

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

Finjan, Inc.,)	
)	
Plaintiff,)	
)	
VS.)	NO. 17-CV-5659
)	
Juniper Network, Inc.,)	
)	
Defendant.)	
)	

San Francisco, California
Thursday, February 22, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025

BY: Mr. Paul Andre
Mr. Kristopher Kastens

For Defendant: IRELL & MANELLA LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660

BY: Ms. Rebecca Carson

Reported By: Vicki Eastvold, RMR, CRR
Official Reporter

1 Thursday - February 22, 2018

11:28 a.m.

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

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4 **THE DEPUTY CLERK:** Calling civil action 17-5659
5 Finjan, Inc., versus Juniper Network, Inc.

6 Counsel, please approach the podium and state your
7 appearances for the record.

8 **MR. ANDRE:** Morning, Your Honor. Paul Andre for
9 plaintiff Finjan.

10 **MS. CARSON:** Good morning, Your Honor. Rebecca Carson
11 for Juniper Networks.

12 **MR. KASTENS:** Kristopher Kastens for Finjan.

13 **THE COURT:** Unless you're about to tell me you've
14 settled your case, I have a plan for your case. Are you ready?
15 It's a two-part plan. First part is a normal schedule. Second
16 is the shoot-out schedule. Are you ready?

17 Any initial disclosures should have already been done, but
18 I'll give you until February 28 to make sure you've done them
19 correctly. Leave to add any new parties or pleading amendments
20 must be received by May 31. Fact discovery cutoff will be
21 March 29 next year. That will also be the date your expert
22 report is due if you have the burden of proof on the issue.
23 March 29 next year. The pre-trial conference would be
24 June 6 -- D Day -- next year. Trial will be July 2.

25 See, is that right? Did I really say July 2?

1 July 8 is what I meant. And that will be a jury trial.
2 I'll refer you to Magistrate Judge -- hope she will accept
3 this -- Susan van Keulen for settlement.

4 And I will have to ask this question: These patent cases
5 are so contentious and so unreasoned, the lawyers are so
6 unreasonable in these cases that I normally keep all discovery
7 disputes. But patent cases the lawyers can't agree on
8 anything. However, if you promise me you will be reasonable on
9 both sides and that there will be very few discovery disputes I
10 will keep all discovery disputes.

11 **MS. CARSON:** Your Honor, we intend to be reasonable.
12 Assuming that the other party is reasonable, I think we can
13 limit discovery motions.

14 **MR. ANDRE:** Your Honor, we're very reasonable. We
15 give up everything.

16 **THE COURT:** All right. I'm giving -- I'm going to
17 keep them for myself and see if it works. Okay. So that's the
18 overall case schedule. Do you have any heartburn on this?

19 **MS. CARSON:** Your Honor, one comment. The parties had
20 actually worked together to come to an agreed schedule.

21 **THE COURT:** I know. It was too leisurely. It would
22 call for a trial in 2020. That would be the -- I won't even be
23 alive probably in 2020. I've never set a case that far out in
24 my entire career. You lawyers are going to have to get going.
25 This is plenty of time.

1 **MR. ANDRE:** Your Honor, it's fine for plaintiff.
2 Works for us.

3 **MS. CARSON:** Your Honor, we think it's a little
4 advanced given the number of patents at issue in the case and
5 then --

6 **THE COURT:** Too bad. You can do this. That's where
7 the shoot-out comes in. Are you ready? The shoot-out is a
8 great thing that I have come up with. It works as follows:

9 How many claims are involved here?

10 **MR. ANDRE:** We've agreed to limit it to 16 claims on
11 the patents.

12 **THE COURT:** Sixteen from how many patents?

13 **MR. ANDRE:** Eight patents.

14 **THE COURT:** Is that right?

15 **MS. CARSON:** That's correct, Your Honor.

16 **THE COURT:** Okay. So of the 16, each of you get to
17 pick one. Plaintiff gets to pick your strongest claim and
18 Juniper gets to pick the weakest of the claims. And then
19 you're going to both make motions. We're going to each have
20 discovery. I'll give you reasonable discovery into those two.
21 This is in addition to all the other discovery that's going on.
22 But you get discovery into each of those two on kind of a
23 compressed schedule. And if anybody stonewalls, believe me
24 their motion won't get granted. You better cooperate on this
25 discovery. So you both are going to cross-move for summary

1 judgment. It could turn out that -- it could turn out like in
2 any summary judgment motion that there are fact issues that are
3 impossible to resolve. But in the past it's quite clear that
4 one side or the other is absolutely correct. What does that
5 mean? It means that it either leads to an immediate
6 preliminary injunction -- that would be bad for Juniper -- or,
7 it leads to a sanctions motion against the plaintiff. Or it
8 might even be a sanctions motion against the defendant.

9 This is -- it just cuts to the heart of the case so
10 quickly. I promise you by August of this year the case will be
11 over because one of you -- I know these patent cases. They're
12 very few where there's a fact issue; maybe one out of three.
13 Two out of three it's quite clear that either the plaintiff is
14 way off base, which was true in the last case that I did, or
15 that the Juniper side is way off base.

16 And there's nothing wrong with a preliminary injunction
17 right off the bat. In fact, it would be a permanent injunction
18 because it's the result of summary judgment if you in fact are
19 infringing. You don't have to wait until the end of the case.
20 Whamo, the product goes off the shelf.

21 So this gets it done to one -- each side has one.

22 Now here's the other trick I found in doing this. That as
23 soon as the Juniper side decides, Oh, we're going to go with
24 claim number eight on the XYZ patent, and you withdraw that
25 patent. They withdrew eight -- eight - claims in seriatum.

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