

Exhibit K

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

FINJAN, INC.,)

Plaintiff,)

VS.)

NO. C 18-02621-WHO

CHECK POINT SOFTWARE)

TECHNOLOGIES, INC. and CHECK)

POINT SOFTWARE TECHNOLOGIES,)

LTD.,)

Defendants.)

San Francisco, California

Wednesday, July 10, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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LINJUN XU, ATTORNEY AT LAW

For Defendants:

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EVAN D. BREWER, ATTORNEY AT LAW

Reported By:

Marla F. Knox, RPR, CRR
Official Reporter

1 Wednesday - July 10, 2019

9:14 a.m.

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

3 ---000---

4 **THE CLERK:** Calling civil matter 18-2621, Finjan,
5 Incorporated versus Checkpoint Software Technologies,
6 Incorporated, et al.

7 Counsel, please come forward and state your appearance.

8 **MS. KOBIALKA:** Good morning, Your Honor, Lisa Kobialka
9 on behalf of Finjan and I'm accompanied by Kris Kastens, my
10 partner, and Ms. Xu.

11 **THE COURT:** Good morning.

12 **MR. ROBERTS:** Good morning, Your Honor, Clement
13 Roberts on behalf of Checkpoint with Alyssa Caridis and Evan
14 Brewer.

15 **THE COURT:** All right. Good morning. Let me give you
16 my thoughts on these motions.

17 With respect to the motion to strike amended infringement
18 contentions, I'm inclined to grant regarding the Blade
19 Architecture which allegedly infringes the '968. I think
20 the -- it is necessary -- I asked before, and I really would
21 like to see a chart for each blade to clarify which blades
22 Finjan is accusing to specify the combinations when they exist
23 and how they infringe. So I'm going to give you the
24 opportunity to amend one more time and just be -- just make
25 this clear. This is the whole point of this exercise. So make

1 it clear.

2 I'm inclined to grant regarding -- with respect to the
3 '844, the instrumentalities other than the Endpoint Threat
4 Emulation, which is the only one that is mentioned in the chart
5 on that patent.

6 I would also grant regarding ThreatCloud because it is a
7 marketing term and not a product, and there is no argument on
8 that in the opposition. So I'm inclined to do that with
9 prejudice unless there is some reason not to do that.

10 With respect to the source code, I'm inclined also to
11 grant Check Point -- it's a -- source code is not easy for me
12 to understand and -- but Check Point says in its brief that
13 there was no code cited for 30 of the 52 accused
14 instrumentalities, and there wasn't a response to that in the
15 briefing that I saw. So if that's true, then I would grant
16 that with prejudice and only allow the contentions that are
17 listed in Check Point's Appendix 2 to continue.

18 With respect to the motion regarding the doctrine of
19 equivalence, I deny that. I think that's -- that is
20 sufficiently asserted. And I would also point out that Check
21 Point didn't object to the DOE the first time around.

22 With respect to the new instrumentalities that were not --
23 the alleged new instrumentalities that weren't initially
24 charted, I would grant with respect to that, that products not
25 in the initial contentions would be struck. And you would need

1 good cause in order to assert them again and not just throw
2 them into the case. And that includes all the products that
3 weren't mentioned and the so-called undefined functionalities
4 and marketing terms in Appendix 3.

5 With respect to the -- the motion to strike the Xu
6 declaration, that would be granted because she obviously did
7 not have personal knowledge sufficient to write that
8 declaration. It is my assumption -- and I just want Ms. Xu to
9 clarify this for me -- that she did not look at the source code
10 outside of the repository. My assumption is what happened was
11 that she got information from the expert and put that in as the
12 large part of the basis of that declaration. That's
13 inappropriate. I'm not going to make a bigger deal of it than
14 that, but don't do that again. And -- but I just want to be
15 sure that that's the case. Because if it's not, then we have a
16 different issue.

17 And then, finally, Checkpoint's motion to amend the
18 invalidity contentions wasn't opposed, so that's granted.

19 So who wants to take that on or do you just want to accept
20 the tentative?

21 **MR. KASTENS:** Your Honor, Kristopher Kastens for
22 Finjan, Inc.

23 I'm just going to address the blades issue and
24 instrumentality that they keep raising. So I just want to
25 clarify something, Finjan's infringement contentions are in

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