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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., ) THURSDAY, MARCH 12, 2020  
)  
Defendants. )

Reporter's Transcript of Jury Trial Day 3, Volume 3  
Pages 388-567

Proceedings reported by stenography, transcript produced by  
computer assisted software

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1 San Diego, California; Thursday, March 12, 2020; 8:30 a.m.

2 (Case called)

3 (Appearances stated)

4 MR. ANDRE: Your Honor, before we get started, I would  
5 like to do a housekeeping matter with claims we are going to be  
6 dismissing with prejudice, if it's okay to do it now.

7 THE COURT: Yes.

8 MR. ANDRE: So for the '844 patent, we will continue  
9 to assert claims, 7 and 15. We'll be dismissing claims 11 and  
10 16 with prejudice. For the '086 patent, we'll be asserting in  
11 this case, claims 24 and 42. We'll be dismissing with  
12 prejudice claims 1, 2, 9 and 10. For the '780 patent, we'll  
13 retain claims 9 and 13. We'll dismiss with prejudice claim 18.  
14 For the '621 patent, we want to assert in this case, claims 1,  
15 6, 7 and 10. We'll dismiss with prejudice claims 5, 11, 13 and  
16 14. And for the '755 patent, we'll be asserting in this trial,  
17 claims 3, 5 and 6. And we'll dismiss with prejudice, claims 7  
18 and 8. We're doing this in good faith to streamline the case  
19 in order to be able get within the time limits we've been  
20 placed with. And we appreciate the Court's indulgence.

21 THE COURT: Thank you. Anything?

22 MR. PISANO: Nothing, Your Honor. Thank you.

23 THE COURT: All right. Then the Court will make that  
24 notation as set forth, the claims that you've indicated are  
25 dismissed with prejudice. In light of dismissal with prejudice

1 of claims in the patents that have expired, the defendants no  
2 longer have a reasonable apprehension of being sued on them  
3 again in the future since any products that you could have  
4 asserted against them are currently on the market and have been  
5 on the market now since the expiration. So your dec relief  
6 action for invalidity is now dismissed for lack of subject  
7 matter jurisdiction since there is no longer a case in  
8 controversy. So I expect that might result in you streamlining  
9 some of your invalidity case going forward. All right. Great.

10 Now I've got your nightly filing, but I understand you  
11 may have resolved some of these issues.

12 MR. ANDRE: Your Honor, the deposition designations  
13 will not be going forward until next week. I think we can  
14 probably work through most of them. We'll change the  
15 designations. And to the extent we can't, we'll bring the  
16 witnesses live next week. If we can't reach accommodations --  
17 it was one-or-two-minute clips of deposition. We tried for  
18 time expediency because it doesn't makes sense to bring a  
19 witness live for one-and-a-half minutes of deposition, but if  
20 that's what the defense wants, that's what they'll get.

21 The only thing left on your schedule is the  
22 Mitzenmacher exhibits.

23 THE COURT: Right. I have your representation that  
24 you understand that if he wants to use exhibits that are the  
25 result of testing on current products, you all need to lay a

1 foundation, not just to have him say oh, yeah I understand  
2 these things were at the infringement time, but actually how he  
3 knows that.

4 MR. HANNAH: Absolutely.

5 THE COURT: And I'll allow the testing.

6 MR. HANNAH: Thank you.

7 MR. PENNER: Thank you, Your Honor.

8 THE COURT: Anything else?

9 MR. PENNER: Actually, there was one issue with one of  
10 the slides to Dr. Mitzenmacher's presentations as well, Your  
11 Honor. Slides 56 and 57 related to hashing.

12 THE COURT: So the purpose of this is what? I mean,  
13 it's a fact, I guess, yes, a hash can be built from multiple  
14 hashes. You can assemble a final hash. But in this case, that  
15 doesn't really comply with the Court's claim construction. So  
16 is it just explanatory?

17 MR. HANNAH: It's explanatory explaining the hashes.  
18 This is actually relevant. Their products do do hashes of  
19 multiple hashes and then has a final hash. He's not talking  
20 about claim construction or anything like that. He's giving a  
21 background of how hashes are formed. We'll lay foundation for  
22 it. He's the expert in hashing and how these things work.  
23 It's just a demonstrative to demonstrate how hashing works and  
24 explain the concept to the jury.

25 MR. PENNER: It seems -- I mean, building hash with

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