

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

4 FINJAN, INC., a Delaware Corporation,) Case No. 17-cv-05659-WHA
 5)
 6 Plaintiff,) San Francisco, California
 7 v.) Courtroom A, 15th Floor
 8) Thursday, June 27, 2019
 9)
 10 JUNIPER NETWORKS, INC., a)
 11 Delaware Corporation,)
 12)
 13 Defendant.)
 14)

15 TRANSCRIPT OF TELEPHONIC DISCOVERY HEARING
 16 BEFORE THE HONORABLE THOMAS S. HIXSON
 17 UNITED STATES MAGISTRATE JUDGE
 18

19 APPEARANCES:

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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

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

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.

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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