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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE

FINJAN, INC., a Delaware corporation,  
Plaintiff,

VS.

SOPHOS, INC., a Massachusetts corporation,  
Defendant.

No. C 14-1197 WHO  
San Francisco, California  
Wednesday, September 7, 2016

TRANSCRIPT OF PROCEEDINGS

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PROCEEDINGS

1 Wednesday - September 7, 2016 7:36 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard out of presence of the jury:)

5 MR. ALLCOCK: Good morning, Your Honor.

6 THE COURT: Good morning. I understand we have an

7 issue.

8 MR. ANDRE: Your Honor, just -- Paul Andre for Finjan.

9 Just a couple small issues.

10 We have plans this afternoon -- this morning to play some

11 deposition designations, and we got some counters in last night

12 from Sophos which we objected to, and we could not resolve

13 them. I guess a good night's sleep resolved a lot of them, but

14 there are still a couple that are not resolved.

15 The first one is a deposition of a Mr. Stutz, one of their

16 engineers. We've agreed now to allow their -- some of their

17 counters in because they withdrew the majority of them this

18 morning, but I don't know logistically if we can get it done or

19 not. I think our trial technician says he can do it at the

20 break so I think we will be okay. I want to conditionally put

21 that out there. We may have to object if we can't do the

22 mechanics of the new cut. The way we do it is we prepare our

23 original designations and we prepare a cut with their counters

24 in, and now they've modified that again this morning. I think

25 we can do it.

1 **BY MR. ANDRE**  
 2 Q. If you look at the front page, this is a Sophos  
 3 presentation from January 2006. Did you review this document  
 4 in preparing your analysis?  
 5 A. Yes, I did.  
 6 Q. And if you turn to page 3 of this document, there is a  
 7 paragraph towards the bottom, next to the last paragraph, that  
 8 states (as read):  
 9 "On the outside of the targets are UTM, Universal  
 10 Threat Management. These products typically appeal to low  
 11 end of the market, both in terms of customer size and what  
 12 a customer is willing to pay. There are circumstances in  
 13 which they may be a soft target, but generally a happy UTM  
 14 customer will not be a realistic prospect for us."  
 15 Do you see that?  
 16 A. Yes, I do.  
 17 Q. Would you describe your understanding, what is being  
 18 discussed in that paragraph in 2006?  
 19 A. Absolutely. So there's generally two types of solutions.  
 20 There's an endpoint solution, and there's a gateway device  
 21 known as a UTM, or Unified Threat Management, that sits on a  
 22 network between the internal computers and the Internet.  
 23 At this time in 2006, Sophos was still primary on  
 24 endpoint. And here they're evaluating whether that gateway or  
 25 UTM market is worth them getting into. And you can see, based

1 on some of their comments, that this really appeals to the  
 2 low-end market. Typically, it's not going to be a realistic  
 3 prospect.  
 4 They're still not convinced, in 2006, that gateway or UTM  
 5 products are the right solution. They're still, sort of,  
 6 saying, our endpoint solution is the way to go, and they're  
 7 still hesitant and not sure that gateways are really going to  
 8 solve customers' problems.  
 9 Q. If we turn to page 6 of this document, in the middle of  
 10 the page there's a paragraph that talks about the advantages of  
 11 the UTM market. It says (as read):  
 12 "Their advantages revolve around their ability to find  
 13 malware. Tend to prove good malware detection. Some are  
 14 better than others. Finjan in particular claimed to offer  
 15 a completely unique approach to protection from web-borne  
 16 malware, and seek to differentiate themselves from the  
 17 mainstream anti-virus vendors. In fact, Finjan's approach  
 18 is so unique they offer OEM virus engines, including ours  
 19 just in case."  
 20 Would you describe what's being discussed in that  
 21 paragraph in 2006.  
 22 A. So here they're talking about the new proactive way of  
 23 solving security. And Sophos is clearly stating that Finjan  
 24 has a completely unique approach.  
 25 So not only is Sophos fully aware of Finjan, but they are

1 saying they have a unique approach for solving this problem.  
 2 And they're also going in to say that it's so unique, in terms  
 3 of the behavioral analysis on the proactive piece, that they  
 4 want to provide such a comprehensive solution that they also  
 5 have traditional anti-virus that's reactive or signature based,  
 6 that they're adding in so they will be able to catch both types  
 7 of threats.  
 8 **MR. ANDRE:** Can we turn to the next page of this  
 9 document.  
 10 (Document displayed.)  
 11 **BY MR. ANDRE**  
 12 Q. There is a paragraph that says:  
 13 "Purpose: Demonstrate behavior protection Finjan  
 14 style."  
 15 Do you see that?  
 16 And then two paragraphs below that it says:  
 17 "They claim to have all sorts of patents and secret  
 18 sauce that helps them detect bad behavior in code."  
 19 Do you see that?  
 20 A. Yes, I do.  
 21 Q. Would you describe your understanding of what is being  
 22 referred to there.  
 23 A. So here Sophos is not only recognizing that Finjan has a  
 24 unique behavioral-based approach, but they're actually naming  
 25 it after them. They're actually calling it the Finjan style,

1 associating that with that unique behavioral approach.  
 2 And then they go on to be fully aware that Finjan has  
 3 patents in the space. So Sophos is saying, we know they have  
 4 patents; we know they have secret sauce; and they are  
 5 considered, sort of, that leader in behavioral analysis.  
 6 Q. If we turn to what's already been admitted into evidence,  
 7 Exhibit 2034.  
 8 (Document displayed.)  
 9 **MR. ANDRE:** I would like to have this published, Your  
 10 Honor.  
 11 **THE COURT:** You may.  
 12 **BY MR. ANDRE**  
 13 Q. Fast-forward almost five years, to 2011, an email chain.  
 14 And did you review this document in your analysis,  
 15 Dr. Cole?  
 16 A. Yes, I did.  
 17 Q. So if we go to the last -- the first email that's in the  
 18 chain, it's on page 3.  
 19 (Document displayed.)  
 20 Q. This is dated Friday, March 11th, 2011. The subject is  
 21 "Gartner SWG MQ second briefing."  
 22 Do you see that?  
 23 A. Yes, I do.  
 24 Q. What does "Gartner SWG MQ" stand for?  
 25 A. Gartner is an industry advisory company. They basically