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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FINJAN, INC., <p style="text-align: right;">Plaintiff,</p> v. ESET, LLC and ESET SPOL. S.R.O., <p style="text-align: right;">Defendants.</p>	Case No.: 17CV183 CAB (BGS) ORDER SETTING REMAINING DISCOVERY DEADLINES AS TO '305 PATENT [ECF 820, 822]
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Discovery as to the '305 Patent was stayed from May 7, 2018 to July 23, 2020. (ECF 251, 802.) After the stay was lifted, the Court ordered the parties to file a joint discovery plan to address completion of discovery. (ECF 811.) The parties submitted competing proposals, however they only addressed completion of written discovery. (ECF 813.) The Court already set the deadlines below based on the proposals previously filed:

Event related to the '305 Patent	Deadline
Eset to complete supplemental responses to technical interrogatories	October 19, 2020
Eset to provide: <ul style="list-style-type: none"> • Supplemental source code • Supplemental production of technical documents • Supplemental financial documents 	November 9, 2020

1	<ul style="list-style-type: none"> • Supplemental responses to financial interrogatories and interrogatory nos. 6, 10, and 12 	
2		
3	Finjan to provide:	
4	<ul style="list-style-type: none"> • Responses to Supplemental interrogatories, including, financial, prior art, and reduction to practice, specifically nos. 1, 2, 3, 8, 9, 10, 11, 12, 14, 15, 18, 19, 21, 23 	
5		
6	Finjan to provide supplemental infringement contentions	November 18, 2020
7	Last day to serve additional written discovery requests ¹	November 25, 2020
8	Eset to provide:	December 14, 2020
9	<ul style="list-style-type: none"> • Supplemental invalidity contentions • Supplemental election of prior art 	
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13 The Order setting these deadlines also required the parties to provide an updated
14 joint discovery plan that proposed a schedule to complete the remaining discovery as to
15 the '305 Patent.

16 The parties have again submitted competing proposals for the completion of
17 discovery. (ECF 820.) In summary, Eset argues a longer schedule is appropriate
18 because: (1) the depositions of the two inventors on the '305 Patent will require
19 utilization of the Hague Convention because the deponents are in Israel; (2) Finjan was
20 recently acquired by Fortress Investment Group, LLC, requiring additional discovery; (3)
21 even being conducted remotely, there may be significant challenges in conducting
22 depositions given COVID-19 travel restrictions, time zone differences, and restrictions on
23 access to source code that may make remote depositions on the source code challenging;

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26 ¹ In setting this deadline, the Court is not necessarily authorizing new discovery requests
27 as a general matter or approving either party delaying discovery requests to this deadline.
28 The Court recognizes fact discovery was ongoing when the case was stayed however, as
would always be the case, the parties should initiate discovery as soon as possible and
responsive discovery should not be cumulative of discovery already provided.

1 (4) possible delays in access to source code given Eset’s Slovakian headquarters are
 2 closed and employees are working from home as a result of rising COVID-19 cases; and
 3 (5) anticipated delays resulting from COVID-19 restrictions. Finjan proposes a shorter
 4 schedule, arguing it should be expedited because it only addresses one patent, depositions
 5 can be conducted remotely, including those dealing with source code, there is no need for
 6 discovery regarding Finjan’s acquisition, and Eset should not be deposing the inventors
 7 are the ‘305 Patent.

8 Having considered the parties arguments,² the Court sets the following deadlines
 9 for the remainder of discovery.

Event related to the ‘305 Patent	Deadline
Close of fact discovery	January 20, 2021
Opening Expert Reports	February 8, 2021
Rebuttal Expert Reports	February 26, 2021
Close of expert discovery	March 12, 2021

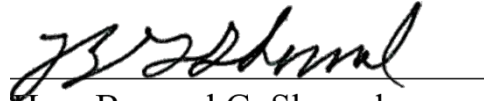
17 In setting these deadlines, the Court is not precluding the parties from seeking
 18 extensions as circumstances warrant, particularly those related to COVID-19 restrictions.
 19 The Court recognizes that some of the concerns raised by Eset may result in the need for
 20 extension of these deadlines. However, instead of setting the schedule to accommodate
 21 issues that may arise, the Court expects the parties will proceed diligently to attempt to
 22 meet the deadlines, meet and confer when they cannot be met, and only seek extensions
 23 when the need for an extension arises. The Court also reminds the parties that any
 24 request should be supported by a declaration identifying the discovery that has been
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 27
 28 ² The Court is not resolving any of these disagreements and expects that the parties will
 timely raise any discovery disputes under the Chambers Rules as they arise.

1 completed, the discovery that remains, and explains why the current deadline cannot be
2 met, (Chambers Rule V.C.), and otherwise complies with the Chambers Rules.

3 **IT IS SO ORDERED.**

4 Dated: November 19, 2020



Hon. Bernard G. Skomal
United States Magistrate Judge

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