

Exhibit C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK

FINJAN, INC.)	
)	
)	
Plaintiff,)	
)	
vs.)	No. C 18-2621 WHO
)	
CHECK POINT SOFTWARE TECHNOLOGIES, INC.)	
)	San Francisco, California
Defendant.)	Wednesday
)	February 13, 2019
)	2:00 p.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
BY: JAMES R. HANNAH, ESQ.
KRISTOPHER BENJAMIN KASTENS, ESQ.

For Defendant: ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
BY: CLEMENT S. ROBERTS, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE
1000 Marsh Road
Menlo Park, California 94025
BY: EVAN DAVID BREWER, ESQ.

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

Debra L. Pas, CSR, RPR, RMR, CRR

1 Wednesday - February 13, 2019

2:14 p.m.

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

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4 **THE CLERK:** Calling Civil Matter 18-2621, Finjan,
5 Incorporated versus Check Point Software Technologies,
6 Incorporated.

7 Counsel, please come forward and state your appearance.

8 **MR. ROBERTS:** Good morning, Your Honor. Clem Roberts
9 from Orrick Herrington for the defendant Check Point Software
10 Technologies.

11 **MR. HANNAH:** Good morning, Your Honor. James Hannah
12 on behalf of Finjan, and with me is Chris Kastens. He will be
13 handling the majority of the argument today.

14 **THE COURT:** Mr. Hannah, I've seen you before.

15 **MR. HANNAH:** Yes. Nice to see you, Your Honor.

16 **THE COURT:** Nice to see you. I hope that my comment
17 at the first case management session was passed on to you.

18 **MR. HANNAH:** It was, Your Honor. And I have to say
19 that at every subsequent trial I have made sure not to make any
20 assumptions any more and definitely took it to heart. So thank
21 you, your Honor.

22 **THE COURT:** All right. So let me tell you what I
23 think about the motion. I'm inclined to grant in almost all
24 ways the motion to strike.

25 Finjan needs to organize its infringement contentions by

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1 the underlying instrumentalities to crystalize the contentions.
2 If the underlying instrumentalities infringe in combination,
3 the combination needs to be specified. Pinpoint citations need
4 to be specific, particularly to where and how each limitation
5 of each asserted claim is found within the accused
6 instrumentality.

7 It's not sufficient to cite multiple sets of source code
8 under each claim limitation without explanation. The public
9 information that's cited isn't sufficient to cure the problem.

10 And I don't think blaming Check Point is a useful way to
11 resolve this problem. If there was a problem in getting
12 technical documents, you shouldn't have waited until the last
13 two days before the deadline to serve contentions.

14 And I think, Mr. Hannah, we had something similar in
15 that -- the trial before. I think a similar kind of issue came
16 up.

17 In any event, regarding the open-ended contentions, Finjan
18 can't reserve any undisclosed theories of infringement. It
19 needs to cite the relevant source code to crystallize its
20 claims.

21 So as long as Finjan corrects all of those things and
22 identifies the source code properly, I'm not going to strike
23 any new instrumentalities. But everything has to be laid out
24 in a very clear manner, which it doesn't appear that it has
25 been.

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1 So I'm happy to hear argument with respect to that.

2 **MR. KASTENS:** Your Honor, I would just respectfully
3 request that we have an opportunity to depose their engineer,
4 who was the one who said that we didn't cite source code for
5 particular products. Our understanding is that we did cite
6 source code for the products and anything that we had accused.
7 So we would like to determine the basis that they made that
8 representation. A lot of his analysis was a black box where he
9 just said they didn't cite source code for these following
10 products without explaining.

11 I think as we tried to lay out in our brief, they have
12 usually just one directory for all the source code. They will
13 have one software package that they give to their customers.
14 The customers can then enable different features in that. They
15 call those different features products and they rely on a lot
16 of source code that is within the same directory and is not
17 labeled as being related to any product. So we would just ask
18 to have the opportunity to depose somebody, a 30(b)(6) witness,
19 regarding the structure of their source code and then we can
20 supplement within 45 days of that to address that.

21 **THE COURT:** Mr. Roberts.

22 **MR. ROBERTS:** Yeah. So this is difficult for me
23 because the -- we addressed this at the very beginning of the
24 case, and we said we would like contentions that give us the
25 theories of the case. Those are necessary, among other things,

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