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FINJAN LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(SAN JOSE DIVISION)

FINJAN LLC., a Delaware Limited Liability Company,

Plaintiff,

v.

SONICWALL, INC., a Delaware Corporation,

Defendant.

Case No. 5:17-cv-04467-BLF (VKD)

PLAINTIFF FINJAN LLC'S OFFER OF PROOF RE THE APPORTIONMENT OPINIONS OF AARON STRIEGEL, PH.D.

Date: March 18, 2021
Time: 1:30 PM
Hon. Beth Labson Freeman
Ctrm: 3, 5th Floor

In view of the discussion during the Court's March 18 hearing on SonicWall's Third Motion *in Limine* (D.I. 362), Finjan respectfully submits the following offer of proof. Were the Court to permit Aaron Striegel, Ph.D., to testify about his methodology regarding the identification of accused products' "top-level functions" for technical apportionment purposes, Dr. Striegel's testimony, consistent with his expert report and deposition, would include the following:

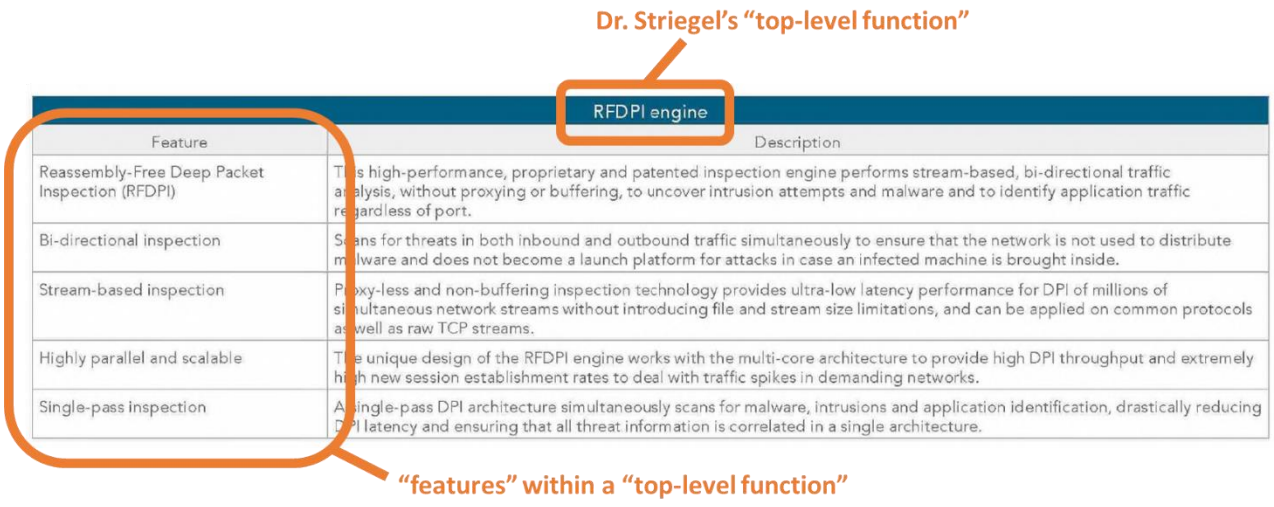
1. Dr. Striegel would testify that he is a Professor in the Department of Computer Science and Engineering at the University of Notre Dame. Exh. A (Striegel Rep.) ¶ 3. He holds a Ph.D. in Electrical and Computer Engineering, and has published twenty-six peer-reviewed journal papers and eighty-nine conference papers in the areas of computer networking, computer security, engineering education, and real-time systems. *Id.* ¶¶ 3–5. Three of his papers have received best paper awards at conferences, and his work has been cited in research papers and other scholarly materials over 2500 times. *Id.* ¶ 5. Dr. Striegel would testify that he has reviewed technical material concerning the SonicWall accused products and formed opinions about technical apportionment for Finjan's asserted patents as to those products.

2. Dr. Striegel would testify that to support his technical apportionment analysis, he identified, for each accused product, that product's "top-level functions." *Id.* ¶¶ 86–87. He relied for this task on "datasheets for the accused products because datasheets typically provide a window into the product in a very compact form to convey to a particular interested customer what are the key benefits, what are the functions, [and] what one should expect if one were to go out and purchase the product." *Id.* ¶ 88. The datasheets are "targeted at skilled technologists," and "provid[e] a very crisp summary [ ] of what are the key benefits . . . that one would receive when purchasing or utilizing [a] particular [product]." Exh. B (Striegel Dep. Tr.) 151:25–152:5. Dr. Striegel would testify that an exemplary datasheet relied on by him (which was discussed at the hearing) is the datasheet for SonicWall's "SuperMassive" product. *Id.* ¶ 90; *see also* Exh. C

3. For each accused product, Dr. Striegel would testify that he created a list of that product's "top-level functions," based on the datasheets and also on his own expertise and experience. Exh. A ¶ 88; *see also id.* ¶ 91 (exemplary list of twelve "top-level functions" for SuperMassive). In the case of SuperMassive, his list of twelve top-level functions "matches up" to the blue-colored rows on the three pages of the datasheet labeled "Features." Exh. B 148:14–149:5. In his expert opinion, as Dr. Striegel testified at his deposition, the twelve blue-highlighted features "are what SonicWall publicly represents to someone who would purchase the device . . . that these are the key benefits that one would expect to gain." *Id.* at 152:10–19.

4. Where datasheets (such as the SuperMassive datasheet) listed other "features"—i.e., features not highlighted in blue, but listed below the blue-highlighted "top-level functions"—Dr. Striegel would testify that in his expert opinion each of these "features" are subsumed within the "top-level functions" under which it is listed.

An example set of a blue-highlighted term Dr. Striegel calls a "top-level functions," and unhighlighted lesser "features" following it, is below:



Exh. C at SONICWALL-FINJAN_00000660 (annotated). Dr. Striegel would testify that he took this distinction between "top-level functions" and lesser "sub features" from the datasheets themselves.

they represented in the document that these [the blue-highlighted "top-level functions"] are the core [functions], the key benefits that [a purchaser] would receive[.] Exh. B at 157:20–23. Dr. Striegel would testify that if one took the time—as SonicWall had when constructing the datasheet—one could "go through and appropriately map those features, specific individual smaller features to the broader top-level functions." *Id.* at 158:6–158:9. In other words, one of skill in the art would know and could show that the sub features are subsumed within the top-level functions.

5. Dr. Striegel would testify that he did consider the lesser "features," and considered whether they should be used for apportionment, but ultimately determined, in his expert opinion, that it is more accurate to rely on the "top-level functions." Dr. Striegel would testify, as he did at deposition, that this is because the features are "narrow" and of interest primarily to "a particular customer, [who may] need a particular feature[.]" *Id.* 154:21–155:1. Dr. Striegel would testify, as he did at deposition, how he considered the "features," but relied instead on the higher-level "top-level functions" for his analysis:

> Again, if I'm . . . a particular customer, if I need a particular feature, I might look through this [the list of lesser "features"] to see is it present with regards to this [product].
>
> But, again, as part of my methodology, what I looked at is what are those ***key*** benefits, what are those ***key top-level functions*** that SonicWall is representing. This [list of lesser features] is more of an enumeration of many different features which might be out there, some which may be important, some which may not be as important.

Id. at 155:2–12 (emphasis added).

6. SonicWall's lawyer returned to the issue of the "sub features" several times during

Striegel would testify, as he did throughout his deposition, that he considered each "sub feature," but ultimately determined that in his expert opinion the higher-level "top-level functions" are more appropriate for apportionment:

> I did not conduct [my analysis] on a sub feature by sub feature basis because I did not feel that would be an appropriate analysis. I thought that the appropriate top-level functions that I identified would be, again, in line with what someone skilled in the area would understand to likely be present on these type of devices, and based on my own expertise of what I would view as a key top-level function.
>
> I did evaluate the sub features. . . . [T]hat's part of the process of evaluating would [a specific] top-level function have benefited from the . . . asserted patents and the asserted claims.

Id. at 252:17–253:5.

7. Dr. Striegel would testify, again consistent with his deposition, about his methodology for using the top-level functions rather than the sub features for his apportionment analysis. For example in discussing a separate data sheet for which he had identified four "top-level functions":

> These [the sub features] might speak to particular features which may not be necessarily valuable to different customers as well . . . . I had looked through these [the sub features].
>
> . . . I had to discern what are the ***top-level*** functions and I stand by my findings that those four top-level functions were appropriate.

Id. at 265:14–23 (emphasis added).

8. In sum: Dr. Striegel would testify, consistent with his expert report and deposition,

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