## Page 1

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 1
 2    UNITED STATES PATENT AND TRADEMARK OFFICE
 3        -------------------------------
 4           BEFORE THE PATENT TRIAL
 5             AND APPEAL BOARD
 6        -------------------------------
 7            SYMANTEC CORPORATION
 8                Petitioner,
 9                   v.
10              FINJAN, INC.,
11             Patent Owner.
12        -------------------------------
13            Case IPR2015-01892
               Patent 8,677,494
14
15        -------------------------------
16
17              DEPOSITION OF
18             JACK W. DAVIDSON
19           FRIDAY, MAY 27, 2016
20                9:00 a.m.
21
22
23
24
25    Reported by:  Adrienne M. Mignano, RPR
                  Job Number:  J0357928
```

## Page 2

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 4
 5                    May 27, 2016
 6                    9:00 a.m.
 7                    New York, New York
 8
 9          Deposition of JACK W. DAVIDSON,
10    held at the offices of Bryan Cave, 1290
11    Avenue of the Americas, New York, New York,
12    pursuant to Notice, before Adrienne M.
13    Mignano, a Notary Public of the State of New
14    York.
15
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## Page 3

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 1
 2    A P P E A R A N C E S:
 3
 4    BRYAN CAVE LLP
 5    Attorneys for Petitioner
 6          1290 Avenue of the Americas
 7          #33
 8          New York, New York 10104
 9    BY:    ALEX WALDEN, ESQ.
10           JOSEPH RICHETTI, ESQ.
11           FRANK M. FABIANI, ESQ.
12
13    KRAMER LEVIN NAFTALIS & FRANKEL LLP
14    Attorneys for Patent Owner
15          1177 Avenue of the Americas
16          New York, New York 10036
17    BY:    MICHAEL LEE, ESQ.
18           JEFFREY H. PRICE, ESQ.
19
20
21
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23
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## Page 4

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 1           Davidson
 2    J-A-C-K  W.  D-A-V-I-D-S-O-N, called as
 3       a witness, having been duly sworn
 4       by a Notary Public, was examined and
 5       testified as follows:
 6    EXAMINATION BY
 7    MR. LEE:
 8      Q    Please state your full name and
 9    address for the record.
10      A    My name is Jack W. Davidson, and
11    I reside at 2040 Tremont Road,
12    Charlottesville, Virginia.
13      Q    Do you understand why you're
14    here today?
15      A    Yes, I do.
16      Q    Why are you here today?
17      A    I'm here to testify on behalf of
18    Symantec regarding the IPR, regarding
19    Patent '494.
20      Q    Did you offer any opinions about
21    the '494 Patent?
22      A    I did.
23      Q    What is your opinion?
24      A    Can you be more specific other
25    than what is my opinion?
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 1              Davidson
 2    Q     Did you offer any opinions in
 3  this case?
 4    A     Yes, I submitted a declaration.
 5    Q     What opinions does the
 6  declaration --
 7    A     I'm sorry.  What?
 8    Q     What are the opinions in your
 9  declaration?
10    A     I mean, again, can you be more
11  specific?
12    Q     Would you be able to give me a
13  summary of the opinions in the
14  declaration?
15    A     So I looked at the claim
16  language and I looked at the prior art,
17  and then I basically did an analysis of
18  the -- whether the prior art covered the
19  claim language, and my opinion was that
20  it, in fact, did.
21    Q     Which prior art?
22    A     There were several pieces that
23  are cited in my declaration.
24          There is a paper in the Virus
25  Bulletin by a person named Morton Swimmer,
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 1              Davidson
 2  I think that was.
 3          Another piece of prior art that
 4  I cited was a paper by Stephanie Forrest
 5  about intrusion detection.  There was a
 6  patent, I think it is Patent '600 by Ji.
 7  I'm not sure of the number of this one,
 8  but we can refer to it, Cline.
 9          I'm trying to think of other --
10  I looked at a lot of other prior art I
11  think in my declaration.  I would have to
12  refer to it to see if I'm missing
13  anything.  But those are certainly -- I
14  think, you know, those are certainly the
15  main ones.
16          (Whereupon, Declaration of Jack
17     W. Davidson, dated September 10, 2015,
18     was marked as Davidson Exhibit 1 for
19     identification, as of this date.)
20  BY MR. LEE:
21    Q     You have been handed an Exhibit
22  marked as Exhibit number 1.
23          Do you recognize Exhibit number
24  1?
25    A     Yes, I do.  This is my
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 1              Davidson
 2  declaration in support of the Petitioner's
 3  petition to the IPR Board regarding the
 4  '494 Patent.
 5    Q     So this is the declaration you
 6  were referring to earlier?
 7    A     Yes.
 8    Q     Can you go to page 96 of your
 9  declaration?
10    A     Yes.
11    Q     Is that your signature?
12    A     That is my signature.
13    Q     Did you sign that on September
14  10, 2015?
15    A     Yes, I did.
16    Q     What is your understanding that,
17  as of September 10, 2015, you were
18  supposed to put into your declaration all
19  the opinions you had in this case?
20    A     All the what?
21    Q     All the opinions you had in this
22  case?
23    A     I didn't understand.  All the
24  dependents?
25    Q     Opinions.
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 1              Davidson
 2    A     Opinions?
 3    Q     Yes.  Let me just rephrase it so
 4  it will be clear for the record.
 5          Was it your understanding that,
 6  as of September 10, 2015, you were
 7  supposed to put into your declaration all
 8  of your opinions that you had in this
 9  case?
10    A     Yes, they are in here.
11    Q     Do you have any other opinion
12  that is not in this declaration?
13          MR. WALDEN:  Objection.  Form.
14    A     No.  I mean these are my
15  opinions.
16    Q     Are there any corrections that
17  you would like to make at this time?
18    A     There are various typos in here.
19  I don't know if you want to go through
20  those, you know.
21          In rereading it in preparation
22  for this thing, I was going, oh, typo, oh,
23  you know, it must have been a cut and
24  paste error.  So there are certainly those
25  kinds of errors, you know, typographical
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1          Davidson
2   errors.  But in terms of the opinions, no,
3   they are complete and accurate.
4       Q     Please describe for me the
5   process of writing your declaration.
6       A     So, I mean the first step was
7   counsel provided me the patent, and I
8   first did a prior art search, you know, at
9   the time of the patent, and collected, you
10  know, lots of material, and read those,
11  read the patent and analyzed the various
12  pieces of prior art to define, you know,
13  did I feel like it was relevant, you know,
14  was it in the scope.
15          And then at some point, counsel
16  provided me a template, you know, with a
17  document that was kind of a framework, the
18  kind of formatting and that kind of thing.
19  I began writing.  I wrote a lot.  At some
20  point, I think -- well, at some point, I
21  came up here and, you know, spent time
22  with counsel.  They were briefing me on
23  some of the aspects of patent law.  I'm
24  not an attorney so they were explaining
25  pieces of that, you know, and I

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1          Davidson
2   incorporated some of that in my
3   declaration.
4          We also talked about the prior
5   art, you know, and I explained to them my
6   understanding of the patent, you know, and
7   read the patent.  I explained some of the
8   prior art, you know, and why I thought it
9   may be relevant to this litigation or, you
10  know, this IPR.  We discussed those, you
11  know, and then I would write more.  I
12  would discuss what I was writing and
13  points with the attorney.
14          And that was kind of an
15  iterative process.  I mean, it is almost a
16  hundred page document; well, you know,
17  several iterations.  I think I made a
18  couple of trips up here.
19      Q     You mentioned you performed a
20  prior art search?
21      A     Yes.
22      Q     Was any of the prior art that
23  you searched the Morton Swimmer reference?
24      A     Say that again.
25      Q     You say there was a prior art

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1          Davidson
2   reference by Morton Swimmer?
3       A     Yes, and that's, you know, one
4   of the -- it's cited in my declaration.
5       Q     Did you locate the Swimmer
6   reference or was that provided to you by
7   counsel?
8       A     That's a good -- I don't know.
9   I don't remember, you know, who actually
10  found that.  I do subscribe to the Virus
11  Bulletin, which is where the Morton
12  Swimmer paper appeared.  It is a
13  publication I was very familiar with and
14  knew to go look in their archives.
15          At one point, I had subscribed
16  to it.  It was kind of the place that
17  people -- when I was teaching, I taught a
18  course, and, you know, it is the place
19  that you go to, you know, to know what's
20  going on in this area.
21          So it is entirely possible, but,
22  sorry, I can't remember who, you know,
23  identified it.  I might be able to answer
24  that if I got on my laptop and looked
25  back, you know, but off the top of my

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1          Davidson
2   head, I couldn't tell you.
3       Q     Sitting here today, which are
4   the prior references that you personally
5   located as opposed to ones that counsel
6   provided to you?
7       A     I think I located Forrest.
8   Again, you know, I think that I did, but,
9   again, I would have to go look at my
10  records, you know, to be absolutely sure.
11      Q     Can you go to paragraph 9 of
12  your declaration?
13      A     I'm on paragraph 9.
14      Q     Do you see where you talk about
15  "innovative security solutions targeted
16  mainly for U.S. Department of Defense
17  applications"?
18      A     Yes, sir.
19      Q     Can you describe these computer
20  security solutions?
21      A     So right now, Zephyr Software
22  has two contracts that we're working on.
23  One is with the -- with DARPA.  DARPA is
24  the Defense Advanced Research Project
25  Agency.  And this project is looking at

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1               Davidson
2   securing embedded systems and industrial
3   control systems, and I think that would be
4   of interest to the military.  And so this
5   project is looking at how to analyze the
6   code for those things, identify
7   vulnerability.  Vulnerability is a
8   weakness in code that can be exploited by
9   a malicious adversary, who would like to
10   potentially take over the system.
11          The kinds of systems that we
12   would be talking about here might be the
13   power grid, or, you know, a system for
14   controlling water purification, or that
15   kind of thing.  And so, you know, we're
16   developing solutions that analyze that
17   code, find vulnerabilities, and patch
18   those vulnerabilities.
19          The other project I have is
20   being funded by ONR, the Office of Naval
21   Research.  And there we are looking at a
22   different kind of system, mainly servers,
23   you know, web servers or critical servers
24   that are providing service to the
25   military, and, again, similarly analyzing

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1               Davidson
2   the code and attempting to -- here it is
3   very specific, we're looking at trying to
4   prevent a certain kind of exploiting
5   called "program hijacking", and this is
6   where an adversary is able to take control
7   of the program, you know, and then carry
8   out malicious actions.
9     Q    These computer security
10   solutions related the '494 Patent?
11     A    They are related in the sense
12   that the '494 Patent discusses a
13   downloadable scanner that parses code, and
14   that is one of the things that locate
15   these vulnerabilities that I mentioned
16   that you would certainly do, you know, and
17   analyze the code.  So in that sense, yes,
18   very related.
19     Q    What do you mean by "parses the
20   code"?
21     A    So to be able to understand the
22   code in the context of my project, you
23   know, these two projects, as I said, we're
24   looking to identify vulnerabilities in the
25   code.  These are weaknesses that, again,

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1               Davidson
2   may be exploited by a malicious adversary.
3          So we are analyzing code, and to
4   do that, you have to parse the code to
5   determine the structure, to determine what
6   the program is attempting to do, you know,
7   and that requires different kinds of
8   analysis.  So, again, we are looking for
9   what are called "unintentional weaknesses"
10   in the code.
11          I'll make a distinction between
12   the '494 Patent and the techniques they
13   used, but there is a difference in terms
14   of the '494 in the specification is really
15   talking -- it seems to be focused on what
16   I'll call "malicious code" that
17   intentionally, you know, has code in it
18   that is going to do something maybe bad in
19   some way.  And that's not in scope for,
20   you know, the projects that I'm working
21   on.  The projects that I'm working on, it
22   is assumed that the code is, you know --
23   it doesn't include stuff that's been added
24   by, let's say, a malicious adversary.
25     Q    I'm looking to understand what

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1               Davidson
2   you meant by parses or parsing.
3          How would you explain what
4   parsing is to a layperson?
5     A    So, let's see, let me think
6   about that.  How would I explain that to a
7   layperson?
8          So are you asking me in the
9   context of the '494 Patent, you know, or
10   are you just talking about, again, in
11   general to not paying any -- you know,
12   relevant to the '494?  Because the term
13   "parsing", you know, can have, depending
14   on the context, different meanings.
15     Q    How is it different in the '494
16   Patent as opposed to outside the '494
17   Patent?
18     A    So, in the '494, they are
19   talking about parsing a downloadable.  So,
20   you know, that's the context of that
21   patent.
22     Q    How is parsing different if it
23   is not downloadable?
24     A    Well, I can parse a sentence.  I
25   mean, this is a common thing like, you

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1          Davidson
2   know, children learn how to parse a
3   sentence.  So, you know, that might be
4   something you would say to a layperson.
5      Q    How would you explain what it
6   means to parse a downloadable to a
7   layperson?
8      A    I think, you know, I would do it
9   in very -- for a layperson, I would do it
10  in general terms that I would explain what
11  a downloadable was in this context.
12          So a downloadable is information
13  that includes program code, code that
14  could be executed.  And then, in this
15  case, you know, in that context, the
16  parsing would be to take that code and
17  analyze it in some way, which means you
18  would have to, you know, again try to --
19  for instance, if it was machine code, you
20  might want to, again in the context of the
21  patent, decode the instructions for the
22  particular machine, and, you know,
23  understand what those functions are that
24  would, you know, apply for what I'll call
25  a "binary program".

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1          Davidson
2      Q    You mentioned a decoding.
3          What is decoding?
4      A    Again, in the context of the
5   patent and some of the prior art, and
6   specifically Swimmer, you're looking at
7   what I will call a binary executable.
8          So it consists of instructions
9   for a specific processor, and they are
10  encoded using basically a mapping, so,
11  say, a number, you know, that is the op
12  code might indicate a particular function
13  that is to be performed by the processor.
14          So the process of decoding is,
15  you know, taking that binary and first
16  determining kind of, okay, which groups of
17  bits correspond to an instruction.  And
18  then once you have done that in
19  determining, okay, what does this
20  instruction do, what is the operation it's
21  going to perform, and what are the
22  operands, O-P-E-R-A-N-D-S.
23          So that would be very common,
24  you know, to analyze a binary operation
25  process that you would do, you know, to

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1          Davidson
2   identify the operation that this
3   downloadable in this case would
4   potentially carry out.
5      Q    I think you mentioned that
6   Swimmer is regarding binary executable
7   programs?
8      A    So Swimmer in the paper
9   discusses doing virus detection on
10  programs that are received, and the
11  examples that he discusses are yes, for
12  the 8086 processor.
13     Q    What do you mean by a binary?
14     A    So normally a binary -- when
15  we're talking about a binary program, that
16  typically would mean a program that is
17  designed on a particular processor at that
18  level, I mean at the level of the
19  processor.
20          So, for instance, there are many
21  different processors, but in the context
22  of the Swimmer paper, he discusses the
23  8086.  That's a processor that's made by
24  Intel, manufactured by Intel.  So we're
25  talking about, you know, a program that is

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1          Davidson
2   going to run directly on that -- designed
3   to run directly on that particular
4   processor, designed to run.
5      Q    What does it mean when a
6   program, a file, is in binary format?
7      A    In some sense -- again, the
8   question is difficult to answer because,
9   you know, in some sense, everything on the
10  computer is binary.  That's the way our
11  digital computers work.  So, you know, it
12  is difficult to answer your question
13  without being more specific, but
14  everything ultimately is a binary.
15     Q    What do you mean by --
16          MR. LEE:  Strike that.
17     Q    What does "binary" mean?
18     A    Binary means there are two
19  states of a bit, zero and one.
20     Q    So would it be fair to say that
21  binary means a mathematical representation
22  where there is only two states, one or
23  zero?
24     A    Again, you know, it depends on
25  the context.  I mean typically you group

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