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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 17-5659 WHA
)	
JUNIPER NETWORKS, INC.,)	
)	San Francisco, California
Defendant.)	
)	
)	

Tuesday, December 4, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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

(Appearances continued, next page)

APPEARANCES, CONTINUED:

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ALAN HEINRICH, ESQ.
SHARON SONG, ESQ.
JOSHUA GLUCOFT, ESQ.

Also Present:

JULIE ANN MAR-SPINOLA
ANN TAYLOR

1 Tuesday - December 4, 2018

9:02 a.m.

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

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

5 Counsel, please step forward and state your appearances
6 for the record.

7 **THE COURT:** Good morning.

8 **MR. ANDRE:** Good morning, Your Honor. Paul Andre for
9 Finjan. And I have my client representatives here today,
10 Julie Mar-Spinola and Ann Taylor in the back (Indicating).

11 And with me -- they're back there (Indicating).

12 **THE COURT:** Okay. Welcome to all of you.

13 **MR. ANDRE:** And I would introduce the attorneys, if
14 that's okay.

15 **THE COURT:** Sure.

16 **MR. ANDRE:** Kristopher Kastens, Austin Manes, Lisa
17 Kobialka and Cristina Martinez.

18 **THE COURT:** Thank you.

19 Welcome to all of you.

20 **MR. ANDRE:** Thank you, Your Honor.

21 **MR. KAGAN:** Good morning, Your Honor. Jonathan Kagan
22 of Irell & Manella for Juniper Networks. And with me are
23 Rebecca Carson --

24 **MS. CARSON:** Good morning.

25 **THE COURT:** Alan Heinrich.

1 **MR. HEINRICH:** Good morning.

2 **MR. KAGAN:** Kevin Wang, Casey Curran, Sharon Song and
3 Josh Glucoft.

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

5 **MR. KAGAN:** Thank you, Your Honor.

6 **THE COURT:** We are here for a final pretrial
7 conference for a trial that starts on Monday. And, just jump
8 right in.

9 So we have a jury selection process -- ready?

10 **MR. KAGAN:** Your Honor, there's one issue we thought
11 we might raise as a preliminary matter with your -- it relates
12 to a filing that Finjan made last night.

13 **THE COURT:** I haven't seen it.

14 **MR. KAGAN:** So --

15 **THE COURT:** Did we look? I thought we looked.

16 **THE LAW CLERK:** Yeah.

17 **THE COURT:** Was there any filing?

18 **THE LAW CLERK:** Witness lists, exhibits --

19 **THE COURT:** I didn't see, I don't know anything about
20 it. So what is the issue?

21 **MR. KAGAN:** So the issue is we understood from the
22 Court's ruling yesterday that plaintiffs' damages expert
23 Mr. Arst would be excluded, based on the *Daubert* ruling.

24 And we received -- and we thought the process would then
25 be the parties would try to streamline their witness list to

1 remove witnesses that were no longer necessary in order to
2 relate to Mr. Arst's testimony and his theory.

3 But when we got the amended witness list from Finjan, it
4 included Mr. Arst again, notwithstanding that the Court had
5 excluded all of his testimony.

6 And so we'd asked -- I asked last night when we received
7 this: What portions of Mr. Arst's testimony do you think
8 survive?

9 I never got a response from Finjan on that. They simply
10 filed the list.

11 So I guess the -- as a preliminary, as a preliminary
12 matter maybe we should take up that because I think it would
13 affect the scope of the case. But also, we would certainly at
14 this point, given the positions they have taken and the fact
15 they refuse to disclose to us what they intend to put on as a
16 damages case, we request a formal offer of proof on what their
17 damages case will look like, in light of this Court's *Daubert*
18 order.

19 **THE COURT:** All right. That's your position.

20 What do you have to say, Mister --

21 **MR. ANDRE:** Your Honor, we amended the witness list
22 based on a deposition we took of Mr. Icasiano, a defendant
23 witness that was disclosed light and subject to these MILs.
24 And we amended it conditionally that if he's not excluded,
25 that we designate his deposition and the exhibits that were

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