

Pages 1 - 13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

FINJAN, INC.,)	
)	
Plaintiff,)	
)	
VS.)	NO. CV 17-05659-WHA
)	
JUNIPER NETWORK, INC.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Wednesday, May 9, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
BY: KRISTOPHER KASTENS, ESQUIRE
PHUONG NGUYEN, ESQUIRE

For Defendant:

IRELL & MANELLA LLP
1800 Avenue of the Stars
Suite 900
Los Angeles, CA 90067
BY: JOSHUA GLUCOFT, ESQUIRE

Reported By: Pamela A. Batalo, CSR No. 3593, RMR, FCRR
Official Reporter

1 Wednesday - May 9, 2017

8:00 a.m.

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

3 ---000---

4 **THE CLERK:** Calling CV 17-5659, Finjan, Inc. vs.
5 Juniper Network, Inc.

6 Counsel, please approach the podium and state your
7 appearances for the record.

8 **MR. KASTENS:** Kristopher Kastens for plaintiff,
9 Finjan, Inc. And with me, I have Phuong Nguyen, who will be
10 doing the majority of the arguments this morning, and she is
11 one of our junior associates.

12 **THE COURT:** Great. Welcome.

13 **MR. GLUCOFT:** Good morning, Your Honor. Joshua
14 Glucoft of Irell & Manella on behalf of Juniper Networks.

15 **THE COURT:** Are you a junior lawyer?

16 **MR. GLUCOFT:** Yes, Your Honor. I'm a fourth year.

17 **THE COURT:** Fourth year. All right.

18 How many years out are you, Ms. Nguyen?

19 **MS. NGUYEN:** Almost three years out now.

20 **THE COURT:** Three?

21 **MS. NGUYEN:** Yes.

22 **THE COURT:** Three against four.

23 This is a motion by Ms. Nguyen; right?

24 **MS. NGUYEN:** Yes, Your Honor.

25 **THE COURT:** Go ahead.

1 **MS. NGUYEN:** Your Honor, Finjan seeks leave to amend
2 its Complaint to include the ATP Appliance, and leave should be
3 granted here because leave is freely granted, and defendant
4 Juniper actually does not oppose the inclusion of the ATP
5 Appliance. It opposes including the ATP appliance in the early
6 summary judgment motions.

7 And here Finjan has acted in good faith in bringing its
8 motion. It brought this request promptly after learning of the
9 ATP appliance in February and it also brought this motion a few
10 days after this Court stated that Finjan would need to move to
11 amend its Complaint to specifically identify the ATP appliance.

12 And also the amendments would not be futile because
13 Finjan's infringement claims are similar to those that were in
14 its original Complaint, which Juniper did not move to dismiss.

15 And finally, there is no prejudice to Juniper because
16 Finjan first identified the ATP appliance as an accused
17 instrumentality in its February discovery requests and has
18 provided specific charts for the ATP appliance in its
19 infringement contentions, which were served on March 8th.

20 And also, these are their own products, and so they should
21 be familiar with how they work, and discovery is still ongoing.

22 **THE COURT:** All right. What does Juniper say?

23 **MR. GLUCOFT:** Thank you, Your Honor.

24 So there is actually two issues here beyond just this new
25 product ATP appliance.

1 The first issue is that the proposed Amended Complaint is
2 defective, and it's defective because it includes the
3 allegations of willfulness that this Court has already
4 dismissed back in February.

5 And so these allegations, which are literally verbatim
6 identical to the willfulness allegations that were previously
7 included in the Complaint, the motion -- the deadline to amend,
8 to add additional factual allegations passed on February 22nd.
9 And so when we pointed out that this new proposed Amended
10 Complaint includes the exact same willfulness allegations, in
11 their reply, Finjan stated, well, actually these allegations,
12 they don't just relate to willfulness. They also go to this,
13 quote/unquote, exceptional case Halo standard.

14 And the problem with that argument is that not only are
15 the allegations exactly verbatim identical, the only reason
16 those allegations suggest the case is exceptional is because
17 they allege that we had -- or they failed to allege that we had
18 notice of the asserted patents and that we infringed and so
19 their exceptional case allegations were based on the notion
20 that our infringement was purportedly willful.

21 So it's the exact same allegations. It even uses the term
22 "willful."

23 **THE COURT:** I have got a question for you.

24 "Exceptional," I know what that means and where it comes
25 from, but don't I just wait until later in the case when the

1 issue comes up? You don't have to plead and prove exceptional,
2 do you?

3 **MR. GLUCOFT:** Well, Your Honor, it depends the
4 basis -- it depends on the basis forming your allegations of an
5 exceptional case. So if, for example, their exceptional case
6 allegations were based on our litigation conduct in this case,
7 then I agree certainly that that couldn't be found in their
8 Complaint.

9 But the -- if the exceptional case allegations are
10 founded, for example, on us copying Finjan's product, then,
11 yes, they would have to plead those --

12 **THE COURT:** What is the decision that says that it has
13 to be pled in that circumstance?

14 **MR. GLUCOFT:** Your Honor, I'm happy to follow up with
15 supplemental authority, but I believe that in any case, they
16 didn't allege anything --

17 **THE COURT:** No, no. "I believe" is not good enough.
18 Lawyers always believe something.

19 I need -- I question the accuracy of what you just told
20 me. I would like to know if there is a decision by the Federal
21 Circuit that says that in order to -- that you must plead in
22 the Complaint exceptional circumstances for infringement if it
23 exists.

24 I know you do for willfulness. Okay. That's fair. But I
25 thought that the judge decides whether something is exceptional

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.