

DECLARATION OF AVIEL D. RUBIN

I, Aviel D. Rubin, declare as follows:

I. INTRODUCTION

1. Irell & Manella LLP has retained me as an independent expert on behalf of Juniper Networks, Inc. (“Juniper”).

2. I submit this Declaration in support of Juniper’s Opposition to Finjan, Inc.’s (“Finjan”) Motion for Summary Judgment Regarding Claim 1 of U.S. Patent No. 8,141,154 (“the ’154 Patent”).

3. I understand that Finjan has accused Juniper of infringing other claims and patents, but this declaration is directed specifically to Claim 1 of the ’154 Patent. As discussed below, it is my opinion that the accused Juniper products do not infringe Claim 1.

II. BACKGROUND AND QUALIFICATIONS

4. I am receiving my customary rate of \$775 per hour for time spent on this case, and I am also receiving reimbursement for reasonable and customary expenses. My compensation does not depend on the results of the lawsuit or the substance of my testimony.

5. I provided an overview of my background and qualifications in my previous declaration, which I incorporate by reference. *See* Dkt. 95-10 at ¶¶ 6-17. Additional details of my education, employment history, professional service, patents, publications, and other testimony are in my current curriculum vitae, which is in the following link: http://avirubin.com/Avi_Rubins_home_page/Vita.html.

III. MATERIALS CONSIDERED

6. To form my opinions, I considered information from various sources. In addition to drawing from over two decades of experience in the computer industry, I have reviewed the following documents: (1) the ’154 patent; (2) the file history (including IPRs); (3) Finjan’s summary judgment filings regarding Claim 1 of the ’154 Patent, including all declaration and exhibits; (4) the deposition transcripts of Juniper’s engineers and Finjan’s expert, Dr. Mitzenmacher; and (5) the other documents and references cited herein (not limited to the excerpts submitted with Juniper’s Motion). I also reviewed the Declaration of Frank Jas (“Jas Dec.”).

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IV. LEGAL STANDARDS

7. I have been advised that patent claims are reviewed from the point of view of a hypothetical person of ordinary skill in the art (“POSITA”) at the time of the filing of the patent.

8. In my opinion, a POSITA for the ‘154 patent would be a person with a Bachelor’s degree in computer science or related academic fields and three to four years of additional experience in the field of computer security or equivalent work experience. More education can substitute for work experience, and vice versa (*e.g.*, a Ph.D. without work experience outside of the university setting). In arriving at my opinions in this declaration, I have considered the issues from the perspective of a POSITA. This level of skill is approximate, and my opinion would not change if a somewhat lower or higher level of skill were adopted.

9. For construing claims, I understand that claim construction is a legal issue that the Court decides by interpreting claim terms as a POSITA would have understood them at the time of the invention. Under this standard, I understand that courts consider the specification, the prosecution history, and any extrinsic evidence regarding how a POSITA would interpret the claims in light of the intrinsic record. For purposes of my analysis in this case, I have interpreted the claims under this standard. I understand that a different standard, referred to as the broadest reasonable interpretation (“BRI”), is applicable in other forums, such as in an IPR proceeding. My opinions regarding the terms below may differ under the BRI standard.

10. I am informed that patent infringement under 35 U.S.C. § 271(a) consists of making, using, offering to sell, or selling a patented invention within the United States, or importing a patented invention into the United States, without authorization.

11. I further understand that determining whether there is infringement of a patent includes two steps. First, each asserted claim must be construed to determine its proper scope and meaning to a POSITA. Second, the construed claims are compared with the accused product or service to determine whether every limitation of the claims is found. Unless every limitation is present in the accused product or process, there is no infringement.

12. I also understand that if literal infringement cannot be established because one or more elements are not literally present in an accused product or process, a product or process may

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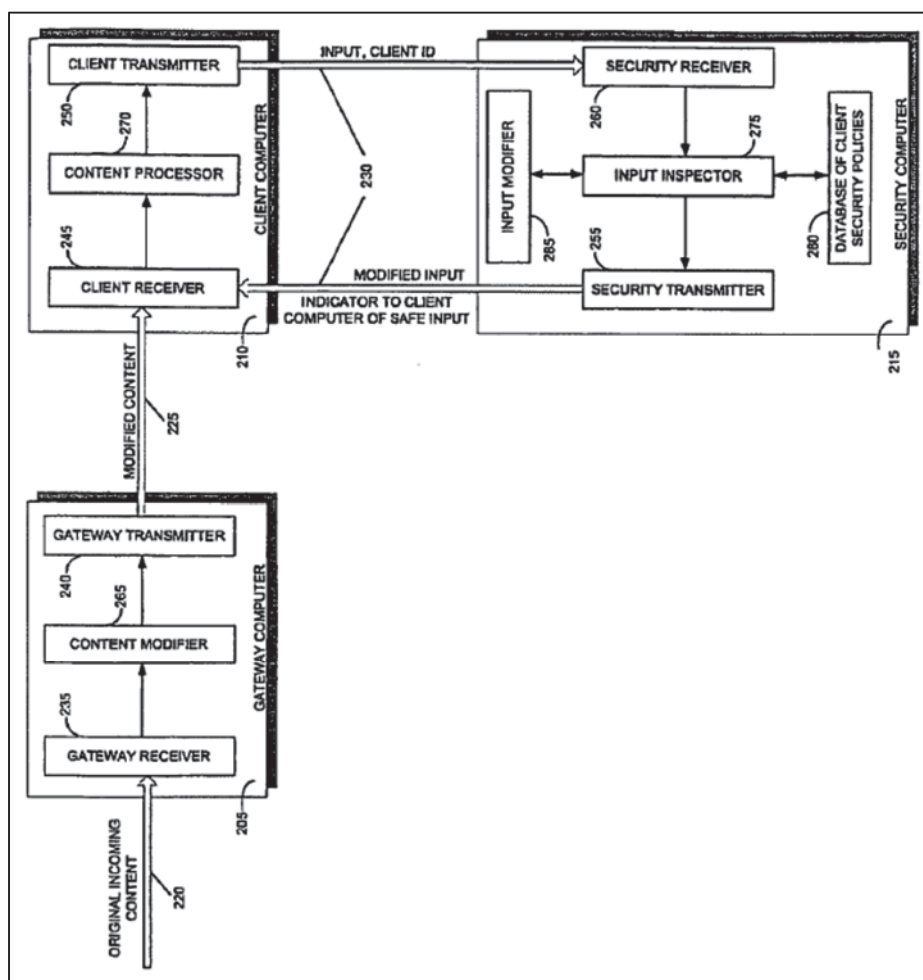
nevertheless be found to infringe under the doctrine of equivalents (“DOE”). For infringement under DOE, I understand that each accused product or process must contain an element at least equivalent to each and every limitation of the asserted claim. I also understand that one may, but is not required to, use the “function-way-result” test to determine equivalence. Under the function-way-result test, I understand that an inquiry is made into whether the accused product or service performs substantially the same function in substantially the same way to achieve the substantially same result as the claim element.

V. OVERVIEW OF THE '154 PATENT

13. The '154 patent describes a system for protecting a computer from viruses that was well-known to those skilled in the art long before the priority data of the '154 patent. The following is a high-level summary of the '154 Patent.

14. The '154 patent describes a system in which a piece of web content can be received over the Internet and is modified, prior to execution, so that when executed by a client computer, the input associated with a function call within the web content is routed to a security computer. The security computer determines if it is safe to execute and sends an indication to the client computer that it can process the original function in the web content.

15. The system the '154 patent describes is illustrated in FIG. 2, reproduced here:

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16. The system that implements the above process includes three central components: (1) a content modifier, (2) a content processor, and (3) a content inspector. The content modifier (1) on the gateway computer receives web content and modifies it; the '154 patent describes this "modified content" as containing "substitute functions" that replace original function calls. The content processor (2) on the client computer is the component that receives the modified content, processes the modified content, and only if the content inspector on the security computer indicates that it is safe, processes the original web content. The input inspector (3) on the security computer analyzes whether it is safe to invoke the original function in the unmodified web content and sends an indication of whether it is safe back to the content processor (2) on the client computer.

17. The '154 Patent alleged that this system was an improvement over the prior art. The '154 Patent states that inspecting for safety at a client computer is not secure because bad actors could obtain copies of client software and design around the security system by reverse

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engineering the software. '154 Patent at 4:15-22. The '154 Patent also states that inspecting for safety at the network gateway is not secure because some viruses are difficult to catch with static analysis and do not show their malicious behavior until they actually begin executing. '154 Patent at 3:65-4:8. The '154 Patent further suggests that inspecting for safety at both the client computer and the network gateway would not resolve the issues applicable to inspecting for safety at either of the individual locations. The system of the '154 Patent was therefore intended to address what the inventors believed was a “need for a new form of behavioral analysis, which can shield computers from dynamically generated malicious code without running on the computer itself that is being shielded.” '154 Patent at 4:23-26.

VI. PROSECUTION HISTORY

18. The application that matured into the '154 Patent was filed on June 14, 2010. On June 28, 2011, the Examiner issued a non-final rejection for various reasons, including that the patent was anticipated by U.S Patent Pub. No. 2001/0005889 to Mikael Albrecht (“Albrecht”). On October 5, 2011, Finjan responded to the Office Action with certain amendments and remarks. On November 2, 2011, the Examiner issued a Notice of Allowance.

VII. CLAIM CONSTRUCTION

A. “Safe”

19. I understand that Juniper has proposed a construction of the term “safe” as “security profile does not violate the client computer’s security policy.” Finjan has proposed the alternate construction of “something that is not potentially harmful or malicious.” As noted below, it is my opinion that the accused products do not infringe under either construction of “safe.”

B. “Content Processor”

20. In my opinion, a POSITA would understand that the plain and ordinary meaning of the term “content processor” in view of the specification and file history for the '154 Patent is “a processor on a client/user computer that processes modified content.”

21. The '154 Patent makes clear that the claimed “content processor” resides on a client/user computer. For example, the '154 Patent notes that there are numerous disadvantages

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