

EXHIBIT 35

Pages 1 - 41

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Virginia K. DeMarchi, Magistrate Judge

FINJAN, INC.,)

Plaintiff,)

VS.)

NO. C 17-04467 BLF (VKD)

SONICWALL, INC.,)

Defendant.)

San Jose, California
Tuesday, August 18, 2020

TRANSCRIPT OF PROCEEDINGS BY ZOOM WEBINAR

APPEARANCES BY ZOOM WEBINAR:

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Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

1 Tuesday - August 18, 2020

11:02 a.m.

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

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4 **THE CLERK:** Calling the matter of Finjan versus
5 SonicWall, Case Number 17-cv-4467.

6 **THE COURT:** May I have appearances, please, starting
7 with plaintiff.

8 **MR. ANDRE:** For plaintiff Finjan, Paul Andre.

9 **THE COURT:** Okay. Good morning.

10 And for defendant?

11 **MS. McGRATH:** Good morning, Your Honor. This is Robin
12 McGrath on behalf of SonicWall.

13 **MS. SNEDEKER:** Alice Snedeker on behalf of SonicWall.

14 **THE COURT:** Okay. Good morning to you both.

15 Ms. McGrath, your audio is a little bit quiet so I don't
16 know if you can maybe get a little bit closer to the microphone
17 when you speak. That would be helpful.

18 **MS. McGRATH:** I will do my best.

19 **THE COURT:** Okay. Thank you.

20 So we are here on two disputes. The first is at
21 Docket 276, and that's a dispute concerning certain of Finjan's
22 requests for admissions and SonicWall's responses to those
23 requests; and second is Document Number 277 concerning
24 SonicWall's identification of its patent portfolio and
25 supplemental initial disclosures served on the last day of

1 discovery.

2 So both of these are styled as sanctions motions and, as
3 you may know, my standing order does not permit the use of a
4 discovery letter brief for sanctions motions. It's supposed to
5 be a regularly noticed motion.

6 This rule is principally for the parties' benefit because
7 often sanctions motions cannot be fairly briefed and dealt with
8 in the abbreviated expedited procedure that I use for discovery
9 disputes. There's not an opportunity for declarations or any
10 of those things.

11 But it appears you-all have agreed to handle these
12 disputes in the discovery letter way, and I am happy to go
13 along with that in this situation in the sense that I think
14 that at least the expedited procedure for discovery disputes
15 can be used to resolve the initial question, which is: Has
16 there been a discovery violation?

17 And so that's how I intend to proceed with this hearing,
18 is just using what you've done so far to address that initial
19 question. And then we can talk about if there's more -- if
20 there's something further that needs to be done, what the most
21 appropriate format is for that because, as I said, I'd like to
22 make sure that it's fair to all parties, and that's the reason
23 that I have that provision in my standing order for sanctions
24 matters.

25 Okay. So I'd like to start with the second matter first,

1 Docket Number 277, which is the dispute about the supplemental
2 initial disclosures, and I'd like to start with a few questions
3 for Finjan.

4 So, first of all, Rule 26(a), as you know, permits a party
5 to describe its documents or to produce them, and those are
6 documents that a party may use in support of the claim or
7 defense. So I understand that the documents that comprise
8 SonicWall's patent portfolio have been produced -- were
9 produced at some point to Finjan, and so I want to understand,
10 first of all, why that production is not sufficient to satisfy
11 Rule 26(a).

12 **MR. ANDRE:** Well, they were produced along with
13 150,000 other documents, and the reason it doesn't satisfy the
14 rule is because they didn't identify them as any relevance. We
15 asked in an interrogatory response to identify all their bases
16 for their affirmative defenses. They didn't identify those
17 documents. They had to list their prior art. In their
18 election of prior art, they didn't identify any of those
19 documents.

20 And so those documents were produced. As in a lot of
21 these patent cases, Your Honor is quite aware, many times
22 there's a lot of irrelevant documents produced. So we just
23 assumed they were documents they produced and they were not
24 relevant to anything in the case.

25 And then on the very last day of discovery, they seem to

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