

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC. and PALO ALTO NETWORKS, INC.,

Petitioners,

v.

PACKET INTELLIGENCE LLC,

Patent Owner.

In re *Inter Partes* Review of:

U.S. Patent Nos. 6,651,099, 6,665,725, 6,771,646, 6,839,751, and 6,954,789

**DECLARATION OF DAVID MCPHIE IN SUPPORT OF PETITIONER
JUNIPER NETWORKS, INC.'S MOTION TO DISQUALIFY
DR. KEVIN ALMEROOTH**

I, David McPhie, declare and state as follows:

1. I am a partner at Irell & Manella LLP and a member in good standing of the bars of the State of California and United States Patent and Trademark Office. I have personal knowledge of the facts set forth in this declaration.

Dr. Almeroth's Previous Work for Juniper

2. My firm and I represented Juniper Networks, Inc. in several matters against Palo Alto Networks ("PAN") that were commenced in 2011–2013. These include: *Juniper Networks, Inc. v. Palo Alto Networks, Inc.*, D. Del. Case No. 1:11-cv-1258; *Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, N.D. Cal. Case No. 4:13-cv-4510; *Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, P.T.A.B. Case No. IPR2013-00369; and *Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, P.T.A.B. Case No. IPR2013-00466.

3. Dr. Kevin Almeroth entered into an engagement agreement with Irell & Manella on behalf of Juniper via a written retention letter, executed on December 13, 2013. A true and correct copy of Dr. Almeroth's retention letter is attached as Exhibit 1105 to the Motion to Disqualify Dr. Almeroth.

4. In the agreement between Dr. Almeroth and Juniper, Dr. Almeroth agreed the subject matter of his retention includes the above-listed matters against PAN "and/or any disputes relating to network security technologies." Neither Juniper

nor Dr. Almeroth has served any notice to terminate Dr. Almeroth's agreement to the terms set forth in the retention letter.

5. Dr. Almeroth prepared and submitted two expert declarations while working for Juniper in connection with the above-listed matters against PAN. The first was for the IPR2013-00369 proceeding regarding Juniper's U.S. Patent No. 7,107,612, and the second was for the IPR2013-00466 proceeding regarding Juniper's U.S. Patent No. 7,734,752. Juniper asserted both of those patents against PAN in the District of Delaware (Case No. 1:11-cv-1258). In Dr. Almeroth's declaration, he provided opinions on issues of claim construction, proposed claim amendments, and validity, including secondary considerations of non-obviousness based on Juniper's SRX Series products.

6. A true and correct copy of excerpts from Dr. Almeroth's declaration submitted in IPR2013-00369 is attached as Exhibit 1106 to the Motion to Disqualify Dr. Almeroth. This exhibit has been redacted to eliminate confidential information relating to PAN.

7. Dr. Almeroth was deposed on May 19, 2014 in connection with IPR2013-00369. I met with Dr. Almeroth to prepare for his deposition. I also attended and assisted in defending Dr. Almeroth's deposition.

8. As part of Dr. Almeroth's retention by Juniper, I had multiple conversations

with him in person and over the phone in which we discussed privileged and confidential information belonging to Juniper. These discussions included litigation and IPR strategy as well as substantive analyses regarding Juniper products, the prior art, and potential claim amendments that both differentiate over the prior art and would be practiced by Juniper's products, including other issues addressed in his expert declarations. My colleagues and I exchanged multiple draft expert declarations with Dr. Almeroth, including transmission of confidential information and specific revisions and comments of a strategic nature.

9. The subject matter of Dr. Almeroth's retention by Juniper, and some of his conversations with me, included:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Other attorneys for Juniper also participated in a number of these communications.

10. For example, in connection with IPR2013-00369, I participated in an-person meeting with Dr. Almeroth and my colleague Benjamin Haber at my law firm's office in Newport Beach, California on March 24, 2014. During that meeting, Mr. Haber and I had strategic and privileged discussions with Dr. Almeroth regarding

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In his final submitted declaration, Dr. Almeroth concluded that the '099 Patent “does not disclose each and every limitation of any of the proposed amended claims of the '612 patent.” Ex. 1106 at ¶ 353.

11. During the March 24 in-person meeting, Dr. Almeroth, Mr. Haber, and I also discussed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This portion of his declaration was redacted in the public filing due to its confidential nature. As part of his retention by Juniper, my team and I provided Dr. Almeroth with confidential Juniper technical documents concerning the functionality of Juniper’s products.

12. As part of the exchange of draft declarations between Dr. Almeroth and my team, Dr. Almeroth also addressed [REDACTED]

[REDACTED]

[REDACTED]

An excerpted copy of Dr. Almeroth’s draft declaration is attached as Exhibit 1110.

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