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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FINJAN, INC., a Delaware Corporation,)	Case No. 17-cv-05659-WHA
)	
Plaintiff,)	San Francisco, California
)	Courtroom A, 15th Floor
)	Thursday, June 6, 2019
v.)	
)	
JUNIPER NETWORKS, INC., a Delaware Corporation,)	
)	
Defendant.)	

TRANSCRIPT OF TELEPHONIC DISCOVERY HEARING
BEFORE THE HONORABLE THOMAS S. HIXSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	PAUL J. ANDRE, ESQ. Kramer Levin Naftalis & Frankel, LLP 990 Marsh Road Menlo Park, California 94025 (650) 752-1700
For Defendant:	HARRY A. MITTLEMAN, ESQ. Irell & Manella, LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067-4276 (310) 277-1010
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1 SAN FRANCISCO, CALIFORNIA THURSDAY, JUNE 6, 2019 10:42 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: This case is going to be 17-5659, Finjan,
5 Inc. v. Juniper Networks, Inc. Counsel, please state your
6 appearances for the record. Let's start with Plaintiff.

7 MR. ANDRE: Good morning, Your Honor. This is Paul
8 Andre for Finjan, Plaintiff.

9 THE COURT: Good morning.

10 UNIDENTIFIED SPEAKER: Yes. (Indiscernible) for the
11 Defendant.

12 THE COURT: Good morning. We are here today on a
13 discovery letter brief about Shlomo Touboul's -- I'm probably
14 mispronouncing the last name -- deposition, and Juniper has made
15 an argument that Judge Alsup issued an order in December of 2018
16 and it looked to me when I read the full context that what he was
17 really doing was not allowing a deposition in a different lawsuit
18 to be entered into evidence. And I didn't see that as necessarily
19 providing any indication concerning how Mr. Touboul's deposition
20 should proceed.

21 Is there something that I misunderstood about that, Mr.
22 Mittleman?

23 MR. MITTLEMAN: Thank you, Your Honor. I actually
24 didn't make my appearance yet. Another counsel did. This is
25 Harry Mittleman for Juniper Networks. The context in which that

1 stage arose -- this concerned depositions from another case -- we
2 cited to it to address the point that Judge Alsup has already
3 rejected the notion that Mr. Touboul has an excuse to remain in
4 Israel and to testify via videotape because of his travel
5 difficulties. So that is the purpose that we were citing that
6 exchange for.

7 The grounds for the motion that we have brought are the
8 following: The -- our opponent, Mr. Andre's client, Finjan, has
9 taken the position that it may take up to ten 30(b)(6) depositions
10 so long as each one is one second shy of three hours -- three and
11 a half hours. So that it depicts, in theory, 34 hours and 50
12 seconds of 30(b)(6) depositions and that's what Judge Alsup's
13 order permits. I submit that that is a preposterous position and
14 totally inconsistent with the obvious purpose of the standing
15 order, which is to set limits on how many times a person can
16 depose different witnesses and contend that they're all simply one
17 corpus designation -- deposition.

18 So we are here because Finjan's taking the position that they
19 should have carte blanche to take as many as they want as long as
20 they stay one second under three and a half hours on the record.
21 And I've looked at the standing order and that makes no sense and
22 it cannot be squared with the language of the logic of the order.

23 And the second issue that is dividing us with respect to Mr.
24 Touboul is that Finjan contends that it has been given blanket
25 permission by Judge Alsup to depose any of their own witnesses if

1 they contend that those witnesses may have a trial conflict. And
2 I've read the relevant exchange and the order from Judge Alsup,
3 and Judge Alsup said that witnesses could testify via videotaped
4 deposition if they have a trial conflict with the San Diego trial
5 that starts on October 29th in -- in Judge McKeown's courtroom.
6 He didn't say that Finjan has carte blanche simply to fly around
7 the world deposing its own witnesses, which is highly unusual.

8 And that brings us to the present dispute. Because we do not
9 believe that any sensible reading of the standing order permits 35
10 hours and -- 34 hours and 50 seconds of 30(b)(6) depositions --
11 that cannot be right -- we calculate them as already exceeding --
12 already hitting the limit such that if they wish to take Mr.
13 Touboul's deposition, they must make a showing of good cause to do
14 so and no such showing has been made.

15 And we dispute and reject the argument that there is no need
16 for them to obtain leave to take Mr. Touboul's deposition because
17 they believe that as long as they keep a deposition one second
18 under three and a half hours, they can take as many as they like.
19 That just can't be right.

20 And we disagree that there is a blanket permission for them
21 to fly around the country deposing their own witnesses, which is
22 such a highly unusual thing. The order from Judge Alsup was very
23 clear. "If there is a showing of a trial conflict such that a
24 Finjan witness cannot appear at the October 21st trial in this
25 case because that witness has a trial conflict with the October

1 29th trial in the San Diego case, then in that situation a witness
2 may testify via videotape."

3 But no such showing has been made. I have searched
4 repeatedly and in vain for any representation that Mr. Touboul
5 does in fact have a trial conflict. There is no representation
6 that he is in fact going to travel to Southern California to be at
7 the October 29th trial. There is no representation one way or the
8 other. And I'd note that the trial in this case is on October
9 21st, which is before the other trial, so no explanation has been
10 given as to why Mr. Touboul has a conflict that prevents him from
11 appearing in this case on the 21st because there is a later case
12 beginning on the 29th, particularly when there is not any
13 representation, let alone evidence, that Mr. Touboul is going to
14 attend the other trial and thus has a conflict.

15 And so what it appears to us to be is a situation where
16 Finjan, for reasons of -- of convenience wishes to depose its own
17 witness, which is highly unusual, and to require Juniper to send
18 an attorney to Israel for the purpose of appearing at that
19 deposition. And we think that that's improper.

20 If they wish to take a deposition in excess of the ten-
21 deposition limit, they are certainly free to make a motion before
22 the Judge. And if there is good cause for them to do it, I
23 believe the Judge would give them permission. But at this point,
24 no good cause has been shown. No leave has been obtained. And we
25 calculate their time. The deposition that they wish to take of

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