

IRELL & MANELLA LLP
Jonathan S. Kagan (SBN 166039)
jkagan@irell.com
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010
Facsimile: (310) 203-7199

Rebecca Carson (SBN 254105)
rcarson@irell.com
Ingrid M. H. Petersen (SBN 313927)
ipetersen@irell.com
840 Newport Center Drive, Suite 400
Newport Beach, California 92660-6324
Telephone: (949) 760-0991
Facsimile: (949) 760-5200

Attorneys for Defendant
JUNIPER NETWORKS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FINJAN, INC., a Delaware Corporation,)	Case No. 3:17-cv-05659-WHA
)	
Plaintiff,)	JUNIPER NETWORKS, INC.'S REPLY IN
)	SUPPORT OF ITS MOTION FOR
vs.)	ATTORNEYS' FEES PURSUANT TO 35
)	U.S.C. § 285
JUNIPER NETWORKS, INC., a Delaware)	
Corporation,)	Hearing Date: January 7, 2021
)	Hearing Time: 8:00 a.m.
Defendant.)	Judge: Hon. William Alsup
)	Courtroom: 12

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. ARGUMENT	2
A. Finjan Concedes that Juniper is the Prevailing Party	2
B. This Case is Exceptional	2
1. Finjan’s Shifting Sands Damages Case for the ’494 Patent.....	3
2. Finjan’s ’494 Patent Infringement Case Was “Smoke and Mirrors”	6
3. Finjan’s Motion for Summary Judgment as to the ’154 Patent Was So Meritless it Ended In a Dispositive Ruling for Juniper	8
4. Finjan’s Notice Argument for the ’780 Patent Was Baseless	11
5. Finjan Forced Juniper to Defend Additional Meritless Claims.....	13
6. Finjan’s Appeal Was Exceptional	14
C. Finjan Does Not Contest that the Fees Requested by Juniper are Reasonable	14
D. Finjan’s Decision to Fire its Counsel is No Reason to Delay	15
III. CONCLUSION	15

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Artic Cat, Inc. v. Bombardier Recreational Prods. Inc.</i> , 876 F.3d 1350 (Fed. Cir. 2017).....	12
<i>Auto. Techs. Int'l, Inc. v. Siemens VDO Auto. Corp.</i> , 744 F. Supp. 2d 646 (E.D. Mich. 2010).....	13
<i>Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.</i> , 424 F.3d 1293 (Fed. Cir. 2005).....	7
<i>Elec. Commcn's Techs., LLC v. ShoppersChoice.com, LLC</i> , 963 F.3d 1371 (Fed. Cir. 2020).....	3
<i>Finjan, Inc. v. Blue Coat Sys., Inc.</i> , 879 F.3d 1299 (Fed. Cir. 2018).....	5
<i>Finjan, Inc. v. Cisco Sys., Inc.</i> , No. 17-cv-00072-BLF, Dkt. 555 (N.D. Cal. Apr. 17, 2020).....	4, 7
<i>Finjan, Inc. v. ESET, LLC</i> , No. 17-cv-183, 2019 WL 5212394 (S.D. Cal. Oct. 16, 2019)	4
<i>Funai Elec. Co. v. Daewoo Elecs. Corp.</i> , 616 F.3d 1357 (Fed. Cir. 2010).....	11, 12
<i>Gilead Sciences, Inc. v. Merck & Co., Inc.</i> , No. 13-cv-04057, 2017 WL 3007071 (N.D. Cal. July 14, 2017).....	8
<i>Honeywell Int'l Inc. v. Nokia Corp.</i> , 615 F. App'x 688 (Fed. Cir. 2015).....	1
<i>Hunter's Edge, LLC v. Primos, Inc.</i> , No. 1:14-cv-00249, 2016 WL 9244954 (M.D. Ala. Sep. 6, 2016)	8
<i>Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.</i> , 876 F.3d 1372 (Fed. Cir. 2017).....	14
<i>Kilopass Tech., Inc. v. Sidense Corp.</i> , 82 F. Supp. 3d 1154 (N.D. Cal. 2015)	15
<i>Linex Techs., Inc. v. Hewlett-Packard Co.</i> , No. C 13-159 CW, 2014 WL 4616847 (N.D. Cal. Sept. 15, 2014)	9
<i>Monsanto Co. v. Bowman</i> , 657 F.3d 1341 (Fed. Cir. 2011).....	12

1	<i>Octane Fitness, LLC v. ICON Health & Fitness, Inc.</i> ,	
2	572 U.S. 545 (2014)	1, 2, 8
3	<i>Palo Alto Networks, Inc. v. Finjan, Inc.</i> ,	
4	752 F. App'x 1017 (Fed. Cir. 2018).....	9, 10
5	<i>Phigenix, Inc. v. Genentech, Inc.</i> ,	
6	No. 15-cv-1238, 2018 WL 3845998 (N.D. Cal. Aug. 13, 2018)	3
7	<i>Phonometrics, Inc. v. Westin Hotel Co.</i> ,	
8	350 F.3d 1242 (Fed. Cir. 2003)	9
9	<i>Princeton Digital Image Corp. v. Office Depot Inc.</i> ,	
10	No. C 13-239, 2016 WL 1533697 (D. Del. Mar. 31, 2016).....	11
11	<i>Regents of Univ. of Minnesota v. AGA Med. Corp.</i> ,	
12	717 F.3d 929 (Fed. Cir. 2013)	10
13	<i>Sathianathan v. Smith Barney, Inc.</i> ,	
14	No. C 04-02130, 2009 WL 537158 (N.D. Cal. Mar. 3, 2009)	14
15	<i>SRI Int'l, Inc. v. Cisco Sys., Inc.</i> ,	
16	No. 13-1534, 2020 WL 1285915 (D. Del. Mar. 18, 2020)	15
17	<i>Straight Path IP Grp., Inc. v. Cisco Sys., Inc.</i> ,	
18	411 F. Supp. 3d 1026 (N.D. Cal. 2019)	3
19	<i>Straight Path IP Grp., Inc. v. Cisco Sys., Inc.</i> ,	
20	No. C 16-03463 WHA, 2020 WL 5522993 (N.D. Cal. Mar. 4, 2020).....	9
21	<i>Taurus IP, LLC v. DaimlerChrysler Corp.</i> ,	
22	726 F.3d 1306 (Fed. Cir. 2013)	10
23	<i>Therasense, Inc. v. Becton, Dickinson & Co.</i> ,	
24	No. C 04-02123 WHA, 2012 WL 1877895 (N.D. Cal. May 22, 2012)	8
25	<i>Ultimate Combustion Co., Inc. v. Fuecotech, Inc.</i> ,	
26	No. 12-60545, 2014 WL 12495264 (S.D. Fla. Jun. 4, 2014)	14
27	Statutes	
28	35 U.S.C. § 285	1, 13
	35 U.S.C. § 287	11, 12
	Rules	
	Fed. R. Civ. P. 36	14
	L.R. 54-5	15

I. INTRODUCTION

Finjan's lawsuit against Juniper was exceptional in every sense of the word. Of the nine patents Finjan asserted, only the '494 Patent survived to trial. As to that lone patent, the Court struck Finjan's damages case as "woefully inadequate" and the jury rejected its infringement case, which the Court later described as "smoke and mirrors." Dkt. 339 at 839:6-8; Dkt. 382 at 3:21-4:18. All of Finjan's other patents were rejected at summary judgment or dismissed with prejudice, and its appeal was summarily rejected by the Federal Circuit. Although not a single one of Finjan's patent claims had any merit, Finjan forced Juniper to litigate for three years and incur over \$8.6 million in attorneys' fees. It is no exaggeration to say that 35 U.S.C. § 285 was enacted for cases like this one.

Finjan argues that this case is not exceptional because it had a subjective "good faith" belief in its positions due to past success in litigating against other parties and products. Opposition (Dkt. 638) ("Opp.") at 1–2. This is irrelevant. The Supreme Court rejected "bad faith" as a requirement for finding a case exceptional, and the mere fact that Finjan successfully litigated against different parties, with different products, has no bearing on whether Finjan had a meritorious case against Juniper. *See Honeywell Int'l Inc. v. Nokia Corp.*, 615 F. App'x 688, 689 (Fed. Cir. 2015) (Supreme Court "rejected our precedent" requiring "a showing of subjective bad faith" and "lowered the burden of proof for proving a case exceptional") (citing *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554–48 (2014)).

In any event, Finjan's pursuit of objectively baseless claims is not the only reason this case is exceptional; the *manner* in which Finjan litigated its claims is equally (if not more) egregious. For example, Finjan asserts that its damages theory for the '494 Patent was "approved by past Federal Circuit law." Opp. at 1. That representation is not only false (as its theory has actually been excluded multiple times), it ignores the reason its conduct was exceptional *in this case*: it is not because Finjan advanced a bogus damages theory, it is because Finjan attempted to *change its infringement theory* to one not advanced by its infringement expert simply to inflate damages. Dkt. 283 at 4–5. Even after the Court excluded Finjan's untimely theory, Finjan tried to present the same inflated numbers at trial through a "fact-based" damages theory, forcing this Court to exclude them again and expressly hold that Finjan was not entitled to any damages. *See, e.g.*, Dkt. 339 at 838:3–



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