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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
THE HONORABLE CATHY ANN BENCIVENGO

FINJAN, INC.,)
)
Plaintiff,) CASE NO. 17CV183-CAB-BGS
)
vs.) SAN DIEGO, CALIFORNIA
)
ESET, LLC and ESET SPOL, S.R.O.,) TUESDAY, MARCH 10, 2020
)
Defendants.)

Reporter's Transcript of Jury Trial, Day 1, Volume 1
Pages 1-219

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1 San Diego, California; Tuesday, March 10, 2020; 8:45 a.m.

2 (Case called)

3 (Appearances stated)

4 THE COURT: All right. I've received your briefs
5 about the opening statement demonstratives and exhibits that
6 Mr. Hartstein is going to use. I'm going to wait on the depo
7 designations. I have to look at them in context, and I don't
8 think I need to do that before we start this morning.

9 MR. ANDRE: It's probably unlikely we get to those
10 today, but we can get to it in the afternoon to see how things
11 progress.

12 THE COURT: Regarding Finjan's PowerPoint, first of
13 all, I expect all of these are demonstrative, correct? None of
14 these are going to be admitted?

15 MR. ANDRE: That's correct.

16 THE COURT: I don't have any issue really with the
17 timeline and the explanation. I understand that Finjan has
18 some concerns that it shows a company that -- and we've had
19 this conversation before -- that evolved over time, and so
20 we're going back to when it was something else and then
21 ultimately became Finjan, Inc. But it's a timeline that shows
22 when the patents issued. I'm okay with that.

23 I'm a little more concerned about the product and the
24 awards because I'm not quite sure in terms of relevance in the
25 case, which is what ESET raised is this -- I mean, when was

1 this product sold? Does it actually practice the patents?
2 What is its relevance? Why pick that one out of however many?
3 Do the awards have anything to do with these patents?

4 MR. ANDRE: Your Honor, I'd like to have Ms. Cristina
5 Martinez argue this, if you don't mind.

6 THE COURT: That's fine.

7 Good morning.

8 MS. MARTINEZ: Good morning, your Honor. So these
9 slides are really just a demonstrative of what the product
10 looked like at the time. We're not planning on introducing any
11 evidence attempting to map the product to any of the patents in
12 this case. It's really to provide a background about the
13 company and say Finjan did, in fact, have products as of a
14 certain time frame.

15 And then with respect to the awards, just to say that
16 Finjan was recognized in the industry and did receive awards as
17 a company. We attached some of ESET's opening slides to show
18 that they are really planning on attacking Finjan as not a real
19 company, not a successful company, and so this is really
20 important for us to be able to say yes, we did, in fact, have a
21 product, and to kind of rebut those attacks on Finjan as an
22 operating entity.

23 So just demonstrating -- this really is a
24 demonstrative to just show what the product looked like and,
25 again, to just mention some industry recognition. It will not

1 be going into detail in terms of either the exhibits or the
2 demonstrative. It's really to just sort of say what the
3 industry was saying about Finjan at the time.

4 THE COURT: Thank you.

5 MR. PENNER: Good morning. As we discussed earlier in
6 the motions in limine conference, the use of the -- the use of
7 the appliances or Finjan's products are basically to provide
8 the jury with an understanding that they practice these patents
9 as well as won awards for them. And, as Your Honor noted,
10 during that time, there is simply no evidence in the record, or
11 witnesses, that can tie any of the products or the awards to
12 any of the patents at issue. And so, it's going to be leaving
13 the jury with the impression that these products practiced the
14 five patents that they're going to wind up discussing this
15 entire time. Otherwise, there's really no reason to introduce
16 them at this point.

17 Also, Your Honor, this image of the actual appliance,
18 they have used this image in other slides as well. And so, for
19 example, there's a slide deck that we'll probably be discussing
20 this tomorrow that uses the same image, and they actually put
21 it on a slide that shows the patent numbers. And so, they're
22 trying to create the impression by showing this to the jury
23 today, and then later on, showing the same images with the
24 patent numbers that these products are practicing those
25 patents. And that's the impression that we discussed at the

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