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FINJAN, INC.
10

11   IN THE UNITED STATES DISTRICT COURT

12   FOR THE NORTHERN DISTRICT OF CALIFORNIA

13   SAN FRANCISCO DIVISION

14

15 FINJAN, INC., a Delaware Corporation, | Case No.: 3:17-cv-05659-WHA

16   Plaintiff, | **DECLARATION OF DR. ERIC COLE IN
                                                | SUPPORT OF PLAINTIFF FINJAN, INC.'S
17   v. | NOTICE OF MOTION AND MOTION FOR
                                                | SUMMARY JUDGMENT OF INRINGEMENT
18 JUNIPER NETWORKS, INC., a Delaware | OF CLAIM 10 OF U.S. PATENT NO. 8,677,494**
19 Corporation,
                                                | Date: July 26, 2018
20   Defendant. | Time: 8:00 a.m.
                                                | Courtroom: Courtroom 12, 19th Floor
21 | Before: Hon. William Alsup
22

23

24

25   **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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I, Eric Cole, hereby declare that:

1.   I have been asked by Plaintiff Finjan, Inc. to submit an expert declaration on whether Juniper, Inc.'s SRX Gateways[1] and Sky ATP[2] products infringe claim 10 of U.S. Patent No. 8,677,494 (the "'494 Patent"). I relied on the documents cited herein, including the '494 Patent, the file history of the '494 Patent, the source code review computer, source code printouts, the deposition transcripts of Tenorio, Manthena, Nagarajan, and Manocha, as well as exhibits thereto, Finjan's Infringement Contentions, and Juniper's Discovery Responses.

I.   EXPERIENCE AND QUALIFICATIONS

2.   I hold a master's degree in computer science and a doctorate in information security and have worked in the cyber and technical information security industry for over 25 years. I am a member of the European InfoSec Hall of Fame, a professional membership awarded by nomination and election by a panel of industry experts. I am the founder of Secure Anchor Consulting where I provide cyber security consulting services and am involved in advance information systems security. I am a Fellow and instructor with The SANS Institute, a research and education organization consisting of information security professionals. I am an author of several security courses such as SEC401-Security Essentials and SEC501-Enterprise Defender. I worked for the government for 8 years as an employee and have held various contracting jobs with government agencies, which involved working with

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[1] SRX Gateways includes all SRX Gateways that are capable of interacting with Sky ATP, and includes SRX100, SRX110, SRX210, SRX220, SRX240, SRX300, SRX340, SRX345, SRX550, SRX550m, SRX650, SRX1400, SRX1500, SRX3400, SRX3600, SRX4000, SRX4100, SRX4200, SRX5400, SRX5600, SRX5800, vSRX Virtual Firewall, vSRX (including 10Mbps, 100Mps, 1000Mbps, 2000Mbps, 4000Mbps version), Next Generation Firewall, cSRX Container Firewall. SRX Gateways include all supporting server or cloud infrastructure, feeds, and other components SRX Gateways utilize.
[2] Sky ATP includes the cloud infrastructure for Sky ATP, and includes the following service subscriptions Free Sky ATP, Basic Sky ATP (SRX340-THRTFEED-1, 3, 5; SRX345-THRTFEED-1, 3, 5; SRX550-THRTFEED-1, 3, 5; SRX1500-THRTFEED-1, 3, 5; SRX4100THRTFEED-1, 3, 5; SRX4200-THRTFEED-1, 3, 5; SRX5400-THRTFEED-1, 3, 5; SRX5600-THRTFEED-1, 3, 5; SRX5800-THRTFEED-1, 3, 5; VSRX10MTHRTFEED-1, 3, 5; VSRX100MTHRTFEED-1, 3, 5; VSRX1GTHRTFEED-1, 3, 5; VSRX2GTHRTFEED-1, 3, 5; and VSRX4GTHRTFEED-1, 3, 5) and Premium Sky ATP (SRX340-ATP-1, 3, 5; SRX345-ATP-1, 3, 5; SRX550-ATP-1, 3, 5; SRX1500-ATP-1, 3, 5; SRX4100-ATP-1, 3, 5; SRX4200-ATP-1, 3, 5; SRX5400-ATP-1, 3, 5; SRX5600-ATP-1, 3, 5; SRX5800-ATP-1, 3, 5; VSRX10M-ATP-1, 3, 5; VSRX100M-ATP-1, 3, 5; VSRX1G-ATP-1, 3, 5; VSRX2G-ATP-1, 3, 5; and VSRX4G-ATP-1, 3, 5). Sky ATP includes all supporting server or cloud infrastructure, feeds, and other components utilized by Sky ATP including Spotlight Secure Threat

1 classified information. I held or hold various top-secret security clearances with Department of

2 Defense, CIA, and Nuclear Regulatory Commission (NRC). I worked for a wide range of government

3 organizations including the FBI, NSA, CIA, DOE, DOD, NRC, Treasury, and Secret Service. As

4 former Chief Scientist and Senior Fellow for Lockheed Martin, I performed research and development

5 in information systems security. At Lockheed Martin, I served as technical advisor in high-profile

6 security projects for government clients including the Department of Defense, the FBI Sentinel case

7 management systems, Department of Homeland Security Enterprise Acquisition Gateway for Leading

8 Edge solutions, JetPropulsion Labs, Hanford Labs, and FBI Information Assurance Technology

9 Infusion programs. As former CTO for McAfee I executed the technology strategy for technology

10 platforms and external relationships to establish product vision and achieve McAfee's goals. I am a

11 contributing author of "Securing Cyberspace for the 44th President." and served as a commissioner on

12 cyber security for President Obama. My 8 books on cyber security include "Network Security Bible -

13 2nd Edition," "Advanced Persistent Threat," and "Insider Threat," which are recognized as industry-

14 standard sources.

15   **A.   Compensation**

16   3.   My rate of compensation for my work in this case is $475 per hour plus any direct

17 expenses incurred. My compensation is based solely on the amount of time that I devote to activity

18 related to this case and is in no way affected by any opinions that I render. I receive no other

19 compensation from work on this action. My compensation is not dependent on the outcome of this case.

20 **II.   LEGAL STANDARDS**

21   4.   Counsel for Finjan has informed me of the following legal standards that I have used as

22 a framework in forming my opinions contained herein.

23   5.   I have been informed that claim construction is a legal issue for the Court to decide. I

24 also understand that the Court has not issued a claim construction order in this case. As such, I have

25 applied the plain and ordinary meaning of all terms, unless specifically identified below.

26   6.   I have been informed that infringement is determined on a claim by claim basis. I have

27 been further informed that literal infringement is found if an accused product, system or method meets

1 party or its agents make, use, sell, or offer to sell a product or system that contains all elements of a

2 claimed system or perform all of the steps of a claimed method.

3   7.   I have been informed that in the case of direct infringement of a system claim, a party

4 can be found to use a patented system even if the party does not exercise physical or direct control over

5 every element of the system. For elements that are not subject to the physical or direct control of the

6 party, I have been informed that the party is still deemed to be using that component or part of the

7 patented system when (1) it puts the component into service, i.e., causes it to work for its intended

8 purpose and (2) receives the benefit of that purpose. For example, if a company queries a third-party's

9 database, thereby causing the database to run a query and return a result to the company, the company

10 is deemed to have used the database for infringement purposes by putting it into service (causing it to

11 run the query) and receiving the benefit of that operation (the result of the query), even though the

12 company does not own or control the database.

13   8.   I have been informed that infringement under the doctrine of equivalents is found if an

14 accused product, system or process contains parts or steps that are identical or equivalent to each and

15 every element of a single claim. A part or step is equivalent if a person of ordinary skill in the art

16 would conclude that the differences between the product or method step and the claim element were not

17 substantial at the time of infringement. I have been further informed that one common test to determine

18 if the difference between a component or method step and a claim element is not substantial is asking if

19 the component or step performs substantially the same function, in substantially the same way, to

20 achieve substantially the same result.

21   9.   I have been informed that in the case of direct infringement of a multinational system

22 claim where elements of such system are located in multiple countries, a party can be found to use the

23 patented system in the United States if the place where control of the accused system is exercised and

24 where beneficial use of the system is obtained are both within the United States. For example, if the

25 accused system is controlled by a device in the United States that generates requests sent to the accused

26 system and the benefit of the accused system is obtained by the company or person using the device in

27 the United States, the company is deemed to have used the accused system for infringement purposes in

A.   Person of Ordinary Skill in the Art

10.   Based on review of the Asserted Patents and consideration of the abovementioned factors, it is my opinion that a person of ordinary skill in the art at the time of the invention of the Asserted Patents would be someone with a bachelor's degree in computer science or related field, and either (1) two or more years of industry experience and/or (2) an advanced degree in computer science or related field. I understand that claim 10 of the '494 Patent claims a priority date of November 8, 1996. But if the '494 Patent is found to have another priority date it would not materially affect my analysis.

III.   SUMMARY OF DECLARATION

11.   I have been asked by counsel for Finjan to consider if Juniper infringes claim 10 of the '494 Patent. I assumed that claim 10 of the '494 Patent is valid and enforceable. I have not considered any issues related to damages associated with this infringement.

12.   The language of Claim 10 of the '494 Patent is set forth below.

> 10. A system for managing Downloadables, comprising:
>
>   (10a) a receiver for receiving an incoming Downloadable;
>
>   (10b) a Downloadable scanner coupled with said receiver, for deriving security profile data for the Downloadable, including a list of suspicious computer operations that may be attempted by the Downloadable; and
>
>   (10c) a database manager coupled with said Downloadable scanner, for storing the Downloadable security profile data in a database.

13.   I have been asked by counsel for Finjan to consider whether the SRX Gateways operating with Sky ATP and Sky ATP alone infringe claim 10 of the '494 Patent. I have confirmed that the functionality that I describe was available and in use before January 29, 2017. I confirmed this with the source code and release notes that the products currently operate in the same manner as what is set forth in those documents. *See, for example*, Ex. 24,[3] JNPR-FNJN_29006_00162260 at 60-64. The following description of the products is undisputed based on Juniper's products and testimony.

_____

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