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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

FINJAN, INC.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. C 17-05659 WHA
	)	
JUNIPER NETWORKS, INC.,	)	
	)	San Francisco, California
Defendant.	)	Thursday
	)	February 1, 2018
	)	

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**For Plaintiff:** KRAMER LEVIN NAFTALIS & FRANKEL LLP  
990 Marsh Road  
Menlo Park, California 94025  
**BY: LISA KOBIALKA, ESQ.**

**For Defendant:** IRELL & MANELLA LLP  
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Newport Beach, California 92660  
**BY: REBECCA L. CARSON, ESQ.**

Reported by: **BELLE BALL, CSR 8785, RDR, CRR**  
Official Reporter, U.S. District Court

1 THURSDAY, FEBRUARY 1, 2018

8:06 A.M.

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

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

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

7 MS. KOBIALKA: Good morning, Your Honor. Lisa Kobialka on  
8 behalf of the plaintiff, Finjan, Inc.

9 THE COURT: Welcome.

10 MS. CARSON: Good morning, Your Honor. Rebecca Carson on  
11 behalf of Juniper Networks.

12 THE COURT: Welcome to you, too.

13 Let's see, you're moving to dismiss.

14 MS. CARSON: That's correct, Your Honor.

15 THE COURT: All right, let's hear a summary.

16 Please don't go into everything, but make your most  
17 important points.

18 MS. CARSON: Sure, Your Honor.

19 The crux of the problem here is that Finjan is trying to  
20 rely on its pre-suit communications regarding a non-asserted  
21 patent to establish the knowledge elements of its willfulness  
22 and inducement claims for the patents that it actually decided  
23 to assert against Juniper.

24 According to the complaint, Finjan first reached out to  
25 Juniper back in 2014. And it called out one specific patent,

1 and provided Juniper with a claim chart that it called exemplary  
2 of its patent portfolio. That patent was the '968 patent. And  
3 there is no dispute that Finjan has not asserted the '968 patent  
4 in this case.

5 At that time, Juniper responded by providing Finjan with  
6 some prior art. And shortly thereafter, the negotiations broke  
7 down. And Finjan waited three years and then brought this  
8 lawsuit.

9 There's no allegation that Juniper was wrong about the '968  
10 patent. In fact, the opposite inference can be made by the fact  
11 that Finjan has elected to assert eight patents against Juniper,  
12 and not one of those patents is the '968 patent that it  
13 specifically identified.

14 There's also no allegation in the complaint that Finjan ever  
15 specifically identified any other patents from its portfolio  
16 during the pre-suit negotiations. Instead, it chose to hide the  
17 ball on those, and not raise them until filing this complaint.

18 Juniper shouldn't be charged with reading Finjan's minds  
19 about these other patents, particularly in light of the fact  
20 that the one patent that they chose to specifically discuss  
21 didn't even have enough merit to make it into their complaint in  
22 this case.

23 Finjan hasn't cited a single case where these sets of facts  
24 were enough to establish the pre-suit knowledge elements for  
25 willfulness and inducement.

1 And in fact, other courts in this district that have been  
2 faced with similar situations where the patentee has identified  
3 or put the defendant on notice of other patents or similar  
4 patents in their portfolio have determined that that's not  
5 sufficient to establish pre-suit knowledge.

6 **THE COURT:** All right. Stop.

7 **MS. CARSON:** Sure.

8 **THE COURT:** What do you say in response?

9 **MS. KOBIALKA:** Yes, Your Honor.

10 The meetings that the parties had, it initially had started  
11 with the '968, but we have a specific allegation in the  
12 pleadings that we had meetings about the asserted patent.

13 And we can add very specific allegations regarding no later  
14 than December of 2014, they, in fact, knew about some of the  
15 patents that are asserted in this case because that was part of  
16 the meetings that we were having with Finjan, and that was going  
17 on between Finjan and Juniper.

18 And --

19 **THE COURT:** Then why didn't you send a -- you picked out a  
20 patent that you didn't even sue on, and sent that as an  
21 exemplar. Right?

22 **MS. KOBIALKA:** Yes. But in --

23 **THE COURT:** And then, and now you are telling me that you  
24 did that, the same thing for the patents you are suing on? I  
25 kind of doubt that's true.

1           **MS. KOBIALKA:** No, we didn't send claim charts for the other  
2 patents that we sued on.

3           **THE COURT:** You mean it just kind of came up; those numbers  
4 were in the air in some conversation.

5           **MS. KOBIALKA:** During the meetings that we had, absolutely.  
6 There were discussions regarding licensing, licensing of  
7 Finjan's patents, and in particular --

8           **THE COURT:** But did you -- no. But did you say -- see,  
9 that's not going to be good enough, either. I'll just tell you  
10 that wouldn't be good enough.

11           What you would have to do is say: Look, we brought the  
12 patent, we showed them at the meeting -- I don't -- the ABC  
13 patent, Claim 4, you infringed that, and here's why.

14           That would be pretty good. But just to say: Hey, here's a  
15 list of the patents in our, quote, portfolio, and we will  
16 license this to you and here's an exemplar, I'm going to throw  
17 that out.

18           **MS. KOBIALKA:** No. We --

19           **THE COURT:** It's going to go so far away. Come on.

20           **MS. KOBIALKA:** We did not -- I will not represent to you or  
21 suggest that we sat down and gave them a claim chart on specific  
22 claims of --

23           **THE COURT:** I know you didn't. I know you didn't.

24           **MS. KOBIALKA:** But we --

25           **THE COURT:** I'm sorry. I apologize for -- but I -- these

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