

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Juniper Networks, Inc.,

Petitioner

v.

Finjan, Inc.,

Patent Owner

U.S. Patent No. 8,141,154

Issued: March 20, 2012

Named Inventors:

David Gruzman and Yuval Ben-Itzhak

Title: System And Method For
Inspecting Dynamically Generated Executable Code

DECLARATION OF DR. SETH NIELSON
IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 8,141,154

I. INTRODUCTION

1. I have been asked by Juniper Networks, Inc. (“Petitioner” or “Juniper”) to provide my expert opinion in support of this petition for *inter partes* review (IPR) of claim 1 of U.S. Patent No. 8,141,154 (“the ‘154 Patent,” Ex. 1001).

2. I am a U.S. citizen over eighteen years of age. I am fully competent to testify as to the matters addressed in this declaration. I currently hold the opinions set forth in this declaration. It is my opinion that the prior art references in the associated petition for IPR render claim 1 of the ‘154 Patent obvious. My detailed opinion is set forth below.

3. I am the founder and Chief Scientist of Crimson Vista, Inc., a computer security consulting company as well as the Director of Advanced Research Projects at Johns Hopkins University Information Security Institute. My curriculum vitae is attached to the associated petition for IPR as Exhibit 1003. I believe that my background and expertise qualify me as an expert in the technical issues in this matter.

4. I am being compensated for my time by Petitioner at my standard rate of \$475 per hour. This compensation is not contingent upon my performance, the outcome of this matter, or any issues involved in or related to this matter.

5. I have no direct personal, commercial, or financial interest in Petitioner or Patent Owner, or any other party related to this matter.

6. I have considered all of the exhibits and documents referred to herein, as well as the complete prosecution history (including prior IPRs). Although not expressly cited in my analysis, I also considered Exhibits 1009, 1014, and 1018. I am also aware of information generally available to, and relied upon by, persons of ordinary skill in the art at the relevant times, including, for example, textbooks, manuals, technical papers, and articles.

7. I understand that, due to procedural limitations for IPR proceedings, the grounds of invalidity that may be presented can be based solely on prior art patents and other printed publications. I understand that Petitioner reserves all rights to assert at a later time other grounds for invalidity not addressed herein. The absence of discussion of such matters here should not be interpreted as indicating that there are no such additional grounds for invalidity of the '154 Patent. Similarly, absence of discussion of other printed prior art references here should not be interpreted as indicating that there are no other printed prior art references that either anticipate or render obvious the '154 Patent.

8. I reserve the right to supplement my opinions to address any information obtained, or positions taken, based on any new information that comes to light.

II. LEGAL STANDARDS

9. I am not a lawyer and my opinions are limited to my technical training, experience, and what I believe a person of ordinary skill in the art would have understood. However, in order to reach my conclusions, I use the principles below that have been explained to me by Petitioner's counsel as a guide in formulating my opinions.

10. My understanding is that a primary step in determining the validity of patent claims is to properly construe the claims to determine claim scope and meaning.

11. It is my understanding that a claim's preamble has the import that the claim as a whole suggests for it. I further understand that, if the preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is necessary to give life, meaning, and vitality to the claim, then the claim preamble should be construed as if in the balance of the claim. I further understand that if the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction.

12. In an IPR proceeding, I understand that claims are to be given their broadest reasonable construction in light of the patent's specification. In other forums, such as in federal District Courts, different standards of claim interpretation control, which are not applied by the Patent Office for IPR. Accordingly, I reserve the right to argue for a different interpretation or construction of the challenged claims in other proceedings, as appropriate.

13. It is my understanding that a claim is obvious, and therefore unpatentable, under 35 U.S.C. § 103 if the claimed subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time of the alleged invention. I understand that obviousness is a question of law based on underlying factual issues. I also understand that an obviousness analysis takes into account the scope and content of the prior art, the differences between the claimed subject matter and the prior art, the level of ordinary skill in the art at the time of the invention, and the existence of secondary considerations such as commercial success or long-felt but unresolved needs.

14. In determining the scope and content of the prior art, it is my understanding that a reference may be considered analogous prior art if it falls within the field of the inventor's endeavor. In addition, I understand that a reference may also be considered analogous prior art if it is reasonably pertinent to the particular problem with which the inventor was involved. A reference is

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