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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

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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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