

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

FINJAN, INC.,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 17-cv-5659 WHA
)	
JUNIPER NETWORKS, INC.,)	
)	
Defendant.)	
)	

San Francisco, California
Thursday, May 2, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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Reported By: Marla F. Knox, RPR, CRR
Official Reporter

1 Thursday - May 2, 2019

10:25 a.m.

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

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

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

8 **MR. ANDRE:** Good morning, Your Honor, Paul Andre,
9 James Hannah and Kristopher Kastens for Finjan.

10 **THE COURT:** Good morning. Thank you.

11 **MS. CARSON:** Good morning, Your Honor. Rebecca Carson
12 at Irell & Manella on behalf of Juniper Networks. And with me
13 is Jonathan Kagan, Joshua Glucoft and Kevin Wong.

14 **THE COURT:** Welcome back.

15 Okay. We have several motions. Here are the issues that
16 I'm interested in. I think first on the 780 patent, the issue
17 of notice and on the other patent, 154, the issue of content
18 processor.

19 Let's take first the 780. Why don't you summarize your
20 position. I think I understand -- it is my Andre who needs to
21 do the most speaking on this one, but I want -- you kind of tee
22 it up for us, and then we will go to Mr. Andre and then come
23 back to you on notice and constructive notice.

24 **MS. CARSON:** Sure, Your Honor. So the undisputed
25 facts in this case show that prior to filing the lawsuit,

1 Finjan did not identify the 780 patent as a patent that it was
2 accusing either side for or Juniper of infringing.

3 The initial complaint in this case did not include the ATP
4 Appliance product, and Finjan did not make a specific
5 allegation that that product infringed the 780 patent until it
6 served its infringement contingency in March of 2018 which was
7 after the expiration of the 780 patent. Therefore, there was
8 no actual notice pertaining to the ATP Appliance product prior
9 to expiration.

10 We have also set forth in our brief that there are
11 undisputed facts showing that Finjan licensed the 780 patent to
12 a number of licensees, some of which had had infringement
13 verdicts under the 780 patent that had been tried to a jury and
14 the jury had found that those Defendants had infringed the 780
15 patents; and the licenses that were entered into after those
16 verdicts did not include a marking provision. There is no
17 evidence that those licensees marked their products during the
18 relevant time period. And, therefore, Finjan has not
19 established either constructive notice or actual notice which
20 is a precursor to its claim because as we now know, they
21 haven't opposed on the SRX or the Sky ATP. So as of now the
22 780 is only being asserted -- claim 9 is only being asserted
23 against the ATP Appliance product.

24 **THE COURT:** Okay. Stand right there. Let's hear from
25 the other side.

1 **MR. ANDRE:** Paul Andre for Finjan, Your Honor.

2 Actual notice was given to Cyphort on February 9, 2015.
3 Finjan sent Cyphort a letter to opening licensing negotiation.
4 March 23rd --

5 **THE COURT:** Wait. Did that letter call out the 780
6 patent?

7 **MR. ANDRE:** It didn't call out any patents. It was a
8 letter introducing --

9 **THE COURT:** I'm just going to tell you right now.
10 Life is too short. That is not going to fly. Give me one
11 where the 780 was called out.

12 **MR. ANDRE:** So on March 23, 2016, Finjan gave Cyphort
13 a presentation that listed the 780 patent.

14 **THE COURT:** It called out the 780?

15 **MR. ANDRE:** It called out several patents, but 780 was
16 one of them.

17 **THE COURT:** Is that true?

18 **MS. CARSON:** Your Honor, it refers to the 780 patent
19 but only in a chart that shows the patents that Finjan has
20 asserted against other defendants. It was not in a chart that
21 charted against the ATP Appliance.

22 **THE COURT:** There is some case law that says you got
23 to take that extra step. So what do you say to that point?

24 **MR. ANDRE:** Well, we listed out other patents that
25 were relevant to Cyphort; and then we gave them the analysis of

1 the ATP Appliance. We didn't break it down by patent by patent
2 by patent. We did give them that notice of the 780 patent --

3 **THE COURT:** You know, why -- it would have been easy.
4 Why do you lawyers and patent owners do this to the poor judges
5 of America? This is such an easy thing to fix. You send a
6 letter up front that calls out the 780. I know why you don't
7 want to do it. It is because that will trigger -- if you are
8 specific enough, it triggers a declaratory relief case. So
9 there is a tactical thing going on here.

10 To me it is crazy for you to stay vague like the -- like
11 you do and not put something in writing and then say Oh, but we
12 put him on notice.

13 All right. You are going to lose on that point unless you
14 can show me you did a claim chart that showed the 780 was
15 violated.

16 **MR. ANDRE:** Your Honor, we entered into a license
17 agreement with these guys until we got to the very signature.
18 It listed the 780 patent and these products.

19 **THE COURT:** Wait, wait.

20 **MR. ANDRE:** This is a --

21 **THE COURT:** You entered into a license agreement?

22 **MR. ANDRE:** I'm sorry. We didn't sign it. We had a
23 license agreement drafted up. The parties were working
24 cooperatively. Cyphort and Finjan were acting as friends
25 trying to do a deal together. They were not adversarial. They

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