

EXHIBIT 12



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Transcript of Nenad Medvidovic, Ph.D.

Date: February 28, 2021

Case: Finjan, Inc. -v- Qualys Inc.

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Transcript of Nenad Medvidovic, Ph.D.

Conducted on February 28, 2021

<p style="text-align: center;">1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF CALIFORNIA</p> <p>3 OAKLAND DIVISION</p> <p>4 -----x</p> <p>5 FINJAN, INC., a Delaware : 6 Corporation, :</p> <p>7 Plaintiff, : Case No.:</p> <p>8 vs. : 4:18-CV-07229-YGR</p> <p>9 QUALYS, INC., a Delaware : 10 Corporation, :</p> <p>11 Defendant. :</p> <p>12 -----x</p> <p>13</p> <p>14 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY</p> <p>15</p> <p>16 Videotaped Deposition of</p> <p>17 NENAD MEDVIDOVIC, Ph.D.</p> <p>18 Conducted Virtually</p> <p>19 Sunday, February 28, 2021</p> <p>20 10:02 a.m.</p> <p>21</p> <p>22 Job No.: 354372</p> <p>23 Pages: 1 - 314</p> <p>24 Reporter: DEBRA BOLLMAN FARFAN, RDR-RMR-CRR</p> <p>25 CA CSR NO. 11648</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFF FINJAN, INC.:</p> <p>3 Lawrence Jarvis, ESQUIRE</p> <p>4 FISH & RICHARDSON</p> <p>5 1180 Peachtree Street NE</p> <p>6 21st Floor</p> <p>7 Atlanta, GA 30309</p> <p>8 404-879-7238</p> <p>9 Jarvis@fr.com</p> <p>10</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANT QUALYS:</p> <p>13 Ryan R. Smith, ESQUIRE</p> <p>14 Christopher Mays, ESQUIRE</p> <p>15 Wilson Sonsini Goodrich & Rosati</p> <p>16 650 Page Mill Road</p> <p>17 Palo Alto, CA 94304</p> <p>18 650-849-3345</p> <p>19 Rsmith@wsgr.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 AVI RUBIN, EXPERT FOR QUALYS</p> <p>23 ALAN ROSS, THE VIDEOTECH</p> <p>24 CATHERINE GONZALEZ, THE VIDEOGRAPHER</p> <p>25</p>																																																									
<p style="text-align: center;">2</p> <p>1 Videoconference Deposition of Nenad</p> <p>2 Medvidovic, Ph.D. held remotely:</p> <p>3</p> <p>4</p> <p>5 Witness Location:</p> <p>6 REMOTE</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Pursuant to notice, before Debra Bollman</p> <p>12 Farfan, Registered Diplomate Reporter,</p> <p>13 Registered Merit Reporter, Certified Realtime</p> <p>14 Reporter, and Certified Shorthand Reporter No.</p> <p>15 11648, in and for the State of California.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p>1</p> <p>2 I N D E X</p> <table border="0"> <tr> <td>3</td> <td>DEPONENT</td> <td>PAGE</td> </tr> <tr> <td>4</td> <td>NENAD MEDVIDOVIC, PH.D.</td> <td></td> </tr> <tr> <td>5</td> <td>EXAMINATION BY MR. SMITH</td> <td>7</td> </tr> <tr> <td>6</td> <td>EXAMINATION BY MR. JARVIS</td> <td>310</td> </tr> <tr> <td>7</td> <td>FURTHER EXAMINATION BY MR. SMITH</td> <td>311</td> </tr> </table> <p>8</p> <p>9</p> <p>10 I N D E X O F E X H I B I T S</p> <p>11 (EXHIBITS WERE ATTACHED TO THE TRANSCRIPT.)</p> <table border="0"> <tr> <td>12</td> <td>DESCRIPTION</td> <td>PAGE</td> </tr> <tr> <td>13</td> <td>EXHIBIT 1 EXPERT REPORT DATED DECEMBER 1, 2020</td> <td>29</td> </tr> <tr> <td>14</td> <td>EXHIBIT 2 '408 PATENT</td> <td>73</td> </tr> <tr> <td>15</td> <td>EXHIBIT 3 DOCUMENT "INTRODUCTION TO XML"</td> <td>133</td> </tr> <tr> <td>16</td> <td>EXHIBIT 5 MICROSOFT U.S. PATENT 7,500,017</td> <td>109</td> </tr> <tr> <td>17</td> <td>EXHIBIT 6 U.S. PATENT 7,480,859 IBM</td> <td>107</td> </tr> <tr> <td>18</td> <td>EXHIBIT 7 U.S. PATENT 7,058,558 BOEING</td> <td>106</td> </tr> <tr> <td>19</td> <td>EXHIBIT 11 FINAL WRITTEN DECISION ISSUED BY THE</td> <td>244</td> </tr> <tr> <td>20</td> <td>PTAB ON THE '408 PATENT</td> <td></td> </tr> <tr> <td>21</td> <td>EXHIBIT 12 MEDVIDOVIC DECLARATION SUBMITTED ON</td> <td>241</td> </tr> <tr> <td>22</td> <td>THE '408 PATENT FOR THE IPR</td> <td></td> </tr> <tr> <td>23</td> <td>PROCEEDING</td> <td></td> </tr> <tr> <td>24</td> <td>EXHIBIT 14 DOCUMENT "USING MULTIPLE SCANNER</td> <td>195</td> </tr> <tr> <td>25</td> <td>APPLIANCES IN PARALLEL."</td> <td></td> </tr> </table>	3	DEPONENT	PAGE	4	NENAD MEDVIDOVIC, PH.D.		5	EXAMINATION BY MR. SMITH	7	6	EXAMINATION BY MR. JARVIS	310	7	FURTHER EXAMINATION BY MR. SMITH	311	12	DESCRIPTION	PAGE	13	EXHIBIT 1 EXPERT REPORT DATED DECEMBER 1, 2020	29	14	EXHIBIT 2 '408 PATENT	73	15	EXHIBIT 3 DOCUMENT "INTRODUCTION TO XML"	133	16	EXHIBIT 5 MICROSOFT U.S. PATENT 7,500,017	109	17	EXHIBIT 6 U.S. PATENT 7,480,859 IBM	107	18	EXHIBIT 7 U.S. PATENT 7,058,558 BOEING	106	19	EXHIBIT 11 FINAL WRITTEN DECISION ISSUED BY THE	244	20	PTAB ON THE '408 PATENT		21	EXHIBIT 12 MEDVIDOVIC DECLARATION SUBMITTED ON	241	22	THE '408 PATENT FOR THE IPR		23	PROCEEDING		24	EXHIBIT 14 DOCUMENT "USING MULTIPLE SCANNER	195	25	APPLIANCES IN PARALLEL."	
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<p style="text-align: right;">81</p> <p>1 I'm trying to understand -- sorry, what I'm 2 trying to do is kind of situate my opinion in 3 the framework of your question. That's why, 4 the way you phrased it, it sounds like you said 5 cloud agent is sending an incoming stream. And 6 I just wanted to make sure we were kind of on 7 the same page as far as what the architecture 8 is that you have in mind. 9 So, yeah, it would be, in that context 10 of your question, I think "outgoing" was the 11 appropriate word. But as far as cloud agent 12 itself, it -- it's -- my report says that cloud 13 agent includes updating scan data to a server 14 associated with the cloud agent. And it also 15 says explicitly that cloud agent receives data 16 from an endpoint. So cloud agent itself would, 17 in that context, have the equivalent 18 functionality to the scanner engine. 19 Q. So what you're saying is for the element 20 receiving by a computer an incoming stream of 21 program code, or cloud agents, the computer is 22 the customer's physical device on which the 23 cloud agent is installed, right? 24 MR. JARVIS: Objection to form. 25 THE WITNESS: No. The computer is</p>	<p style="text-align: right;">83</p> <p>1 confused. 2 Q. Well, I think I -- so, I'll strike that. 3 So under your infringement theory, the 4 computer would be a combination of the 5 customer's end computer on which the cloud 6 agent runs, plus one or more servers operated 7 by Qualys, right? 8 A. Well, I would prefer, so I'll just clean 9 up what you said in the sense that I would 10 prefer not to use -- not to define computer in 11 terms of computer. But if there is a part of 12 what gets -- so Qualys's capability is what 13 constitutes this computer. It is -- and then 14 the way it's embodied is by a set of 15 processors. 16 So, for example, if for a particular 17 claim element you have an agent that Qualys 18 deploys onto a processor that Qualys doesn't 19 legally own, in other words, that Qualys's 20 customers own, but that agent is part of this 21 system, and that agent actually reads a stream 22 of program code, then the computer, as defined 23 by a person of ordinary skill in the art, would 24 be in the context of the '408 patent, it would 25 be the collection of processors and other</p>
<p style="text-align: right;">82</p> <p>1 whatever the entire claim element would 2 require. In other words, whatever would be 3 processed or accomplished in the context of the 4 entire claim element. So the computer would 5 include processors from what you're calling the 6 customer's machine, and also procedure 7 processors from Qualys's own cloud platform. 8 BY MR. SMITH: 9 Q. So you're saying in your infringement 10 theory, the claim computer is a combination of 11 the customer's end computer on which the 12 scanner agent runs, plus different computer's 13 in Qualys's assortment of servers, right? 14 MR. JARVIS: Objection. Form. 15 THE WITNESS: Scanner engine does not 16 run on the customer's computers, at least not 17 in the configurations that I've been able to 18 identify. 19 BY MR. SMITH: 20 Q. Okay. I'm just trying -- right now, I'm 21 just trying to pin down what your actual 22 opinion is on what the computer is for cloud 23 agents. 24 A. Okay. But I think your question 25 referenced a scanner engine, which is why I was</p>	<p style="text-align: right;">84</p> <p>1 peripherals, if you will, that comprise a 2 server by Qualys and possibly a server that 3 belongs to one of the Qualys customers. 4 But it is a computer. Because what it 5 does is it computes, and it computes a specific 6 thing in a specific way. 7 Q. So to clarify, in your view, for the 8 claims of the '408 patent, under your 9 infringement theory, the computer would include 10 a server operated by Qualys as well as servers 11 operated by the Qualys customers on which the 12 cloud agents are installed, right? 13 A. Honestly, I think that it's -- it's 14 clear, and I think that you've included my 15 testimony from other cases in the list of prior 16 art. So we can maybe go there, because I've 17 opined on this consistently over the years. 18 A computer, the way a person of ordinary 19 skill in the art would understand it, it can be 20 built in software or in hardware or a 21 combination of the two. 22 A computer in this context is an engine. 23 It could be a physical thing or a virtual thing 24 that accomplishes a particular task. And this 25 is completely consistent with that view.</p>

<p style="text-align: right;">85</p> <p>1 It -- you know, this tying it down 2 specifically to one server here and one server 3 there, those are specific examples or possible 4 embodiments, but a computer is what Qualys 5 itself provides. 6 Q. What do you mean by -- strike that. 7 When you say Qualys is providing the 8 computer, you mean Qualys is providing the 9 server functionality? 10 A. Qualys is providing the functionality of 11 Vulnerability Management specifically that 12 we're talking about here. Part of that 13 functionality includes these agents, but the 14 computer that Qualys provides is the thing that 15 performs all of this. 16 The fact that that virtual or software 17 computer is deployed onto one or more hardware 18 devices in a way, I mean, it's almost like a 19 necessary evil because ultimately you need 20 hardware to run the software, but that's not 21 boiling it down to this thing on this side of 22 the network link, physical thing, and this 23 other thing on this other side of the network 24 link, also a physical thing. Boiling it down 25 to that is inappropriate. That's not how one</p>	<p style="text-align: right;">87</p> <p>1 right? 2 A. There are many computers that have been 3 built fully in software. 4 Q. And my question was for purposes of 5 construing the claim that we're looking at in 6 this case, when you looked at -- the way you're 7 construing the word -- strike that. 8 The way you're construing the term 9 "computer" in the claims of the '408 patent, 10 does not require physical hardware, right? 11 A. Again, it specifies a computer. It does 12 not -- the patent itself does not restrict it 13 to a particular definition of a computer, and 14 all of us, I think, use virtual computers all 15 the time that are fully developed in software. 16 And that is what is relevant here. 17 The fact that those virtual computers 18 may run on one or more hardware platforms, 19 that's incidental to the invention. The 20 computer itself can be a virtual computer. It 21 can also be a physical computer. But what I'm 22 saying is that attributing this notion of 23 computer to who actually bought a processor 24 with some memory on it, I think that is an 25 incorrect read of what this patent actually</p>
<p style="text-align: right;">86</p> <p>1 should read these claims or these claim 2 elements. 3 Q. So just to be clear, what you're 4 alleging as the computer in your infringement 5 theory includes a portion of hardware that is 6 owned and operated by Qualys's customers, 7 right? 8 MR. JARVIS: Objection to form. 9 THE WITNESS: What I'm saying is that 10 it's immaterial who owns the hardware, because 11 the claims never state hardware. So, in other 12 words, the claims themselves, nor the patent 13 really ever talk about hardware or hardware 14 ownership. 15 What I'm talking about here is the 16 computer is the thing that Qualys itself 17 provides. Specific deployments of that may 18 involve hardware or processors that are owned 19 by Qualys's customers in specific scenarios. 20 But that is, in a sense, immaterial because it 21 is the actual computer that is provided by 22 Qualys. 23 BY MR. SMITH: 24 Q. And your construction of the term 25 "computer" would not require physical hardware,</p>	<p style="text-align: right;">88</p> <p>1 teaches. 2 Q. And you didn't attempt to do an 3 infringement analysis where you assumed that 4 computer required physical hardware, right? 5 A. I don't think it changes my infringement 6 analysis at all. The infringement is still 7 there because the actual computer accomplishes 8 exactly every single element of every single -- 9 of the asserted claims. 10 But the fact is that the customer does 11 not provide this computer. The customer 12 basically allows Qualys to deploy a component 13 of this computer on to its hardware, on to the 14 actual, physical machine that the customer has. 15 But the computer is the actual thing that 16 Qualys supplies to solve these problems. 17 Q. Right. And the way you construed -- the 18 way you interpreted the claims was you didn't 19 include the customer's hardware as part of the 20 computer in the way that you interpreted the 21 claims of the '408 patent, right? 22 A. The customer's hardware participates in 23 this, but that's not directly relevant to the 24 definition of what a computer is. 25 Q. And the same is true for the work --</p>

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