

Jack Davidson
November 02, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SYMANTEC CORP., and BLUE
COAT SYSTEMS, INC.,

Petitioner, Case IPR2015-01892

v.

FINJAN, INC.,

Patent Owner.

-----x

Videotaped Deposition of JACK W. DAVIDSON,
as reported by Nancy C. Bendish, Certified Court
Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, at the
offices of BRYAN CAVE LLP, 1290 Avenue of the
Americas, New York, New York, on Wednesday,
November 2, 2016, commencing at 10:08 a.m.

U.S. LEGAL SUPPORT
(415) 362-4346

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November 02, 2016

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1 A P P E A R A N C E S :
2
3 BRYAN CAVE LLP
1290 Avenue of the Americas
4 New York, New York 10104-3300
BY: ALEXANDER WALDEN, ESQ.
5 alexander.walden@bryancave.com
FRANK FABIANI, ESQ.
6 frank.fabiani@bryancave.com
For the Petitioner, Symantec Corporation
7
8
9 KRAMER LEVIN NAFTALIS & FRANKEL LLP
990 Marsh Road
Menlo Park, California 94025-1949
10 BY: MICHAEL LEE, ESQ.
mhlee@kramerlevin.com
For the Patent Owner, Finjan, Inc.
11
12
13 WILSON SONSINI GOODRICH & ROSATI
701 Fifth Avenue, Suite 5100
14 Seattle, WA 98104-7036
BY: ANDREW S. BROWN, ESQ. (via telephone)
15 asbrown@wsgr.com
For the Petitioner, Blue Coat Systems
16
17
18 ALSO PRESENT:
19 JUAN TORRES, Videographer
20
21
22
23
24
25

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1 THE VIDEOGRAPHER: The time is
2 10:08 a.m. on November 2nd, 2016 and this begins
3 media number 1 of the video deposition of
4 Mr. Jack Davidson in the matter Symantec Corp.
5 and Blue Coat Systems, Inc. versus Finjan, Inc.
6 My name is Juan Torres and I am
7 the senior legal video specialist with U.S.
8 Legal Support. The court reporter today is
9 Nancy Bendish.
10 Will counsel please introduce
11 themselves beginning with the party noticing
12 this proceeding.
13 MR. LEE: Michael Lee from Kramer
14 Levin representing Finjan.
15 MR. WALDEN: Alex Walden from
16 Bryan Cave, representing Symantec.
17 MR. FABIANI: Frank Fabiani, also
18 from Bryan Cave, representing Symantec.
19 MR. BROWN: Andy Brown of Wilson
20 Sonsini representing petitioner Blue Coat.
21 THE VIDEOGRAPHER: Will the court
22 reporter swear in the witness.
23 J A C K W. D A V I D S O N, sworn.
24 EXAMINATION BY MR. LEE:
25 Q. Please spell your full name and

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1 address for the record.
2 A. Jack, J-a-c-k, W, Davidson,
3 D-a-v-i-d-s-o-n.
4 Q. Do you understand why you're here
5 today, Dr. Davidson?
6 A. Yes, I do.
7 Q. Why are you here today?
8 A. I'm here to testify on behalf of
9 Symantec as an expert witness, my analysis of
10 the '494 patent.
11 Q. Is this for IPR2015-01892?
12 A. I believe it is. I don't have the
13 number in front of me but, yes, it's an IPR.
14 (Exhibit 1 marked for
15 identification.)
16 Q. I'm handing you an exhibit marked
17 Exhibit No. 1. Exhibit No. 1 is entitled
18 "Declaration of Jack W. Davidson in Support of
19 Petitioner Pursuant to 37 CFR section 42.120"
20 and it's labeled Symantec 1027, IPR2015-01892.
21 Do you recognize Exhibit No. 1?
22 A. Yes, I do.
23 Q. What is Exhibit No. 1?
24 A. This is my declaration in support
25 of the petitioner, second response, kind of

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1 following Dr. Medvidovic's declaration or
2 testimony.
3 Q. So this is your second declaration
4 for this proceeding, correct?
5 A. That's correct.
6 Q. Can you go to page 69. Is that
7 your signature on page 69 of Exhibit 1?
8 A. Yes, that is my signature.
9 Q. Did you sign Exhibit No. 1 on
10 September 16th, 2016?
11 A. Yes, I did.
12 Q. Was it your understanding that as
13 of September 16th, 2016 you're supposed to put
14 in to your declaration all the opinions you had
15 in this case?
16 A. I'm sorry, say the last part. All
17 of the what?
18 Q. All of the opinions that you had
19 in this case?
20 A. Yes. I worked with the counsel
21 here to make sure that I covered all the
22 relevant points.
23 Q. As you sit here on November 2nd,
24 2016, is there anything concerning the bases of
25 your opinion that are not included in Exhibit

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1 No. 1?
2 A. No. I mean, I think there are
3 some typos in here, when I was going back over
4 it, but other than that, these are my opinions.
5 Q. When did you -- strike that.
6 Did you write your declaration?
7 A. I worked with, you know, counsel,
8 Mr. Walden and Mr. Fabiani, to write it, worked
9 with them on structuring the arguments and
10 providing analysis. You know, we worked
11 together to write it. We carefully went over
12 it, made sure that it was exactly what I, you
13 know, my opinions, that I agreed with all the
14 arguments.
15 Q. When did you start working with
16 counsel on your declaration?
17 A. You know, I couldn't tell you the
18 exact date. We've been working on it, you know,
19 once we got the deposition of Dr. Medvidovic.
20 Q. Medvidovic.
21 A. Say it again.
22 Q. I believe it's pronounced
23 Medvidovic.
24 A. Medvidovic, thank you. But, yeah.
25 But, you know, I can't recall the exact date but

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1 we've been in contact and working over that
2 period of time back and forth.
3 Q. Would you say it was sometime
4 around August 2016?
5 A. I think that's right, partly
6 because, you know, part of the timestamp for me
7 is I was in a big competition that was held at
8 the beginning of August, and up until that time
9 I was busy. So basically it was only after, you
10 know, that that -- in fact, I remember Frank,
11 Mr. Fabiani contacted me and congratulated me on
12 where we, you know, had finished in this
13 competition. So I think that is where I had
14 been -- you know, kind of the middle of August,
15 late August, after that. The competition was
16 August 4th and so I was pretty much tied up with
17 that until then.
18 (Exhibit 2, Exhibit 3 and Exhibit 4
19 marked for identification.)
20 Q. The court reporter handed you
21 three exhibits.
22 A. Yes.
23 Q. Exhibit number 2 is entitled "The
24 Flat File Database Generator Ffg." Exhibit
25 number 3 is entitled "cql - A Flat File Database

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1 Query Language." And exhibit number 4 is
2 entitled "An Intrusion-Detection Model."
3 Do you recognize these three
4 exhibits?
5 A. Yes, I do.
6 Q. What are these three exhibits?
7 A. These three exhibits are things
8 that are referenced in my declaration. And so
9 they're included here because I rely on them for
10 some of the analysis that I did. These would, I
11 think, be categorized as prior art.
12 Q. These are only referenced in your
13 2016 declaration, correct?
14 A. I believe that's correct, yes.
15 That's only in the declaration that I have here,
16 Symantec 1027.
17 Q. Could you have cited Exhibits 2
18 through 4 in your previous declaration that you
19 on September 15th, 2015?
20 MR. WALDEN: Objection, form.
21 A. The reason -- I could have, but
22 the reason that they're cited here is that, you
23 know, this is based on looking at patent owner's
24 response and I'm going to say, you know, if it's
25 okay with you I'm just going to say Dr. M, Dr.

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1 M's declaration. So, you know, it was based on
2 looking at that and formulating this declaration
3 in response to that.
4 Q. So you could have cited and
5 described Exhibits 2 through 4 in your previous
6 declaration?
7 A. Certainly the Denning, you know,
8 reference I was certainly familiar with. I know
9 Dorothy, I know Doug. Again, they seemed --
10 when they were looking at the patent owner
11 response in Dr. M's declaration it was like,
12 okay, this will help explain, you know, some of
13 the terms being used and again, you know, prior
14 art.
15 Q. So you were aware of these three
16 references on September --
17 A. I was not aware of the Glen Fowler
18 one. This is one that I think Symantec, you
19 know, in the process of understanding what a
20 flat file database is, that they came up with.
21 So that was not one that I was aware of.
22 Q. So you were aware of the Comer
23 reference and the Denning reference as of
24 September 15th, 2015?
25 A. Is that September -- yeah, I mean,

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1 at the time of the -- you know, the declaration,
2 yes. These are referenced in my declaration.
3 Q. The previous declaration.
4 A. Oh, I'm sorry, you're talking
5 about not this current one?
6 Q. Correct.
7 A. Yeah. I mean, like I said, I
8 worked in, you know, these areas and so these
9 are things that, you know, in the past, you
10 know, I teach in this area. And so these are
11 things that, you know, where I know Doug Comer,
12 so I'm familiar with his work.
13 At some point when this became
14 relevant I was like, oh, okay, here's some prior
15 art that based on the patent owner's response
16 and the declaration that would be relevant for
17 my subsequent declaration.
18 Q. They weren't relevant before?
19 MR. WALDEN: Object to the form.
20 A. I think, you know, they're
21 relevant but I didn't reference them in my
22 declaration. Partly it's to, in terms of making
23 sure that people understand the terms. I think
24 in these -- two of these cases we're talking
25 about, you know, what a flat file database is,

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1 you know, whether a relational database would
2 have been obvious. That's what the Denning
3 reference, which is referenced by Swimmer. So
4 these then seem to become more important and
5 worth, you know, including.
6 Q. Just so the record is clear, is it
7 okay if we refer to your previous declaration as
8 the 2015 declaration and the current one as the
9 2016 declaration?
10 A. Okay. So when I say included, I
11 was saying included in my 2016, you know, the
12 one signed on September 16th.
13 Q. So the Denning and Comer
14 references are only cited in your 2016
15 declaration, but you were aware of them as of
16 2015, correct?
17 A. Yeah. I've been aware -- again,
18 these are, like I said, I know these people so
19 I'm familiar with their work over the years.
20 Q. So therefore you could have cited
21 the Comer and Denning reference in your 2015
22 declaration, correct?
23 MR. WALDEN: Objection, form.
24 A. I, you know, could have but we
25 decided not to. Again, this is something I

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1 worked with counsel on deciding what references
2 to include. You know, I think there's some
3 desire to not have a huge number of references
4 in these things, and so you decide -- I mean,
5 again, I think this is part of the decision
6 process, but I definitely rely on counsel in
7 terms of, you know, what to include and not
8 include.
9 Q. Can you go to paragraph 8 of
10 Exhibit 1.
11 A. Paragraph 8.
12 Q. Do you see where you state, "In my
13 opinion, the term 'storing' is well understood
14 by those of ordinary skill in the art and
15 requires no further construction"?
16 A. I do.
17 Q. What is the well understood
18 meaning of the term "storing"?
19 A. Storing is putting information in
20 a storage, you know, to save information in some
21 kind of medium. It could be, you know, RAM or
22 disk, file, nonvolatile memory, but it's putting
23 information somewhere potentially, you know, for
24 retrieval or manipulation later.
25 Q. What do you mean by putting

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1 information?

2 A. So, storage devices you would
3 write information. So like, for instance, the
4 declaration has definition of storage device, or
5 write from main memory, there would be a store
6 instruction that would place a data in, let's
7 say, a memory location or a register. And it's
8 common, we store this information in this
9 location. We stored it in this file.

10 Q. How is saving something in a file
11 or storing something in a file different from
12 creating a file?

13 A. Different from creating a file?

14 Q. Yes.

15 A. So, you could create a file and
16 not put anything in it. So, you know, creating,
17 kind of creates kind of the, I'll call it the
18 logical kind of structure. But it may not
19 have -- you may not have stored any information
20 in it yet.

21 Q. What's required to store
22 information in a file?

23 A. What's required? I mean, _____
24 typically there would be some operation. For
25 instance, on a machine there are what we often

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1 call store instruction or sometimes they're
2 called move instructions where you move a piece
3 of data from one storage element to another or
4 you move it, you know, from a register, which is
5 also being stored.

6 So there's some operation in terms
7 of, let's say, a file on disk. The operation
8 would be a write operation, which would write
9 some data into, you know, to that file.

10 Again, there's underlying
11 mechanisms that are happening in terms of, you
12 know, depending on the device, how that
13 information is actually, you know, stored in
14 that device.

15 In the case of a disk, there are
16 two kinds of, you know, storage devices.
17 There's kind of the magnetic one. There's a
18 storing the bits in terms of magnetization, and
19 now we have these things called SSD, solid state
20 devices, which it's much more like storing in
21 a -- it's not a transistor, but in a kind of
22 capacitor kind of way.

23 So anyway, there's an operation
24 that takes place, writes or moves, depending on
25 what level you're talking about that puts that

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1 information in the storage unit.

2 Q. So how is the storing operation
3 different from the creating operation?

4 MR. WALDEN: Object to the form.

5 A. So, the creating, you can create
6 data, you know, but to manipulate the data in a
7 modern, in fact in a machine, it's in a storage
8 device. It may be like, for instance, adding
9 something that's going to create a sum, but in
10 the process of doing that, that result is
11 stored.

12 So they're kind of, you know, we
13 distinguish them in terms of we're talking about
14 the operation, but they're again always
15 manipulating storage elements.

16 Q. Can you go to paragraph 10 of
17 Exhibit No. 1.

18 A. Yes.

19 Q. Do you see where you talk about a
20 "stream of data"?

21 A. Yes. On page 4.

22 Q. Is a stream of data in Swimmer the
23 same thing as Swimmer's audit trail, or are you
24 talking about something different?

25 A. So, this term "stream of data,"

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1 yeah. What's happening is there's -- in terms
2 of Swimmer, the emulator is emulating the
3 downloadable and observing, you know, and then
4 writing to the audit trail, the suspicious
5 operations which are, in this case, the
6 operating -- typically the operating system
7 commands.

8 Q. So just to be clear, I'm asking
9 about two terms, Swimmer's stream of data and
10 then another term in Swimmer called the audit
11 trail. My question is, are you saying that
12 these two are completely different from each
13 other?

14 A. No. The stream of data that the
15 emulator is producing and then, you know, is
16 stored, it's stored in the audit trail.

17 So there's this process of
18 emulating and that's creating this, determining
19 this data that then is stored in the audit
20 trail.

21 Q. In your opinion, how is a stream
22 of data different from Swimmer's audit trail?

23 A. The stream of data is what's being
24 stored in audit trail, it's being created, you
25 know, by the emulator and stored in the audit

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