

U.S. Patent No. 8,141,154
Declaration in Support of Petition for *Inter Partes* Review

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Palo Alto Networks, Inc.
Petitioner

v.

Finjan, Inc.
Patent Owner

Patent No. 8,141,154

Issue Date: Mar. 20, 2012

Title: System and Method for Inspecting Dynamically Generated Executable Code

Inter Partes Review No. IPR2016-00151

**DECLARATION OF DR. AVIEL D. RUBIN IN SUPPORT OF PETITION
FOR *INTER PARTES* REVIEW**

UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42.100 *et seq.*

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | INTRODUCTION | 1 |
| II. | BACKGROUND AND QUALIFICATIONS | 2 |
| | A. Education..... | 2 |
| | B. Career | 2 |
| | C. Publications: | 5 |
| | D. Curriculum Vitae..... | 6 |
| III. | MATERIALS CONSIDERED | 7 |
| IV. | LEGAL STANDARDS | 7 |
| | A. Person Having Ordinary Skill in the Art..... | 7 |
| | B. Broadest Reasonable Interpretation | 9 |
| | C. Prior Art..... | 9 |
| V. | BRIEF OVERVIEW OF THE '154 PATENT..... | 12 |
| | A. Summary of the '154 Patent..... | 12 |
| | B. Purported features of the '154 Patent..... | 14 |
| | C. The claims of the '154 patent..... | 17 |
| VI. | CLAIM CONSTRUCTION | 18 |
| VII. | STATE OF THE ART | 19 |
| VIII. | ANALYSIS OF THE PRIOR ART..... | 30 |
| | A. U.S. Patent Publication No. 2007/0113282 to Ross et al. ("Ross") | 31 |
| | B. U.S. Patent Publication No. 2002/0066022 to Calder et al. ("Calder") | 35 |
| IX. | CLAIMS 1-8 AND 10-11 OF THE '154 PATENT ARE INVALID AS OBVIOUS OVER ROSS. | 36 |
| X. | CLAIMS 9 AND 12 OF THE '154 PATENT ARE INVALID AS OBVIOUS OVER ROSS IN VIEW OF CALDER..... | 59 |
| | 1. Prima Facie case for obviousness..... | 59 |
| XI. | CONCLUSION..... | 65 |

Exhibit List for Declaration of Dr. Aviel Rubin

| Exhibit Description | Exhibit |
|---|----------------|
| Dr. Aviel D. Rubin Curriculum Vitae | A |
| Fred Cohen, <i>Computer Viruses Theory and Experiments</i> , Elsevier Science Publishers, North-Holland, Computers & Security 6, at 22-35 (1987); Ex. C, David M. Chess and Steve R. White, An Undetectable Computer Virus, IBM Thomas J. Watson Research Center (2000) | B |
| David M. Chess and Steve R. White, <i>An Undetectable Computer Virus</i> , IBM Thomas J. Watson Research Center (2000) | C |
| Fridrik Skulason, <i>Developing a Virus Scanner</i> , Virus Bulletin at 7-9 (March 1991) | D |
| David M. Chess, <i>Tools and Techniques</i> , Virus Bulletin (November 1991) | E |
| <i>Living Together – Without False Alarms!</i> , Virus Bulletin at 19 (November 1991); Ex. G, James Beckett, <i>Maltese Amoeba... Poetic Justice</i> , Virus Bulletin at 15-16 (December 1991) | F |
| James Beckett, <i>Maltese Amoeba... Poetic Justice</i> , Virus Bulletin at 15-16 (December 1991) | G |
| <i>The Shape Shifters</i> , Virus Bulletin at 13-15 (November 1993) | H |
| Dmitry Gryaznov, <i>Scanners of the Year 2000: Heuristics</i> , Proceedings of the Fifth Int'l Virus Bulletin Conference at 225, 228-30, and 233-34 (Sept. 1999.) | I |
| Sarah Gordon, <i>What a (Winword.) Concept</i> , Virus Bulletin at 8-9 (Sept. 1995) | J |
| <i>How Does An IBM PC Virus Infect A Computer</i> , Virus Bulletin at 11-12 (Apr. 1990) | K |
| Eric Chien, <i>Malware Do You Want To Go Today? Part 2</i> , Virus | L |

| | |
|---|---|
| Bulletin at 10-11 (Feb. 2000) | |
| Aviel D. Rubin and Daniel E. Greer, <i>Mobile Code Security</i> at 1 (1998) | M |

1. I, Aviel D. Rubin, Ph.D., submit the following declaration (the “Declaration”) in connection with the proceeding identified above.

I. INTRODUCTION

2. I have been retained by counsel for Palo Alto Networks, Inc., (“Palo Alto Networks”) as a technical expert in connection with the proceeding identified above. I submit this Declaration in support of Petitioner Palo Alto Networks’ Petition for *Inter Partes* Review (“Petition”) of United States Patent No. 8,141,154 (“the ’154 patent”) (Exhibit 1001) against Patent Owner Finjan, Inc. (“Finjan”).

All “Ex. 10__” cites herein are to the Exhibits to the Petition. All “Ex. _” cites with letters A through M herein are to Exhibits to this Declaration.

3. I understand that Finjan has filed a patent infringement lawsuit in the U.S. District Court for the Northern District of California alleging infringement by Palo Alto Networks of claims the ’154 patent. *Finjan, Inc. v. Palo Alto Networks, Inc.*, Civil Action No. 2:14-cv-01526-CB (W.D. Pa.).

4. For the purposes of this Declaration, I will address certain claims of the ’154 patent. Inclusion of a claim in my analysis is not an indication that I believe it could reasonably be asserted against Palo Alto Networks.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.