

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN, INC.,

Plaintiff,

No. C 17-05659 WHA

v.

JUNIPER NETWORK, INC., et al.,

Defendants.

**ORDER RE ATTORNEY’S
FEES AND COSTS AND
APPOINTMENT OF SPECIAL
MASTER**

A companion order found Juniper entitled to attorney’s fees for Finjan’s assertion of U.S. Patent Nos. 8,677,494 and 6,804,780. Given the parties already disputed Juniper’s initial calculation of fees, and anticipating further dispute regarding the fee amount to which Juniper is entitled, this order concludes this dispute is suitable for referral to a special master per Rule 53, using the following procedure:

1. The Court is inclined to appoint **MATT BORDEN** of BraunHagey & Borden LLP, one of the undersigned’s former law clerks, as the special master for this dispute. By special accommodation of the Court, Attorney Borden has agreed to provide this service at the reduced rate of \$300 per hour. By **JANUARY 28 AT NOON**, each side shall submit a statement with any objection to the appointment, including any suggestions for alternative candidates or other request to be heard. If neither side objects, then the Court will proceed with the appointment described herein.

2. Defense counsel shall provide the special master with an itemized accounting for unreimbursed expenses listed as “Travel” and “Expert Witness Fees.” Travel must be broken down into at least the following categories: air transportation, ground travel, meals, and lodging. Counsel may include additional categories, if necessary. Within each category, each expense must be listed, including date, description, and cost. Professional fees may be broken down into separate categories if counsel deems appropriate. The date, description, and cost for each expense incurred, such as the fee paid to an expert to produce an expert report on a specific issue, must be listed for all professional fees.

3. Counsel must also provide the special master a detailed declaration, organized by discrete projects, breaking down all attorney and paralegal time sought to be recovered. For each project, there must be a detailed description of the work, giving the date, hours expended, attorney name, and task for each work entry, in chronological order. A “project” means a deposition, a motion, a witness interview, and so forth. It does not mean generalized statements like “trial preparation” or “attended trial.” It includes discrete items like “prepare supplemental trial brief on issue X.” The following is an example of time collected by a project.

PROJECT: ABC DEPOSITION (2 DAYS IN FRESNO)

Date	Time-keeper	Description	Hours x	Rate =	Fee
01-08-20	XYZ	Assemble and photocopy exhibits for use in deposition.	2.0	\$100	\$200
01-09-20	RST	Review evidence and prepare to examine ABC at deposition.	4.5	\$200	\$900
01-10-20	XYZ	Research issue of work-product privilege asserted by deponent.	1.5	\$100	\$150
01-11-20	RST	Prepare for and take deposition.	8.5	\$100	\$1,700
01-12-20	RST	Prepare for and take deposition.	7.0	\$200	\$1,400
	Project Total:		23.5		\$4,350

4. All entries for a given project must be presented chronologically one after the other, *i.e.*, uninterrupted by other projects, so that the timeline for each project can be readily

1 grasped. Entries can be rounded to the nearest quarter-hour and should be net of write-down
2 for inefficiency or other cause. Please show the sub-totals for hours and fees per project, as in
3 the example above, and show grand totals for all projects combined at the end. Include only
4 entries for which compensation is sought, *i.e.*, after application of “billing judgment.” For each
5 project, the declaration must further state, in percentage terms, the proportion of the project
6 directed at issues for which fees are awardable and must justify the percentage. This
7 percentage should then be applied against the project total to isolate the recoverable portion
8 (a step not shown in the example above).

9 5. A separate summary chart of total time and fees sought per individual
10 timekeeper (not broken down by project) should also be shown at the end of the declaration.
11 This cross-tabulation will help illuminate all timekeepers’ respective workloads and roles in the
12 overall case.

13 6. The declaration must also set forth (a) the qualifications, experience and role of
14 each attorney or paralegal for whom fees are sought; (b) the normal rate ordinarily charged for
15 each in the relevant time period; (c) how the rates were comparable to prevailing rates in the
16 community for like-skilled professionals; and (d) proof that “billing judgment” was exercised.
17 On the latter point, as before, the declaration should describe adjustments made to eliminate
18 duplication, excess, associate-turnover expense, and so forth. These adjustments need not be
19 itemized but totals for the amount deleted per timekeeper should be stated. The declaration
20 must identify the records used to compile the entries and, specifically, state whether and the
21 extent to which the records were contemporaneous versus retroactively prepared. It must state
22 the extent to which any entries include estimates (and what any estimates were based on).
23 Estimates and/or use of retroactively-made records may or may not be allowed, depending on
24 the facts and circumstances.

25 7. Ordinarily, no more than one attorney and one paralegal need be present at a
26 deposition; more will normally be deemed excessive. Ordinarily, no more than one attorney
27 need attend a law-and-motion hearing; more will normally be deemed excessive. To allow for

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1 8. The special master shall review the briefs and declarations by the parties, hear
2 argument, and then determine a reasonable amount to award, including any fees on fees. The
3 special master shall also determine the extent to which any discovery should be permitted —
4 with the caution that further discovery should be the exception and not the rule. The special
5 master shall then prepare and file a report on recommended findings and amount.

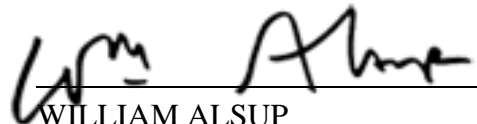
6 9. Except for any supplementation allowed by the special master, the foregoing
7 submissions shall be the entire record for this dispute. There will be no further briefing unless
8 allowed by the special master. After the special master's appointment, any further submissions
9 solely for the special master's use should not be filed with the Court. If objections are later
10 made to the special master's report, then the objecting party must file a declaration submitting
11 to the Court a complete appendix of relevant communications with the special master.

12 10. The special master shall include in his report a recommendation for allocating his
13 fees among the parties, taking into account the equities and merits of both sides' respective
14 positions in this dispute.

15 11. The special master shall identify each item requested that bears little or no
16 relation to the conduct found exceptional herein, that being the assertion of the '494 and '780
17 patents.

18 **IT IS SO ORDERED.**

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20 Dated: January 9, 2021.

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23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE