

Page 1

1 UNITED STATES PATENT AND TRADEMARK OFFICE
 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
 3 Case No. IPR2015-01979
 4 Patent 8,141,154
 5
 6 ----- x
 7 PALO ALTO NETWORKS, INC.,
 8
 9 Petitioner,
 10
 11 vs.
 12 FINJAN, INC.,
 13
 14 Patent Owner.
 15
 16 ----- x
 17 DEPOSITION OF AVIEL RUBIN, PH.D.
 18 Pikesville, Maryland
 19 Friday, May 20, 2016
 20 9:00 a.m.
 21
 22 * * *
 23
 24 Assignment No. J0357971
 25

Page 3

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 22 * * * *
 23
 24
 25

Page 2

1 * * *
 2
 3 Whereupon, this is the deposition of AVIEL RUBIN, PH.D.
 4 who appeared as a witness called by the Plaintiff in the
 5 above-styled caption, examined on Friday, May 20, 2016
 6 conducted at the Doubletree Inn, 1726 Reisterstown Road,
 7 Pikesville, Maryland commencing at 9:00 a.m.. and was
 8 reported and transcribed by T. S. Hubbard, Jr. a Notary
 9 public for the State of Maryland.
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Page 4

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 2 A P P E A R A N C E S : (continued)
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Page 5

1
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Page 6

1 TABLE OF CONTENTS
2 Witness:
3 AVIEL RUBIN, PH.D. Page
4 Examination
5 by Mr. Lee 7, 210
6 by Mr. Armon 203
7 INDEX OF PLAINTIFFS EXHIBITS
8 Exhibit 1 Declaration 8
9 Exhibit 2 Exhibit 1034 in Declaration 18
10 Exhibit 3 Decision of the Court 36
11 Exhibit 4 '154 Patent 41
12 Exhibit 5 Petition for Inte Parte 45
13 Review
14 Exhibit 6 "U.S. Patent Application 49
15 Publication 2005 / 0108562,
16 Khazan, et al and Palo Alto
17 Networks Exhibit 1003
18 Exhibit 7 Design and Implementation of 123
19 Distributed Retro Machine for
20 Network Computers, Palo Alto
21 Networks Exhibit 1004
22 Exhibit 8 Hand drawn Diagram 188
23
24 * * * * *
25

Page 7

1 P R O C E E D I N G
2 MR. ARMON: Orion Armon, Cooley, LLP on
3 behalf of the petitioner, Palo Alto Networks,
4 and Dr. Aviel Rubin.
5 MR. LEE: Michael Lee from Kramer Levin
6 representing Finjan.
7 MR. PRICE: Jeffrey Price from Kramer
8 Levin representing defendant Finjan.
9 MR. KIM: Michael Kim in house counsel
10 with Finjan.
11 MR. BISWAS: I am Shouwik Biswas with
12 Morrison Foerster representing Palo Alto
13 Networks.
14 (Whereupon, AVIEL RUBIN, PH.D. is sworn:)
15 EXAMINATION BY MR. LEE:
16 Q Please state your full name and address
17 for the record?
18 A My full name is Aviel Rubin. I am at 3
19 Thornhaugh Court, Pikesville, Maryland 21208.
20 Q Do you understand why you are here
21 today?
22 A Yes, I do.
23 Q Why are you here?
24 A I am here because you wanted to take my
25 deposition in this case.

Page 8

1 Q Did you offer any opinions in this case?
2 A Yes, I have.
3 Q What are those opinions?
4 A The full opinions are stated in my
5 declaration. Everything that is in there is my
6 opinion, so I can state the whole thing.
7 Q Can you give me a summary of your
8 opinion?
9 A Will you be able to provide my
10 declaration to me?
11 Q Sure.
12 (Whereupon, Defendant's Exhibit No. 1 is marked
13 for Identification.)
14 MR. LEE: You have been handed what has
15 been marked as Exhibit No. 1 entitled
16 "Declaration of Aviel D. Rubin in Support of
17 Petition for Inter Partes Review of U.S.
18 Patent Number 8,141,154."
19 BY MR. LEE:
20 Q Do you recognize Exhibit No. 1?
21 A Yes, I do.
22 Q What is Exhibit No. 1?
23 A Exhibit No. 1 is the Declaration that I
24 submitted in this case in support of the IPR
25 petition.

Page 9

1 Q Are you able to give a summary of your
2 opinion?
3 A Yes. In my declaration there is a
4 section called "Summary of Opinion," page one or
5 page 4 as it is marked as an exhibit, and the
6 summary is that each of the claims of the '154
7 patent addressed in a declaration are invalid as
8 obvious in the 2005 time frame in light of
9 knowledge of skill in the art at the time of the
10 teachings, suggestions, motivations, present in
11 the prior art.
12 Q Can you go to page 73 of your
13 declaration.
14 A I assume you are referring to the page
15 numbers at the bottom where it says "Exhibit,"
16 because there are also page numbers.
17 Q I am referring to the page number above
18 that.
19 A The one that is printed on the document.
20 Q Correct.
21 A I am there.
22 Q Did you sign your declaration on
23 September 25, 2015?
24 A Yes.
25 Q That is your signature on page 73

Page 10

1 correct?
2 A Yes.
3 Q Was it your understanding that as of
4 September 25, 2015, you are supposed to put into
5 your declaration all the opinions that you have in
6 this case?
7 A Yes.
8 Q Is there any another opinion that is not
9 in the declaration.
10 A Sorry?
11 Q Do you have another opinion that is not
12 in the declaration?
13 A No.
14 Q Are there any corrections that you would
15 like to make at this time?
16 A No.
17 Q As you sit here on May 20, 2016, is
18 there anything that you were aware of concerning
19 the bases of your opinions that were not included
20 in Exhibit No. 1?
21 A No.
22 Q Can you describe to me the process of
23 writing your declaration?
24 A Sure. The process of forming the
25 opinions or writing the actual writing of the

Page 11

1 declaration? Which are you asking?
2 Q Is there a difference?
3 A No, I mean there was a bunch of work
4 that happened before I started writing. I want to
5 know if you're including that or just the writing
6 of it?
7 Q Sure, start with that.
8 A The process involved getting up to speed
9 on the case, reading a lot of materials, like the
10 '154 patent, reading prior art references, and
11 performing an analysis.
12 I worked with a couple of assistants
13 that worked for me in doing this.
14 And working with counsel as well,
15 receiving the legal standard from them and then
16 applying the legal standard to the analysis and
17 then kind of a group effort in terms of producing
18 the text.
19 I would have conversations with my staff
20 and the lawyers and we would draft up the text and
21 I will read it, approve it, and then we came up
22 with the final draft and I read the whole thing
23 making sure that it is containing all of my
24 opinions and signed off on the document.
25 Q When you said that you had assistants

Page 12

1 from your company, is that Harbor Labs?
2 A Yes. Harbor Labs.
3 Q Who were these assistants?
4 A Seth Nielsen who worked with me at the
5 time that I was doing this work, but is no longer
6 with Harbor Labs and Paul Martin has been with
7 Harbor Labs for a while.
8 Q What exactly did Seth and Paul do in
9 connection with your declaration?
10 A We had a lot of discussions together.
11 They helped me with the analysis.
12 So, for example, if I was considering
13 whether or not a piece of prior art was relevant
14 or whether it met the claim limitations, I would
15 have discussions with them. They would have
16 discussions with the lawyers. I have discussions
17 with the lawyers and we worked as a team.
18 They would help draft some portions of
19 the text in the background section under my
20 direction. I think that is probably about it.
21 Q Did they help draft any other portion
22 other than the background section of your
23 declaration?
24 A They were definitely involved in the
25 conversations that led to some of that texts. I

Page 13

1 don't remember who specifically wrote the words
2 the first time. I made editing passes through the
3 document as we went.
4 Q During your conversations with Seth and
5 Paul, did you exchange any emails?
6 A I am sure that we did.
7 Q Did you exchange any documents of any
8 kind besides the drafts of the declaration?
9 A I don't know.
10 Q Would you be surprised if you exchanged
11 documents during your conversation with Paul and
12 Seth about the declaration?
13 A I don't know why we would have. I mean
14 I emailed them all day long on other matters too
15 in other cases and we send documents to each
16 other, but whether we sent documents relating to
17 this case to each other like prior art references,
18 it is possible.
19 I just don't recall.
20 Q Did you send drafts of the declaration
21 back and forth to each other?
22 A I think so.
23 Q You mentioned legal counsel that you
24 worked with?
25 A Right.

Page 14

1 Q Who were the legal counsel that you
2 worked with?
3 A I worked with Orion here and at times
4 there have been other lawyers, but I don't really
5 remember their names, but I worked most closely
6 with Orion.
7 Q Are there any other names that you can
8 remember other than Orion?
9 A There is someone named Robert, but I'm
10 not sure if it was this declaration. I just know
11 there is a lawyer named Robert who I think is with
12 this firm.
13 Q With the firm called Cooley?
14 A Cooley, yes, but I'm not even certain
15 about that.
16 Q Do you recall working with any attorneys
17 at other law firms other than Cooley?
18 A Yes.
19 Q Which ones?
20 A Morrison & Foerster.
21 Q Do you recall any names of attorneys
22 that you worked with at Morrison Foerster?
23 A I believe I was retained by Michael
24 Jacobs and I spoke with him, but I don't think I
25 worked with him very much and I am blanking on the

Page 15

1 names of the lawyers that I spoke with.
2 Q You primarily worked with Orion for this
3 case, correct?
4 A Yes.
5 Q Can you give me a ballpark of how much
6 you worked with Orion compared with other
7 attorneys?
8 A I think 85 percent of the time if not
9 more.
10 Q Any other law firms that you remember
11 other than Cooley and Morrison & Foerster.
12 A No, I don't think so.
13 Q Can you go to the section of your report
14 entitled "Materials Considered." I believe it
15 starts on page 79. You list a number of documents
16 from Exhibit 1001 to 1035.
17 A Yes.
18 Q Why did you list these documents?
19 A These are the materials that I
20 considered in this case.
21 Q Does this list from other Exhibits 1001
22 to 1035 identify all of the materials considered
23 in this case?
24 A I believe so.
25 Q Do you have any other material that is

Page 16

1 not listed on the materials considered?
2 A None that I can recall right now.
3 Q Do you see where you listed Exhibit
4 1034. It is entitled, "Press Release MA 86
5 Security Complete Acquisition of Finjan."
6 A Yes.
7 Q Why did you cite this document?
8 A I could take the time now to go through
9 my declaration and see where it is referenced to
10 try to answer that, if you like.
11 Q I actually did not see it referenced in
12 your declaration anywhere and that is why I am
13 asking why you cite it, but you can take the time
14 to take a look for yourself if you want.
15 A I don't remember why that is cited.
16 Q Do you understand what Exhibit 1034 is
17 regarding?
18 A Just what I can understand right now
19 from the title.
20 Q Do you have any understanding of MA 86
21 Security acquisition of Finjan?
22 A Do you have that document?
23 Q Would you like a copy of that document?
24 A Yes, please.
25 (Whereupon, Defendant's Exhibit No. 2 is marked

| | |
|---|--|
| <p style="text-align: right;">Page 17</p> <p>1 for Identification.) 2 BY MR. LEE: 3 Q You were handed an exhibit marked as 4 Exhibit Number 2 entitled MA 86 Finjan. Is this 5 Exhibit 1034 cited in your declaration? 6 A It is labeled Exhibit 1034 and it has 7 the same title, so I imagine it is. 8 Q Does this refresh your memory of what 9 Exhibit 1034 is? 10 A I will just take a moment to read. No, 11 I don't remember this document. 12 Q Do you see in the paragraph starting 13 with, "Finjan provides active real-time content 14 inspection and code analysis technology focused on 15 identifying malware delivered inbound through the 16 web channel." 17 MR. ARMON: Counsel, where are you 18 reading from? 19 MR. LEE: It is from Exhibit 1034. 20 MR. ARMON: At what page? 21 MR. LEE: Page 2. 22 THE WITNESS: Yes, I see that. 23 BY MR. LEE: 24 Q Can you explain the relevance of this 25 sentence to the patent at issue in this case?</p> | <p style="text-align: right;">Page 19</p> <p>1 which tells me that at some point I may have 2 seen or received this document, but I didn't, 3 as far as I can tell, I did not use this 4 document in any place in my declaration or 5 referred to it in any specific way. 6 BY MR. LEE: 7 Q I'm trying to understand why you cited 8 this document here in your materials considered? 9 A I think that it is likely that this may 10 have been something that I or somebody on my team 11 looked at at some point and very likely did not 12 use because I don't have a specific, according to 13 you, and I think it makes sense, there is nothing 14 anywhere in the document that refers to it. 15 So when making a list I think it is good 16 to be exhaustive and to include more rather than 17 less in case I leave something out. 18 So right now I believe that this 19 document was not used in any way in forming my 20 opinions. 21 Q Did you consider any other documents 22 regarding Finjan into your analysis of the '154 23 patent? 24 MR. ARMON: Objection, ambiguous. 25 THE WITNESS: Which one specifically?</p> |
| <p style="text-align: right;">Page 18</p> <p>1 MR. ARMON: I object to that question as 2 vague and is also outside the scope of the 3 report. 4 Also foundation. 5 THE WITNESS: I'm not sure I understand 6 the question. 7 BY MR. LEE: 8 Q What is it that you are not able to 9 understand? 10 A You are asking me how a press release 11 relates to the '154 patent. This press release 12 came out five years after the filing date and I am 13 not sure that I know what you are asking me and 14 how to answer you. 15 Q I'm trying to understand why you cited 16 this article and how it relates to the '154 patent 17 because it is cited in your declaration regarding 18 the '154 patent. 19 So if you can explain? 20 MR. ARMON: Same objections. 21 THE WITNESS: It is not cited in my 22 declaration in the sense that I have it used 23 as a citation for a particular statement that 24 I am making in the declaration. 25 It is listed as materials considered</p> | <p style="text-align: right;">Page 20</p> <p>1 BY MR. LEE: 2 Q This article that is in Exhibit 1034 is 3 regarding Finjan, correct? 4 A Right. 5 Q My question was whether you considered 6 any other documents regarding Finjan in preparing 7 your declaration? 8 MR. ARMON: Same objection. 9 THE WITNESS: I think if you ask me a 10 specific one I can try to answer it and look 11 at the document, but as kind of a catchall, I 12 am not sure. 13 BY MR. LEE: 14 Q Sitting here today, can you recall any 15 Finjan documents or any documents with Finjan 16 other than Exhibit 1034? 17 MR. ARMON: Same objection. 18 THE WITNESS: I have trouble answering 19 that because I reviewed a lot of documents 20 over a period of time and I listed all the 21 ones here that at the time that I wrote the 22 report I considered that I had looked at. 23 I rather look at a specific document 24 like I did with this one where I could see if 25 I can refresh my memory and recall what was</p> |

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