

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

Finjan, Inc.,)	
)	
Plaintiff,)	
)	
VS.)	NO. CV-17-5659 WHA
)	
Juniper Network, Inc.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Wednesday, June 27, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: KRAMER, LEVIN, NAFTALIS & FRANKEL LLP
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BY: JAMES HANNAH, ESQ.

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BY: SHARON SONG, ESQ.

Reported By: Vicki Eastvold, RMR, CRR
Official Reporter

1 Wednesday - June 27, 2018

10:36 a.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling Civil Action 17-5659, Finjan,
5 Inc., versus Juniper Network, Inc.

6 Counsel, please approach the podium and state your
7 appearances for the record.

8 **MR. HANNAH:** Good morning, Your Honor. James Hannah
9 on behalf of Finjan.

10 **THE COURT:** Hannah?

11 **MR. HANNAH:** Hannah. James Hannah.

12 **MS. SONG:** Good morning, Your Honor. Sharon Song from
13 Irell and Manella on behalf of Juniper Network, Inc.

14 **THE COURT:** All right. How can I help you this
15 morning?

16 **MR. HANNAH:** Well, Your Honor, may it please the
17 Court, we have an issue with regard to the protective order in
18 this case. It's become apparent that the parties can't agree
19 on providing a stipulated protective order to the Court.

20 Finjan's position is that the case law in this district
21 has been crystal clear since 2013; you know, starting with the
22 *Grobler* case, and continuing to EPL Holdings, and Judge
23 Orrick's case six months later with LifeScan, and two months
24 later after that Judge Grewal reaffirmed it again that
25 litigation counsel can participate in a limited manner in

1 IPR's.

2 Those cases laid out a two-factor test. The first factor
3 was whether the representation was going to implicate
4 competitive decision-making. And the second factor was whether
5 the choice of counsel outweighs any risk.

6 Judge Grewal, Judge Orrick, Judge Corley, all specifically
7 found that in order to mitigate the first factor that there can
8 be no amendment of the claims.

9 **THE COURT:** There can be what?

10 **MR. HANNAH:** There can be no amendment of the claims
11 during the IPR proceedings. And we've agreed to that.

12 In order to mitigate the second factor, which is the
13 choice of counsel outweighing the risk, the court has -- the
14 court and the case law has specifically said that we have to
15 make an affirmation we won't use confidential information
16 during IPR's. Again, that's exactly what we stipulated to that
17 we provide in the protective order.

18 And the guiding principle in all those cases is that there
19 shouldn't be undue expense on the patentee.

20 Here there's a tremendous amount of expense that would be
21 dealt with if trial counsel was not allowed to participate in
22 the IPR's. We've been representing -- I've personally been
23 representing Finjan in over 58 IPR's involving these patents.
24 And that's just from a count I did during our meet and confer
25 on Docket Navigator. There might be more. I just literally

1 typed in my name and "Finjan." 58 IPR's.

2 We have currently pending IPR's that I'm representing
3 Finjan. For me to have to -- and for us to have to go, and
4 Finjan, to hire additional separate counsel and come up to
5 speed on 58 IPR's and 13 years of experience -- I've been
6 representing Finjan for 13 years now in various litigations --
7 it's just a huge expense that we would have to -- that Finjan
8 would have to endure.

9 And there's absolutely no risk to Juniper in this case.
10 First of all, they're trying to box us out of an IPR that they
11 didn't even file. When I asked counsel I said, Are there any
12 plans to file? She said, I'm a unaware of any plans to file an
13 IPR.

14 So they're not trying to protect themselves. It's merely
15 a tactic to try and box us out of this litigation, which is
16 completely contrary to the controlling case law.

17 **THE COURT:** Go back to the point about -- I think you
18 said under no circumstances would Finjan seek to amend the
19 claims in the IPR. Did I understand you correctly?

20 **MR. HANNAH:** You understood me correctly. We -- trial
21 counsel, me, I will not participate, or my team will not
22 participate, in any IPR in which Finjan attempts to --

23 **THE COURT:** Would there be some other IPR where it
24 was -- an amendment was the result?

25 **MR. HANNAH:** In the -- are you asking the 58 IPR's?

1 **THE COURT:** I'm talking about the IPR that Juniper
2 could be not involved in but that would involve the patents
3 being asserted now against Juniper.

4 **MR. HANNAH:** So in each of the patents that involve
5 Juniper, there's been IPR's that were instituted. All the
6 claims confirmed that are asserted, no amendments were ever
7 made. And there's no plan to -- Okay. To answer your
8 question, there's no plan to amend any claims.

9 **THE COURT:** You're being cute here.

10 **MR. HANNAH:** Okay. I'm sorry, Your Honor.

11 **THE COURT:** Let me ask. Are there IPR's now pending
12 that involve any of the patents asserted against Juniper?

13 **MR. HANNAH:** Yes. There's one IPR with that --
14 against -- that Cisco initiated.

15 **THE COURT:** All right. So with respect to that one,
16 are you telling me that under no circumstances will there be
17 any amendment to that patent?

18 **MR. HANNAH:** Yes, Your Honor. I affirmatively confirm
19 we are not amending any claims in that, and we can't, because
20 of the protective order in that case. We have a protective
21 order in the Cisco case as well in which Cisco agreed for us to
22 participate if we don't amend the claims. And since we're --

23 **THE COURT:** Then -- well, what if the IPR finds the
24 patent invalid, and you have a possibility of narrowing the
25 claims and thereby saving them. You're telling me you won't do

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