IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN SOFTWARE, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-369 (GMS)
	)	
SECURE COMPUTING CORPORATION, *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM

I. INTRODUCTION

Presently before the court are the parties' post-trial motions in the above-captioned patent infringement action. For the reasons that follow, the court will deny all of the defendants' post-trial motions (D.I. 253), as well as the plaintiff's renewed motion for invalidity of the '361 patent (D.I. 243). The court, however, will grant the plaintiff's motion for a permanent injunction (D.I. 283). The court will also grant in part the plaintiff's motion for enhanced damages (D.I. 245) and its motion to amend the judgment and for an accounting of sales (D.I. 246).

II. PROCEDURAL BACKGROUND

On June 6, 2006, plaintiff Finjan Software, Ltd., ("Finjan") filed this action against the defendants, Secure Computing Corporation, *et al.*, (collectively, "Secure") alleging that Secure's Webwasher and TSP products infringe United States Patent Nos. 6,092,194, (the "'194 patent"), 6,804,780 (the "'780 patent), and 7,058,822 (the "'822 patent") (the "Finjan patents"). On April 20, 2007, Secure filed counterclaims against Finjan alleging infringement of United States Patent Nos.

7,185,361, (the "'361 patent"), and 6,357,010, (the "'010 patent") (the "Secure patents"). (D.I. 47.) The court held a *Markman* hearing in this matter on October 24, 2007. On December 11, 2007, the court issued an order construing the disputed claim terms of both the Finjan patents and the Secure patents (collectively, the "patents-in-suit"). (D.I. 142.)

On March 12, 2008, following a seven-day jury trial, the jury returned a verdict in favor of Finjan. (D.I. 226.) In its verdict, the jury found that: (1) the Finjan patents are not invalid; (2) Secure infringes the asserted claims of the Finjan patents; (3) Secure's infringement of the Finjan patents was willful; (4) the Secure patents are not invalid; and that (5) Finjan does not infringe the Secure patents. (*Id.*) In addition, the jury awarded Finjan $9.18 million in compensatory damages, based on: (1) a 16% royalty on $49 million in sales of Secure's Webwasher software product; (2) an 8% royalty on $3.25 million in sales of Secure's Webwasher hardware appliance product; and (3) an 8% royalty on $13.5 million in sales of Secure's TSP appliance product. (D.I. 226.) On March 28, 2008, the court entered judgment on the verdict in favor of Finjan and against Secure for monetary damages totaling $9.18 million. (D.I. 242.)

Following entry of the judgment,[1] on April 7, 2008, Finjan filed the following post-trial motions: (1) a motion for JMOL that the Secure '361 patent claims are invalid (D.I. 243); (2) a motion for permanent injunction (D.I. 244); (3) a motion for enhanced damages and for attorneys' fees (D.I. 245); and (4) a motion to amend the judgment and for an accounting of sales (D.I. 246). Likewise, on April 11, 2008, Secure filed the following post-trial motions: (1) a renewed motion

[1] Pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, prior to the entry of judgment, the parties each moved for judgment as a matter of law ("JMOL") on the issues of infringement and invalidity. (D.I. 240.) At that time, however, the court reserved ruling on these motions, subject to the parties renewing the motions post-trial. *See* Fed. R. Civ. P. 50 (b).

for JMOL and, in the alternative, for a new trial for non-infringement, invalidity, and no willful infringement of the Finjan patents; (2) a motion for JMOL, or in the alternative remittur, to alter or amend the damages; and (3) a renewed motion for JMOL that Finjan infringed the Secure patents.[2] (D.I. 253.) The parties completed briefing on these motions on May 16, 2008. (D.I. 293.)

III. BACKGROUND OF THE TECHNOLOGY

The patents-in-suit relate to computer networks. The Finjan patents relate to "hostile downloadables."[3] The '194 patent, at [57] (filed Nov. 6, 1997). Specifically, the '194 patent relates to a system and method for protecting a computer and a network from hostile downloadables. *Id.* This patent discloses a computer virus protection technique that monitors for known hostile downloadables, as well as examining the downloadable code to determine whether the code contains any suspicious operations. *Id.* Likewise, the '780 patent also relates to a system and method for protecting a computer and a network from hostile downloadables. The '780 patent, at [57] (filed March 30, 2000). This patent discloses a computer virus protection technique that monitors downloadables for performing suspicious operations. *Id.* The '822 patent relates to a system and method for protecting "network-connectable devices" from hostile downloadables. The '822 patent, at [57] (filed May 17, 2001). This patent discloses a computer virus protection technique that monitors downloadables for performing suspicious operations in an efficient and flexible manner

[2] On April 7, 2008, Secure also filed a motion to stay enforcement of the judgment and for expedited relief in this case. (D.I. 247.) On February 18, 2009, the court granted Secure's motion in part, subject to Secure posting an appropriate security for the judgment entered against it. (D.I. 277, 301.)

[3] As described in the Finjan patents, the term "downloadable" is construed as "an executable application program, which is downloaded from a source computer and run on the destination computer." (D.I. 142 at 2.)

that minimizes the usage of system resources while running in the background. *Id.*

The Secure patents relate to "firewalls."[4] The '361 patent, at [57] (filed Jan. 31, 2000). Specifically, the '361 patent discloses a system, method and computer program product for providing authentication to a firewall using a lightweight directory access protocol (a "LDAP") directory server. *Id.* According to this claimed invention, the firewall can be configured through a graphical user interface to implement an authentication scheme. *Id.* Secure's '010 patent relates to controlling communication between networks. The '010 patent, at [57] (filed Feb. 17, 1998). The '010 patent discloses a system and method for limiting access to documents stored on an internal network. *Id.*

IV. STANDARD OF REVIEW

A. Motion for Judgment as a Matter of Law

Pursuant to Fed. R. Civ. P. 50, a court may render judgment as a matter of law after the moving party is fully heard on an issue at trial if there is no legally sufficient evidentiary basis for a reasonable jury to find for the party opposing the motion on that issue. *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1238 (3d Cir. 1993) (internal citation omitted). If the court denies a motion for judgment as a matter of law during trial, the motion may be renewed within ten days of entry of judgment in the case. Fed. R. Civ. P. 50(b). For a party to prevail on its renewed motion for judgment as a matter of law following a jury trial, the party "'must show that the jury's findings, presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusion(s) implied [by] the jury's verdict cannot in law be supported by those findings.'" *Pannu*

[4] As described in the Secure patents the term "firewall" is construed as having its plain and ordinary meaning, *i.e.*, a mechanism that allows only authorized users to access a network using its own authentication database. (D.I. 142, 112 at 27.)

v. Iolab Corp., 155 F.3d 1344, 1348 (Fed. Cir. 1998) (quoting *Perkin-Elmer Corp. v. Computer-Vision Corp.*, 732 F.2d 888, 893 (Fed. Cir. 1984)). "'Substantial' evidence is such relevant evidence from the record taken as a whole as might be accepted by a reasonable mind as adequate to support the finding under review." *Perkin-Elmer Corp.*, 732 F.2d. at 893. In assessing the sufficiency of the evidence, the court must draw all reasonable inferences from the evidence in the light most favorable to the nonmovant. *Id.*; *Richardson-Vicks, Inc. v. UpJohn Co.*, 122 F.3d 1476, 1479 (Fed. Cir. 1997). The appropriate inquiry is whether a reasonable jury, given the facts before it, could have arrived at the conclusion it did. *Dawn Equip. Co. v. Kentucky Farms, Inc.*, 140 F.3d 1009, 1014 (Fed. Cir. 1998). The court may not determine the credibility of the witnesses nor "substitute its choice for that of the jury between conflicting elements of the evidence." *Perkin-Elmer Corp.*, 732 F.2d at 893.

B. Motion for a New Trial

Pursuant to Fed. R. Civ. P. 59, a court may grant a new trial"for any of the reasons for which new trials have heretofore been granted in actions of law in the courts of the United States." Fed. R. Civ. P. 59(a). The decision to grant or deny a new trial is within the sound discretion of the trial court. *See Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980). In making this determination, the trial judge should consider the overall setting of the trial, the character of the evidence, and the complexity or simplicity of the legal principles which the jury had to apply to the facts. *Lind v. Schenley Industries, Inc.*, 278 F.2d 79, 89 (3d Cir. 1960), cert. denied, 364 U.S. 835 (1960). Unlike the standard for determining judgment as a matter of law, the court need not view the evidence in the light most favorable to the verdict winner. *Allied Chem. Corp.*, 449 U.S. at 36. A court should grant a new trial in a jury case, however, only if "the verdict was against the weight

DOCKET ALARM

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.