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11 FINJAN, INC.

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**
16

17 FINJAN, INC., a Delaware Corporation,

18 Plaintiff,

19 v.

20 JUNIPER NETWORKS, INC., a Delaware
21 Corporation,

22 Defendant.
23

Case No.: 3:17-cv-05659-WHA

**PLAINTIFF FINJAN, INC.’S OPPOSITION
TO JUNIPER’S MOTION FOR JUDGMENT
AS A MATTER OF LAW**

1 **I. INTRODUCTION**

2 Finjan, Inc. (“Finjan”) presented more than sufficient evidence at trial to support its
3 infringement, notice and damages claims, including sworn testimony of Finjan’s CEO and Finjan’s
4 Director of Business Development, the deposition testimony of several employees of Juniper
5 Networks, Inc. (“Juniper”), the Accused Products’ source code, numerous Finjan and Juniper
6 documents, and testimony of highly reputable expert witnesses. Finjan established that it has sufficient
7 facts to support infringement and a jury’s award of a reasonable royalty for Juniper’s infringement
8 under 35 U.S.C. § 271(a) for Juniper’s use, sale, and offer for sale of (1) the SRX with SkyATP and
9 (2) SkyATP by itself (“Accused Products”). When all reasonable inferences are drawn in Finjan’s
10 favor, the Court should deny Juniper’s motion for judgment as a matter of law (“Motion”).¹

11 **II. DAMAGES**

12 Finjan presented substantial evidence so the jury can determine a reasonable royalty. In
13 addition to relevant factual information regarding the Accused Products and how they functioned,
14 Finjan had substantial testimony regarding the significant benefits of the patented technology,
15 including the benefits to Juniper. This included the testimony of Finjan’s expert witnesses, the
16 inventor of the ‘494 Patent and Finjan and Juniper’s employees. Finjan provided evidence and
17 testimony regarding (1) relevant facts surrounding the hypothetical negotiation, including the
18 considerations of both parties, (2) several different methods to calculate a royalty base, based upon
19 Juniper’s use, offer for sale and sales of the Accused Products, (3) different methods to apply a royalty
20 rate, (4) the significant technical advantages and pioneering nature of the patented technology at issue,
21 and (5) factual evidence in Juniper’s confidential documents that will permit the fact finder to tie
22 Juniper’s infringement to the footprint of the invention, i.e., apportion the royalty base to the footprint
23 of the invention.

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26
27 ¹ Finjan incorporates by reference the arguments and evidence set forth in its (i) Motion for Judgment
28 as a Matter of Law Pursuant to Fed. R. Civ. P. 50(a) (Dkt. No. 323).

1 **A. Finjan’s Apportionment**

2 Contrary to Juniper’s assertions, Finjan presented evidence and testimony regarding
3 “apportionment.” Under Federal Circuit precedent, apportionment is not limited to specific
4 methodologies, *i.e.* the jury can apportion either the rate or base, because flexibility is required to
5 determine fact-dependent damages. *Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prod. Grp.,*
6 *LLC*, 879 F.3d 1332, 1348 (Fed. Cir. 2018) (“We have held that apportionment can be addressed in a
7 variety of ways, including “by careful selection of the royalty base to reflect the value added by the
8 patented feature [or] ... by adjustment of the royalty rate so as to discount the value of a product’s non-
9 patented features; or by a combination thereof.”)(citing *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d
10 1201, 1226 (Fed. Cir. 2014).

11 Finjan presented several different methods to apportion. For example, Finjan presented Mr.
12 Icasiano’s testimony regarding how Juniper’s infringement of SkyATP is tied to the footprint of the
13 invention based on how many scans sent to Sky ATP relate to the specific accused functionality of
14 SkyATP, *i.e.* dynamic analysis, through the patent expiration date of January 2017. *See, e.g.*, Ex. 498
15 at 24:5-33:19 (Testimony of Mr. Icasiano that 40% of SkyATP files are sent for dynamic analysis, *i.e.*,
16 sandboxed); *see also* Trial Exhibit 88 at 514137, 514169 (Juniper presentation showing that over
17 500,000 files scanned in one week, 31% of those files processed are attributed to the infringing
18 technology and that the components of SkyATP are Cache Lookup, Anti-Virus Scanning, Static
19 Analysis and Dynamic Analysis). Additionally, Dr. Cole testified and identified the specific infringing
20 functionality in SkyATP as Static and Dynamic Analysis. *See* Trial Tr. at 428:11-429:25.

21 Juniper’s assertion that Finjan should have apportioned the components of SkyATP shown at
22 Dkt. 323 at 3 (Juniper’s Motion) is misplaced. Finjan’s base of 10 million files are sent to Sky ATP.
23 40% of these files are dynamically analyzed in Sky ATP, according to Mr. Icasiano. As Dr. Cole
24 explained, there is a malware inspection pipeline that analyzes each of the files. *See* Trial Tr. at vol. 3
25 at 428:11-429:25 (explaining the components of the malware inspection pipeline). The 40% of all files
26 sent to Sky ATP only accounts for a *portion* of those files that are scanned *using the infringing*

1 **technology**, i.e., the dynamic analysis. It does not include static analysis, which is also infringing. As
2 a result, the 40% apportionment is conservative and does not capture all the infringement.

3 Juniper's argument that a multitude non-infringing features and functionality are somehow
4 included in Finjan's damages is a red herring. As stated above, Finjan is **only** accounting for the 10
5 million files that are sent to Sky ATP, which Sky ATP scans. Finjan is not including any files that get
6 blocked from the SRX based on C&C, compromised hosts, GeoIP, whitelists and blacklists. Finjan is
7 not capturing files that are blocked. Furthermore, Finjan is not including the web user interface, which
8 utilizes the results database and therefore could be part of the infringing use, but is not captured within
9 the 10 million files that are scanned that makes up the royalty base. Also, Finjan played deposition
10 testimony of Mr. Chandra Nagarajan, who is responsible for the team developing Sky ATP, and
11 identified the sending and scanning of files as the "key component of Sky ATP." Nagarajan Depo.
12 12:24-13:19.

13 Finally, the current apportionment is nothing like the Federal Circuit determination in the
14 *Finjan v. Blue Coat* case where the Federal Circuit found that the infringing functionality of DRTR
15 included non-infringing functionality. 879 F.3d 1299, 1310 (Fed. Cir. 2018). Here, Finjan is not
16 seeking to capture all the infringing functionality because it is only seeking to capture the files sent for
17 dynamic analysis. Thus, Finjan has removed all non-infringing functionality and even some infringing
18 functionality (*i.e.*, the static analysis) in its overly aggressive apportionment of 40%. Moreover,
19 Juniper does not claim that the dynamic analysis contains non-patented technology. See Dkt 323 at 3
20 (identifying alleged non patented features of Sky ATP, not dynamic analysis). Thus, Finjan provided
21 sufficient facts for apportioning Juniper's infringing use of the patented technology for Sky ATP.

22 With respect to the SRX, the 10 million scans and 40% apportionment only captures Sky ATP,
23 or, at the very least, only captures the files scanning relationship between SRX and Sky ATP. Thus,
24 the jury has sufficient evidence to apportion the infringing revenues of SRX and Sky ATP, including
25 through apportionment of the revenues based on number of files SRX sends to Sky ATP, and the
26 profits gained from those infringing sales.

1 Finally, Finjan provided sufficient evidence regarding the substantial benefits to Juniper and its
2 customers through the sale, use and offer for sale of the accused products. Finjan's technical experts,
3 Dr. Cole and Dr. Bims, identified the significant benefits and novelty of the patented technology, and
4 Finjan provided the jury with the testimony of Juniper's witnesses regarding its extensive use and need
5 for the patented technology, including the number of customers, the volume of units for the accused
6 products and the extensive use of the infringing technology by Juniper and its customers. Trial Tr. at
7 225:19-239:5 (Testimony of Dr. Bims) and Trial Exhibit 496 (Nagarajan Testimony identifying need
8 for SkyATP). Given Juniper's substantial benefit received from its infringing use, Finjan further
9 substantiates that Finjan's apportionment is conservative.

10 **B. Finjan's Royalty Base**

11 Finjan presented testimony and facts regarding how to calculate an appropriate royalty base for
12 the Accused Products, including the revenues and number of units/licenses/enrollments tied to the
13 infringing sales, the use of the patented invention through the number of files processed and number of
14 Juniper's customers for the Accused Products. *See* Trial Exhibits 88, 490, 494, 499 at 23:14-53:08
15 (Testimony of Ms. Gupta, Juniper's Senior Financial Director regarding the revenues associated with
16 SRX and SkyATP and number of infringing units/enrollments), Exhibit 496 at 53:17-61:10 (Testimony
17 of Mr. Nagarajan, Juniper's Senior Director in the Security Business Group regarding 10 million scans
18 analyzed by SkyATP a month and the number of customers for Sky ATP was between 300-500), Ex.
19 58 (Sky Advanced Threat Prevention Administration Guide at 116-117 showing between 200-100,000
20 files processed per day for Premium Licenses and 25-5000 files processed per day with free
21 enrollment), Ex. 498 at 53:09-53:16 (Testimony of Mr. Icasiano, Juniper's Manager of the DevOps
22 team for SkyATP, regarding number of SRX devices with free enrollments); Trial Tr. at 471:19-473:9,
23 525:9-527:5 (Dr. Cole's Testimony regarding 535,000 files processed in seven days). Thus, contrary
24 to Juniper's claim, Finjan's evidence above provides an identification of several appropriate royalty
25 bases, including (1) for sales, the infringing sales based on the revenues of the Accused Products and
26 (2) for use, the use based on the number of units and enrollments/licenses for of the Accused Products
27 and use based on the number of files processed.

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