

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01979¹
U.S. Patent No. 8,141,154

PATENT OWNER'S MOTION FOR OBSERVATION

¹ Case IPR2016-00919 has been joined with this proceeding.

Patent Owner Finjan, Inc. submits the following observations of the
November 14, 2016 cross-examination of Aviel Rubin (Ex. 2035):

Evidence that Should Have Been Cited in Petition Rather than the Reply

1. In Exhibit 2035, pg. 10, line 10- pg. 11, line 20, the witness testified:

Q You mentioned that you cited Exhibit Number 1044 Nebenzahl
and Wool, correct?

A Yes.

Q When were you first aware of this document?

A Probably in late 2003, 2004.

Q How did you become aware of the Nebenzahl document?

A So I worked actively as a researcher in this field and actually
Avishai Wool, the second officer is someone I know very well. He was at
the labs when I was at AT&T labs. He was at Bell Labs. And in fact he was
my host for my last sabbatical at Tel Aviv University. So his research is
research that I followed closely. And when he wrote this paper I'm sure that
I was aware of it, along with a lot of other papers in the field at the time.

Q The Nebenzahl document, it's not cited in your previous
declaration, correct?

A That's right.

Q You could have cited the Nebenzahl document in your previous declaration, correct?

A I suppose I could cite any document that I want.

(Deposition Exhibit 2 was marked for purposes of identification.)

Q You've been handed an exhibit marked as Exhibit Number 2. Exhibit Number 2 is entitled, "Install-Time Vaccination of Windows Executables to Defend Against Stack Smashing Attacks." By Nebenzahl and Wool. And at the bottom it's marked as Exhibit 1044. Is this the Nebenzahl document we have been referring to?

A Yes.

This testimony is relevant because Nebenzahl (Ex. 1044) is an improper reference that Petitioner newly introduced after Patent Owner had already submitted its Patent Owner Response. Dr. Rubin testified that he was aware of this reference since 2003 and did not cite this in his original declaration even though he could have included it in his original declaration.

Offers No Opinion on What is or Isn't an Application

2. In Exhibit 2035, pg. 18, line 18-pg. 19, line 4, the witness testified:

Q So in your opinion an application is not any code that can be run, correct?

A I don't think I said that.

Q Is that your opinion though?

A Is what?

Q Is it your opinion that an application is not any code that can be run?

A I don't offer opinion about what is or isn't an application in my declaration.

This testimony is relevant because Petitioner insists that Khazan instruments application. But after repeatedly asked for his understanding of what an application is, Dr. Rubin concedes that his declaration fails to offer an opinion of what is or isn't an application.

Disassembly of a Binary Does not Instrument an Application

3. In Exhibit 2035, pg. 36, lines 13-23, the witness testified:

Q What is the IDA Pro Disassembler for?

A It's to disassemble binaries.

Q Is it your opinion that disassembling a binary is the same as instrumenting applications?

A No.

Q Can you explain the difference?

A Disassembling binaries is converting binaries into assembly language. And instrumenting applications is adding code to an application

in order to be able to do some kind of a check or operation on it before you run the original code.

This testimony is relevant because Petitioner newly argues that the IDA Pro Disassembler teaches a POSITA how to instrument an application. But Dr. Rubin concedes that the purpose of the IDA Pro Disassembler is to disassemble binaries not instrument applications. This testimony is also relevant because Dr. Rubin goes on to explain why these two functionalities are different, including explaining that disassembling binaries is converting binaries into assembly language while instrumenting application is adding code to an application.

Respectfully submitted,

Dated: November 17, 2016

/James Hannah/

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