

# Exhibit 5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FINJAN, INC., a Delaware Corporation,	)	
	)	
	)	
Plaintiff and Counter-	)	Case No. 17CV0183-CAB
Defendant,	)	
	)	
vs.	)	
	)	
ESET, LLC, a California Limited Liability Corporation, and ESET SPOL. S.R.O., a Slovak Republic Corporation,	)	
	)	
	)	
Defendants and Counter-	)	
Plaintiffs.	)	

Reporter's Transcript of Claims Construction Hearing  
Volume 2, pages 1-198  
Before The Honorable Cathy Ann Bencivengo  
Tuesday, September 26, 2017, 9:00 a.m.  
San Diego, California

Proceedings recorded by stenography, transcript produced by computer assisted software

---

Mauralee Ramirez, RPR, CSR No. 11674  
Federal Official Court Reporter  
ordertranscript@gmail.com

1   Appearances:

2   For The Plaintiff:

3       Kramer Levin Naftalis & Frankel, LLP  
4       Paul Andre  
5       James Hannah  
6       990 Marsh Road  
7       Menlo Park, California 94025

8   For The Defendants:

9       Foley & Lardner LLP  
10      Nicola A. Pisano  
11      Scott A. Penner  
12      Wendy Cheung  
13      3579 Valley Center Drive, Suite 350  
14      San Diego, California 92130

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

1 San Diego, California; Tuesday, September 26, 2017; 9:00 a.m.

2 THE CLERK: All right. We're on record this morning  
3 on 17CV0183-CAB-BGS, Finjan Incorporated versus ESET, LLC, et  
4 al., on calendar for day 2 of claim constructions.

5 Counsel, please state your appearances.

6 MR. ANDRE: Good morning, your Honor. Paul Andre and  
7 James Hannah for Finjan. And with us is our client  
8 representative Julie Mar-Spinola.

9 THE COURT: Thank you.

10 MR. PISANO: Good morning, your Honor. Nicola Pisano.  
11 With me is Scott Penner, senior counsel, and Wendy Cheung,  
12 associate counsel of Foley & Lardner, and today we have the  
13 client representative, general counsel Alexandra Albro.

14 THE COURT: Thank you. Good morning.

15 Okay. So I went home last night and spent more time  
16 reading about "before the web server makes the Downloadable  
17 available to web clients." And at the end of the day, I may  
18 not be fully appreciating or understanding what the plaintiffs  
19 are trying to do here, but claim 1 is about the inspector. It  
20 is not about the network gateway. It is not about the  
21 subsequent investigation that some other computer might do of  
22 the Downloadable.

23 My understanding of the '844 patent is that it  
24 essentially is an efficiency that Downloadables get this  
25 inspection before they're made available to the web so that

1 when somebody calls it up and says I want to download this, the  
2 network gateway computer can look at it and say it's already  
3 been inspected. It's got its UL, its Good Housekeeping Seal of  
4 Approval; or it's got these issues, and we need to further  
5 inspect it; or none of this happened, and we have to do it  
6 ourselves, which was what was going on before, they had to  
7 inspect everything that was going through. And this created  
8 this inefficiency to say this Downloadable has already been  
9 inspected, it has this profile link to it, here are the issues  
10 with it; under our policies, it's okay, it can come in; or  
11 under our policies, it's not okay, it can't come in; or we need  
12 to do further inspection with it.

13 But the inspector discussion of claim 1 is all  
14 happening before there has been a call to download this  
15 Downloadable by a web client. It's happening before it goes to  
16 the web server to make it available to web clients, and so the  
17 Court is reading claim 1 not to cover something that is done by  
18 a network protection engine or a computer protection engine  
19 subsequently after the Downloadable has been called up to be  
20 forwarded, but before that.

21 And so I'm not quite sure in terms of construing the  
22 claim, other than to just say "before the web server makes the  
23 Downloadable available to web clients" means before the  
24 Downloadable is available on a web server to be called up or  
25 forwarded to a web client. That's when that step in the method

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.