1

2

3

4

5

6   IN THE UNITED STATES DISTRICT COURT

7

8   FOR THE NORTHERN DISTRICT OF CALIFORNIA

9

10   FINJAN, INC.,   No. C 17-05659 WHA

11   Plaintiff,

12   v.   **ORDER ON MOTION TO SET
                                                                      ASIDE VERDICT AND MOTION**
13   JUNIPER NETWORKS, INC.,   **FOR SANCTIONS**

14   Defendant.
                                                       /
15

16   **INTRODUCTION**

17   In this patent infringement action, patent owner moves to set aside the verdict in

18   connection with the first round of motions for summary judgment. Accused infringer moves

19   for sanctions. For the reasons stated below, patent owner's motion is **DENIED** and accused

20   infringer's motion is **HELD IN ABEYANCE**.

21   **STATEMENT**

22   The instant motions are related to both parties' conduct during the first round of

23   motions for summary judgment. In August 2018, the Court granted defendant Juniper

24   Networks, Inc.'s first motion for summary judgment on non-infringement of Claim 1 of the

25   United States Patent No. 6,804,780 ("the '780 patent") after construing one of the disputed

26   terms (Dkt. No. 180).

27   The Court also granted in part plaintiff Finjan, Inc.'s first motion for summary

28   judgment on infringement of Claim 10 of the United States Patent No. 8,677,494 ("the '494

     patent") (Dkt. No. 189). In December 2018, trial was held to resolve the remaining factual

United States District Court
For the Northern District of California

1   issue at play — namely, whether Juniper's accused product Sky Advanced Threat Prevention

2   ("Sky ATP") met the "database" limitation in Claim 10 of the '494 patent. A jury found in

3   favor in Juniper, *i.e.*, Sky ATP did not have the "database" as recited in Claim 10 (Dkt. No.

4   333). A subsequent order denied Finjan's renewed motion for judgment as a matter of law

5   (Dkt. No. 387).

6   Finjan now moves for relief from the jury verdict and subsequent denial of Finjan's

7   motion for judgment as a matter of law. It asserts that Juniper "concealed key evidence during

8   discovery that proved that Sky ATP had a 'database' as recited" in Claim 10 of the '494 patent

9   (Dkt. No. 412 at 2). Specifically, Finjan argues that Juniper failed to disclose the Joe Sandbox

10   database despite Finjan's requests for such information.[1] This "concealment," Finjan contends,

11   "prevented both the Court and the jury from evaluating this key evidence of how and where

12   Sky ATP satisfies the 'database' element of Claim 10" (*ibid.*).

13   For its part, Juniper moves for sanctions (Dkt. No. 409). It argues that, *inter alia*,

14   Finjan pursued unsupported damages theories in bad faith, waffled on the issue of constructive

15   notice in bad faith, claimed actual notice based on false statements, and asserted without merit

16   Claim 1 of the '780 patent against SRX (*id*. at 1–2).

<div align="center">

ANALYSIS

</div>

1.   FINJAN'S MOTION TO SET ASIDE VERDICT.

19   According to Finjan, Juniper produced twelve new documents that disclosed a database

20   used by Joe Sandbox in February 2019 — two months after the jury rendered a verdict of non-

21   infringement (Dkt. No. 412 at 2–3). The newly produced documents included, *inter alia*, Joe

22   Sandbox User Guide and Joe Sandbox Interface Guide, which discussed the technical

23   operations of the Joe Sandbox database (that was in turn allegedly incorporated in Sky ATP)

24   (*id*. at 3). These new documents are significant, Finjan contends, because they show that the

25   Joe Sandbox database was "an internal database for storing security profiles according a rigid

26

27

28

---

[1]   Juniper licenses from Joe Security (a Switzerland-based third party) technology called "Joe Sandbox" to perform Sky ATP's dynamic analysis (Dkt. No. 435-2 ¶ 3).

1 directory schema" — a database that would have fit within Juniper's own interpretation during

2 trial (*ibid.*).

3   Finjan argues that Juniper withheld these "relevant documents" relating to the Joe

4 Sandbox database that were responsive to requests for documents served before trial and that

5 Juniper had no reasonable grounds to delay production (*ibid.*). It thus moves to set aside the

6 verdict under Rules 60(b)(2) and (3) (*id.* at 1). Specifically, Rule 60(b) provides the following

7 grounds upon which a district court "may relieve a party or its legal representative from a final

8 judgment, order, or proceeding":

9   (2) newly discovered evidence that, with reasonable diligence,
           could not have been discovered in time to move for a new trial
10   under Rule 59(b);

11   (3) fraud (whether previously intrinsic or extrinsic),
           misrepresentation, or misconduct by an opposing party[.]
12
     Under Rule 60(b)(2), the movant "must show the evidence (1) existed at the time of the
13
     trial, (2) could not have been discovered through due diligence, and (3) was of such magnitude
14
     that production of it earlier would have been likely to change the disposition of the case."
15
     Jones v. Aero/Chem Corp., 921 F.2d 875, 878 (9th Cir. 1990) (internal quotation marks and
16
     citation omitted).
17
         Under Rule 60(b)(3), the movant must "(1) prove by clear and convincing evidence that
18
     the verdict was obtained through fraud, misrepresentation, or other misconduct [and] (2)
19
     establish that the conduct complained of prevented the losing party from fully and fairly
20
     presenting his case or defense. Although when the case involves the withholding of
21
     information called for by discovery, the party need not establish that the result in the case
22
     would be altered." *Ibid.* at 878–79 (quoting *Bunch v. United States*, 680 F.2d 1271, 1283 (9th
23
     Cir. 1982)).
24
         This order finds that Finjan has not sufficiently shown by clear and convincing
25
     evidence that Juniper's handling of discovery amounted to "misconduct" under the meaning of
26
     Rule 60(b)(3). Nor has it sufficiently shown that the newly produced documents could not
27
     have been discovered through due diligence under Rule 60(b)(2).
28

1   Because Finjan's accusation of concealment by Juniper and claimed inability to

2   exercise due diligence significantly overlap, this order addresses both grounds for relief

3   together. Finjan contends that Juniper concealed those documents by omitting the existence of

4   the Joe Sandbox database in its response to Finjan's interrogatory asking for "all Databases

5   that are incorporated or used, either directly or indirectly, by the Accused Instrumentalities,"

6   despite the fact that Juniper had named other databases it argued did not meet the claimed

7   "database" (Dkt. Nos. 411-10 at 13–14; 442 at 9). Finjan further asserts that Juniper seemingly

8   stonewalled in producing the relevant documents, arguing that Juniper "cannot eliminate its

9   discovery obligations and shift them onto Finjan, or expect Finjan to know what is in Juniper's

10   possession when Juniper represented the production was complete" (Dkt. No. 442 at 9). It

11   points out that Juniper's engineers could have contacted a Joe Security representative for

12   troubleshooting purposes and that they had access to a server for documents and code received

13   from Joe Security (*id*. at 14–15). Yet Juniper, Finjan complains, claimed that Joe Sandbox is a

14   "black box" to them (*id*. at 14). Because Juniper had reasonable access to these documents,

15   Finjan asserts, Juniper "intentionally omitted them from its production and its discovery

16   responses in bad faith" (*ibid*.). As such, Finjan blames Juniper's alleged discovery misconduct

17   for its inability to diligently follow up on discovery of the Joe Sandbox documents at issue in

18   time for the December 2018 trial.

19   Finjan points to Juniper's "misleading and untruthful discovery responses" as the

20   reason Finjan did not seek court intervention in obtaining the relevant documents and

21   accordingly asserts that it exercised due diligence (*id*. at 15). Specifically, Finjan points to its

22   third set of requests for production served in July 2018, which stated in relevant part (Dkt. Nos.

23   412-7 at 6):

24   REQUEST FOR PRODUCTION NO. 89: All Documents,
         manuals, guides, or other documents provided by Joe Security to
25   Juniper, including documents description the operation, use, or
         API of any Joe Security product, including its Joe Sandbox and Joe
26   Static product(s).

27   In August 2018, Juniper responded that it had "completed its technical production detailing the

28   operation of Sky ATP, which includes both the complete Sky ATP source code as well as

1   many thousands of pages of technical specifications, design and development documents, and

2   administration guides" (Dkt. No. 412-8 at 11). Juniper further stated that it "ha[d] already

3   produced licenses with Joe Security for products used by Sky ATP" and that "[i]f Finjan

4   believe[d] that additional discovery [was] somehow proportional to the needs of the case,

5   Juniper [was] willing to meet and confer with Finjan to understand exactly what other types of

6   documents Finjan believe[d were] relevant and proportional to the needs of the case" (*ibid*.).

7   Finjan argues that Juniper falsely represented that it had completed its production in its

8   entirety. This order disagrees. Juniper's response, though cleverly worded, did not amount to

9   a "the false assertion that Juniper had completed its Sky ATP production and there was nothing

10   further that was responsive to produce," as Finjan contends (Dkt. No. 412 at 4). As Juniper

11   points out, it had stated that its production related to *Sky ATP* was complete and that it had

12   already produced the *Joe Security licenses*. By noting the production relating to the two

13   products separately in its response, Juniper put Finjan on notice that Juniper treated Sky ATP

14   and Joe Security as distinct products. And, as such, Juniper did not necessarily represent that it

15   had completed production as to Joe Security. Though Finjan complains that Juniper did not

16   "indicate that it [was] withholding documents or that it [was] refusing to search for them,"

17   Juniper's response was not clearly a false statement or an affirmative misrepresentation (Dkt.

18   No. 442 at 5).

19   Moreover, Juniper objected in its response, stating that it "w[ould] not search through

20   non-network drives" (Dkt. No. 412-8 at 10). As relevant here, Joe Security delivered Joe

21   Sandbox in binary code, which Juniper's engineers downloaded as a .zip file onto the third-

22   party server iWeb (which Juniper may access remotely) used to deploy Joe Sandbox (Dkt. No.

23   435-2 ¶ 4). One of these .zip files also contained the twelve documents produced in February

24   2019 (*id*. ¶ 5). Juniper did not typically use the iWeb server to store technical documents

25   related to Sky ATP and because no search tool on the Juniper network would have enabled a

26   search on third-party iWeb server for documents, its engineer "specifically navigated to the

27   .zip files [manually] to look for them" (*id*. ¶¶ 6, 8).

28

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.