

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL

Before The Honorable WILLIAM H. ALSUP, Judge

FINJAN, INC., a Delaware Corporation,)	Motions for Judgment as a Matter of Law
)	
Plaintiff,)	
)	
vs.)	NO. C 17-05659 WHA
)	
JUNIPER NETWORKS, INC., A Delaware Corporation,)	Pages 1 - 33
)	
Defendant.)	San Francisco, California
)	Thursday, February 21, 2019

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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1 Thursday, February 21, 2019

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 Network, Inc.

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

7 (Pause in the proceedings.)

8 **MR. ANDRE:** Good morning, Your Honor. Paul Andre for
9 Finjan.

10 **MS. KOBIALKA:** Lisa Kobialka for Finjan.

11 **THE COURT:** Welcome back.

12 **MS. KOBIALKA:** Thank you.

13 **MR. KASTENS:** Kristopher Kastens for Finjan, Your
14 Honor.

15 **THE COURT:** Okay.

16 **MS. CARSON:** Good morning, Your Honor. Rebecca
17 Carson for Juniper.

18 **MR. KAGAN:** Jonathan Kagan of Irell & Manella for
19 Juniper.

20 **THE COURT:** All right.

21 Well, first on the motion -- renewed motions for judgment
22 as a matter of law, we're not going to go through all of
23 these. I'll let each of you pick one that you want to
24 address, and then we'll give that some time.

25 But I want the world to know how burdensome these cases

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1 are. We've gone through a trial and hit at every turn,
2 everyone has got to litigate everything to the nth degree.
3 And there's just not time in the universe for all of that.

4 I could have decided this on the papers and just either
5 granted it or denied it, but I'm giving you each a shot at
6 something.

7 And then we got to -- we got case management to talk about
8 after that. You all want to certify it to the Court of
9 Appeals. Then you're going to want to go to the International
10 Court of the Hague. At some point, this has got to stop.

11 All right. So who wants to go first?

12 **MR. KASTENS:** Your Honor --

13 **THE COURT:** Let's hear from you, Finjan.

14 **MR. KASTENS:** Finjan would like to discuss its JMOL
15 request for a finding of infringement. We've -- we've --

16 **THE COURT:** What's your point?

17 **MR. KASTENS:** The point is that the arguments that
18 their expert made of -- regarding non-infringement are legally
19 irrelevant, contradicted by their own documents, and did not
20 address --

21 **THE COURT:** Not true. That is not true. I want you
22 to know this: It is true that along the way, I thought
23 that -- I thought that you had a strong case on infringement.
24 I was wrong about that.

25 Mr. Kagan gave one of the best closing arguments, and it

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1 was not theatrics, but it was just calm, dispassionate
2 explanation of a -- of points that I had not focused on that
3 were your burden of proof, but he pointed it out. And I was
4 very convinced at the end of that that he was right and that
5 you had been wrong from the get-go on infringement.

6 So those statements that I made along the way about how
7 I -- that was just -- I was just drawn in by your smoke and
8 mirrors. That's all that happened on that.

9 And Mr. Kagan, I compliment him for an excellent closing
10 argument. I thought he was -- he was -- his one of the best
11 I've heard in the U. S. District Court in a long time. And it
12 wasn't because it was emotional. It was just good, calm
13 explanation of something that was complicated. And then
14 finally the scales fell from my eyes. So I don't agree with
15 you on that point.

16 I am not going to grant that motion. I'm just going to
17 save you some time. You're not going to win that motion.

18 All right. What is the point you want to raise.

19 **MS. CARSON:** Sure, Your Honor.

20 So we're asking a judgment as a matter of law on the
21 notice issue. The notice issues that were tried were not
22 decided by verdict because the jury found no infringement.
23 However, the notice issue implicates many of the other patents
24 in this case.

25 **THE COURT:** Yeah, but we only tried the one patent.

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1 **MS. CARSON:** We believe that Your Honor's ruling on
2 the notice issue would help the parties to evaluate --

3 **THE COURT:** No. I want to tell you, both sides,
4 something here. At every turn, I have been told -- I said,
5 why can't this case settle? Why won't these lawyers settle
6 the case?

7 All right. The word comes back to me, "Oh, judge, just go
8 through this one last thing -- the summary judgment -- this is
9 months ago -- go through the summary judgment, and then that
10 will help the lawyers -- everybody see where things stand."

11 So I did. We put a lot of work into it. I would say,
12 "good. Now it's going to settle."

13 Did it? No.

14 Then you say, "We have to have a trial," so we had a
15 trial. The word came back, "Oh, just have that trial, and
16 then they will see where they stand and they will settle the
17 case."

18 Did they? We had the trial. You won and -- but now the
19 case won't settle either. It's -- I don't believe this
20 business.

21 Now I'm being told -- I won't say by who -- that you want
22 me to let you go up to the Court of Appeals on a Rule --
23 interlocutory appeal. Both sides want that. And then the
24 case will settle. No, I don't believe that. I've heard it
25 too much. I've heard it too much. We're going to push ahead

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