

EXHIBIT 17

Volume 5

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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
Friday, December 14, 2018

TRANSCRIPT OF PROCEEDINGS

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1 **Friday - December 14, 2018** **7:22 a.m.**

2 **PROCEEDINGS**

3 **---000---**

4 (Proceedings were heard out of the presence of the jury:)

5 **THE COURT:** Okay. Let's get started.

6 Okay. First we'll consider Rule 50 motions. We've

7 considered your written material so the oral part will be

8 brief. Let's hear first from the defendant.

9 **MR. HEINRICH:** Good morning, Your Honor. Alan

10 Heinrich.

11 **THE COURT:** One issue at a time. So what's your first

12 issue?

13 **MR. HEINRICH:** So we move for JMOL on damages. We

14 think it's clear from plaintiff's submission that they're

15 intent on violating the law. They're going to get up here in a

16 few minutes and they're going to present the jury with a

17 damages theory that the Federal Circuit rejected in *Finjan v.*

18 *Blue Coat.*

19 They're going to argue to the jury that the jury should

20 award a royalty based on a per-user or per-scan rate that's

21 based on nothing more than what Finjan's CEO testified Finjan

22 would like to get. It's contrary to law.

23 **THE COURT:** Okay. All right.

24 All right. Let's hear from the other side.

25 **MR. ANDRE:** Good morning, Your Honor. Paul Andre for

1 less -- I said to you this case is going to come down to one
 2 issue in terms of the infringement case. That's: What is a
 3 database, and are we using that limitation?
 4 And the parties agree on that, but we disagree
 5 fundamentally on what that means.
 6 What Finjan has said when they've come up here and in
 7 opening statement, they have said that the only thing you need
 8 to determine is whether or not they, that's Juniper, used a
 9 database. That's it. That's all you need to determine.
 10 And that's been their philosophy. Come up here, show you
 11 a lot of documents that say Juniper uses a database, and that's
 12 all they need to do; they can walk away.
 13 Similar issue with some of the other words in this case.
 14 Schema. Come up, say, here, you're using a schema. That's it;
 15 we're done.
 16 It's actually much more complicated than that.
 17 This Court has given -- well, the claim itself has
 18 requirements for what is a database.
 19 Your Honor, I'm having a minor issue with the slides, if
 20 we can just take a moment.
 21 **THE COURT:** Sure.
 22 (Pause)
 23 **MR. KAGAN:** Thank you. Sorry about that, ladies and
 24 gentlemen.
 25 **THE COURT:** You've got Claim 10 on the screen.

CLOSING ARGUMENT / KAGAN

1 show you this. They're trying to take documents that have
 2 words, that have labels, and wave them around and say, here's
 3 the word "database," here's the word "schema," therefore,
 4 there's a database schema in a database that's used -- being
 5 used to store a security profile.
 6 And we will show you that that is absolutely not what is
 7 happening. And you don't have to take my word for it. In
 8 fact, you're not allowed to take my word for it. I'm going to
 9 show you the evidence, and I'm going to remind you of the
 10 things that were said and presented to you as evidence in this
 11 case.
 12 Finjan's lawyer showed you a chart with a bunch of check
 13 boxes. And there was one box not checked, to somehow suggest
 14 that in terms of their claim elements that we're really using a
 15 lot of the claim.
 16 That's not how patent infringement works. You remember
 17 the football example Dr. Rubin talked about where if you were
 18 to do that kind of a check mark, a football and a soccer ball
 19 can look very much alike because they share a lot of
 20 characteristics, but the key feature is different, so there's
 21 no infringement.
 22 That's what's going on here. The key issue, the whole
 23 point of novelty for their invention -- and I'll talk about
 24 this -- what made their invention get allowed you, the speed
 25 with which you can access the security profiles by putting them

1 **MR. KAGAN:** Okay. So the question here is not just
 2 does Juniper use a database? But what does it store in a
 3 database? And what does it mean to be a database within the
 4 meaning of this claim?
 5 What we need to do, what has to happen for purposes of
 6 Claim 10 is there has to be a security profile that is stored
 7 in a database. And the security profile has to include a list
 8 of suspicious operations. It's not just having a database, not
 9 just using a database, but storing a security profile in a
 10 database.
 11 And, furthermore, not just any database. When Finjan's
 12 lawyer got up here they said it's just a plain old ordinary
 13 database, just got it out of the IBM Computer Dictionary;
 14 there's nothing special about it.
 15 I don't know if I'd say there's something special or not
 16 special about the database, but it's a particular type of
 17 database. It is a database that is organized according to a
 18 database schema to serve one or more applications.
 19 And that's a very important definition. This is an agreed
 20 definition. Why do you think Juniper would agree to this
 21 definition? We know what type of database it is we are using
 22 to store our security profiles, and we know whether or not they
 23 have a schema. We're happy with this construction. That's why
 24 we agreed to it.
 25 What Finjan is trying to do is play word games. And we'll

CLOSING ARGUMENT / KAGAN

1 in a database with a schema doesn't exist in Juniper's product.
 2 And the reason it doesn't exist is because Juniper's
 3 product, the Sky ATP, is fundamentally different. It does not
 4 use security profiles in the way that the patent contemplates.
 5 It uses something completely different, called a verdict.
 6 Dr. Rubin testified to this. And I'll be going through it in
 7 detail later.
 8 But there's a reason that Juniper's product is different,
 9 is better, in Juniper's view. But it doesn't need to rely on a
 10 database with a schema, which may have been good technology
 11 back in 1996, when this patent claims priority, but it's not
 12 now, with modern schema-less databases.
 13 You saw this diagram when Dr. Rubin was testifying. This
 14 is the fundamental architecture of the Sky ATP. It shows where
 15 Juniper stores all of its data, including the security
 16 profiles. And there are three solutions that Juniper uses.
 17 They're at the bottom right.
 18 One is the Amazon DynamoDB. Some security profiles are
 19 stored there. One is the Amazon S3. Some security profiles
 20 are stored there. The third storage solution is called MySQL.
 21 And that's a database that we agree that that has a schema.
 22 But no security profiles are stored there.
 23 So Finjan has sort of a mix and match problem. They can
 24 find a database within the meaning of the claim, the definition
 25 of the construction, but they can't find any security profiles

1 being stored in there.

2 And they can find where the security profiles are being

3 stored, which is DynamoDB and S3, but those don't have a schema

4 and, therefore, don't qualify as databases under the Court's

5 construction. That's why there can be no infringement in this

6 case.

7 Dr. Rubin testified in this case, and he testified, he

8 said that he had experience with DynamoDB from his own work.

9 He testified it's schema-less. We presented you -- he

10 presented you with documents from Amazon itself explaining

11 database. Dynamo database, DynamoDB is schema-less.

12 What's the response from Finjan? Well, don't believe it

13 because it's just an Amazon document.

14 What motivation would Amazon have to falsely describe its

15 database?

16 Dr. Rubin testified from his own knowledge and experience

17 that he knows that this does not have a schema, which is

18 consistent with these documents.

19 Amazon S3 was even less structured. The unstructured

20 blogs. He and Dr. Rubin testified this does not have a schema.

21 Do you remember he stood up here and he wrote on the easel

22 with a pen? The Judge, I believe was standing over there.

23 And he explained all about how schema-less databases work

24 and how they can store large amounts of information. And

25 they're simply not very efficient. The difference between

1 databases with a schema and databases without. And he

2 explained to you, from his years of expertise, why these

3 databases were schema-less.

4 Part of his discussion was why you would want to use a

5 database with a schema versus a database without a schema. And

6 he explained that a database with a schema is extremely fast

7 and efficient a query. You can get information very quickly

8 out of that database.

9 With a schema-less database, it's slow because you can't

10 write these structured queries. That's what he described them.

11 The SQL. Structured query language that makes the SQL

12 database. These are fundamentally different databases, with

13 the schema and without.

14 What did Dr. Cole say about the schema-less databases? He

15 says you go through the Amazon documents. And even though

16 Amazon themselves say these databases are schema-less, there's

17 still a schema.

18 There's no evidence of that. The Amazon documents say the

19 databases are schema-less. They do not have a database schema.

20 The key value, which is the way of identifying the data,

21 is there. But in terms of the database itself, do you remember

22 Dr. Rubin drew the circles, and he said you can put whatever

23 blobs of data you want, some big and some small? There's

24 nothing about the structure of those databases that restricts

25 the information that you could put in them.

1 And do you remember Dr. Cole gave the example, he said,

2 well, if you have a database with fields and you just leave one

3 blank, that turns it into a schema-less database?

4 Dr. Rubin explained why that's not true as well.

5 The point is, when you look at the actual evidence from

6 Amazon and from Dr. Rubin, who is extremely credible on this

7 point, he explained why both Amazon DB and Amazon S3 are

8 schema-less. And because they're schema-less, they cannot meet

9 the construction, the agreed construction of the database in

10 this case. And that is where the security profiles are stored.

11 So that is what Finjan must show you, and they haven't done

12 that.

13 Dr. Cole tried to explain that there has to be a schema

14 because the only way, according to Dr. Cole, Juniper's system

15 can work is if there is structure and schema to that database

16 so you can very quickly look up a hash, pull out the security

17 profile and the verdict, and make a decision very, very

18 quickly.

19 And this is where Dr. Cole misunderstands how Juniper's

20 system works. As Dr. Rubin explained, Juniper's system, Sky

21 ATP, does not use the security profile to analyze files. It

22 uses only the verdict. Remember the integer?

23 And he said, so you don't need to have a database with a

24 schema because you can very quickly pull out that integer so

25 you can just put that in a schema-less database.

1 It's Dr. Cole's misunderstanding of Juniper's system that

2 led him to this erroneous view. He's wrong. You do not need a

3 database with a schema or structure to run Sky ATP because you

4 don't need the security profile.

5 The security profile is that big list of all the

6 operations the computer does. That's not how Juniper's system

7 works. All it does is look at a single number, a single

8 integer. And that's why it can be stored in a schema-less

9 database.

10 Dr. Rubin explains in his testimony. He was asked:

11 "Does the verdict contain or include a list of

12 suspicious computer operations?"

13 That's what the security profile is. Dr. Rubin said:

14 "It's a simple number. It doesn't contain anything

15 except that number."

16 So what does Dr. Cole do? He's got a problem. He's

17 trying to find a way of saying that what Juniper is actually

18 using is a database with a schema to store these security

19 profiles.

20 You've got the Amazon documents saying these two databases

21 don't have a schema. These two places where the security

22 profiles are stored actually do not have a schema.

23 So this is what he does. And this is exactly what I

24 showed you in the opening. And I said I can't be a hundred

25 percent sure this is going to come into evidence, but it did