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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 FINJAN, INC.,

13 Plaintiff,

14 v.

15 JUNIPER NETWORKS, INC.,

16 Defendant.
17

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

**FINJAN'S BRIEF RESPONDING TO
JUNIPER'S SUBMISSION SEEKING
EXPERT FEES AND TRAVEL EXPENSES**

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

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27
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TABLE OF CONTENTS

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

	Page(s)
ARGUMENT	1
I. The Record Includes No Indications of Fraud or Abuse of the Judicial Process	1
A. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s Decision to Proceed to Trial on the ’494 Patent is Baseless	2
B. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s Trial Presentation on ’494 Damages is Baseless	2
C. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Presentation of Testimony About Finjan’s Licensing Practices is Baseless	3
D. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s ’494 Liability Case is Baseless	3
E. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s Decision Not to Drop the ’780 Patent After the First Showdown is Meritless.....	4
F. Juniper’s Allegation of Fraud/Abuse of Process in Connection With the Testimony of John Garland is Meritless.....	4
G. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s Accidental Misstatement About a Case’s Appellate History During an Oral Hearing is Meritless.....	5
II. Even Considering Juniper’s Cited Incidents Together, There is No Support for Juniper’s Proposed Sanction or For a Fraud/Abuse of Process Determination	7
III. Juniper’s Request for \$1,425,659.24 is Unreasonable and Excessive.....	9
IV. Juniper’s Proposal is Procedurally Improper	9
V. Conclusion	10

TABLE OF AUTHORITIES

Page(s)

Cases

1
2
3
4 *Amsted Indust., Inc. v. Buckeye Steel Castings Co.*,
5 23 F.3d 374 (Fed. Cir. 1994)..... 1
6 *Chambers v. NASCO*,
7 501 U.S. 32 (1991)..... 1, 8
8 *Kearney v. Salomon Smith Barney, Inc.*,
9 137 P.3d 914 (Cal. 2006) 4
10 *Lindemann Maschinenfabrik GmbH v. Am. Hoist & Derrick Co.*,
11 895 F.2d 1403 (Fed. Cir. 1990)..... 2
12 *MarcTec, LLC v. Johnson & Johnson*,
13 664 F.3d 907 (Fed. Cir. 2012)..... 1
14 *Moser v. Bret Harte Union High Sch. Dist.*,
15 366 F. Supp. 2d 944 (E.D. Cal. 2005)..... 6
16 *Novo Nordisk A/S v. Becton Dickinson & Co.*,
17 304 F.3d 1216 (Fed. Cir. 2002)..... 6
18 *Novo Nordisk A/S v. Becton Dickinson & Co.*,
19 96 F. Supp. 2d 309 (S.D.N.Y. 2000), *aff'd*, 304 F.3d 1216 (Fed. Cir. 2002) 5, 6
20 *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*,
21 572 U.S. 545 (2014)..... 8
22 *Oplus Technologies, Ltd. v. Vizio, Inc.*,
23 782 F.3d 1371 (Fed. Cir. 2015)..... 8, 9
24 *Raniere v. Microsoft Corp.*,
25 No. 3:15-cv-0540-M, 2016 WL 4626584 (N.D. Tex. Sept. 2, 2016) 7, 8
26 *Smith v. LoanMe, Inc.*,
27 483 P.3d 869 (Cal. 2021) 4
28

Statutes

25 Cal. Invasion of Privacy Act (Cal. Penal Code § 632)..... 4
26
27
28

1 **A. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s**
2 **Decision to Proceed to Trial on the ’494 Patent is Baseless**

3 First, Juniper complains that after the *Daubert* order in December 2018, Finjan failed to
4 “cut its losses” and “forego its baseless case regarding the ’494 Patent.” Juniper Br. 4–5.
5 Juniper’s suggestion that the decision to proceed to trial might show fraud or abuse of process is
6 incorrect as to both Finjan’s liability case and its damages case. As to liability, nothing in the
7 *Daubert* order suggested that Finjan’s technical allegations lacked merit. Although an adverse
8 damages decision may limit a case’s ultimate value, it does not on its own reduce a litigant’s right
9 to have triable liability claims heard by a jury. *Cf. Lindemann Maschinenfabrik GmbH v. Am.*
10 *Hoist & Derrick Co.*, 895 F.2d 1403, 1406–07 (Fed. Cir. 1990). And as to damages, the following
11 sections describe how there was neither fraud nor abuse of process there, either.

12 **B. Juniper’s Allegation of Fraud/Abuse of Process in Connection With Finjan’s**
13 **Trial Presentation on ’494 Damages is Baseless**

14 Next, Juniper claims that weaknesses in Finjan’s apportionment at trial amounted to fraud
15 or abuse of process. Juniper Br. 5. Not so. Finjan believed—in error, as it turned out—that its
16 trial case properly apportioned between patented and unpatented features. (*See* D.I. 336 at 212–13
17 (trial describing apportionment based on Juniper’s statements that “only 40 percent of [files] get
18 processed through the infringing components”); *also see id.* at 216 (“[THE COURT:] You have the
19 burden to apportion in some not just rational way, something that meets the standards of the *Blue*
20 *Coat* decision. MR. ANDRE: Your Honor, we will do so.”))

21 Of course, the Court disagreed with Mr. Andre and found Finjan’s presentation insufficient
22 as a matter of law (and subsequently exceptional under § 285).¹ But the exchanges above
23 completely contradict Juniper’s allegation of fraud/abuse of process. Until the moment the Court
24 struck Finjan’s damages presentation at trial, Finjan believed it had carried out the task set by the
25 Court and the law: to present a triable apportionment. Finjan may have been wrong in that belief,
26 but in no sense was it proceeding in bad faith.

27
28 ¹ Finjan acknowledges that the § 285 Order is binding before this Court. Finjan reserves its right
to seek appellate relief to that Order’s legal holdings and factual determinations.

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