

United States District Court
For the Northern District of California

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BROCADE COMMUNICATIONS SYSTEMS,)
INC., a Delaware corporation; and FOUNDRY)
NETWORKS, LLC, a Delaware limited liability)
company,)

Plaintiffs and Counterclaim Defendants,)

v.)

A10 NETWORKS, INC., a California)
corporation; LEE CHEN, an individual;)
RAJKUMAR JALAN, an individual; RON)
SZETO, an individual; DAVID CHEUNG, an)
individual; LIANG HAN, an individual; and)
STEVE HWANG, an individual,)

Defendants and Counterclaimants.)

Case No.: 10-CV-03428-LHK

ORDER GRANTING IN PART AND
DENYING IN PART A10'S MOTION
FOR SUMMARY JUDGMENT

On May 3, 2012, Defendants Lee Chen, Rajkumar Jalan, Ron Szeto, and Steve Hwang (collectively, the "Individual A10 Defendants") and A10 Networks, Inc. ("A10"; collectively "A10 Defendants") filed a motion for summary judgment ("A10's Mot."). Defendant David Cheung joined that motion. On May 17, 2012, Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (collectively, "Brocade") filed an opposition to A10's motion. On May 24, 2012, the A10 Defendants filed a reply. ECF No. 550. The Court held a hearing on A10's motion on June 8, 2012. The pretrial conference in this matter is set for June 27, 2012; the trial will begin on July 16, 2012. Because the parties require a ruling on this motion on an expedited basis, the Court will keep its analysis brief.

The parties are familiar with the factual and procedural background of this case, and the Court will not repeat it here. The Court refers the unfamiliar reader to its Orders of January 6, 2012. *See* ECF Nos. 434, 438. In short, Brocade alleges that in 2004, Mr. Chen, a co-founder of

1 Foundry (a wholly owned subsidiary of Brocade), secretly began to develop a new company,
2 Raksha Networks, while still working at Foundry. Mr. Chen left Foundry in August 2004, and
3 renamed his new company A10 Networks. Brocade alleges that Mr. Chen recruited Foundry's
4 employees Jalan, Szeto, Han, and Hwang. Brocade further alleges that these former Foundry
5 employees (including Mr. Chen) took Brocade's intellectual property with them to A10.
6 According to Brocade, A10 used this intellectual property to develop a competing product, the AX
7 Series, which allegedly infringes several Brocade patents. Additional facts are discussed below, as
8 necessary, in the Court's analysis.

9 Brocade's third amended complaint alleges the following claims: (a) patent infringement
10 (10 asserted claims from six patents); (b) trade-secret misappropriation (20 trade secrets); (c)
11 copyright infringement (5 copyrights); (d) breach of contract; (e) breach of fiduciary duty; (f)
12 breach of loyalty; (g) interference with contract and prospective economic advantage; and (h)
13 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*

14 A10 moves for summary judgment on all of Brocade's claims. A10 argues that Brocade
15 has adduced no evidence of patent infringement, copyright infringement, trade secret
16 misappropriation, or any of its other state law claims. Brocade has withdrawn its breach of
17 fiduciary duty, breach of loyalty, and UCL claims. *See* Opp'n 22. Accordingly, A10's motion is
18 GRANTED as to Brocade's breach of fiduciary duty, breach of loyalty, and UCL claims. The
19 Court sets forth the general standard for summary judgment and then discusses each of Brocade's
20 remaining claims in turn.

21 I. Legal Standard

22 Under Federal Rule of Civil Procedure 56(a), "the court shall grant summary judgment if
23 the movant shows that there is no genuine dispute as to any material fact and the movant is entitled
24 to judgment as a matter of law." Material facts are those that may affect the outcome of the case.
25 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is
26 "genuine" if the evidence is such that "a reasonable jury could return a verdict for the nonmoving
27 party." *See id.* "[I]n ruling on a motion for summary judgment, the judge must view the evidence
28 presented through the prism of the substantive evidentiary burden." *Id.* at 254. The question is

1 “whether a jury could reasonably find either that the [moving party] proved his case by the quality
2 and quantity of evidence required by the governing law or that he did not.” *Id.* “[A]ll justifiable
3 inferences must be drawn in [the nonmovant’s] favor.” *See United Steelworkers of Am. v. Phelps*
4 *Dodge Corp.*, 865 F.2d 1539, 1542 (9th Cir. 1989) (en banc) (citing *Liberty Lobby*, 477 U.S. at
5 255).

6 The moving party bears the initial responsibility for informing the district court of the basis
7 for its motion and identifying those portions of the pleadings, depositions, interrogatory answers,
8 admissions and affidavits, if any, that it contends demonstrate the absence of a genuine issue of
9 material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A party opposing a properly
10 supported motion for summary judgment “may not rest upon the mere allegations or denials of
11 [that] party’s pleading, but . . . must set forth specific facts showing that there is a genuine issue for
12 trial.” *See Fed. R. Civ. P. 56(e)*; *see also Liberty Lobby*, 477 U.S. at 250. The opposing party need
13 not show the issue will be resolved conclusively in its favor. *See Liberty Lobby*, 477 U.S. at 248–
14 49. All that is necessary is submission of sufficient evidence to create a material factual dispute,
15 thereby requiring a jury or judge to resolve the parties’ differing versions at trial. *See id.*

16 As the Federal Circuit has noted, summary judgment of noninfringement is a two-step
17 analysis. “First, the claims of the patent must be construed to determine their scope. Second, a
18 determination must be made as to whether the properly construed claims read on the accused
19 device.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1304 (Fed. Cir. 1999)
20 (internal citation omitted). “[S]ummary judgment of non-infringement can only be granted if, after
21 viewing the alleged facts in the light most favorable to the non-movant, there is no genuine issue
22 whether the accused device is encompassed by the claims.” *Id.* at 1304.

23 **II. Patent Infringement against A10, Chen, and Jalan**

24 Brocade alleges that Defendants A10, Chen, and Jalan infringe eight apparatus claims and
25 two method claims from six patents through either: (1) direct infringement; (2) the doctrine of
26 equivalents; or (3) indirectly through inducement or contributory infringement. The parties
27 disagree as to the legal standard that should apply to these claims.
28

1 As an initial matter, Brocade has submitted only argument without citing any evidence that
2 Messrs. Chen and Jalan engaged in any kind of patent infringement. *See* Opp'n 7-11. Federal Rule
3 of Civil Procedure 56 requires a party asserting that a fact is genuinely disputed to support the
4 assertion by: "citing to particular parts of materials in the record, including depositions, documents,
5 electronically stored information, affidavits or declarations, stipulations (including those made for
6 purposes of the motion only), admissions, interrogatory answers, or other materials." Brocade has
7 not done so with regard to its patent infringement claims against Messrs. Chen and Jalan.
8 Although Brocade states the proposition of law that corporate officers who actively aid and abet
9 their corporation's infringement may be personally liable for inducing infringement, Brocade does
10 not cite *any* facts, let alone sufficient facts to raise a genuine factual dispute as to whether this
11 proposition of law applies to Messrs. Chen and Jalan. Opp'n 11 (citing *Orthokinetics, Inc. v.*
12 *Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1579 (Fed. Cir. 1986). Accordingly A10's motion for
13 summary judgment is GRANTED as to all patent infringement claims against Messrs. Chen and
14 Jalan.

15 A. Legal Standard

16 1. Direct Infringement

17 A10 argues that for the apparatus claims at issue here, Brocade is required to show more
18 than the capacity to perform a particular claim element; rather "Plaintiffs must show evidence of
19 direct infringement by showing that customers actually use the infringing features." Mot. 5 (citing
20 *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1329 (Fed. Cir. 2010); *Finjan, Inc. v. Secure*
21 *Computing Corp.*, 626 F.3d 1197, 1204 (Fed. Cir. 2010)). Brocade, on the other hand, argues that
22 "[t]here is no requirement that [an] apparatus be used in a particular manner" to establish direct
23 infringement. Opp'n 7 (citing *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1468
24 (Fed. Cir. 1990)).

25 The correct standard to apply to apparatus claims depends on the language of a particular
26 claim. As the Federal Circuit has cautioned, "'in every infringement analysis, the language of the
27 claims, as well as the nature of the accused product, dictates whether an infringement has
28 occurred.'" *Finjan*, 626 F.3d at 1204 (quoting *Fantasy Sports Props. v. Sportsline.com, Inc.*, 287

1 F.3d 1108, 1118 (Fed. Cir. 2002)). Thus, “‘to infringe a claim that recites capability and not actual
2 operation, an accused device ‘need only be capable of operating’ in the described mode.’” *Id.*
3 (quoting *Intel Corp. v. U.S. Int’l Trade Comm’n*, 946 F.2d 821, 832 (Fed. Cir. 1991); citing *Ball*
4 *Aerosol & Specialty Container, Inc. v. Ltd. Brands, Inc.*, 555 F.3d 984, 994 (Fed. Cir. 2009)).

5 In contrast, “[t]o infringe a method claim, a person must have practiced all steps of the
6 claimed method.” *Finjan*, 626 F.3d at 1206. “[A] method or process claim is directly infringed
7 only when the process is performed.” *Joy Techs, Inc. v. Flakt, Inc.*, 6 F.3d 770, 773 (Fed. Cir.
8 1993) (citing *Atlantic Thermoplastics Co. v. Faytex Corp.*, 970 F.2d 834, 836 (Fed. Cir. 1992)).

9 **2. Doctrine of Equivalents**

10 To prove infringement under the doctrine of equivalents, a plaintiff must show that the
11 allegedly infringing device and claimed limitation perform “substantially the same function in
12 substantially the same way to obtain substantially the same result.” *Warner-Jenkinson Co. v.*
13 *Hilton Davis Chem. Co.*, 520 U.S. 17, 38 (1997); *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*,
14 324 F.3d 1308, 1317 (Fed. Cir. 2003). Courts apply the function-way-result analysis to each
15 limitation of a claim, and there can be no infringement “if even one limitation of a claim or its
16 equivalent is not present in the accused device.” *Lockheed Martin*, 324 F.3d at 1321; *see also*
17 *Pennwalt Corp. v. Durand-Wayland, Inc.*, 833 F.2d 931, 935-36 (Fed. Cir. 1987).

18 **3. Indirect Infringement**

19 In order to prove vicarious liability for indirect infringement, a plaintiff must prove that: (1)
20 “the defendant’s actions led to direct infringement”; and (2) “the defendant possessed the requisite
21 knowledge or intent to be held vicariously liable.” *Dynacore Holdings Corp. v. U.S. Philips Corp.*,
22 363 F.3d 1263, 1274-75 (Fed. Cir. 2004) (citing *Hewlett-Packard Co.*, 909 F.2d at 1469; *Met-Coil*
23 *Sys. v. Korners Unlimited, Inc.*, 803 F.2d 684, 687 (Fed. Cir. 1986)). A patentee may prove
24 indirect infringement through direct or circumstantial evidence. *Metabolite Labs., Inc. v. Lab.*
25 *Corp. of Am. Holdings*, 370 F.3d 1354, 1365 (Fed. Cir. 2004).

26 A party who “actively induces infringement of a patent shall be liable as an infringer.” 35
27 U.S.C. § 271(b). Under this provision, “[t]he plaintiff has the burden of showing that the alleged
28 infringer’s actions induced infringing acts and that he knew or should have known his actions

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.