

Exhibit 2

Volume 2

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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.,)	
Defendant.)	
)	San Francisco, California
)	Tuesday, December 11, 2018

TRANSCRIPT OF PROCEEDINGS

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1 develop technologies in cybersecurity. And, in fact, we also
2 invested in a venture fund at the same time.

3 But all of those things, I think, are were very important
4 to the business at that time.

5 Q. So when I look on the timeline, it says "Finjan invests in
6 innovation fund." Is that the investment you were just
7 referring to?

8 A. That's correct. So we invested in a venture fund. It's
9 called Jerusalem Venture Partners. The fund is called Cyber
10 Strategic Partners. We are a strategic partner in that
11 investment fund.

12 Q. And can you just name a couple of companies you
13 co-invested in?

14 A. So there are actually four strategic LPs. So finjan being
15 one. A second would be Cisco, which is another large
16 networking company. We also are invested alongside Alibaba who
17 you may have heard of; and another media company, which is a
18 Chinese media company called Qihoo 360. And that's spelled
19 Q-I-H-O-O 360.

20 Q. So now looking at the last entry on this timeline here
21 that we have up, it says "Finjan launches new products and
22 services." It looks like that's around that March 2015 time
23 frame. Do you see that?

24 A. I do see that. So when it expired in March, I think by
25 June is when we had launched both our advisory services

1 business, which we call CybeRisk, and our mobile security
2 business, which we call Finjan Mobile.

3 Q. And could you just tell, what is the name of that
4 Finjan Mobile product that you have?

5 A. So the Finjan Mobile product we call VitalSecurity, and it
6 had several generations, Generation 2, Gen3, Gen4. And today
7 just recently, within the last several months, it's actually
8 been rebranded to Invincibull, I-N-V-I-N-C-I-B-U-L-L.

9 Q. So the last three letters are like the word "bull"?

10 A. Yes, right. That's a play on words, Invincibull.

11 Q. Okay. So just at a high level, what technologies in
12 Invincibull that is offered to customers?

13 A. So Finjan fundamentally believes that what it invented
14 changed the way enterprise security is managed and is thought
15 of today, and the idea behind Finjan Mobile's product is that
16 we could take that very complex technology previously only
17 available to enterprises and that we could translate that into
18 a consumer-tangible format; for example, that you could use on
19 a mobile phone or on a laptop.

20 So it uses a lot of the same technologies where a lot of
21 folks don't know what happens when you click go or send on your
22 phone or when you make a request to the Internet or when you're
23 connected to wifi at Starbucks.

24 So what we have brought to the mobile device is that same
25 level of scanning where you may want to go out to a website but

1 transparently in that process you may actually be using a
2 technology like Finjan's where it would scan that before it
3 would receive -- you would retrieve that information back to
4 your mobile device.

5 Q. For an earlier version of this mobile application, did
6 Finjan identify the '494 patent in connection with it?

7 A. We did. So specifically I mentioned VitalSecurity. It
8 was in our Gen3 product that used the '494.

9 Q. When was that released? What time frame?

10 A. Well, we targeted the fourth quarter of 2016. I know we
11 said October. It may have slipped into the early part of
12 November, but sometime in the fourth quarter.

13 Q. And did you indicate on your marketing materials that the
14 mobile app actually utilized the '494 technology?

15 A. Yes. So the '494 and some other patents. We did so in
16 our marketing materials, on our website. If you were to, for
17 example, go online to try and purchase the product, you would
18 have also seen the designations of the various patents that the
19 technology was using.

20 Q. And you had mentioned you go online to purchase the
21 products. Are you referring to the Apple iTunes or the
22 Google Play Store?

23 A. Right. Certainly. So, you know, just like you would --
24 if you were going to download any app today, the vast majority
25 of those apps are downloaded from the store for which your

1 phone's operating system is. So if you have an Android phone,
2 you would be going to the Google Play Store. If you had an
3 Apple iPhone, you would be going to the Apple App Store.

4 Q. I'd like you to take a look at what we've marked as Trial
5 Exhibit 372, and it may also be in your book there. Could you
6 just briefly describe what this is?

7 A. Yeah. That is basically the bibliographical information
8 that you would see when you go to the Google Play Store. It
9 has a description of the product. You can see the logo. You
10 can see the name. And in that description you also see the
11 '494 patent listed.

12 MS. KOBIALKA: Your Honor, at this time I'd like to
13 move and publish Exhibit 372.

14 MS. CARSON: Your Honor, we object to the admission of
15 this as hearsay and lack of foundation.

16 THE COURT: I'm sorry. You object to 372 on what
17 ground?

18 MS. CARSON: Hearsay and lack of foundation.

19 THE COURT: May I see the exhibit, please?

20 (Pause in proceedings.)

21 THE COURT: I ask you, do you know what this document
22 is?

23 THE WITNESS: It is -- I do know what it is, yes.

24 THE COURT: All right. And how do you know that?
25 Don't tell me what it is, but how do you come by that

1 information?
 2 **THE WITNESS:** It appears to be the identical
 3 description of what I've experienced when you go online to
 4 purchase the product. This is what you would see as a
 5 consumer.
 6 **THE COURT:** Purchase what product?
 7 **THE WITNESS:** Our mobile security application, and in
 8 this case this is from one of two stores where you could buy
 9 it.
 10 **THE COURT:** What is the objection again?
 11 **MS. CARSON:** A hearsay objection, Your Honor.
 12 **THE COURT:** All right. The hearsay objection is not
 13 well taken because you're offering this to show that something
 14 is on the Internet for sale; is that it?
 15 **MS. KOBIALKA:** It's their product. Their product.
 16 That's how they sell their product.
 17 **THE COURT:** But it's to show that if you went online,
 18 this is what you would find?
 19 **MS. KOBIALKA:** Yes.
 20 **THE COURT:** Why would that be hearsay?
 21 **MS. CARSON:** Your Honor, they're also offering it for
 22 the statements that are made on the page.
 23 **THE COURT:** Well, all right. I will allow 372 in
 24 evidence with this caveat: All kinds of stuff is on the
 25 Internet. Whether it's true or not, who knows? I'm allowing

1 this to be in evidence with a caveat that not a word of this
 2 can be taken as true. It may be true. I don't know. But it
 3 is hearsay for that purpose.
 4 If it says "This is the best thing since sliced bread,"
 5 maybe it is and maybe it's not, but you cannot rely on this
 6 document for proof that it's good for anything.
 7 What you can rely upon this document for is that it is on
 8 the Internet and if you went there, you can see that the
 9 document -- that this item is for sale. That's legitimate, and
 10 for that purpose it is not hearsay. For that very limited
 11 purpose this can come in, but I'm going to tell you again,
 12 please do not rely upon this document for proof that anything
 13 in it is true. It's not allowable for that purpose.
 14 Everybody got that? Good.
 15 Received in evidence with that limitation.
 16 (Trial Exhibit 372 received in evidence)
 17 **MS. KOBIALKA:** Thank you, Your Honor.
 18 **Q.** So if we could look at the bottom of the page there, it
 19 says "2016, Finjan Mobile, Inc.," and it continues on and says
 20 "Finjan Mobile is a trademark of Finjan Mobile, Finjan, and
 21 VitalSecurity, and the trademarks of Finjan Holdings, Inc.,"
 22 and it lists a number of patents, and the last one it refers to
 23 8,677,494. Do you see that?
 24 **A.** I do, yes. That's what we refer to as the '494 patent.
 25 **Q.** And does Finjan make this representation regarding its

1 mobile app in terms of -- does it associate it with the '494
 2 patent?
 3 **A.** That's exactly what it does, is it says -- it uses the
 4 patented technology in our '494 patent.
 5 **Q.** Okay. Let's --
 6 **THE COURT:** Now, I want to clarify.
 7 Now for purposes of whether or not the public was on
 8 notice through this document that that product used the '494
 9 patent, you may consider it for that purpose. That's a
 10 legitimate purpose of using this evidence. That would be okay
 11 because that is an issue in the case for you, the jury, to
 12 decide, is whether or not the so-called marking issue is one
 13 that's going to go to the jury. So that evidence is
 14 permissible for that purpose.
 15 All right. Go ahead.
 16 **MS. KOBIALKA:** Thank you, Your Honor.
 17 **Q.** Is the same information available also on Finjan's
 18 website?
 19 **A.** Yes. I would expect that the same information would be
 20 available.
 21 **THE COURT:** Well, now, wait a minute. That's
 22 speculation, "I would expect."
 23 **THE WITNESS:** I'm sorry.
 24 **THE COURT:** That's no good. Any answer that starts
 25 that way is no good. You can't -- that's speculation. It's

1 either there or it's not, and you can't -- I've heard that all
 2 the time, then it turns out not to be there. So, no.
 3 **MS. KOBIALKA:** Let me rephrase.
 4 **THE COURT:** Go a different way. You cannot go that
 5 way.
 6 **MS. KOBIALKA:** Your Honor, that was my -- I asked a
 7 bad question. Let me try that again.
 8 **THE COURT:** All right. You did. Okay.
 9 **BY MS. KOBIALKA:**
 10 **Q.** So in 2016, did Finjan list on its website the '494 patent
 11 in connection with its mobile app?
 12 **A.** We did, yes.
 13 **Q.** And was the same information that we've just seen in
 14 Exhibit 372 also on Finjan's website at that --
 15 **THE COURT:** Well, wait a minute. What same
 16 information? Are you talking about that marking point?
 17 **MS. KOBIALKA:** Yes.
 18 **THE COURT:** Or are you talking about all the greatest
 19 since sliced bread?
 20 **MS. KOBIALKA:** Just the marking component.
 21 **THE COURT:** All right. Limited to that, you may
 22 answer.
 23 **THE WITNESS:** Yes.
 24 **BY MS. KOBIALKA:**
 25 **Q.** And that was in the 2016 time frame?

1 A. (Witness examines document.) Both in the app store sales
 2 in the 2016 as well as on our website, yes.
 3 Q. Let's talk about licensing. Does Finjan have patent
 4 licenses?
 5 A. Yes. We have more than 20 licensees today.
 6 Q. I believe we have a slide of Finjan's licensees and
 7 technology partners. Could you just tell us a little bit about
 8 that?
 9 A. So in this list -- maybe I break it up for you a little
 10 bit. So, for example, in the bottom corner, a company called
 11 Avira, not only are they a licensee to Finjan's patents, but
 12 they're also a technology partner so they do a lot of the
 13 back-end technology provisioning for our mobile security
 14 product.
 15 Maybe to reference a few others, for example, on the other
 16 side, Trend Micro and Sophos are both companies that have
 17 licenses to Finjan's patents.
 18 We also are the beneficiary of cross-licenses back to
 19 Finjan Mobile, and that's because we all sell competing
 20 products in the marketplace.
 21 You may see some of our licensees that are more household
 22 names; for example, Microsoft and Symantec. There are several
 23 on there, for example, though, that unless you're in the
 24 security industry, you might not know; and those, for example,
 25 would be a FireEye or Proofpoint.

1 And then we also have a few licensees that we've, through
 2 our licensing agreements, have agreed to keep their names
 3 confidential so they would not be listed here.
 4 Q. What does Finjan do to keep itself informed of the
 5 security industry and what's happening?
 6 A. So, as I mentioned earlier, that is a challenge. It's a
 7 very dynamic industry. One of the things that we do is we read
 8 everything that we can get our hands on, publicly available
 9 information, market research.
 10 We get out of the office and we travel to industry
 11 conferences like RSA, which is a big event that happens here in
 12 San Francisco every year. There's other events like Black Hat
 13 and even some international events that we travel to.
 14 The idea is that the more that you can meet people and see
 15 these products in the market that the better abreast of how
 16 that technology is developing and being sold, and that's all
 17 very important to this business.
 18 Q. Okay. And how does Finjan approach its licensing part of
 19 its business?
 20 A. Oh, boy. So I think there's probably six things that I
 21 would tell you about how we do that. I'd probably break them
 22 into two categories. The first category would be how we
 23 identify a prospective licensee.
 24 Q. And maybe I can write some of this down.
 25 MS. KOBIALKA: I don't know if the Elmo is available,

1 if there's a switch.
 2 (Pause in proceedings.)
 3 THE COURT: Do you need to use the Elmo?
 4 MS. KOBIALKA: Yes.
 5 THE COURT: Tracy, can you help us turn the Elmo on?
 6 Is there a switch we need to use?
 7 MS. KOBIALKA: I'm on, Your Honor. Thank you.
 8 THE COURT: All right.
 9 BY MS. KOBIALKA:
 10 Q. Okay. I'm sorry, you were saying six things. Go ahead.
 11 A. So the first -- they are in two buckets. The first would
 12 be how do you identify a prospective licensee. So you're going
 13 to look at -- and number one is to try and identify a company
 14 by its size and maybe its market share. You're going to want
 15 to look for information about its revenues and value. You're
 16 also going to want to undertake some effort to determine the
 17 extent and the scope of use of your patented technologies that
 18 you can observe in their products.
 19 The second bucket would be more on the process of
 20 licensing, and number one there, first and foremost, is whether
 21 or not you are able to engage in good faith negotiations, and
 22 that's really key to this whole process.
 23 The second would be how flexible is a prospective
 24 licensee, are they willing to set up meetings with you and
 25 actually share information through that process.

1 And the third would be, for example, whether or not the
 2 parties can agree on a timeline for which that licensing
 3 discussion should occur.
 4 Q. Did I capture that okay there?
 5 A. Yes.
 6 Q. Okay. So can you -- we went through the approach to
 7 licensing. What do you do next? What's the next step?
 8 A. Well, I mentioned we only have access to publicly
 9 available information so we're going to read whatever we can
 10 get access to. You know, we're going to pull market research.
 11 There's companies out there like IDC who covers the space, and
 12 that helps us understand what new products are on the market or
 13 in what volumes companies are selling those products.
 14 So we'll look at revenues; but we're also looking at the
 15 value that the technology actually brings to a company, and
 16 sometimes that's not directly reflected in the revenues.
 17 Q. I don't understand. What do you mean by that, the value
 18 is not reflected in the revenues?
 19 A. If we were having this conversation seven or eight years
 20 ago and I was looking at a company and I wanted to go, say, to
 21 their public filings, it would be very easy for me to look in
 22 there because they would make a disclosure and they would say,
 23 for example, "This much of our sales is in hardware." And that
 24 would be easy for me because then I could say, "Well, we take
 25 an 8 percent rate on your hardware sales."

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