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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 FINJAN, INC.,

13 Plaintiff,

14 v.

15 JUNIPER NETWORKS, INC.,

16 Defendant.

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

**FINJAN'S OBJECTIONS TO THE  
SPECIAL MASTER'S REPORT AND  
RECOMMENDATION ON FEES**

U.S. District Judge William H. Alsup  
Courtroom 12

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

FACTUAL BACKGROUND ..... 1

LEGAL STANDARDS..... 3

ARGUMENT ..... 4

    I. *Goodyear and Rembrandt* Do Not Permit “All Fees” Awards  
    Absent a Determination of Exceptionality as of the Filing of the  
    Complaint, and the Special Master’s Recommended Award of  
    Fees Accrued Since the Complaint Should Be Set Aside ..... 4

    II. *Goodyear and Rembrandt* Do Not Permit Recovery of Fees That  
    Would Have Been Incurred Regardless of the Exceptional  
    Conduct, and the Special Master’s Recommended Award of  
    Unrelated Fees Should Be Set Aside ..... 7

        A. As to the ’494 Patent, There is No Causal Connection  
        Between Finjan’s Damages Case and Case Proceedings  
        on Liability ..... 7

        B. As to the ’780 Patent, There is No Causal Connection  
        Between the Conduct Held Exceptional and Finjan’s  
        Liability Case Against “ATP Appliance” ..... 9

CONCLUSION ..... 9

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

1		
2		
3	<b>Cases</b>	
4	<i>Chambers v. NASCO,</i>	
5	501 U.S. 32 (1991).....	4
6	<i>Goodyear Tire &amp; Rubber Co. v. Haeger,</i>	
7	137 S. Ct. 1178 (2017).....	3, 4, 5, 6, 7, 9
8	<i>Large Audience Display Sys., LLC v. Tennman Prods., LLC,</i>	
9	745 F. App'x 153 (Fed. Cir. 2018) .....	5
10	<i>Lindemann Maschinenfabrik GmbH v. Am. Hoist &amp; Derrick Co.,</i>	
11	895 F.2d 1403 (Fed. Cir. 1990).....	8
12	<i>Monolithic Power Sys., Inc. v. O2 Micro Int'l Ltd.,</i>	
13	726 F.3d 1359 (Fed. Cir. 2013).....	3, 5
14	<i>Octane Fitness, LLC v. ICON Health &amp; Fitness, Inc.,</i>	
15	572 U.S. 545 (2014).....	3
16	<i>In re PersonalWeb Techs., LLC Patent Litig.,</i>	
17	No. 18-md-02834-BLF, 2021 WL 796356 (N.D. Cal. Mar. 2, 2021).....	5
18	<i>In re Rembrandt Techs. LP Patent Litig.,</i>	
19	899 F.3d 1254 (Fed. Cir. 2018).....	3, 4, 5, 6, 7, 9
20	<i>SAP Am., Inc. v. Investpic, LLC,</i>	
21	No. 3:16-cv-02689-K, 2018 WL 6329690 (N.D. Tex. Dec. 4, 2018).....	5
22	<i>Straight Path IP Group v. Cisco Systems, Inc.,</i>	
23	411 F. Supp. 3d 1026 (N.D. Cal. 2019) .....	6
24	<i>Straight Path IP Grp. v. Cisco Sys., Inc.,</i>	
25	No. C 16-03463 WHA, 2020 WL 2539002 (N.D. Cal. May 19, 2020).....	6

**Statutes**

26	Patent Act Section 285 .....	1, 2, 3, 5, 6, 7, 8, 9
27		
28		

1 The Special Master’s report (D.I. 658) does not conform to controlling authority for § 285  
2 fee-shifting. The report reasons, erroneously, that Juniper is entitled to receive nearly all attorney  
3 fees incurred in opposing Finjan’s infringement claims under the ’494 and ’780 Patents, from the  
4 day of the Complaint until final disposition. That reasoning contravenes long-settled law. § 285  
5 does not permit such sweeping fee-shifting except in extraordinary circumstances not present here.  
6 Any fee award in this case should restore only those fees incurred to address the specific parts of  
7 the litigation held to have been exceptional. § 285 does not authorize a windfall of all fees relating  
8 to the ’494 and ’780 Patents; rather, it permits recovery of only those fees related to the conduct  
9 held to have been exceptional. For these reasons, and as set forth below, Finjan respectfully  
10 requests that the Court set aside the Special Master’s overly broad recommendation and remand  
11 for recomputation of those fees particularly related to the conduct held exceptional.

### 12 FACTUAL BACKGROUND

13 The Complaint in this case was filed September 29, 2017. (D.I. 1) The case evolved into a  
14 seven-patent dispute with a high-speed schedule. (*See generally* D.I. 170-4 (final asserted  
15 patents); D.I. 35 ¶¶ 4, 14 (setting rapid discovery and trial schedule)) This was also a “patent  
16 showdown.” (D.I. 44, at 7:4) The Court ordered two rounds of single-claim summary judgment  
17 motions, both during fact discovery. (D.I. 35 ¶ 11; D.I. 219) Proceedings during and after those  
18 “showdowns” formed the basis of the § 285 determination at issue here.

19 **First showdown, concluding August 2018.** The June showdown involved the ’494 and  
20 ’780 Patents, and had a split result. On Juniper’s motion, the Court entered summary judgment  
21 that Juniper’s “SRX Gateway” and “Sky ATP” products did not infringe claim 1 of the ’780  
22 Patent. (D.I. 177) In doing so, the Court made claim construction determinations that it  
23 acknowledged differed from those by another judge in this District. (*Id.* at 7–8; *see also* D.I. 648,  
24 at 4) As to Finjan’s motion, the Court substantially granted it, entering summary judgment that  
25 Juniper infringed all limitations of ’494 claim 10 save one. (D.I. 185) The Court set trial for  
26 December 2018 to address the remaining ’494 claim limitation and ’494 damages. (D.I. 191)  
27 Thus, as to the ’494 Patent, Finjan and Juniper in pre-trial preparations before the close of fact  
28 discovery.

1           **The '494 trial in December 2018.** A week before trial began, the Court excluded all '494  
 2 damages opinions of Kevin Arst, Finjan's expert (D.I. 283), but permitted Finjan to present a fact-  
 3 only damages case to the jury (D.I. 335 at 12–13). After the close of Finjan's presentation, the  
 4 Court held that that Finjan's presentation failed to meet apportionment requirements and entered  
 5 JMOL of zero damages. (D.I. 330-1; *see also* D.I. 338 at 638–39; D.I. 339 at 837–39) The  
 6 liability trial continued, and the jury returned a verdict of no infringement. (D.I. 333) After the  
 7 Court denied Finjan's post-trial motions, proceedings on the '494 patent ended.

8           **Second showdown, concluding May 2019.** In the second showdown, Juniper moved  
 9 again on the '780 Patent, addressing claims and products that had survived the first showdown.  
 10 The Court granted Juniper's motion, as follows:

Claim	Accused Product	Ruling
'780 claim 9	SRX Gateway	No infringement
	Sky ATP	No infringement
	ATP Appliance	No damages (infringement held moot)

11  
 12  
 13  
 14 (D.I. 459, at 18) Finjan's submission in the second showdown concerned the '154 Patent, not at  
 15 issue here. After '154 proceedings concluded with summary judgment of no infringement, Finjan  
 16 voluntarily dismissed its remaining claims.  
 17

18           **Fees order of January 2021.** Finjan appealed; the Federal Circuit affirmed. On a motion  
 19 by Juniper, the Court determined that parts of the case were exceptional under § 285. It found  
 20 Finjan's assertion of the '494 Patent exceptional "in certain respects." (D.I. 648 at 1 ["the § 285  
 21 Order"]). It held Finjan's '494 damages case—e.g., its expert's opinions (ultimately excluded)  
 22 and its attempt to put on a "fact-only" trial presentation—a "fiasco" and "woefully inadequate."  
 23 The § 285 Order did not find or discuss exceptionality for the liability case, except to note that the  
 24 jury had rejected the merits of Finjan's '494 infringement claim. (*Id.* at 3) As to the '780 Patent,  
 25 the Court held that Finjan should have dropped the patent after the first showdown rather than  
 26 requiring further motion practice on liability or damages. (*Id.* at 3–4) In view of these  
 27 exceptionality determinations, the Court held fee-shifting appropriate as to the '494 and '780  
 28 Patents, and referred the issue of computing fees to the Special Master. (*Id.* at 4–5; D.I. 654)

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