

John Hawes
November 30, 2016

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,

Petitioner

v

FINJAN, INC.,

Patent Owner.

Case IPR2016-00159
U.S. Patent No. 8,677,494

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

v

FINJAN, INC.,
Patent Owner.

Case IPR 2015-01892
U.S. Patent No. 8,677,494

DATE: November 30, 2016

TIME: 10:00 a.m.

DEPOSITION OF JOHN HAWES, held at the
offices of Cooley LLP, 1114 Sixth Avenue, New
York, New York, pursuant to Agreement, before Hope
Menaker, a Shorthand Reporter and Notary Public of
the State of New York.

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<p style="text-align: right;">Page 2</p> <p>1 2 A P P E A R A N C E S 3 BRYAN CAVE, LLP 4 Attorneys for the Petitioner 5 Symantec Corporation 6 1290 Avenue of the Americas 7 New York, New York 10104-3300 8 BY: ALEXANDER WALDEN, ESQ. 9 10 11 COOLEY LLP 12 Attorneys for Petitioner - Palo Alto Networks 13 380 Interlocken Crescent 14 Suite 900 15 Broomfield, Colorado 80021-8023 16 BY: BRIAN EUTERMOSER, ESQ. 17 18 19 KRAMER LEVIN NAFTALIS & FRANKEL LLP 20 Attorneys for Patent Owners - Finjan, Inc. 21 1177 Avenue of the Americas 22 New York, New York 10036 23 BY: SHANNON HEDVAT, ESQ. 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 A. The first piece of evidence that I 3 provided for this case, the paper, the Morton 4 Swimmer's 1995 paper in the Virus Bulletin 5 conference. 6 Q. So as you know from your first 7 deposition, I'll be asking you some questions. If 8 there's anything that you need clarity on, I ask 9 that you ask for clarification and if not, I'll -- 10 the mutual understanding would be that you have no 11 questions about what my question is asking you. 12 A. Okay. 13 Q. Is there any reason you feel that you 14 cannot give your best and most accurate testimony 15 today? 16 A. No. 17 Q. When were you first contacted about 18 having to give this deposition today? 19 A. I guess it was mid-October I think. 20 Q. Of this year? 21 A. Yes. 22 Q. Who contacted you? 23 A. Brian. 24 Q. What did he tell you about this 25 deposition?</p>
<p style="text-align: right;">Page 3</p> <p>1 2 JOHN HAWES, called as a witness, 3 having been duly sworn on November 30, 2016, 4 by a Notary Public, was examined and 5 testified as follows: 6 The Pentagon 7 Abingdon Science Park 8 Abingdon Oxon UK 9 (Business) 10 11 EXAMINATION BY MS. HEDVAT: 12 Q. Good morning. 13 A. Hi. 14 Q. May I ask you to state your name for 15 the record, please. 16 A. My name is John Hawes. 17 Q. Thank you, Mr. Hawes. 18 Do you understand why you're here 19 today? 20 A. I think so. 21 Q. Have you been deposed before? 22 A. I have. 23 Q. And how many times? 24 A. Once. 25 Q. In what context?</p>	<p style="text-align: right;">Page 5</p> <p>1 2 A. That I might be required to give 3 another deposition. 4 Q. And when you were contacted initially 5 to work on these cases, who contacted you? 6 A. Brian. 7 Q. And what did he tell you your 8 assignment was? 9 A. I was asked to provide a scan of the 10 Morton Swimmer paper. That was the initial thing, 11 first thing I was asked to do. 12 Q. When did he contact you about that? 13 A. Early this year I think. 14 Q. Did you meet with anyone to prepare 15 for your deposition today? 16 A. Not really. We had a brief 17 conversation while we were waiting for you guys to 18 arrive. 19 Q. For clarification, who is "we"? 20 A. Myself, Brian, and I'm sorry -- Alex. 21 (Whereupon, Exhibit 1 was marked at 22 this time.) 23 Q. You have been handed what's been 24 marked as Exhibit 1. Do you recognize this 25 document?</p>

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<p>1</p> <p>2 A. Yes.</p> <p>3 Q. And what is this document?</p> <p>4 A. I think this is the second -- yes,</p> <p>5 this is a piece of paper that I signed in Denver</p> <p>6 declaring that some of the documents that I</p> <p>7 provided were what they claim to be.</p> <p>8 Q. If I could direct your attention to</p> <p>9 the third page of this document. Is that your</p> <p>10 signature?</p> <p>11 A. Yes, it is.</p> <p>12 Q. So, if I could direct your attention</p> <p>13 to Paragraph 2 of this declaration, it states that</p> <p>14 you are the chief of operations of Virus Bulletin.</p> <p>15 Is that your current position?</p> <p>16 A. Yes.</p> <p>17 Q. What does your role entail in that</p> <p>18 position?</p> <p>19 A. I essentially run the company. I set</p> <p>20 budgets. I manage the team. I decide strategy</p> <p>21 and direction.</p> <p>22 Q. How long have you held that position?</p> <p>23 A. Since mid 2014.</p> <p>24 Q. Were you at Virus Bulletin before</p> <p>25 2014?</p>	<p>1</p> <p>2 first declaration or second?</p> <p>3 A. The second -- well, they're both</p> <p>4 pretty much the same process.</p> <p>5 Q. What did you understand the purpose</p> <p>6 was of scanning those documents?</p> <p>7 A. To provide supporting evidence that</p> <p>8 the original document, that the Morton Swimmer</p> <p>9 paper was published by us.</p> <p>10 Q. And the documents that you provide</p> <p>11 with this declaration here, those could have been</p> <p>12 located with your first declaration during that</p> <p>13 time frame?</p> <p>14 MR. EUTERMOSER: Object to the form.</p> <p>15 A. Sorry, could have been located?</p> <p>16 Q. They could have been -- let me</p> <p>17 retract.</p> <p>18 So you mentioned that you scanned in</p> <p>19 documents in connection with this declaration,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the scanning of those documents</p> <p>23 could have been performed, for example, at the</p> <p>24 time frame when you submitted your first</p> <p>25 declaration in these proceedings?</p>
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<p>1</p> <p>2 A. Yes.</p> <p>3 Q. What positions did you hold?</p> <p>4 A. I was originally technical consultant</p> <p>5 and subsequently test team director.</p> <p>6 Q. During what time frame did you hold</p> <p>7 those positions?</p> <p>8 A. I started with VB in 2006 and I think</p> <p>9 they made me test team director in around 2010.</p> <p>10 Q. What -- where did you work prior to</p> <p>11 2006?</p> <p>12 A. I worked at Sophos.</p> <p>13 Q. In what capacity?</p> <p>14 A. I was a test engineer.</p> <p>15 Q. What did that role entail?</p> <p>16 A. Testing anti-virus products, QA.</p> <p>17 Q. So when you were contacted about this</p> <p>18 declaration in front of you, what specifically</p> <p>19 were you asked to do?</p> <p>20 A. I was asked -- I had previously been</p> <p>21 asked to provide scans of several documents and</p> <p>22 then I was asked to sign this piece of paper</p> <p>23 confirming that they were scans of those</p> <p>24 documents.</p> <p>25 Q. And that was with respect to your</p>	<p>1</p> <p>2 A. Could have been.</p> <p>3 Q. Now, could you direct your attention</p> <p>4 back to Paragraph 2 in the declaration in front of</p> <p>5 you.</p> <p>6 A. Okay.</p> <p>7 Q. It states towards the end that "Virus</p> <p>8 Bulletin has run an annual international</p> <p>9 conference on malware, anti-malware and related</p> <p>10 subjects since 1999."</p> <p>11 A. 1991.</p> <p>12 Q. Sorry.</p> <p>13 A. 1991.</p> <p>14 Q. Sorry, 1991, excuse me. Thank you.</p> <p>15 Have you ever attended any of these</p> <p>16 annual conferences?</p> <p>17 A. Yes. I've attended every one since</p> <p>18 2005.</p> <p>19 Q. In what capacity have you attended</p> <p>20 those conferences?</p> <p>21 A. In 2005, in Dublin. I was an</p> <p>22 employee of Sophos. So I was a delegate at the</p> <p>23 conference and at the subsequent 11, I think.</p> <p>24 I've been an employee of Virus Bulletin so I have</p> <p>25 been helping to run the conference.</p>

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<p>1</p> <p>2 Q. Then in Paragraph 2 you also mention</p> <p>3 that "Virus Bulletin is an online magazine."</p> <p>4 When did it first become an online</p> <p>5 magazine?</p> <p>6 A. Currently we are entirely online.</p> <p>7 Previously we had published paper editions. I</p> <p>8 think we stopped publishing the paper editions in</p> <p>9 2006 and --</p> <p>10 Q. When did you -- sorry.</p> <p>11 A. And by that point we were already</p> <p>12 publishing everything online as well, so there was</p> <p>13 a period of overlap.</p> <p>14 Q. When did you first -- when did Virus</p> <p>15 Bulletin start publishing the magazine, in</p> <p>16 general, not online, just in paper?</p> <p>17 MR. EUTERMOSER: Object to the form.</p> <p>18 A. Off the top of my head I'm not sure,</p> <p>19 but it was the first thing we did. So it was</p> <p>20 before the conference started so before 1991.</p> <p>21 Q. The online magazine, today, who has</p> <p>22 access to it?</p> <p>23 A. It's freely available to anybody on</p> <p>24 the Internet.</p> <p>25 Q. Prior to the magazine being online,</p>	<p>1</p> <p>2 matter of course to confirm that it's the same</p> <p>3 declaration.</p> <p>4 Can you confirm that the Exhibit 2</p> <p>5 that's been handed to you is the same as the first</p> <p>6 three pages of Exhibit 1 that's been handed to</p> <p>7 you?</p> <p>8 A. It certainly looks to be, yes.</p> <p>9 Q. So if I could direct your attention</p> <p>10 back to Exhibit 1, in particular Paragraph 3 --</p> <p>11 A. Yes.</p> <p>12 Q. -- where you reference Exhibit A,</p> <p>13 which is I believe Page 4 or 5.</p> <p>14 A. Uh-huh.</p> <p>15 Q. What is Exhibit A?</p> <p>16 A. That's the first declaration that I'd</p> <p>17 signed previously.</p> <p>18 Q. And then in Paragraph 4 of Exhibit A,</p> <p>19 your most recent declaration, you state that in</p> <p>20 your October 15th, 2015 declaration "the paper</p> <p>21 entitled, Dynamic Detection and Classification of</p> <p>22 Computer Viruses Using General Behavior Patterns</p> <p>23 was published," and then couple of lines down it</p> <p>24 says, "September 1995."</p> <p>25 What is the basis for your knowledge</p>
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<p>1</p> <p>2 who had access to it when it was in print?</p> <p>3 A. We had areas of the website which</p> <p>4 were available only to paying subscribers and</p> <p>5 likewise it was only available to paying</p> <p>6 subscribers.</p> <p>7 Q. What's the basis of your knowledge</p> <p>8 for this?</p> <p>9 A. My working for the company.</p> <p>10 (Whereupon, Exhibit 2 was marked at</p> <p>11 this time.)</p> <p>12 Q. You have been handed what's marked as</p> <p>13 Exhibit 2.</p> <p>14 Do you recognize this document?</p> <p>15 A. Yes.</p> <p>16 Is this not the same one?</p> <p>17 Q. What is this document?</p> <p>18 It's not a trick. I just want to</p> <p>19 confirm, unless would you like to state on the</p> <p>20 record, that the same was submitted in both</p> <p>21 proceedings, whatever --</p> <p>22 A. The piece of paper that I signed in</p> <p>23 Denver.</p> <p>24 Q. Okay. Is this -- again, Mr. Hawes,</p> <p>25 this is not a matter of trickery, this is just a</p>	<p>1</p> <p>2 of this statement?</p> <p>3 A. The records of my company.</p> <p>4 Q. What are those records?</p> <p>5 A. We keep copies of all the conference</p> <p>6 books that we have produced for each conference</p> <p>7 going back to the very beginning in 1991. They're</p> <p>8 stored in an archive which we reference quite</p> <p>9 regularly.</p> <p>10 Q. How do you know, as you state in</p> <p>11 Paragraph 4 of your declaration, that the paper</p> <p>12 you reference was quote/unquote published to all</p> <p>13 163 attendees of the conference in September 1995?</p> <p>14 A. It's our standard business practice</p> <p>15 that we produce a book of the proceedings that is</p> <p>16 provided to everybody that attends the conference.</p> <p>17 Q. Did you attend that conference in</p> <p>18 September 1995?</p> <p>19 A. I did not.</p> <p>20 Q. Did you speak with anyone who did</p> <p>21 attend that conference?</p> <p>22 A. I spoke to many people who attended</p> <p>23 that conference.</p> <p>24 Q. Specifically about that conference?</p> <p>25 A. I -- yes, I would say it's very</p>

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<p>1</p> <p>2 likely that I've spoken to people who attended</p> <p>3 that particular conference.</p> <p>4 Q. Did you speak with any of them in</p> <p>5 preparing this declaration?</p> <p>6 MR. EUTERMOSER: Object to the form.</p> <p>7 A. I wasn't really. In preparing this</p> <p>8 declaration I mentioned to some of them that I had</p> <p>9 been asked to give a declaration about that</p> <p>10 particular conference.</p> <p>11 Q. The last sentence of Paragraph 4 of</p> <p>12 your declaration you state that "The paper was</p> <p>13 subsequently made available for purchase by Virus</p> <p>14 Bulletin."</p> <p>15 A. Yes.</p> <p>16 Q. What does that mean, for a paper to</p> <p>17 be available for purchase?</p> <p>18 A. So after the conference is over, we</p> <p>19 keep several copies of the book because people who</p> <p>20 were unable to attend or for whatever reason,</p> <p>21 quite often want copies of it so we make it</p> <p>22 available for people to purchase separate from</p> <p>23 attending the conference.</p> <p>24 It's also considered to be cheaper</p> <p>25 than attending the conference just to buy the</p>	<p>1</p> <p>2 particular about the preparation of the</p> <p>3 proceedings book in the connection with this</p> <p>4 declaration?</p> <p>5 A. No.</p> <p>6 (Whereupon, Exhibit 3 was marked at</p> <p>7 this time.)</p> <p>8 Q. You've been handed what's marked as</p> <p>9 Exhibit 3.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It's the first declaration that I</p> <p>15 signed relating to the Morton Swimmer paper.</p> <p>16 Q. The second page of that document, is</p> <p>17 that your signature?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And is that the same declaration</p> <p>20 that's included as Exhibit A to Exhibit 1 of this</p> <p>21 deposition?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Okay. Thank you.</p> <p>24 I'm still going to direct your</p> <p>25 attention back to Exhibit 1, then, in particular</p>
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<p>1</p> <p>2 book.</p> <p>3 Q. Do you know anyone who purchased the</p> <p>4 proceedings book that you referenced in Paragraph</p> <p>5 4 of your declaration?</p> <p>6 A. No, I don't.</p> <p>7 Q. What exactly is a proceedings book?</p> <p>8 A. So, the conference mainly consists of</p> <p>9 a number of presentations, somewhere around 50 at</p> <p>10 the moment. It varies from year to year depending</p> <p>11 on the setup and each of those the main</p> <p>12 presentations are accompanied by a paper and those</p> <p>13 are all collected in book form which may be a ring</p> <p>14 bound or fully bound book; and it also contains</p> <p>15 other information about the conference, location</p> <p>16 and so on.</p> <p>17 Q. Who prepares a proceedings book?</p> <p>18 A. The Virus Bulletin team.</p> <p>19 Q. Do you know who prepared the</p> <p>20 proceedings book for the specific conference in</p> <p>21 September 1995 that you reference?</p> <p>22 A. I do not. I know within three or</p> <p>23 four people, but I could not say which one in</p> <p>24 particular did all the work.</p> <p>25 Q. You didn't speak with anyone in</p>	<p>1</p> <p>2 Paragraph 5.</p> <p>3 A. Okay.</p> <p>4 Q. You state in the first sentence that</p> <p>5 "A copy of the Swimmer paper including this</p> <p>6 Exhibit A is part of the conference proceedings</p> <p>7 book that was prepared by Virus Bulletin employees</p> <p>8 in 1995."</p> <p>9 Again, you did not attend the</p> <p>10 conference in 1995, correct?</p> <p>11 A. Correct.</p> <p>12 Q. You testified earlier that you have</p> <p>13 you did not speak with any of the employees that</p> <p>14 prepared the proceedings book for that 1995</p> <p>15 conference, correct?</p> <p>16 MR. EUTERMOSER: Objection,</p> <p>17 mischaracterizes his testimony.</p> <p>18 A. I spoke to them. I did not question</p> <p>19 them about the preparation of the book.</p> <p>20 Q. So you testified earlier you did not</p> <p>21 speak with them in connection with your</p> <p>22 preparation of this declaration?</p> <p>23 MR. EUTERMOSER: Object to the form.</p> <p>24 A. I spoke to them in connection with</p> <p>25 the declaration because, as I said, I mentioned to</p>

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