

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

FINJAN, INC., a Delaware Corporation,)	
)	
Plaintiff,)	
)	NO. C 17-05659 WHA
vs.)	
)	
JUNIPER NETWORKS, INC., a Delaware Corporation,)	
)	San Francisco, California
Defendant.)	
)	

Thursday, July 5, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff Finjan, Inc.:

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BY: CASEY MAY CURRAN

Reported by: Lydia Zinn, CSR No. 9223, FCRR, Official Reporter

1 Thursday - July 5, 2018

8:18 a.m.

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

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4 **THE COURT:** Now we go to Finjan.

5 **THE CLERK:** Calling Civil Action 17-565, Finjan,
6 Inc., versus Juniper Networks, Inc. Counsel, please approach
7 the podium and state your appearances for the Record.

8 **MR. KASTENS:** Your Honor, Kristopher Kastens, from
9 Kramer Levin, for Finjan, Inc.

10 **MS. CURRAN:** Good morning. Casey Curran, on behalf
11 of Juniper Networks.

12 **THE COURT:** Say your name again.

13 **MS. CURRAN:** Casey Curran.

14 **THE COURT:** All right, now. Kristopher Kastens and
15 Casey Curran. Okay. How can I help you this morning?

16 **MR. KASTENS:** Finjan is seeking to amend its
17 Complaint to add an additional patent to the case, based on a
18 deposition that took place in early May; the first technical
19 deposition that took place in this case.

20 **THE COURT:** Why shouldn't I grant that?

21 **MS. CURRAN:** We believe they delayed in seeking leave
22 to amend. We think that the information that came out in the
23 depo -- the pertinent information -- was already public as of
24 September 2017 in an administrative guide, and, further, would
25 have been able to be discovered in Juniper's source code, which

1 they reviewed in March, prior to their first motion for leave
2 to amend, which we did not oppose.

3 **THE COURT:** What do you say to that?

4 **MR. KASTENS:** I say that -- I mean, it contradicts
5 what they've actually filed.

6 So we attached our Amended Complaint, and we included the
7 material that came out through the deposition.

8 And they submitted a declaration with a motion to seal,
9 saying that that was all confidential information that was not
10 publicly available, and Juniper keeps it as a closely guarded
11 secret.

12 We've also set forth in the papers about how the technical
13 implementations of their cloud systems are not publicly
14 available. So --

15 **THE COURT:** I got a different question for you. You,
16 Ms. Curran, have a separate motion that I haven't put on
17 calendar for today, to require notes from the 30(b)(6)
18 designee. I want to hear how you could possibly, on the Finjan
19 side, not produce those.

20 **MR. KASTENS:** I know the work-product doctrine.
21 We've submitted a --

22 **THE COURT:** That's going to be overruled. He used
23 them to refresh his memory.

24 **MR. KASTENS:** Your Honor, if -- we would like the
25 opportunity to submit other portions of the declaration, which

1 maybe clarifies that.

2 **THE COURT:** No, no. Hold off. I'm going to let you
3 have that opportunity, but on the main motion -- I'm not going
4 to rule on that until I see --

5 If you're playing games with work product, you're not
6 going to get this amendment.

7 **MR. KASTENS:** Okay.

8 **THE COURT:** You're going to do equity to get equity
9 in this Court. So we're going to wait and see on 30(b)(6).
10 I've only read their side, but if their side is correct, I
11 don't like it. That's not the way it works.

12 Somebody -- it could be privileged all day long. And if
13 you use it to refresh your memory, it is waived. Do you
14 understand that?

15 **MR. KASTENS:** Yes, Your Honor.

16 **THE COURT:** And then you know what else I'm going to
17 do? When the jury is here I'm going to tell them, *Mr. Kastens*
18 *wrongfully withheld this document*, because it is wrongful all
19 day long. No.

20 So what day? Have we set a hearing date for this yet?

21 **MS. CURRAN:** No, Your Honor. We just submitted the
22 letter brief.

23 **THE COURT:** I'm going to set a date now. I won't be
24 here next week. We'll say July 18. Look and see if that
25 works: July 18.

1 **THE CLERK:** You're here July 18.

2 **THE COURT:** We'll be here. At 8:00 a.m., please meet
3 and confer. At 11:00 a.m. we will have the hearing.

4 I could tell you how the hearing is going to come out,
5 unless you have something very good in your papers that I've
6 never heard of before; but from about the time that I was a
7 third-year lawyer, I knew that if somebody reads a document to
8 refresh their memory, it is waived. No privilege thereafter
9 exists.

10 **MR. KASTENS:** And, Your Honor --

11 **THE COURT:** So you'd better be -- if you're just
12 stalling, think about the jury over there, hearing how you
13 stalled on this.

14 I'm going to also wait on the pending motion before I --
15 I'm going to wait and see how this -- whether or not you do
16 equity to get equity in this Court.

17 **MR. KASTENS:** Can I just say two things really
18 quickly about that, Your Honor?

19 **THE COURT:** Yeah. Go ahead.

20 **MR. KASTENS:** I think there are further statements
21 within this deposition that show that he did not use it to
22 refresh his recollection.

23 **THE COURT:** What?

24 **MR. KASTENS:** There are statements where he clarifies
25 that he did not use it to refresh his recollection, in the

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