

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Cisco System, Inc.,
Petitioner,

v.

Finjan, Inc.,
Patent Owner.

U.S. Patent No. 8,677,494

Issue Date: March 18, 2014

Title: Malicious Mobile Code Runtime Monitoring System and Methods

Inter Partes Review No.: Unassigned

**DECLARATION OF PAUL CLARK IN SUPPORT OF PETITION FOR
INTER PARTES REVIEW OF
U.S. PATENT NO. 8,677,494**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

	Page
I. Introduction.....	1
II. List of Documents I Considered in Forming My Opinions.....	4
III. My Background and Qualifications.....	6
IV. Person of Ordinary Skill in the Art (POSA).....	10
V. Relevant Legal Standards	11
VI. The ‘494 Patent.....	15
A. Summary	15
B. Priority Date of Claims	19
VII. State of the Art.....	19
A. Malicious Code in Executable Programs	19
B. Tools to Combat Malicious Code	23
1. Malicious Code Detection.....	24
2. Downstream Malicious Code Defense Methods.	27
3. Specifications.....	29
VIII. Claim Construction.....	31
IX. Overview.....	31
X. Challenge #1: Claims 10, 11, 14, 15 and 16 are obvious over Shear in view Kerchen	35
A. Shear in view of Kerchen Teaches Every Element of Claims	35
1. The Shear Reference	35

2.	The Kerchen Reference.....	43
3.	The Motivation to Combine Shear with Kerchen.....	45
B.	Detailed Invalidity Analysis.....	47
1.	Claim 10.....	47
2.	Claim 11.....	59
3.	Claim 14.....	61
4.	Claim 15.....	63
5.	Claim 16.....	65
XI.	Challenge 2: Claims 10, 11, 14, 15 and 16 Are Obvious Over Crawford 91 in view of Knowledge of a POSA.....	68
A.	Crawford 91 in view of Knowledge of a POSA Teaches Every Element of Claims.....	68
1.	THE CRAWFORD 91 REFERENCE.....	68
B.	Detailed Application of Crawford 91 to the Claims.....	69
1.	Claim 10.....	69
2.	Claim 14.....	78
3.	Claim 15.....	79
4.	Claim 16.....	81

I. Introduction

1. I am over the age of eighteen (18) and otherwise competent to make this declaration.

2. I have been retained by Cisco Systems (Petitioner) as an independent expert consultant in this proceeding before the United States Patent and Trademark Office. Although I am being compensated at my rate of \$590.00 per hour for the time I spend on this matter, no part of my compensation depends on the outcome of this proceeding, and I have no other interest in this proceeding. To the best of my knowledge, I have no financial interest in Cisco Systems.

3. This Petition for inter partes review involves U.S. Patent No. 8,677,494 (“the ‘494 Patent”) (CS-1001). The ‘494 Patent is entitled “Malicious Mobile Code Runtime Monitoring System and Methods” and lists Yigal Mordechai Edery, Nirmrod Itzhak Vered, David R. Kroll, and Shlomo Touboul, as the inventors.

4. The ‘494 Patent issued March 18, 2014, from U.S. Patent Application No 13/290,708 which was filed Nov. 7, 2011. The ‘494 Patent claims the benefit of U.S. provisional application No. 60/030,639, filed on Nov. 8, 1996. CS-1002.

5. For the purposes of this *inter partes* review as discussed later, I have been instructed to assume that the effective filing date of the Claims of the ‘494

Patent challenged by the Petitioner in this *inter partes* review is no earlier than November 8, 1996, the filing date of U.S. Provisional Patent Application No. 60/030,639.

6. I understand that according to USPTO records, the ‘494 Patent is currently assigned to Finjan, Inc. (“Finjan” or “Patent Owner”).

7. The ‘494 Patent is directed to malicious code detection. CS-1001, I am familiar with the technology described in the ‘494 Patent as of the earliest possible priority date of November 8, 1996.

8. In preparing this Declaration, I have reviewed the ‘494 Patent (CS-1001), the file history of the ‘494 Patent (CS-1002), and each of the documents cited herein, and I have considered these documents in light of the general knowledge in the art as of November 8, 1996. In formulating my opinions, I have relied upon my experience in the relevant art. I have also considered the viewpoint of a person of ordinary skill in the art (“POSA”) in the field, as of November 8, 1996.

9. I have been asked to provide my technical expertise, analysis, insights and opinions regarding the ‘494 Patent and relevant references that form the basis of the grounds of rejection set forth in the accompanying Petition for *inter partes*

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.