

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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		:	Confirmation No.: 9521
Patent No.:	7,647,633	:	
		:	Group Art Unit: 3992
Inventors:	Ederly et al.	:	
		:	Examiner: Adam L. Basehoar
Issued:	June 12, 2010	:	
		:	Attorney Docket No.: FINREXM0005
Title:	MALICIOUS MOBILE CODE RUNTIME MONITORING SYSTEM AND METHODS		

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Attn: Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF PHIL HARSTEIN PURSUANT TO 37 C.F.R. § 1.132

Dear Sir:

I, Phil Hartstein, make the following declaration under penalty of perjury:

1. I make this Declaration based upon my own personal knowledge, information, and belief, and I would and could competently testify to the matters set forth herein if called upon to do so.
2. I am the current President of Finjan Holdings, Inc. ("Finjan"). I have been President of Finjan since April 2013.
3. As part of my position as Finjan's President I oversee the direction and management of Finjan's assets, future investments, litigation, and licensing activity. This has required me to study Finjan's history and to become acquainted with Finjan's technology.

4. Finjan has invested considerable time, effort and resources to secure it's invention with US an Foreign patents. Finjan has invested over 65 million dollars in research and development of its technology.
5. The total revenue to date for Finajan's licensing and enforcement activities of its patent portfolio, including the '633 patent, is more than \$145 million.
6. Finjan has consistently been praised for its pioneering technology. For example, IDC reported that:

Finjan Software, the inventor of proactive content behavior inspection, protects organizations using its Next Generation of Vital Security Appliance Series of products that provide day-zero defense against new, previously unknown attacks by leveraging its proprietary application-level behavior blocking technology.

(Exhibit 1 at 55-56)

7. Finjas was the finalist in two of SC Magazine's 2007 Awards, Best Security Company and Best Security Solution for Government – Finjan Vital Security Web Appliance. (Exhibit 3). Finjan was the winner of the Winner of Excellence in Anti-Malware and Winner of Excellence in Gateways in the Info Security Products Guide – Product Excellence Awards 2007. (Exhibit 4). SC Magainze rated the Finjan Vital Security NG-6100 5 out of 5 stars. (Exhibit 5). PC Pro stated that the Finjan Vital Security NG-1100 appliance “is one of the best solutions available.” (Exhibit 6). Finjan Vial Security Web Appliance was the winner of eWEEK's Seventh Annual Excellence Award in the Network Datastream Protection category. (Exhibit 7). Named in the top ten Most Interesting Products exhibited at RSA 2009 by eWEEK. (Exhibit 8). CRN.com review praised Finjan's Vital Security Web appliance because “Finjan's Vital Security can make a difference in organizations concerned about security and compliance.” (Exhibit 9). SC Magaine gave the Finjan Vital Security NG-8000 5 out of 5 starts. (Exhibit 10). SC Magazinc commented that the Finjan Vital Security Web Appliance Series was “[j]ust about the most comprehensive product of its kind [they have] tested.” (Exhibit 29).

8. The '633 patent's technology itself received specific industry praise. An article by InformationWeek described the Finjan Vital Security 6100 appliance as taking "signature based protection to the next level by actually executing the code of the site you're visiting in a sandbox in real time." (Exhibit 2).
9. In July 2005, Microsoft Corporation obtained a license to Finjan's computer security patents. (Exhibit 12) (Exhibit 1 at 13). This included the application that was to become the '633 Patent. Microsoft obtained a license to Finjan's technology in order to advance their security innovation just after entering the computer security market. At the time Microsoft obtained a license to Finjan's patents Microsoft had nearly no market share in the computer security space and was heading to compete against large well established companies. (Exhibit 13). Microsoft saw the value of licensing Finjan's technology to help give them a boost and now Microsoft is one of the more dominant players with Microsoft Security Essentials product. (Exhibit 14). A Microsoft spokesperson stated that "Finjan has done some interesting product innovation in the security space." (Exhibit 12).
10. On June 6, 2005 Finjan filed a complaint of infringement against Secure Computing Corp. ("Secure Computing") asserting that Secure Computing infringed U.S. Patents No. 6,092,194, No. 6,804,780, and No. 7,058,822. (Exhibit 15 at 2). This case proceeded to a jury trial where Secure Computing asserted that U.S. Patents No. 5,623,600 and No. 5,983,348 by inventor Shuang Ji ("Ji") were prior art to the Finjan Patents. (Exhibit 16 at 39). The jury disagreed and found all the Finjan patents not invalid by the asserted prior art. (Exhibit 17). Secure Computing was also found to infringe Finjan's patents, including their sandboxing technology, and awarded damages on Secure Computing revenue of \$65.75 million. (Exhibit 17).
11. On August 18, 2009 the district court in the Secure case enhanced Finjan's jury verdict. The court bases its reasoning for enhancing damages partly on a finding that "Finjan's patents were copied deliberately" and "Finjan patents represented a technology that [Secure] wished to compete with and emulate in the market." (Exhibit 18 at 28). Secure Computing even

named this copying in their code and called it “Finjan Buster” or “Finjan Killer.” (Exhibit 19 at 7). Finjan was also awarded a permanent injunction against Secure Computing for infringing Finjan’s sandboxing technology. (Exhibit 18 at 1)

12. In November 2009, Finjan licensed its patents to M86 Security
13. In March 2012, Finjan licensed its patents to Trustwave Security, Inc.
14. In April 2012, Finjan licensed its patents to Webroot Inc.
15. In November 2012, McAfee, Inc./Intel Security (“Intel Security”) took a license to Finjan’s patent portfolio. When Intel Security took the license to Finjan’s patents, the permanent injunction that had been levied against Secure Computing (which intel Security purchased in 2008) was dissolved. (see Exhibit 18 for the permanent injunction against Secure Computing which included Finjan’s sandboxing technology).
16. Finjan had millions of dollars in sales with products that incorporated the ‘633 technology. (Exhibit 20 at 20). Indeed, Finjan had sales of \$6.5 million in 2001, \$6.1 million in 2002, \$9.3 million in 2003, \$12.9 million in 2004, \$16.4 million in 2005, and \$19.7 million in 2006. (Exhibit 21 at 11) (Exhibit 22 at 9) (Exhibit 23 at 15). During this time Finjan had incorporated its patented sandboxing technology into its Vital Security product line. (Exhibit 24).
17. In total, Finjan has licensed its network and computer security patents to Microsoft, M86 Security, Trustwave, Intel Security and Webroot. Finjan had millions of dollars in sales of the ‘633 technology. Finjan’s competitor Secure Computing was found to have copied Finjan’s technology. Finjan’s enjoyed much industry praise for its sandboxing technology.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent and any reexamination certificate issuing thereon.

Philip Hartstein  2/18/14
Print Name Signature Date