

EXHIBIT 2



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

<p>FINJAN, LLC,</p> <p>Plaintiff,</p> <p>vs.</p> <p>SONICWALL, INC., a Delaware Corporation,</p> <p>Defendant.</p>	<p>Case No. 5:17-cv-04467-BLF</p> <p>EXPERT REPORT OF DeForest McDuff, Ph.D.</p>
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R. D. McDuff

DeForest McDuff, Ph.D.

September 4, 2020

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5. My curriculum vitae contains more details on my education, experience, and expert testimony and is provided as Attachment A-1.

b. Scope of work

6. For this report, I was asked to evaluate potential economic damages resulting from the alleged infringement of U.S. Patent Nos. 6,154,844 (“the ‘844 Patent”); 6,804,780 (“the ‘780 Patent”); 6,965,968 (“the ‘968 Patent”); 7,058,822 (“the ‘822 Patent”); 7,613,926 (“the ‘926 Patent”); 7,647,633 (“the ‘633 Patent”); 7,975,305 “the ‘305 Patent”); 8,141,154 (“the ‘154 Patent”); 8,225,408 (“the ‘408 Patent”); 8,677,494 (“the ‘494 Patent”), (collectively the “Patents-at-Issue”) by SonicWall, Inc. This report is a statement of my opinions and the bases and reasons for those opinions.¹ In forming the opinions expressed in this report, I have relied upon my education, experience, and materials considered or relied upon, provided as Attachment A-2.

7. In connection with my work on this matter, Insight Economics has been retained by Kramer Levin Naftalis and Frankel LLP on behalf of Finjan, Inc. (now Finjan LLC). Insight Economics is being compensated at a rate of \$700 per hour for my work and at lower rates for time spent by others on my team. The compensation of Insight Economics does not depend on the substance of my testimony or the outcome of this matter.

c. Summary of opinions

8. As explained in detail throughout this report, I have reviewed numerous materials including the testimony of Finjan and SonicWall employees, interviews with Finjan and technical experts, documents produced in this case, and public research materials. The following provides some summary points on the conclusions I have drawn from my analysis:

- a. Hypothetical negotiations. The hypothetical negotiations in this case would have been between Finjan as the licensor and SonicWall as the licensee on the eve of first infringement for each Asserted Patent. As a practical matter, and is common in industry licensing and Finjan licensing, the parties may have negotiated a single license to all of the Patents-at-Issue at the earliest hypothetical negotiation. Under both scenarios, the royalty amount resulting from the hypothetical negotiation would

¹ This report reflects only my current opinions, which are subject to change based upon additional information, analysis, and/or opinions or other experts.

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- be the same and changes to the hypothetical negotiation dates do not materially affect my conclusions. See Section 4.b below.
- b. Royalty structure. The reasonable royalty calculated in this report is based on the value of the past and projected infringement because, when negotiating a license to the patents and consistent with Finjan's license agreements, the parties would have desired to resolve the license with an amount that reasonably compensates Finjan for the full period of alleged and expected infringement. Given that some of the Patents-at-Issue do not expire until after the trial date currently scheduled, I have projected accused revenues based on constant annual amounts through the expiration of the last Patent-in-Suit. My analysis provides breakdowns of the reasonable royalty based on (a) the value of infringement that has already occurred during each year, (b) the present value of projected infringement at the time of this report, and (c) the present value of royalties at the start of the damages period for the first Patent-at-Issue. See Sections 4.e and 4.f below.
- c. Reasonable royalty. I use three approaches to calculate a reasonable royalty. The first approach considers the infringing sales and associated revenues using Finjan's historical royalty rates of 8 and 16 percent, applied to a royalty base that is apportioned based on discussion and consideration of the technical expert opinions. See Sections 4.e, 4.f, 4.g, and throughout this report.

Second, I consider an alternative royalty structure based on the per-unit royalty according to the number of units sold by SonicWall and comparable SonicWall licenses relating to the claimed subject matter. In the second royalty structure, the royalty is a fee that SonicWall would owe Finjan as reasonable compensation for each unit SonicWall sells that incorporates the infringing technology, converted to a single payment amount as described above. See Section 4.h.i.

Third, I consider an alternative royalty structure based on the per-scan royalty according to the number of times SonicWall has used the infringing technology (each time a "scan" occurs) and a price per scan based on a comparable Finjan negotiation and agreement. In the third royalty structure, the royalty is a fee that SonicWall would owe Finjan as a reasonable compensation for each scan, converted to a single payment amount as described above. See Section 4.h.ii.

While I have calculated royalties for each patent individually, the parties would have practically and reasonably agreed to a license to all Patents-at-Issue at the hypothetical negotiations. Given that some of the infringing products, specific accused functionality, infringement dates, and expiration dates may overlap, the royalties for each patent are not entirely additive. The primary reasonable royalty

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amounts for the alleged infringement for all of the Patents-at-Issue in this case, taking into consideration and removing any overlap in royalties, is determined based on SonicWall worldwide sales (for which infringement of the Patents-in-Suit occurs in the United States), where the value of royalties on past sales is not discounted and projected sales are discounted to present value at the time of this report. These amounts are approximately \$160 million (see Attachment B-2) based on the apportioned royalty base methodology (or \$119 million based on all past and projected sales discounted to the start of damages) (see Attachment B-1); \$30.8 million based on a per-unit royalty (or \$22.9 million based on all past and projected sales discounted to the start of damages) (see Attachment I-1); and \$114 million based on a per-scan royalty (or \$90.8 million based on all past and projected sales discounted to the start of damages) (see Attachment J-1). Additional damages scenarios and amounts based on individual patents, territories, time periods, and products are provided in the attachments of this report.

The most reasonable royalty is approximately \$160 million (see Attachment B-2) based on the apportioned royalty base methodology. This figure is the most reasonable amount, because, among other reasons discussed below, it is based on (1) revenues that SonicWall generated using the infringing technology, (2) Finjan's licensing rates of 8% and 16%, and (3) the apportionment percentages for each apportionment group and Patent-at-Issue. The per-scan royalty of \$114 million provides a supportive and confirmatory measure of damages, since the per-scan royalty is based upon the use of the infringing technologies via scans. In contrast, the per-unit royalty results in a lower dollar figure than the other two methods, which is based on a more conservative per-unit royalty of \$9.50 for Capture ATP functionality applied to infringing units according to an apportioned per-unit royalty structure for SonicWall's Accused Products (and also conservative compared to the 12.375% in the same agreement).

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