UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FINJAN LLC,
Plaintiff,
v.

SONICWALL, INC.,
Defendant.

Case No. 17-cv-04467-BLF

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

Plaintiff Finjan, Inc. ("Finjan") brings this patent infringement lawsuit against Defendant SonicWall, Inc. ("SonicWall"), alleging infringement of eight[1] of Finjan's patents: 6,154,844 (the "'844 Patent"), 6,804,780 (the "'780 Patent"), 7,613,926 (the "'926 Patent"), 8,141,154 (the "'154 Patent"), 8,677,494 (the "'494 Patent"), 7,975,305 (the "'305 Patent"), 8,225,408 (the "'408 Patent"), and 6,965,968 (the "'968 Patent") (collectively, the "Asserted Patents"). Complaint ("Compl."), ECF 1. Finjan alleges that it is entitled to enhanced damages pursuant to 35 U.S.C. § 284 because SonicWall has engaged in willful infringement of each of the Asserted Patents. *Id.* ¶¶ 72, 90, 106, 123, 140, 158, 170, 189, 206, 224.

Before the Court is SonicWall's Motion for Partial Summary Judgment. Motion ("Mot."), ECF 319-3; *see also* ECF 320 (redacted motion). On December 21, 2020, Finjan filed an opposition brief to the motion. Opposition Brief ("Opp."), ECF 327-4; *see also* ECF 326 (redacted opposition brief). On December 31, 2020, SonicWall filed a reply brief. Reply Brief ("Reply"),

[1] Finjan originally alleged infringement of ten patents. *See* Compl. The parties have since stipulated dismissal of Finjan's claims of infringement of U.S. Patent Nos. 7,058,822 and

ECF 335-3; *see also* ECF 336 (redacted reply brief). The Court heard oral arguments on January 14, 2021. ECF 341; *see also* Transcript ("Tr."), ECF 354. The Court GRANTS IN PART and DENIES IN PART SonicWall's Motion for Partial Summary Judgment.

I. THE ACCUSED PRODUCTS

The infringement allegations subject to SonicWall's motion for summary judgment relate to SonicWall's cybersecurity products, to include (1) Gateways; (2) Email Security products ("ES products," also referred to as "ESA"); (3) Capture Advanced Threat Protection ("Capture ATP"); (4) Gateways and Capture ATP; (5) ES products and Capture ATP; (6) Capture Client and Capture ATP; (7) Gateways and WAN Acceleration Appliance (WXA). Mot. at v.

SonicWall describes its products as follows: ES products receive emails that may contain attachments and perform numerous security-related tasks. In certain situations, the ES products may send email attachments to Capture ATP for analysis. SonicWall Senior Vice President and Chief Technology Officer John Gmuender Declaration ("Gmuender Decl."), ECF 319-5 ¶ 8. Gateways operate similarly to ES products, but [redacted] *Id.* at ¶ 5. When a Gateway sends packets to Capture ATP, [redacted]. *Id.* at ¶ 12. [redacted] *Id.* at ¶¶ 5, 8. Capture Client runs on an endpoint device. Just like Gateways and ES products, Capture Client can send files to Capture ATP for analysis. *Id.* at ¶ 10. Capture ATP analyzes files as they are received. As part of its analysis, Capture ATP [redacted] *Id.* at ¶¶ 12-13.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary judgment is appropriate if the evidence and all reasonable inferences in the light most favorable to

moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The current version of Rule 56 authorizes a court to grant "partial summary judgment" to dispose of less than the entire case and even just portions of a claim or defense. *See* Fed. R. Civ. P. advisory committee's note, 2010 amendments; *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1232 (N.D. Cal. 2015). As such, a court can, "when warranted, selectively fillet a claim or defense without dismissing it entirely." *Id*.

The moving party bears the burden of showing there is no material factual dispute, by "identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact." *T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). In judging evidence at the summary judgment stage, the Court "does not assess credibility or weigh the evidence, but simply determines whether there is a genuine factual issue for trial." *House v. Bell*, 547 U.S. 518, 559–60 (2006). A fact is "material" if it "might affect the outcome of the suit under the governing law," and a dispute as to a material fact is "genuine" if there is sufficient evidence for a reasonable trier of fact to decide in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In cases like this, where the nonmoving party will bear the burden of proof at trial on a dispositive issue (e.g., patent infringement), the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324. For a court to find that a genuine dispute of material fact exists, "there must be enough doubt for a reasonable trier of fact to find for the [non-moving party]." *Corales v. Bennett*, 567 F.3d 554, 562 (9th Cir. 2009). In considering all motions for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255.

SonicWall asks the Court to issue an Order finding that:

- SonicWall does not infringe claim 1 of Patent '154;
- The combination of SonicWall's Email Security products and Capture ATP cannot infringe the asserted claims of Patent '844, '494 and '926;
- SonicWall Gateways do not receive "Downloadables" and therefore cannot infringe the asserted claims 10 and 14 of Patent '494, claims 41 and 43 of Patent '844, and the asserted claim of Patent '780 Patent;
- SonicWall does not infringe the asserted claims Patents '305 and '408 based on a combination of separate, remote computers;
- SonicWall does not infringe the asserted claims of Patents '926 and '305;
- Finjan is not entitled to a royalty on SonicWall's Non-U.S. Sales; and
- Finjan is not entitled to damages prior to actual notice of infringement of Patents '926, '968, '844, and '780.

Mot. at viii. The Court considers each request in turn.

A. Non-Infringement of the '154 Patent

SonicWall first requests the Court find that the Accused Products do not infringe claim 1 of Patent '154. The '154 Patent is directed to a system and a method "for protecting a client computer from dynamically generated malicious content[.]" '154 Patent at Abstract. Conventional reactive antivirus applications perform file scans looking for a virus's signature against a list known virus signatures kept on a signature file and thus, cannot protect against first time viruses or if a user's signature file is out of date. '154 Patent at 1:25-31, *id*. at 2:32-37. Proactive anti-virus application, on the other hand, use "a methodology known as 'behavioral analysis' to analyze computer content for the presence of viruses." *Id*. at 1:56-58.

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

malicious code is not present in the content prior to runtime. *Id*. at 3:65-4:4. To this point, the '154 Patent concerns a "new behavioral analysis technology [that] affords protection against dynamically generated malicious code, in addition to conventional computer viruses that are statically generated." *Id*. at 4:31-34.

The basic setup of the '154 Patent involves three components: (1) gateway computer including a content modifier, (2) client computer including a content processor, and (3) security computer including an inspector, a database of client security policies, and an input modifier. '154 Patent at 9:5-11. A preferred embodiment describes a gateway computer that receives content including a call to an original function and an input. *Id*. at 5:6-9. The gateway computer then substitutes the call to the original function with a corresponding call to a substitute function, which operates to send the input to a security computer for inspection. *Id*. at 5:10-15. The gateway computer transmits the "modified content from the gateway computer to the client computer, processing the modified content at the client computer." *Id*. at 5:13-15. The client computer then transmits "the input to the security computer for inspection when the substitute function is invoked." *Id*. at 5:15-17. The security computer first determines "whether it is safe for the client computer to invoke the original function with the input." *Id*. at 5:17-19. The security computer then transmits "an indicator of whether it is safe for the client computer to invoke the original function with the input," to the client computer. *Id*. at 5:19-22. The client computer invokes the original function "only if the indicator received from the security computer indicates that such invocation is safe." *Id*. at 5:22-24.

Claim 1 of the '154 Patent provides:

> A system for protecting a computer from dynamically generated malicious content, comprising:
>
> a content processor (i) for processing content received over a network, the content including a call to a *first function*, and the call including an input, and (ii) for invoking a *second function* with the input, only

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