system
25 allows the Downloadable to be recognized without reevaluation. Such recognition increases
26 efficiency while also saving valuable resources, such as memory and computing power.

1 11. On December 13, 2011, U.S. Patent No. 8,079,086 (“the ‘086 Patent”), entitled
2 MALICIOUS MOBILE CODE RUNTIME MONITORING SYSTEM AND METHODS, was issued
3 to Yigal Mordechai Edery, Nimrod Itzhak Vered, David R Kroll and Shlomo Touboul. A true and
4 correct copy of the ‘086 Patent is attached to this Complaint as Exhibit B and is incorporated by
5 reference herein.

6 12. All rights, title, and interest in the ‘086 Patent have been assigned to Finjan, which is
7 the sole owner of the ‘086 Patent. Finjan has been the sole owner of the ‘086 Patent since its
8 issuance.

9 13. The ‘086 Patent is generally directed towards computer networks and, more
10 particularly, provides a system that protects devices connected to the Internet from undesirable
11 operations from web-based content. One of the ways this is accomplished is by creating a profile of
12 the web-based content and sending these profiles and corresponding web-content to another computer
13 for appropriate action.

14 14. On July 5, 2011, U.S. Patent No. 7,975,305 (“the ‘305 Patent”), entitled METHOD
15 AND SYSTEM FOR ADAPTIVE RULE-BASED CONTENT SCANNERS FOR DESKTOP
16 COMPUTERS, was issued to Moshe Rubin, Moshe Matitya, Artem Melnick, Shlomo Touboul,
17 Alexander Yermakov and Amit Shaked. A true and correct copy of the ‘305 Patent is attached to this
18 Complaint as Exhibit C and is incorporated by reference herein.

19 15. All rights, title, and interest in the ‘305 Patent have been assigned to Finjan, which is
20 the sole owner of the ‘305 Patent. Finjan has been the sole owner of the ‘305 Patent since its
21 issuance.

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

26 17. On July 17, 2012, U.S. Patent No. 8,225,408 (“the ‘408 Patent”), entitled METHOD
27 AND SYSTEM FOR ADAPTIVE RULE-BASED CONTENT SCANNERS, was issued to Moshe

1 Rubin, Moshe Matitya, Artem Melnick, Shlomo Touboul, Alexander Yermakov and Amit Shaked. A
2 true and correct copy of the '408 Patent is attached to this Complaint as Exhibit D and is incorporated
3 by reference herein.

4 18. All rights, title, and interest in the '408 Patent have been assigned to Finjan, which is
5 the sole owner of the '408 Patent. Finjan has been the sole owner of the '408 Patent since its
6 issuance.

7 19. The '408 Patent is generally directed towards network security and, in particular, rule-
8 based scanning of web-based content for a variety of exploits written in different programming
9 languages. One of the ways this is accomplished is by expressing the exploits as patterns of tokens.
10 Additionally, the system provides a way to analyze these exploits by using a parse tree.

11 20. On June 6, 2006, U.S. Patent No. 7,058,822 ("the '822 Patent"), entitled MALICIOUS
12 MOBILE CODE RUNTIME MONITORING SYSTEM AND METHODS, was issued to Yigal
13 Mordechai Edery, Nimrod Itzhak Vered, David R. Kroll and Shlomo Touboul. A true and correct
14 copy of the '822 Patent is attached to this Complaint as Exhibit E and is incorporated by reference
15 herein.

16 21. All rights, title, and interest in the '822 Patent have been assigned to Finjan, which is
17 the sole owner of the '822 Patent. Finjan has been the sole owner of the '822 Patent since its
18 issuance.

19 22. The '822 Patent is generally directed towards computer networks and, more
20 particularly, provides a system that protects devices connected to the Internet from undesirable
21 operations from web-based content. One of the ways this is accomplished is by determining whether
22 any part of such web-based content can be executed and then trapping such content and neutralizing
23 possible harmful effects using mobile protection code. Additionally, the system provides a way to
24 analyze such web-content to determine whether it can be executed.

25 23. On January 12, 2010, U.S. Patent No. 7,647,633 ("the '633 Patent"), entitled
26 MALICIOUS MOBILE CODE RUNTIME MONITORING SYSTEM AND METHODS, was issued
27 to Yigal Mordechai Edery, Nimrod Itzhak Vered, David R. Kroll and Shlomo Touboul. A true and
28

1 correct copy of the '633 Patent is attached to this Complaint as Exhibit F and is incorporated by
2 reference herein.

3 24. All rights, title, and interest in the '633 Patent have been assigned to Finjan, which is
4 the sole owner of the '633 Patent. Finjan has been the sole owner of the '633 Patent since its
5 issuance.

6 25. The '633 Patent is generally directed towards computer networks and, more
7 particularly, provides a system that protects devices connected to the Internet from undesirable
8 operations from web-based content. One of the ways this is accomplished is by determining whether
9 any part of such web-based content can be executed and then trapping such content and neutralizing
10 possible harmful effects using mobile protection code.

11 26. On November 28, 2000, U.S. Patent No. 6,154,844 ("the '844 Patent"), entitled
12 SYSTEM AND METHOD FOR ATTACHING A DOWNLOADABLE SECURITY PROFILE TO
13 A DOWNLOADABLE, was issued to Shlomo Touboul and Nachshon Gal. A true and correct copy
14 of the '844 Patent is attached to this Complaint as Exhibit G and is incorporated by reference herein.

15 27. All rights, title, and interest in the '844 Patent have been assigned to Finjan, which is
16 the sole owner of the '844 Patent. Finjan has been the sole owner of the '844 Patent since its
17 issuance.

18 28. The '844 Patent is generally directed towards computer networks and, more
19 particularly, provides a system that protects devices connected to the Internet from undesirable
20 operations from web-based content. One of the ways this is accomplished is by linking a security
21 profile to such web-based content to facilitate the protection of computers and networks from
22 malicious web-based content.

23 29. On March 20, 2012, U.S. Patent No. 8,141,154 ("the '154 Patent"), entitled SYSTEM
24 AND METHOD FOR INSPECTING DYNAMICALLY GENERATED EXECUTABLE CODE, was
25 issued to David Gruzman and Yuval Ben-Itzhak. A true and correct copy of the '154 Patent is
26 attached to this Complaint as Exhibit DD and is incorporated by reference herein.

1 30. All rights, title, and interest in the ‘154 Patent have been assigned to Finjan, which is
2 the sole owner of the ‘154 Patent. Finjan has been the sole owner of the ‘154 Patent since its
3 issuance.

4 31. The ‘154 Patent is generally directed towards a gateway computer for protecting a
5 client computer from dynamically generated malicious content. One way this is accomplished is to
6 use a content processor to process a first function and invoke a second function if a security computer
7 indicates that it is safe to invoke the second function.

8 32. The ‘780 Patent, the ‘086 Patent, the ‘408 Patent, the ‘305 Patent, the ‘822 Patent, the
9 ‘633 Patent, the ‘844 Patent and the ‘154 Patent are collectively referred to as “the Patents-In-Suit.”

10 **FIREEYE’S MOTION TO STAY THIS CASE AND**
11 **POST-ISSUANCE PROCEDURES CONCERNING THE PATENTS-IN-SUIT**

12 33. On October 7, 2013, Defendant filed requests with the Patent and Trademark Office
13 (“USPTO”) for *ex parte* reexamination of the claims 1-8, 16-27 of the ‘822 Patent, claims 1-7, 28-33
14 of the ‘633 Patent and the claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the ‘086 Patent. On the
15 same day, Defendant also sought to stay the case pending *ex parte* reexamination of these ‘822, ‘633
16 and ‘086 Patents claiming that these patents are “related” to the rest of the Patents-in-Suit. Dkt. No.
17 28. The Court granted Defendant’s motion and administratively closed the case. Dkt. No. 72.

18 34. Since the stay was granted, all the Patents-in-Suit have been challenged by Defendant
19 and/or third parties through requests for *ex parte* reexaminations as well as *inter partes* reviews
20 (“IPR”) many times. Each time, however, the USPTO or Patent Trial Appeal Board (“PTAB”) either
21 denied the requests for *ex parte* reexaminations or petitions for institutions of IPR or found, after
22 conducting the *ex parte* reexaminations or IPR, that most of the challenged claims are not
23 unpatentable, further confirming the validity of the challenged Patents-in-Suit. As a result of these
24 USPTO and PTAB decisions, the Court denied Defendant’s renewed motion to stay and lifted the
25 stay of this case on March 28, 2017. Dkt. No. 86.

1 **The ‘844 Patent**

2 35. A third-party request for *ex parte* reexamination of claims 32 and 42 of the ‘844 Patent
3 was filed on December 9, 2015 by Proofpoint, Inc. (“Proofpoint”) and assigned Reexamination
4 Control Number 90/013,653. The request for *ex parte* reexamination was granted on January 13,
5 2016. On March 30, 2016, the USPTO terminated the *ex parte* reexamination. On May 13, 2016, a
6 Reexamination Certificate was issued confirming the patentability of all claims.

7 36. On September 11, 2015, Symantec Corporation (“Symantec”) filed a petition for IPR
8 of the ‘844 Patent (IPR2015-01894). The PTAB denied institution of the IPR proceeding on the ‘844
9 Patent on March 11, 2016. On January 25, 2016, Blue Coat Systems, Inc. (“Blue Coat”) filed a
10 Petition for IPR of the ‘844 Patent (IPR2016-00498) and a Motion for Joinder to Symantec’s Petition
11 for IPR of the ‘844 Patent (IPR2015-01894). On June 20, 2016, the PTAB dismissed the Petition and
12 motion for joinder.

13 **The ‘780 Patent**

14 37. On November 6, 2015, Palo Alto Networks Inc. (“Palo Alto Networks”) filed a
15 petition for IPR of the ‘780 Patent (IPR 2016-00165). On April 21, 2016, the PTAB denied
16 institution of IPR. On January 21, 2016, Blue Coat Systems, Inc. filed a petition for IPR of U.S.
17 Patent No. 6,804,780 (IPR2016-00492) and a Motion for Joinder to Palo Alto Networks’ Petition for
18 IPR of the ‘780 Patent (IPR2016-00165). On June 8, 2016, the PTAB denied institution of IPR.

19 **The ‘822 Patent**

20 38. A third-party request for *ex parte* reexamination of claims 1-8 and 16-27 of the ‘822
21 Patent was filed on October 7, 2013, on behalf of Defendant and assigned Reexamination Control
22 Number 90/013,017. The USPTO granted the request for *ex parte* reexamination and rejected claims
23 1-8 and 16-27. Finjan filed an appeal brief on February 8, 2015, and the Appeal was docketed at the
24 PTAB and assigned Appeal No. 2015-006304. On December 30, 2015, the PTAB issued a decision
25 reversing the Examiner’s rejection of claims 1-8 and 16-27 and new claims 37 and 40 added during
26 prosecution of the *ex parte* reexamination. On February 16, 2016, a Reexamination Certificate
27 (Certificate No. US 7,058,822 C1) was issued to Finjan.

39. On September 30, 2015, Palo Alto Networks filed a petition for IPR of the ‘822 Patent (IPR2015-01999). The PTAB denied institution of IPR proceedings on the ‘822 Patent on March 29, 2016. On April 28, 2016, Palo Alto Networks filed a Request for Rehearing, and on May 18, 2016, the PTAB granted Palo Alto Networks’ Request for Rehearing but did not alter its Decision denying institution.

The ‘633 Patent

40. A third-party request for *ex parte* reexamination of claims 1-7 and 28-33 of the ‘633 Patent was filed on October 7, 2013, on behalf of Defendant and assigned Reexamination Control Number 90/013,016. The USPTO granted the request for *ex parte* reexamination and on November 19, 2013 issued rejections of claims 1-7 and 28-33. A final Office Action was issued May 22, 2015, rejecting added claims 42-52. On August 24, 2015, Finjan appealed the rejections of claims 1-7, 28-33 and 42-52. On June 29, 2016, the USPTO reversed the Examiner’s rejections of claim 1-7, 28-33, 42, 44, 48 and 49. On September 16, 2016, the USPTO issued a Reexamination Certificate to Finjan confirming the patentability of original claims 1-7 and 28-33 and new claims 42, 44, 48 and 49.

41. A second third-party request for Reexamination of claims 8 and 12 of the ‘633 Patent was filed on December 9, 2015 by Proofpoint and assigned Reexamination Control Number 90/013,652. The *ex parte* reexamination request was granted on February 3, 2016. On May 10, 2016, the USPTO terminated the *ex parte* reexamination. On May 26, 2016, the USPTO issued a Reexamination Certificate to Finjan confirming the patentability of all claims.

42. On September 30, 2015, Palo Alto Networks filed a petition for IPR of the ‘633 Patent (IPR2015-01974). On March 29, 2016, the PTAB granted institution of IPR proceedings with respect to claims 14 and 19 of the ‘633 Patent, and denied institution with respect to all other challenged claims. On March 16, 2017, the PTAB issued a final written decision maintaining the validity of all instituted claims. On January 20, 2016, Blue Coat Systems, Inc. filed a Petition for IPR of the ‘633 Patent (IPR2016-00480) and a Motion for Joinder to Palo Alto Networks’ Petition for IPR of the ‘633 Patent (IPR2015-01974). On June 24, 2016, the PTAB instituted the IPR, and granted Blue Coat Systems, Inc.’s Motion for Joinder. On March 16, 2017, the PTAB issued a final written decision

1 maintaining the validity of all instituted claims. On April 29, 2016, Proofpoint and Armorize
2 Technologies, Inc. (“Armorize”) filed a Petition for IPR of the ‘633 Patent (IPR2016-00966) and a
3 Motion for Joinder to Palo Alto Networks’s Petition for IPR of the ‘633 Patent (IPR2015-01974). On
4 June 24, 2016, the PTAB terminated the IPR proceedings pursuant to a joint motion.

5 **The ‘305 Patent**

6 43. A third-party request for *ex parte* reexamination of claims 1, 2, 5 and 13 of the ‘305
7 Patent was filed on December 11, 2015 by Proofpoint and assigned Reexamination Control Number
8 90/013,660. The USPTO granted the request for *ex parte* reexamination on January 19, 2016 and
9 rejected all challenged claims. Finjan filed an Appeal Brief on January 23, 2017 and this proceeding
10 is currently pending.

11 **The ‘086 Patent**

12 44. A first third-party request for *ex parte* reexamination of the ‘086 Patent was filed on
13 October 7, 2013, on behalf of Defendant and assigned Reexamination Control Number 90/013,015.
14 The USPTO denied Defendant’s request on November 19, 2013, and the *ex parte* reexamination
15 proceedings terminated on January 14, 2014. A second third-party request by Defendant for *ex parte*
16 reexamination of the ‘086 Patent was filed on February 7, 2014, and assigned Reexamination Control
17 Number 90/013,147. The USPTO denied Defendant’s second request on March 27, 2014, and the *ex*
18 *parte* reexamination proceedings terminated on April 29, 2014. A third third-party request for *ex*
19 *parte* reexamination of claims 17 and 24 of the ‘086 Patent was filed on December 9, 2015 by
20 Proofpoint and assigned Reexamination Control Number 90/013,654. On November 28, 2016, the
21 USPTO issued a Reexamination Certificate to Finjan confirming the patentability of all claims.

22 45. On July 15, 2016, Blue Coat filed a Petition for IPR of the ‘086 Patent (IPR2016-
23 01444). The PTAB denied institution of IPR on February 16, 2017. On October 28, 2016, Defendant
24 filed a petition for IPR of the ‘086 Patent (IPR2017-00155) and a Motion for Joinder to Blue Coat’s
25 Petition for IPR of the ‘086 Patent (IPR2016-01444). The PTAB denied institution of IPR of Blue
26 Coat’s Petition for IPR on February 16, 2017.

The '154 Patent

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2 46. On September 25, 2015 and November 5, 2015, Palo Alto Networks filed two separate
3 petitions for IPR of the '154 Patent (IPR2015-01979; IPR2016-00151) and a Motion for Joinder to
4 Symantec's Petition for IPR of the '154 Patent (IPR2015-01547). With respect to IPR2015-01979,
5 the PTAB granted institution of IPR proceedings on the '154 Patent on March 21, 2016. On March
6 15, 2017, the PTAB issued a final written decision maintaining the validity of all instituted claims.
7 With respect to IPR2016-00151, on April 20, 2016, the PTAB instituted trial on claims 1-8, 10, and
8 11, denied institution on the remaining claims and denied Palo Alto Network's Motion for Joinder.
9 On March 15, 2017, the PTAB issued a final written decision maintaining the validity of all instituted
10 claims.

11 47. On April 21, 2016, Proofpoint and Armorize filed a Petition for IPR of the '154 Patent
12 (IPR2016-00937) and a Motion for Joinder to Palo Alto Networks's Petition for IPR of the '154
13 Patent (IPR2015-01979). On June 24, 2016, the PTAB terminated the IPR proceedings pursuant to a
14 joint motion.

The '408 Patent

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16 48. On October 28, 2016, Defendant moved to join the IPR proceeding, case numbered
17 IPR2016-01441. On January 23, 2017, the PTAB issued its decision in IPR2016-01441, denying
18 institution of IPR of the '408 Patent. On March 17, 2017, the PTAB issued its final written decision
19 in IPR2015-02001/IPR2016-00157, confirming the validity of the '408 Patent.

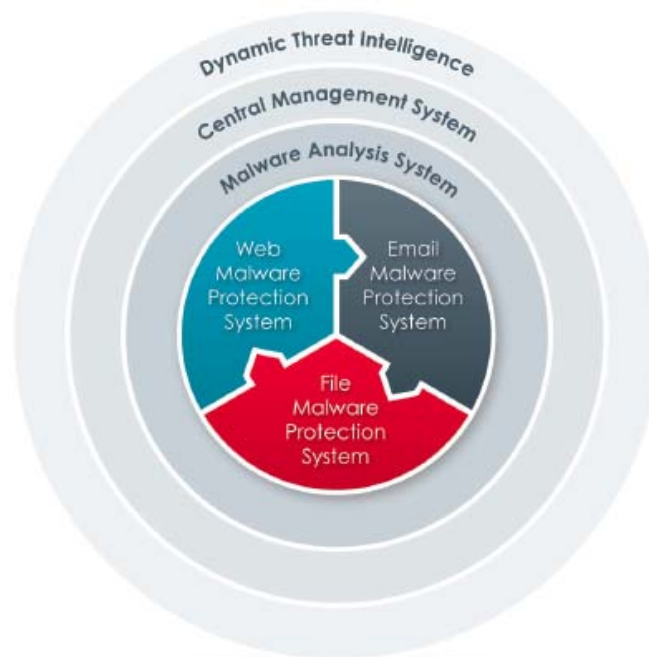
20 49. On September 30, 2015 and November 6, 2015, Palo Alto Networks filed two (2)
21 separate petitions for IPRs of the '408 Patent (IPR2015-02001; IPR2016-00157). On March 29,
22 2016, the PTAB granted institution of the IPR proceedings in IPR2015-02001 and IPR2016-00157
23 and consolidated the two IPR proceedings. On March 17, 2017, the PTAB issued a final written
24 decision maintaining the validity of all instituted claims.

25 50. On April 27, 2016, Blue Coat filed two separate petitions for IPRs of the '408 Patent
26 (IPR2016-00955; IPR2016-00956), and Motion for Joinder to Palo Alto Networks's Petitions for IPR
27 of the '408 Patent (IPR2015-02001 and IPR2016-00157). On August 30, 2016, the PTAB granted
28

1 Blue Coat's Motions for Joinder. On March 17, 2017, the PTAB issued a final written decision
2 maintaining the validity of all instituted claims in IPR2015-02001 and IPR2016-00157. On July 15,
3 2016, Blue Coat filed an additional Petition for IPR of the '408 Patent (IPR2016-01441). On January
4 23, 2017, the PTAB denied institution of IPR. On October 28, 2016, Defendant filed a Petition for
5 IPR of the '408 Patent (IPR2017-00157) and a Motion for Joinder to Blue Coat's Petition for IPR of
6 the '408 Patent (IPR2016-01441). The PTAB denied institution of IPR of Blue Coat's Petition for
7 IPR on January 23, 2017. On April 13, 2017, the PTAB denied Defendant's Petition and Motion for
8 Joinder.

9 **FIREEYE**

10 51. Defendant makes, uses, sells, offers for sale, and/or imports into the United States and
11 this District products and services that utilize the FireEye Threat Protection Platform, including but
12 not limited to, NX Series (including Web MPS Products and cloud versions), EX Series (including
13 Email MPS Products and cloud versions), AX Series (including MAS Products), Central
14 Management System (CM) and FireEye's Dynamic Threat Intelligence Cloud (also known as MPC,
15 ATI, ATI+, iSight).



**Complete solution portfolio to stop
today's cyber attacks**

15 <http://www.fireeye.com/resources/pdfs/fireeye-advanced-threat-protection.pdf> at 3 (attached as
16 Exhibit H).

17 52. FireEye NX products and services are deployed inline at Internet ingress points to
18 block inbound Web exploits. FireEye NX products and services include FireEye Web MPS 1000,
19 2000, 1300, 1310, 2300, 2310, 4000, 4310, 4320, 7000, 7300, and 7320; NX 900 NX1400, NX2400,
20 NX4400/4420, NX7400/7420, NX 10000-NX10550, NX7500, NX 1500V-NX6500V; MVX Smart
21 Grid Appliances VX 5500, VX 125000. *See* Datasheet – NX Series (attached as Exhibit EE). The
22 FireEye Cloud MVX is part of the FireEye NX products and services and provides access to the
23 FireEye's MVX technology as a cloud-based or "hosted" service. The FireEye NX are also part of
24 FireEye's Security-as-a-Service Offerings, which also include the FireEye Helix and FireEye-as-a-
25 Service.

26 53. FireEye EX products and services analyzes email attachment and URL content as part
27 of an appliance or as a cloud-based or "hosted" service. FireEye EX products and services include
28

1 FireEye Email MPS 3300, 5000, 5300, 8000, 8300, and 8320; EX 3400, 5400, 8400, and 8420. *See*
2 Datasheet – EX Series (attached as Exhibit FF). FireEye EX Products include and are utilized as part
3 of FireEye’s Security-as-a-Service Offerings, including the Email Threat Prevent Cloud (ETP) and
4 FireEye-as-a-Service

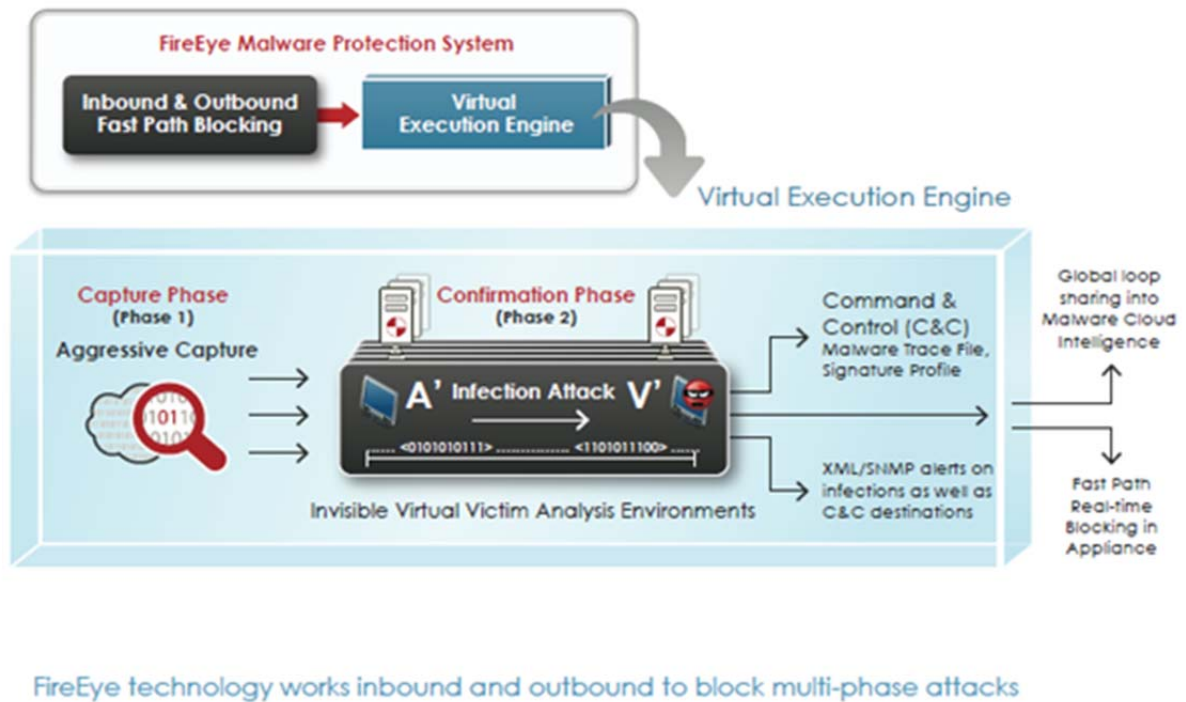
5 54. FireEye AX products and services provide additional sandboxing and analysis
6 capabilities. FireEye AX products and services include FireEye MAS 4000, 4310, 7000, 7300, and
7 8300; AX 5400, 5500, and 8400. *See* Datasheet – AX Series (attached as Exhibit GG).

8 55. FireEye CM products and services provide pathways and connectivity between the
9 various FireEye products to provide additional reporting capabilities. FireEye CM products and
10 services include FireEye CMS 4000, 4310, and 7300, and CM 4400, CM 7400, and CM 9400. *See*
11 Datasheet – CM Series (attached as Exhibit HH).

12 56. FireEye’s Dynamic Threat Intelligence Cloud (DTI) is a service that connects with
13 other FireEye products and provides a real-time exchange of threat data, providing subscribing
14 platforms with the latest intelligence on advanced cyberattacks. *See* Exhibit II. FireEye’s Dynamic
15 Threat Intelligence Cloud includes subscription services to DTI, Malware Protection Cloud (MPC),
16 Advanced Threat Intelligence (ATI), FireEye iSight Intelligence, and Email Threat Prevent
17 Attachment/URL Engine.

18 57. Utilizing these products and technologies, the FireEye Threat Protection Platform
19 provides real-time, dynamic threat protection without the use of signatures to protect an organization
20 across the primary threat vectors, including Web, email, and files and across the different stages of an
21 attack life cycle.

22 58. The FireEye NX, EX, and AX Series with CM and DTI are designed to protect against
23 drive by downloads and blended Web and email attacks. The FireEye NX, EX and AX Series
24 provide real-time, dynamic threat protection by performing two phases of analysis, as shown below:
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26
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13 See FireEye_5DesignPrinciples_wp.pdf at 10 (attached at Exhibit I).

14 59. The FireEye NX, EX, and AX products' first phase of analysis consists of network-
15 traffic-analysis techniques that rely on methods such as static analysis, YARA rules, heuristic
16 analysis and pattern recognition to identify suspected malware. The front-end heuristic analysis
17 engine parses HTML and JavaScript. The engine detects statistical anomalies in the structure and
18 content of the code. These anomalies are assigned priority rankings, and when the rankings exceed a
19 threshold, the suspicious HTML and/or JavaScript is passed to a Virtual Victim Machine (also known
20 as the VX or MVX engine) for further analysis.

21 60. The FireEye NX, EX, and AX products' second phase of analysis executes suspected
22 malware in a virtual machine to verify that it is malicious. The virtual machines run an operating
23 system, multiple browser types, and over thirty different browser plug-ins. Defendant touts the
24 importance of these features because Web-based attacks frequently exploit vulnerabilities in browser
25 plug-ins such as Adobe Flash and Acrobat and Apple QuickTime. The FireEye NX, EX, and AX
26 products also trace possible malware infections within the virtual victim machine analysis
27 environment. By using the knowledge of malicious operations in the virtual machine, Defendant
28

1 advertises the ability to dynamically create exploit signatures from such real-time virtual machine
2 analysis. These dynamically generated signatures are then shared with all appliances connected into
3 FireEye's cloud protection network.

4 61. Another part of the FireEye Threat Protection Platform is the FireEye Dynamic Threat
5 Intelligence. The FireEye Dynamic Threat Intelligence is a global network that connects FireEye
6 NX, EX, and AX appliances to provide a real-time exchange of threat data on today's cyber-attacks.
7 Additionally, the FireEye Dynamic Threat Intelligence provides subscriber appliances with the latest
8 intelligence on advanced cyber-attacks and malware callback destinations, enabling the FireEye
9 appliances to proactively recognize new threats and block attacks. This intelligence is auto-generated
10 and includes: malware attack profiles (MD5s of malware code, network behaviors, obfuscation
11 tactics) that identify confirmed and now-known attacks; analysis of file share objects, email
12 attachments, and URLs; fully qualified malware callback destinations (destination IP address,
13 protocols, ports) used to exfiltrate data and deliver cybercriminal commands; and malware
14 communication protocol characteristics, such as custom commands used to instantiate transmission
15 sessions.

16 62. The FireEye Threat Protection Platform also includes the FireEye Central
17 Management System. The FireEye Central Management System consolidates the management,
18 reporting, and data sharing of the FireEye NX, EX, and AX network-based appliances as well as
19 provide pathways for connecting various FireEye NX, EX, and AX products. Additionally, the
20 FireEye Central Management System enables real-time sharing of the auto-generated malware
21 intelligence to identify and block advanced attacks targeting the organization. It also enables
22 centralized configuration, management, and reporting of FireEye appliances.

23 63. Defendant provides detailed instructions to its users regarding all aspects of the
24 FireEye Threat Protection Platform, including the FireEye NX, EX, and AX appliances and services,
25 the FireEye Dynamic Threat Intelligence and the FireEye Central Management System. These
26 instructions can be found at <https://docs.fireeye.com/>

1 64. Defendant also permits third-party developers to access and use the FireEye Threat
2 Protection Platform. In doing so, Defendant requires third-party developers to agree to terms and
3 conditions that dictate how the developers access and use the FireEye Threat Protection Platform.
4 Third-party developers have access to a variety of services that integrate third party applications and
5 products with the FireEye Threat Protection Platform.

6 65. The FireEye Threat Protection Platform includes the FireEye Threat Protection
7 Platform, as well as the set of development tools and APIs that are provided to third-party developers.
8 Defendant provides detailed instructions to developers to enable them to integrate with the FireEye
9 Threat Protection Platform to utilize the FireEye Web Malware Protection System. *See* FireEye-
10 Partner-Brief.pdf (attached as Exhibit J); *see also* EnCase-FireEye-Integration-Onesheet.pdf (attached
11 as Exhibit K).

12 **FIREEYE'S INFRINGEMENT OF FINJAN'S PATENTS**

13 66. Defendant has been and is now infringing and will continue to infringe the '780
14 Patent, the '086 Patent, the '408 Patent, the '305 Patent, the '822 Patent, the '633 Patent, the '844
15 Patent and the '154 Patent in this judicial District, and elsewhere in the United States by, among other
16 things, making, using, importing, selling, and/or offering for sale FireEye Appliances and Software,
17 including, but not limited to the NX Series (including Web MPS Products and cloud versions), EX
18 Series (including Email MPS Products and cloud versions), AX Series (including MAS Products),
19 Central Management System (CMS) and FireEye's Dynamic Threat Intelligence Cloud (also known
20 as MPC, ATI, ATI+, iSight).

21 67. In addition to directly infringing the Patents-In-Suit pursuant to 35 U.S.C. § 271(a)
22 either literally or under the doctrine of equivalents, Defendant has induced infringement and
23 continues to induce infringement of claims 1-8 of the '780 Patent, claims 1- 3 of the '822 Patent,
24 claims 1-7 of the '633 Patent, claims 1, 3-8, 11, 12, 22, and 23 of the '844 Patent, claims 1, 4-6, 8,
25 and 23 of the '408 Patent, claims 13-15 and 17-24 of the '305 Patent, claims 1-6, 8, 17, 31-33, 35, 36,
26 39 and 41 of the '086 Patent, and claim 1 of the '154 Patent pursuant to 35 U.S.C. § 271(b) by
27
28

1 instructing, directing and/or requiring others, including its users and developers, to perform all or
2 some of the steps of the method claims, either literally or under the doctrine of equivalents.

3 68. Additionally, Defendant has contributorily infringed and continues to contributorily
4 infringe claims 1, 2, 9 and 10 of the '822 Patent as well as claims 8-11 and 13 of the '633 Patent
5 pursuant to 35 U.S.C. § 271(c).

6 **COUNT I**

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

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

10 70. Defendant has infringed and continues to infringe claims 1-18 of the '780 Patent in
11 violation of 35 U.S.C. § 271(a).

12 71. Defendant's infringement is based upon literal infringement or, in the alternative,
13 infringement under the doctrine of equivalents.

14 72. Defendant's acts of making, using, importing, selling, and/or offering for sale
15 infringing products and services have been without the permission, consent, authorization or license
16 of Finjan.

17 73. Defendant's infringement includes the manufacture, use, sale, importation and/or offer
18 for sale of FireEye Appliances and Software, including, but not limited to the NX Series (including
19 Web MPS Products and cloud versions), EX Series (including Email MPS Products and cloud
20 versions), AX Series (including MAS Products), Central Management System (CMS) and FireEye's
21 Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight) which embody the
22 patented invention of the '780 Patent.

23 74. As a result of Defendant's unlawful activities, Finjan has suffered and will continue to
24 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
25 to preliminary and/or permanent injunctive relief.

26 75. Defendant's infringement of the '780 Patent has injured and continues to injure Finjan
27 in an amount to be proven at trial.

1 76. Defendant has been aware of the '780 Patent at least since July 8, 2013, the date of the
2 filing of Finjan's original Complaint. Despite this knowledge, Defendant has continued and currently
3 continues its infringing activity willfully and egregiously.

4 77. Defendant's infringement of the '780 Patent is willful and egregious. Besides having
5 the knowledge of the '780 Patent at least since July 8, 2013, Defendant has also been aware that the
6 '780 Patent as well as the rest of the Patents-in-Suit have all been challenged before the USPTO and
7 PTAB either through *ex parte* reexamination or IPR and yet found not to be unpatentable. Defendant
8 has also been aware that more than one jury has found the '844, '780, '822 and '633 Patents to be not
9 invalid. In light of these facts, Defendant does not have a good faith basis to assert a defense of
10 invalidity of the '780 Patent. As such, Defendant's continued infringing activity is willful and
11 egregious, justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284, and attorneys'
12 fees and costs incurred under 35 U.S.C. § 285.

13 78. Specifically, Defendant has been aware of the post-grant proceedings related to the
14 '780 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
15 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
16 Patents. And on October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination
17 of the '822, '633 and '086 Patents claiming that these patents are "related" to the '780 Patent:

18 Each of the seven Finjan asserted patents purportedly relate to protecting network security
19 technology. Six of the seven patents (all but the '844 patent) come from the same patent
20 family, and five of those six patents name Shlomo Touboul as an inventor, among other
21 former Finjan employees. Each of the seven asserted patents claim similar technology; namely
22 systems and methods for protecting network devices from undesirable or "hostile"
23 downloadables.

24 Dkt. No. 28. On November 19, 2013, the USPTO denied Defendant's request for *ex parte*
25 reexamination of claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the '086 Patent. Defendant filed a
26 second request for *ex parte* reexamination of the claims 17 and 24 of the '086 Patent, and the USPTO
27 denied the request again on March 27, 2014. On February 16, 2016, the USPTO issued a
28 Reexamination Certificate to Finjan confirming the validity of claims 1-8 and 16-27 of the '822
Patent. On September 16, 2016, the USPTO issued a Reexamination Certificate to Finjan confirming

1 the validity of claims 1-7 and 28-33 of the '633 Patent. As a result of these USPTO and PTAB
2 decisions, the Court denied Defendant's renewed motion to stay and lifted the stay of this case on
3 March 28, 2017. Dkt. No. 86. In light of these facts, Defendant's reliance on its defense of the
4 invalidity of the '780 Patent is unreasonable and continued infringement of the '780 Patent is willful
5 and egregious.

6 79. Defendant is also aware that on April 21, 2016, the PTAB issued its decision in
7 IPR2016-00165 denying institution of IPR of the '780 Patent. Finjan further notified Defendant of
8 the PTAB's decision on or before March 22, 2017 when it filed with the Court its Statement of
9 Recent Decisions (Dkt. No. 85). This fact further confirms that Defendant's reliance upon its defense
10 of the invalidity of the '780 Patent is unreasonable and its continued infringement of the '780 Patent
11 is willful and egregious.

12 **COUNT II**

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

14 80. 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 81. Defendant has induced and continues to induce infringement of at least claims 1-8 of
17 the '780 Patent under 35 U.S.C. § 271(b).

18 82. In addition to directly infringing the '780 Patent, Defendant indirectly infringes the
19 '780 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
20 but not limited to its customers, users and developers, to perform some of the steps of the method
21 claims, either literally or under the doctrine of equivalents, of the '780 Patent, where all the steps of
22 the method claims are performed by either Defendant or its customers, users or developers, or some
23 combination thereof. Defendant knew or was willfully blind to the fact that it was inducing others,
24 including customers, users and developers, to infringe by practicing, either themselves or in
25 conjunction with Defendant, one or more method claims of the '780 Patent.

26 83. Defendant knowingly and actively aided and abetted the direct infringement of the
27 '780 Patent by instructing and encouraging its customers, users and developers to use the FireEye

1 Threat Protection Platform. Such instructions and encouragement include, but are not limited to,
2 advising third parties to use the FireEye Threat Protection Platform in an infringing manner,
3 providing a mechanism through which third parties may infringe the '780 Patent, specifically through
4 the use of the FireEye Threat Protection Platform; advertising and promoting the use of the FireEye
5 Threat Protection Platform in an infringing manner, and distributing guidelines and instructions to
6 third parties on how to use the FireEye Threat Protection Platform in an infringing manner.

7 84. Defendant regularly updates and maintains the FireEye Documentation Portal to
8 provide demonstration, instruction, and technical assistance to users to help them use the FireEye
9 Threat Protection Platform, including:

- 10 • Cybersecurity Strategies for Small to Medium-sized Businesses (*see, e.g.*,
11 FireEye_Cybersecurity_Strategies.pdf at 5, available at
12 [http://www2.fireeye.com/WEB2013WPCybersecurityStrategiesforSMB_closing-critical-](http://www2.fireeye.com/WEB2013WPCybersecurityStrategiesforSMB_closing-critical-security-gaps.html)
13 [security-gaps.html](http://www2.fireeye.com/WEB2013WPCybersecurityStrategiesforSMB_closing-critical-security-gaps.html) (attached as Exhibit L) tells users that “[u]pgrading security defenses is
14 critical...” and to deploy the “industry-leading FireEye platform”);
- 15 • 5 Design Principles for Advanced Malware Protection (*see, e.g.*,
16 http://www2.fireeye.com/wp_5principles_adv_malware.html?x=FE_WEB_IC (attached as
17 Exhibit M) provides instructions to users, providing “design principles for advanced
18 malware protection”);
- 19 • Dynamic Threat Intelligence Cloud Datasheet (*see, e.g.*, [fireeye-dynamic-threat-](http://www2.fireeye.com/wp_dynamic-threat-intelligence-cloud.pdf)
20 [intelligence-cloud.pdf](http://www2.fireeye.com/wp_dynamic-threat-intelligence-cloud.pdf) (attached as Exhibit N) encourages customers to subscribe to the
21 FireEye Dynamic Threat Intelligence Cloud service to receive and share data with FireEye).

22 85. Defendant instructs users, including employees, to use and test the FireEye Threat
23 Protection Platform. For example, Defendant provides auto-configured test environments where
24 users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks
25 embedded in common file formats, email attachments, and Web objects. *See* Malware Analysis
26 Tools, Testing, & Protection System.pdf (attached as Exhibit O).

27 86. Defendant provides FireEye Visio stencils for certain product families to instruct
28 customers how to use the FireEye Threat Protection Platform. *See* [http://www.fireeye.com/products-](http://www.fireeye.com/products-and-solutions/visio-stencils.html)
[and-solutions/visio-stencils.html](http://www.fireeye.com/products-and-solutions/visio-stencils.html) (attached as Exhibit P).

1 87. Defendant provides value added resellers, solution providers and alliance partners with
2 the FireEye Fuel Partner Program to encourage and expand use of the FireEye Threat Protection
3 Platform by offering “technical guidance, sales alignment, enablement, and competitive financial
4 rewards needed to become trusted advisors to their customers and end-to-end solution providers for
5 the core FireEye threat protection platform.” *See, e.g.*, [http://www.fireeye.com/news-events/press-](http://www.fireeye.com/news-events/press-releases/read/fireeye-introduces-fuel-partner-program)
6 [releases/read/fireeye-introduces-fuel-partner-program](http://www.fireeye.com/news-events/press-releases/read/fireeye-introduces-fuel-partner-program) (attached as Exhibit Q).

7 88. FireEye regularly updates and maintains the FireEye Education Center to provide
8 demonstration, instruction, and technical assistance to users to help them use the FireEye Threat
9 Protection Platform, including the FireEye Web Malware Protection System (MPS). *See, e.g.*,
10 <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit
11 R) providing a course catalog of online courses such as “Web MPS Installation and Configuration.”

12 89. Defendant has had knowledge of the ‘780 Patent at least as of the time it learned of
13 this action for infringement and by continuing the actions described above, has had the specific intent,
14 or was willfully blind, to the fact that its actions would induce infringement of the ‘780 Patent.

15 90. Defendant actively and intentionally maintains websites, including FireEye’s
16 Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential
17 customers, users and developers to use the FireEye Threat Protection Platform in the manner
18 described by Finjan.

19 91. Defendant actively updates websites, including FireEye’s Documentation Portal, to
20 promote the FireEye Threat Protection Platform, including the FireEye NX products and services and
21 FireEye Dynamic Threat Intelligence, to encourage customers, users and developers to practice the
22 methods taught in the ‘780 Patent.

23 **COUNT III**

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

25 92. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
26 allegations of the preceding paragraphs, as set forth above.

1 93. Defendant has infringed and continues to infringe at least the claims 1-6, 8-14, 16-17,
2 24, 31-33, 35-37 and 39-42 of the '086 Patent in violation of 35 U.S.C. § 271(a).

3 94. Defendant's infringement is based upon literal infringement or, in the alternative,
4 infringement under the doctrine of equivalents.

5 95. Defendant's acts of making, using, importing, selling, and/or offering for sale
6 infringing products and services have been without the permission, consent, authorization or license
7 of Finjan.

8 96. Defendant's infringement includes, but is not limited to, the manufacture, use, sale,
9 importation and/or offer for sale of FireEye Appliances and Software, including, but not limited to,
10 the NX Series (including Web MPS Products and cloud versions), EX Series (including Email MPS
11 Products and cloud versions), AX Series (including MAS Products), Central Management System
12 (CMS) and FireEye's Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight)
13 which embody the patented invention of the '086 Patent.

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

17 98. Defendant's infringement of the '086 Patent has injured and continues to injure Finjan
18 in an amount to be proven at trial.

19 99. Defendant has been aware of the '086 Patent at least since July 8, 2013, the date of the
20 filing of Finjan's original Complaint. Despite this knowledge, Defendant has continued and currently
21 continues its infringing activity willfully and egregiously.

22 100. Defendant's infringement of the '086 Patent is willful and egregious. Besides having
23 the knowledge of the '086 Patent at least since July 8, 2013, Defendant has also been aware that the
24 '086 Patent as well as the rest of the Patents-In-Suit have all been challenged before the USPTO and
25 the PTAB either through *ex parte* reexamination or IPR and yet found not to be unpatentable.
26 Defendant has also been aware that more than one jury has found the '844, '780, '822 and '633
27 Patents, related to the '086 Patent to be not invalid. In light of these facts, Defendant does not have a
28

1 good faith basis to assert a defense of invalidity of the '086 Patent. As such, Defendant's continued
2 infringing activity is willful and egregious, justifying an award to Finjan of enhanced damages under
3 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

4 101. Specifically, Defendant has been aware of the post-grant proceedings related to the
5 '086 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
6 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
7 Patents. And on October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination
8 of the '822, '633 and '086 Patents claiming that these patents are "related" to the all other asserted
9 patents except the '844 Patent:

10 Each of the seven Finjan asserted patents purportedly relate to protecting network security
11 technology. Six of the seven patents (all but the '844 patent) come from the same patent
12 family, and five of those six patents name Shlomo Touboul as an inventor, among other
13 former Finjan employees. Each of the seven asserted patents claim similar technology; namely
14 systems and methods for protecting network devices from undesirable or "hostile"
15 downloadables.

16 Dkt. No. 28. On November 19, 2013, the USPTO denied Defendant's request for *ex parte*
17 reexamination of claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the '086 Patent. Defendant filed a
18 second request for *ex parte* reexamination of the claims 17 and 24 of the '086 Patent, and the USPTO
19 denied the request again on March 27, 2014. On February 16, 2016, the USPTO issued a
20 Reexamination Certificate to Finjan confirming the validity of claims 1-8 and 16-27 of the '822
21 Patent. On September 16, 2016, the USPTO issued a Reexamination Certificate to Finjan confirming
22 the validity of claims 1-7 and 28-33 of the '633 Patent. As a result of these USPTO and PTAB
23 decisions, the Court denied Defendant's renewed motion to stay and lifted the stay of this case on
24 March 28, 2017. Dkt. No. 86. In light of these facts, Defendant's reliance on its defense of the
25 invalidity of the '086 Patent is unreasonable and continued infringement of the '780 Patent is willful
26 and egregious.

27 102. Defendant is also aware that on February 16, 2017, the PTAB issued its decision in
28 IPR2016-01444, denying institution of IPR of the '086 Patent. Defendant moved to join the IPR
proceeding on October 28, 2016 and therefore has been aware of this PTAB's decision dated

1 February 16, 2017. Finjan further notified Defendant of the PTAB's decision dated February 16,
2 2017, on or before March 22, 2017, when it filed with the Court its Statement of Recent Decisions
3 (Dkt. No. 85). This fact further confirms that Defendant's reliance upon its defense of the invalidity
4 of the '086 Patent is unreasonable and its continued infringement of the '780 Patent is willful and
5 egregious.

6 **COUNT IV**

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

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

10 104. Defendant has induced and continues to induce infringement of at least claims 1-6, 8,
11 17, 31-33, 35, 36, 39 and 41 of the '086 Patent under 35 U.S.C. § 271(b).

12 105. In addition to directly infringing the '086 Patent, Defendant indirectly infringes the
13 '086 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
14 but not limited to its users and developers, to perform some of the steps of the method claims, either
15 literally or under the doctrine of equivalents, of the '086 Patent, where all the steps of the method
16 claims are performed by either Defendant or its customers, users or developers, or some combination
17 thereof. Defendant knew or was willfully blind to the fact that it was inducing others, including
18 customers, users and developers, to infringe by practicing, either themselves or in conjunction with
19 Defendant, one or more method claims of the '086 Patent.

20 106. Defendant knowingly and actively aided and abetted the direct infringement of the
21 '086 Patent by instructing and encouraging its users and developers to use the FireEye Threat
22 Protection Platform. Such instructions and encouragement include, but are not limited to, advising
23 third parties to use the FireEye Threat Protection Platform in an infringing manner, providing a
24 mechanism through which third parties may infringe the '086 Patent, specifically through the use of
25 the FireEye Threat Protection Platform; advertising and promoting the use of the FireEye Threat
26 Protection Platform in an infringing manner, and distributing guidelines and instructions to third
27 parties on how to use the FireEye Threat Protection Platform in an infringing manner.

1 107. Defendant regularly updates and maintains the FireEye Documentation Portal to
2 provide demonstration, instruction, and technical assistance to users to help them use the FireEye
3 Threat Protection Platform, including the following webcasts and webinars:

- 4 • Next-Generation Threats: Advanced, Targeted...Successful – How Do You Stop Them?
5 (*see, e.g.*, <http://www2.fireeye.com/how-stop-next-generation-threats.html> (attached as
6 Exhibit S) instructing users how to “effectively protect against advanced targeted attacks
7 with the FireEye Malware Protection System”);
- 8 • FireEye Malware Protection System Demo (*see e.g.*
9 http://www2.fireeye.com/WEB2013OnDemandDemo_n.html (attached as Exhibit T)
10 instructing users on “how to stop zero-day, advanced targeted attacks, and APTs in an on-
11 demand demo of the FireEye Malware Protection System (MPS).”).

12 108. Defendant regularly updates and maintains the FireEye Products and Solutions website
13 to encourage customers and users to use the FireEye Threat Protection Platform, including Advanced
14 Dynamic Threat Intelligence cloud & Intelligence from FireEye. *See, e.g.*,
15 <http://www.fireeye.com/products-and-solutions/dynamic-threat-intelligence-cloud.html> (attached as
16 Exhibit U).

17 109. Defendant instructs users, including employees, to use and test the FireEye Threat
18 Protection Platform. For example, Defendant provides auto-configured test environments where
19 users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks
20 embedded in common file formats, email attachments, and Web objects. *See Malware Analysis
21 Tools, Testing, & Protection System.pdf* (attached as Exhibit O).

22 110. Defendant provides value added resellers, solution providers and alliance partners with
23 the FireEye Fuel Partner Program to encourage and expand use of the FireEye Threat Protection
24 Platform by offering “technical guidance, sales alignment, enablement, and competitive financial
25 rewards.”
26
27
28

FireEye Partner Ecosystem



See <http://www.fireeye.com/partners/> (attached as Exhibit V).

111. Defendant regularly updates and maintains the FireEye Education Center to provide demonstration, instruction, and technical assistance to users to help them use the FireEye Threat Protection Platform. See, e.g., <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit R) providing a course catalog of online courses such as “FireEye Platform Deployment | Final Activity” and “FireEye Platform Fundamentals.”

112. Defendant has had knowledge of the '086 Patent at least as of the time it learned of this action for infringement and by continuing the actions described above, has had the specific intent, or was willfully blind, to the fact that its actions would induce infringement of the '086 Patent.

113. Defendant actively and intentionally maintains websites, including FireEye’s Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential

1 users and developers to use the FireEye Threat Protection Platform in the manner described by
2 Finjan.

3 114. FireEye actively updates websites, including FireEye’s Documentation Portal, to
4 promote the FireEye Threat Protection Platform, including the FireEye NX products and services and
5 FireEye Dynamic Threat Intelligence, to encourage users and developers to practice the methods
6 taught in the ‘086 Patent.

7
8 **COUNT V**

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

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

12 116. Defendant has infringed and continues to infringe at least the claims 1-3, 5-15 and 17-
13 25 of the ‘305 Patent in violation of 35 U.S.C. § 271(a).

14 117. Defendant’s infringement is based upon literal infringement or, in the alternative,
15 infringement under the doctrine of equivalents.

16 118. Defendant’s 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.

19 119. Defendant’s infringement includes, but is not limited to, the manufacture, use, sale,
20 importation and/or offer for sale of FireEye Appliances and Software, including, but not limited to,
21 NX Series (including Web MPS Products and cloud versions), EX Series (including Email MPS
22 Products and cloud versions), AX Series (including MAS Products), Central Management System
23 (CMS), FireEye’s Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight),
24 which embody the patented invention of the ‘305 Patent.

25 120. As a result of Defendant’s unlawful activities, Finjan has suffered and will continue to
26 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
27 to preliminary and/or permanent injunctive relief.

1 121. Defendant's infringement of the '305 Patent has injured and continues to injure Finjan
2 in an amount to be proven at trial.

3 122. Defendant has been aware of the '305 Patent at least since July 8, 2013, the date of the
4 filing of Finjan's original Complaint. Despite this knowledge, Defendant has continued and
5 currently continues its infringing activity willfully and egregiously.

6 123. Defendant's infringement of the '305 Patent is willful and egregious. Besides having
7 the knowledge of the '305 Patent at least since July 8, 2013, Defendant has also been aware that the
8 '780, '844, '822, '633, '086 and '408 Patents, related to the '305 Patent, have all been challenged
9 before the USPTO and the PTAB either through *ex parte* reexamination or IPR and yet found not to
10 be unpatentable. Defendant has also been aware that more than one jury has found the '844, '780,
11 '822 and '633 Patents to be not invalid.

12 124. Specifically, Defendant has been aware of the post-grant proceedings related to the
13 '305 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
14 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
15 Patents. And on October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination
16 of the '822, '633 and '086 Patents claiming that these patents are "related" to the '305 Patent:

17 Each of the seven Finjan asserted patents purportedly relate to protecting network security
18 technology. Six of the seven patents (all but the '844 patent) come from the same patent
19 family, and five of those six patents name Shlomo Touboul as an inventor, among other
20 former Finjan employees. Each of the seven asserted patents claim similar technology; namely
systems and methods for protecting network devices from undesirable or "hostile"
downloadables.

21 Dkt. No. 28. On November 19, 2013, the USPTO denied Defendant's request for *ex parte*
22 reexamination of claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the '086 Patent. Defendant filed a
23 second request for *ex parte* reexamination of the claims 17 and 24 of the '086 Patent, but the USPTO
24 denied the request again on March 27, 2014. On February 16, 2016, the USPTO issued a
25 Reexamination Certificate to Finjan confirming the validity of claims 1-8 and 16-27 of the '822
26 Patent. On September 16, 2016, the USPTO issued a Reexamination Certificate confirming the
27 validity of claims 1-7 and 28-33 of the '633 Patent. As a result of these USPTO and PTAB decisions,

1 the Court denied Defendant's renewed motion to stay and lifted the stay of this case on March 28,
2 2017. Dkt. No. 86. In light of these facts, Defendant does not have a good faith basis to assert a
3 defense of invalidity of the '305 Patent. As such, Defendant's continued infringing activity is willful
4 and egregious, justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284, and
5 attorneys' fees and costs incurred under 35 U.S.C. § 285.

6 **COUNT VI**

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

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

10 126. Defendant has induced and continues to induce infringement of at least claims 13-15
11 and 17-24 of the '305 Patent under 35 U.S.C. § 271(b).

12 127. In addition to directly infringing the '305 Patent, Defendant indirectly infringes the
13 '305 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
14 but not limited to its users, developers and advertisers, to perform some of the steps of the method
15 claims, either literally or under the doctrine of equivalents, of the '305 Patent, where all the steps of
16 the method claims are performed by either Defendant or its customers, users or developers, or some
17 combination thereof. Defendant knew or was willfully blind to the fact that it was inducing others,
18 including customers, users and developers, to infringe by practicing, either themselves or in
19 conjunction with Defendant, one or more method claims of the '305 Patent.

20 128. Defendant knowingly and actively aided and abetted the direct infringement of the
21 '305 Patent by instructing and encouraging its users, developers and advertisers to use of the FireEye
22 Threat Protection Platform. Such instructions and encouragement include, but are not limited to,
23 advising third parties to use the FireEye Threat Protection Platform in an infringing manner,
24 providing a mechanism through which third parties may infringe the '305 Patent, specifically through
25 the use of the FireEye Threat Protection Platform, advertising and promoting the use of the FireEye
26 Threat Protection Platform in an infringing manner, and distributing guidelines and instructions to
27 third parties on how to use the FireEye Threat Protection Platform in an infringing manner.

1 129. Defendant regularly updates and maintains the FireEye Documentation Portal to
2 provide demonstration, instruction, and technical assistance to users to help them use the FireEye
3 Threat Protection Platform, including the following webcasts and webinars:

- 4 • Lifecycle of a Breach - 6 Steps Toward Better Security (*see, e.g.*,
5 <http://www2.fireeye.com/WEB2013WebcastLifeCycleofaBreach.html> (attached as Exhibit
6 W) instructs users on “six steps towards better security” using the FireEye Threat
7 Protection Platform);
- 8 • FireEye Malware Protection System Demo (*see e.g.*
9 http://www2.fireeye.com/WEB2013OnDemandDemo_n.html (attached as Exhibit T)
10 instructing users on “how to stop zero-day, advanced targeted attacks, and APTs in an on-
11 demand demo of the FireEye Malware Protection System (MPS).”).

12 130. Defendant regularly updates and maintains the FireEye Info Center Videos website
13 (*see e.g.* <http://www.fireeye.com/info-center/videos/> (attached as Exhibit X) to encourage customers
14 and users to partner with FireEye’s Threat Protection Platform.

15 131. Defendant regularly updates and maintains the FireEye Products and Solutions website
16 to encourage customers and users to use the FireEye Threat Protection Platform, including Web
17 Malware Protection System (*see, e.g.*, [http://www.fireeye.com/products-and-solutions/web-
18 security.html](http://www.fireeye.com/products-and-solutions/web-security.html) (attached as Exhibit Y).

19 132. Defendant instructs users, including employees, to use and test the FireEye Threat
20 Protection Platform. For example, Defendant provides auto-configured test environments where
21 users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks
22 embedded in common file formats, email attachments, and Web objects. *See* Malware Analysis
23 Tools, Testing, & Protection System.pdf (attached as Exhibit O).

24 133. Defendant provides Fuel Alliance Partners with “the ability to easily integrate, test,
25 and promote product interoperability with the open FireEye threat protection platform.” *See, e.g.*,
26 <http://www.fireeye.com/partners/alliances.html> (attached as Exhibit Z).

27 134. Defendant regularly updates and maintains the FireEye Education Center to provide
28 demonstration, instruction, and technical assistance to users to help them use the FireEye Threat
Protection Platform. *See, e.g.*,

1 <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit
2 R) providing a course catalog of online courses such as “FireEye Platform Deployment | Final
3 Activity” and “FireEye Platform Fundamentals.”

4 135. Defendant has had knowledge of the ‘305 Patent at least as of the time it learned of
5 this action for infringement and by continuing the actions described above has had the specific intent,
6 or was willfully blind, to the fact that its actions would induce infringement of the ‘305 Patent.

7 136. Defendant actively and intentionally maintains websites, including FireEye’s
8 Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential
9 users, developers and advertisers to use the FireEye Threat Protection Platform in the manner
10 described by Finjan.

11 137. Defendant actively updates websites, including FireEye’s Documentation Portal, to
12 promote the FireEye Threat Protection Platform, including the FireEye NX products and services, to
13 encourage users, developers and advertisers to practice the methods taught in the ‘305 Patent.

14 **COUNT VII**

15 **(Direct Infringement of the ‘408 Patent pursuant to 35 U.S.C. § 271(a))**

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

18 139. Defendant has infringed and continues to infringe at least the claims 1, 4-6, 8-10, 12-
19 13, 18-20, 22-23, 29 and 35 of the ‘408 Patent in violation of 35 U.S.C. § 271(a).

20 140. Defendant’s infringement is based upon literal infringement or, in the alternative,
21 infringement under the doctrine of equivalents.

22 141. Defendant’s acts of making, using, importing, selling, and/or offering for sale
23 infringing products and services have been without the permission, consent, authorization or license
24 of Finjan.

25 142. Defendant’s infringement includes, but is not limited to, the manufacture, use, sale,
26 importation and/or offer for sale of FireEye Appliances and Software, including, but not limited to,
27 the NX Series (including Web MPS Products and cloud versions), EX Series (including Email MPS
28

1 Products and cloud versions), AX Series (including MAS Products), Central Management System
2 (CMS) and FireEye's Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight),
3 which embody the patented invention of the '408 Patent.

4 143. As a result of Defendant's unlawful activities, Finjan has suffered and will continue to
5 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
6 to preliminary and/or permanent injunctive relief.

7 144. Defendant's infringement of the '408 Patent has injured and continues to injure Finjan
8 in an amount to be proven at trial.

9 145. Defendant has been aware of the '408 Patent at least since July 8, 2013, the date of the
10 filing of Finjan's original Complaint. Despite this knowledge, Defendant has continued and
11 currently continues its infringing activity willfully and egregiously.

12 146. Defendant's infringement of the '408 Patent is willful and egregious. Besides having
13 the knowledge of the '408 Patent at least since July 8, 2013, Defendant has also been aware that the
14 '408 Patent as well as the rest of the Patents-In-Suit have all been challenged before the USPTO and
15 the PTAB either through *ex parte* reexamination or IPR and yet found not to be unpatentable.
16 Defendant has also been aware that either more than one jury has found the '844, '780, '822 and '633
17 Patents, all related to the '408 Patent, to be not invalid. In light of these facts, Defendant does not
18 have a good faith basis to assert a defense of invalidity of the '408 Patent. As such, Defendant's
19 continued infringing activity is willful and egregious, justifying an award to Finjan of increased
20 damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

21 147. Specifically, Defendant has been aware of the post-grant proceedings related to the
22 '408 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
23 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
24 Patents. And on October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination
25 of the '822, '633 and '086 Patents claiming that these patents are "related" to the '408 Patent:

26 Each of the seven Finjan asserted patents purportedly relate to protecting network security
27 technology. Six of the seven patents (all but the '844 patent) come from the same patent

1 family, and five of those six patents name Shlomo Touboul as an inventor, among other
2 former Finjan employees. Each of the seven asserted patents claim similar technology; namely
3 systems and methods for protecting network devices from undesirable or “hostile”
4 downloadables.

5 Dkt. No. 28. On November 19, 2013, the USPTO denied Defendant’s request for *ex parte*
6 reexamination of claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the ‘086 Patent. Defendant filed a
7 second request for *ex parte* reexamination of the claims 17 and 24 of the ‘086 Patent, and the USPTO
8 denied the request again on March 27, 2014. On February 16, 2016, the USPTO issued a
9 Reexamination Certificate to Finjan confirming the validity of claims 1-8 and 16-27 of the ‘822
10 Patent. On September 16, 2016, the USPTO issued a Reexamination Certificate confirming the
11 validity of claims 1-7 and 28-33 of the ‘633 Patent. As a result of these USPTO and PTAB decisions,
12 the Court denied Defendant’s renewed motion to stay and lifted the stay of this case on March 28,
13 2017. Dkt. No. 86. In light of these facts, Defendant’s reliance on its defense of the invalidity of the
14 ‘408 Patent is unreasonable and continued infringement of the ‘408 Patent is willful and egregious,
15 justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284, and attorneys’ fees and
16 costs incurred under 35 U.S.C. § 285.

17 148. Defendant is also aware that on January 23, 2017, the PTAB issued its decision in
18 IPR2016-01441, denying institution of IPR of the ‘408 Patent and on March 17, 2017, the PTAB
19 issued its Final Written Decision in IPR2015-02001/IPR2016-00157, confirming the validity of the
20 ‘408 Patent. Defendant has been aware of this PTAB’s decision dated January 23, 2017 because it
21 moved to join the IPR proceeding on October 28, 2016. Finjan further notified Defendant regarding
22 the PTAB’s decisions dated January 23, 2017 and March 17, 2017, on or before March 22, 2017,
23 when it filed with the Court its Statement of Recent Decisions (Dkt. No. 85). This fact further
24 confirms that Defendant’s reliance upon its defense of the invalidity of the ‘408 Patent is
25 unreasonable and continued infringement of the ‘408 Patent is willful and egregious, justifying an
26 award to Finjan of enhanced damages under 35 U.S.C. § 284, and attorneys’ fees and costs incurred
27 under 35 U.S.C. § 285.
28

COUNT VIII

(Indirect Infringement of the ‘408 Patent pursuant to 35 U.S.C. § 271(b))

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

4 150. Defendant has induced and continues to induce infringement of at least claims 1, 4-6,
5 8, and 23 of the ‘408 Patent under 35 U.S.C. § 271(b).

6 151. In addition to directly infringing the ‘408 Patent, Defendant indirectly infringes the
7 ‘408 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
8 but not limited to its users and developers, to perform some of the steps of the method claims, either
9 literally or under the doctrine of equivalents, of the ‘408 Patent, where all the steps of the method
10 claims are performed by either Defendant or its customers, users or developers, or some combination
11 thereof. Defendant knew or was willfully blind to the fact that it was inducing others, including
12 customers, users and developers, to infringe by practicing, either themselves or in conjunction with
13 Defendant, one or more method claims of the ‘408 Patent.

14 152. Defendant knowingly and actively aided and abetted the direct infringement of the
15 ‘408 Patent by instructing and encouraging its users and developers to use of the FireEye Threat
16 Protection Platform. Such instructions and encouragement include, but are not limited to, advising
17 third parties to use the FireEye Threat Protection Platform in an infringing manner, providing a
18 mechanism through which third parties may infringe the ‘408 Patent, specifically through the use of
19 the FireEye Threat Protection Platform; advertising and promoting the use of the FireEye Threat
20 Protection Platform in an infringing manner, and distributing guidelines and instructions to third
21 parties on how to use the FireEye Threat Protection Platform in an infringing manner.

22 153. Defendant regularly updates and maintains the FireEye Documentation Portal to
23 provide demonstration, instruction, and technical assistance to users to help them use the FireEye
24 Threat Protection Platform, including the following webcasts and webinars:

- 25
- 26 • Lifecycle of a Breach - 6 Steps Toward Better Security (*see, e.g.*,
27 <http://www2.fireeye.com/WEB2013WebcastLifeCycleofaBreach.html> (attached as Exhibit
28 W) instructs users on “six steps towards better security” using the FireEye Threat
Protection Platform);

- FireEye Malware Protection System Demo (*see, e.g.*, http://www2.fireeye.com/WEB2013OnDemandDemo_n.html (attached as Exhibit T) instructing users on “how to stop zero-day, advanced targeted attacks, and APTs in an on-demand demo of the FireEye Malware Protection System (MPS).”).

154. Defendant regularly updates and maintains the FireEye Products and Solutions website to encourage customers and users to use the FireEye Threat Protection Platform, including Advanced Dynamic Threat Intelligence cloud & Intelligence from FireEye. *See e.g.*

<http://www.fireeye.com/products-and-solutions/dynamic-threat-intelligence-cloud.html> (attached as Exhibit U). Defendant regularly updates and maintains the FireEye Info Center Videos website (*see, e.g.*, <http://www.fireeye.com/info-center/videos/> (attached as Exhibit X) to encourage customers and users to partnering with FireEye’s Threat Protection Platform.

155. Defendant regularly updates and maintains the FireEye Products and Solutions website to encourage customers and users to use the FireEye Threat Protection Platform, including Web Malware Protection System. *See, e.g.*, <http://www.fireeye.com/products-and-solutions/web-security.html> (attached as Exhibit Y).

156. Defendant instructs users, including employees, to use and test the FireEye Threat Protection Platform. For example, Defendant provides auto-configured test environments where users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks embedded in common file formats, email attachments, and Web objects. *See Malware Analysis Tools, Testing, & Protection System.pdf* (attached as Exhibit O).

157. Defendant provides value added resellers, solution providers and alliance partners with the FireEye Fuel Partner Program to encourage and expand use of the FireEye Threat Protection Platform by offering “technical guidance, sales alignment, enablement, and competitive financial rewards needed to become trusted advisors to their customers and end-to-end solution providers for the core FireEye threat protection platform.” *See, e.g.*, <http://www.fireeye.com/news-events/press-releases/read/fireeye-introduces-fuel-partner-program> (attached as Exhibit Q).

158. Defendant regularly updates and maintains the FireEye Education Center to provide demonstration, instruction, and technical assistance to users to help them use the FireEye Threat

1 Protection Platform. *See, e.g.,*

2 <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit

3 R) providing a course catalog of online courses such as “FireEye Platform Deployment | Final

4 Activity” and “FireEye Platform Fundamentals.”

5 159. Defendant has had knowledge of the ‘408 Patent at least as of the time it learned of
6 this action for infringement and by continuing the actions described above has had the specific intent
7 to or was willfully blind to the fact that its actions would induce infringement of the ‘408 Patent.

8 160. Defendant actively and intentionally maintains websites, including FireEye’s
9 Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential
10 users and developers to use the FireEye Threat Protection Platform in the manner described by
11 Finjan.

12 161. Defendant actively updates websites, including FireEye’s Documentation Portal, to
13 promote the FireEye Threat Protection Platform, including the FireEye NX products and services, to
14 encourage users and developers to practice the methods taught in the ‘408 Patent.

15 **COUNT IX**

16 **(Direct Infringement of the ‘822 Patent pursuant to 35 U.S.C. § 271(a))**

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

19 163. Defendant has infringed and continues to infringe at least the claims 1-3, and 9-12 of
20 the ‘822 Patent in violation of 35 U.S.C. § 271(a).

21 164. Defendant’s infringement is based upon literal infringement or, in the alternative,
22 infringement under the doctrine of equivalents.

23 165. Defendant’s acts of making, using, importing, selling, and/or offering for sale
24 infringing products and services have been without the permission, consent, authorization or license
25 of Finjan.

26 166. Defendant’s infringement includes, but is not limited to, the manufacture, use, sale,
27 importation and/or offer for sale of FireEye Appliances and Software, including, but not limited to,

1 the NX Series (including Web MPS Products and cloud versions), EX Series (including Email MPS
2 Products and cloud versions), AX Series (including MAS Products), Central Management System
3 (CMS) and FireEye's Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight),
4 which embody the patented invention of the '822 Patent (the "822 Patent Accused Products").

5 167. As a result of Defendant's unlawful activities, Finjan has suffered and will continue to
6 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
7 to preliminary and/or permanent injunctive relief.

8 168. Defendant's infringement of the '822 Patent has injured and continues to injure Finjan
9 in an amount to be proven at trial.

10 169. Defendant has been aware of the '822 Patent at least since July 8, 2013, the date of the
11 filing of Finjan's original Complaint. Despite this knowledge, Defendant has continued and currently
12 continues its infringing activity willfully and egregiously.

13 170. Defendant's infringement of the '822 Patent is willful and egregious. Besides having
14 the knowledge of the '822 Patent at least since July 8, 2013, Defendant has also been aware that the
15 '822 Patent as well as the rest of the Patents-In-Suit have all been challenged before the USPTO and
16 the PTAB either through *ex parte* reexamination or IPR and yet found not to be unpatentable.
17 Defendant has also been aware that more than one jury has found the '844, '780, '822 and '633
18 Patents to be not invalid. In light of these facts, Defendant does not have a good faith basis to assert a
19 defense of invalidity of the '822 Patent. As such, Defendant's continued infringing activity is willful
20 and egregious, justifying an award to Finjan of increased damages under 35 U.S.C. § 284, and
21 attorneys' fees and costs incurred under 35 U.S.C. § 285.

22 171. Specifically, Defendant has been aware of the post-grant proceedings related to the
23 '822 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
24 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
25 Patents. And on October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination
26 of the '822, '633 and '086 Patents claiming that these patents are "related":
27
28

1 Each of the seven Finjan asserted patents purportedly relate to protecting network security
2 technology. Six of the seven patents (all but the '844 patent) come from the same patent
3 family, and five of those six patents name Shlomo Touboul as an inventor, among other
4 former Finjan employees. Each of the seven asserted patents claim similar technology; namely
5 systems and methods for protecting network devices from undesirable or "hostile"
6 downloadables.

7 Dkt. No. 28. On November 19, 2013, the USPTO denied Defendant's request for *ex parte*
8 reexamination of claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the '086 Patent. Defendant filed a
9 second request for *ex parte* reexamination of the claims 17 and 24 of the '086 Patent, and the USPTO
10 denied the request again on March 27, 2014. On February 16, 2016, the USPTO issued a
11 Reexamination Certificate to Finjan confirming the validity of claims 1-8 and 16-27 of the '822
12 Patent. On September 16, 2016, the USPTO issued a Reexamination Certificate to Finjan confirming
13 the validity of claims 1-7 and 28-33 of the '633 Patent. As a result of these USPTO and PTAB
14 decisions, the Court denied Defendant's renewed motion to stay and lifted the stay of this case on
15 March 28, 2017. Dkt. No. 86. In light of these facts, Defendant's reliance on its defense of the
16 invalidity of the '822 Patent is unreasonable and continued infringement of the '822 Patent is willful
17 and egregious, justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284, and
18 attorneys' fees and costs incurred under 35 U.S.C. § 285.

19 172. Defendant is also aware that on February 16, 2016, the USPTO issued a
20 Reexamination Certificate confirming the validity of challenged claims 1-8 and 16-27 of the '822
21 Patent. Finjan further notified Defendant of the issuance of the Reexamination Certificate on or
22 before May 31, 2016 when the parties filed their Joint Status Report (Dkt. No. 78) with the Court.
23 This fact further confirms that Defendant's reliance upon its defense of the invalidity of the '822
24 Patent is unreasonable and continued infringement of the '822 Patent is willful and egregious,
25 justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and
26 costs incurred under 35 U.S.C. § 285.
27
28

COUNT X**(Indirect Infringement of the '822 Patent pursuant to
35 U.S.C. § 271(b) – Induced Infringement)**

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

174. Defendant has induced and continues to induce infringement of at least claims 1-3 of the '822 Patent under 35 U.S.C. § 271(b).

175. In addition to directly infringing the '822 Patent, Defendant indirectly infringes the '822 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including but not limited to its users and developers, to perform some of the steps of the method claims, either literally or under the doctrine of equivalents, of the '822 Patent, where all the steps of the method claims are performed by either FireEye or its customers, users or developers, or some combination thereof. Defendant knew or was willfully blind to the fact that it was inducing others, including customers, users and developers, to infringe by practicing, either themselves or in conjunction with Defendant, one or more method claims of the '822 Patent.

176. Defendant knowingly and actively aided and abetted the direct infringement of the '822 Patent by instructing and encouraging its users and developers to use the FireEye Threat Protection Platform. Such instructions and encouragement include, but are not limited to, advising third parties to use the FireEye Threat Protection Platform in an infringing manner, providing a mechanism through which third parties may infringe the '822 Patent, specifically through the use of the FireEye Threat Protection Platform, advertising and promoting the use of the FireEye Threat Protection Platform in an infringing manner, and distributing guidelines and instructions to third parties on how to use the FireEye Threat Protection Platform in an infringing manner.

177. Defendant regularly updates and maintains the FireEye Documentation Portal to provide demonstration, instruction, and technical assistance to users to help them use the FireEye Threat Protection Platform, including the following webcasts and webinars:

- Cybersecurity Strategies for Small to Medium-sized Businesses (*see e.g.* FireEye_Cybersecurity_Strategies.pdf at 5, available at http://www2.fireeye.com/WEB2013WPCybersecurityStrategiesforSMB_closing-critical-

1 [security-gaps.html](#) (attached as Exhibit L) tells users that “[u]pgrading security defenses is
2 critical..” and to deploy the “industry-leading FireEye platform”);

- 3 • 5 Design Principles for Advanced Malware Protection (*see e.g.*
4 [http://www2.fireeye.com/wp_5principles_adv_malware.html?x=FE WEB IC](http://www2.fireeye.com/wp_5principles_adv_malware.html?x=FE_WEB_IC) (attached as
5 Exhibit M) provides instructions to users, providing “design principles for advanced
6 malware protection”);
- 7 • FireEye encourages users to use the FireEye Threat Protection Platform. For example,
8 Digital Forensics and Incident Response - Why You Need Them Both (*see, e.g.*,
9 <http://www2.fireeye.com/WEB2013WebcastDigitalForensicsandIR.html> (attached as
10 Exhibit AA) encourages users to use both the Digital Forensics and Incident Response
11 features of the FireEye Threat Protection Platform).

12 178. Defendant regularly updates and maintains the FireEye Products and Solutions website
13 to encourage customers and users to use the FireEye Threat Protection Platform, including Advanced
14 Dynamic Threat Intelligence cloud & Intelligence from FireEye (*see, e.g.*,
15 <http://www.fireeye.com/products-and-solutions/dynamic-threat-intelligence-cloud.html> (attached as
16 Exhibit U); FireEye Web Malware Protection System (*see, e.g.*, [http://www.fireeye.com/products-
18 and-solutions/web-security.html](http://www.fireeye.com/products-
17 and-solutions/web-security.html) (attached as Exhibit Y); and FireEye Central Management System
19 (*see, e.g.*, <http://www.fireeye.com/products-and-solutions/central-management-system.html> (attached
20 as Exhibit BB)).

21 179. Defendant instructs users, including employees, to use and test the FireEye Threat
22 Protection Platform. For example, Defendant provides auto-configured test environments where
23 users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks
24 embedded in common file formats, email attachments, and Web objects. *See* Malware Analysis
25 Tools, Testing, & Protection System.pdf (attached as Exhibit O).

26 180. Defendant provides value added resellers, solution providers and alliance partners with
27 the FireEye Fuel Partner Program to encourage and expand use of the FireEye Threat Protection
28 Platform by offering “technical guidance, sales alignment, enablement, and competitive financial
rewards needed to become trusted advisors to their customers and end-to-end solution providers for
the core FireEye threat protection platform.” *See, e.g.*, [http://www.fireeye.com/news-events/press-
releases/read/fireeye-introduces-fuel-partner-program](http://www.fireeye.com/news-events/press-
releases/read/fireeye-introduces-fuel-partner-program) (attached as Exhibit Q).

1 181. Defendant regularly updates and maintains the FireEye Education Center to provide
2 demonstration, instruction, and technical assistance to users to help them use the FireEye Threat
3 Protection Platform, including FireEye Central Management System (CMS). *See, e.g.,*
4 <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit
5 R) providing a course catalog of online courses such as “CMS Installation and Configuration.”

6 182. Defendant has had knowledge of the ‘822 Patent at least as of the time it learned of
7 this action for infringement and by continuing the actions described above has had the specific intent,
8 or was willfully blind, to the fact that its actions would induce infringement of the ‘822 Patent.

9 183. Defendant actively and intentionally maintains websites, including FireEye’s
10 Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential
11 users and developers to use the FireEye Threat Protection Platform in the manner described by
12 Finjan.

13 184. Defendant actively updates websites, including FireEye’s Documentation Portal, to
14 promote the FireEye Threat Protection Platform, including the FireEye NX products and services,
15 FireEye Dynamic Threat Intelligence and FireEye Central Management System, to encourage users
16 and developers to practice the methods taught in the ‘822 Patent.

17 **COUNT XI**
18 **(Indirect Infringement of the ‘822 Patent pursuant to**
19 **35 U.S.C. § 271(b) – Contributory Infringement)**

20 185. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
21 allegations of the preceding paragraphs, as set forth above.

22 186. Defendant has contributorily infringed and continues to contributorily infringe claims
23 1, 2, 9 and 10 of the ‘822 Patent in violation of 35 U.S.C. § 271(c).

24 187. In addition to directly infringing the ‘822 Patent, Defendant contributorily infringes
25 the ‘822 Patent pursuant to 35 U.S.C. § 271(c) by selling, offering for sale or importing within the
26 United States all or a substantial portion of the components of the ‘822 Patent Accused Products for
27 use in an infringement process disclosed in the ‘822 Patent.

1 188. The '822 Patent Accused Products are not staples or commodities capable of
2 substantial non-infringing use and constitute material parts of the patented invention of the '822
3 Patent. The '822 Patent Accused Products are components sold or offered for sale in the United
4 States and are especially made and adapted for use in infringement of the '822 Patent because the
5 '822 Patent Accused Products utilize mobile protection code in its sandbox technologies.

6 189. Defendant has been aware at least since October 7, 2013, the date of the filing of
7 Finjan's original Complaint, that the components were made or adapted for use in the '822 Patent
8 Accused Products.

9 190. Defendant has had knowledge of the '822 Patent at least as of the time it learned of
10 this action for infringement and by continuing the actions described above has had the specific intent,
11 or was willfully blind, to the fact that its actions would contributorily infringe the '822 Patent.

12 **COUNT XII**

13 **(Direct Infringement of the '633 Patent pursuant to 35 U.S.C. § 271(a))**

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

16 192. Defendant has infringed and continues to infringe at least the claims 1-14 of the '633
17 Patent in violation of 35 U.S.C. § 271(a).

18 193. Defendant's infringement is based upon literal infringement or, in the alternative,
19 infringement under the doctrine of equivalents.

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

23 195. Defendant's infringement includes, but is not limited to, the manufacture, use, sale,
24 importation and/or offer for sale of FireEye Appliances and Software, including, but not limited to,
25 the NX Series (including Web MPS Products and cloud versions), EX Series (including Email MPS
26 Products and cloud versions), AX Series (including MAS Products), Central Management System
27 (CMS), FireEye's Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight),
28

1 which embody the patented invention of the ‘633 Patent (collectively the “‘633 Patent Accused
2 Products”).

3 196. As a result of Defendant’s unlawful activities, Finjan has suffered and will continue to
4 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
5 to preliminary and/or permanent injunctive relief.

6 197. Defendant’s infringement of the ‘633 Patent has injured and continues to injure Finjan
7 in an amount to be proven at trial.

8 198. Defendant has been aware of the ‘633 Patent at least since July 8, 2013, the date of the
9 filing of Finjan’s original Complaint. Despite this knowledge, Defendant has continued and
10 currently continues its infringing activity willfully and egregiously.

11 199. Defendant’s infringement of the ‘633 Patent is willful and egregious. Besides having
12 the knowledge of the ‘633 Patent at least since July 8, 2013, Defendant has also been aware that the
13 ‘633 Patent as well as the rest of the Patents-In-Suit have all been challenged before the USPTO and
14 PTAB either through *ex parte* reexamination or IPR and yet found not to be unpatentable. Defendant
15 has also been aware that more than one jury has found the ‘844, ‘780, ‘822 and ‘633 Patents to be not
16 invalid. In light of these facts, Defendant does not have a good faith basis to assert a defense of
17 invalidity of the ‘633 Patent. As such, Defendant’s continued infringing activity is willful and
18 egregious, justifying an award to Finjan of increased damages under 35 U.S.C. § 284, and attorneys’
19 fees and costs incurred under 35 U.S.C. § 285.

20 200. Specifically, Defendant has been aware of the post-grant proceedings related to the
21 ‘633 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
22 Defendant filed with the USPTO its *ex parte* reexamination requests for the ‘822, ‘633 and ‘086
23 Patents. And on October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination
24 of the ‘822, ‘633 and ‘086 Patents claiming that these patents are “related”:

25 Each of the seven Finjan asserted patents purportedly relate to protecting network security
26 technology. Six of the seven patents (all but the ‘844 patent) come from the same patent
27 family, and five of those six patents name Shlomo Touboul as an inventor, among other
28 former Finjan employees. Each of the seven asserted patents claim similar technology; namely

1 systems and methods for protecting network devices from undesirable or “hostile”
2 downloadables.

3 Dkt. No. 28. On November 19, 2013, the USPTO denied Defendant’s request for *ex parte*
4 reexamination of claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the ‘086 Patent. Defendant filed a
5 second request for *ex parte* reexamination of the claims 17 and 24 of the ‘086 Patent, but the USPTO
6 denied the request again on March 27, 2014. On February 16, 2016, the USPTO issued a
7 Reexamination Certificate to Finjan confirming the validity of claims 1-8 and 16-27 of the ‘822
8 Patent. On September 16, 2016, the USPTO issued a Reexamination Certificate to Finjan confirming
9 the validity of claims 1-7 and 28-33 of the ‘633 Patent. As a result of these USPTO and PTAB
10 decisions, the Court denied Defendant’s renewed motion to stay and lifted the stay of this case on
11 March 28, 2017. Dkt. No. 86. In light of these facts, Defendant’s reliance on its defense of the
12 invalidity of the ‘780 Patent is unreasonable and continued infringement of the ‘780 Patent is willful
13 and egregious, justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284, and
14 attorneys’ fees and costs incurred under 35 U.S.C. § 285.

15 201. Defendant has also been aware that on September 16, 2016, the USPTO issued a
16 Reexamination Certificate to Finjan confirming the validity of the challenged claims 1-7 and 28-33 of
17 the ‘633 Patent and on March 16, 2017, the PTAB issued its Final Written Decision in IPR2015-
18 01974, confirming the validity of the ‘633 Patent. Finjan further notified Defendant of the issuance
19 of the Reexamination Certificate on or before September 30, 2016 when the parties filed their Joint
20 Status Report (Dkt. No. 79) with the Court. These facts further confirm that Defendant’s reliance
21 upon its defense of the invalidity of the ‘633 Patent is unreasonable and continued infringement of the
22 ‘633 Patent is willful and egregious, justifying an award to Finjan of enhanced damages under 35
23 U.S.C. § 284, and attorneys’ fees and costs incurred under 35 U.S.C. § 285.

24 **COUNT XIII**

25 **(Indirect Infringement of the ‘633 Patent pursuant to 35 U.S.C. § 271(b))**

26 202. Finjan repeats, realleges, and incorporates by reference, as if fully set forth herein, the
27 allegations of the preceding paragraphs, as set forth above.
28

1 203. Defendant has induced and continues to induce infringement of at least claims 1-7 and
2 28-33 of the ‘633 Patent under 35 U.S.C. § 271(b).

3 204. In addition to directly infringing the ‘633 Patent, Defendant indirectly infringes the
4 ‘633 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
5 but not limited to its users and developers, to perform some of the steps of the method claims, either
6 literally or under the doctrine of equivalents, of the ‘633 Patent, where all the steps of the method
7 claims are performed by either Defendant or its customers, users or developers, or some combination
8 thereof. Defendant knew or was willfully blind to the fact that it was inducing others, including
9 customers, users and developers, to infringe by practicing, either themselves or in conjunction with
10 Defendant, one or more method claims of the ‘633 Patent.

11 205. Defendant knowingly and actively aided and abetted the direct infringement of the
12 ‘633 Patent by instructing and encouraging its users and developers to use the FireEye Threat
13 Protection Platform. Such instructions and encouragement include, but are not limited to, advising
14 third parties to use the FireEye Threat Protection Platform in an infringing manner, providing a
15 mechanism through which third parties may infringe the ‘633 Patent, specifically through the use of
16 the FireEye Threat Protection Platform; advertising and promoting the use of the FireEye Threat
17 Protection Platform in an infringing manner, and distributing guidelines and instructions to third
18 parties on how to use the FireEye Threat Protection Platform in an infringing manner.

19 206. Defendant regularly updates and maintains the FireEye Documentation Portal to
20 provide demonstration, instruction, and technical assistance to users to help them use the FireEye
21 Threat Protection Platform, including the following webcasts and webinars:

- 22 • Cybersecurity Strategies for Small to Medium-sized Businesses (*see, e.g.*,
23 FireEye_Cybersecurity_Strategies.pdf at 5, available at
24 [http://www2.fireeye.com/WEB2013WPCybersecurityStrategiesforSMB_closing-critical-
25 security-gaps.html](http://www2.fireeye.com/WEB2013WPCybersecurityStrategiesforSMB_closing-critical-security-gaps.html) (attached as Exhibit L) tells users that “[u]pgrading security defenses is
26 critical.” and to deploy the “industry-leading FireEye platform”);
- 27 • 5 Design Principles for Advanced Malware Protection (*see, e.g.*,
28 http://www2.fireeye.com/wp_5principles_adv_malware.html?x=FE_WEB_IC (attached as

1 Exhibit M) provides instructions to users, including “how to design systems that protect
2 against advanced threats”);

- 3 • FireEye encourages users to use the FireEye Threat Protection Platform. For example,
4 Digital Forensics and Incident Response - Why You Need Them Both (*see, e.g.*,
5 <http://www2.fireeye.com/WEB2013WebcastDigitalForensicsandIR.html>) (attached as
6 Exhibit AA) encourages users to use both the Digital Forensics and Incident Response
7 features of the FireEye Threat Protection Platform).

8 207. Defendant regularly updates and maintains the FireEye Products and Solutions website
9 to encourage customers and users to use the FireEye Threat Protection Platform, including Advanced
10 Dynamic Threat Intelligence cloud & Intelligence from FireEye (*see, e.g.*,
11 <http://www.fireeye.com/products-and-solutions/dynamic-threat-intelligence-cloud.html>) (attached as
12 Exhibit U); FireEye Web Malware Protection System (*see, e.g.*, [http://www.fireeye.com/products-
13 and-solutions/web-security.html](http://www.fireeye.com/products-and-solutions/web-security.html)) (attached as Exhibit Y); and FireEye Central Management System
14 (*see, e.g.*, <http://www.fireeye.com/products-and-solutions/central-management-system.html>) (attached
15 as Exhibit BB).

16 208. Defendant instructs users, including employees, to use and test the FireEye Threat
17 Protection Platform. For example, Defendant provides auto-configured test environments where
18 users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks
19 embedded in common file formats, email attachments, and Web objects. *See* Malware Analysis
20 Tools, Testing, & Protection System.pdf (attached as Exhibit O).

21 209. Defendant provides value added resellers, solution providers and alliance partners with
22 the FireEye Fuel Partner Program to encourage and expand use of the FireEye Threat Protection
23 Platform by offering “technical guidance, sales alignment, enablement, and competitive financial
24 rewards needed to become trusted advisors to their customers and end-to-end solution providers for
25 the core FireEye threat protection platform.” *See, e.g.*, [http://www.fireeye.com/news-events/press-
26 releases/read/fireeye-introduces-fuel-partner-program](http://www.fireeye.com/news-events/press-releases/read/fireeye-introduces-fuel-partner-program) (attached as Exhibit Q).

27 210. Defendant regularly updates and maintains the FireEye Education Center to provide
28 demonstration, instruction, and technical assistance to users to help them use the FireEye Threat
Protection Platform. *See, e.g.*,

1 <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit
2 R) providing a course catalog of online courses such as “FireEye Platform Deployment| Final
3 Activity” and “FireEye Platform Fundamentals.”).

4 211. Defendant has had knowledge of the ‘633 Patent at least as of the time it learned of
5 this action for infringement and by continuing the actions described above has had the specific intent,
6 or was willfully blind, to the fact that its actions would induce infringement of the ‘633 Patent.

7 212. Defendant actively and intentionally maintains websites, including FireEye’s
8 Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential
9 users and developers to use the FireEye Threat Protection Platform in the manner described by
10 Finjan.

11 213. Defendant actively updates websites, including FireEye’s Documentation Portal, to
12 promote the FireEye Threat Protection Platform, including the FireEye NX products and services,
13 FireEye Dynamic Threat Intelligence and FireEye Central Management System, to encourage users
14 and developers to practice the methods taught in the ‘633 Patent.

15 **COUNT XIV**
16 **(Indirect Infringement of the ‘633 Patent pursuant to**
17 **35 U.S.C. § 271(b) – Contributory Infringement)**

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

20 215. Defendant has contributorily infringed and continues to contributorily infringe claims
21 8-11 and 13 of the ‘633 Patent in violation of 35 U.S.C. § 271(c).

22 216. In addition to directly infringing the ‘633 Patent, Defendant contributorily infringes
23 the ‘633 Patent pursuant to 35 U.S.C. § 271(c) by selling, offering for sale or importing within the
24 United States all or a substantial portion of the components of the ‘633 Patent Accused Products for
25 use in an infringement process disclosed in the ‘633 Patent.

26 217. The ‘633 Patent Accused Products are not staples or commodities capable of
27 substantial non-infringing use and constitute material parts of the patented invention of the ‘633
28

1 Patent. The '633 Patent Accused Products are components sold or offered for sale in the United
2 States and are especially made and adapted for use in infringement of the '633 Patent because the
3 '633 Patent Accused Products utilize mobile protection code in its sandbox technologies.

4 218. Defendant has been aware at least since October 7, 2013, the date of the filing of
5 Finjan's original Complaint, that the components were made or adapted for use in the '633 Patent
6 Accused Products.

7 219. Defendant has had knowledge of the '633 Patent at least as of the time it learned of
8 this action for infringement and by continuing the actions described above has had the specific intent,
9 or was willfully blind, to the fact that its actions would contributorily infringe the '633 Patent.

10 **COUNT XV**

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

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

14 221. Defendant has infringed and continues to infringe one or more claims of the '844
15 Patent in violation of 35 U.S.C. § 271(a).

16 222. Defendant's infringement is based upon literal infringement or, in the alternative,
17 infringement under the doctrine of equivalents.

18 Defendant's acts of making, using, importing, selling, and/or offering for sale infringing products and
19 services have been without the permission, consent, authorization or license of Finjan.

20 223. Defendant's infringement includes, but is not limited to, the manufacture, use, sale,
21 importation and/or offer for sale of Defendant's products and services, including but not limited to
22 the FireEye Threat Protection Platform, including the FireEye Malware Protection System, FireEye
23 Dynamic Threat Intelligence and FireEye Central Management System, which embody the patented
24 invention of the '844 Patent.

25 224. As a result of Defendant's unlawful activities, Finjan has suffered and will continue to
26 suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Finjan is entitled
27 to preliminary and/or permanent injunctive relief.

1 225. Defendant's infringement of the '844 Patent has injured and continues to injure Finjan
2 in an amount to be proven at trial.

3 226. Defendant has been aware of the '844 Patent at least since July 8, 2013, the date of the
4 filing of Finjan's original Complaint. Despite this knowledge, Defendant has continued and
5 currently continues its infringing activity willfully and egregiously.

6 227. Defendant's infringement of the '844 Patent is willful and egregious. Besides having
7 the knowledge of the '844 Patent at least since July 8, 2013, Defendant has also been aware that the
8 '844 Patent as well as the rest of the Patents-In-Suit have all been challenged before the USPTO and
9 PTAB either through *ex parte* reexamination or IPR and yet found not to be unpatentable. Defendant
10 has also been aware that more than one jury has found the '844, '780, '822 and '633 Patents, related
11 to the '844 Patent, to be not invalid.

12 228. Specifically, Defendant has been aware of the post-grant proceedings related to the
13 '844 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
14 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
15 Patents. On October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination of
16 the '822, '633 and '086 Patents claiming that these patents are "related" to the '844 Patent. Dkt. No.
17 28. On November 19, 2013, the USPTO denied Defendant's request for *ex parte* reexamination of
18 claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the '086 Patent. Defendant filed a second request for
19 *ex parte* reexamination of the claims 17 and 24 of the '086 Patent, and the USPTO denied the request
20 again on March 27, 2014. On February 16, 2016, the USPTO issued a Reexamination Certificate to
21 Finjan confirming the validity of claims 1-8 and 16-27 of the '822 Patent. On September 16, 2016,
22 the USPTO issued a Reexamination Certificate to Finjan confirming the validity of claims 1-7 and
23 28-33 of the '633 Patent. As a result of these USPTO and PTAB decisions, the Court denied
24 Defendant's renewed motion to stay and lifted the stay of this case on March 28, 2017. Dkt. No. 86.
25 In light of these facts, Defendant does not have a good faith basis to assert a defense of invalidity of
26 the '844 Patent. As such, Defendant's continued infringing activity is willful and egregious,

1 justifying an award to Finjan of increased damages under 35 U.S.C. § 284, and attorneys' fees and
2 costs incurred under 35 U.S.C. § 285.

3 229. Defendant has also been aware that on March 11, 2016, the PTAB issued its decision
4 in IPR2015-01894, denying institution of IPR of the '844 Patent and on May 16, 2016, the USPTO
5 issued a Reexamination Certificate to Finjan confirming the validity of the challenged claims 32 and
6 42 of the '844 Patent. Finjan further notified Defendant of the PTAB's decision and the issuance of
7 the Reexamination Certificate on or before March 22, 2017, when it filed with the Court its Statement
8 of Recent Decisions (Dkt. No. 85). These fact further confirm that Defendant's reliance upon its
9 defense of the invalidity of the '844 Patent is unreasonable and continued infringement of the '844
10 Patent is willful and egregious, justifying an award to Finjan of enhanced damages under 35 U.S.C. §
11 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

12 COUNT XIV

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

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

16 231. Defendant has induced and continues to induce infringement of at least claims 1, 3-8,
17 11, 12, 22, and 23 of the '844 Patent under 35 U.S.C. § 271(b).

18 232. In addition to directly infringing the '844 Patent, Defendant indirectly infringes the
19 '844 Patent pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others, including
20 but not limited to its users and developers, to perform some of the steps of the method claims, either
21 literally or under the doctrine of equivalents, of the '844 Patent, where all the steps of the method
22 claims are performed by either Defendant or its customers, users or developers, or some combination
23 thereof. Defendant knew or was willfully blind to the fact that it was inducing others, including
24 customers, users and developers, to infringe by practicing, either themselves or in conjunction with
25 Defendant, one or more method claims of the '844 Patent.

26 233. Defendant knowingly and actively aided and abetted the direct infringement of the
27 '844 Patent by instructing and encouraging its users and developers to use the FireEye Threat

1 Protection Platform. Such instructions and encouragement include, but are not limited to, advising
2 third parties to use the FireEye Threat Protection Platform in an infringing manner, providing a
3 mechanism through which third parties may infringe the '844 Patent, specifically through the use of
4 the FireEye Threat Protection Platform, advertising and promoting the use of the FireEye Threat
5 Protection Platform in an infringing manner, and distributing guidelines and instructions to third
6 parties on how to use the FireEye Threat Protection Platform in an infringing manner.

7 234. Defendant regularly updates and maintains the FireEye Documentation Portal to
8 provide demonstration, instruction, and technical assistance to users to help them use the FireEye
9 Threat Protection Platform, including the following:

- 10 • Life Cycle of a Breach – 6 Steps Toward Better Security (*see, e.g.*,
11 <http://www2.fireeye.com/WEB2013WebcastLifeCycleofaBreach.html> (attached as Exhibit
12 W) instructing users in "[h]ow to connect the dots to better understand and mitigate attacks"
and "[h]ow to evolve your approach from cyber defense to cyber resilience";
- 13 • Definitive Guide to Next-Generation Threat Protection (*see, e.g.*,
14 http://www2.fireeye.com/definitive-guide-next-gen-threats.html?x=FE_WEB_IC (attached
15 as Exhibit CC) instructing users in “[s]electing the right NGTP solution for your
organization”).

16 235. Defendant regularly updates and maintains the FireEye Products and Solutions website
17 to encourage customers and users to use the FireEye Threat Protection Platform, including Advanced
18 Dynamic Threat Intelligence cloud & Intelligence from FireEye (*see, e.g.*,
19 <http://www.fireeye.com/products-and-solutions/dynamic-threat-intelligence-cloud.html> (attached as
20 Exhibit U); FireEye Web Malware Protection System (*see, e.g.*, [http://www.fireeye.com/products-
21 and-solutions/web-security.html](http://www.fireeye.com/products-and-solutions/web-security.html) (attached as Exhibit Y); and FireEye Central Management System
22 (*see, e.g.*, <http://www.fireeye.com/products-and-solutions/central-management-system.html> (attached
23 as Exhibit BB).

24 236. Defendant instructs users, including employees, to use and test the FireEye Threat
25 Protection Platform. For example, Defendant provides auto-configured test environments where
26 users can safely execute and inspect advanced malware, zero-day, and targeted APT attacks
27
28

1 embedded in common file formats, email attachments, and Web objects. *See* Malware Analysis
2 Tools, Testing, & Protection System.pdf (attached as Exhibit O).

3 237. Defendant provides value added resellers, solution providers and alliance partners with
4 the FireEye Fuel Partner Program to encourage and expand use of the FireEye Threat Protection
5 Platform by offering “technical guidance, sales alignment, enablement, and competitive financial
6 rewards needed to become trusted advisors to their customers and end-to-end solution providers for
7 the core FireEye threat protection platform.” *See, e.g.*, [http://www.fireeye.com/news-events/press-](http://www.fireeye.com/news-events/press-releases/read/fireeye-introduces-fuel-partner-program)
8 [releases/read/fireeye-introduces-fuel-partner-program](http://www.fireeye.com/news-events/press-releases/read/fireeye-introduces-fuel-partner-program) (attached as Exhibit Q).

9 238. Defendant regularly updates and maintains the FireEye Education Center to provide
10 demonstration, instruction, and technical assistance to users to help them use the FireEye Threat
11 Protection Platform. *See, e.g.*,
12 <https://gm1.geolearning.com/geonext/fireeye/opensite.geo?nav=OpenSiteHome> (attached as Exhibit
13 R) providing a course catalog of online courses such as “FireEye Platform Deployment | Final
14 Activity” and “FireEye Platform Fundamentals.”

15 239. Defendant has had knowledge of the ‘844 Patent at least as of the time it learned of
16 this action for infringement and by continuing the actions described above has had the specific intent,
17 or was willfully blind, to the fact that its actions would induce infringement of the ‘844 Patent.

18 240. Defendant actively and intentionally maintains websites, including FireEye’s
19 Documentation Portal, to promote the FireEye Threat Protection Platform and to encourage potential
20 users and developers to use the FireEye Threat Protection Platform in the manner described by
21 Finjan.

22 241. Defendant actively updates websites, including FireEye’s Documentation Portal, to
23 promote the FireEye Threat Protection Platform, including the FireEye NX products and services,
24 FireEye Dynamic Threat Intelligence and FireEye Central Management System, to encourage users
25 and developers to practice the methods taught in the ‘844 Patent.

COUNT XV

(Direct Infringement of the ‘154 Patent pursuant to 35 U.S.C. § 271(a))

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

4 243. Defendant has infringed and continues to infringe at least claim 1 of the ‘154 Patent in
5 violation of 35 U.S.C. § 271(a).

6 244. Defendant’s infringement is based upon literal infringement or, in the alternative,
7 infringement under the doctrine of equivalents.

8 245. Defendant’s acts of making, using, importing, selling, and/or offering for sale
9 infringing products and services have been without the permission, consent, authorization or license
10 of Finjan.

11 246. Defendant’s infringement includes the manufacture, use, sale, importation and/or offer
12 for sale of FireEye Appliances and Software, including, but not limited to the NX Series (including
13 Web MPS Products and cloud versions), EX Series (including Email MPS Products and cloud
14 versions), AX Series (including MAS Products), Central Management System (CMS) and FireEye’s
15 Dynamic Threat Intelligence Cloud (also known as MPC, ATI, ATI+, iSight), which embody the
16 patented invention of the ‘154 Patent (“‘154 Accused Products”).

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

20 248. Defendant’s infringement of the ‘154 Patent has injured and continues to injure Finjan
21 in an amount to be proven at trial.

22 249. Defendant has been aware of the ‘154 Patent at least since September 25, 2015, the
23 date when Palo Alto Networks filed its first petition for IPR. Finjan further notified Defendant on
24 November 17, 2016 that (1) at least 29 IPR petitions against Finjan’s patents have been rejected in
25 their entirety, showing significant strength of Finjan’s patents; (2) no IPR had been successful in
26 invalidating any of Finjan’s claims as of November 17, 2016; (3) no *ex parte* reexamination has been
27

1 successful in invalidating any of Finjan's claims as of November 17, 2016 and since FireEye filed its
2 original motion to stay back in October 7, 2013; and (4) Finjan has had two jury verdicts in this
3 District that confirmed validity of at least four of the Patents-in-Suit in this case. Based on this
4 notice, Defendant is or should have been aware of the '154 Patent at the latest on November 17, 2016.
5 Despite this knowledge, Defendant has continued and currently continues its infringing activity
6 willfully and egregiously, justifying an award to Finjan of enhanced damages under 35 U.S.C. § 284,
7 and attorneys' fees and costs incurred under 35 U.S.C. § 285.

8 250. Furthermore, in light of Defendant's involvement in this litigation with Finjan, its
9 involvement in multiple post-issuance proceedings related to Finjan's patents and its multiple
10 requests for a stay of the case, Defendant has been or should have been aware of the '154 Patent
11 because a reasonable company should be monitoring the IPR proceedings that its competitor is
12 engaged with, especially where such competitor is accusing the company for infringement of its
13 patents.

14 251. Defendant's infringement of the '154 Patent is willful and egregious. Besides having
15 the knowledge of the '154 Patent at least since September 25, 2015 or latest since November 17,
16 2016, Defendant has also been aware that the '154 Patent and the rest of the Patents-in-Suit have all
17 been challenged before the USPTO and PTAB either through *ex parte* reexamination or IPR and yet
18 found not to be unpatentable. Defendant has also been aware that more than one jury has found the
19 '844, '780, '822 and '633 Patents, related to the '844 Patent, to be not invalid.

20 252. Specifically, Defendant has been aware of the post-grant proceedings related to the
21 '154 Patent and other asserted patents since as early as October 7, 2013. On October 7, 2013,
22 Defendant filed with the USPTO its *ex parte* reexamination requests for the '822, '633 and '086
23 Patents. On October 7, 2013, Defendant sought to stay the case pending *ex parte* reexamination of
24 the '822, '633 and '086 Patents claiming that these patents are "related" to the '844 Patent. Dkt. No.
25 28. On November 19, 2013, the USPTO denied Defendant's request for *ex parte* reexamination of
26 claims 1-8, 17-23, 31, 32, 35, 36, 39 and 41 of the '086 Patent. Defendant filed a second request for
27 *ex parte* reexamination of the claims 17 and 24 of the '086 Patent, and the USPTO denied the request
28

1 again on March 27, 2014. On February 16, 2016, the USPTO issued a Reexamination Certificate to
2 Finjan confirming the validity of claims 1-8 and 16-27 of the '822 Patent. On September 16, 2016,
3 the USPTO issued a Reexamination Certificate to Finjan confirming the validity of claims 1-7 and
4 28-33 of the '633 Patent. As a result of these USPTO and PTAB decisions, the Court denied
5 Defendant's renewed motion to stay and lifted the stay of this case on March 28, 2017. Dkt. No. 86.
6 On September 25, 2015 and November 5, 2015, Palo Alto Networks filed two (2) separate petitions
7 for IPR of the '154 Patent (IPR2015-01979; IPR2016-00151) and a Motion for Joinder to Symantec's
8 Petition for IPR of the '154 Patent (IPR2015-01547). With respect to IPR2015-01979, on March 15,
9 2017, the PTAB issued a final written decision maintaining the validity of all instituted claims of the
10 '154 Patent. With respect to IPR2016-00151, on March 15, 2017, the PTAB issued a final written
11 decision maintaining the validity of all instituted claims of the '154 Patent. In light of these facts,
12 Defendant does not have a good faith basis to assert a defense of invalidity of the '154 Patent. As
13 such, Defendant's continued infringing activity is willful and egregious, justifying an award to Finjan
14 of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C.
15 § 285.

PRAYER FOR RELIEF

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

18 A. An entry of judgment holding Defendant has infringed, is infringing, has induced and
19 is inducing the infringement of the '780 Patent, the '086 Patent, the '408 Patent, the '305 Patent, the
20 '822 Patent, the '633 Patent, the '844 Patent and the '154 Patent;

21 B. An entry of judgment holding Defendant has contributorily infringed and is
22 contributorily infringing the '822 and '633 Patents.

23 C. A preliminary and permanent injunction against Defendant and its officers, employees,
24 agents, servants, attorneys, instrumentalities, and/or those in privity with them, from infringing, or
25 inducing the infringement of the '780 Patent, the '408 Patent, the '305 Patent, the '822 Patent, the
26 '633 Patent and the '154 Patent, and for all further and proper injunctive relief pursuant to 35 U.S.C.
27 § 283;

1 D. An award to Finjan of such damages as it shall prove at trial against Defendant that is
2 adequate to fully compensate Finjan for Defendant's infringement of the '780 Patent, the '086 Patent,
3 the '408 Patent, the '305 Patent, the '822 Patent, the '633 Patent, the '154 Patent and the '844 Patent
4 said damages to be no less than a reasonable royalty;

5 E. A determination that Defendant's infringement of the '780 Patent, the '086 Patent, the
6 '408 Patent, the '305 Patent, the '822 Patent, the '633 Patent, the '844 Patent and the '154 Patent has
7 been willful and egregious and that the damages against it be enhanced up to treble on this basis or
8 for any other basis within the Court's discretion;

9 F. A finding that this case is "exceptional" and an award to Finjan of its costs and
10 reasonable attorney's fees, as provided by 35 U.S.C. § 285;

11 G. An accounting of all infringing sales and revenues; and

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

13
14 Respectfully submitted,

15 Dated: May 31, 2017

16 By: /s/ Paul J. Andre

17 Paul J. Andre
18 Lisa Kobialka
19 James Hannah
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FINJAN, INC.

DEMAND FOR JURY TRIAL

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

3 Respectfully submitted,

4
5 Dated: May 31, 2017

6 By: /s/ Paul J. Andre
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