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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
	Thursday, May 9, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: KRAMER, LEVIN, NAFTALIS & FRANKEL LLP
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                           LISA KOBIALKA, ESQ.
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Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
              Official Reporter

1   **Thursday - May 9, 2019**   **7:59 a.m.**

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

3   ---oOo---

4   **THE CLERK:** Calling civil action 17-5659, Finjan, Inc.

5   versus June, Inc.

6   Counsel, please step forward and state your appearances

7   for the record.

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

9   Lisa Kobialka, Kris Kastens, and Missy Brenner for plaintiff

10   Finjan.

11   **MS. KOBIALKA:** Hello.

12   **THE COURT:** Welcome to you.

13   **MR. ANDRE:** Thank you.

14   **MR. KAGAN:** Good morning, Your Honor. Jonathan Kagan,

15   of Irell & Manella. With me is Rebecca Carson.

16   **THE COURT:** Welcome to you.

17   **MR. KAGAN:** Thank you.

18   **THE COURT:** We have two motions. We'll start with the

19   motion by Finjan. Please, go ahead.

20   **MS. KOBIALKA:** Your Honor, Lisa Kobialka on behalf of

21   Finjan.

22   So Finjan brought this Rule 60 motion under two different

23   grounds, one under 60(b)(2) and then one under 60(b)(3),

24   because there were incredibly misleading omissions that were

25   made throughout discovery with respect to Sky ATP.

1   And the first thing I can point to was an interrogatory

2   that specifically asked about the databases in Sky ATP. That

3   was in April of 2018, which would have given us plenty of time

4   if they had been honest in their response about what those

5   databases were.

6   And what they did was they indicated what databases there

7   were, that they're willing to tell us about, whether or not --

8   THE COURT: Wait. See, you got a false start, and

9   then I got confused.

10   MS. KOBIALKA: Sorry.

11   THE COURT: Give me the question and the answer again,

12   but be clear-cut instead of false start.

13   MS. KOBIALKA: Fair enough.

14   Interrogatory No. 12 explicitly asked:

15   "Identify and describe all databases that are

16   incorporated or used by the accused products."

17   They responded:

18   "Based on an investigation to date, Sky ATP" -- so

19   we're specifically talking about the product at issue that

20   was at trial -- "does not store results from the

21   adapter" -- and it gives the claim construction -- "in a

22   collection of interrelated data organized according to a

23   database schema to serve one or more applications."

24   But it goes on, and this is where it's really misleading,

25   because of the omission.

1	**THE COURT:** Now, read slowly then.
2	**MS. KOBIALKA:** It goes on to say:
3	"To the extent Sky ATP uses any other database that
4	may or may not have had schema, such databases are
5	irrelevant to this matter. Such as, for example, Customer
6	Database, which is used to track information. Dynamo DB
7	and Amazon RDS, which do store adapter results, are
8	schema-less and, thus, do not fall within Finjan's
9	definition of database, which is, quote, a collection of
10	interrelated data organized according to a database schema
11	to serve one or more applications."
12	Nowhere is there any mention of the Joe Sandbox file
13	database, which we discovered and were able to confirm, in
14	February of this year, months after the trial, on this very
15	issue, that, in fact, Joe Sandbox file database stores the
16	results, and it has a database. And that's part of Sky ATP.
17	They omitted it explicitly from their interrogatory response.
18	Several months prior to this interrogatory request, we
19	specifically asked for documents regarding Sky ATP, the
20	operation of Sky ATP. And we were told throughout discovery,
21	You have everything.
22	They explicitly wrote in their interrogatory response --
23	**THE COURT:** Is this the same one?
24	**MS. KOBIALKA:** Oh, excuse me, document response.
25	**THE COURT:** All right. Okay. Hold that thought.

1   I just want to hear on the interrogatory answer. What is

2   your response on the interrogatory answer?

3   **MR. KAGAN:** So the first -- the thing that the Court

4   may recall but I will remind the Court of is that Sky ATP is a

5   program that was written by Juniper Networks.

6   What that program does is it licenses certain components

7   or features that it uses from other companies, but it does not

8   have the source code for those. They're not a part of Sky ATP.

9   They're licensed third-party components. One of those is Joe

10 Sandbox.

11   So what Juniper knows is what Juniper's product does. It

12 knows where Sky ATP stores information. What Joe Sandbox does

13 internally, which is now something that Finjan is focusing on,

14 is not something that Juniper knows.

15   Juniper does not have the source code for Joe Sandbox.

16 Juniper does not -- Juniper's prohibited from doing any reverse

17 engineering to try to figure out what Joe Sandbox does

18 internally.

19   And, also, this -- we can get more complex on this. Sky

20 ATP doesn't store anything in Joe Sandbox. So Joe Sandbox does

21 an analysis and it sends information to Sky ATP, but it's a

22 one-way connection.

23   Sky ATP then takes that data, analyzes it, and stores it

24 in precisely the locations that were described in the

25 interrogatory. Sky ATP never goes back and stores anything in

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