

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

FINJAN, INC.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	<b>NO. CV 17-05659-WHA</b>
	)	
JUNIPER NETWORK, INC.,	)	
	)	
Defendant.	)	
_____	)	

San Francisco, California  
Wednesday, July 18, 2018

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

KRAMER, LEVIN, NAFTALIS & FRANKEL LLP  
990 Marsh Road  
Menlo Park, CA 94025

**BY: KRISTOPHER B. KASTENS, ESQUIRE**

For Defendant:

IRELL & MANELLA LLP  
840 Newport Center Drive - Suite 400  
Newport Beach, CA 92660

**BY: REBECCA L. CARSON, ESQUIRE**

IRELLA & MANELLA LLP  
1800 Avenue of the Stars - Suite 900  
Los Angeles, CA 90024

**BY: CASEY M. CURRAN, ESQUIRE**

Reported By:

Pamela A. Batalo, CSR No. 3593, RMR, FCRR  
Official Reporter

1 Wednesday - July 18, 2018

10:46 a.m.

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

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4 **THE CLERK:** Calling CV 17-5659, Finjan, Inc. vs.  
5 Juniper Network, Inc.

6 Counsel, please state your appearances for the record.

7 **MR. KASTENS:** Kristopher Kastens here on behalf of  
8 Finjan, Inc., from Kramer Levin Naftalis --

9 **THE COURT:** Thank you. Have a seat back there.

10 All right. And?

11 **MS. CARSON:** Good afternoon. Rebecca Carson from  
12 Irell & Manella on behalf of Juniper Networks. I have here  
13 with me Casey Curran. She's a 2015 graduate from UCLA, and she  
14 will be arguing today. And we have also brought a summer  
15 associate, Jordan Nafeth.

16 **THE COURT:** Welcome to all of you.

17 Let's hear your motion.

18 **MS. CURRAN:** Thank you, Your Honor.

19 We believe we're entitled to the unredacted version of the  
20 notes that Mr. Garland sent along via email that Finjan has  
21 filed in the public record and that were used to refresh the  
22 witness' recollection prior to his deposition.

23 **THE COURT:** All right. Good, succinct summary.

24 Your turn.

25 **MR. KASTENS:** Your Honor, I think if you look at the

1 entirety of the deposition transcript, Mr. Garland -- it's  
2 clear that he did not use the document to refresh his  
3 recollection.

4 Furthermore, to the extent it wasn't work product, that  
5 we've already produced it. I don't know if you've had a chance  
6 to look at what the produced version is, but there is just  
7 minor portions that are asserted as work product that are  
8 remaining.

9 And --

10 **THE COURT:** I'm sorry. I'm confused. I thought you  
11 were withholding the notes.

12 **MR. KASTENS:** So, first of all, I would just like to  
13 clarify, they're not notes. They're an email from Mr. Garland  
14 to in-house counsel at Finjan. So they're specifically related  
15 to his request in anticipation of litigation.

16 Furthermore --

17 **THE COURT:** Is that what he looked at before his  
18 deposition?

19 **MR. KASTENS:** Yes. It was what he looked at before  
20 his deposition.

21 And to the extent that it wasn't work product, we've  
22 already produced it. It's attached as the final exhibit to our  
23 opposition.

24 **THE COURT:** Find it in here for me.

25 **MR. KASTENS:** It is Exhibit 4, Your Honor.

1           **THE COURT:** Put a tag on it for me.

2           Have you looked at the unredacted portions? Have you seen  
3 any of it?

4           **MS. CURRAN:** Yes. So we have Exhibit 4, the copy that  
5 they filed on the record, which is redacted in places. We  
6 don't -- have not had access to a version which was not  
7 redacted. They're claiming work product over those redactions.

8           **THE COURT:** Well, how am I supposed to know what's  
9 under the blacked-out part?

10          **MR. KASTENS:** I mean, Your Honor, it's just mental  
11 impressions and -- that are --

12          **THE COURT:** But that's for me to decide. How do I --  
13 where can I find the -- I thought you were telling me that  
14 this -- wait a minute.

15          Have you produced everything in this exhibit except what's  
16 redacted?

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

18          **THE COURT:** Is that true?

19          **MS. CURRAN:** That's accurate. They have redacted what  
20 seems like -- if you flip to the next page, it's just  
21 individual words. We can't understand how that possibly  
22 constitutes work product, especially given that the entire  
23 email could be characterized as his impression of what  
24 happened --

25          **THE COURT:** As I see it, there are three blacked-out

1 parts.

2 **MR. KASTENS:** Correct, Your Honor.

3 **THE COURT:** But you haven't given me the -- what's  
4 under the blacked-out parts.

5 **MR. KASTENS:** Correct, Your Honor. Those are --  
6 that's what -- that's in our privilege log as the work product.

7 **THE COURT:** All right. I misunderstood. I thought  
8 you were trying to tell me you had given me the withheld stuff  
9 in camera for me to evaluate, but I -- so for clarity of the  
10 record, that's not true. All you've given me is exactly what  
11 was given to counsel.

12 **MR. KASTENS:** Yes, Your Honor. My apologies.

13 **THE COURT:** Have both sides finished their argument?

14 **MS. CURRAN:** Your Honor, we would request --

15 **THE COURT:** Let me -- have you finished your argument?

16 **MR. KASTENS:** I would just like to say that I believe  
17 this clearly is work product and we've established it as so.  
18 It's on our privilege log. And Mr. Garland submitted a  
19 declaration that's Exhibit 3 which says that this was -- excuse  
20 me. The privilege log is Exhibit 3.

21 Exhibit 1 is Mr. Garland's declaration stating that he  
22 made this email because he thought Juniper was unwilling to  
23 engage in licensing negotiations and that he wanted legal  
24 advice because he anticipated that we were going to be in  
25 litigation with Juniper.

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