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 1   UNITED STATES DISTRICT COURT
                      NORTHERN DISTRICT OF CALIFORNIA
 2   SAN FRANCISCO DIVISION

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 4   FINJAN, INC., a Delaware   ) Case No. 17-cv-05659-WHA
     Corporation,   )
 5   ) San Francisco, California
                  Plaintiff,   ) Courtroom A, 15th Floor
 6   ) Thursday, June 27, 2019
          v.   )
 7   )
     JUNIPER NETWORKS, INC., a   )
 8   Delaware Corporation,   )
)
 9   Defendant.   )
     _____)

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

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1   SAN FRANCISCO, CALIFORNIA THURSDAY, JUNE 27, 2019 11:11 A.M.

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3   (Call to order of the Court.)

4   THE CLERK: We are here in Civil Action 17-5659, Finjan,

5   Inc. v. Juniper Networks, the Honorable Thomas S. Hixson,

6   presiding.

7   And, counsel, let's hear your appearances and we'll start

8   with the Plaintiff.

9   MS. CAIRE: This is Yuridia Caire from Kramer Levin on

10   behalf of Finjan.

11   MR. WILLIAMS: Daniel Williams from Kramer Levin on

12   behalf of Plaintiff Finjan.

13   THE CLERK: And how about Defendants?

14   MR. GLUCOFT: Your Honor, it's Josh Glucoft from Irell

15   & Manella on behalf of Defendant Juniper Networks.

16   THE COURT: Good morning, everyone. So we are here on

17   the joint discovery letter brief concerning Finjan's relationship

18   with and lawsuit against Trustwave. So let me put this question

19   to Finjan.   Why aren't RFPs 3 to 5 and No. 13 relevant to

20   determining the degree of comparability between the Trustwave

21   license and the hypothetical negotiation in this case, as well as

22   to calculating the reasonable royalty?

23   MS. CAIRE: Good morning, Your Honor. This is Yuridia

24   Caire. Well, this is -- the *Finjan v. Trustwave* case is a breach

25   of contract litigation. We've given Juniper the actual license

3

1   agreement with Trustwave, and there's really been no other

2   evidence that a breach of contract or that additional royalties

3   would need to be paid under that agreement would be relevant to

4   any damages analysis in this case.

5   THE COURT: What about the negotiations surrounding the

6   license agreement with Trustwave? Could that shed light on the

7   hypothetical negotiation here or a reasonable royalty here?

8   MS. CAIRE: No, Your Honor, because they already have

9   the actual agreement and Finjan has already produced mediations

10 leading up to the signed agreement with Trustwave.

11   THE COURT: Okay. You mean --

12   MS. CAIRE: So what they're seeking is actually

13 information related to the breach of contract issue.

14   THE COURT: Well, some of that is. But like RFP 3 is

15 seeking "communications and documents regarding any agreements

16 between Finjan and Trustwave involving the patents-in-suit."

17 That's not necessarily even about the lawsuit, is it?

18   MS. CAIRE: Well, I guess it depends at what time frame,

19 Your Honor. So leading up to it, we agreed to produce everything

20 up to the original agreement. And from what I understand, they're

21 seeking information regarding negotiations that may be related to

22 the subsequent acquisition that occurred in the breach of contract

23 issue.

24   THE COURT: But why should I limit them to things

25 leading up to the 2009 agreement?   Why not the 2012 amended

4

1 agreement?

2   MS. CAIRE: Again, Your Honor, I think we actually have

3 produced communications up through 2012, and I think we would be

4 willing to give communications up to that date.   But our

5 understanding was they were seeking information past that.

6   THE COURT: I think they are. That's right. But why

7 isn't that relevant as well?

8   MS. CAIRE: Because that's all related to the breach of

9 contract issue. And so they've already got the actual agreement.

10 And so I don't understand what a breach of contract or any

11 communications relating to a breach of contract would have to do

12 with product management (ph).

13   THE COURT: Well, one of the issues -- and this gets to

14 the breach of contract issue -- is that one of Trustwave's

15 defenses is to say that they actually don't use or Finjan hasn't

16 sufficiently allege that they use Finjan's patents in the products

17 they sell. Isn't that relevant to the issue of irreparable harm,

18 including whether Trustwave is a competitor and then secondary

19 considerations of known obviousness?

20   MS. CAIRE: No, Your Honor, because the agreement was

21 signed in -- the original agreement was signed in 2009, amended in

22 2012. And so as far as if seven years later the new acquired --

23 you know, the acquiring company is still using the product, is not

24 relevant. There's been no evidence that any sales or additional

25 sales would change that.

5

1   THE COURT: Okay. Juniper, can you respond?

2   MR.   GLUCOFT: Yes, Your Honor.   So I think

3   fundamentally, Your Honor has really hit the nail on the head.

4   There are several reasons why the documents we're seeking, created

5   not just up until 2009 but through the 2012 amendment, and then

6   certainly beyond that, especially up until the 2016 acquisition

7   attempting alleged converting a fully paid-up license into an

8   ongoing royalty license.

9   So from -- just from the damages perspective, obviously if

10 you have a fully paid-up license, you need to know if you can

11 convert that to a royalty rate or an expected royalty rate for a

12 damages analysis -- which is something that we would be doing as

13 part of our damages analysis -- you have to know how many products

14 are sold that allegedly would have been royalty-bearing had it

15 been a per-unit royalty rather than a fully paid-up lump sum as

16 the original 2009 agreement was.

17   And so the fact that there's a dispute between the parties

18 as to how many products (indiscernible) and what -- how they may

19 or may not (indiscernible) because, remember, Finjan has a

20 portfolio of patents, many of which are not asserted against

21 Juniper -- all of those things are highly relevant to how we turn

22 that into expected royalty rates and we can say this is or is not

23 comparable for the reasons that you have to adjust higher or

24 lower.

25   In addition to that, there's also, for example, a provision

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