

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Palo Alto Networks, Inc. and  
Blue Coat Systems, Inc.,  
Petitioners

v.

Finjan, Inc.  
Patent Owner

Case IPR2016-00159<sup>1</sup>  
Patent No. 8,677,494

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**PETITIONER'S RESPONSE TO PATENT OWNER'S  
MOTION FOR OBSERVATION**

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<sup>1</sup> Case IPR2016-01174 has been joined with the instant proceeding.

Petitioner Palo Alto Networks, Inc. hereby responds to Patent Owner Finjan, Inc.'s Observations of the November 30, 2016 cross-examination of John Hawes (Ex. 2045) as follows:

**I. MR. HAWES'S TESTIMONY REGARDING THE VIRUS BULLETIN CONFERENCE**

**A. Response to Observation #1**

In Exhibit 2045, from pg. 25, line 12 to pg. 26, line 8, Mr. Hawes testified:

Q. Do you have any confirmation that any of the 163 delegates to the 1995 conference ever received the proceedings book?

A. Do I have any –

Q. Confirmation. Firsthand knowledge, excuse me.

A. Yes, yes. I know of at least two people who have full collections of Virus Bulletin magazines and conference books all the way back.

Q. Who are those two people?

A. One of them is Ian Whalley, W-H-A-L-L-E-Y, former editor. The other one is Righard Zweinenberg. R-I-G-H-A-R-D, Z-W-E-I-N-E-N-B-E-R-G. I have seen both of their archives.

Q. Who are each of those individuals?

A. One is a former editor of Virus Bulletin and one is a prominent anti-virus researcher.

And in Exhibit 2045, at page 36, line 11 to page 37, line 23, Mr. Hawes testified:

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Q. You also testified that the list of conference delegates shown in Exhibit B to your October 7<sup>th</sup> declaration reflects people who registered for and bought tickets to the 1995 conference?

A. Yes, that's correct or had bought tickets up to the point where it was printed.

Q. Do you know how much they paid for those tickets?

A. I don't know exactly, no. I imagine quite a lot.

Q. Why do you say that?

A. Our current price is I believe around \$1,900 and people had mentioned that it's been the same price for a very long time.

Q. People at Virus Bulletin?

A. Both ourselves and regular delegates. If we have occasional discussions about changing our prices.

Q. So the delegates listed in Exhibit B to your October 7<sup>th</sup> declaration paid at least hundreds of dollars to attend?

A. At least hundreds.

Q. What percentage roughly of the advanced registrants for a Virus Bulletin conference typically show up?

A. Almost all I would say. We occasionally get a few either through illness or things like visa issues, but probably less than five percent.

Q. Has that been true your entire time at Virus Bulletin?

A. Yes. We also get extra people signing up at the last minute as well, almost always.

This testimony is responsive to Patent Owner's observations on cross-

examination (Paper 34 at 1, Observations #1 & #2) and is relevant to the arguments in Petitioner's Petition and Reply concerning the public availability of Swimmer. (Paper 2 at 6; Paper 26 at 3-5; Ex. 2014 at 32:21-50:6; Ex. 1088.)

**B. Response to Observation #2**

In addition to the testimony in Exhibit 2045 from pg. 25, line 12 to pg. 26, line 8 (Part II.A., *supra*), Mr. Hawes further testified at pg. 12, line 18 to page 13, line 16:

Q. And then in Paragraph 4 of Exhibit A, your most recent declaration, you state that in your October 15<sup>th</sup>, 2015 declaration "the paper entitled, Dynamic Detection and Classification of Computer Viruses Using General Behavior Patters was published," and then couple of lines down it says, "September 1995." What is the basis for your knowledge of this statement?

A. The records of my company.

Q. What are those records?

A. We keep copies of all the conference books that we have produced for each conference going back to the very beginning in 1991. They're stored in an archive which we reference quite regularly.

Q. How do you know, as you state in Paragraph 4 of your declaration, that the paper you reference was quote/unquote published to all 163 attendees of the conference in September 1995?

A. It's out standard business practice that we produce a book of the proceedings that is provided to everybody that attends the conference.

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And in Exhibit 2045, at page 38, lines 16-24, Mr. Hawes testified:

Q. At the time you prepared your declaration, did you already know how the magazine was distributed in 1995?

A. Yes.

Q. How did you know that?

A. Well, I have been working for the company for more than ten years and was familiar with it for six or seven years before that. I'm quite familiar with the way it worked.

Furthermore, in Exhibit 2045, at page 39, line 4 to page 41, line 3, Mr. Hawes testified:

Q. Before you were asked to prepare any declarations for purposes of these proceedings, had you ever spoken with anyone at Virus Bulletin about how the magazine was distributed back in the '90s?

A. Yeah. Yes. We – when we went through the process of deciding not to – to cease the subscription model, I was part of a team and there was a lot of discussion about the history of how we've done things and whether we should break these traditions, they've gone back a long way.

Similarly also, when we stopped publishing the magazine, the printed copy, we had similar discussions about changing the way we'd done things because people don't like change.

But, yes, something that was regularly discussed – it's something that was regularly discussed, the process that we used.

Q. Before you were asked to prepare a declaration in this case, had

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