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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
v.	)	Wednesday, July 31, 2019
	)	
JUNIPER NETWORKS, INC., a Delaware Corporation,	)	
	)	
Defendant.	)	

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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
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For Defendant:	HARRY MITTLEMAN, ESQ. JOSHUA P. GLUCOFT, ESQ. Irell & Manella, LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067-4276 (310) 277-1010
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Transcription Service:	Peggy Schuerger Ad Hoc Reporting 2220 Otay Lakes Road, Suite 502-85 Chula Vista, California 91915 (619) 236-9325
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1 SAN FRANCISCO, CALIFORNIA WEDNESDAY, JULY 31, 2019 3:32 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Okay, Counsel. The Judge has taken the  
5 bench. We're here in Civil Action 17-5659, Finjan, Inc. v.  
6 Juniper Networks, Inc. Counsel, please state your appearances for  
7 the record. Let's start with Plaintiff, please.

8 MR. ANDRE: Good afternoon, Your Honor. Paul Andre for  
9 Finjan.

10 MR. MITTLEMAN: Good afternoon, Your Honor. Harry  
11 Mittleman for Juniper Networks.

12 THE COURT: Good afternoon, Counsel.

13 THE CLERK: Mr. Glucoft, do you want to state your  
14 appearance as well, please.

15 MR. GLUCOFT: Yes. Mr. Joshua Glucoft on behalf of  
16 Defendant Juniper Networks, Inc.

17 THE COURT: Good afternoon. I'm not sure which side  
18 wanted this call but, for whoever did, why don't you introduce the  
19 issue.

20 MR. MITTLEMAN: Thank you very much, Your Honor. This  
21 is Harry Mittleman for Juniper Networks. We are the party  
22 requesting today's call. The purpose of the call is to bring to  
23 Your Honor's attention a very serious discovery issue and it's an  
24 issue regarding Finjan withholding highly relevant ESI evidence.  
25 And so what we are requesting today is that the Court issue an

1 order that Finjan produce all of the responsive ESI information by  
2 close of business today, and I'd like to explain, if I may, the  
3 background for why this is being -- why this is so important.

4 THE COURT: Yes. Please do so.

5 MR. MITTLEMAN: So, Your Honor, back in June, the  
6 parties -- Juniper provided Finjan with final ESI search terms.  
7 This followed several rounds of narrowing and emailing, regarding  
8 narrowing, and so we served our final search terms on June 21st.  
9 We received the ESI earlier this month, on the 12th -- really the  
10 morning of Saturday, July 13th.

11 We noted that no objections had been served and we asked them  
12 to confirm that nothing was being withheld on relevance grounds.  
13 And we also served a subpoena on the search party Cisco seeking  
14 documents.

15 The following day, we learned from Finjan for the first time  
16 that it is objecting to ESI production on relevance grounds. No  
17 specifics were provided. We asked for clarification immediately  
18 that day, Sunday. We then asked again on Monday for clarification  
19 as to what was being withheld as no objections had been served  
20 with specificity. That was the day that fact discovery closed.

21 The very following day, we learned for the first time when  
22 Finjan states that, "Documents have been withheld on the basis of  
23 certain discovery objections."

24 And it's important to note the interplay with what was going  
25 on with Cisco. As I mentioned to Your Honor, Juniper had

1 subpoenaed Cisco. Finjan was simultaneously threatening Cisco not  
2 to produce documents, seeking sanctions and fees if they did  
3 produce documents. Finjan never moved for a protective order and  
4 ultimately Cisco produced documents. They produced those  
5 documents today.

6 We began reviewing those documents today. And we immediately  
7 discovered highly relevant information that clearly reads on the  
8 ESI terms that we provided that should have been produced, that  
9 were not produced, that are core relevant documents and that it's  
10 -- if they were withheld on intentional grounds as opposed to  
11 inadvertent grounds, the only inference that comes to mind is that  
12 they were withheld because they contain very -- they contain some  
13 unflattering statements that Finjan made that I believe patent  
14 litigation in jury cases is not decided on the merits, and that  
15 may have been why we decided to withhold it if it was done  
16 intentionally.

17 But whether it was done intentionally or whether it was the  
18 result of inadvertence, the fact remains that the production we  
19 received in response to the ESI is clearly and demonstrably  
20 incomplete. And we can provide the Court with at least one  
21 example that we found already demonstrating that to be the case.

22 We have no confidence in Finjan's representation that it has  
23 properly withheld documents on relevance grounds. It's Juniper's  
24 position, Your Honor, that that objection is too late and, to the  
25 extent it's not too late, it is an objection that is insupportable

1 in view of the fact that we now have concrete evidence that  
2 relevant ESI -- core relevant ESI has been withheld under the  
3 circumstances and this is an urgent matter.

4 And this is why we ask that all of the ESI materials be  
5 produced by close of business today. We know it's been collected.  
6 We know that Finjan has reviewed it. And so we believe it can be  
7 produced and ought to be produced today without further  
8 withholding on the basis of purported relevance.

9 THE COURT: Thank you. Mr. Andre.

10 MR. ANDRE: Thank you, Your Honor. First off, Your  
11 Honor, I do want to just address one thing. This is the second  
12 time that Juniper has foregone the briefing scheduling, provided  
13 any type of authority for what they're talking about, and actually  
14 giving Finjan a head's up what they're actually specifically  
15 referring to; for example, a "docket" that patent cases are not  
16 decided on the merits. Now, why that is urgent and why that is  
17 relevant to anything is beyond me.

18 But the fact that we're skipping briefing schedules and to  
19 kind of meet the first schedule that we've set forward is  
20 problematic and I think it's telling of the fact that they don't  
21 have the authority to be asking what they're asking for.

22 Let me get into the meat of this motion now. The ESI request  
23 that is at issue here was -- they served the ESI discovery on the  
24 last day they could serve discovery in the case. ESI for the  
25 witnesses that they focused on were for witnesses that were

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