Case 3:17-cv-05659-WHA Document 661-7 Filed 06/10/21 Page 1 of 8

EXHIBIT 6

DOCKET A L A R M Find authenticated court documents without watermarks at <u>docketalarm.com</u>.

	Case 3:17-cv-0	5659-WHA Document 6	61-7	Filed 06/10/21	Page 2 of 8	_
	Pages	1 - 28	1	Thursday - January 7, 202	1 10:13 a.m.	2
		ATES DISTRICT COURT	2		CEEDINGS	
	NORTHERN I	DISTRICT OF CALIFORNIA	3		000	
	Before The Honorable Willian		4		Calling Civil matter 17-5659, Fin	ijan.
	FINJAN, INC.,	17 8	5		er Network, Incorporated.	J
	Plaintiff,		6	• •	iffs, will counsel please state your	•
	vs.	NO. C 17-05659 WHA	7	appearances.	, I ,	
	JUNIPER NETWORK, INC.,		8		Good morning, Your Honor. Juanita	Brooks
	Defendant.		9	from Fish & Richardson of	•	Dicond
			10	THE COURT: W	Ũ	
		rancisco, California day, January 7, 2021	11		ood morning, Your Honor. Jonathan	Kagan
			12		ehalf of Juniper Networks.	Tugun
	TRANSCRIPT OF TELE	PHONIC PROCEEDINGS	13	THE COURT:	•	
			14		attorneys fees by Juniper. So I'm	ı
	APPEARANCES BY TELEPHONE:		15		g in here, but take up to ten minute	
	For Plaintiff: ETSH & RI	CHARDSON PC	16	make your argument. Ju	-	
	12860 El	Camino Real - Suite 400 , California 92130	17	• •	Okay. So, Your Honor, the stand	ard for
	BY: JUANITA F	BROOKS, ATTORNEY AT LAW	18		e dealing with, I just want to make	
	For Defendant:		19		a lot of cases cited, comes from the	
	TRELL & M	IANELLA LLP ue of the Stars - Suite 900	20		se; and the test is does this case sta	
	Los Ange	es, California 90067 S. KAGAN, ATTORNEY AT LAW	21		spect to the strength of the case and	
			22		reasonable manner. These are not	
			23	-	t both of these standards. It can be	
	Reported By: Jo Ann Bryce, CSR	No 3321 RMR CRR FCRR	24	•	ndards is how a case can be	
	Official Reporter	No. 5521, Nak, Chi, Ferr	25		is case we feel there's evidence to	
				······		
1	.1.4	3	1			4
1	support both.		1		nts that Finjan asserted, they were	
2		ie to put on the table is the	2	-	ny one of them even before reachi	ng a
3		luct an issue-by-issue analysis of	3		: Does that stand out from other	
4	the extraordinary nature of		4	cases?		
5		es to determine whether it's	5	-	gine how you can argue it doesn't	
6	extraordinary. So it doesn't		6	v 1	rofessional plaintiff in patent cases	
7	extraordinary. This patent		7	•	enue comes from licensing patent	s and
8	-	to that rule, neither of which	8	0 0 1	t their brief, they list all of their	
9		if there is a partial victory, so	9	· ·	e had in litigation. They've had	
10	•	iled on some patents but not others,	10	wonderful results.	1 (1 '04' '4	
11		straordinary nature of the case	11		nd out because if this case is the	
12	•	ict, which is not what we have a	12	•	not exist as a professional patent	
13	-	t this case stands out from others	13	• •	assert nine patents, they're not	
14	for reasons other than misco		14		even one even before getting to a	
15	-	es this case stand out or not?	15	• • •	ness. So this is clearly a case that	
16	-	n. So this was a patent case	16	-	o their litigation and, frankly, I	
17		Finjan asserted. Only one of those	17		gation that this Court sees.	
18	_	to trial. So eight of the nine	18		May I ask a question?	
19	•	t to trial; and for the one patent	19 20	MR. KAGAN: Y		Inne 1
20	that made it to trial, by the t		20		You say they were zero for nine. W	
21		medy for Finjan because the patents	21	-	ose were actually litigated and wh	
22		unction possible and the Court had	22		were not litigated? I remember the	
23	U	titled to damages even if they got	23	-	, but I know it wasn't all nine so te	11
24	a jury verdict. Obviously the	ne jury verdict went in Juniper's	24	me what happened to the	so there were several there was	ro two
	KET	chenticated court documents v				

Case 3:17-cv-05659-WHA Document 661-7 Filed 06/10/21 Page 3 of 8

	Case 3:17-cv-05659-WHA Document 6	61-7	Filed 06/10/21 Page 3 of 8
1	that were the subject of a summary judgment motion. Well, ⁵	1	troubles me and is extraordinary but the rest of it was just ⁶
2	there were two claims that were the subject of a summary	2	routine patent shenanigans, patent lawyer shenanigans, and that
3	judgment motion. There was the '154 patent and the '780 patent	3	if forced to, I could find examples on the Juniper side where
4	where Juniper prevailed on summary judgment. There was the	4	you were unreasonable too? So what if I think it's only this
5	'494 patent that went to trial that was the subject of a trial;	5	one thing that deserves, am I able to carve that out and say
6	and then Finjan in order to focus its appeal, voluntarily	6	"You've got to pay fees on that one bad chapter" or do I have
7	dismissed with prejudice all of the other patents in order to	7	to give fees to the entire case?
8	pursue its appeal on the patents that were litigated: The	8	MR. KAGAN: So what I would say, the way so I think
8 9	'154, the '780, and the '494.	8 9	there's two conflicting let me answer the second question
9 10	THE COURT: Okay. That comes back to me now. So		first.
	there were three that were litigated before me and that I made	10	
11	rulings on, and then the other six were dismissed with	11	So I think there's two conflicting principles here. One
12			is that you're really supposed to just look at the whole case.
13	prejudice.	13	You're under no obligation to parse out individual parts of the
14	MR. KAGAN: Yes.	14	case, and that's fair. However, this is a discretionary
15	THE COURT: All right.	15	decision for the Court, and I do believe that it can be a
16	MR. KAGAN: And this was	16	proper exercise of your discretion to award fees as you see
17	THE COURT: You know, I have this question for you,	17	fit; and if you see unreasonable behavior on both sides or you
18	though. In every case there's going to be a loser and a	18	believe that Juniper took unreasonable positions, you know,
19	winner, and are you saying that, "Okay. So Finjan gave it its	19	that's something that I think in your discretion you're allowed
20	best college try and they lost"? But surely that can't be	20	to consider.
21	enough to just because you lost doesn't mean that you	21	The case law is not so clear on this other than saying
22	it's an extraordinary case and you should pay the other side's	22	it's a discretionary decision; but as an Article III judge, I
23	fees.	23	think those are the types of things that you would routinely
24	So help me and also I've got a related question. What	24	use to exercise discretion. So I think you have great latitude
25	if I think there's only one aspect of the whole case that	25	on that.
	7		8
1	THE COURT: All right. What is what if you 7	1	So this is a brand new infringement theory. It's not even 8
2	looking at this entire record, what would you say just give	1 2	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement
	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over	1 2 3	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him,
2	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that		So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by
2 3	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over	3	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him,
2 3 4	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that	3 4 5	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by
2 3 4 5	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did.	3 4 5	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i>
2 3 4 5 6	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case	3 4 5 6	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory.
2 3 4 5 6 7	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here,	3 4 5 6 7	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent
2 3 4 5 6 7 8	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll	3 4 5 6 7 8	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory
2 3 4 5 6 7 8 9	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a	3 4 5 6 7 8 9	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory
2 3 4 5 6 7 8 9 10	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on	3 4 5 6 7 8 9 10	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that
2 3 4 5 6 7 8 9 10 11	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said.	3 4 5 6 7 8 9 10 11 12	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the
2 3 4 5 6 7 8 9 10 11 12	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had	3 4 5 6 7 8 9 10 11 12	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion.
2 3 4 5 6 7 8 9 10 11 12 13	 looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold 	3 4 5 6 7 8 9 10 11 12 13	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit?
2 3 4 5 6 7 8 9 10 11 12 13 14	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in	3 4 5 6 7 8 9 10 11 12 13 14	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	 looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in 	3 4 5 6 7 8 9 10 11 12 13 14 15	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what	3 4 5 6 7 8 9 10 11 12 13 14 15 16	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on. Then when they submit their damages report and, by the	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary affirmance. There was no opinion. It didn't even merit an
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on. Then when they submit their damages report and, by the way, the total revenue for that was \$1.8 million. That was the total revenue.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary affirmance. There was no opinion. It didn't even merit an opinion but it was affirmed. THE COURT: Hmm. Okay.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on. Then when they submit their damages report and, by the way, the total revenue for that was \$1.8 million. That was the total revenue. When they submit their damages report, though, they	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary affirmance. There was no opinion. It didn't even merit an opinion but it was affirmed. THE COURT: Hmm. Okay. MR. KAGAN: So then what Finjan does is they don't
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on. Then when they submit their damages report and, by the way, the total revenue for that was \$1.8 million. That was the total revenue. When they submit their damages report, though, they claim \$142 million as a damages base because they now have a 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary affirmance. There was no opinion. It didn't even merit an opinion but it was affirmed. THE COURT: Hmm. Okay. MR. KAGAN: So then what Finjan does is they don't say so now they have no they have essentially no damages
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on. Then when they submit their damages report and, by the way, the total revenue for that was \$1.8 million. That was the total revenue. When they submit their damages report, though, they claim \$142 million as a damages base because they now have a theory, they've come up with an infringement theory where the 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary affirmance. There was no opinion. It didn't even merit an opinion but it was affirmed. THE COURT: Hmm. Okay. MR. KAGAN: So then what Finjan does is they don't say so now they have no they have essentially no damages case. So what they tell Your Honor is, "Well, we want the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 looking at this entire record, what would you say just give me one or two examples of where you think Finjan went way over the line and it just spans out as a terrible abusive thing that Finjan did. MR. KAGAN: So one easy example is the damages case for the '494 patent, which went to trial. What happened here, as you may recall this is covered in the briefs, but I'll just summarize it quickly what Finjan did was they had a damages we moved for they moved for summary judgment on the '494 patent. That was their strongest patent they said. They accused certain products. We pointed out that they had not they were not seeking damage on the SRX product as sold by itself. It was only the SRX product when used in combination with and this is their words the SRX used in combination with Sky ATP and the Sky ATP product. That's what the trial was supposed to be on. Then when they submit their damages report and, by the way, the total revenue for that was \$1.8 million. That was the total revenue. When they submit their damages report, though, they claim \$142 million as a damages base because they now have a 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	So this is a brand new infringement theory. It's not even advanced by their infringement expert. Their infringement expert actually disavowed that theory. When we questioned him, we said, "Are you have you looked at the SRX product by itself?" He said, "No." This became the subject of a <i>Daubert</i> motion and Your Honor excluded the theory. And Finjan in their brief goes into a lot of they spent a lot of time talking about why they believe that this theory was meritorious. It doesn't matter whether or not this theory was meritorious. It was an undisclosed theory, and on that basis Your Honor issued a <i>Daubert</i> order and excluded the expert's opinion. THE COURT: Was that litigated in the Federal Circuit? MR. KAGAN: Yes, it was. THE COURT: What did the Federal Circuit say on that <i>Daubert</i> ruling? MR. KAGAN: The Federal Circuit it was a summary affirmance. There was no opinion. It didn't even merit an opinion but it was affirmed. THE COURT: Hmm. Okay. MR. KAGAN: So then what Finjan does is they don't say so now they have no they have essentially no damages

_

DOCKET A L A R M Find authenticated court documents without watermarks at <u>docketalarm.com</u>.

С

Case 3:17-cv-05659-WHA Document 6	61-7	Filed 06/10/21 Page 4 of 8
fact-based damages case," and Your Honor allowed them to at	1	So, I mean, I think if you're looking for a single example ¹⁰
trial.	2	of the types of sort of shenanigans that were going on, that's
So they come to trial and they have their CEO testify, and	3	what's going on here. So we have this changing infringement
the CEO testifies when he testifies, he includes in his	4	theory just to try to artificially boost damages, an
royalty base the exact same information that Your Honor	5	undisclosed theory that Your Honor strikes, and then they try
excluded in the Daubert. He starts trying to talk about	6	to end-run the ruling by sneaking it in a different way at
numbers and damages that include this product by itself that	7	trial forcing Your Honor to again strike it and take the issue
Your Honor said was out.	8	from the jury.
Then in addition what he does, is he talks about numbers	9	So we had an entire trial on a patent where there was no
that he wants for a negotiation. He said, "Well, in a	10	possibility of damages because of essentially the litigation
negotiation with Juniper, this is what I want. This is what	11	conduct of Finjan. Had they not tried to change their theory,
I'm asking for." And, Your Honor, ultimately we objected.	12	they could have tried to get the one whatever percentage of
Ultimately Your Honor excluded that testimony as well as	13	the \$1.8 million of damages they wanted, but that's not what
improper.	14	they did.
Some of his testimony in terms of what he was seeking had	15	Another example relates to the '780 patent which has to do
actually been excluded in another case by the Federal Circuit.	16	with notice. The question was: Did they provide actual or
The Federal Circuit he had this theory that they were	17	constructive notice to Juniper about this patent? They
entitled to \$8 per stand. That was just the number they came	18	actually had their head of licensing lie. They signed a false
up with. And he tried using the same number in another case	19	interrogatory response where they said in a phone conversation
against another defendant. The Federal Circuit actually	20	they had expressly talked about this with a representative from
reviewed that and said, "This number is pulled out of thin air.	21	Juniper. We deposed the guy. That's what he said.
You can't use that."	22	Then we were ultimately able to go find a recording of the
So Your Honor ultimately in the middle of the trial	23	conversation; and when we played the recording of the
removed the issue of damages and struck his testimony, took	24	conversation, there's absolutely no reference to this
damages away from the jury.	25	whatsoever. It was made up. That was on actual notice for
11		
that patent.	1	was trial so none of this is against her, but this is the
Then they also then there was an instance, and we cite	2	behavior that they engaged in at trial and before.
some of this in the briefing, where they said they'd given a	3	THE COURT: Okay.
presentation to Juniper or to Cyphort, the predecessor of	4	All right. Let's hear from Ms. Brooks.
Juniper, where they said they provided notice. And we had a	5	MS. BROOKS: Thank you very much, Your Honor. Juanita
hearing on this, and Your Honor said, "Okay. Show me the	6	Brooks on behalf of Finjan.
presentation. Show me where it says this product infringes the	7	I'd like to start actually where counsel just left off
'780 patent."	8	about the fact that we were not trial counsel, and that is
And they kept pointing to different pages, but every time	9	true, but in some ways I think that puts us in somewhat of an
they could not come up with a single reference to that. They	10	advantage in that we weren't in the fray.
talked about this patent being asserted against other people.	11	And as Your Honor pointed out, the nature of litigation is
They talked about products. Not once was there any reference	12	it's adversarial. There's always a winner and there's always a
to an accusation of infringement by Cyphort of the '780 patent.	13	loser; and of course if you end up on the losing side, that
We had a big hearing on that.	14	automatically means that you have to pay attorneys' fees, that
Then again on notice, they admitted Finjan admitted in	15	would be the end of the adversarial system that we have.
open court that notice. It was their burden under the		
1	16	So we at Fish & Richardson were sort of not in the fray,
Arctic Cat case. Then they tried to recant that. They tried	16 17	So we at Fish & Richardson were sort of not in the fray, but we do have the record and so we can look at it and we can
•		•

- to walk back -- they're constantly trying to change their
- position to suit, you know, the prevailing winds of the day.
- Whatever the challenge is, they just take a different position
- and it was not supported by the record.

Δ

R

Μ

- And, again, I mean, Ms. Brooks -- you know, when I'm
- talking about Finjan counsel, Ms. Brooks was not trial counsel.
- Livet want to make alear They got rid of the councel that
- And I'd like to start by also addressing we did,
- Fish & Richardson, handled the appeal and counsel mentioned
- that the appeal, quote, "didn't even merit an opinion."

passionate, heated fashion and see what is there.

- I'd like to point Your Honor to a case that just came out
- of the Federal Circuit two days ago, and it is the -- so we dan't have an actual Fed. Circuit aits wat but it's

Find authenticated court documents without watermarks at docketalarm.com.

Case 3:17-cv-05659-WHA Document 661-7 Filed 06/10/21 Page 5 of 8

 Innovation Sciences LLC Frighta harovation Sciences, Inc., ¹³ And, again, I think we are st an advantage "we," ¹⁴ And, again, I think we are st an advantage "we," ¹⁴ And, again, I think we are st an advantage "we," ¹⁴ The we are st an advantage "we," ¹⁴ The we are st an advantage "we," ¹⁴ The west and the rest of the appeal. The west advantage "we," ¹⁴ The west advantage "west "west "west "west		Case 3:17-cv-05659-WHA Document 6	61-7	Filed 06/10/21 Page 5 of 8
 <i>a dmacm,</i> and the number is 2020-1699 decided on January 50t. <i>ibat - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>that - or the district court case in that 1 think what</i> <i>the case of the argement attempts to the there</i> <i>the late imposition of smactions by the district court,</i> <i>the late imposition of smactions by the district court,</i> <i>the late imposition of smactions structured for the color index on the district court due 7 color. (critic like 13 provides any</i> <i>this court just two days ago, the Federal Circuit, cautional</i> <i>the that sis post on the sis of the case or the opinion.</i> <i>So now let's go back and lak about what happened in district court.</i> Your Hours stud <i>you in post.</i> <i>apar of the case that is above and byoud 1 think what you clust is appened in the same study.</i> <i>apar of the case that first, Your Hours.</i> <i>back calsbac as maller amount for damages.</i> <i>back calsbac as maller amount for damages.</i> <i>back calsbac as maller amount for damages.</i> <i>back calsbac as maller amount </i>	1	Innovation Sciences IIC Virginia Innovation Sciences Inc	1	And again I think we are at an advantage "we "
 2021. Now, it is sneprecelenal but its very informative of this issue as to the merits of the appeal. 3 that - or the district our case in that 1 this what 4 happend here is to quote the movie that 1 like quite a bit, we had a failure to communicate. 4 that - or the district our case in that 1 this what 4 happend here is to quote the movie that 1 like quite a bit, we had a failure to communicate. 5 This was an atomery for easy of affirmance without opinion to the later imposition of samons argument that an affirmance by information About whether a case was close, trivoleus, or noncorrestial. 6 This was any sign that the append dirt even merit an opinion. 7 son corrorversial. 1 that says nothing as to the merits of the case or the 19 opinion. 2 apart of the case that i sabwer and beyood 1 think what you 2 characterized as the sheamings that go on in patent cases, 24 which what is it, and coursel first went to the damges. So: 12 like to abdress that first, Your Honor. 1 have been 1.8. 1 think it was the revenue on which you would have calcinated as mainter ago. You sid that the damages would be on that is when it came time for the 24 damages malaysis, it turned out that the creater - 1 doi: recember every dual movy, but 1 do 23 remember this much, and that is when it came time for the 24 damages malaysis, it turned out that the damages would be on so let me 18. I think it was the revenue on which you would have acalized as that beyon you completely go in that. The beer shat is alwey the you is a so maint that was the admones you would have a so that is alwey and your is a sing against semeting. 1 with Sky ATP, and that was the damages and you if the admages would in the ory. Is alway that was the admages and you or that is a data that was the har patent and you if the server and that is way and that is was the server and that was that believe that finin a hard patent as the server and	2	•		
 this issue as to the merits of the appeal. This was an attorney fee issue, and what the court - the Federal Circuit vent out of its way to say is that, and Tin quoting now from page 6 of the opinion (reading): "To the extent that the argument attempts to ite the fact of an cartier Rule 36 affirmance without opinion to the later imposition of sanctions by the district court, whe hasten to urge caution. We categorically right the imposition of Amazon's argument that an affirmance by this court utder Federal Circuit, cautiond the appeal dicht even merit an opinion, on is asying that the appeal dicht even merit an opinion, this court just two days ago, the Federal Circuit, cautiond that that says nothing as to the merits of the case or the opinion. So now laf's go back and talk about what happend in 21 have been 1.8. I think it was the revenue on which you would bave calculated a smaller amount for damages. Not youlf news cancel case was that if min, that a about what happend in 22 characterized as the shorning minet theory. have been 1.8. I think it was the revenue on which you would bave calculated a smaller amount for damages. It turned out is 3 the word to the forein the fing in ddri make a - what's 4 the word on the foodball field when you completely go in the 4 discretion to dust it was the revenue on which you would 5 have the revenue, and may 'minging against something 4 this that append the was the evenue - 1 helieve 5 youff incerton? And that was the revenue on that. 4 here yo that it could take advantage of a bigger revenue 4 barys cald valaming on dome with againg against something 4 the word on the foodball field when you completely go in the 5 yourt flower convince me that it was - it was not 6 course (was mere, and what was with the was of the something 4 that is was note, and that was with the was of the oas that 5 work there that fing and dri make a - what's 4 the word on the foodball field when you completely go in 5 that is was note		•		
 This was an attorey fecisore, and what the court - the Federal Circuit went out of its way to say is that, and I'm quoting now from page 6 of the opinion (realing): "To the extent that the argument attempts to ite the fact i'm position of anarotic Pale 8 of attimenace without opinion to the later imposition of sanctions by the district court, we hasten to urge caution. We categorically reject the implication of Anarotic argument that an affirmance by into functional by, Fingin raiked to adequately articulate to Vour Honor that, no, there had been no changes. The model is damages in the beginning the technical expert, Dr. Cole, at U Your Honor that, no, there had been no changes. The model is that the sagnese and ylooking at SRX andy damages theory, never happened. It was a ways only looking at SRX andy damages theory, never happened. It was a ways only looking at SRX andy damages theory, never happened. It was always only the sRX models form the beginning the technical expert. The court. Your Honor asked if you helieve that ther is a part of the case that is about what happened in 2 district court. Your Honor asked if you helieve that ther is a part of the case that is about what happened in 2 district court. Your Honor asked if you helieve that ther is a net course I first went to the damages. So 2 To like to address that first, Your Honor. there been 1.8. 1 think it was the revenue on which you would the we got a brand new infringement theory. have been 1.8. 1 think it was the revenue on which you would have ave completed theory. have accluated a smaller amount for damages. At turned out the forther I first, Your Honor. the very or the forth I'm and hoped for, and share with the ways in the ways to the forther I first, Your Honor. we the strand mew infringement theory. we have and hym our completely up in the same in the ways to the forther I first went to the damages. the vede the				
 6 Federal Circuit vent our of its way to say is that, and I'm quoting now from page 6 of the opinion (reading): 8 To the extent that the argument attempts to ic the fact of an earlier Rule 36 affirmance without opinion to the heater in position of saxotics by the district court, and the transmitter and the sax on a lock and the appeal didn't even merit an opinion, in asyng that the appeal didn't even merit an opinion, in district court, Your Honor asked I'g vue believe that the asyno held goal is to the merits of the case or the opinion. 9 models that dra, guote. So this whole idea that somehow Finjan reverted to an I SRX-only damages theory, never happened. It was always only 17 this court just two days ago, the Federal Circuit, cautored for this way to rever happened. It was always only 17 this court, Your Honor asked I'g vue believe that the asyno. 1 have been 1.8. I think it was the revenue on which you would to be vasify analler amount for damages. It further that a first, Your Honor. 1 have been 1.8. I think it was the revenue on which you would to be vasify analler amount for damages. It turned out the the revenue - 1 believe 25 you misspoke a minute ago. You sid that the damages would the way on ong to an instruct asset, stat first, Your Honor. 1 have been 1.8. I think it was the revenue on which you would the way the revenue on thich you would the way on you're just arguing against something analysis, it turned out the fragma dight make a - what's the word on the forothal Tickery you you go to an adapter mount for damages. It ways and that that fact would cause this acset to stand out on the stretmether ways and you're just arguing against something the stretmether and you way and you're just arguing against something the stretmether and you ways and shat the on angle and what ways and that the damages sould daws ways and you're just arguing against something the stretmether and you way and the maxes ways and you're just arguing against something th				•••••••••••••••••••••••••••••••••••••••
 quoting now from page 6 of the option (reading): To the extent that the argument attempts to tie the field an ages model after valizing their vasion by going to 5: S. B. million in damages if they stuck with their original model. Unfortunately, Finging to 5: S. B. million in damages if they stuck with their original model. Unfortunately, Finging to 5: S. S. B. million in damages if they stuck with their original model. Unfortunately, Finging to 5: S. S. S. Sectionally stuck and the stuck of the option. more ontroversit.¹⁰ S. S. S. Sectionally stuck and stuck and that an affirmance with original stuck are quote; "appleble of interacting with Sky ATP, S. D. that more ontroversit.¹⁰ S. S. S. S. S. Sectionally stuck and stuck are more in a optimion. S. S. S. S. S. Sectionally stuck are and stuck and the stuck are quote; "appleter and the stuck are and the stuck are and the stuck are are stuck are appleter and the stuck are are stuck are appleter and the stuck are appleter and the stuck are are stuck are appleter and the stuck are are time for the damages stuck are appleter and the stuck are appleter and the		•		
 S1.8 million in damages if they stude, with their original model. Unfortunately, Finjan failed to adequately ariculate in model information show with their original model. Unfortunately, Finjan failed to adequately ariculate in the set materia model information show with their original model. Unfortunately, Finjan failed to adequately ariculate it was the model from the beginning. First material show and the set was close, frivolous, or information about whether a case was close, frivolous, or information about whether a case was close, frivolaus, or information about whether a case was close, frivolaus, or information about whether a case was close, frivolaus, or information about whether a case was close, frivolaus, or information about whether a case was close, frivolaus, or information about whether a case was close, frivolaus, or information about whether a case was close, frivolaus, or information about whether a case was close. The could clase that is above and beyond 1 think what you characterize at the sharmings that go on in patter cases. So now let's go back and talk about what happened in distic court. Your Honor asked if you believe that there, a whet is and coursel first went to the damages. So 21 Id like to address that first, Your Honor. Theve been 1.8. I think it was the revenue on which you would thave calculated as smaller man Finjan had hoped for, and that was when if a we of the formation for damages. It turned out that the reverse cavina the more infingement theory. Now, you'll never convince me that it was - it was not for damages. It turned out that the admages when it is and about you're just arguing against something that har was when it was when it was - it was not in fort at the serve of using against something that that the there and was assent of that that a start believe that in thread that start believe that that start believe that that the serve in theore start in theory is that inclusthere and that is was relying	_		-	
 fact of an carlier Rule 36 affirmance without opinion to the later imposition of sanctions by the district court, we hasten to urge carling regeringly reject the implication of Amazon's argument that an affirmance by information about whether a case was close, frivolus, or noncontroversial." The court sign of the cheral Circuit, cautioned that that says nothing as to the merits of the case or the opinion. So now let's go back and talk about what happend in opinion. So now let's go back and talk about what happend in opinion. So now let's go back and talk about what happend in opinion. So now let's go back and talk about what happend in opinion. So now let's go back and talk about what happend in opinion. So now let's go back and talk about what happend in opinion. Have been 1.8. 1 think it was the revenue on which you world¹⁵ have calculated a smaller amount for damages. It turned out the word on the forball field when you completely go in the opposite direction? And that's what 1 believed then, that's wwith what is it, and coursel first went to the disclosed, it was new, and that's why 1 thew it out. So you'll never convince me that it was it was not disclosed, it was new, and that's why 1 thew it out. So characterized a smaller amount for damages. It sumed out the word on the forball field when you completely go in the opposite direction? And that's what 1 believed then, that's theury so that it could take alvanage of a bigger reverus. Mush BOOKS: Oh, no. Thank you, Your Honor. And of so certainly Thon there tyring to brie the court's input. Mush BOOKS: Oh, no. Thank you, Your Honor. And of so certainly Thon there tyring to it on there tyring to persuade that is certainly thing and come up with a different that is certainly then there the damages revery. Your Honor that Your Honor was wrong. I am simply, though. Mush BOOKS: Oh, no. Thank				
10 the later imposition of sanctions by the district court, 11 the later imposition of Anazova argument that an affirmance by 13 to Your Honor that, no, there had been no change. The model 14 11 was the model from the beginning. 10 to Your Honor that, no, there had been no change. The model 14 13 this court under Federal Circuit Rule 36 provides any 16 10 to Your Honor that, no, there had been no change. The model 17 14 information about whether a case was close, firvious, or nonconversial." 10 to Your Honor that, no, there had been no change. The model 18 15 no conversial." 10 to Your Honor that, no, there had been no change. The model 19 16 So now ledge appeal didn't even merit an opinion. 11 was the model scapable of interacting with Sky ATP. So that 18 17 the scape that is above and beyond 1 think why toor 26 anages analysis, it turned out that the rewene - 1 18 was the what is i, and counsel first went to the damages. So 25 10 like to address that first, Your Honor. 11 have aclusted a smaller anoth fing had hoped for, and that was went 4 we so al brand new infringement theory. 11 have calculated a smaller anothing inpla hoped for, and that wy 1 the was not 4 and mages analysis, it turned out that the admages so 4 12 have been 1.8. I think it was		÷ .		
 we hasten to urge caution. We categorically reject the implication of Amazon's argument that an affirmance by this implication of Amazon's argument that an affirmance by this implication of Amazon's argument that an affirmance by this court under Federal Circuit. Rul So Provides any information about whether a case was close, frivolous, or molecular 28-6, specifically said that he was only looking at SXP. '' unquote. So this whole idea that seen work with Sky ATP. So that that says nothing as to the merits of the case or the 'o opinion.'' this court just two days ago, the Federal Circuit, cautioned that that says nothing as to the merits of the case or the 'o opinion.'' So now lefs go back and talk about what happened in district ocurt. Your Honor added if you believe that there is a part of the case that is above and beyood 1 hink what yoe.'' the SRX models capable of interacting with Sky ATP. So that was the technical expert.'' the COURT: We go to interacting with Sky ATP. So that was the is in an coursent first went to the damages. So 't intercented's and that is hand course first went to the damages.'' the courts'' was netwer and bey and this is and atoms inframement theory. You'l Honor.'' that is in an coursent first went to the damages. It turned out to 't were used that the sampler than Finjan didn't make a - what''s why therew it out. So 'you'll never convince me that if was - it was not disclosed, it was new, and that's why therew it out. So 'you'll never convince me that if was - it was not the word on the forbull field when you completely go in the oposite direction? And that's why therew it out. So 'you'll never convince me that finjan didn't make a - what''s the triping didn't make a - what''s the triping didn't make a - what''s the there finjan didn't make a - what''s the triping didn't make a - what''s the word on the forbull field when you c				
 implication of Amazov's argument that an affirmance by this court under Federal Circuit Rule 36 provides any intimation about whether a case was close, firvolous, or noncontroversial." So in saying that the appeal didn't even merit an opinion. So in saying that the appeal didn't even merit an opinion. So now let's go back and talk about what happened in district court. Your Honor asked if you believe that there is a part of the case that is above and beyond 1 think what you character as the shearing and that you believe that there is a part of the case that is above and beyond 1 think what you character as the shearing and that you the court of the case that is above and beyond 1 think what you character as the shearing and that you the diverse that first, Your Honor. thave been 1.8. I think it was the revenue on which you would to a brand new infringement theory. have been 1.8. I think it was the revenue on which you would to be vastly smaller than Finjan had hoped for, and that was when the word on the football field when you completely go in the opposite direction? And that's what I believe that Finjan didn't make a - what's the word on the football field when you completely go in the opposite direction? And that's what I believe that 1 lived through. So I believe you're wrong on that. I 1 believe that Finjan didn't make a - what's the word on the football field when you completely go in the opposite direction? And that's what I believe that 1 lived through. So I believe you're wrong on that. I 1 believe that Finjan didn't make a - what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's 10 what I believe that Finjan didn'th make a - what's the word on the football field when you completely go in the opposite direction? And that's what I believe that 1 lived through. So I believe you're wrong on that. I 1 believe that Finjan didn'ting to persuade 1 direction? An				-
 this court under Federal Circuit Rule 36 provides any information about whether a case was close, frivolous, or monortoversial." noncontroversial." So in saying that the appeal didn't even merit an opinion. So in saying that the appeal didn't even merit an opinion. this court just two days ago, the Federal Circuit, cautioned that that says nothing as to the merits of the case or the opinion. So now let's go back and talk about what happened in district court. Your Honor asked if you believe that there is a part of the case that is above and beyond 1 think what you characterized as the shenanigans that go on in patent cases, 24 which what is it, and counsel first went to the damages. So 57 If like to address that first, Your Honor. have been 1.8. I think it was the revenue on which you would have calculated a smaller amount for damages. It turned out a backed is smaller amount for damages. It turned out to ago posite direction? And that's what I believe to you misspoke a minute ago. You said that the damages would with Sky ATP, and that's at Docket 228-7 and specifically his⁶ supplemental Exhibit 1.5. Now, you'll never convince me that it wasit was not 6 opposite direction? And that's what I believe dot what it was the inign adid hip-flop and come up with a different 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead 14 that flow any you completely go in the 15 us theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead 15 of interacting with Sky ATP, itan that's all be considered. 16 And Ise the damages expert, Mr. Arst, took that opinion advants 17 and there damages expert, Mr. Arst, took that opinion advant 18 the the damages expert, Mr. Arst, took that opinion advant				
 information about whether a case was close, frivolous, or noncontroversial." information about whether a case was close, frivolous, or noncontroversial." So now let's go back and talk about what happened in 21 district court. Your Honor asked if you believe that there is a part of the case that is above and beyond 1 think what you 23 characterized as the shenanigans that go on in patent cases, 24 which what is it, and coursel first went to the damages. So 21 dl like to address that first, Your Honor. have been 1.8. I think it was the revenue on which you would 2 have calculated a smaller amount for damages. It rurned out was when a with Sey ATP, and that's at Docket 228-7 and specifically his for the case that is about why therw. Now, you'll never convince me that Finjan didn't make a - what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's the word on the football field when you completely go in the opposite direction? And that's what I believe duter, that's dillow on you completely go in the opposite direction? And that's what I believe duter, that's dillow on you completely go in the opposite direction? And that's what I believe duter, that's dillow on you completely go in the opposite direction? And that's what I believe duter, that's dillow on you completely go in the opposite direction? And that's what I believe duter, that's dillow on you completely go in the opposite direction? And that's what I believe duter, that's dillow on you completely go in the opposite direction? And that's what I believe duter, bat's damages theory, and you're just arguing against something ther the gamage and what we set. Mat I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different the theory so that it could take advantage of a bigger revenue thase. Make concor the court's input. Mat Bieve tha				
15 noncontroversial." 15 unquote. So this whole idea that somehow Finjan reverted to an 16 So in saying that the appeal dich't even merit an opinion, 16 SRX-only damages theory, never happened. It was always only 17 this that that says nothing as to the merits of the case or the 16 SRX-only damages theory, never happened. It was always only 18 that that says nothing as to the merits of the case or the 16 SRX-only damages theory, never happened. It was always only 20 So now let's go back and talk about what happened in district court. Your Honor asked if you believe that there is a part of the case that is alwoe and beyond I think what you 17 the SRX models, it was always only 21 characterized as the shenangens malys, it urned out that the remember this much, and that is when it came time for the 22 have calculated a smaller amount for damages. It turned out to 16 23 have conculted a smaller amount for damages. It turned out to 5 3 be vastly smaller than Finjan had hoped for, and that was when 16 4 which what is it, and course I were onvince me that if was - it was not 16 5 Now, you'll never convince me that Finjan did' make a - what's 1 6 the word on the football field when you completely go in the <td></td> <td>1 · · ·</td> <td>13</td> <td></td>		1 · · ·	13	
16 So in saying that the appeal didn't even merit an opinion, 17 this court just two days ago, the Federal Circuit, cautioned 18 that that says nothing as to the merits of the case or the 10 opinion. 20 So now let's go back and talk about what happened in 21 district court. Your Honor asked if you believe that there is 2a part of the case that is above and beyond think what point 21 characterized as the shenanigans that go on in patent cases, 24 which what is it, and coursel first went to the damages. So 25 Tel like to address that first, Your Honor. 26 have been 1.8. I think it was the revenue on which you would 2 have calculated a smaller amount for damages. It turned out th 3 have got a brand new infringement theory. 5 Now, youll never convince me that Tima do tho' and way weigt diath the obsell of the word on the football field when you completely go in the 9 opposite direction? And that's what I believe then, that's 10 what I believe now, and you're just arguing againts something 11 that level would sa advantage of a bigger revenue 14 balaway said althole: That lived through. So I believe you're wrong on that.			14	· · · ·
 17 this court just two days ago, the Federal Circuit, cautioned 18 that that says nothing as to the merits of the case or the 19 opinion. 20 So now let's go back and talk about what happened in 21 district court. Your Honor asked if you believe that there is 22 a part of the case that is above and beyond I think what you 23 characterized as the shenanigans that go on in pater cases, 24 which what is it, and counsel first went to the damages. So 25 I'd like to address that first, Your Honor. 21 have been 1.8. I think it was the revenue on which you would 22 have calculated a smaller amount for damages. It turned out to 23 be vastly smaller than Finjan had hoped for, and that was when 24 who on the football field when you completely go in the 25 okay. Go ahead. I interrupted you, but go ahead 26 MS. BROKS: So 1 believe you're wrong on that. I 27 believe that Finjan did flip-flop and come up with a different 28 theory so that i could take advantage of a bigger revenue 29 And then the Court's input. 20 And you frey ist arguing against stomething 21 that 1 lived through. So 1 believe you're wrong on that. I 22 believe that Finjan did flip-flop and come up with a different 23 theory so that i could take advantage of a bigger revenue 21 hat o courts in the numbers 22 to think that that fast what is advalating adving to appeal and what we saw in three was Dr. Cole's expert 23 of interacting with Sky ATP, that that's all be considerd. 24 And then the damages scept, Mr. Arst, to ch ta rojinion and 24 And then the damages expert, Mr. Arst, to ch at opinion and 24 And then the damages expert, Mr. Arst, to ch at opinion and 24 And then the damages expert, Mr. Arst, to ch that tojinion and 25 of interacting with Sky ATP, that that's the originion and 	15	noncontroversial."	15	unquote. So this whole idea that somehow Finjan reverted to an
 18 that that says nothing as to the merits of the case or the 19 opinion. 20 So now let's go back and talk about what happened in 21 district court. Your Honor asked if you believe that there is a part of the case that is above and beyond I think what you 22 a part of the case that is above and beyond I think what you 23 characterized as the sheanaigans that go on in patent cases, 24 which what is it, and coursel first were to the damages. So 25 I'd like to address that first, Your Honor. 21 have been 1.8. I think it was the revenue on which you would 25 have calculated a smaller amount for damages. It turned out to 26 have calculated a smaller amount for damages. It turned out to 27 how, you'll never convince me that it was - it was not 28 he word on the football field whor you completely go in the 29 oposite direction? And that's why I threw it out. So 20 you flix believe now, and you're just arguing against something 21 that I believe now, and you're just arguing against something 29 Okay. Go ahead. I interrupted you, but go ahead 30 Kas RBOOKS: On, no. Thank you, Your Honor. And of 31 okas RBOOKS: On, no. Thank you, Your Honor. And of 32 otarse I welcome the Court's input. 33 And so certainly I'm not here trying to persuade 34 And so certainly I'm not here trying to persuade 35 othat it could take advantage of a bigger revenue 36 othat here that doard as wo in there was Dr. Cole's expert 37 And so certainly I'm not here trying to persuade 38 and there, and what we saw in there was Dr. Cole's expert 39 Your Honor that Your Honor was wrong. I am simply, though. 30 finteracting with Sky ATP, that that al he considered. 31 And hen the damages expert, Mr. Arst, took that opinion and 34 And then the damages expert, Mr. Arst, took that opinion and<!--</td--><td>16</td><td>So in saying that the appeal didn't even merit an opinion,</td><td>16</td><td>SRX-only damages theory, never happened. It was always only</td>	16	So in saying that the appeal didn't even merit an opinion,	16	SRX-only damages theory, never happened. It was always only
 19 opinion. 10 opinion. 10 so now let's go back and talk about what happened in district court. Your Honor asked if you believe that there is a part of the case that is above and beyond I think what you could characterized as the sheanaigans that go on in patent cases, which what is it, and counsel first went to the damages. So I'd like to address that first, Your Honor. 11 have been 1.8. I think it was the revenue on which you would be avastly smaller than Finjan had hoped for, and that was when you winspoke a minute ago. You said that the damages sould be vastly smaller than Finjan had hoped for, and that was there acculated a smaller amount for damages. It turned out to disclosed, it was new, and that's wyl threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's the courd on the football field when you completely go in the opposite direction? And that's what I believed then, that's the word on the football field when you completely go in the opposite direction? And that's what I believe that. I believe now, and you're just arguing against something that I believe now, and you're just arguing against something that I believe tow rimpt. 10 Kay. Go ahead. I interrupted you, but go ahead 11 batil lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different the damages so that i could take advantage of a bigger revenue that out that you could that was wing the revery fing. 11 batil believe that Finjan did Nip-flop and come up with a different the they can up to defind on that particular 1 bad ways said shat it said about Sky ATP - SKX plus Sky ATP; and Mr. Fars's report that it always said SRX plus Sky ATP; and Mr. Fars's report that it always said SRX plus Sky ATP; and Mr. Fars's report that it always said Skx plus Sky ATP; and flit stop. Your Honor, and se	17	this court just two days ago, the Federal Circuit, cautioned	17	the SRX models capable of interacting with Sky ATP. So that
 So now let's go back and talk about what happened in district court. Your Honor asked if you believe that there is a part of the case that is above and beyond I think what you characterized as the shenanigans that go on in patter cases, which what is it, and coursel first went to the damages. So I dike to address that first, Your Honor. I have been 1.8. I think it was the revenue on which you would find have acalculated a smaller amount for damages. It turned out to a brean drew infrigement theory. I have been 1.8. I think it was the revenue on which you would find have acalculated a smaller amount for damages. It turned out to a brand new infrigement theory. Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didh't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's the word on the football field when you completely go in the opposite direction? And that's what I believe that ring an different 1 believe that Finjan didh't make a what's the word on the football field when you completely go in the opposite direction? And that's why I threw it out. So Okay, Go ahead. I interrupted you, but go ahead Ms. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade of a bigger revenue hase. So kay. Go ahead. I interrupted you, but go ahead. Ms. BROOKS: (N, no. Thank you, Your Honor. And of the staw and there was mone frage and what we saw in there, and what we saw in there was Dr. Cole's expert that it adays said SRX plus Sky ATP; and there fore, that doesn't make thaging to experiment and what we saw in there was Dr. Cole's expert that it adaption of you have the dianges they. Your Honor, and see if you have any questions. Ms. BROOKS: Oh, no. Thank you, Your Honor. And of '	18	that that says nothing as to the merits of the case or the	18	was the technical expert.
21 district court. Your Honor asked if you believe that there is a part of the case that is above and beyond I think what you 21 THE COURT: I've got to interrupt you here. 22 a part of the case that is above and beyond I think what you 22 I rememberI don't remember very detail now, but I do 23 characterized as the shenanigans that go on in patent cases, 21 THE COURT: I've got to interrupt you here. 24 which what is it, and coursel first went to the damages. So 25 I'd like to address that first, Your Honor. 25 I'd like to address that first, Your Honor. 1 with Sky ATP, and that's at Docket 228-7 and specifically his 26 have calculated a smaller amount for damages. It turned out to be vastly smaller than Finjan had hoped for, and that was when 1 with Sky ATP, and that's at Docket 228-7 and specifically his 3 wore got a brand new infringement theory. 30 Now, I know that 1 - I know when I'm fighting an uphill 4 was got a brand new infringement theory. 30 Now, I know that I want to die on so let me 5 you'll never convince me that Finjan didn't make a - what's 10 batte and this is not a bill that I want to die on so let me 6 find, for example, that you cannot be persuaded you think that that fact would cause this case to stand out on	19	opinion.	19	THE COURT: Wait a minute.
 22 a part of the case that is above and beyond I think what you 23 characterized as the shenanigans that go on in patent cases, 24 which what is it, and counsel first went to the damages. So 25 I'd like to address that first, Your Honor. 26 I have been 1.8. I think it was the revenue on which you would 27 have calculated a smaller amount for damages. It turned out to 28 beve than Finjan had hoped for, and that was when 29 with Sky ATP, and that's at Docket 228-7 and specifically his 20 with Sky ATP, and that's at Docket 228-7 and specifically his 21 have been 1.8. I think it was the revenue on which you would 22 with Sky ATP, and that's at Docket 228-7 and specifically his 23 mov, you'll never convince me that I image was not 24 disclosed, it was new, and that's why I threw it out. So 25 you'll never convince me that Finjan did hoped for, and that wasi twas not 25 wou you'll never convince me that I image against something 24 balte word on the football field when you completely go in the 25 optic direction? And that's what I believed then, that's 26 what I believe now, and you're just arguing against something 27 that I lived through. So I believe you're wrong on that. I 28 believe that Finjan did fip-flop and come up with a different 29 that I lived through. So I believe you're wrong on that. I 20 believe that Finjan had a good faith belief that it wasn't changing 20 Kay. Go ahead. I interrupted you, but go ahead 21 Mat the fees that they ran up to defend on that particular 22 issue stand-alone. And so Your Honor, cratiny has the 23 discreting with Sky ATP, that that's all be considered. 24 And then the damages expert, Mr. Arst, took that opinion and 25 of interacting with Sky ATP, that that's all be considered. 26 And then the damages expert, Mr.	20	So now let's go back and talk about what happened in	20	MS. BROOKS: Yes, Your Honor.
 22 a part of the case that is above and beyond I think what you 23 characterized as the shenanigans that go on in patent cases, 24 which what is it, and counsel first went to the damages. So 25 I'd like to address that first, Your Honor. 26 I have been 1.8. I think it was the revenue on which you would 27 have calculated a smaller amount for damages. It turned out to 28 beve than Finjan had hoped for, and that was when 29 with Sky ATP, and that's at Docket 228-7 and specifically his 20 with Sky ATP, and that's at Docket 228-7 and specifically his 21 have been 1.8. I think it was the revenue on which you would 22 with Sky ATP, and that's at Docket 228-7 and specifically his 23 mov, you'll never convince me that I image was not 24 disclosed, it was new, and that's why I threw it out. So 25 you'll never convince me that Finjan did hoped for, and that wasi twas not 25 wou you'll never convince me that I image against something 24 balte word on the football field when you completely go in the 25 optic direction? And that's what I believed then, that's 26 what I believe now, and you're just arguing against something 27 that I lived through. So I believe you're wrong on that. I 28 believe that Finjan did fip-flop and come up with a different 29 that I lived through. So I believe you're wrong on that. I 20 believe that Finjan had a good faith belief that it wasn't changing 20 Kay. Go ahead. I interrupted you, but go ahead 21 Mat the fees that they ran up to defend on that particular 22 issue stand-alone. And so Your Honor, cratiny has the 23 discreting with Sky ATP, that that's all be considered. 24 And then the damages expert, Mr. Arst, took that opinion and 25 of interacting with Sky ATP, that that's all be considered. 26 And then the damages expert, Mr.	21	district court. Your Honor asked if you believe that there is	21	THE COURT: I've got to interrupt you here.
 23 characterized as the shenanigans that go on in patent cases, 24 which what is it, and counsel first went to the damages. So 25 I'd like to address that first, Your Honor. 21 have been 1.8. I think it was the revenue on which you would 22 have calculated a smaller amount for damages. It turned out to 23 be vastly smaller than Finjan had hoped for, and that was when 4 we got a brand new infringement theory. 24 Now, YoUll never convince me that it was it was not 25 disclosed, it was new, and that's why I threw it out. So 26 you'll never convince me that Finjan didh't make a what's 27 the word on the football field when you completely go in the 28 opposite direction? And that's what I believed then, that's 29 with Nat I believe hat Finjan didh't make a what's 30 believe that Finjan didh't make a what's 31 the word on the football field when you completely go in the 32 opposite direction? And that's what I believed then, that's 33 that I believe now, and you're just arguing against something 34 that I believe that Finjan didh't make a what's 35 okay. Go ahead. I interrupted you, but go ahead 36 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 36 okay. Go ahead. I interrupted you, but go ahead 36 or tracting with Sky ATP, that that's all be considered. 34 And then the damages expert, Mr. Arst, took that opinion and 35 of interacting with Sky ATP, that that's all be considered. 34 And then the damages expert, Mr. Arst, took that opinion and 35 of interacting with Sky ATP, that that's all be considered. 34 And then the damages expert, Mr. Arst, took that opinion and 35 or interacting with Sky ATP, that that opinion and 36 or interacting with Sky ATP. that's all be considered. 36 or interacting with Sky ATP, that that all be considered.	22	a part of the case that is above and beyond I think what you	22	I remember I don't remember every detail now, but I do
24 which what is it, and counsel first went to the damages. So 25 I'd like to address that first, Your Honor. 26 I'd like to address that first, Your Honor. 27 I'd like to address that first, Your Honor. 28 I'd like to address that first, Your Honor. 29 I'd like to address that first, Your Honor. 20 I'd like to address that first, Your Honor. 21 have calculated a smaller amount for damages. It turned out to 24 with Sky ATP, and that's at Docket 228-7 and specifically his 25 supplemental Exhibit 1.5. 26 Now, you'll never convince me that i'mas it was not 26 find, for example, that you cannot be persuaded, that you 27 you'll never convince me that Finjan didn't make a what's 28 the word on the football field when you completely go in the 29 opposite direction? And that's what I believed then, that's 20 what I believe now, and you're just arguing against something 21 that I lived through. So I believe you're wrong on that. I 29 believe that Finjan did flip-flop and come up with a differnt 20 thad so certainly I'm not here trying to persuade 21 Your	23		23	-
25 I d like to address that first, Your Honor. 25 you misspoke a minute ago. You said that the damages would 1 have been 1.8. I think it was the revenue on which you would 1 with Sky ATP, and that's at Docket 228-7 and specifically his 2 supplemental Exhibit 1.5. 3 Now, I know that I I know when I'm fighting an uphill 2 battle and this is not a hill that I want to die on so let me 5 3 Now, You'll never convince me that Finjan dith' make a what's 6 4 the word on the foothall field when you completely go in the 9 9 opposite direction? And that's what I believe them, that's 10 issue and ask Juniper to supply the Court with the numbers 11 that I lived through. So I believe you're wrong on that. I 1 10 issue and ask Juniper to supply the Court with the numbers 11 that' i could take advantage of a bigger revenue 13 I would submit, however, Your Honor, that, once again, 16 Ms. BROOKS: Oh, no. Thank you, Your Honor. And of 10 issue stand-alone. And so ot Six ad about Sky ATP SRX plus Sky ATP; 18 And so certainly I'm not here trying to persuade 14 I would submit, however, Your Honor, and see if you have any 19 your Honor that Your Honor was wo			24	
1have been 1.8. I think it was the revenue on which you would152have calculated a smaller amount for damages. It turned out tosupplemental Exhibit 1.5.3be vastly smaller than Finjan had hoped for, and that was whenwe got a brand new infringement theory.4we got a brand new infringement theory.Now, you'll never convince me that it was it was not5Now, you'll never convince me that it was it was notNow, I know that I I know when I'm fighting an uphill6disclosed, it was new, and that's why I threw it out. SoNow, I know that I I know when I'm fighting an uphill7you'll never convince me that it was it was notfind, for example, that you cannot be persuaded, that you8the word on the football field when you completely go in thepoposite direction? And that's what I believe then, that's9what I believe now, and you're just arguing against somethingthat is use, you do have the discretion to simply carve ou that10what I believe now, and you're just arguing against somethingthat the fees that they ran up to defend on that particular14base.I would submit, however, Your Honor, that, once again,15Okay. Go ahead. I interrupted you, but go aheadI would submit, however, Your Honor, that, once again,16MS. BROOKS: Oh, no. Thank you, Your Honor. And ofto screption that i aid about Sky ATP;17had so certainly I'm not here trying to persuadethat isaid about Sky ATP, i and Mr. Arst's report that it aid about Sky ATP;18and Mr. Arst's report that it aid about Sky ATP;19Your Hono		e e e e e e e e e e e e e e e e e e e		
 have calculated a smaller amount for damages. It furned out to be vastly smaller than Finjan had hoped for, and that was when we got a brand new infringement theory. Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade trying to cite to the record as we got it on appeal and what we as win there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. and then the damages expert, Mr. Arst, took that opinion and and then the damages expert, Mr. Arst, took that opinion and the continue, but I want Mr. Kagan to respond to what I just 				
 have calculated a smaller amount for damages. It furned out to be vastly smaller than Finjan had hoped for, and that was when we got a brand new infringement theory. Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade trying to cite to the record as we got it on appeal and what we as win there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. and then the damages expert, Mr. Arst, took that opinion and and then the damages expert, Mr. Arst, took that opinion and the continue, but I want Mr. Kagan to respond to what I just 	1	have been 1.8. I think it was the revenue on which you would	1	with Sky ATP, and that's at Docket 228-7 and specifically his
 3 be vastly smaller than Finjan had hoped for, and that was when 4 we got a brand new infringement theory. 5 Now, you'll never convince me that it was it was not 6 disclosed, it was new, and that's why I threw it out. So 7 you'll never convince me that Finjan didn't make a what's 8 the word on the football field when you completely go in the 9 opposite direction? And that's what I believed then, that's 10 what I believe now, and you're just arguing against something 11 that I lived through. So I believe you're wrong on that. I 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 10 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 3 Mow, I know that I I know when I'm fighting an uphill 3 battle and this is not a hill that I want the damages theory. 3 I know that I I know when I'm fighting an uphill 4 battle and this is not a hill that I want we discretion to simply chough, 4 I would submit, however, Your Honor, that, once again, 15 Okay. Go ahead. I interrupted you, but go ahead 16 its damages theory, it was relying on Dr. Cole's report 17 had always said what it said about Sky ATP SRX plus Sky ATP; 18 and Mr. Arst's repor	2	have calculated a smaller amount for damages. It turned out to		supplemental Exhibit 1.5.
 we got a brand new infringement theory. Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and 		÷		
 Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and Solue and then the damages expert, Mr. Arst, took that opinion and the the talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and the courd is a convert of the second to what I just 	-			
 disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and disclosed, it was net, and what I believe that sall he considered. And then the damages expert, Mr. Arst, took that opinion and discretion to was I just 	4	we got a brand new infringement theory.	4	battle and this is not a hill that I want to die on so let me
 you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different believe that Finjan did flip-flop and come up with a different believe that Finjan did flip-flop and come up with a different believe that Finjan did flip-flop and come up with a different believe that Finjan did flip-flop and come up with a different believe that Finjan did flip-flop and come up with a different believe that Finjan did flip-flop and come up with a different believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead fo course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and the courts input. And then the damages expert, Mr. Arst, took that opinion and the courts with the advantage of a bigger revenue that the fees that they ran up to defend on that particular that the fee				
 8 the word on the football field when you completely go in the 9 opposite direction? And that's what I believed then, that's 10 what I believe now, and you're just arguing against something 11 that I lived through. So I believe you're wrong on that. I 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 8 you think that that fact would cause this case to stand out on 9 you think that that fact would cause this case to stand out on 9 that i suid about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 	5	Now, you'll never convince me that it was it was not	5	just also answer Your Honor's other question, which is if you
 9 opposite direction? And that's what I believed then, that's 10 what I believe now, and you're just arguing against something 11 that I lived through. So I believe you're wrong on that. I 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 9 opposite direction? And that's what I believe due, and then the damages expert, Mr. Arst, took that opinion and 9 that issue, you do have the discretion to simply carve out that 10 issue and ask Juniper to supply the Court with the numbers 11 that the fees that they ran up to defend on that particular 12 issue stand-alone. And so Your Honor certainly has the 13 that the fees that they ran up to defend on that particular 14 I would submit, however, Your Honor, that, once again, 15 because Finjan had a good faith belief that it wasn't changing 16 its damages theory, it was relying on Dr. Cole's report that 17 had always said what it said about Sky ATP SRX plus Sky ATP; 18 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and, therefore, that doesn't make this case exceptional. 21 And I'll stop, Your Honor, and see if you have any 22 qu	5 6	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So	5 6	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you
 10 what I believe now, and you're just arguing against something 11 that I lived through. So I believe you're wrong on that. I 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead. 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 10 issue and ask Juniper to supply the Court with the numbers 11 that the fees that they ran up to defend on that particular 12 issue stand-alone. And so Your Honor certainly has the 13 discretion to do that. 14 I would submit, however, Your Honor, that, once again, 15 because Finjan had a good faith belief that it wasn't changing 16 its damages theory, it was relying on Dr. Cole's report that 17 had always said what it said about Sky ATP SRX plus Sky ATP; 18 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and, therefore, that doesn't make this case exceptional or even 20 that issue exceptional. 21 And I'll stop, Your Honor, and see if you have any 22 questions. 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 	5 6 7	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's	5 6 7	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and
 11 that I lived through. So I believe you're wrong on that. I 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 11 that the fees that they ran up to defend on that particular 12 issue stand-alone. And so Your Honor certainly has the 13 discretion to do that. 14 I would submit, however, Your Honor, that, once again, 15 because Finjan had a good faith belief that it wasn't changing 16 its damages theory, it was relying on Dr. Cole's report that 17 had always said what it said about Sky ATP SRX plus Sky ATP 18 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and, therefore, that doesn't make this case exceptional or even 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 24 And then the damages expert, Mr. Arst, took that opinion and 	5 6 7 8	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the	5 6 7 8	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on
 12 believe that Finjan did flip-flop and come up with a different 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 24 And then the damages expert, Mr. Arst, took that opinion and 25 believe that Finjan did flip-flop and come up with a different 26 believe that Finjan did flip-flop and come up with a different 27 believe that Finjan did flip-flop and come up with a different 28 believe that Finjan did flip-flop and come up with a different 29 believe that is a different 20 trying to cite to the record as we got it on appeal and what we 21 and Mr. Arst's report that it always said SRX plus Sky ATP; 22 and Mr. Arst's report that it always said SRX plus Sky ATP; 23 and I'll stop, Your Honor, and see if you have any 24 and then the damages expert, Mr. Arst, took that opinion and 24 believe that for the record as we provide that that the topinion and 25 believe that for the record as we provide that that that that that that the topinion and 26 believe that the topinion and 27 believe that that that that topinion and 28 believe that the topinion and that that top	5 6 7 8 9	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's	5 6 7 8 9	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that
 13 theory so that it could take advantage of a bigger revenue 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead. 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 13 discretion to do that. 14 I would submit, however, Your Honor, that, once again, 15 because Finjan had a good faith belief that it wasn't changing 16 its damages theory, it was relying on Dr. Cole's report that 17 had always said what it said about Sky ATP SRX plus Sky ATP 18 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and, therefore, that doesn't make this case exceptional or even 21 that issue exceptional. 22 questions. 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 	5 6 7 8 9 10	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something	5 6 7 8 9 10	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers
 14 base. 14 base. 15 Okay. Go ahead. I interrupted you, but go ahead. 16 MS. BROOKS: Oh, no. Thank you, Your Honor. And of 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 14 I would submit, however, Your Honor, that, once again, 15 because Finjan had a good faith belief that it wasn't changing 16 its damages theory, it was relying on Dr. Cole's report that 17 had always said what it said about Sky ATP SRX plus Sky ATP 18 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and therefore, that doesn't make this case exceptional or even 21 that issue exceptional. 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 24 to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I	5 6 7 8 9 10 11	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular
 Okay. Go ahead. I interrupted you, but go ahead. MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional. And I'll stop, Your Honor, and see if you have any questions. THE COURT: Well, I'm going to come back. I want you to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11 12	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different	5 6 7 8 9 10 11 12	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the
16MS. BROOKS:Oh, no.Thank you, Your Honor.And of course I welcome the Court's input.16its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional.18And so certainly I'm not here trying to persuade trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and16its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional.20trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and161623THE COURT: to continue, but I want Mr. Kagan to respond to what I just	5 6 7 8 9 10 11 12 13	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue	5 6 7 8 9 10 11 12 13	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that.
 17 course I welcome the Court's input. 18 And so certainly I'm not here trying to persuade 19 Your Honor that Your Honor was wrong. I am simply, though, 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 17 had always said what it said about Sky ATP SRX plus Sky ATP 18 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 19 and Mr. Arst's report that it always said SRX plus Sky ATP; 21 And I'll stop, Your Honor, and see if you have any 22 questions. 23 THE COURT: Well, I'm going to come back. I want you 24 to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11 12 13 14	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base.	5 6 7 8 9 10 11 12 13 14	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again,
18And so certainly I'm not here trying to persuade18and Mr. Arst's report that it always said SRX plus Sky ATP;19Your Honor that Your Honor was wrong. I am simply, though,18and Mr. Arst's report that it always said SRX plus Sky ATP;20trying to cite to the record as we got it on appeal and what we19and, therefore, that doesn't make this case exceptional or even20trying to cite to the record as we got it on appeal and what we20that issue exceptional.21saw in there, and what we saw in there was Dr. Cole's expert21And I'll stop, Your Honor, and see if you have any22report where he talked about only SRX models that were capable22questions.23of interacting with Sky ATP, that that's all he considered.23THE COURT: Well, I'm going to come back. I want you24And then the damages expert, Mr. Arst, took that opinion and24to continue, but I want Mr. Kagan to respond to what I just	5 6 7 8 9 10 11 12 13 14 15	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead	5 6 7 8 9 10 11 12 13 14 15	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing
 Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and and, therefore, that doesn't make this case exceptional or even and, therefore, that doesn't make this case exceptional or even that issue exceptional. And I'll stop, Your Honor, and see if you have any questions. THE COURT: Well, I'm going to come back. I want you to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11 12 13 14 15 16	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead. MS. BROOKS: Oh, no. Thank you, Your Honor. And of	5 6 7 8 9 10 11 12 13 14 15 16	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that
 20 trying to cite to the record as we got it on appeal and what we 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 20 that issue exceptional. 21 And I'll stop, Your Honor, and see if you have any 22 questions. 23 THE COURT: Well, I'm going to come back. I want you 24 to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11 12 13 14 15 16 17	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead. MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input.	5 6 7 8 9 10 11 12 13 14 15 16 17	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP
 21 saw in there, and what we saw in there was Dr. Cole's expert 22 report where he talked about only SRX models that were capable 23 of interacting with Sky ATP, that that's all he considered. 24 And then the damages expert, Mr. Arst, took that opinion and 25 of interacting with Sky ATP, that that's all he considered. 26 And then the damages expert, Mr. Arst, took that opinion and 27 And I'll stop, Your Honor, and see if you have any 28 questions. 29 THE COURT: Well, I'm going to come back. I want you 20 to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11 12 13 14 15 16 17 18	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade	5 6 7 8 9 10 11 12 13 14 15 16 17 18	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP;
 report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and THE COURT: Well, I'm going to come back. I want you to continue, but I want Mr. Kagan to respond to what I just 	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead. MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though,	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even
23of interacting with Sky ATP, that that's all he considered.23THE COURT: Well, I'm going to come back. I want you24And then the damages expert, Mr. Arst, took that opinion and24to continue, but I want Mr. Kagan to respond to what I just	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional.
24 And then the damages expert, Mr. Arst, took that opinion and 24 to continue, but I want Mr. Kagan to respond to what I just	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional. And I'll stop, Your Honor, and see if you have any
	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable	$5 \\ 6 \\ 7 \\ 8 \\ 9 \\ 10 \\ 11 \\ 12 \\ 13 \\ 14 \\ 15 \\ 16 \\ 17 \\ 18 \\ 19 \\ 20 \\ 21 \\ 22 \\ 22 \\ 3 \\ 22 \\ 3 \\ 3 \\ 3 \\ 4 \\ 19 \\ 20 \\ 21 \\ 22 \\ 3 \\ 3 \\ 3 \\ 4 \\ 19 \\ 20 \\ 21 \\ 22 \\ 3 \\ 3 \\ 3 \\ 4 \\ 10 \\ 10 \\ 10 \\ 10 \\ 10 \\ 10 \\ 10 $	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional. And I'll stop, Your Honor, and see if you have any questions.
25 applied it only then to models that were capable of interacting 1 25 heard because it's important to me. I want to make sure I got	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional. And I'll stop, Your Honor, and see if you have any questions. THE COURT: Well, I'm going to come back. I want you
	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Now, you'll never convince me that it was it was not disclosed, it was new, and that's why I threw it out. So you'll never convince me that Finjan didn't make a what's the word on the football field when you completely go in the opposite direction? And that's what I believed then, that's what I believe now, and you're just arguing against something that I lived through. So I believe you're wrong on that. I believe that Finjan did flip-flop and come up with a different theory so that it could take advantage of a bigger revenue base. Okay. Go ahead. I interrupted you, but go ahead MS. BROOKS: Oh, no. Thank you, Your Honor. And of course I welcome the Court's input. And so certainly I'm not here trying to persuade Your Honor that Your Honor was wrong. I am simply, though, trying to cite to the record as we got it on appeal and what we saw in there, and what we saw in there was Dr. Cole's expert report where he talked about only SRX models that were capable of interacting with Sky ATP, that that's all he considered. And then the damages expert, Mr. Arst, took that opinion and	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	just also answer Your Honor's other question, which is if you find, for example, that you cannot be persuaded, that you believe that Finjan absolutely changed its damages theory and you think that that fact would cause this case to stand out on that issue, you do have the discretion to simply carve out that issue and ask Juniper to supply the Court with the numbers that the fees that they ran up to defend on that particular issue stand-alone. And so Your Honor certainly has the discretion to do that. I would submit, however, Your Honor, that, once again, because Finjan had a good faith belief that it wasn't changing its damages theory, it was relying on Dr. Cole's report that had always said what it said about Sky ATP SRX plus Sky ATP and Mr. Arst's report that it always said SRX plus Sky ATP; and, therefore, that doesn't make this case exceptional or even that issue exceptional. And I'll stop, Your Honor, and see if you have any questions. THE COURT: Well, I'm going to come back. I want you to continue, but I want Mr. Kagan to respond to what I just

DOCKET ALARM Find authenticated court documents without watermarks at <u>docketalarm.com</u>.

DOCKET A L A R M



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.