

# EXHIBIT 8

1 UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 3 SAN JOSE DIVISION  
 4  
 5 FINJAN, INC., A DELAWARE  
 CORPORATION,  
 6  
 7 PLAINTIFF,  
 8  
 9 VS.  
 10 BLUE COAT SYSTEMS, INC.,  
 11  
 12 DEFENDANT.  
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CASE NO. CV-15-03295-BLF  
 SAN JOSE, CALIFORNIA  
 JANUARY 9, 2018  
 VOLUME 2  
 PAGES 25 - 283  
**SEALED PAGES 251-253,  
 265-267**

TRANSCRIPT OF TRIAL  
 BEFORE THE HONORABLE BETH LABSON FREEMAN  
 UNITED STATES DISTRICT JUDGE AND A JURY

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: KRAMEP, LEVIN, NAFTALIS & FRANKEL,  
 LLP  
 BY: PAUL J. ANDRE  
 LISA KOBIALKA  
 JAMES HANNAH  
 KRISTOPHER KASTENS  
 HANNAH LEE  
 990 MARSH ROAD  
 MENLO PARK, CALIFORNIA 94025

FOR THE DEFENDANT: DURIE TANGRI LLP  
 BY: DASALYN J. DURIE  
 STEPHEN ELKIND  
 217 LEIDESDORFF STREET  
 SAN FRANCISCO, CALIFORNIA 94111

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS: IRENE L. RODRIGUEZ, CSR, FMR, CRR  
 CERTIFICATE NUMBER 8074  
 LEE-ANNE SHORTRIDGE, CSR, CRR  
 CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,  
 TRANSCRIPT PRODUCED WITH COMPUTER.

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1 APPEARANCES: (CONT'D)  
 2 FOR THE DEFENDANT: MORRISON & FOERSTER  
 3 BY: STEFANI SHANBERG  
 NATHAN SABRI  
 ROBIN BREWER  
 4 EUGENE MARDER  
 MADELEINE E. GREENE  
 5 MICHAEL GUO  
 ALEX N. HADDUCK  
 6 425 MARKET STREET  
 SAN FRANCISCO, CALIFORNIA  
 7 94105  
 8  
 9 ALSO PRESENT: SYMANTEC  
 10 BY: DAVID MAJORS  
 CARRIE FLYNN  
 11  
 12 FINJAN  
 BY: JULIE MAR-SPINOLA  
 PHILIP HARTSTEIN  
 13  
 14 MORRISON & FOERSTER  
 BY: ANTONIO RAMOS, PARALEGAL  
 425 MARKET STREET  
 15 SAN FRANCISCO, CALIFORNIA  
 94105  
 16  
 17 THOMAS & THOMAS  
 BY: GEOFFREY S. THOMAS  
 1321 JONES STREET  
 18 OMAHA NEBRASKA 68102  
 19  
 20 RLM  
 BY: JASON YOUNG  
 21  
 22  
 23  
 24  
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03:58PM 1 I'D LIKE TO TELL YOU THAT ALL OF THOSE DISCUSSIONS ARE

03:58PM 2 MUTUAL AND THAT WE CAN MOVE FORWARD AND REACH A LICENSING

03:58PM 3 AGREEMENT, BUT IN SOME INSTANCES OUR ONLY OPTION BECOMES

03:58PM 4 LITIGATION.

03:58PM 5 Q. DOES FINJAN START -- HAVE A STARTING APPROACH WHEN IT

03:58PM 6 REACHES OUT TO A POTENTIAL LICENSEE?

03:58PM 7 A. WE DO. OUR RATES ARE -- AND THESE WILL SOUND FAMILIAR TO

03:58PM 8 YOU -- THESE ARE 8 PERCENT FOR HARDWARE, 16 PERCENT FOR

03:58PM 9 SOFTWARE, OR \$8 PER USER TO THE EXTENT THAT THERE'S A USER

03:58PM 10 BASE, OR THAT THE REVENUES ARE NOT REFLECTED BASED ON THE VALUE

03:58PM 11 OF THE TECHNOLOGY IN THE COMPANY'S -- IN THE DATA THAT THEY'RE

03:59PM 12 ABLE TO SHARE WITH US.

03:59PM 13 Q. WHERE DID THIS \$8 PER USER COME FROM?

03:59PM 14 A. SO \$8 PER USER, YOU HAVE TO BACK UP A LITTLE BIT AND

03:59PM 15 UNDERSTAND THAT -- I MENTIONED EARLIER THAT THERE WERE SIMILAR

03:59PM 16 TIMES AND YOU COULD WALK INTO A STORE AND YOU WOULD PAY \$50 FOR

03:59PM 17 A BOX OF SOFTWARE AND IT WAS VERY EASY TO APPLY 16 PERCENT TO

03:59PM 18 THE PRICE OF THAT SOFTWARE.

03:59PM 19 THE INDUSTRY HAS MOVED TO A MODEL BY WHICH IT SELLS ITS

03:59PM 20 SOFTWARE NOW INTO THE INDUSTRY. IT'S CALLED SOFTWARE AS A

03:59PM 21 SERVICE.

03:59PM 22 AND THE WAY THAT THEY PRICE AND CHARGE CUSTOMERS FOR THIS

03:59PM 23 TECHNOLOGY NOW IS EITHER BY THE SEAT OR BY THE USER. SO IT'S

03:59PM 24 KIND OF THE SAME THING. YOU MAY GET A TEN SEAT COMPANY LICENSE

03:59PM 25 THAT COMES FOR A PRICE.

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03:59PM 1 SO WE HAD TO MOVE WITH THE INDUSTRY'S ADOPTION WITH THE

03:59PM 2 SERVICE. SO THE \$8 IS DERIVED FROM THE 16 PERCENT. IT

03:59PM 3 ACTUALLY IS CONNECTED MATHEMATICALLY.

03:59PM 4 Q. AND WERE YOU INVOLVED IN COMING UP WITH THIS \$8 PER USER?

03:59PM 5 A. SO, YES. I DID THE WORK. I DID A LOT OF THE RESEARCH.

04:00PM 6 AS I MENTIONED, THE MARKET RESEARCH REPORTS, YOU CAN READ A LOT

04:00PM 7 OF GENERAL INDUSTRY REPORTS.

04:00PM 8 THE WORK THAT I HAD TO DO WAS TO UNDERSTAND HOW DO YOU

04:00PM 9 TAKE WHAT IS A PERCENTAGE RATE AND EQUATE THAT INTO A FIXED

04:00PM 10 PRICE LIKE A FEE, THE \$8?

04:00PM 11 SO IN THIS INSTANCE YOU GO BACK AND YOU LOOK AT THE

04:00PM 12 PRICING OF THE SOFTWARE.

04:00PM 13 SO IN 2013, ROUGHLY AROUND THE TIME OF THIS, IT WENT TO

04:00PM 14 THE INTERNET AND YOU LOOK UP AND THIS TECHNOLOGY WOULD SELL FOR

04:00PM 15 ABOUT \$50. IF ANYONE WANTED TO GO AND BUY IT, IT WOULD BE

04:00PM 16 ABOUT \$50.

04:00PM 17 SO THE SIMPLE MATH THERE IS 16 PERCENT OF \$50 IS \$8, BUT

04:00PM 18 IT'S ALSO SUPPORTED BY A NUMBER OF OTHER DATA POINTS AS WELL.

04:00PM 19 Q. AND WHAT ARE THOSE OTHER DATA POINTS?

04:00PM 20 A. OKAY. SO YOU HAVE TO TAKE INTO ACCOUNT THAT COMPANIES

04:00PM 21 OFTEN SELL THEIR PRODUCTS TO ENTERPRISES DIFFERENTLY THAN THEY

04:01PM 22 WOULD, SAY, TO A CONSUMER.

04:01PM 23 SO THEY MAY CHARGE YOU ON A VOLUME BASIS AND MAYBE YOU

04:01PM 24 ONLY PAY \$40 A USER OR MAYBE IN A LOW VOLUME BASIS MAYBE YOU

04:01PM 25 WOULD PAY AS MUCH AS \$60.

04:01PM 1 SO I WENT OUT TO THE INTERNET AND I LOOKED AT BLUE COAT'S

04:01PM 2 PRICING THAT IT WOULD SELL ON A SEAT BASIS, ON AVERAGE BETWEEN

04:01PM 3 40 AND \$60 PER YEAR.

04:01PM 4 SO, AGAIN, TRYING TO DERIVE A NUMBER, A PER USER RATE OF

04:01PM 5 \$8, YOU CAN TAKE THE AVERAGE OF 40 TO 60 AND IT'S \$50 AND,

04:01PM 6 AGAIN, YOU CAN SAY 16 PERCENT OF \$50 IS \$8.

04:01PM 7 Q. AND WHEN YOU'RE DOING THIS RESEARCH, WHAT TIMEFRAME IS

04:01PM 8 THIS RESEARCH FROM?

04:01PM 9 A. MOSTLY FROM THE 2013 AND 2014 TIMEFRAMES.

04:01PM 10 Q. AND WERE THERE ANY OTHER DATA POINTS THAT SUPPORTED THE \$8

04:01PM 11 PER USER VALUATION?

04:01PM 12 A. SURE. THERE ARE SOME OTHER THINGS THAT HAPPEN WHEN YOU'RE

04:01PM 13 SELLING SOFTWARE AS A SERVICE. SO YOU AS A CONSUMER MIGHT SAY,

04:02PM 14 WOW, I REMEMBER PAYING \$50 FOR THIS, BUT I CAN JUST DOWNLOAD IT

04:02PM 15 AND PAY \$20 A YEAR.

04:02PM 16 SO THE IDEA FOR YOU IS THAT YOU HAVE THIS SENSATION THAT

04:02PM 17 YOU'RE PAYING LESS FOR THE TECHNOLOGY BUT, IN FACT, ONCE YOU

04:02PM 18 START PAYING, THEN YOU CONTINUE PAYING FOR SOME PERIOD OF TIME.

04:02PM 19 WHAT THAT REQUIRES IS THAT YOU UNDERSTAND THE METRIC, THE

04:02PM 20 METRICS THAT YOU WOULD USE TO THEN MODEL THAT BUSINESS.

04:02PM 21 SO, IN OTHER WORDS, IT'S NOT JUST ABOUT HOW MANY PEOPLE

04:02PM 22 ARE USING THE TECHNOLOGY AT THAT POINT. YOU ALSO HAVE TO

04:02PM 23 INCORPORATE SOMETHING WITHIN THE INDUSTRY THAT MEASURES HOW

04:02PM 24 LONG EACH OF THOSE USERS STAYS USING THAT AND PAYING FOR THAT

04:02PM 25 TECHNOLOGY.

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04:02PM 1 SO THAT INDUSTRY METRIC IS CALLED CHURN.

04:02PM 2 Q. AND WHAT DID YOU LEARN ABOUT CHURN?

04:02PM 3 A. SO, AGAIN, YOU CAN READ IN THE VERY DETAILED -- AND THIS

04:02PM 4 IS WHAT I DID. I LOOKED UP AND I READ THE MARKET RESEARCH.

04:02PM 5 YOU CAN ALSO GO TO -- I MEAN, IT WAS EVERYWHERE. YOU COULD

04:02PM 6 READ NEW YORK TIMES, WALL STREET JOURNAL, CNN. EVERYBODY WAS

04:03PM 7 TALKING ABOUT THE TRANSITION TO SOFTWARE AS A SERVICE.

04:03PM 8 AND IN TERMS OF CHURN, THERE ARE A COUPLE OF ARTICLES THAT

04:03PM 9 I SPECIFICALLY RECALL, ONE BECAUSE IT HAD A REALLY CUTE NAME,

04:03PM 10 IT SAYS CHURN IS KING.

04:03PM 11 AND THAT'S IMPORTANT BECAUSE IT SHOWS THAT YOU ARE AT

04:03PM 12 LEAST -- I THINK IN THE TITLE IT DEMONSTRATES THAT IT'S NOT

04:03PM 13 JUST THE ACCUMULATION OF PEOPLE WHO HAVE PAID TO DOWNLOAD THE

04:03PM 14 SOFTWARE, BUT IT'S AGAIN HOW LONG ARE THEY GOING TO STAY.

04:03PM 15 AND THEN TO UNDERSTAND THE HOW LONG DO THEY STAY, YOU NEED

04:03PM 16 TO LOOK AT SOFTWARE AS A SERVICE SORT OF METRIC. WHAT IS

04:03PM 17 HAPPENING? WHAT ARE THE NUMBERS BEHIND THAT? SO THERE IS A

04:03PM 18 LOT OF BENCHMARKING THAT IS DONE OUT THERE. SO I READ AND

04:03PM 19 REVIEWED THAT INFORMATION AS WELL.

04:03PM 20 AND THE ANSWER IS THAT USERS, THE CHURN MODEL SUGGESTS

04:03PM 21 THAT USERS WILL STAY SUBSCRIBED FOR AN AVERAGE OF TWO AND A

04:03PM 22 HALF YEARS.

04:03PM 23 SO IN THAT EXAMPLE THAT I GAVE YOU WHERE YOU MAY HAVE PAID

04:03PM 24 \$50 WHEN YOU BOUGHT THE BOX, BUT NOW YOU'VE DOWNLOADED IT AND

04:04PM 25 YOU'RE PAYING \$20 A YEAR, BUT NOW YOU HAVE THE MATH THAT SAYS