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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,)	DEFENDANT JUNIPER NETWORKS,
)	INC.'S OBJECTION TO SPECIAL
vs.)	MASTER'S REPORT AND
)	RECOMMENDATION RE ATTORNEY'S
JUNIPER NETWORKS, INC., a Delaware)	FEES AND EXPENSES (DKT. 658)
Corporation,)	
)	
Defendant.)	

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. LEGAL STANDARD	1
III. ARGUMENT	3
A. Juniper respectfully requests that the Court include an express finding of bad faith in its final order on fees.....	4
B. Juniper respectfully requests that the Court order Finjan to pay \$1,425,659.24 in sanctions.	9
IV. CONCLUSION	11

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

<i>AdjustaCam LLC v. Amazon.com, Inc.</i> , 2018 WL 1335308 (E.D. Tex. Mar. 15, 2018).....	5, 8
<i>Amsted Indus. Inc. v. Buckeye Steel Castings Co.</i> , 23 F.3d 374 (Fed. Cir. 1994).....	2
<i>Anderson v. Asset Acceptance, LLC</i> , 2010 WL 1752609 (N.D. Cal. Apr. 29, 2010)	2
<i>Arunachalam v. Int’l Bus. Machines Corp.</i> , 989 F.3d 988 (Fed. Cir. 2021).....	2
<i>B.K.B. v. Maui Police Dep’t</i> , 276 F.3d 1091 (9th Cir. 2002), as amended (Feb. 20, 2002)	2, 5, 6
<i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32 (1991)	1, 2, 5, 8
<i>F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.</i> , 244 F.3d 1128 (9th Cir. 2001).....	2
<i>In re Girardi</i> , 611 F.3d 1027 (9th Cir. 2010).....	3
<i>Goodyear Tire & Rubber Co. v. Haeger</i> , 137 S. Ct. 1178 (2017)	9, 11
<i>Indiezone, Inc. v. Rooke</i> , 2014 WL 4354122 (N.D. Cal. Sept. 2, 2014).....	9
<i>Intellectual Mgmt. Corp. v. Lee Yunn Enters., Inc. (U.S.A.)</i> , 2009 WL 9137315 (C.D. Cal. Dec. 14, 2009)	3
<i>MarcTec, LLC v. Johnson & Johnson</i> , 664 F.3d 907 (Fed. Cir. 2012).....	2, 9
<i>Moser v. Bret Harte Union High Sch. Dist.</i> , 366 F. Supp. 2d 944 (E.D. Cal. 2005).....	8
<i>Octane Fitness, LLC v. ICO Health & Fitness, Inc.</i> , 134 S. Ct. 1749 (2014)	4, 9
<i>Oplus Techs., Ltd. v. Vizio, Inc.</i> , 782 F.3d 1371 (Fed. Cir. 2015).....	8

Page(s)

1	<i>In re Personalweb Techs., LLC Pat. Litig.</i> ,	
2	2021 WL 796356 (N.D. Cal. Mar. 2, 2021)	9
3	<i>Phonometrics, Inc. v. Westin Hotel Co.</i> ,	
4	350 F.3d 1242 (Fed. Cir. 2003)	2
5	<i>Qualcomm Inc. v. Broadcom Corp.</i> ,	
6	2007 WL 9677112 (S.D. Cal. Oct. 29, 2007)	9
7	<i>Ranieri v. Microsoft Corp.</i> ,	
8	2016 WL 4626584 (N.D. Tex. Sept 2, 2016)	2, 8
9	<i>Takeda Chem. Indus., Ltd. v. Mylan Labs., Inc.</i> ,	
10	549 F.3d 1381 (Fed Cir. 2008)	2, 9
11	<i>Taurus IP, LLC v. DaimlerChrysler Corp.</i> ,	
12	726 F.3d 1306 (Fed. Cir. 2013)	7
13	<i>Thermolife Int'l, LLC v. Myogenix Corp.</i> ,	
14	2018 WL 325025 (S.D. Cal. Jan. 8, 2018)	4

Statutes

15	28 U.S.C. § 1927	2, 3
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I. INTRODUCTION

Although Special Master Borden reduced some of Juniper Networks Inc.'s ("Juniper") submitted attorneys' fees, Juniper does not object to that reduction. Juniper does object, however, to the Special Master's finding that a consideration of the expert fees and travel expenses the Court had ordered Juniper to provide to the Special Master was "premature" because the Court's preliminary fees order "does not have an express finding of bad faith." Dkt. 658 (Fees Order) at 20. Juniper believes that the Special Master should have reviewed these expenses so the Court could include them as part of its final fees award, should that award include a finding of bad faith.

While Juniper believes the Special Master's failure to review the expenses the Court ordered Juniper to provide to the Special Master is error, the impact of this error is negligible, as Finjan did not specifically challenge the reasonableness of any of the particular expenses Juniper submitted; it only challenged whether the Court intended to award them and broadly stated that the expenses were large. As the parties agree these expenses are awardable by the Court if its final award includes a finding of bad faith, Juniper urges this Court to include these expenses in its final fees order, along with a clear, express, and unambiguous statement that Finjan's improper litigation conduct (which it already detailed in its preliminary fees order) constitutes bad faith. The only expenses for which Juniper is seeking recovery are the categories of expenses this Court previously identified in Paragraph 2 of its Order Re Attorney's Fees And Costs And Appointment of Special Master (Dkt. 649) ("Referral Order")—specifically expert fees and travel expenses. As detailed in the March 22, 2021 Declaration of Jonathan Kagan (Ex. 1), the vast majority of these costs were unnecessary fees that Juniper paid to experts who testified at trial in this case—a trial the Court already held would not have been necessary but for Finjan's improper litigation conduct. The total amount of the costs for the categories identified by the Court in its Referral Order is \$1,425,659.24.

II. LEGAL STANDARD

The parties do not dispute that this Court has the inherent power to permit Juniper to recover costs actually incurred in defending the underlying lawsuit. Indeed, the law on this is clear: "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates."

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