Filed on behalf of Symantec Corporation
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SYMANTEC CORP.
Petitioner

v.

FINJAN, INC.
Patent Owner

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IPR2015-01547
U.S. Patent No. 8,141,154

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**PETITIONER'S REQUEST FOR
REHEARING PURSUANT TO 37 C.F.R. § 42.71(c) FOR PARTIAL
RECONSIDERATION OF ITS DECISION TO NOT INSTITUTE TRIAL**

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Petitioner Symantec Corporation ("Symantec" or "Petitioner") respectfully requests a rehearing pursuant to 37 C.F.R. § 42.71(c) for partial reconsideration of the Board's Decision Denying Institution of Trial (Paper No. 9) ("Decision") with respect to claims 1-12 of U.S. Patent 8,141,154 ("the '154 patent"). More specifically, Symantec requests reconsideration of the Board's decision as to Grounds 1-3 of the Petition, which primarily pertain to U.S. Patent Publication 2007/0113282 ("Ross"). Petitioner respectfully submits that the Board overlooked duly presented evidence when it decided to not institute trial in this proceeding with respect to claims 1-12 under Ross. Specifically, in its discussion of Ross, the Board focused on one embodiment illustrated in figure 2, while ignoring other embodiments described in Ross and relied on in the Petition that clearly disclose the one allegedly missing claim limitation. Thus, the Board's decision is premised on factual findings that are not supported by substantial evidence.

I. INTRODUCTION

On January 14, 2014, the Board denied the institution of *inter partes* review of claims 1-12 of the '154 patent with respect to all four grounds presented in the petition, namely:

1. Anticipation of Claims 1-5 by Ross;

2. Obviousness of Claims 2, 4-8, 10 and 11 by Ross;

3. Obviousness of Claims 9 and 12 in view of Ross and U.S. Patent Publication 2002/0066022 ("Calder"); and

4. Obviousness of Claims 1-12 in view of Calder and Sirer.[1]

Decision, p. 2-3, 13.

Symantec respectfully requests rehearing because the Board overlooked Symantec's arguments and evidence in its Petition when incorrectly concluding that Ross does not disclose "a content processor (i) for processing **content received over a network, the content including a call to a first function**, and the call including an input." Decision, p. 5 (emphasis added). In fact, this conclusion is contradicted by the Board's own characterization of the reference when providing an "Overview of Ross." Decision, p. 5-6. In particular, the Board acknowledged that Ross' detection engine, which provides the hook script (*i.e.*, content) including hook functions (*i.e.*, first function) to the content processor, "may be physically located away from client 202." Decision, p. 6. Thus, it is clear that, in these embodiments of Ross, the client's script processing engine (*i.e.*, content processor), which resides on client 202, necessarily receives the hook script (*i.e.*, content including a first function) over a network.

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[1] Sirer *et al.*, *Design and Implementation of a Distributed Virtual Machine for Networked Computers*, (1999).

For the reasons discussed more fully below, Symantec requests that the Board reconsider its denial of institution, and institute trial on Grounds 1-3, each of which rely on the teachings of Ross for the disclosure of the sole claim limitation deemed missing by the Board. This Request for Rehearing is filed within thirty days of the Decision Denying Institution and is thus timely under 37 C.F.R. § 42.71, § 1.7.

II.   THE STANDARD OF REVIEW FOR REHEARING

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." An abuse of discretion occurs when a "decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted); *see also O'Keefe v. U.S. Postal Service*, 318 F.3d 1310, 1314 (Fed. Cir. 2002) ("The Board necessarily abuses its discretion when it rests its decision on factual findings unsupported by substantial evidence.") (internal quotations omitted). "The request [for rehearing] must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." 37 C.F.R. § 42.71(d).

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