

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
Northern District of California

FORTINET, INC,

No. C 12-02540 JSW (MEJ)

Plaintiff,

v.

SRI INTERNATIONAL, INC,

Defendant.

CHECK POINT SOFTWARE
TECHNOLOGIES INC.,

No. C 12-03231-JSW (MEJ)

Plaintiff,

DISCOVERY ORDER

v.

SRI INTERNATIONAL, INC,

Defendant.

On February 7, 2013, the parties filed a pair of discovery letters regarding Plaintiffs' responses to SRI's Interrogatories 8 and 9 and its request for Production 11, 26, 58, and 66, seeking information and documents relating to customers for the accused products in this case. Because the parties had failed to meet and confer before filing their letters, on March 11, 2013, the Court issued an order requiring the parties to appear in court to meet and attempt to resolve their dispute. Dkt. No. 63. On March 15, 2013, the parties met for several hours and were able to come to an agreement on several issues; however, certain matters remain unresolved. Consequently, following their meet and confer session, the parties filed the instant letter outlining the issues that remain in dispute. Dkt. No. 64

In the letter, SRI indicates that Plaintiffs "have agreed to produce customer and Accused

1 Product specific revenue data from the date SRI provided notice of infringement forward. Plaintiffs
2 also agree to compile and produce aggregate sales revenue from 2006 forward for the accused
3 products identified in SRI’s infringement contentions.” SRI further explains that Plaintiffs “also
4 agree to extract and produce the documents on the Accused Products contained within their customer
5 support databases within a time frame as set out [in the letter].” While SRI believes that this
6 production may be useful in advancing the discovery process forward, it indicates that it still needs to
7 review the information and may renew its motion to compel production if it finds that the information
8 produced is deficient.

9 The parties, however, have been unable to resolve the issue regarding email production in
10 response to SRI’s requests for customer-related documents. According to SRI, Plaintiffs have
11 refused to search any email from employees who may have communicated with customers to induce
12 them to use the products in an infringing manner and have not identified persons/employees with
13 relevant customer-related information. Plaintiffs, in response, argue that SRI’s requests for
14 production are “exceedingly broad in scope . . . and especially burdensome given the size of Check
15 Point and Fortinet and the number of customers.” Plaintiffs state that they agreed to search email if
16 SRI will provide search terms and specify custodians, but SRI has refused to do so. Plaintiffs also
17 request that the Court enter a version of the Federal Circuit Model Order or Northern District of
18 California Model Order adopting limits on custodians and search terms.

19 The Court has considered the parties’ positions, and rules as follows. Within five days of this
20 Order, Fortinet and Check Point shall identify to SRI any employees/custodians who are known to
21 have customer information responsive to SRI’s requests. Thereafter, email production shall proceed
22 consistent with the following framework.

23 1. Email production requests shall identify the custodian, search terms, and time frame.
24 The parties shall cooperate to identify the proper custodians, proper search terms and proper
25 timeframe.

26 2. Each requesting party shall limit its first email production requests to a total of ten
27 (10) custodians per producing party for all such requests. Sixty (60) days after the receipt of initial
28

1 documents responsive to the first set of email production requests, a party may make additional email
2 production requests to five (5) custodians. The five custodians who receive the additional email
3 production requests may include custodians from whom documents have already been requested.
4 The parties may jointly agree to modify these limits without the Court's leave. The Court shall
5 consider contested requests for up to five (5) additional custodians per producing party, upon
6 showing a distinct need based on the size, complexity, and issues of this specific case. Should a party
7 serve email production requests for additional custodians beyond the limits agreed to by the parties or
8 granted by the Court pursuant to this paragraph, the requesting party shall bear all reasonable costs
9 caused by such additional discovery.

10 3. Each requesting party shall limit its first email production requests to a total of twenty
11 (20) search terms per custodian per party. Each requesting party shall limit its additional email
12 production requests to a total of five (5) search terms per custodian per party. The parties may jointly
13 agree to modify these limits without the Court's leave. The Court shall consider contested requests
14 for up to five (10) additional search terms per custodian, upon showing a distinct need based on the
15 size, complexity, and issues of this specific case. The search terms shall be narrowly tailored to
16 particular issues. Indiscriminate terms, such as the producing company's name or its product name,
17 are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of
18 overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and
19 "system") narrows the search and shall count as a single search term. A disjunctive combination of
20 multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or
21 phrase shall count as a separate search term unless they are variants of the same word. Use of
22 narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and
23 shall be considered when determining whether to shift costs for disproportionate discovery. Should a
24 party serve email production requests with search terms beyond the limits agreed to by the parties or
25 granted by the Court pursuant to this paragraph, the requesting party shall bear all reasonable costs

26 ///

27 ///

28

1 ///


2 caused by such additional discovery.

3 **IT IS SO ORDERED.**

4

5 Dated: March 27, 2013

6



Maria-Elena James
United States Magistrate Judge

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28