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FINJAN, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FINJAN, INC., a Delaware Corporation, Plaintiff, v. SYMANTEC CORP., a Delaware Corporation, Defendant.	Case No.: 5:13-cv-02298-HSG **DECLARATION OF NENAD MEDVIDOVIC IN SUPPORT OF PLAINTIFF FINJAN, INC.'S OPENING CLAIM CONSTRUCTION BRIEF** Date: June 11, 2015 Time: 2:00 p.m. Place: Courtroom 15 – 18th Floor Before: Hon. Haywood S. Gilliam Jr.

Δ π EXHIBIT 3
MEDVIDOVIC
Deponent
Date 10/21 Rptr
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MEDVIDOVIC DECL. ISO FINJAN'S OPENING   CASE NO. 13-CV-02298-HSG

I, Nenad Medvidović, declare:

1.   I make this Declaration based upon my own personal knowledge, information, and belief, and I would and could competently testify to the matters set forth herein if called upon to do so.

Qualifications

2.   I received a Bachelor of Science ("BS") degree, Summa Cum Laude, from Arizona State University's Computer Science and Engineering department.

3.   I received a Master of Science ("MS") degree from the University of California at Irvine's Information and Computer Science department.

4.   I received a Doctor of Philosophy ("PhD") degree from the University of California at Irvine's Information and Computer Science department. My dissertation was entitled, "Architecture-Based Specification-Time Software Evolution."

5.   I am employed by the University of Southern California ("USC") as a faculty member in the Computer Science Department, and have been since January 1999. I currently hold the title of Professor with tenure. Between January 2009 and January 2013, I served as the Director of the Center for Systems and Software Engineering at USC. Since July 2011, I have served as my Department's Associate Chair for PhD Affairs.

6.   I am very familiar with and have substantial expertise in the area of software systems development / software engineering, software architecture, software design, and distributed systems.

7.   I have over twenty years of research experience that has spanned a wide range of issues pertaining to large, complex, distributed software systems. This research has included security and trust as significant components. As one example, my research has resulted in a new technique that deploys a software system on a set of distributed computers in a manner that optimizes that system's "non-functional" characteristics, including efficiency, scalability, resource consumption, reliability, as well as security. As another example, motivated by the frequent vulnerability of distributed systems to

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malicious adversaries, I have developed, published, and eventually patented a novel technique for ensuring system security and data privacy in open computer networks. I have co-authored a widely adopted textbook on software system architectures, in which several chapters deal with the issue of security and one entire chapter is specifically dedicated to security and trust.

Materials Reviewed

8.   I have reviewed in detail U.S. Patent Nos. 6,154,844 ("the '844 Patent"); 7,613,926 ("the '926 Patent"); 7,757,996 ("the '996 Patent"); 7,757,289 ("the '289 Patent"); 7,930,299 ("the '299 Patent"); 8,015,182 ("the '182 Patent"); 8,141,154 ("the '154 Patent"); and 8,667,494 ("the '494 Patent") (collectively "Finjan Patents"). I have also reviewed the prosecution history of the Finjan Patents.

9.   I understand that I am submitting this Declaration to assist the Court in determining the proper construction of certain terms used in the claims in the Finjan Patents. I have reviewed the Joint Claim Construction and Pre-Hearing Statement Pursuant to Patent Local Rule 4-3, which I understand was submitted jointly by Finjan and Symantec and sets forth their respective proposed claim construction and support thereof. I have also reviewed the terms that I understand were selected by Finjan and Symantec for construction.

Construction of the Terms

10.   I have reviewed Finjan's and Symantec's proposed constructions for the terms in the claims of the Finjan Patents. My understanding of a person of skill in the art is a person with a bachelor's degree in computer science or related field, and either (1) two or more years of industry experience and/or (2) an advanced degree in computer science or related field.

11.   I understand that Finjan and/or Symantec have disputes regarding the constructions for the claims terms listed below.

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a) *Construction of the Terms of the '844 Patent*

i. **Downloadable**

Claim Term	Finjan's Proposed Construction	Symantec's Proposed Construction
Downloadable	an executable application program, which is a downloaded from a source computer and run on the destination computer	mobile code that is requested by an ongoing process and downloaded from a source computer to a destination computer for automatic execution

12.   Based on my professional experience, a person of ordinary skill in the art reading the specification would understand the term "Downloadable" to mean "an executable application program, which is a downloaded from a source computer and run on the destination computer." Indeed, the term "Downloadable is expressly defined in the '844 Patent specification as well as in related patents. *See* '844 Patent at Col. 1, ll. 44-47 ("A Downloadable is an executable application program, which is downloaded from a source computer and run on the destination computer."); U.S. Patent No. 6,092,194 (the "'194 Patent") at Col. 1, ll. 44-47; U.S. Patent No. 6,804,780 (the "'780 Patent") at Col. 1, ll. 50-53. In my opinion, the '844 Patent specification's explicit definition is consistent with how a person of ordinary skill in the art at that time would understand "Downloadable" to mean.

13.   Furthermore, Symantec's proposed construction imports limitations into Downloadable that is not supported by the '844 Patent specification or the prosecution history. First, Symantec introduces the term "mobile code," a term that is not in the '844 Patent specification and is a term that requires construction. While, "mobile code" is mentioned in the prosecution history of the '194 Patent, in my opinion, it does not redefine what is explicitly defined in the specification of the '844 Patent.

14.   Second, Symantec imports the requirement that every "Downloadable" is "requested by an ongoing process." Here, Symantec conflates an example of a Downloadable and applies it to every type of Downloadable to restrict its definition. The specification of the '844 Patent states "A

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Downloadable is typically requested by an ongoing process such as by an Internet browser or web client." '844 Patent at Col. 1, ll. 47-49. In my opinion, a person of ordinary skill in the art would understand that "Downloadable" is not limited to being only "requested by an ongoing process" because the sentence states "typically" which is non-limiting.

15.   Third, Symantec imports the limitation "for automatic execution." In my opinion, nothing in the '844 Patent specification or prosecution history requires the Downloadable be automatically executed. Indeed, there is nothing the specification of the '844 Patent that discusses, much less requires, that the Downloadable being automatically executed.

ii.   **Means for Receiving a Downloadable**

Claim Term	Finjan's Proposed Construction	Symantec's Proposed Construction
means for receiving a Downloadable	Governed by 35 U.S.C. § 112(6): **Function:** receiving a Downloadable **Structure:** Downloadable file interceptor	means-plus-function under § 112(6): **Function:** receiving a Downloadable **Structure:** indefinite for failure to disclose corresponding structure/algorithm

16.   Based on my professional experience, a person of ordinary skill in the art would understand that the element "means for receiving a Downloadable" describes an element with the function of "receiving a Downloadable," as unambiguously stated in the claim. A person of ordinary skill in that art would easily be able to ascertain this is the function associated with this element because the claim sets forth a clear function with reasonable certainty. Specifically, the function is found after the "for" clause in the claim term.

17.   I understand that in order to determine the proper function for the claim term, a person of skill in the art must look to the specification to find the structure that performs the function recited

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