

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FINJAN, INC.,
Plaintiff,
v.
CISCO SYSTEMS INC.,
Defendant.

Case No. [17-cv-00072-BLF](#)

ORDER GRANTING IN PART AND DENYING IN PART CISCO’S MOTION FOR PARTIAL SUMMARY JUDGMENT OF NON-INFRINGEMENT

[Re: ECF 378]

United States District Court
Northern District of California

Plaintiff Finjan, Inc. (“Finjan”) brings this patent infringement lawsuit against Defendant Cisco Systems, Inc. (“Cisco”), alleging infringement of five of Finjan’s patents directed to computer and network security: U.S. Patent Nos. 6,154,844 (the “’844 Patent”); 6,804,780 (the “’780 patent”); 7,647,633 (the “’633 patent”); 8,141,154 (the “’154 patent”); and 8,677,494 (the “’494 patent”). Cisco seeks summary judgment of non-infringement on 3 of the 5 asserted patents: the ’154 Patent, the ’633 Patent, and the ’780 Patent. Cisco also seeks summary judgment of no pre-suit damages. The Court heard oral arguments on January 9, 2020 (the “Hearing”).

I. THE ACCUSED PRODUCTS

The infringement allegations subject to Cisco’s motion for summary judgment primarily relate to Cisco’s Advanced Malware Protection (“AMP”) products under the following categories: (1) AMP Gateway/Cloud Products (for Enterprise) and AMP for Endpoints (collectively, “AMP Products”) and (2) Talos (or its component, [REDACTED] and Threat Grid (collectively “Cisco Sandboxes”). Cisco Systems, Inc.’s Motion for Partial Summary Judgment (“MSJ”) at 1, ECF 382-3 (redacted version filed at ECF 378); Plaintiff Finjan, Inc.’s Opposition to Defendant Cisco Systems, Inc.’s Motion for Partial Summary Judgment (“Opp’n”) at 1-2, ECF 400-4 (redacted version filed at ECF 401). The AMP Products screen incoming files that are intended for a user’s

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1 device for malicious content. MSJ at 1.

2 For the AMP Gateway Products, a requested file is processed as follows: [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 [REDACTED] MSJ at 2. The AMP appliance may also send a copy of an unknown file to Cisco’s
9 “sandboxes,” known as Threat Grid and [REDACTED] *Id.* AMP for Endpoints operates similarly
10 to AMP Gateway, except it runs on client (end-user) devices instead of running at a gateway. *Id.*

11 Finjan also accuses the “URL rewriting” feature within the Cisco E-mail Security Appliance
12 (“ESA”) with respect to the ’154 Patent only. MSJ at 2; Opp’n at 2. Cisco’s ESA products screen
13 incoming emails for malicious content before they are delivered to a user’s inbox.

14 **II. LEGAL STANDARD**

15 Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary
16 judgment is appropriate if the evidence and all reasonable inferences in the light most favorable to
17 the nonmoving party “show that there is no genuine issue as to any material fact and that the moving
18 party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
19 (1986). Rule 56 authorizes a court to grant “partial summary judgment” to dispose of less than the
20 entire case and even just portions of a claim or defense. *See* Fed. R. Civ. P. advisory committee’s
21 note, 2010 amendments.

22 The moving party bears the burden of showing there is no material factual dispute, by
23 “identifying for the court the portions of the materials on file that it believes demonstrate the absence
24 of any genuine issue of material fact.” *T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass’n*, 809
25 F.2d 626, 630 (9th Cir. 1987). In judging evidence at the summary judgment stage, the Court “does
26 not assess credibility or weigh the evidence, but simply determines whether there is a genuine factual
27 issue for trial.” *House v. Bell*, 547 U.S. 518, 559-60 (2006). A fact is “material” if it “might affect

28 the outcome of the suit under the governing law” and a dispute as to a material fact is “genuine” if

1 there is sufficient evidence for a reasonable trier of fact to decide in favor of the nonmoving party.
2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3 In cases like this, where the nonmoving party will bear the burden of proof at trial on a
4 dispositive issue (*e.g.*, patent infringement), the nonmoving party must “go beyond the pleadings
5 and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’
6 designate ‘specific facts showing that there is a genuine issue for trial.’” *Celotex*, 477 U.S. at 324.
7 For a court to find that a genuine dispute of material fact exists, “there must be enough doubt for a
8 reasonable trier of fact to find for the [non-moving party].” *Corales v. Bennett*, 567 F.3d 554, 562
9 (9th Cir. 2009). In considering all motions for summary judgment, “[t]he evidence of the non-
10 movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson*, 477
11 U.S. at 255; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

12 **III. DISCUSSION**

13 **A. The Parties’ Dispute Regarding Finjan’s Expert Reports on Infringement**

14 As an initial matter, the Court addresses a procedural dispute regarding Finjan’s expert
15 reports on infringement. Finjan’s infringement theories in this case have been the subject of
16 extensive motion practice. On April 18, 2019, Finjan moved to supplement (or amend) its
17 infringement contentions pursuant to Local Patent Rule 3-6. ECF 231. On June 11, 2019,
18 Magistrate Judge van Keulen denied Finjan’s motion and rejected its assertion that it was simply
19 adding the codenames of particular components to its previous contentions regarding the associated
20 functionality. ECF 274 at 6-7. Finjan sought relief from Judge van Keulen’s order, which this Court
21 denied on July 17, 2019. ECF 304 at 3-4. Finjan served its expert infringement reports – which
22 included the codenames in dispute – and Cisco moved to strike. ECF 312. The Court granted
23 Cisco’s motion and directed Finjan’s experts to “redraft their reports to remove the disallowed
24 terminology and Talos-only allegations, and to ensure that their opinions track the disclosures in
25 Finjan’s operative infringement contentions.” ECF 397 at 7. At the Hearing, the parties informed
26 the Court that they had not yet finalized the revised infringement expert reports. *See* Transcript of
27 Proceedings Before the Honorable Beth Labson Freeman on January 9, 2020 (“Hr’g Tr.”) at 49:18-

1 As a result, the basis for Cisco’s present motion for summary judgment is Finjan’s now-
2 stricken expert reports that include the disallowed codenames. In several instances, Cisco seeks
3 summary judgment on the ground that that the accused codenames have been stricken and thus,
4 cannot be relied upon to show infringement. The Court rejects those arguments wholesale without
5 prejudice. As the Court explained at the Hearing, the Court struck certain codenames from Finjan’s
6 expert reports – but not the experts’ opinions generally. Hr’g Tr. at 50:22-51:6. The Court further
7 allowed Finjan to amend its reports and substitute the disallowed codenames with functionalities
8 that were included in Finjan’s infringement contentions. As of the date of this Order, the Court is
9 not aware of any amended expert reports. Accordingly, the Court decides on Cisco’s motion for
10 summary judgment under the assumption that the codenames used in the expert reports (and the
11 parties’ briefing) have a corresponding functionality in the infringement contentions and thus, are
12 still in the case. If, however, Finjan is unable to show that the functionalities corresponding to the
13 codenames were included in its operating infringement contentions, the Court would entertain that
14 dispute in a motion *in limine*. See Hr’g Tr. at 159:14-17.

15 **B. Non-infringement of the ’154 Patent**

16 **1. Background of the ’154 Patent**

17 The ’154 patent is directed to a system and a method “for protecting a client computer from
18 dynamically generated malicious content[.]” ’154 Patent at Abstract. Conventional reactive anti-
19 virus applications perform file scans looking for a virus’s signature against a list known virus
20 signatures kept on a signature file and thus, cannot protect against first time viruses or if a user’s
21 signature file is out of date. ’154 Patent at 1:25-31, *id.* at 2:32-37. Proactive anti-virus application,
22 on the other hand, use “a methodology known as ‘behavioral analysis’ to analyze computer content
23 for the presence of viruses.” *Id.* at 1:56-58.

24 Dynamic virus generation occurs at runtime where dynamically generated HTML contains
25 malicious JavaScript code. ’154 Patent at 3:53-64. For example the JavaScript function
26 document.write() is used to generate dynamic HTML at runtime. *Id.* at 3:53-57. Malicious code
27 inserted in a document.write() function would not be caught prior to runtime because the malicious

28 code is not present in the content prior to runtime. *Id.* at 2:65-4:4. To this point, the ’154 Patent

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