IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 18-1519 (MN)
	)	
RAPID7, INC., et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

At Wilmington this 5th day of February 2020:

IT IS HEREBY ORDERED that the claim terms of U.S. Patent Nos. 8,677,494 ("'494 Patent"), 8,079,086 ("'086 Patent"), 7,975,305 ("'305 Patent"), and 7,613,918 ("'918 Patent") with agreed-upon constructions are construed as follows (*see* D.I. 116 at Exhibit 1):

1. "Downloadable[s]" means "an executable application program, which is downloaded from a source computer and run on a destination computer" ('494 Patent, claim 10; '086 Patent, claims 1, 17, 41, & 42);

2. "Destination computer" means "separate computer receiving the [appended downloadable / Downloadable and a representation of the Downloadable security profile data]" ('086 Patent, claims 1, 17, 24, 41, & 42);

3. "Database" means "a collection of interrelated data organized according to a database schema to serve one or more applications" ('494 Patent, claim 10; '305 Patent, claims 1, 13, & 25; '086 Patent, claims 41 & 42);

4. "Parse tree" means "a hierarchical structure of interconnected nodes built from scanned content" ('408 Patent, claims 1, 22, & 35);

5. "Code-A" means "potentially malicious executable code" ('918 Patent, claims, 1, 12, 22, 28, & 33);

6. "Code-B" means "executable wrapper code" ('918 Patent, claims 1, 22, 28, & 33);

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

7. "Code-C" means "combined code" ('918 Patent, claims 1, 12, 22, 28, & 33); and

8. "Security context" means "an environment in which a software application is run, which may limit resources that the application is permitted to access or operations that the application is permitted to perform" ('918 Patent, claims 1, 12, 22, 28, & 33).

Further, as announced at the hearing on January 22, 2020, IT IS HEREBY ORDERED that the disputed claim terms of the '494 Patent, '086 Patent, '305 Patent, '918 Patent, and U.S. Patent Nos. 8,141,154 ("'154 Patent") and 8,225,408 ("'408 Patent") are construed as follows:

1. "Downloadable scanner" means "software that decomposes code using conventional parsing techniques to identify suspicious patterns or suspicious computer operations" ('494 Patent, claim 10; '086 Patent, claim 24);

2. "list of suspicious computer operations [that may be attempted by]" means "list of computer operations derived from a received Downloadable that are deemed hostile or potentially hostile" ('494 Patent, claim 10; '086 Patent, claims 1, 17, 24, 41, & 42);

3. "appended Downloadable" means "downloadable with a representation of the Downloadable security profile data attached" ('086 Patent, claim 1);

4. "first function" / "second function" shall have its plain and ordinary meaning and no construction is necessary ('154 Patent, claims 1, 4, 6, & 10);

5. "content processor" means "a processor that processes content" ('154 Patent, claims 1 & 6);

6. "a call to a first function" means "a statement or instruction in the content, the execution of which causes the function to provide a service" ('154 Patent, claims 1, 4, 6, & 10);

7. "a rule-based content scanner" means "a scanner that is able to adapt itself dynamically to scan a specific type of content" ('305 Patent, claim 1);

8. "patterns of types of tokens" means "patterns of categories of tokens" ('305 Patent, claims 1, 13, & 25);

9. "scanner" means "a scanner that is able to adapt itself dynamically to scan a specific type of content" ('408 Patent, claims 1 & 22);

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

10. "parser rules" means "patterns of tokens that form syntactical constructs of program code" ('408 Patent, claims 1 & 22);

11. "dynamically building" shall have its plain and ordinary meaning, "non-static building" ('408 Patent, claims 1, 22, 29, & 35);

12. "dynamically detecting" shall have its plain and ordinary meaning, "non-static detecting" ('408 Patent, claims 1, 22, 29, & 35);

13. "incoming stream of program code" shall have its plain and ordinary meaning ('408 Patent, claims 1, 22, 29, & 35);

14. "instantiating, by the computer, a scanner for the specific programming language / instantiating a scanner for the specific programming language" means "generating or requesting a scanner that can scan the specific programming language" ('408 Patent, claims 1 & 22);

15. "executable wrapper code / wrapper executable code" means "executable code that wraps another executable" ('918 Patent, claims 1, 12, 22, 28, & 33);

16. "computer account(s)" shall have its plain and ordinary meaning, "computer account(s)" ('918 Patent, claims, 1, 12, 22, 28, & 33);

17. "combining" / "combine" shall have its plain and ordinary meaning ('918 Patent, claim 1).

The parties briefed the issues (*see* D.I. 76) and submitted an appendix that included briefing and orders from numerous related cases and proceedings (*see* D.I. 77). The parties also submitted a Joint Claim Construction Chart containing intrinsic evidence (*see* D.I. 55-58). The Court carefully reviewed all submissions in connection with the parties' contentions regarding the disputed claim terms, heard oral argument (*see* D.I. 118, 121), and applied the following legal standards in reaching its decision.

LEGAL STANDARDS

"[T]he ultimate question of the proper construction of the patent [is] a question of law," although subsidiary fact-finding is sometimes necessary. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325-27 (2015). "[T]he words of a claim are generally given their ordinary and

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

customary meaning [which is] the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc) (internal citations and quotation marks omitted). Although "the claims themselves provide substantial guidance as to the meaning of particular claim terms," the context of the surrounding words of the claim also must be considered. *Id.* at 1314. "[T]he ordinary meaning of a claim term is its meaning to the ordinary artisan after reading the entire patent." *Id.* at 1321 (internal quotation marks omitted).

The patent specification "is always highly relevant to the claim construction analysis . . . [as] it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). It is also possible that "the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." *Phillips*, 415 F.3d at 1316. "Even when the specification describes only a single embodiment, [however,] the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction." *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1372 (Fed. Cir. 2014) (internal quotation marks omitted) (quoting *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004)).

In addition to the specification, a court "should also consider the patent's prosecution history, if it is in evidence." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). The prosecution history, which is "intrinsic evidence, . . . consists of the complete record of the proceedings before the [Patent and Trademark Office] and includes the prior art cited during the examination of the patent." *Phillips*, 415 F.3d at 1317.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

"[T]he prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Id.*

In some cases, courts "will need to look beyond the patent's intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period." *Teva*, 574 U.S. at 331. Extrinsic evidence "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Markman*, 52 F.3d at 980. Expert testimony can be useful "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318. Nonetheless, courts must not lose sight of the fact that "expert reports and testimony [are] generated at the time of and for the purpose of litigation and thus can suffer from bias that is not present in intrinsic evidence." *Id.* Overall, although extrinsic evidence "may be useful to the court," it is "less reliable" than intrinsic evidence, and its consideration "is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence." *Id.* at 1318-19. Where the intrinsic record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper. *See Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308 (Fed. Cir. 1999) (citing *Vitronics*, 90 F.3d at 1583).

I. THE COURT'S RULING

The Court's rulings regarding the disputed claim terms of the '494, '086, '305, '918, '154, and '408 Patents were announced from the bench at the hearing as follows:

> Before we start[], I wanted to give you my rulings on terms that we argued last week. So in this case, we have six patents and nineteen

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.