

<p style="text-align: right;">1</p> <p>08:47:39</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 IN AND FOR THE DISTRICT OF DELAWARE</p> <p>3 - - -</p> <p>4 FINJAN, INC.,) Civil Action</p> <p>5 Plaintiff,)</p> <p>6 v.)</p> <p>7 SYMANTEC CORP.,)</p> <p>8 WEBROOT SOFTWARE, INC.,)</p> <p>9 WEBSense INC., and SOPHOS, INC.,)</p> <p>10 Defendants.) No. 10-593-GMS</p> <p>11 - - -</p> <p>12 Wilmington, Delaware</p> <p>13 Friday, November 30, 2012</p> <p>14 9:00 a.m.</p> <p>15 Day 1 of Trial</p> <p>16 - - -</p> <p>17 BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge,</p> <p>18 and a Jury</p> <p>19 APPEARANCES:</p> <p>20 PHILIP A. ROVNER, ESQ.</p> <p>21 Potter Anderson & Corroon LLP</p> <p>22 -and-</p> <p>23 PAUL J. ANDRE, ESQ.,</p> <p>24 LISA KOBIALKI, ESQ.,</p> <p>25 JAMES HANNAH, ESQ.,</p> <p>HANNAH LEE, ESQ., and</p> <p>JONATHAN S. CAFLAN, ESQ.</p> <p>Kramer Levin</p> <p>(Redwood Shores, CA)</p> <p>Counsel for Plaintiff</p>	<p style="text-align: right;">3</p> <p>09:06:41 1 THE COURT: Good morning. Please, take your</p> <p>09:06:43 2 seats.</p> <p>09:06:49 3 I wanted to come out and discuss a few of the</p> <p>09:06:54 4 voir dire questions. There is nothing major. I have three</p> <p>09:06:57 5 questions, and I wanted to double-check and see if there</p> <p>09:07:00 6 were any issues that you might have.</p> <p>09:07:03 7 Do you have the voir dire script with you?</p> <p>09:07:12 8 So, Question No. 11 reads, Finjan, Inc.</p> <p>09:07:17 9 currently holds or has held equity in the following</p> <p>09:07:20 10 companies, and it goes on. I really don't know why we need</p> <p>09:07:24 11 to ask that question. Is there a particular reason that</p> <p>09:07:30 12 this is going to help us understand this jury's potential,</p> <p>09:07:34 13 these jurors' potential fairness or impartiality?</p> <p>09:07:37 14 MR. ANDRE: Not from our point of view, Your</p> <p>09:07:39 15 Honor.</p> <p>09:07:40 16 THE COURT: I am trying to pare down and save</p> <p>09:07:43 17 time.</p> <p>09:07:47 18 There is a stock question in here, stock</p> <p>09:07:50 19 ownership questions in here. It just seems a little</p> <p>09:07:54 20 frivolous.</p> <p>09:07:54 21 MR. NELSON: Your Honor, Dave Nelson, Quinn</p> <p>09:07:59 22 Emanuel.</p> <p>09:07:59 23 That one really goes more to something that you</p> <p>09:08:02 24 may be dealing with at the end, which is, this is kind of</p> <p>09:08:05 25 the way that they are claiming they might be entitled to an</p>
<p style="text-align: right;">2</p> <p>1 APPEARANCES CONTINUED:</p> <p>2 DENISE SEASTONE KRAFT, ESQ.</p> <p>3 DLA Piper LLP (US)</p> <p>4 -and-</p> <p>5 JOHN ALLCOCK, ESQ.,</p> <p>6 KATHRYN RILEY GRASSO, ESQ., and</p> <p>7 SEAN CUNNINGHAM, ESQ.</p> <p>8 DLA Piper LLP (US)</p> <p>9 (San Diego, CA)</p> <p>10 Counsel for Defendant</p> <p>11 Sophos, Inc.</p> <p>12 MARYELLEN NOREIKA, ESQ.</p> <p>13 Morris Nichols Arsht & Tunnell LLP</p> <p>14 -and-</p> <p>15 JENNIFER A. KASH, ESQ., and</p> <p>16 DAVID NELSON, ESQ.</p> <p>17 Quinn Emanuel</p> <p>18 (San Francisco, CA)</p> <p>19 Counsel for Defendant</p> <p>20 Symantec Group</p> <p>21 THOMAS C. GRIMM, ESQ.</p> <p>22 Morris Nichols Arsht & Tunnell LLP</p> <p>23 -and-</p> <p>24 ANTHONY M. STIEGLER, ESQ., and</p> <p>25 JOHN KYLE, ESQ.</p> <p>Cooley LLP</p> <p>(San Diego, CA)</p> <p>Counsel for Websense Inc.</p> <p>- - -</p>	<p style="text-align: right;">4</p> <p>09:08:08 1 injunction, that they have an ownership interest in these</p> <p>09:08:12 2 companies. So if Your Honor is inclined to perhaps take</p> <p>09:08:16 3 additional evidence on that question --</p> <p>09:08:19 4 THE COURT: You are right, counsel, that has to</p> <p>09:08:21 5 do with my decision. I am eliminating that. Thank you for</p> <p>09:08:27 6 that.</p> <p>09:08:27 7 I will introduce you all just ahead of Question</p> <p>09:08:34 8 No. 12. And then we will ask you to identify potential</p> <p>09:08:41 9 witnesses by your teams.</p> <p>09:08:43 10 I think No. 20 is repetitive of 9 through 10.</p> <p>09:08:48 11 If you take a look at that, Have you or someone close to you</p> <p>09:08:52 12 ever used any company's products, I think 9 through 10, you</p> <p>09:08:59 13 specifically asked about the use of such items and</p> <p>09:09:02 14 technology in those questions, in 9 and 10. No? Do you not</p> <p>09:09:07 15 see this as repetitive?</p> <p>09:09:08 16 MR. NELSON: 8, 9 and 10. They ask specifically</p> <p>09:09:13 17 about defendants' products.</p> <p>09:09:14 18 THE COURT: Yes.</p> <p>09:09:16 19 MR. STIEGLER: Your Honor, Tony Stiegler for</p> <p>09:09:18 20 Websense.</p> <p>09:09:19 21 The only difference I would see is 8, 9, and 10</p> <p>09:09:23 22 are specific only to the defendants' products where 20 is</p> <p>09:09:26 23 much broader.</p> <p>09:09:27 24 THE COURT: Everybody uses computer security.</p> <p>09:09:31 25 Is that going to help you identify fair and impartial</p>

<p style="text-align: right;">496</p> <p>09:12:27 1 applicable.</p> <p>09:12:29 2 Q. Yesterday counsel asked you about extracting a list of</p> <p>09:12:33 3 suspicious operations. Do you remember that?</p> <p>09:12:37 4 A. Yes.</p> <p>09:12:38 5 Q. In your opinion, is identifying a list of suspicious</p> <p>09:12:40 6 operations the same as extracting a list of operations?</p> <p>09:12:46 7 A. So, I mean, by identifying a list of operations, you</p> <p>09:12:53 8 point them out, so you extract, I would say that could be</p> <p>09:12:58 9 considered equivalent.</p> <p>09:12:58 10 Q. Could you apply behavior signature to identify</p> <p>09:13:01 11 suspicious operations?</p> <p>09:13:04 12 A. So, I mean, again, I have to generalize a little. I</p> <p>09:13:12 13 am not talking about a specific technology in particular.</p> <p>09:13:18 14 But, of course, if you have this signature of behaviors that</p> <p>09:13:24 15 you match against an existing program, say, that this</p> <p>09:13:31 16 operation and this operation and this operation happened,</p> <p>09:13:33 17 against an existing program, in a way you are extracting</p> <p>09:13:36 18 these operations and you can realize that the signature</p> <p>09:13:39 19 matches and therefore you extract the behavior, yes.</p> <p>09:13:46 20 MR. ANDRE: Your Honor, I have no further</p> <p>09:13:47 21 questions for Dr. Vigna.</p> <p>09:13:49 22 THE COURT: Doctor, you are excused.</p> <p>09:13:51 23 THE WITNESS: Thank you very much, Your Honor.</p> <p>24 (Witness excused.)</p> <p>09:13:54 25 THE COURT: Does counsel need to see me before</p>	<p style="text-align: right;">498</p> <p>09:16:06 1 THE COURT: Are we good now?</p> <p>09:16:08 2 MR. NELSON: I hope so.</p> <p>09:16:10 3 THE COURT: It is important that you be able to</p> <p>09:16:12 4 see.</p> <p>09:16:12 5 MR. NELSON: I appreciate it.</p> <p>09:16:14 6 THE COURT: Mr. Andre.</p> <p>09:16:15 7 DIRECT EXAMINATION</p> <p>09:16:20 8 BY MR. ANDRE:</p> <p>09:16:22 9 Q. Mr. Touboul, would you please state your name for the</p> <p>09:16:30 10 record?</p> <p>09:16:30 11 A. Yes. Shlomo Touboul.</p> <p>09:16:19 12 Q. Mr. Touboul, how did you first become affiliated with</p> <p>09:16:22 13 Finjan?</p> <p>09:16:22 14 A. I founded Finjan in January '96.</p> <p>09:16:26 15 Q. And over your time at Finjan, what positions have you</p> <p>09:16:30 16 held?</p> <p>09:16:30 17 A. I think I started as the president. Moved to CEO</p> <p>09:16:35 18 position. Chairman of the Board. And my last phase was</p> <p>09:16:37 19 board member.</p> <p>09:16:38 20 Q. And your current position with Finjan right now?</p> <p>09:16:42 21 A. I am a consultant to Finjan today.</p> <p>09:16:50 22 Q. And I can show him on the screen, PTX-1. You have it</p> <p>09:16:56 23 in your book there as well if you want to see them in your</p> <p>09:16:59 24 binder.</p> <p>09:17:05 25 A. Yes, I have it.</p>
<p style="text-align: right;">497</p> <p>09:13:57 1 the next witness?</p> <p>09:13:58 2 MR. ANDRE: No, Your Honor. I believe the</p> <p>09:14:00 3 issues we have will be for the --</p> <p>09:14:04 4 THE COURT: Is the answer no?</p> <p>09:14:05 5 MR. ANDRE: Yes.</p> <p>09:14:06 6 Your Honor, at this time Finjan would like to</p> <p>09:14:11 7 call Shlomo Touboul, the inventor of the two patents in</p> <p>09:14:14 8 suit.</p> <p>09:14:14 9 THE COURT: All right.</p> <p>09:14:15 10 ... SHLOMO TOUBOUL, having been duly sworn as a</p> <p>09:14:35 11 witness, was examined and testified as follows ...</p> <p>09:14:46 12 DIRECT EXAMINATION</p> <p>09:14:47 13 MR. NELSON: Your Honor, could we maybe move the</p> <p>09:15:26 14 podium just a little bit? There is not much of a window for</p> <p>09:15:31 15 me to see the witness.</p> <p>09:15:33 16 THE COURT: Counsel, the room, I thought it was</p> <p>09:15:36 17 working out pretty well yesterday.</p> <p>09:15:38 18 MR. NELSON: I couldn't see him all day</p> <p>09:15:40 19 yesterday.</p> <p>09:15:42 20 MR. ANDRE: I will not take it personally, Your</p> <p>09:15:45 21 Honor.</p> <p>09:15:45 22 THE COURT: Is there room to move it a slight</p> <p>09:15:47 23 bit to the left? If there is room, that is fine. I have no</p> <p>09:15:50 24 problem. Somebody else's view is going to be blocked</p> <p>09:15:53 25 probably.</p>	<p style="text-align: right;">499</p> <p>09:17:08 1 Q. Mr. Touboul, are you the inventor of the '194 patent</p> <p>09:17:12 2 listed at PTX-1?</p> <p>09:17:14 3 A. Yes, I do.</p> <p>09:17:24 4 THE COURT: Is that our setup over there or is</p> <p>09:17:27 5 that somebody's cell phone? Oh.</p> <p>09:17:33 6 MS. WALKER: Hearing aid.</p> <p>09:17:34 7 THE COURT: It's feedback from his hearing aid.</p> <p>09:17:38 8 Are you okay?</p> <p>09:17:40 9 A JUROR: Yeah, I am fine.</p> <p>09:17:43 10 THE COURT: Sorry about that. Do we need a</p> <p>09:17:49 11 break for you to adjust that?</p> <p>09:17:52 12 A JUROR: Pardon me?</p> <p>09:17:53 13 THE COURT: Do you need break to adjust that?</p> <p>09:17:56 14 A JUROR: I am going to put it on.</p> <p>09:17:59 15 BY MR. ANDRE:</p> <p>09:18:00 16 Q. Mr. Touboul, are you the sole inventor of the '194</p> <p>09:18:03 17 patent?</p> <p>09:18:03 18 A. Yes, I am.</p> <p>09:18:04 19 Q. If you will turn to PTX-2.</p> <p>09:18:10 20 A. (Witness complies.)</p> <p>09:18:11 21 Q. Mr. Touboul, are you the sole inventor of the '962</p> <p>09:18:15 22 patent as well?</p> <p>09:18:21 23 A. Yes, I am.</p> <p>09:18:21 24 Q. When did you file for patents for Finjan?</p> <p>09:18:26 25 A. When I -- when I started Finjan, I believed what we</p>

<p style="text-align: right;">500</p> <p>09:18:32 1 are doing at Finjan and what we intended to do at Finjan is</p> <p>09:18:35 2 all significant, and it was so early in the market I</p> <p>09:18:38 3 believed that later on, all the giant companies will come</p> <p>09:18:41 4 into that domain, and the only way to defend small startups,</p> <p>09:18:45 5 young startups was to file patents back then. It was not</p> <p>09:18:48 6 the first time I did it and I did it with Finjan, too.</p> <p>09:18:51 7 Q. When you say it's not the first time you did it, what</p> <p>09:18:53 8 do you mean by that?</p> <p>09:18:54 9 A. Filing patent on my startup.</p> <p>09:18:56 10 Q. So you had a company before Finjan that you filed</p> <p>09:18:58 11 patents for?</p> <p>12 A. Yes.</p> <p>09:18:59 13 Q. And we will get back to Finjan and talk a little bit</p> <p>09:19:02 14 later. Before we do, let's get a little background.</p> <p>09:19:05 15 Where did you attend University?</p> <p>09:19:07 16 A. I study in the Technion Hafia in a Israel. It's like</p> <p>09:19:13 17 if you can compare it the MIT of the United States.</p> <p>09:19:17 18 Q. And what was your major course of study at the</p> <p>09:19:20 19 University?</p> <p>09:19:21 20 A. Computer science, BSC in computer science.</p> <p>09:19:24 21 Q. And what type of -- what time frame was this? What</p> <p>09:19:27 22 time period?</p> <p>09:19:28 23 A. The early '80s.</p> <p>09:19:29 24 Q. So what type of course of study were you taking of</p> <p>09:19:34 25 pure science in the early '80s?</p>	<p style="text-align: right;">502</p> <p>09:20:59 1 collaboration, you need to have network. And when the</p> <p>09:21:02 2 network was introduced, I was building my company to deliver</p> <p>09:21:06 3 products that will help that field to get progressed.</p> <p>09:21:10 4 Q. And did you develop any products at Shany?</p> <p>09:21:12 5 A. We did multiple products. I think the flagship was a</p> <p>09:21:17 6 product we called Alert View, which basically we run every</p> <p>09:21:20 7 desktop and every client of PC. Whenever the end user will</p> <p>09:21:23 8 have problems, if you remember the end days of M.S. Doss, we</p> <p>09:21:27 9 are talking a long time ago when you get those frustrating</p> <p>09:21:30 10 blue screens and you don't know what happened to your</p> <p>09:21:32 11 screen, so our system will take all the information about</p> <p>09:21:34 12 the problem you have and use the network to send it to the</p> <p>09:21:36 13 help desk so the help desk can help you figure out what</p> <p>09:21:40 14 happened wrong and help you to fix it. So that was the main</p> <p>09:21:43 15 product of Shany.</p> <p>09:21:45 16 Q. Did any of the work that you were doing at Shany have</p> <p>09:21:47 17 anything to do with the computer security software industry?</p> <p>09:21:51 18 A. No.</p> <p>09:21:57 19 Q. Did you have any concerns about the computer software</p> <p>09:22:00 20 industry while you were at Shany?</p> <p>09:22:02 21 A. Did I have -- I am sorry. I didn't hear you well.</p> <p>09:22:05 22 Q. Did you have any concerns with computer security</p> <p>09:22:08 23 software when you were at Shany?</p> <p>09:22:10 24 A. I don't think so. First, security in '86, which I</p> <p>09:22:13 25 think that's the year that I started Shany, it was not a big</p>
<p style="text-align: right;">501</p> <p>09:19:36 1 A. So I liked, from the early days, I liked very much</p> <p>09:19:38 2 local Internet communication, operating systems, databases.</p> <p>09:19:43 3 And I would focus and that field of study.</p> <p>09:19:45 4 Q. And what did you do after you finished University?</p> <p>09:19:49 5 A. So my first real job was in company called Fibronics,</p> <p>09:19:55 6 doing communication in Israel.</p> <p>09:19:58 7 Q. And when did you start at Fibronics?</p> <p>09:20:02 8 A. I think '85. Around '85.</p> <p>09:20:04 9 Q. And what did you do at Fibronics?</p> <p>09:20:07 10 A. I was a young engineer that got a lot of</p> <p>09:20:11 11 responsibility for engineer. I was responsible for</p> <p>09:20:13 12 development of the communication between IBM mainframes</p> <p>09:20:19 13 terminal communication and the terminals themselves, so all</p> <p>09:20:22 14 the communication layers, I was designing system for that.</p> <p>09:20:26 15 Q. And what did you do after you left Fibronix?</p> <p>09:20:29 16 A. I found my first company, Shany.</p> <p>09:20:32 17 Q. How do you spell that?</p> <p>09:20:33 18 A. S-H-A-N-Y.</p> <p>09:20:36 19 Q. And what was the idea that you had when you started</p> <p>09:20:40 20 Shany?</p> <p>09:20:40 21 A. At the middle of the '80s, it was a big renovation by</p> <p>09:20:45 22 local area networks. So if you remember in the early '80s,</p> <p>09:20:48 23 we start, we have personal computers, that's why we call</p> <p>09:20:52 24 them "PCs." In the middle of the '80s, we start to connect</p> <p>09:20:55 25 and interact between them. In order to get functionality,</p>	<p style="text-align: right;">503</p> <p>09:22:17 1 issue at that time. And I was focusing on what I thought</p> <p>09:22:20 2 was the big issue, which was announcing the interocular</p> <p>09:22:23 3 networks, and security was not yet an issue of PCs.</p> <p>09:22:26 4 Q. What happened to Shany?</p> <p>09:22:27 5 A. Shany was acquired by Intel.</p> <p>09:22:31 6 Q. And did you go to work for Intel after they purchased</p> <p>09:22:34 7 your company?</p> <p>09:22:36 8 A. Yes. Intel appointed me to run a business unit, the</p> <p>09:22:40 9 network management business of Intel of about 300 people,</p> <p>09:22:45 10 and I was working for Intel.</p> <p>09:22:47 11 Q. And how long did you stay at Intel?</p> <p>09:22:49 12 A. I stayed until mid '95.</p> <p>09:22:52 13 Q. Why did you leave?</p> <p>09:22:54 14 A. Around mid '95, Intel, there was a reorganization.</p> <p>09:22:58 15 You know, in big companies like Intel are, you have many</p> <p>09:23:01 16 reorganizations once in a while and that was another one,</p> <p>09:23:04 17 but that one required me to relocate to Utah from Israel,</p> <p>09:23:08 18 and on a personal level, on a family level, it didn't fit</p> <p>09:23:11 19 our plans, and I decided to move on and I didn't continue.</p> <p>09:23:16 20 Q. And what did you do after leaving Intel?</p> <p>09:23:19 21 A. Well, I thought for the first time I had some time to</p> <p>09:23:23 22 get, you know, play with my hobbies and have some free time,</p> <p>09:23:26 23 and my hobbies are computers, that's what I like to do, I</p> <p>09:23:29 24 get blamed by my wife so many times but that's what I like,</p> <p>09:23:33 25 so I bought a few computers and I started to reprogram and</p>

<p style="text-align: right;">504</p> <p>09:23:37 1 learn again all different new stuff which came which was</p> <p>09:23:40 2 very exciting to do in '95.</p> <p>09:23:44 3 Q. What kind of new stuff came out in '95?</p> <p>09:23:45 4 A. '95 was exiting for two aspects. First, the Internet</p> <p>09:23:49 5 become commercial and everybody could start to connect to</p> <p>09:23:52 6 Internet, and that was a big use.</p> <p>09:23:55 7 But what really "drived" my attention more than</p> <p>09:23:58 8 anything else was the appearance of Java. Sun Microsystems</p> <p>09:24:02 9 introduced the Java computing language in '95, which was</p> <p>09:24:05 10 very exiting in language by itself, but on top of that, also</p> <p>09:24:09 11 introduced the revolution, what I thought was the revolution</p> <p>09:24:12 12 in the computing industry that would change the world, and</p> <p>09:24:14 13 if you look now back to '95, you understand it really</p> <p>09:24:17 14 happened, and I was getting so excited with that, that I was</p> <p>09:24:20 15 focusing on studying Java and learning Java.</p> <p>09:24:24 16 Q. And what was it about Java that you felt was so</p> <p>09:24:26 17 revolutionary that it was going to change the computing</p> <p>09:24:30 18 world?</p> <p>09:24:30 19 A. So we need to go back to '95 and think about what</p> <p>09:24:34 20 would a person in '95 looking at a computer, if you would</p> <p>09:24:39 21 like to get an extra functionality or education. In '95, if</p> <p>09:24:44 22 you wanted to get a new application running on your</p> <p>09:24:46 23 computer, on your desktop, you need to obtain a copy of the</p> <p>09:24:49 24 install product and then run the install on your -- it</p> <p>09:24:52 25 wasn't Windows, it was M.S. Doss, and Windows 95 came up a</p>	<p style="text-align: right;">506</p> <p>09:26:22 1 think of them in order to infect your computer, they need --</p> <p>09:26:24 2 you need to get an infected file and bring it to your</p> <p>09:26:28 3 computer, but now infection become legal. Every Java code</p> <p>09:26:31 4 coming to your machine is infecting your machine. So the</p> <p>09:26:35 5 name of the game is infection all the time. How do you</p> <p>09:26:37 6 defend? How do you know if a piece of code is a friend or</p> <p>09:26:40 7 foe? How can you do the -- tell the difference?</p> <p>09:26:44 8 So, you know, that was so exciting to me and</p> <p>09:26:48 9 that's why I was focusing on that domain in '95.</p> <p>09:26:53 10 Q. And after you made them -- once you learned Java --</p> <p>09:26:59 11 A. Yes.</p> <p>09:27:01 12 Q. -- what did that lead you to?</p> <p>09:27:03 13 A. That was funny. First, Sun Microsystems, the owner of</p> <p>09:27:07 14 Java in early '95, in order to promote Java, announced he</p> <p>09:27:11 15 had a competition with \$1 million prize for the best Java</p> <p>09:27:15 16 application that would be written in '95. But it's not the</p> <p>09:27:19 17 \$1 million in cash that you get, but you get Sun Microsystem</p> <p>09:27:23 18 computers which vary for \$1 million that you can decide to</p> <p>09:27:26 19 who to contribute, a school or some university that would</p> <p>09:27:31 20 contribute.</p> <p>09:27:31 21 So it was very attractive to me, so I said, I am</p> <p>09:27:34 22 going to utilities my new knowledge to build a nice</p> <p>09:27:38 23 application to submit.</p> <p>09:27:39 24 So I started to build an application. As I</p> <p>09:27:42 25 build application, I am seeing more and more how the problem</p>
<p style="text-align: right;">505</p> <p>09:24:56 1 little bit later. There was some early version of that,</p> <p>09:25:00 2 Windows 1, 2, and 3, but you still need to install it.</p> <p>09:25:04 3 Once you install it and finish with that</p> <p>09:25:06 4 process, you need to alt control delete, if you remember</p> <p>09:25:11 5 those awful buttons, to restart the machine, and only after</p> <p>09:25:13 6 the restart you would have the new tooling on your machine.</p> <p>09:25:16 7 With Java, you can put that aside. From now on,</p> <p>09:25:20 8 with Java, you don't need all of that in many aspects. One</p> <p>09:25:24 9 will look before -- before the Java revolution, if you would</p> <p>09:25:27 10 take your browser in '95, before Java, you connect to a</p> <p>09:25:31 11 server like was demonstrated here, you would get text, you</p> <p>09:25:34 12 would get graphics, you would jump from one picture to</p> <p>09:25:37 13 another page to a different service, but that's in. That</p> <p>09:25:40 14 cannot do a lot of harm to you.</p> <p>09:25:42 15 When Java came, you suddenly started to get code</p> <p>09:25:46 16 coming to your machine, so the code would travel for the</p> <p>09:25:49 17 first time to your machine, so forget about installing,</p> <p>09:25:52 18 forget about restarting your machine. The code would come</p> <p>09:25:56 19 to your machine and you have no idea what's happened.</p> <p>09:26:00 20 That's amazing because productivity can jump so</p> <p>09:26:05 21 quickly. Here it's happening finally. When I was a</p> <p>09:26:08 22 student, my professors talked about this with computing and</p> <p>09:26:11 23 now suddenly I see it's happening, so it's very exiting.</p> <p>09:26:14 24 But at the same token, it was bringing such a</p> <p>09:26:17 25 huge risk because, because viruses, until that time, if you</p>	<p style="text-align: right;">507</p> <p>09:27:44 1 is even bigger than I initially thought. I said, wait a</p> <p>09:27:47 2 second, let's put aside that contest and start to focus on</p> <p>09:27:50 3 how can we make sure that people enjoy the productivity of</p> <p>09:27:54 4 that new application without taking the risks by eliminating</p> <p>09:27:57 5 that huge risk that is associated with it.</p> <p>09:27:59 6 So I start to think about, okay, what kind of</p> <p>09:28:02 7 new solution, because the existing solution would never be</p> <p>09:28:05 8 able to apply to that new problem because when those new</p> <p>09:28:09 9 solutions came, we didn't have that problem. You know, it's</p> <p>09:28:12 10 a new dimension of problem. You need a new dimension of</p> <p>09:28:17 11 solution.</p> <p>09:28:17 12 So I was starting to sit and think: What may be</p> <p>09:28:19 13 the solution? I drove some ideas. I did some feasibility</p> <p>09:28:24 14 tests and slowly and slowly I was trying to crystalize a new</p> <p>09:28:29 15 idea of how to --</p> <p>09:28:32 16 MR. NELSON: Your Honor, I hate to interrupt.</p> <p>09:28:35 17 It's becoming very difficult when we have a big, long</p> <p>09:28:37 18 narratives, so if we could punctuate with some questions and</p> <p>09:28:40 19 we might able to interpose some objections and maybe a</p> <p>09:28:43 20 little clearer record?</p> <p>09:28:45 21 THE COURT: Mr. Andre, the objection is somewhat</p> <p>09:28:49 22 well taken. I would like to reduce the narrative aspect.</p> <p>09:28:54 23 But some of it is unavoidable, I understand that, okay, so</p> <p>09:28:58 24 if you can intersperse with questions more frequently, I</p> <p>09:29:02 25 think, is a reasonable request to give people an opportunity</p>

<p style="text-align: right;">508</p> <p>09:29:06 1 to object.</p> <p>09:29:06 2 MR. ANDRE: And, Your Honor, Mr. Touboul has a</p> <p>09:29:08 3 hard time with English --</p> <p>09:29:10 4 THE COURT: I appreciate that, but counsel</p> <p>09:29:12 5 points out that they may want the opportunity to interpose</p> <p>09:29:15 6 an objection a time or two and it's difficult to do that</p> <p>09:29:19 7 without appearing rude and all of the things that you</p> <p>09:29:21 8 lawyers worry about. Okay?</p> <p>09:29:23 9 MR. ANDRE: I will do my best, Your Honor.</p> <p>09:29:24 10 Thank you.</p> <p>09:29:25 11 BY MR. ANDRE:</p> <p>09:29:29 12 Q. So you stated that in 1995, you recognized that the</p> <p>09:29:38 13 existing security solutions would not work for Java.</p> <p>09:29:41 14 Correct?</p> <p>09:29:41 15 A. Right.</p> <p>09:29:42 16 Q. And why is that?</p> <p>09:29:43 17 A. Because in '95, the existing solutions would be</p> <p>09:29:50 18 relying on the list of known threats, and we are trying to</p> <p>09:29:55 19 find, if a file is infected by a virus, using that list and</p> <p>09:29:58 20 using maybe some infection code, remember that in '95, a</p> <p>09:30:02 21 virus need to have infection code in order to infect.</p> <p>09:30:06 22 After Java, you don't need that infection code.</p> <p>09:30:09 23 All the effort in finding infection code becomes obsolete</p> <p>09:30:13 24 because it's very legal to infect and it's a day-to-day</p> <p>09:30:18 25 operation to infect.</p>	<p style="text-align: right;">510</p> <p>09:32:03 1 before you founded Finjan in January '96?</p> <p>09:32:06 2 A. Exactly.</p> <p>09:32:06 3 Q. Do you know the date when you had it crystallized in</p> <p>09:32:09 4 your mind before you founded Finjan?</p> <p>09:32:12 5 A. It's like 12, 13 years, I can't tell exactly which</p> <p>09:32:14 6 date. But it was before I was founding Finjan and once I</p> <p>09:32:18 7 had everything in my mind, I founded the company.</p> <p>09:32:20 8 Q. So after you formed Finjan and you hired these two</p> <p>09:32:28 9 young engineers to write code, you state that you had Finjan</p> <p>09:32:34 10 SurfinBoard. What is SurfinBoard?</p> <p>09:32:38 11 A. The product name was SurfinBoard, the first client</p> <p>09:32:42 12 product.</p> <p>09:32:42 13 Q. Why did you name it SurfinBoard?</p> <p>09:32:44 14 A. I am sorry. I don't hear too well.</p> <p>09:32:46 15 Q. Why did you name the product SurfinBoard?</p> <p>09:32:49 16 A. Well, you know, it was a combination of surfing and</p> <p>09:32:53 17 dashboard. The idea was, a dashboard, when you surf, you</p> <p>09:32:57 18 have the mobile controls, so you can control it. So I</p> <p>09:33:00 19 combined it and called it SurfinBoard.</p> <p>09:33:02 20 Q. When you formed the new company in January, what did</p> <p>09:33:06 21 you name it?</p> <p>09:33:08 22 A. Finjan, yes, first, Java was named on the Java beans.</p> <p>09:33:15 23 And the Sun Microsystems developer, all the different coffee</p> <p>09:33:21 24 makers they had, they really liked the Java. It was their</p> <p>09:33:23 25 big thing from Java coffee and they named their technology</p>
<p style="text-align: right;">509</p> <p>09:30:19 1 Q. And you said that you built a, I think I understood</p> <p>09:30:23 2 you correctly, you built a prototype to do a feasibility</p> <p>09:30:27 3 test to see if your idea would work?</p> <p>09:30:30 4 A. Right. The way I have done my couple of invention</p> <p>09:30:34 5 back then was to, once I identified a problem, to try to</p> <p>09:30:38 6 come with a solution, then test my solution and see if, in</p> <p>09:30:41 7 different places, it's really solid and can hold the water.</p> <p>09:30:45 8 So for those points, I will do feasibility test,</p> <p>09:30:48 9 and once I am convinced my solution is good, we will merge</p> <p>09:30:52 10 and embark on a new invention, and that's what happened.</p> <p>09:30:57 11 Q. And the prototype you built for your feasibility</p> <p>09:31:11 12 tests, what was that prototype?</p> <p>09:31:17 13 A. I don't remember exactly the date and what I did. I</p> <p>09:31:20 14 just built a prototype and I registered the company in</p> <p>09:31:24 15 January '96 then moved to develop client software, which we</p> <p>09:31:33 16 called SurfinBoard.</p> <p>09:31:34 17 Q. Was the your first client product?</p> <p>09:31:36 18 A. Yes, SurfinBoard was our first client product. In '96</p> <p>09:31:39 19 I established -- Finjan wanted to realize a solution. I</p> <p>09:31:42 20 started a company. I hired two young engineers, not</p> <p>09:31:45 21 engineers, high school developers, that knew Java, I</p> <p>09:31:50 22 couldn't find developers that know Java. It was that new.</p> <p>09:31:52 23 But I recognized two young high school students who helped</p> <p>09:31:56 24 me build the first product, which was the client product.</p> <p>09:31:59 25 Q. You said you had this idea crystallized in your mind</p>	<p style="text-align: right;">511</p> <p>09:33:26 1 Java. And Finjan in the Middle East is a term which is a</p> <p>09:33:30 2 container of coffee, and for me, it so nicely fit because we</p> <p>09:33:35 3 would like to help Sun Microsystems to serve Java in a safe</p> <p>09:33:40 4 manner and so that the people can benefit from the coffee.</p> <p>09:33:44 5 If I leave the coffee without the pot, you can't drink it.</p> <p>09:33:47 6 But with Finjan, you can drink it very safely.</p> <p>09:33:50 7 So that was the idea of Finjan. That is why we</p> <p>09:33:52 8 named the company Finjan.</p> <p>09:33:56 9 MR. ANDRE: Your Honor, we have some exhibits</p> <p>09:33:59 10 that we would like to put into his binder. Is it okay if I</p> <p>09:34:02 11 approach? And into the Court's as well. We have some</p> <p>09:34:06 12 exhibits as well.</p> <p>09:34:07 13 THE COURT: Into the jury's binder?</p> <p>09:34:11 14 MR. ANDRE: Yes -- not in the jury's binder,</p> <p>09:34:14 15 Your Honor.</p> <p>09:34:14 16 THE COURT: Sure.</p> <p>09:34:15 17 Which binder for the Court are you talking</p> <p>09:34:37 18 about?</p> <p>09:34:38 19 MR. ANDRE: This is the first binder that has</p> <p>09:34:40 20 three witnesses' names on it.</p> <p>09:34:43 21 THE COURT: Okay. Thank you.</p> <p>09:34:55 22 MR. ANDRE: While we pull those together, I can</p> <p>09:34:57 23 go to the projector on the screen.</p> <p>09:34:59 24 Why don't we go to Exhibit JTX-8.</p> <p>09:35:03 25 BY MR. ANDRE:</p>

<p style="text-align: right;">512</p> <p>09:35:03 1 Q. Mr. Touboul, I will get you a hard copy of this. In</p> <p>09:35:06 2 the meantime, you can look on the computer screens.</p> <p>09:35:08 3 Do you recognize what has been marked as JTX-8?</p> <p>09:35:15 4 A. Yes, I do.</p> <p>09:35:16 5 Q. What is this?</p> <p>09:35:17 6 A. It's a press release announcing SurfinBoard, our</p> <p>09:35:22 7 client product, in July 29, 1996.</p> <p>09:35:25 8 Q. And as of July 1996, did you have a client application</p> <p>09:35:35 9 that was functioning?</p> <p>09:35:38 10 A. Well, I don't remember if I have the exact date. But</p> <p>09:35:43 11 by that press release, yes, that is the date where we were</p> <p>09:35:47 12 announcing the release of the client product.</p> <p>09:35:49 13 Q. If you look at the headline for the Finjan software</p> <p>09:35:54 14 release of SurfinBoard, under that it says Industry's first</p> <p>09:35:59 15 Java security product for the worldwide Web.</p> <p>09:36:02 16 Do you see that?</p> <p>09:36:04 17 A. Yes, I do.</p> <p>09:36:05 18 Q. Was it your understanding that when you released</p> <p>09:36:08 19 SurfinBoard in July of 1996 it was the first Java security</p> <p>09:36:11 20 product?</p> <p>09:36:11 21 A. Yes. That's my understanding and my belief. Back</p> <p>09:36:16 22 then when we talked about it, people even had a hard time</p> <p>09:36:20 23 understanding what we were talking about. We couldn't see</p> <p>09:36:24 24 anything else like that in the industry.</p> <p>09:36:26 25 Q. If you look at the second paragraph, it states,</p>	<p style="text-align: right;">514</p> <p>09:37:57 1 Q. What is this document?</p> <p>09:37:59 2 A. That's the press release announcing our first gateway</p> <p>09:38:02 3 product, SurfinGate, in November 18, 1996.</p> <p>09:38:06 4 Q. And what was the difference between your SurfinBoard</p> <p>09:38:11 5 product in July '96 and the SurfinGate product in November</p> <p>09:38:15 6 '96?</p> <p>09:38:15 7 A. Right. If you think about security in general, you</p> <p>09:38:19 8 would like to have multiple lines of defense. Look at the</p> <p>09:38:24 9 money that the bank holds. It would be held in a safe, and</p> <p>09:38:27 10 there will be a guard in the door of the bank. We have</p> <p>09:38:29 11 multiple lines of defense. Now, the principle is you want</p> <p>09:38:32 12 to have different types of technology or operations in each</p> <p>09:38:35 13 line of defense. So the guard will look at people and the</p> <p>09:38:40 14 safe will block people from reaching the assets.</p> <p>09:38:42 15 By the same token, what we have come up with in</p> <p>09:38:45 16 '96 was presenting two lines of defense. One of them is the</p> <p>09:38:50 17 client, which is the applet got into my machine, my</p> <p>09:38:53 18 computer, I will prevent it from doing malicious acts in run</p> <p>09:38:56 19 time, in realtime.</p> <p>09:38:57 20 But with your corporations, wouldn't it be nice</p> <p>09:39:01 21 to stop the threat at the door, at the point where the</p> <p>09:39:05 22 corporation connects to the Internet? That was SurfinGate.</p> <p>09:39:08 23 It was a product that was like guarding the connection to</p> <p>09:39:11 24 the Internet for the company. And if you find something</p> <p>09:39:13 25 malicious at that level, it will stop it even from entering</p>
<p style="text-align: right;">513</p> <p>09:36:34 1 Examining all applets as they enter the user's system,</p> <p>09:36:39 2 SurfinBoard warns the user of any suspicious activity or</p> <p>09:36:43 3 security breach and logs all applet activity running at all</p> <p>09:36:48 4 times.</p> <p>09:36:48 5 Do you see that?</p> <p>09:36:50 6 A. Yes, I do.</p> <p>09:36:50 7 Q. Does that refresh your recollection as to some of the</p> <p>09:36:54 8 functionality of SurfinBoard back in July of 1996?</p> <p>09:36:57 9 A. Yes. If you remember, part of the problem, as I</p> <p>09:37:01 10 described earlier, was that when Java applet was getting</p> <p>09:37:04 11 into your machine, into your antivirus, you didn't know.</p> <p>09:37:07 12 You have no idea what is happening. And like was</p> <p>09:37:10 13 demonstrated yesterday, I was here, if those are running in</p> <p>09:37:15 14 front of you, you don't know what is going on behind the</p> <p>09:37:17 15 scene.</p> <p>09:37:18 16 So the first product for the client was</p> <p>09:37:21 17 monitoring every job applet as it is getting loaded on your</p> <p>09:37:24 18 machine so you know if they do something which they are not</p> <p>09:37:27 19 supposed to do, they will alert you about something like</p> <p>09:37:29 20 that, that it is happening, and prevent it from happening.</p> <p>09:37:32 21 Q. Was this monitoring the Java applet during run time?</p> <p>09:37:37 22 A. Yes.</p> <p>09:37:38 23 Q. I am going to show you what has been marked as</p> <p>09:37:53 24 JTX-542. Mr. Touboul, do you recognize this document?</p> <p>09:37:56 25 A. Yes, I do.</p>	<p style="text-align: right;">515</p> <p>09:39:16 1 the network and reaching those clients.</p> <p>09:39:18 2 You may say, why do you need two of them? We</p> <p>09:39:22 3 have one of them.</p> <p>09:39:23 4 Each of them was implementing different</p> <p>09:39:25 5 technology. One was doing like we described here,</p> <p>09:39:28 6 behavioral analysis, let's see this, when it comes, what it</p> <p>09:39:32 7 tries to do on my computer. It's trying to do something</p> <p>09:39:37 8 bad, we will stop it right here.</p> <p>09:39:39 9 The technology on the client is very different.</p> <p>09:39:40 10 It is the run time monitoring of what it is trying to do.</p> <p>09:39:44 11 Maybe if we missed something here, we will find it with</p> <p>09:39:47 12 different technology here.</p> <p>09:39:48 13 Think about having different nets, but each of</p> <p>09:39:51 14 them is different. So that the holes become smaller when</p> <p>09:39:54 15 you put a different net on. And you are making the security</p> <p>09:40:00 16 hole smaller and smaller.</p> <p>09:40:01 17 Q. We will turn to the third page of JTX-542. This</p> <p>09:40:09 18 paragraph at the bottom, it says, Finjan - The new security</p> <p>09:40:13 19 company for the new computing paradigm. The paragraph</p> <p>09:40:17 20 reads:</p> <p>09:40:19 21 Finjan Software, Ltd. is the leading provider of</p> <p>09:40:21 22 multi-layer security solutions for the new world of Internet</p> <p>09:40:24 23 and intranet downloadables.</p> <p>09:40:28 24 A. Right.</p> <p>09:40:28 25 Q. Could you explain what you were talking about when you</p>

<p style="text-align: right;">516</p> <p>09:40:32 1 were talking before Internet/intranet downloadables?</p> <p>09:40:36 2 A. Yes. Internet we all know is the worldwide Web.</p> <p>09:40:41 3 Intranet is when you have a small server inside your</p> <p>09:40:44 4 network, in your company. So we didn't know if that applet</p> <p>09:40:47 5 could come from the intranet because maybe the employee was</p> <p>09:40:50 6 doing that malicious act or it could come from the Internet</p> <p>09:40:53 7 and maybe a hacker is sending us malicious stuff. We are</p> <p>09:40:56 8 saying new computing paradigm because again I strongly</p> <p>09:41:00 9 believed back then and I think that today it is known to</p> <p>09:41:02 10 everybody, in fact, people don't remember the history, but</p> <p>09:41:06 11 the appearance of code traveling from one machine to another</p> <p>09:41:09 12 really changed the world of computing. We wouldn't be able</p> <p>09:41:13 13 to do a lot of stuff we are doing day-to-day in our</p> <p>09:41:16 14 computers on the Internet in general without that new</p> <p>09:41:18 15 concept. And we came up with this multiple line of defense.</p> <p>09:41:23 16 Q. Were the solutions that you developed at Finjan, were</p> <p>09:41:27 17 they solutions for the new Internet downloadables? Is that</p> <p>09:41:31 18 what they were focused for?</p> <p>09:41:33 19 A. Yes, absolutely.</p> <p>09:41:34 20 Q. Now, I see the word downloadables here.</p> <p>09:41:43 21 A. Right.</p> <p>09:41:44 22 Q. Was that something that you came up with?</p> <p>09:41:47 23 A. Yes. Well, downloadables, I mean, initially there was</p> <p>09:41:50 24 Java. And Java came from Sun Microsystems. But, you know,</p> <p>09:41:54 25 at that time Windows, you know, it still is, Windows is very</p>	<p style="text-align: right;">518</p> <p>09:43:20 1 is happening is very difficult, especially when you know</p> <p>09:43:22 2 there is some various products that everybody believes are</p> <p>09:43:26 3 good enough.</p> <p>09:43:26 4 Then, we were a very small staff with very</p> <p>09:43:31 5 limited resources, the only company that would come and say</p> <p>09:43:33 6 there is a problem here that needs to be fixed. And we</p> <p>09:43:36 7 didn't have a large budget to educate the market about the</p> <p>09:43:39 8 new problem.</p> <p>09:43:40 9 So the combination of problems, difficult to</p> <p>09:43:42 10 understand initially and a very small startup with limited</p> <p>09:43:48 11 resources, make it a very slow ramp-up.</p> <p>09:43:51 12 Q. When did the market start to recognize the value of</p> <p>09:43:53 13 Finjan's technologies?</p> <p>09:43:54 14 A. So that's interesting, because it took some years.</p> <p>09:43:57 15 And what happened during these years is that the</p> <p>09:44:00 16 signature-based antivirus that has those list of viruses</p> <p>09:44:06 17 slowly became less and less effective because if you start</p> <p>09:44:09 18 to get so many people coming to your machine, and new code</p> <p>09:44:13 19 is born every second somewhere in the world, and you knew</p> <p>09:44:18 20 they were coming, then the antivirus companies cannot keep</p> <p>09:44:21 21 up and classify all of them, find out which ones are better</p> <p>09:44:26 22 signatures.</p> <p>09:44:26 23 All the time you get less and less effectiveness</p> <p>09:44:28 24 of the data of the signatures and a new attack would come.</p> <p>09:44:32 25 So I believe by 2002-2003, the situation was that many</p>
<p style="text-align: right;">517</p> <p>09:41:57 1 big and administering the company, operating systems in the</p> <p>09:42:00 2 office, and they would need to rush to the market with that</p> <p>09:42:04 3 new alternative, because you couldn't leave that paradigm</p> <p>09:42:07 4 shift just to Sun Microsystems.</p> <p>09:42:10 5 So they would come up with their own solutions.</p> <p>09:42:12 6 So they quickly came with what they call ActiveX. ActiveX</p> <p>09:42:16 7 was an old Windows application that they would basically</p> <p>09:42:19 8 wrap it with installers so it can travel like Java applet,</p> <p>09:42:24 9 run automatically on our browser.</p> <p>09:42:26 10 So there was no term in the market for us to</p> <p>09:42:31 11 call the combination of Java applets and ActiveX. So we</p> <p>09:42:34 12 called it downloadables because we couldn't find a better</p> <p>09:42:37 13 term.</p> <p>09:42:38 14 Q. Now, once you launched your product at Finjan, how did</p> <p>09:42:46 15 the market respond?</p> <p>09:42:49 16 A. It was disappointingly slow initially.</p> <p>09:42:51 17 Q. And why was that?</p> <p>09:42:55 18 A. Well, I think for two reasons. First, it was very</p> <p>09:43:01 19 difficult to explain the problem, because in '95 people</p> <p>09:43:04 20 didn't see the difference. They were using the antivirus to</p> <p>09:43:07 21 go and get some data and they think it's happening again.</p> <p>09:43:10 22 They didn't think about what's behind the scene because it</p> <p>09:43:13 23 doesn't show.</p> <p>09:43:13 24 So we need to go out to the market and tell,</p> <p>09:43:16 25 hey, what you see is not what's happening. Something that</p>	<p style="text-align: right;">519</p> <p>09:44:36 1 people already had antivirus for many years and still</p> <p>09:44:40 2 getting attacks coming through those antiviruses which made</p> <p>09:44:43 3 them scratching their heads and say, what's wrong here. We</p> <p>09:44:47 4 have this, why are we still getting those viruses?</p> <p>09:44:50 5 So about 2002-2003, I would call it the</p> <p>09:44:53 6 waking-up years.</p> <p>09:44:54 7 Q. I want to show you what has been marked as JTX-5. Do</p> <p>09:45:02 8 you recognize what this exhibit is, Mr. Touboul?</p> <p>09:45:05 9 A. This is an IDC report.</p> <p>09:45:07 10 Q. What is IDC?</p> <p>09:45:10 11 A. IDC is a market research company. They would do</p> <p>09:45:14 12 market research, research new trends of the market, new</p> <p>09:45:18 13 technologies as they appear and try to envision what's the</p> <p>09:45:21 14 future of those market trends with those new technologies.</p> <p>09:45:24 15 They may do survey and cover different products, so</p> <p>09:45:29 16 customers know which product to buy and what is needed. And</p> <p>09:45:33 17 they will provide services to vendors to know what the end</p> <p>09:45:38 18 user needs so they can better build their products.</p> <p>09:45:41 19 Q. How did the IDC report relate to the computer security</p> <p>09:45:48 20 industry?</p> <p>09:45:48 21 A. They cover, follow the IT information technology field</p> <p>09:45:52 22 and security is part of the IT domain. So they would have</p> <p>09:45:56 23 reports about security.</p> <p>09:45:59 24 Q. If you will go to Page 20 of this report, if we go to</p> <p>09:46:15 25 this third paragraph -- I am sorry, the paragraph below</p>

<p style="text-align: right;">520</p> <p>09:46:23 1 that, it states, Behavior-based tools have not been widely</p> <p>09:46:31 2 adopted to date.</p> <p>09:46:32 3 Do you see that?</p> <p>09:46:33 4 A. Yes. Can you tell me which year that report is from?</p> <p>09:46:37 5 Q. Go back to the cover page, at the very bottom, and you</p> <p>09:46:44 6 go to 2003.</p> <p>09:46:45 7 A. Right.</p> <p>09:46:46 8 Q. Does that coincide with your recollection as to the</p> <p>09:46:50 9 fact that the behavior-based tools have not been widely</p> <p>09:46:54 10 accepted as of 2003?</p> <p>09:46:55 11 A. Yes. That's very much in my understanding, too. It</p> <p>09:47:01 12 was not yet widely adopted, our solutions had not yet been</p> <p>09:47:05 13 widely adopted in 2003.</p> <p>09:47:06 14 Q. Go back to the previous page, Page 19. The section</p> <p>09:47:11 15 that talks about new solutions. There is a part of the</p> <p>09:47:20 16 paragraph that says, Signature-based antivirus software is</p> <p>09:47:24 17 fairly sophisticated, but virus writers are often a step</p> <p>09:47:27 18 ahead of the software, and new viruses are constantly being</p> <p>09:47:30 19 released that signature-based antivirus software struggles</p> <p>09:47:34 20 to keep up with.</p> <p>09:47:35 21 A. Look also on the Nimda, Code Red. At this time what</p> <p>09:47:41 22 is happening in the market, you probably had for the first</p> <p>09:47:43 23 time massive attacks, massive viruses that would infect</p> <p>09:47:48 24 millions and millions of computers in no time, when all of</p> <p>09:47:51 25 those people already had antivirus installed.</p>	<p style="text-align: right;">522</p> <p>09:49:27 1 to realize they cannot rely upon reactive signature-based</p> <p>09:49:30 2 antivirus technology alone. These companies know that they</p> <p>09:49:35 3 have a very limited protection from new attacks until their</p> <p>09:49:38 4 antivirus vendor receives the new attack sample, creates a</p> <p>09:49:43 5 new patch, or signature, and delivers that patch to the</p> <p>09:49:47 6 antivirus product's database. To put it in simple terms, a</p> <p>09:49:50 7 company, or many companies, is often made the sacrificial</p> <p>09:49:55 8 lamb by becoming the first infected by an unknown virus</p> <p>09:49:59 9 before a signature can be deployed to combat the specific</p> <p>09:50:02 10 virus.</p> <p>09:50:02 11 Do you see that?</p> <p>09:50:04 12 A. Yes, I do.</p> <p>09:50:04 13 Q. Do you have an understanding as to what that is</p> <p>09:50:06 14 referring to?</p> <p>09:50:07 15 A. Yes. You see, IDC had the benefit of having many of</p> <p>09:50:10 16 the Fortune 500 companies in America to be their customer,</p> <p>09:50:15 17 and would have regular sessions with their IT groups and</p> <p>09:50:19 18 learning from them what's better for them and what are they</p> <p>09:50:23 19 concerned with. And they would reflect that in those kind</p> <p>09:50:26 20 of reports. And they basically reflect with their feedback</p> <p>09:50:31 21 with their IT employees say, again, you had those massive</p> <p>09:50:34 22 attacks and companies, you know, they need better</p> <p>09:50:38 23 protection. They need that new kind of protection to be</p> <p>09:50:41 24 more productive on the situation. People cannot, you know,</p> <p>09:50:44 25 stay there and just wait for the next massive wave of</p>
<p style="text-align: right;">521</p> <p>09:47:54 1 So people, as they said, I mean, getting those</p> <p>09:47:57 2 massive attacks and still ending up with viruses, which is</p> <p>09:48:01 3 not helping, started people thinking, okay, the</p> <p>09:48:04 4 signature-based antivirus is not effective enough anymore.</p> <p>09:48:09 5 Q. So was it frustrating to you that in 2003 they are</p> <p>09:48:15 6 still calling these new solutions when you have been around</p> <p>09:48:18 7 since 1996?</p> <p>09:48:19 8 A. Yes.</p> <p>09:48:19 9 Q. I want to you show you what has been marked as</p> <p>09:48:31 10 JTX-349. Do you recognize what this exhibit is?</p> <p>09:48:35 11 A. Yes. This looks like an IDC report, October 2003.</p> <p>09:48:44 12 Q. If you look up underneath the photograph of the</p> <p>09:48:52 13 individual, it says, Finjan Software. Closing the window of</p> <p>09:48:55 14 vulnerability.</p> <p>09:48:56 15 Do you see that?</p> <p>09:48:57 16 A. Yes, I do.</p> <p>09:48:57 17 Q. Is this the first time Finjan was covered by IDC in</p> <p>09:49:01 18 its own special report?</p> <p>09:49:02 19 A. If I am not wrong about the dates, I think that</p> <p>09:49:05 20 probably would be the first time that we have been covered</p> <p>09:49:08 21 specifically by IDC.</p> <p>09:49:09 22 Q. And that was in October 2003?</p> <p>09:49:11 23 A. Yes.</p> <p>09:49:12 24 Q. If you look at the first paragraph on the first page,</p> <p>09:49:22 25 it states that, Forward-looking organizations are beginning</p>	<p style="text-align: right;">523</p> <p>09:50:47 1 attacks to go through without doing anything. These IT</p> <p>09:50:50 2 people need to come up with solutions.</p> <p>09:50:52 3 Q. If you go to the next page of this report, the top</p> <p>09:50:56 4 bullet point on this page states that, According to a recent</p> <p>09:51:01 5 IDC survey, an alarming 90 percent of large organizations</p> <p>09:51:06 6 reported a virus incident over the past year.</p> <p>09:51:08 7 They give a cite for that.</p> <p>09:51:11 8 Do you see that?</p> <p>09:51:12 9 A. Yes, I do. I would add one comment to that, which,</p> <p>09:51:17 10 you know, those companies they speak about, large</p> <p>09:51:19 11 organizations, a hundred percent of them had antivirus in</p> <p>09:51:24 12 place. A hundred percent of these companies had</p> <p>09:51:27 13 signature-based antivirus in place and still 90 percent of</p> <p>09:51:30 14 them are reporting to be having some virus incidents coming</p> <p>09:51:35 15 through.</p> <p>09:51:40 16 Q. If you go down to the paragraph that talks about</p> <p>09:51:49 17 Finjan Software, a pioneer in proactive content behavior</p> <p>09:51:59 18 inspection, was founded in 1996. Finjan Software delivers</p> <p>09:52:07 19 proactive content security solutions that protect companies</p> <p>09:52:10 20 from new, unknown attacks by malicious code, allowing these</p> <p>09:52:15 21 companies to conduct e-business safely.</p> <p>09:52:19 22 Do you see that?</p> <p>09:52:20 23 A. Yes, I do.</p> <p>09:52:21 24 Q. When we talk about the unknown malicious attacks --</p> <p>09:52:27 25 unknown attacks by malicious code, what is your</p>

<p>524</p> <p>09:52:29 1 understanding of what is being referred to there?</p> <p>09:52:31 2 A. Well, they are referring to being able, when a new</p> <p>09:52:34 3 wave of widely spread viruses is coming through and</p> <p>09:52:38 4 attacking you, that you are able to stop them on the first</p> <p>09:52:41 5 time. So it's not that you are going to get the attack</p> <p>09:52:44 6 coming through and maybe later will get a new signature of</p> <p>09:52:48 7 that new virus, so the next wave of the same virus will be</p> <p>09:52:52 8 detected. No. It is being able to stop them on the first</p> <p>09:53:04 9 strike.</p> <p>09:52:45 10 Q. The paragraph goes on and states, "Finjan Solutions</p> <p>09:52:49 11 represent an effective way to combat unknown Trojan horses,</p> <p>09:52:55 12 worms, malicious ActiveX, Java, VBScript, and JavaScript</p> <p>09:53:00 13 programs using a patented, real-time behavior analysis</p> <p>09:53:03 14 technology that does not require database updates." Do you</p> <p>09:53:06 15 see that?</p> <p>16 A. Yes.</p> <p>09:53:13 17 Q. Do you have any idea what that's referring to?</p> <p>09:53:16 18 A. Interesting enough, I remember that, they mentioned</p> <p>09:53:18 19 patented, and that we are not relying on database to stop</p> <p>09:53:21 20 the viruses, so that's very much in my understanding, my</p> <p>09:53:27 21 memory.</p> <p>09:53:28 22 Q. Did the IC and market recognition of this type of need</p> <p>09:53:35 23 for the technology increase your -- help your company?</p> <p>09:53:37 24 A. I am sorry. Can you repeat the first phrase? I</p> <p>09:53:40 25 didn't understand it.</p>	<p>526</p> <p>09:55:21 1 A. Yes.</p> <p>09:55:22 2 Q. What's your understanding of "just-in-time computing"</p> <p>09:55:25 3 or "write once"?</p> <p>09:55:29 4 A. Right. The just-in-time, we don't need to get a new</p> <p>09:55:30 5 software, install it, re-boot. I just take my browser,</p> <p>09:55:34 6 connect to a server, and boom, I get productivity just in</p> <p>09:55:38 7 time for me to work.</p> <p>09:55:40 8 And write-once, run everywhere, the inventor of</p> <p>09:55:43 9 that code, of that application, would put it on his web</p> <p>09:55:46 10 server, and from that moment, it's available for everybody.</p> <p>09:55:49 11 Today, it looks so trivial. You go, for</p> <p>09:55:52 12 example, for Sales Force, if you heard about service over</p> <p>09:55:55 13 the web like Sales Force, it's a customer management</p> <p>09:55:59 14 application that in the old days, it took you a long time to</p> <p>09:56:02 15 install and configure and data up and running, it would be</p> <p>09:56:06 16 maybe two months to take you and today you just connect to</p> <p>09:56:12 17 the service and so that's just-in-time computing.</p> <p>09:56:17 18 Q. Is that the same thing as write-once, run anywhere</p> <p>09:56:23 19 computing, is that synonymous?</p> <p>09:56:23 20 A. I am sorry?</p> <p>09:56:24 21 Q. Is the write-once, run anywhere computing, is that</p> <p>09:56:30 22 synonymous with just-in-time computing?</p> <p>09:56:32 23 A. It's a bit -- it's overwriting the point of view of</p> <p>09:56:35 24 the inventor that he once developed it, put it in the</p> <p>09:56:39 25 computer, and it's run everywhere.</p>
<p>525</p> <p>09:53:40 1 Q. Did the industry's acknowledgment that this type of</p> <p>09:53:44 2 technology was going to be necessary, did that help your</p> <p>09:53:47 3 company?</p> <p>09:53:47 4 A. Well, I think in 2003, that was probably the first</p> <p>09:53:49 5 time that serious entity would do that and start to tell the</p> <p>09:53:55 6 world, hey, you are facing a problem, there is a small</p> <p>09:53:59 7 vendor here that is under the radar that you should start to</p> <p>09:54:04 8 look at, and it's definitely helped.</p> <p>09:54:15 9 Q. I am going to show you what's been marked as JTX-543.</p> <p>09:54:26 10 Do you recognize what this exhibit is?</p> <p>09:54:28 11 A. This looks like material from Finjan. It's says '97</p> <p>09:54:36 12 here, from the early days.</p> <p>09:54:38 13 Q. Would this be a printout of the Finjan website in '97?</p> <p>09:54:43 14 A. It may be. I don't remember, but it probably</p> <p>09:54:46 15 definitely can be.</p> <p>09:54:50 16 Q. Turn to the -- we will go to the second page. There</p> <p>09:54:54 17 is a paragraph talking about a "New computing paradigm." Do</p> <p>09:54:59 18 you see that?</p> <p>09:54:59 19 A. Yes, I do.</p> <p>09:55:03 20 Q. The first paragraph talks about, "Finjan Solutions</p> <p>09:55:07 21 addresses a new paradigm of computing. This new paradigm,</p> <p>09:55:11 22 sometimes known as just-in-time computing or write-once, run</p> <p>09:55:14 23 anywhere computing, is happening now and is transforming the</p> <p>09:55:17 24 way software programs are distributed."</p> <p>09:55:20 25 Do you see that?</p>	<p>527</p> <p>09:56:45 1 Q. We go to the next paragraph in this section, it says,</p> <p>09:56:51 2 "Unfortunately, the self-acting nature of downloadables</p> <p>09:56:55 3 means they are virtually pushed into your system without</p> <p>09:56:58 4 your acknowledgment, opening your computer up to a new breed</p> <p>09:57:02 5 of security threats that simply cannot be addressed by</p> <p>09:57:06 6 solution of the 'old world'."</p> <p>09:57:08 7 Do you see that?</p> <p>8 A. Yes.</p> <p>09:57:09 9 Q. What are you referring to?</p> <p>09:57:10 10 A. I am sorry?</p> <p>09:57:11 11 Q. What were you referring to in that sentence?</p> <p>09:57:13 12 A. I apologize to keep asking you again because I don't</p> <p>09:57:15 13 really hear well. I don't yet have a machine, but I will</p> <p>09:57:20 14 probably one day.</p> <p>09:57:22 15 What does that tell me? Well, it's exactly what</p> <p>09:57:25 16 we have said. I mean, when you connect to those websites</p> <p>09:57:29 17 with those downloadables, which may be ActiveX, JavaScript,</p> <p>09:57:34 18 Java applet, then it gets loaded automatically into your</p> <p>09:57:38 19 machine. And you never know what's to do behind the scene</p> <p>09:57:42 20 and what kind of security threat are they putting on your</p> <p>09:57:45 21 machine. So that makes sense. It's coming from our</p> <p>09:57:50 22 website. That's the messaging we had already in '97.</p> <p>09:57:53 23 Q. The next sentence states, "Inherent security systems,</p> <p>09:57:56 24 such as the Java Security Manager, offer an initial layer of</p> <p>09:57:59 25 protection, but just as new technology is developed, so are</p>

<p style="text-align: right;">528</p> <p>09:58:03 1 new plans of attack."</p> <p>09:58:05 2 Do you see that?</p> <p>09:58:05 3 A. Yes, I do.</p> <p>09:58:07 4 Q. What are you referring to when you say the "inherent</p> <p>09:58:10 5 security systems such as Java Security Manager"?</p> <p>09:58:12 6 A. Yeah. I would love to compliment here Sun</p> <p>09:58:16 7 Microsystems because when they came with the concept of</p> <p>09:58:19 8 Java, they understand there may be some security issues, so</p> <p>09:58:22 9 they did some effort in Security Manager to secure their</p> <p>09:58:26 10 machine.</p> <p>09:58:26 11 While the ActiveX does nothing in security,</p> <p>09:58:29 12 JavaScript, none of them had except Java, so they did some</p> <p>09:58:32 13 effort in the Security Manager, which was limited because it</p> <p>09:58:35 14 was trying to secure the Java from the Java, but the threat</p> <p>09:58:39 15 is on the operating system.</p> <p>09:58:41 16 So -- so the early days already figure out if</p> <p>09:58:45 17 you want to really bring a full solution, it can be</p> <p>09:58:48 18 protecting from the Java from the Java, but it should be</p> <p>09:58:50 19 from the foundation, and that's where we focused our</p> <p>09:58:54 20 solution.</p> <p>09:58:54 21 But Sun Microsystems is a company that brought</p> <p>09:58:57 22 something, and we improved it and announced it using our</p> <p>09:59:02 23 operating system.</p> <p>09:59:02 24 Q. Just so I am clear, the Java Security Manager didn't</p> <p>09:59:06 25 operate -- didn't go on the operating system? Explain that.</p>	<p style="text-align: right;">530</p> <p>10:00:33 1 A. Again, in the old world, before Java antivirus were</p> <p>10:00:37 2 very effective actually because they could have very</p> <p>10:00:40 3 detailed list of all the attacks out there in a very</p> <p>10:00:43 4 reasonable time.</p> <p>10:00:43 5 When Java start to show up, there have been so</p> <p>10:00:46 6 big and so many new active codes coming and getting born and</p> <p>10:00:50 7 dying -- by the way, we heard about numbers of attacks that</p> <p>10:00:53 8 happens per month today yesterday -- but the number of new</p> <p>10:00:57 9 active code that is getting born on every single day is</p> <p>10:01:00 10 huge. And I -- I believe that running list on that huge</p> <p>10:01:04 11 number of incidents will never be able to close the gap and</p> <p>10:01:08 12 map all of them. So you need to -- I don't care who you</p> <p>10:01:11 13 are. I care what you do. That was the idea.</p> <p>10:01:14 14 So instead of mapping all those viruses, we will</p> <p>10:01:17 15 look on what they try to do, and they got us through that.</p> <p>10:01:23 16 So that's the old versus what we have done.</p> <p>10:01:25 17 Q. Now, while you were the president and COE of Finjan,</p> <p>10:01:29 18 did you ever use any of the traditional signature-based</p> <p>10:01:33 19 antivirus technology along with Finjan's technology?</p> <p>10:01:36 20 A. Yes, I did.</p> <p>10:01:36 21 Q. Why did you do that?</p> <p>10:01:37 22 A. That was interesting. So we had so much hard time</p> <p>10:01:40 23 from the market to sell the product against the giants, we</p> <p>10:01:45 24 would be like a small dot compared to them with our sales</p> <p>10:01:48 25 force and our resources, and in 2003, they are waking up</p>
<p style="text-align: right;">529</p> <p>09:59:09 1 I didn't quite get that.</p> <p>09:59:11 2 A. Okay. So, the way -- the way computers sat on the</p> <p>09:59:15 3 operating system, remember, when you have a few of them,</p> <p>09:59:18 4 would be layers of operating systems. So the first layer</p> <p>09:59:20 5 was Windows and then you would have your browser. And then</p> <p>09:59:23 6 in order to run Java, what Sun Microsystems did, they put an</p> <p>09:59:27 7 engine of Java in the browser that allows it to load those</p> <p>09:59:31 8 applets so they can run into the browser.</p> <p>09:59:34 9 So they put some mechanism into what they used</p> <p>09:59:37 10 to call class load or Java Security Manager already in their</p> <p>09:59:41 11 Java virtual machine. But if something penetrates that,</p> <p>09:59:46 12 there is nothing there to penetrate the operating systems.</p> <p>09:59:49 13 If you look, for example, in my document folder,</p> <p>09:59:52 14 which I would like to protect from hackers in the Internet,</p> <p>09:59:57 15 it's an operating system, so I figure out so I can put</p> <p>10:00:00 16 myself on my resources. So what we have done, we have put a</p> <p>10:00:03 17 safe on the resource. What Java Virtual machine did, they</p> <p>10:00:09 18 put the same on Java Virtual Machine.</p> <p>10:00:11 19 But I care about my resources more than I care</p> <p>10:00:14 20 about anything else.</p> <p>10:00:15 21 Q. And we talk about the new breed of security threats</p> <p>10:00:22 22 that simply cannot be addressed by the solutions of the,</p> <p>10:00:26 23 quote, old world.</p> <p>10:00:27 24 What was different about Finjan's technology as</p> <p>10:00:31 25 opposed to the old world?</p>	<p style="text-align: right;">531</p> <p>10:01:53 1 here. We started to have customers that wanted the product,</p> <p>10:01:57 2 need the product, and wanted to buy the product, especially</p> <p>10:02:00 3 the large organizations, but they didn't have the budget</p> <p>10:02:03 4 item. So if they don't have the budget item, you can't get</p> <p>10:02:06 5 the purchase order for that product. They would need to</p> <p>10:02:10 6 submit to their treasury committee a new budget item that</p> <p>10:02:15 7 may take six, eight months, and once it's approved, it will</p> <p>10:02:18 8 go to the year after to be purchased, so that means we need</p> <p>10:02:21 9 to wait two years.</p> <p>10:02:22 10 We convince the customer that they need to buy</p> <p>10:02:25 11 and want to buy very much. You don't have the budgetary</p> <p>10:02:29 12 item for that. So they did have budget for antivirus. They</p> <p>10:02:33 13 have done it for many years.</p> <p>10:02:34 14 What we have done is licensed antivirus engine,</p> <p>10:02:37 15 put it in our offer, and basically, we didn't care about</p> <p>10:02:41 16 charging for the antivirus because we just wanted to get</p> <p>10:02:43 17 into the corporate budget using that item, so they would buy</p> <p>10:02:47 18 our solution with antivirus, we gave it for free, the</p> <p>10:02:50 19 antivirus, but this way, we could get the budget for our</p> <p>10:02:52 20 sale.</p> <p>10:02:53 21 Now, because different vendor wanted to have</p> <p>10:02:56 22 different antivirus, it's a bit like religion back then, we</p> <p>10:03:01 23 didn't care which antivirus, so we licensed few of them. So</p> <p>10:03:05 24 we go to Mr. Customer and say, okay, you have a budget for</p> <p>10:03:08 25 antivirus, which one do you buy? You buy antivirus X.</p>

<p style="text-align: right;">532</p> <p>10:03:11 1 Here, we will give you an offer, an integrated offer of</p> <p>10:03:15 2 antivirus X with Finjan solution. We get into the budget,</p> <p>10:03:17 3 we don't care about anything.</p> <p>10:03:22 4 Q. Do you recall what companies that you actually</p> <p>10:03:23 5 licensed to acquire their antivirus traditional</p> <p>10:03:29 6 signature-based antivirus solutions?</p> <p>10:03:31 7 A. I think we started with McAfee, if I am not wrong. I</p> <p>10:03:35 8 think we had Sophos. I think we had Kaspersky, and other</p> <p>10:03:39 9 ones, I just don't remember all the names.</p> <p>10:03:46 10 Q. I want to talk to you a little bit about the Finjan</p> <p>10:03:49 11 patents.</p> <p>10:03:50 12 When you were at Finjan, did you make sure that</p> <p>10:03:52 13 the Finjan's products were marked with some indication that</p> <p>10:03:55 14 you had patents or patents pending?</p> <p>10:03:58 15 A. Yes. So, we would mark the products until it was</p> <p>10:04:01 16 issued, we'd put the statement of "patent pending" in our</p> <p>10:04:05 17 products. And then when it issued, we'd put the patent</p> <p>10:04:09 18 numbers on it.</p> <p>10:04:09 19 The place you put it is in two areas usually.</p> <p>10:04:13 20 You put it on a splash screen, so until the software is</p> <p>10:04:16 21 getting loaded you get the splash screen that is saying the</p> <p>10:04:20 22 patent pending and the numbers. And then, also, if you go</p> <p>10:04:24 23 to the bout, the main menu, you look in the bout, the</p> <p>10:04:27 24 developers like to put their names, you know, who are they.</p> <p>10:04:32 25 We also put there the patent numbers.</p>	<p style="text-align: right;">534</p> <p>10:05:43 1 at all in the security market. They were an operating</p> <p>10:05:46 2 system market.</p> <p>10:05:47 3 However, they did make a small acquisition of a</p> <p>10:05:49 4 small company that we believed acquired our license. So</p> <p>10:05:52 5 while Microsoft didn't have a product that may infringe our</p> <p>10:05:56 6 patent, we believe the small startup they bought may need</p> <p>10:05:59 7 the license. So we enter into negotiation with them to</p> <p>10:06:03 8 license the patent.</p> <p>10:06:04 9 That's the players and the setup.</p> <p>10:06:06 10 Now, the business part that matters is that,</p> <p>10:06:10 11 first, Microsoft paid us \$8 million on the product they</p> <p>10:06:13 12 never sell, which is great. And also, they invested</p> <p>10:06:17 13 additional \$2 million in Finjan. And that's a huge</p> <p>10:06:21 14 awareness. That's like a huge blessing from the largest</p> <p>10:06:24 15 player on the world investing in startup and give us a lot</p> <p>10:06:28 16 of credibility in the market.</p> <p>10:06:30 17 Then they added a lot of marketing help for us</p> <p>10:06:33 18 which will help to us market the product.</p> <p>10:06:34 19 Then there was something else which I believe</p> <p>10:06:36 20 was -- is amazing. And that's at a certain time of the</p> <p>10:06:40 21 negotiation, Microsoft said, well, you know, Finjan, one</p> <p>10:06:43 22 day, we are going to put application interfaces for behavior</p> <p>10:06:48 23 marketing Windows --</p> <p>10:06:50 24 MR. STIEGLER: Objection, Your Honor. This is</p> <p>10:06:52 25 now hearsay about what Microsoft said.</p>
<p style="text-align: right;">533</p> <p>10:04:34 1 Q. So on the actual product itself, you had it on the</p> <p>10:04:37 2 bout screen and the splash screen?</p> <p>10:04:39 3 A. Yes.</p> <p>10:04:40 4 Q. Did you put it on the documentation about the products</p> <p>10:04:42 5 for the company?</p> <p>10:04:43 6 A. I would guess. I don't remember, but I would guess</p> <p>10:04:45 7 that we would find it in user manuals as well.</p> <p>10:04:48 8 Q. Now, when you were at Finjan, did Finjan ever license</p> <p>10:04:52 9 its patents?</p> <p>10:04:54 10 A. Only once.</p> <p>10:04:55 11 Q. And who was that to?</p> <p>10:04:56 12 A. It was to -- to Microsoft.</p> <p>10:04:59 13 Q. And why did Finjan license its patent technology to</p> <p>10:05:02 14 Microsoft?</p> <p>10:05:03 15 A. Well, the deal with Microsoft, I personally believe it</p> <p>10:05:05 16 was my -- my best I ever -- deal I ever done. And I</p> <p>10:05:10 17 explained why. And, you know, in order to understand the</p> <p>10:05:15 18 value of that business, you should first understand all the</p> <p>10:05:17 19 players and what's the nature of this deal.</p> <p>10:05:19 20 So the players, Microsoft, these days, Microsoft</p> <p>10:05:25 21 was the only huge player. Apple was not as big as they are</p> <p>10:05:28 22 today. So Apple was the giant company and Finjan was the</p> <p>10:05:33 23 small startup struggling to penetrate this great idea but</p> <p>10:05:37 24 very hard time to penetrate.</p> <p>10:05:39 25 So, and Microsoft was not dominant or not active</p>	<p style="text-align: right;">535</p> <p>10:06:54 1 THE COURT: Sustained.</p> <p>10:06:54 2 THE WITNESS: Okay. So --</p> <p>10:06:55 3 BY MR. ANDRE:</p> <p>10:06:55 4 Q. Let me ask you a question, Mr. Touboul.</p> <p>10:06:58 5 A. Please.</p> <p>10:06:59 6 Q. So, in your negotiation with Microsoft, were there any</p> <p>10:07:02 7 terms that came up regarding adding in an application</p> <p>10:07:07 8 interface or API? First of all, could you explain what</p> <p>10:07:11 9 "API" is?</p> <p>10:07:12 10 A. "API" is "Application Programmer Interface." If I am</p> <p>10:07:16 11 a developer for Windows, I would use the Windows application</p> <p>10:07:19 12 program or interface that would help me build my</p> <p>10:07:22 13 application. That's how I get services from Windows.</p> <p>10:07:25 14 Q. What's an API used for?</p> <p>10:07:27 15 A. It's used for -- it's used for getting different</p> <p>10:07:30 16 services from the operating system. So Microsoft put a lot</p> <p>10:07:33 17 of services, for example, if an application, when it reads</p> <p>10:07:36 18 or display a content of the file, it will call an API of</p> <p>10:07:41 19 Windows to access that file, it cannot go directly. It</p> <p>10:07:44 20 needs to go through the API.</p> <p>10:07:49 21 Q. Did you personally negotiate the license with</p> <p>10:07:51 22 Microsoft?</p> <p>10:07:51 23 A. Yes.</p> <p>10:07:53 24 Q. And when you were negotiating the license with</p> <p>10:07:54 25 Microsoft, were there any terms regarding APIs that were</p>

<p style="text-align: right;">536</p> <p>10:07:59 1 discussed?</p> <p>10:07:59 2 A. Yeah. Initially, there was a very annoying term that</p> <p>10:08:02 3 they put, like they always put, which is if a third company,</p> <p>10:08:06 4 let's say McAfee would like to use their API, their service</p> <p>10:08:11 5 to behavior blocking because, remember, we thought that they</p> <p>10:08:15 6 will have behavior blocking ability in Windows, so if McAfee</p> <p>10:08:18 7 would use that API, Microsoft said, they don't need to pay</p> <p>10:08:23 8 Finjan royalty. And I thought that -- that's terrible</p> <p>10:08:26 9 because it's going to close our market very quickly.</p> <p>10:08:30 10 So I insisted for like six months of</p> <p>10:08:32 11 negotiations with Microsoft to get that removed so that if</p> <p>10:08:36 12 McAfee or any antivirus company would use the API to get</p> <p>10:08:41 13 access to behavior blocking, they need to negotiate with</p> <p>10:08:44 14 Finjan royalty and pay us royalty, and they agreed.</p> <p>10:08:48 15 So that turned Microsoft, in my opinion, to an</p> <p>10:08:52 16 amazing deal because Microsoft become this huge sales force</p> <p>10:08:55 17 of Finjan to the security market and also paid us \$8 million</p> <p>10:08:58 18 in revenue and also gave us investment of \$2 million.</p> <p>10:09:03 19 So that's why I think it was my best deal ever.</p> <p>10:09:06 20 Q. And, ultimately, did, while you were at Finjan or</p> <p>10:09:09 21 since you rejoined Finjan, did Microsoft ever add the API in</p> <p>10:09:16 22 that would allow third-parties to come in and license Finjan</p> <p>10:09:19 23 patents?</p> <p>10:09:20 24 A. No. Microsoft always sit on the fence that Microsoft</p> <p>10:09:23 25 do one step forward and two back step. That's the angle on</p>	<p style="text-align: right;">538</p> <p>10:10:37 1 also, I visited the Symantec offices in '97 and '98, and I</p> <p>10:10:43 2 think it was even something after I was CEO, I was on the</p> <p>10:10:46 3 board for some time and there was some meetings back then,</p> <p>10:10:49 4 and probably '99, if I remember. I may be wrong.</p> <p>10:10:53 5 Q. Do you recall the substance of the meetings that you</p> <p>10:10:54 6 attended or were aware of at Symantec in the '98-'99 time</p> <p>10:11:02 7 period?</p> <p>10:11:02 8 A. Yeah. '98-'99 period, I met, they have a team called</p> <p>10:11:09 9 Star in southern California, so it was a huge table with</p> <p>10:11:14 10 maybe 20, 30 engineers and me, and I am trying to convince</p> <p>10:11:17 11 them that, you know, the world is moving to a new direction</p> <p>10:11:19 12 and you better adopt our technology, and that was the</p> <p>10:11:22 13 purpose of the meeting, so the OEM and license option.</p> <p>10:11:28 14 Q. I am going to show you what's been marked as PTX-810.</p> <p>10:11:36 15 And the top of this is entitled, "Non-disclosure</p> <p>10:11:39 16 agreement." Do you see that?</p> <p>10:11:40 17 A. Yes.</p> <p>10:11:40 18 Q. And it says, "This non-disclosure agreement is made</p> <p>10:11:43 19 between and entered into as of January 4th, 1999, between</p> <p>10:11:46 20 Finjan, Inc., (Company) and Symantec, (Recipient)." Do you</p> <p>10:11:50 21 see that?</p> <p>10:11:50 22 A. Yes, I do.</p> <p>10:11:52 23 Q. Do you recall entering into any of the non-disclosure</p> <p>10:11:55 24 agreement or any non-disclosure agreement with Symantec</p> <p>10:11:59 25 during the time that you were associated with Finjan?</p>
<p style="text-align: right;">537</p> <p>10:09:28 1 the security.</p> <p>10:09:29 2 Q. Did you have a understanding of what kind of financial</p> <p>10:09:37 3 compensation Finjan could have obtained from the license</p> <p>10:09:40 4 with Microsoft if they would have had this API?</p> <p>10:09:44 5 A. Normally --</p> <p>10:09:45 6 MR. STIEGLER: Objection. Calls for</p> <p>10:09:48 7 speculation. Foundation.</p> <p>10:09:48 8 THE COURT: I think so. Sustained.</p> <p>10:09:51 9 MR. ANDRE: Thank you, Your Honor.</p> <p>10:09:51 10 BY MR. ANDRE:</p> <p>10:09:52 11 Q. Well, while you were at Finjan, when you were the CEO</p> <p>10:09:56 12 of Finjan and president of Finjan, did Finjan ever license</p> <p>10:10:00 13 this patented technology to any security software companies?</p> <p>10:10:03 14 A. No.</p> <p>10:10:03 15 Q. Why not?</p> <p>10:10:05 16 A. We wanted to license products. I mean, we were all --</p> <p>10:10:08 17 all -- the whole idea was to build a company that was</p> <p>10:10:12 18 selling products, and the patent was helping us to defend</p> <p>10:10:14 19 ourselves. So we wanted to license our product to many of</p> <p>10:10:19 20 the vendors, but not patents.</p> <p>10:10:22 21 Q. When you were CEO and one of your positions on the</p> <p>10:10:25 22 Board, Board of Directors at Finjan, did you have any</p> <p>10:10:28 23 discussions with any of the defendants in this case?</p> <p>10:10:31 24 A. Well, you know, we have -- we have different meetings</p> <p>10:10:34 25 and different scenarios. It could be trade shows. And,</p>	<p style="text-align: right;">539</p> <p>10:12:01 1 A. I don't remember exactly a specific agreement, but I</p> <p>10:12:04 2 can tell you that before any meeting like that, there would</p> <p>10:12:07 3 be exchanges of NDA. That's the procedure.</p> <p>10:12:09 4 Q. And this particular agreement that we have looked at</p> <p>10:12:11 5 today, were you on the Board of Directors in January of 1999</p> <p>10:12:14 6 at Finjan?</p> <p>10:12:15 7 A. I think I was on the board at that time.</p> <p>10:12:16 8 Q. Were you aware that Finjan was having these meetings</p> <p>10:12:19 9 with --</p> <p>10:12:20 10 A. I wasn't at the meetings.</p> <p>10:12:22 11 Q. If you look at the bottom of the agreement, it's</p> <p>10:12:24 12 signed by Enrique Salem?</p> <p>10:12:29 13 A. Enrique Salem.</p> <p>10:12:33 14 Q. Do you know who he is?</p> <p>10:12:34 15 A. Yes. He was back then the vice president, and for the</p> <p>10:12:36 16 last maybe eight years, he is the CEO of Symantec.</p> <p>10:12:39 17 Q. Did Symantec ever end up licensing any of the Finjan</p> <p>10:12:48 18 technology?</p> <p>10:12:50 19 A. Not that I know of.</p> <p>10:12:54 20 Q. Now, at some point, you left Finjan all together. Is</p> <p>21 that correct?</p> <p>10:12:58 22 A. Yes, I did.</p> <p>10:12:59 23 Q. And why did you -- what did you do after that?</p> <p>10:13:05 24 A. It -- the one in '98 or the one in 2005? Which one?</p> <p>10:13:11 25 Q. 2005.</p>

<p style="text-align: right;">540</p> <p>10:13:12 1 A. 2005, I think maybe three weeks after, I started a new</p> <p>10:13:15 2 venture, which is a bad habit. I can't get rid of that</p> <p>10:13:19 3 virus. I started a new venture called the Yoggie Security</p> <p>10:13:23 4 Systems.</p> <p>10:13:24 5 Q. And you just mentioned you left twice. Would you</p> <p>10:13:26 6 describe the -- how many times you have come and gone from</p> <p>10:13:29 7 Finjan?</p> <p>10:13:29 8 A. Yeah. Well, I think the first time I left in -- in</p> <p>10:13:33 9 mid or late '98. I don't remember the date exactly. But I</p> <p>10:13:38 10 relocate -- initially I started Finjan in Israel and then I</p> <p>10:13:42 11 built a U.S. entity in California, San Jose, I don't</p> <p>10:13:48 12 remember which one was the first office, but then I relocate</p> <p>10:13:50 13 all marketing and sales and started to move the operations</p> <p>10:13:53 14 and slowly move to the U.S., because that's where the market</p> <p>10:13:58 15 is, and then I made a decision, okay, if I move everything</p> <p>10:14:01 16 to the U.S. and leave just the engineer in Israel, CEO needs</p> <p>10:14:06 17 to be where the headquarters are.</p> <p>10:14:08 18 So, relocation question arrived again and I</p> <p>10:14:10 19 didn't want to relocate again with my family, so I hired</p> <p>10:14:12 20 Bill Lyons to replace me as the CEO of the company and I</p> <p>10:14:16 21 stayed on the board for about a year or so and stepped aside</p> <p>10:14:20 22 and let him run the company.</p> <p>10:13:41 23 Q. Were you chairman of the board at that time?</p> <p>10:14:35 24 A. No. When he came -- before that, I think I was. When</p> <p>10:14:39 25 he came I think I named him chairman of the board, also.</p>	<p style="text-align: right;">542</p> <p>10:16:48 1 CROSS-EXAMINATION</p> <p>10:16:49 2 BY MR. ALLCOCK:</p> <p>10:16:50 3 Q. Good morning, Mr. Touboul. My name is John Allcock.</p> <p>10:16:59 4 A. Good morning.</p> <p>10:17:00 5 Q. I represent Sophos. We have never met.</p> <p>10:17:03 6 A. In the past? I am sorry. I don't remember.</p> <p>10:17:06 7 Q. We have never met.</p> <p>10:17:08 8 A. It happens sometimes to me people tell me we met and I</p> <p>10:17:14 9 can't remember.</p> <p>10:17:14 10 Q. We have never met before.</p> <p>10:17:16 11 A. We have never let. I can believe that, too.</p> <p>10:17:20 12 Q. Let me first get clear when you worked for the</p> <p>10:17:23 13 company. You started the company in '96. Is that right?</p> <p>10:17:26 14 A. Yes.</p> <p>10:17:26 15 Q. And then you left in 1998. Did I get that right?</p> <p>10:17:30 16 A. Yes. Sometime in '98 I left the position of CEO, and</p> <p>10:17:34 17 returned to the position of board member for about a year.</p> <p>10:17:37 18 Q. And then you came back again at some point and what I</p> <p>10:17:43 19 had written down was early 2001. Is that right?</p> <p>10:17:46 20 A. Yes. I think early 2001 I returned as the CEO of the</p> <p>10:17:51 21 company.</p> <p>10:17:51 22 Q. And then you worked from 2001 to about 2003. Have I</p> <p>10:17:57 23 got that right?</p> <p>10:17:58 24 A. No. 2005.</p> <p>10:17:59 25 Q. 2005. Then you left in 2005 and very recently you</p>
<p style="text-align: right;">541</p> <p>10:14:43 1 Q. Did you return to Finjan sometime after that?</p> <p>10:14:45 2 A. What happened after is that something happened in late</p> <p>10:14:53 3 '99, where in early 2000, the investors in Finjan called me,</p> <p>10:15:00 4 specific investors from California, say, Shlomo, we have a</p> <p>10:15:03 5 problem with the company, Bill Lyons left. Won't you help</p> <p>10:15:06 6 us come and fix the situation?</p> <p>10:15:08 7 And Finjan is like, I gave it birth and I felt</p> <p>10:15:11 8 responsible, so I joined back the company and run the</p> <p>10:15:15 9 company starting in 2001 again, and turn over the company.</p> <p>10:15:19 10 So that is what happened.</p> <p>10:15:21 11 Q. You stated earlier what your relationship with Finjan</p> <p>10:15:25 12 is. This is your third stint coming back with Finjan. What</p> <p>10:15:28 13 is your relationship with Finjan today?</p> <p>10:15:30 14 A. Today I am a consultant with Finjan.</p> <p>10:15:32 15 Q. Do you get paid for your consulting work?</p> <p>10:15:34 16 A. Yes, sure.</p> <p>10:15:35 17 Q. Do you get any extra pay depending on the outcome of</p> <p>10:15:39 18 this litigation?</p> <p>10:15:40 19 A. No. It could be interesting, but, no.</p> <p>10:15:43 20 MR. ANDRE: Your Honor I have no further</p> <p>10:15:45 21 questions.</p> <p>10:15:46 22 THE COURT: Mr. Allcock.</p> <p>10:15:53 23 MR. ALLCOCK: Thank you, Your Honor.</p> <p>10:15:54 24 May I approach, Your Honor?</p> <p>10:16:33 25 THE COURT: Yes.</p>	<p style="text-align: right;">543</p> <p>10:18:04 1 became a consultant to the company?</p> <p>10:18:06 2 A. True.</p> <p>10:18:06 3 Q. "Recently" meaning in February of this year?</p> <p>10:18:10 4 A. Early this year, February I don't remember, but early</p> <p>10:18:14 5 this year, yes.</p> <p>10:18:15 6 Q. That is the chronology.</p> <p>10:18:17 7 Let's go back to 1996. May I have JTX-8? You</p> <p>10:18:27 8 were shown this on your direct examination.</p> <p>10:18:30 9 MR. ALLCOCK: Your Honor, I am going to ask some</p> <p>10:18:32 10 questions on exhibits that are in his direct examination</p> <p>10:18:35 11 binder and some in the cross-examination binder, if you are</p> <p>10:18:38 12 looking.</p> <p>10:18:38 13 THE COURT: Okay.</p> <p>10:18:39 14 BY MR. ALLCOCK:</p> <p>10:18:39 15 Q. So I want to start by looking at JTX-8 and looking at</p> <p>10:18:44 16 the second paragraph. I think this is one you were asked</p> <p>10:18:46 17 about.</p> <p>10:18:46 18 So this is early on, this is in June of 1996.</p> <p>10:18:53 19 Is that right?</p> <p>10:18:53 20 A. Yes.</p> <p>10:18:56 21 Q. This talks a little bit about your first product. Do</p> <p>10:18:59 22 you see that?</p> <p>10:18:59 23 A. SurfinBoard.</p> <p>10:19:01 24 Q. Right.</p> <p>10:19:02 25 A. Yes.</p>

<p style="text-align: right;">544</p> <p>10:19:02 1 Q. And it talks about searching and detecting for</p> <p>10:19:06 2 suspicious applets. Is that right?</p> <p>10:19:08 3 A. Yes.</p> <p>10:19:08 4 Q. And an applet is just a downloadable or a program. Is</p> <p>10:19:14 5 that right?</p> <p>10:19:14 6 A. At that time it was before the ActiveX. So I would</p> <p>10:19:17 7 call it a small Java application that could be an applet.</p> <p>10:19:20 8 Q. Very well. So what this describes, what you were</p> <p>10:19:25 9 doing was searching for suspicious applets or applets that</p> <p>10:19:32 10 were involved in suspicious operations. Is that right?</p> <p>10:19:36 11 A. You mean technically or marketing?</p> <p>10:19:39 12 Q. I am just asking you a question based --</p> <p>10:19:42 13 A. As a marketing document, you are right.</p> <p>10:19:44 14 Q. Very well. The document here doesn't talk anything</p> <p>10:19:50 15 about behavior based?</p> <p>10:19:53 16 A. I don't see it. I don't see behavior based here.</p> <p>10:19:55 17 Q. So let's go now to the exhibit in your</p> <p>10:20:00 18 cross-examination binder, it's the last one in there, it's</p> <p>10:20:05 19 JTX-542. I believe you were shown this on direct as well.</p> <p>10:20:12 20 This is a document in November of 1996. Is that</p> <p>10:20:20 21 right?</p> <p>10:20:20 22 A. Yes, it is.</p> <p>10:20:21 23 Q. And this talks about SurfinGate. Is that right?</p> <p>10:20:25 24 A. Yes.</p> <p>10:20:25 25 Q. And if you could turn to the next page, which, for the</p>	<p style="text-align: right;">546</p> <p>10:21:59 1 Q. Again, the word behavior or behavior based is not</p> <p>10:22:04 2 mentioned anywhere here?</p> <p>10:22:05 3 A. The word behavior is not showing here.</p> <p>10:22:09 4 Q. So that takes us through till November of '96. I</p> <p>10:22:15 5 notice -- I mean November of '96. I notice on the first</p> <p>10:22:21 6 page of JTX-542, at the bottom of the first paragraph, it</p> <p>10:22:32 7 talks about Finjan having a patent pending on this</p> <p>10:22:42 8 technology. Do you see that?</p> <p>10:22:43 9 A. Yes, I do.</p> <p>10:22:44 10 Q. And you were shown a couple of patents on your direct</p> <p>10:22:51 11 examination, the two patents that are involved in this case?</p> <p>10:22:54 12 A. Can you repeat the question again, please?</p> <p>10:22:56 13 Q. You were shown on direct examination, way back at the</p> <p>10:22:58 14 beginning of your direct examination, the two patents that</p> <p>10:23:01 15 were involved in this case?</p> <p>10:23:03 16 A. True.</p> <p>10:23:03 17 Q. You are the inventor?</p> <p>10:23:04 18 A. Yes.</p> <p>10:23:05 19 Q. Let's take a look at PTX-1. That is the '194 patent.</p> <p>10:23:17 20 You are the inventor on this?</p> <p>10:23:19 21 A. Yes, I am.</p> <p>10:23:20 22 Q. The original application on this was filed in November</p> <p>10:23:26 23 of 1996. Is that right? Do you see it there under Related</p> <p>10:23:32 24 U.S. Provisional Data?</p> <p>10:23:34 25 A. Yes.</p>
<p style="text-align: right;">545</p> <p>10:20:30 1 record, is 4817, I want to look at the bottom paragraph</p> <p>10:20:34 2 there.</p> <p>10:20:40 3 This again talks about hostile downloadables.</p> <p>10:20:45 4 Do you see that?</p> <p>10:20:45 5 A. Yes, I do.</p> <p>10:20:46 6 Q. And it talks about suspicious applets. Is that right?</p> <p>10:20:51 7 A. It says so, yes.</p> <p>10:20:52 8 Q. And so, again, what we are talking about here is the</p> <p>10:20:57 9 technology that you had that was looking at the suspicious</p> <p>10:21:03 10 activity of these downloadables or applets. Is that right?</p> <p>10:21:08 11 A. Of the one you referred to earlier? Of the</p> <p>10:21:12 12 potentially hostile? Or in general?</p> <p>10:21:15 13 Q. I am asking you about what this document says. What</p> <p>10:21:18 14 you are talking about here is Finjan's ability to detect</p> <p>10:21:25 15 suspicious downloadables for applets. Is that right?</p> <p>10:21:31 16 A. I am sorry. I don't understand your question. Can</p> <p>10:21:33 17 you repeat it, please.</p> <p>10:21:33 18 Q. I will ask it again. What you are talking about here</p> <p>10:21:36 19 is the Finjan gateway ability to detect hostile</p> <p>10:21:42 20 downloadables or suspicious downloadables. Is that right?</p> <p>10:21:45 21 A. Yes.</p> <p>10:21:46 22 Q. And suspicious meaning that they engage in computer</p> <p>10:21:51 23 operations that are suspicious, that might make you think</p> <p>10:21:55 24 that they are a malware or a virus. Is that right?</p> <p>10:21:59 25 A. True.</p>	<p style="text-align: right;">547</p> <p>10:23:34 1 Q. Let's take a look at the first few lines of the</p> <p>10:23:39 2 abstract there off to the right.</p> <p>10:23:41 3 The extract is a short description of what this</p> <p>10:23:49 4 is all about. Is that right?</p> <p>10:23:52 5 A. I can't comment on that document.</p> <p>10:23:54 6 Q. But here it's talking about how a computer, the system</p> <p>10:23:59 7 of your invention protects a computer from suspicious</p> <p>10:24:05 8 downloadables. Do you see that?</p> <p>10:24:06 9 A. Yes. But I just want to mention, again, this is a</p> <p>10:24:10 10 legal document. I will be very happy to talk about</p> <p>10:24:13 11 products, technology. But legal documents should be dealt</p> <p>10:24:16 12 with by legal experts.</p> <p>10:24:20 13 THE COURT: You can just answer his questions.</p> <p>10:24:23 14 THE WITNESS: To interpret that?</p> <p>10:24:26 15 BY MR. ALLCOCK:</p> <p>10:24:26 16 Q. I am just asking a question. I am not asking you to</p> <p>10:24:29 17 interpret anything or a legal document. This is your</p> <p>10:24:32 18 patent. You are the inventor. Right?</p> <p>10:24:33 19 A. Yes, I am.</p> <p>10:24:34 20 Q. When this was written, you signed an oath saying that</p> <p>10:24:36 21 you understood this. Right?</p> <p>10:24:38 22 A. Yes, I do.</p> <p>10:24:38 23 Q. And so what it's talking about is protecting a</p> <p>10:24:45 24 computer from suspicious downloadables. Is that right?</p> <p>10:24:49 25 A. Yes. If you ask me what is written here, yes,</p>

<p style="text-align: right;">548</p> <p>10:24:53 1 definitely.</p> <p>10:24:53 2 Q. On direct examination, you mentioned something called</p> <p>10:24:57 3 Bugbear. Is that right? Bugbear?</p> <p>10:25:01 4 A. Yes. The virus, yes.</p> <p>10:25:04 5 Q. It was a virus?</p> <p>10:25:06 6 A. In the IDC report?</p> <p>10:25:07 7 Q. Right.</p> <p>10:25:08 8 A. Yes.</p> <p>10:25:08 9 Q. That is a suspicious downloadable, isn't it?</p> <p>10:25:10 10 A. I don't know.</p> <p>10:25:12 11 Q. Well, is it malware, is it a virus, Bugbear?</p> <p>10:25:19 12 A. I don't remember exactly how it was classified. If I</p> <p>10:25:22 13 would see reports, I can tell you.</p> <p>10:25:23 14 Q. I am just asking you about it. You seemed to know it</p> <p>10:25:26 15 quite well when you were asked about it on direct in the IDC</p> <p>10:25:29 16 report.</p> <p>10:25:31 17 A. Well, in early 2000, there have been a couple of very</p> <p>10:25:34 18 famous attacks, there was Nimda, Bugbear. I don't remember</p> <p>10:25:38 19 each of them classified. At that time, I did remember.</p> <p>10:25:42 20 Today, I don't believe I do. But if I see the document with</p> <p>10:25:47 21 Bugbear I can tell you what it was.</p> <p>10:25:48 22 Q. I am going to get to that maybe in a little bit.</p> <p>10:25:51 23 Right now I just want to know, was Bugbear a virus? It was</p> <p>10:25:54 24 something that attacked computers. Right?</p> <p>10:25:56 25 A. I am sorry. I don't know how to classify it today. I</p>	<p style="text-align: right;">550</p> <p>10:27:22 1 will have a hard time to do that.</p> <p>10:27:23 2 THE COURT: I don't think that's what's being</p> <p>10:27:25 3 asked. This is your patent. He is not asking you for your</p> <p>10:27:30 4 opinion as a lawyer. Understandably, there is a lot of</p> <p>10:27:35 5 lawyer language in here. But there is also the language of</p> <p>10:27:39 6 one skilled in the art, one who is an inventor, language of</p> <p>10:27:42 7 that type, language that one might expect an inventor such</p> <p>10:27:47 8 as yourself to be able to discuss.</p> <p>10:27:50 9 That is what he is asking. He is not asking you</p> <p>10:27:53 10 for a legal opinion.</p> <p>10:27:54 11 THE WITNESS: The technical aspects.</p> <p>10:27:56 12 THE COURT: Technical and --</p> <p>10:27:58 13 THE WITNESS: Technical aspects, okay.</p> <p>10:28:01 14 THE COURT: Do you wish to have your question</p> <p>10:28:03 15 read back?</p> <p>10:28:04 16 MR. ALLCOCK: I will try again.</p> <p>10:28:06 17 THE WITNESS: Thank you, Your Honor.</p> <p>10:28:07 18 BY MR. ALLCOCK:</p> <p>10:28:08 19 Q. So the patent here talks about protecting a computer</p> <p>10:28:14 20 from suspicious downloadables. That would be viruses,</p> <p>10:28:19 21 malware, and the like. Is that right?</p> <p>10:28:22 22 A. Yes.</p> <p>10:28:22 23 Q. And back then, there was something called polymorphic</p> <p>10:28:27 24 viruses. Do you remember that?</p> <p>10:28:28 25 A. Sure.</p>
<p style="text-align: right;">549</p> <p>10:25:59 1 don't know how it was classified. It may be a worm, it may</p> <p>10:26:04 2 be so many different flavors. I don't remember which one it</p> <p>10:26:06 3 was.</p> <p>10:26:06 4 Q. Whatever flavor it was, it was a bad thing. Right?</p> <p>10:26:10 5 A. I don't remember. It may be just, some of the early</p> <p>10:26:14 6 attacks, they were just, going through all the books and</p> <p>10:26:18 7 just -- I don't remember, there was one thing, "I love you."</p> <p>10:26:21 8 So you would get an e-mail message saying "I love you." I</p> <p>10:26:25 9 don't remember which one it was. It didn't necessarily need</p> <p>10:26:28 10 to be malicious.</p> <p>10:26:28 11 Q. So what you are saying now is Bugbear wasn't</p> <p>10:26:31 12 necessarily a virus or anything that hurt impurities, it</p> <p>10:26:34 13 could have been a good thing?</p> <p>10:26:35 14 A. I don't remember.</p> <p>10:26:36 15 Q. Very well. So the patent is talking about suspicious</p> <p>10:26:44 16 operations and detecting suspicious operations. Is that</p> <p>10:26:51 17 right?</p> <p>10:26:51 18 A. In what it says on this document?</p> <p>10:26:57 19 Q. Well, Mr. Touboul, are you saying you have no</p> <p>10:27:01 20 understanding of what you invented?</p> <p>10:27:06 21 A. I think I am, in the product, in the technology,</p> <p>10:27:09 22 definitely, you know, you can wake me in the middle of the</p> <p>10:27:13 23 night, I can tell you what the product is doing and how it</p> <p>10:27:16 24 acts and interacts. If you want me to interrupt the patent</p> <p>10:27:19 25 itself or tell you what it says in the patent language, I</p>	<p style="text-align: right;">551</p> <p>10:28:29 1 Q. Those were suspicious. Right?</p> <p>10:28:32 2 A. They were malicious.</p> <p>10:28:33 3 Q. Malicious and suspicious?</p> <p>10:28:35 4 A. Well, polymorphic is not exactly downloadable. If I</p> <p>10:28:41 5 recall well, the term polymorphic back in the early</p> <p>10:28:44 6 nineties, it was the ability of the virus that you already</p> <p>10:28:47 7 had the signature in your database to have kind of an</p> <p>10:28:51 8 encryption code if you want ahead of that that will scramble</p> <p>10:28:55 9 and encrypt the code of the virus in a way that you would</p> <p>10:29:01 10 have the same malicious act, not suspicious, malicious act</p> <p>10:29:05 11 of the virus. But with the signature-based it scrambles the</p> <p>10:29:09 12 signature. You can't find the signature anymore.</p> <p>10:29:10 13 Q. I see. It was disguised?</p> <p>10:29:13 14 A. I am sorry?</p> <p>10:29:14 15 Q. It was disguised?</p> <p>10:29:15 16 A. Disguised?</p> <p>10:29:16 17 Q. The signature was disguised?</p> <p>10:29:18 18 A. Yes.</p> <p>10:29:18 19 Q. Scrambled?</p> <p>10:29:19 20 A. Yes.</p> <p>10:29:19 21 Q. Made unknown?</p> <p>10:29:22 22 A. For the signature, not for the behavioral.</p> <p>10:29:26 23 Q. Very well.</p> <p>10:29:26 24 Let's look at Column 2 of the patent. See where</p> <p>10:29:34 25 it says Summary of the Invention?</p>

<p style="text-align: right;">552</p> <p>10:29:56 1 A. Yes.</p> <p>10:29:57 2 Q. Where it talks about the present invention provides a</p> <p>10:29:59 3 system for protecting a system from suspicious</p> <p>10:30:04 4 downloadables. Do you see that?</p> <p>10:30:05 5 A. Yes.</p> <p>10:30:06 6 Q. The patent doesn't talk about behavior based, does it?</p> <p>10:30:14 7 A. I don't remember you have the term behavior based in</p> <p>10:30:17 8 the patent.</p> <p>10:30:18 9 Q. Nowhere?</p> <p>10:30:19 10 A. I don't remember that. If you ask me from the top of</p> <p>10:30:21 11 my head, I would guess it's not. It's a marketing term.</p> <p>10:30:25 12 But I need to check if you want me to give you a definite</p> <p>10:30:28 13 answer.</p> <p>10:30:28 14 Q. You said it's a marketing term. You mean that it's</p> <p>10:30:33 15 not a precise technical term?</p> <p>10:30:36 16 A. Not necessarily. It's not the patent language.</p> <p>10:30:38 17 That's what I referred to.</p> <p>10:30:39 18 Q. And the term behavior based is not a precise technical</p> <p>10:30:46 19 term in your opinion?</p> <p>10:30:50 20 A. It depends. It depends on which context you put me.</p> <p>10:30:54 21 Tell me the context; I will tell you if it is technical or</p> <p>10:30:57 22 not.</p> <p>10:30:57 23 Q. When it's written as describing a product, in your</p> <p>10:31:05 24 view, it's not a precise technical term?</p> <p>10:31:10 25 A. When it's describing a document on a brochure or on</p>	<p style="text-align: right;">554</p> <p>10:32:58 1 A. Yes.</p> <p>10:32:59 2 Q. That's a Finjan white paper. You mentioned white</p> <p>10:33:05 3 papers a couple of moments ago?</p> <p>10:33:07 4 A. Yes. I want to address your attention, if you will</p> <p>10:33:10 5 allow me, when you see this logo, and the dates, I was not</p> <p>10:33:15 6 in the company at that time. So I never have seen this</p> <p>10:33:18 7 document before.</p> <p>10:33:18 8 Q. You never saw this document before?</p> <p>10:33:20 9 A. I don't think so.</p> <p>10:33:20 10 Q. Let me ask you one question about something in it, and</p> <p>10:33:23 11 if you know something about it, great, if not, we will move</p> <p>10:33:27 12 on.</p> <p>10:33:28 13 A. Okay.</p> <p>10:33:28 14 Q. Could you look at 34662, the bottom paragraph of the</p> <p>10:33:36 15 top three?</p> <p>10:33:37 16 A. Which paragraph, please?</p> <p>10:33:38 17 Q. It's 3662, I will put it up here. Bugbear?</p> <p>10:33:44 18 A. Yes.</p> <p>10:33:44 19 Q. This talks about Bugbear being a polymorphic virus</p> <p>10:33:52 20 because it changes its shape with each infection.</p> <p>10:33:56 21 Do you see that?</p> <p>10:33:57 22 A. I see that it says Bugbear, one of the more complex</p> <p>10:34:01 23 worms that appeared in September 2002, at the beginning of</p> <p>10:34:06 24 the paragraph.</p> <p>10:34:06 25 Q. Right. Then at the end it says that it changes its</p>
<p style="text-align: right;">553</p> <p>10:31:13 1 the white papers, for example, can you distinguish the two,</p> <p>10:31:17 2 please?</p> <p>10:31:18 3 Q. I am just asking you questions.</p> <p>10:31:20 4 A. If it is in a brochure, I wouldn't consider that, as a</p> <p>10:31:23 5 computer engineer, as a technical document, no.</p> <p>10:31:25 6 Q. And so we have now looked at a couple of your press</p> <p>10:31:30 7 releases in 1996, and your patent in 1996, and nowhere does</p> <p>10:31:38 8 it talk about behavior based. Can you agree with me on</p> <p>10:31:42 9 that?</p> <p>10:31:43 10 A. In the patent?</p> <p>10:31:43 11 Q. Or in the two brochures we just looked at, from</p> <p>10:31:46 12 November of 1996 and June of 1996?</p> <p>10:31:48 13 A. If you tell me it's not there, I trust you.</p> <p>10:31:51 14 Q. Later on, Finjan started using the terms behavior</p> <p>10:32:00 15 based in their marketing materials, didn't they?</p> <p>10:32:03 16 A. That's possible.</p> <p>10:32:03 17 Q. But in November of 1996, it wasn't a term that you</p> <p>10:32:11 18 used in either the marketing materials or in the patent?</p> <p>10:32:14 19 A. No, I didn't say that. I said I trust that those two</p> <p>10:32:18 20 specific documents, it wasn't there. And you tell me it's</p> <p>10:32:22 21 not there, and I didn't check, and I trust you. If it had</p> <p>10:32:26 22 been in a marketing document that had it or didn't have it,</p> <p>10:32:29 23 I don't remember.</p> <p>10:32:30 24 Q. You mentioned a white paper. Could you look at</p> <p>10:32:51 25 JTX-89. It's in your cross binder.</p>	<p style="text-align: right;">555</p> <p>10:34:11 1 shape with each infection. And it calls that polymorphic.</p> <p>10:34:16 2 Do you see that?</p> <p>10:34:17 3 A. Yes. It has those parentheses around polymorphic. By</p> <p>10:34:22 4 the way, polymorphic today still exists. They call it</p> <p>10:34:25 5 packers, they call it zippers. There are so many names to</p> <p>10:34:29 6 the situation where a code, by the way, can be not</p> <p>10:34:34 7 necessarily a virus. Even a good code will try to change</p> <p>10:34:37 8 itself to avoid reverse engineering, for example.</p> <p>10:34:39 9 Q. Right. So the key about the polymorphic concept is</p> <p>10:34:45 10 that it changes its shape with each infection. Right?</p> <p>10:34:50 11 A. Not necessarily each infection. But its presentation.</p> <p>10:34:56 12 Q. The reason that a virus would want to be polymorphic</p> <p>10:34:59 13 would be to change its shape with each infection to disguise</p> <p>10:35:05 14 itself. Is that right?</p> <p>10:35:06 15 A. I wouldn't put it like that. I would put, it would</p> <p>10:35:08 16 try to hide its signature by scrambling its code.</p> <p>10:35:13 17 Q. Disguise itself?</p> <p>10:35:15 18 A. Yes. I am sorry, this word. I am not sure. Can you</p> <p>10:35:19 19 say that again?</p> <p>10:35:19 20 Q. Disguise?</p> <p>10:35:20 21 A. Disguise meaning? I am sorry. It is my English</p> <p>10:35:25 22 limit.</p> <p>10:35:25 23 Q. Could we have from the tutorial yesterday --</p> <p>10:35:30 24 A. Yes, it was mentioned then, too.</p> <p>10:35:33 25 Q. Slide 29.</p>

<p style="text-align: right;">556</p> <p>10:35:53 1 A. Is that with him being somebody else with the hat?</p> <p>10:35:58 2 Q. Right.</p> <p>10:35:58 3 A. I can guess what it is.</p> <p>10:35:59 4 Q. I put it on the screen for you, JTX-29. So the --</p> <p>10:36:06 5 this is obviously not a computer virus. But the analogy was</p> <p>10:36:10 6 made that it changes its shape by disguising itself?</p> <p>10:36:14 7 A. Halloween style.</p> <p>10:36:15 8 Q. Right.</p> <p>10:36:16 9 A. Gotcha. Thank you.</p> <p>10:36:18 10 Q. So that's one thing a polymorphic virus does, it</p> <p>10:36:22 11 changes its shape to disguise itself?</p> <p>10:36:24 12 A. Yeah. Well, again, I can't identify with the term</p> <p>10:36:29 13 change its shape. I can definitely identify with changing</p> <p>10:36:36 14 the sequence of bytes so it won't be recognized, the</p> <p>10:36:40 15 signature.</p> <p>10:36:40 16 Q. Very well. That is a suspicious activity, isn't it?</p> <p>10:36:43 17 A. Well, if you say so, because everything, then</p> <p>10:36:48 18 everything is suspicious, because if I go to Halloween</p> <p>10:36:58 19 dressed like a lady, am I suspicious because I dress like a</p> <p>10:37:01 20 lady? I would answer that: Not necessarily. It depends.</p> <p>10:37:06 21 Q. Right, not necessarily. Sometimes disguising yourself</p> <p>10:37:10 22 means suspicious, sometimes not. Right?</p> <p>10:37:13 23 A. Sure.</p> <p>10:37:13 24 Q. Very well. Okay. So different topic now.</p> <p>10:37:18 25 You came back to the company, and I apologize, I</p>	<p style="text-align: right;">558</p> <p>10:38:59 1 it.</p> <p>10:38:59 2 Q. But you did approach my client and ultimately come to</p> <p>10:39:03 3 an agreement with them that became a partnership that lasted</p> <p>10:39:08 4 quite a number of years. Right?</p> <p>10:39:10 5 A. That's true. You know, if you allow me, if I remember</p> <p>10:39:13 6 well, and I am not sure about it, but I think, you mentioned</p> <p>10:39:18 7 yesterday the Sweep and InterScan or something like that?</p> <p>10:39:25 8 If I recall well, we licensed you SDK for the gateway, which</p> <p>10:39:31 9 is something different, by the way. We licensed that into</p> <p>10:39:34 10 our SurfinGate product and we stayed partners for a couple</p> <p>10:39:38 11 of years.</p> <p>10:39:38 12 Q. We will get into those details maybe in a minute.</p> <p>10:39:40 13 Let's look at DJX-359. That is in your book.</p> <p>10:39:48 14 It is an OEM agreement.</p> <p>10:39:56 15 A. Yes.</p> <p>10:39:57 16 Q. If you look at Page 4942, I think you will find your</p> <p>10:40:13 17 signature?</p> <p>10:40:18 18 A. Yes.</p> <p>10:40:20 19 MR. ALLCOCK: Offer DJX-359 in evidence, Your</p> <p>10:40:24 20 Honor.</p> <p>10:40:24 21 THE COURT: It's already in, Mr. Allcock.</p> <p>10:40:27 22 MR. ALLCOCK: That's right. Sorry.</p> <p>10:40:29 23 BY MR. ALLCOCK:</p> <p>10:40:29 24 Q. So could we go to the first page, which is 4931, and</p> <p>10:40:38 25 the top quadrant down to Whereas, D.</p>
<p style="text-align: right;">557</p> <p>10:37:29 1 am not getting these dates too straight in my mind, in 2001.</p> <p>10:37:34 2 Is that right?</p> <p>10:37:34 3 A. Yes.</p> <p>10:37:34 4 Q. And I thought you said on direct that one of the</p> <p>10:37:37 5 reasons you came back was there were some problems at the</p> <p>10:37:41 6 company?</p> <p>10:37:41 7 A. Yes.</p> <p>10:37:42 8 Q. And were part of those problems financial problems?</p> <p>10:37:48 9 A. Yeah, sure.</p> <p>10:37:49 10 Q. And so, then, after you came back to the company, you</p> <p>10:37:58 11 approached my client Sophos to use their product bundled</p> <p>10:38:07 12 with your products. Is that right?</p> <p>10:38:10 13 A. I don't remember exactly the order. But I think I</p> <p>10:38:13 14 first talked to McAfee and we first licensed McAfee. For</p> <p>10:38:17 15 like a year or two years, it was only McAfee. And then we</p> <p>10:38:20 16 started to bring more and more antiviruses and probably your</p> <p>10:38:23 17 customers -- sorry, your customer was also one of them.</p> <p>10:38:26 18 Q. Right. So, then, you did approach my client, Sophos,</p> <p>10:38:33 19 to use their product to bundle with the product that Finjan</p> <p>10:38:38 20 had. Is that right?</p> <p>10:38:39 21 A. Yes.</p> <p>10:38:39 22 Q. And one of the reasons you did that is you knew that</p> <p>10:38:46 23 Sophos had a world leading antivirus engine?</p> <p>10:38:54 24 A. No. I am not saying they don't have it. Don't</p> <p>10:38:56 25 misunderstand me. I am saying that's not the reason I did</p>	<p style="text-align: right;">559</p> <p>10:40:47 1 So this is the beginning part of the agreement</p> <p>10:40:52 2 between Finjan and Sophos. That's in the very first part of</p> <p>10:41:01 3 the agreement. Do you see that?</p> <p>10:41:03 4 A. Yes.</p> <p>10:41:04 5 Q. And it's called an OEM agreement. And for this</p> <p>10:41:14 6 agreement, Finjan was the OEM. Is that right?</p> <p>10:41:18 7 A. Yes. The original equipment manufacturer.</p> <p>10:41:21 8 Q. Right. And Sophos was to provide you their antivirus</p> <p>10:41:28 9 scanning software?</p> <p>10:41:29 10 A. Absolutely.</p> <p>10:41:30 11 Q. And you at the time were selling the products, or at</p> <p>10:41:38 12 least some products that we mentioned earlier?</p> <p>10:41:40 13 A. Yes. If you allow me, I did see by my signature the</p> <p>10:41:45 14 date is 2003.</p> <p>10:41:46 15 Q. That's correct.</p> <p>10:41:47 16 A. In 2003, that probably would have been the third or</p> <p>10:41:50 17 maybe more than the third antivirus we had. We had this</p> <p>10:41:55 18 one, that's true.</p> <p>10:41:56 19 Q. Now, let's go down to 1.2. This talks about a bundled</p> <p>10:42:07 20 unit. Do you see that?</p> <p>10:42:09 21 A. Yes, I do.</p> <p>10:42:10 22 Q. And so the purpose of this agreement was so that you</p> <p>10:42:15 23 could bundle the Sophos antivirus engine with your product</p> <p>10:42:23 24 to sell to customers. Is that right?</p> <p>10:42:27 25 A. Yes.</p>

<p style="text-align: right;">560</p> <p>10:42:28 1 Q. So then the products that Sophos was selling to you</p> <p>10:42:52 2 was software that they were licensing to you as well. Is</p> <p>10:42:58 3 that right?</p> <p>10:42:59 4 A. Licensing to us as user or as vendor?</p> <p>10:43:01 5 Q. Yes.</p> <p>10:43:02 6 A. Yes.</p> <p>10:43:03 7 Q. So they were providing you this antivirus engine and</p> <p>10:43:09 8 in a license so that you could then bundle it and sell it?</p> <p>10:43:12 9 A. True.</p> <p>10:43:13 10 Q. So the license programs are identified in Exhibit A,</p> <p>10:43:17 11 which is Page 4943. Let's take a look at that, and look at</p> <p>10:43:23 12 1, 2 and 3.</p> <p>10:43:24 13 So they were licensing you the software -- the</p> <p>10:43:36 14 Sophos antivirus engine. Correct?</p> <p>10:43:40 15 A. Yes.</p> <p>10:43:40 16 Q. And you were putting that into your OEM product that's</p> <p>10:43:45 17 listed next as 2. Right?</p> <p>10:43:48 18 A. Right.</p> <p>10:43:48 19 Q. And the product at that time was marketed as Vital</p> <p>10:43:53 20 Security for clients. Do you see that?</p> <p>10:43:55 21 A. Yes.</p> <p>10:43:55 22 Q. We are going to come back to that in a minute or two.</p> <p>10:44:01 23 And then below, there is a fee schedule, if we</p> <p>10:44:09 24 can scroll down. Do you see that, fee schedule?</p> <p>10:44:14 25 A. Yes.</p>	<p style="text-align: right;">562</p> <p>10:46:01 1 you were going to be able to use the Sophos antivirus engine</p> <p>10:46:05 2 with?</p> <p>10:46:06 3 A. True.</p> <p>10:46:06 4 Q. For example, on Page 4950, it was expanded to a</p> <p>10:46:13 5 product that you added, the InternetBox. Do you see that?</p> <p>10:46:22 6 A. Yes, the 1Box, yes.</p> <p>10:46:25 7 Q. Then there was another amendment in April of 2007,</p> <p>10:46:30 8 which is, for the record, 4952, that expands it to the</p> <p>10:46:36 9 Secure Browsing product that you all had.</p> <p>10:46:39 10 A. Okay. At that time, Secure Browsing, I wasn't there.</p> <p>10:46:42 11 On the 1Box I was there. If I remember, the 1Box was never</p> <p>10:46:47 12 released. Maybe the entire appendix is beyond my time. Can</p> <p>10:46:52 13 you tell me what the date is on that appendix? Because I</p> <p>10:47:04 14 wasn't there when Secure Browsing was released.</p> <p>10:47:06 15 Q. I think it's on the bottom?</p> <p>10:47:08 16 A. 2005, March --</p> <p>10:47:10 17 Q. No, April of 2007, I believe?</p> <p>10:47:12 18 A. I wasn't with the company.</p> <p>10:47:14 19 Q. Very well. In any event, the relationship continued</p> <p>10:47:18 20 over a period of years?</p> <p>10:47:21 21 A. I think so, yes.</p> <p>10:47:22 22 Q. And one of the reasons that you selected Sophos as one</p> <p>10:48:17 23 of the antivirus engines to provide was because of their</p> <p>10:48:21 24 market leadership?</p> <p>10:48:24 25 A. Well, if I remember well, we selected antiviruses that</p>
<p style="text-align: right;">561</p> <p>10:44:14 1 Q. So the concept here was, you were going to pay Sophos</p> <p>10:44:21 2 to buy and license their antivirus engine, put that with</p> <p>10:44:26 3 your product, and then sell it to customers?</p> <p>10:44:30 4 A. True.</p> <p>10:44:31 5 Q. And you were going to pay Sophos according to this</p> <p>10:44:37 6 schedule?</p> <p>10:44:40 7 A. Yes. If I look here, probably we were in the</p> <p>10:44:42 8 neighborhood of cents per license.</p> <p>10:44:45 9 Q. Right. And so this is a concept of "seats." I am</p> <p>10:44:53 10 sure you know what that means?</p> <p>10:44:55 11 A. Yes, I do.</p> <p>10:44:56 12 Q. So what does that mean, seats means what?</p> <p>10:44:59 13 A. So this is the gateway product of Finjan. We changed</p> <p>10:45:03 14 the name from SurfinGate to Vital Security sometime. And we</p> <p>10:45:08 15 would license that to customers, which is corporate</p> <p>10:45:11 16 customers. Based on the number of clients, desktops that</p> <p>10:45:15 17 are connected to our gateway, so we probably would charge</p> <p>10:45:19 18 per seat something like \$40, \$35, I don't remember exactly.</p> <p>10:45:24 19 And from those \$30, \$40 we would probably pay Sophos about</p> <p>10:45:29 20 60, 70 cents for what we bundled with our system.</p> <p>10:45:36 21 Q. Very well. That is what you did for a number of</p> <p>10:45:39 22 years. Is that right?</p> <p>10:45:39 23 A. Yes, I think it was extended even after I left Finjan.</p> <p>10:45:42 24 Q. Right. If you look later on in Exhibit 359, there is</p> <p>10:45:53 25 a couple of amendments thereto that expand the products that</p>	<p style="text-align: right;">563</p> <p>10:48:32 1 customers would require because we wanted to sell them the</p> <p>10:48:38 2 product behavior analysis into their budget, so it needs to</p> <p>10:48:42 3 be an antivirus that they buy. That is one of the reasons.</p> <p>10:48:45 4 And I think antivirus software was good. That is my</p> <p>10:48:48 5 personal opinion.</p> <p>10:48:50 6 Q. Let's look at a couple of the documents that you used</p> <p>10:48:53 7 to promote your product in this time period. Let's look at</p> <p>10:49:00 8 DVX-153. And we can hone in on the top.</p> <p>10:49:13 9 We just saw in the agreement that the Vital</p> <p>10:49:17 10 Security product was the product that Finjan had. Do you</p> <p>10:49:20 11 see that?</p> <p>10:49:21 12 A. Yes.</p> <p>10:49:22 13 Q. And this is a brochure selling that, marketing that?</p> <p>10:49:26 14 A. Right.</p> <p>10:49:27 15 Q. And if we look on the back -- on the second page of</p> <p>10:49:30 16 the document, it talks about World Class Products, and go</p> <p>10:49:38 17 down a little, one more. There we go. Down more. This</p> <p>10:49:47 18 talks about World Class Partner Products. Do you see that?</p> <p>10:49:53 19 A. Yes.</p> <p>10:49:53 20 Q. And one of the world class partner products you were</p> <p>10:49:57 21 promoting was the Sophos antivirus product?</p> <p>10:50:02 22 A. Yes. I definitely agree with that. If you read, it</p> <p>10:50:06 23 says below, blocks known viruses based on their signatures.</p> <p>10:50:10 24 I think Sophos and McAfee have been among the best</p> <p>10:50:14 25 signature-based antiviruses, that's definitely true.</p>

<p style="text-align: right;">564</p> <p>10:50:20 1 Q. Actually, over the years, the vast majority of the</p> <p>10:50:24 2 sales of the Finjan product were bundled, combined, with one</p> <p>10:50:31 3 or another of those antivirus products, weren't they?</p> <p>10:50:36 4 A. I don't remember the statistics. But I think that was</p> <p>10:50:38 5 a lot of our sales, it was combined product to get into the</p> <p>10:50:41 6 budget. But I don't remember exactly the distribution of</p> <p>10:50:45 7 the sales.</p> <p>10:50:45 8 Q. Right. But it was the vast majority of them, wasn't</p> <p>10:50:50 9 it?</p> <p>10:50:51 10 A. I don't know. You need to get reports and see that.</p> <p>10:50:54 11 I don't remember.</p> <p>10:50:55 12 Q. But certainly a goodly number of your sales were made</p> <p>10:51:02 13 with an antivirus engine either of Sophos or McAfee. Is</p> <p>10:51:06 14 that right?</p> <p>10:51:06 15 A. I would guess, yeah. A way to get to customers many</p> <p>10:51:09 16 times was on the budget of that selection, that would be</p> <p>10:51:13 17 correct, what you are saying.</p> <p>10:51:14 18 Q. Right. Because the customers wanted a more</p> <p>10:51:16 19 comprehensive platform than merely the Finjan product</p> <p>10:51:21 20 offering. Is that right?</p> <p>10:51:22 21 A. No. The contrary. I mean, they could -- they didn't</p> <p>10:51:25 22 need Finjan to buy Sophos. Your marketing budget was maybe</p> <p>10:51:30 23 a thousand times bigger than ours. Your market reach was by</p> <p>10:51:34 24 far larger than us. They didn't need Finjan. If a customer</p> <p>10:51:37 25 wanted to buy Sophos, they would go to Sophos. If the</p>	<p style="text-align: right;">566</p> <p>10:53:12 1 URL filtering, it would be in URL filtering.</p> <p>10:53:14 2 Q. I see. So here in the company profile, this is a</p> <p>10:53:19 3 document that was created to provide to people to explain to</p> <p>10:53:24 4 them what the company was all about?</p> <p>10:53:26 5 A. Yeah.</p> <p>10:53:26 6 Q. I see.</p> <p>10:53:28 7 A. That's the first statement.</p> <p>10:53:29 8 Q. So you chose to include in this profile of your</p> <p>10:53:33 9 company this information?</p> <p>10:53:37 10 A. Yeah. You know, think about the small ant, you know,</p> <p>10:53:41 11 walking alongside with the giant elephants, and he is proud</p> <p>10:53:44 12 of being part of the party. Yes, definitely.</p> <p>10:53:47 13 Q. So did you -- were you one of a contingent of folks</p> <p>10:53:52 14 that visited Sophos Labs while you were working with them?</p> <p>10:54:00 15 A. I don't think so. Do you remember which year was it?</p> <p>10:54:03 16 Q. I don't remember.</p> <p>10:54:04 17 A. I don't remember I visited Sophos.</p> <p>10:54:06 18 Q. You don't remember going to visit there?</p> <p>10:54:08 19 A. No.</p> <p>10:54:08 20 Q. Do you remember people from your team going to visit?</p> <p>10:54:12 21 A. I mean, I guess, with the OEM contract, you probably</p> <p>10:54:16 22 had meetings.</p> <p>10:54:17 23 Q. Now, you mentioned that you came back to work at</p> <p>10:54:44 24 Sophos, I asked you, relatively recently?</p> <p>10:54:48 25 A. At Finjan.</p>
<p style="text-align: right;">565</p> <p>10:51:42 1 customer goes to Finjan, they want a proactive system. To</p> <p>10:51:46 2 buy Sophos, they can go to you guys.</p> <p>10:51:50 3 Q. In your view, the only reason you reached out to</p> <p>10:51:52 4 Sophos to include this was so that you could get it included</p> <p>10:51:55 5 in the marketing budgets of corporations. Have I got you</p> <p>10:51:59 6 right on that?</p> <p>10:52:00 7 A. Yeah. We were struggling. We were struggling to get</p> <p>10:52:04 8 to the market. That was a way that we identified and it was</p> <p>10:52:07 9 good, actually.</p> <p>10:52:08 10 Q. So let's look at JTX-7. That talks about the company</p> <p>10:52:22 11 profile. Do you see that?</p> <p>10:52:23 12 A. Yes.</p> <p>10:52:24 13 Q. And if you look at the second page, third page of</p> <p>10:52:29 14 that, on the upper right-hand corner, it talks about</p> <p>10:52:36 15 technology partnerships providing customers with enhanced</p> <p>10:52:40 16 Best-of-Breed web security. Do you see that?</p> <p>10:52:44 17 A. Yes.</p> <p>10:52:47 18 Q. And it lists Sophos in there?</p> <p>10:52:50 19 A. Sure.</p> <p>10:52:50 20 Q. What does Best of Breed mean?</p> <p>10:52:53 21 A. Well, Best of Breed, that if you take -- if you take a</p> <p>10:52:56 22 solution of a certain domain, for example, the signature AV,</p> <p>10:53:00 23 and you choose best in that domain, that would be best in</p> <p>10:53:04 24 breed in signature-based AV. If you take an interactive</p> <p>10:53:09 25 protocol, it would be the interactive protocol. If you need</p>	<p style="text-align: right;">567</p> <p>10:54:49 1 Q. At Finjan, sorry. Relatively recently. Right?</p> <p>10:54:52 2 A. Yes.</p> <p>10:54:53 3 Q. If you look at DJX-271, I believe that's your</p> <p>10:54:59 4 consulting agreement?</p> <p>10:55:07 5 A. Do I have it here?</p> <p>10:55:08 6 Q. It should be DJX-271.</p> <p>10:55:12 7 A. Right.</p> <p>10:55:12 8 Q. Is that your signature on that agreement?</p> <p>10:55:15 9 A. Yes, from January 1st, 2012. Yes.</p> <p>10:55:19 10 Q. Okay. So if we look at 3.1, it talks about the</p> <p>10:55:29 11 consulting fees?</p> <p>10:55:30 12 A. Sure.</p> <p>10:55:30 13 Q. So can we zoom in on 3.1. And so you were recently --</p> <p>10:55:44 14 were you only engaged as a consultant in or about February</p> <p>10:55:48 15 of 2012?</p> <p>10:55:51 16 A. January, it says January here. January 1st.</p> <p>10:55:53 17 Q. So there was an up-front payment for that?</p> <p>10:55:56 18 A. Yes.</p> <p>10:55:56 19 Q. And then you are paid a gross amount of \$10,000 a</p> <p>10:56:01 20 month. Is that right?</p> <p>10:56:02 21 A. Sure.</p> <p>10:56:02 22 Q. And then I notice on the other side, 4.1, you also</p> <p>10:56:10 23 have, you are granted some options to purchase stock in the</p> <p>10:56:15 24 company. Is that right?</p> <p>10:56:16 25 A. True.</p>

<p style="text-align: right;">568</p> <p>10:56:16 1 Q. Have you exercised any of those?</p> <p>10:56:19 2 A. No.</p> <p>10:56:19 3 Q. And then Schedule A, Annex A talks about services you</p> <p>10:56:27 4 render to the company. Do you see that?</p> <p>10:56:33 5 A. Yes.</p> <p>10:56:33 6 Q. So that's the services to be rendered for this. Is</p> <p>10:56:38 7 that right?</p> <p>10:56:39 8 A. For the company, yes.</p> <p>10:56:39 9 Q. Who did you negotiate this agreement with?</p> <p>10:56:46 10 A. Daniel Chinn, the CEO.</p> <p>10:56:47 11 Q. Daniel Chinn. He is a lawyer, isn't he?</p> <p>10:56:50 12 A. In education? I think he is a great businessman. If</p> <p>10:56:53 13 you refer to his education, so he is a lawyer.</p> <p>10:56:55 14 Q. Doesn't he work as a lawyer now?</p> <p>10:56:57 15 A. I don't know.</p> <p>10:56:58 16 Q. You don't know.</p> <p>10:56:58 17 What do you do now generally?</p> <p>10:57:00 18 A. Well, I am helping, you know, the IP, intellectual</p> <p>10:57:03 19 property of the company. There are many, many patents in</p> <p>10:57:06 20 Finjan. Many of them I submitted. I help with the patents</p> <p>10:57:12 21 and all the patent followup. I probably have the earlier</p> <p>10:57:15 22 experience in that. My mission is to help the company to</p> <p>10:57:18 23 cultivate that intellectual property.</p> <p>10:57:20 24 Q. You don't have -- they are not making any new</p> <p>10:57:24 25 products, are they?</p>	<p style="text-align: right;">570</p> <p>11:20:56 1 started.</p> <p>11:20:57 2 THE COURT: Okay.</p> <p>11:20:58 3 MR. NELSON: I don't think it will be an issue,</p> <p>11:20:59 4 but it's something I would just like to to address.</p> <p>11:21:17 5 (The following discussion was held at sidebar:</p> <p>11:21:17 6 MR. NELSON: I don't think we have an issue at</p> <p>11:21:18 7 all, but I just want to clarify.</p> <p>11:21:21 8 We know it is a secure computing case. There is</p> <p>11:21:24 9 no reference to a secure computing case. We had agreed at</p> <p>11:21:27 10 Mr. Touboul's deposition that the prior deposition, we</p> <p>11:21:31 11 wouldn't have to go through and ask all the same questions,</p> <p>11:21:36 12 we could use that in this case.</p> <p>11:21:38 13 THE COURT: Okay.</p> <p>11:21:39 14 MR. NELSON: So I don't -- I mean, it would only</p> <p>11:21:42 15 be for people, obviously, in case it came up, but there is</p> <p>11:21:46 16 potentially some questions, the way I would intend to</p> <p>11:21:49 17 introduce it, it's just: You were the deposed concerning</p> <p>11:21:52 18 the '194 patent in 2007?, and that's it.</p> <p>11:21:54 19 THE COURT: Yeah.</p> <p>11:21:56 20 MR. NELSON: But I don't want that to be opening</p> <p>11:21:58 21 the door to the secure computing case, any difficulty with</p> <p>11:22:01 22 that.</p> <p>11:22:02 23 MS. KOBIALKA: There may be some issues in terms</p> <p>11:22:03 24 of the opening statements that counsel had made that may</p> <p>11:22:06 25 have opened the door, frankly, specifically --</p>
<p style="text-align: right;">569</p> <p>10:57:26 1 A. Well, they have stocks in companies that still sell</p> <p>10:57:32 2 Finjan products. So indirectly they do it. But me</p> <p>10:57:37 3 personally, I am not responsible for products.</p> <p>10:57:39 4 Q. You are not working on product development?</p> <p>10:57:42 5 A. In Finjan, no.</p> <p>10:57:42 6 Q. You have another job as well, though. Right?</p> <p>10:57:46 7 A. A few of them.</p> <p>10:57:47 8 Q. A few of them?</p> <p>10:57:49 9 A. Right.</p> <p>10:57:49 10 Q. But as far as Finjan goes, the bulk of your time has</p> <p>10:57:54 11 been working to prepare for being a witness in this case.</p> <p>10:57:57 12 Right?</p> <p>10:57:58 13 A. Not at all. I don't work for them to be a witness. I</p> <p>10:58:02 14 work on the IP. I am not working on being a witness.</p> <p>10:58:05 15 MR. ALLCOCK: No further questions, Your Honor.</p> <p>10:58:07 16 THE COURT: We will take our morning break.</p> <p>10:58:12 17 (Jury leaves courtroom at 10:58 a.m.)</p> <p>10:58:14 18 (Recess taken.)</p> <p>11:19:47 19 THE COURT: All right, Ms. Walker. Bring our</p> <p>11:19:49 20 jury in, please.</p> <p>11:20:29 21 (Jury enter the courtroom at 11:20 a.m.)</p> <p>11:20:42 22 THE COURT: All right, members of the jury.</p> <p>11:20:47 23 Please continue.</p> <p>11:20:49 24 MR. NELSON: If I could just approach very</p> <p>11:20:52 25 briefly to clarify a motion in limine issue before I get</p>	<p style="text-align: right;">571</p> <p>11:22:09 1 THE COURT: We can discuss that later.</p> <p>11:22:11 2 MS. KOBIALKA: I have citations that I can</p> <p>11:22:15 3 provide.</p> <p>11:22:15 4 THE COURT: For purposes of Mr. Nelson's</p> <p>11:22:17 5 cross-examination, that's his question, I think.</p> <p>11:22:19 6 MR. ANDRE: Yeah.</p> <p>11:22:20 7 MR. NELSON: I am not sure what she is referring</p> <p>11:22:22 8 to.</p> <p>11:22:22 9 THE COURT: I am not going there, okay, counsel.</p> <p>11:22:24 10 You like to -- both sides do it. You interject issues</p> <p>11:22:28 11 that's not timely, and that's not timely right now.</p> <p>11:22:30 12 MR. NELSON: I understand.</p> <p>11:22:31 13 THE COURT: All right. We are okay.</p> <p>11:22:52 14 (End of sidebar discussion).</p> <p>11:22:54 15 THE COURT: It's still morning, Mr. Nelson.</p> <p>11:22:59 16 MR. NELSON: May I proceed, Your Honor.</p> <p>11:23:02 17 THE COURT: Yes.</p> <p>11:23:03 18 BY MR. NELSON:</p> <p>11:23:04 19 Q. Good morning, Mr. Touboul.</p> <p>11:23:05 20 A. Good morning.</p> <p>11:23:06 21 Q. My name is Dave Nelson. I represent Symantec in this</p> <p>11:23:10 22 case.</p> <p>11:23:11 23 A. Yes. And finally we see each other.</p> <p>11:23:13 24 Q. Yes. We have seen each other in the hall a few times.</p> <p>11:23:15 25 A. Right.</p>

<p style="text-align: right;">572</p> <p>11:23:16 1 Q. Can we put PTX-1, which I believe is the '194 patent, 11:23:20 2 up, the first one, please. 11:23:26 3 So you talked about this on direct, of, you are 11:23:28 4 a named inventor on this patent. Right? 11:23:31 5 A. Yes. 11:23:31 6 Q. And this patent describes the ideas, I think, that you 11:23:37 7 mentioned during your direct, that you came up with when you 11:23:40 8 formed Finjan. Correct? 11:23:41 9 A. Yes. 11:23:43 10 Q. So, now, let's look -- if we can blow up around Line 11:23:49 11 160, I just want to clarify one thing with you. It's the 11:23:54 12 related U.S. application, the original application. If you 11:23:58 13 can blow that up a little bit. 11:24:00 14 So you see there is this reference to 11:24:02 15 "Provisional Application No. 60/030,639," filed November 8, 11:24:11 16 1996? 11:24:12 17 A. Yes. 11:24:12 18 Q. So, was that provisional application, was it, at least 11:24:14 19 in your understanding, was that the first document that you 11:24:17 20 filed with the Patent Office? 11:24:19 21 A. Yeah. I think I submitted the provisional material to 11:24:22 22 the lawyer, and he submitted that to the provisional 11:24:25 23 application. 11:24:26 24 Q. Right. But at least to your understanding, that was 11:24:28 25 the first document that you filed with the Patent Office</p>	<p style="text-align: right;">574</p> <p>11:25:35 1 A. Right, the 2nd and 3rd of February. 11:25:40 2 Q. So, at the time of your deposition in February, you 11:25:43 3 didn't remember what problems you were trying to solve when 11:25:46 4 you developed the inventions claimed in the '162 patent, for 11:25:51 5 example. Right? 11:25:52 6 A. Maybe. I need to read it, but that may be. 11:25:55 7 Q. Well, why don't you look at the 2/3 version. 11:26:04 8 February 3rd, I should say. Look at Page 7, beginning at 11:26:08 9 Line 3. 11:26:09 10 A. Page 7? Page 7? 11:26:14 11 Q. Yeah, beginning at Line 3, and continuing through Line 11:26:17 12 20. 11:26:27 13 A. Yes. 11:26:28 14 Q. So, at the time of your deposition in February, it's 11:26:32 15 true that you didn't remember what problems you were trying 11:26:34 16 to solve when you developed the inventions claimed in the 11:26:38 17 '962 patent. Right? 11:26:39 18 A. Yes. 11:26:39 19 Q. And it's true also that at the time of your deposition 11:26:41 20 in February, you didn't remember the problems that you were 11:26:45 21 trying to solve with the inventions that were claimed in the 11:26:52 22 '194 patent. Correct? 11:26:52 23 A. Well, it was -- I was required to describe the 11:26:56 24 invention in the '194 patent, trying to solve. That's the 11:27:04 25 reason, yes, for that.</p>
<p style="text-align: right;">573</p> <p>11:24:31 1 that contained your ideas that you talked about at direct 11:24:34 2 that you came up with in your forming of Finjan. Right? 11:24:40 3 A. Yes. 11:24:44 4 Q. So, you talked on your direct testimony about the 11:24:46 5 problems that you were trying to solve when you came up with 11:24:46 6 these inventions that would be reflected in this provisional 11:24:50 7 application, for example. Right? 11:24:51 8 A. That would be reflected in the solution? 11:24:54 9 Q. Right. 11:24:55 10 A. Yes. 11:24:56 11 Q. Meaning, you talked about the problems that you were 11:24:57 12 trying to solve with what you think your inventions are. 11:25:00 13 Right? 11:25:01 14 A. Yes. 11:25:01 15 Q. Sir, you were deposed in this case for a couple of 11:25:07 16 days in February of this year. Right? 11:25:10 17 A. I think March, April. I don't recall. 11:25:14 18 Q. Well, you should have in front of you this binder, 11:25:20 19 "Prior testimony," and it will have -- you will see 2012, 11:25:27 20 2/2. 11:25:28 21 A. February? 11:25:30 22 Q. Right. 11:25:31 23 A. Okay. 11:25:31 24 Q. So you were deposed for a couple of days in February 11:25:34 25 in this case. Right?</p>	<p style="text-align: right;">575</p> <p>11:27:05 1 Q. Right. But you didn't remember what problems you were 11:27:07 2 trying to solve? 11:27:07 3 A. The patent was trying to solve. That's what it says 11:27:10 4 here. Right? 11:27:12 5 Q. Well, if that refreshes your recollection as to what 11:27:15 6 your memory was then, that's fine. 11:27:18 7 Is is that your memory of what you understood? 11:27:20 8 A. I think if I probably understand what I am saying, 11:27:23 9 that's what I am reading here. No? 11:27:26 10 Q. I believe so. 11:27:26 11 A. Yeah. 11:27:27 12 Q. Do you want me to show you the clip, just to be clear? 11:27:30 13 A. Yeah, so I know exactly which paragraph you speak. 11:27:33 14 Q. Let's do that. Can we show February 3rd? 11:27:36 15 MR. ANDRE: Your Honor, this is not for 11:27:38 16 impeachment purposes. He has the transcript. 11:27:42 17 THE COURT: I think it is for impeachment 11:27:44 18 purposes. He is trying to clear up the point upon which he 11:27:47 19 is trying to impeach the witness, so, at the very least, to 11:27:53 20 refresh his recollection. 11:27:55 21 "Question: Mr. Touboul, what problem were you 11:27:57 22 trying to solve when you developed the inventions claimed in 11:28:00 23 the '962 patent? 11:28:04 24 "THE INTERPRETER: What are the problems? 11:28:07 25 MR. ARMEN: Yes.</p>

<p style="text-align: right;">576</p> <p>11:28:09 1 "THE WITNESS: I can't describe which problems</p> <p>11:28:36 2 this -- the invention in the patent is meant to solve, but I</p> <p>11:28:41 3 think that the '962 describes very well the methodologies</p> <p>11:28:46 4 that are used in the invention of the patents.</p> <p>11:28:53 5 "Question: Are you able to describe the</p> <p>11:28:54 6 problems that the inventions in the '194 problems, are you</p> <p>11:28:58 7 able to solve them?</p> <p>11:29:00 8 "Answer: No. My recollections are the same</p> <p>11:29:14 9 also with regard to patent '194."</p> <p>10 BY MR. NELSON:</p> <p>11:29:22 11 Q. Now, during your direct testimony, you also talked for</p> <p>11:29:25 12 a while about when you conceived of the ideas that are</p> <p>11:29:28 13 reflected in the '194 and the '962 patent. Correct?</p> <p>11:29:33 14 A. I think so, yes.</p> <p>11:29:34 15 Q. But if we go back to the time in February of this</p> <p>11:29:37 16 year, with your deposition, isn't it the case that you don't</p> <p>11:29:42 17 remember when you first conceived of the ideas that were</p> <p>11:29:45 18 reflected in those patents?</p> <p>11:29:47 19 A. You know, so many things happened since February, I</p> <p>11:29:51 20 mean, first, I was deposed for two days with a bunch of</p> <p>11:29:56 21 maybe eight, nine lawyers who keep bringing me documents,</p> <p>11:30:00 22 and, you know, refreshing my memory all the time, so slowly,</p> <p>11:30:04 23 slowly, I was getting to remember, so I think that, yes,</p> <p>11:30:07 24 today I am more fresh in some of the issues than I was back</p> <p>11:30:10 25 in February. That's a good statement.</p>	<p style="text-align: right;">578</p> <p>11:31:06 1 2007?</p> <p>11:31:06 2 A. Correct.</p> <p>11:31:06 3 Q. Concerning the '194 patent?</p> <p>11:31:08 4 A. Correct.</p> <p>11:31:09 5 Q. I want to focus on, for this case, the one in</p> <p>11:31:12 6 February.</p> <p>11:31:13 7 A. Okay.</p> <p>11:31:13 8 Q. You were paid, pursuant to the consulting agreement,</p> <p>11:31:17 9 for the time you spent at that deposition. Correct?</p> <p>11:31:20 10 A. No.</p> <p>11:31:21 11 Q. You were paid \$100,000 up front under that consulting</p> <p>11:31:25 12 agreement?</p> <p>11:31:25 13 A. Yes.</p> <p>11:31:26 14 Q. And you were paid \$10,000 a month. Correct?</p> <p>11:31:28 15 A. True.</p> <p>11:31:29 16 Q. And you are also -- have the stock options that we</p> <p>11:31:33 17 saw. Correct?</p> <p>11:31:34 18 A. True. I have multi stock options, by the way, if you</p> <p>11:31:38 19 want to say. I also purchased, I have invested in the past.</p> <p>11:31:42 20 I have all stock options.</p> <p>11:31:44 21 Q. So, beyond that, I think it was almost 1.6 million</p> <p>11:31:47 22 that we saw you say you have additional stock options?</p> <p>11:31:49 23 A. I think, over the years at Finjan, I also put my money</p> <p>11:31:53 24 in the company, and I still have these stocks also.</p> <p>11:31:56 25 Q. And you don't know how much options that is as you sit</p>
<p style="text-align: right;">577</p> <p>11:30:12 1 Q. So before that February deposition, you had signed a</p> <p>11:30:16 2 consulting agreement that we were referring to with Finjan.</p> <p>11:30:21 3 Right?</p> <p>11:30:21 4 A. Yeah, true.</p> <p>11:30:22 5 Q. And part of what you got was an up front payment of</p> <p>11:30:25 6 \$100,000. Right?</p> <p>11:30:26 7 A. True.</p> <p>11:30:27 8 Q. And part of what you were supposed to do under that</p> <p>11:30:29 9 consulting agreement was provide IP consulting to the</p> <p>11:30:33 10 company. Right?</p> <p>11:30:34 11 A. True.</p> <p>11:30:34 12 Q. And that included being a witness for the company.</p> <p>11:30:37 13 Correct?</p> <p>11:30:37 14 A. No.</p> <p>11:30:38 15 Q. Well, meaning that would be if the company asked you</p> <p>11:30:41 16 to be a witness concerning its IP, that would be concluded</p> <p>11:30:44 17 in the consulting agreement?</p> <p>11:30:46 18 A. No. I was a witness when I wasn't paid also. I mean,</p> <p>11:30:50 19 I think it's two separate issues.</p> <p>11:30:52 20 Q. I am talking about after you signed this consulting</p> <p>11:30:55 21 agreement, that was in January of this year. Right?</p> <p>11:30:57 22 A. That was the only the position I had after. The one I</p> <p>11:31:00 23 had before, it wasn't the consultant and I did provide</p> <p>11:31:02 24 deposition.</p> <p>11:31:03 25 Q. Right. You are talking about a deposition back in</p>	<p style="text-align: right;">579</p> <p>11:31:58 1 here?</p> <p>11:31:58 2 A. I don't remember the numbers, but it should be in the</p> <p>11:32:01 3 books of the company.</p> <p>11:32:02 4 Q. Okay. Great. So, at that deposition, you were</p> <p>11:32:05 5 represented by Finjan's lawyers. Correct?</p> <p>11:32:07 6 A. In the last one?</p> <p>11:32:09 7 Q. Yeah, the one in February, I am talking about.</p> <p>11:32:11 8 A. Yes.</p> <p>11:32:12 9 Q. And you prepared for that deposition with Finjan's</p> <p>11:32:14 10 lawyers. Right?</p> <p>11:32:15 11 A. No.</p> <p>11:32:15 12 Q. You didn't prepare for that deposition with Finjan's</p> <p>11:32:17 13 lawyers?</p> <p>11:32:18 14 A. No.</p> <p>11:32:18 15 Q. You have prepared for your trial testimony here with</p> <p>11:32:21 16 Finjan's lawyers. Correct?</p> <p>11:32:22 17 A. No.</p> <p>11:32:23 18 Q. You haven't met with them to discuss what your</p> <p>11:32:26 19 testimony is going to be?</p> <p>11:32:28 20 A. Of course, I met them, but I -- what do you mean</p> <p>11:32:31 21 "prepare"? Can you please explain to me that?</p> <p>11:32:35 22 Q. Well, did you meet with them to get ready for what you</p> <p>11:32:38 23 were going to present to the jury here?</p> <p>11:32:40 24 A. Sure. I understand. I mean, of course. This is the</p> <p>11:32:43 25 first time that I come to American court. You know, for an</p>

<p style="text-align: right;">580</p> <p>11:32:46 1 Israeli, this is the first time I see this setup. So I</p> <p>11:32:50 2 have, for example, Lisa drawing me how it's going to look</p> <p>11:32:53 3 like, the setup, and where I am going to sit and all that,</p> <p>11:32:57 4 and the procedures, so if that's what you meant, yes.</p> <p>11:33:00 5 Q. Now, during your direct, you also talked about some of</p> <p>11:33:04 6 the operation of the SurfinBoard product?</p> <p>11:33:07 7 A. I am sorry. Can you say it again?</p> <p>11:33:09 8 Q. Yeah. During your direct testimony -- when I say</p> <p>11:33:12 9 "direct testimony," I am referring to the testimony you gave</p> <p>11:33:15 10 in response to the questions from Mr. Andre, just so we are</p> <p>11:33:18 11 on the same page.</p> <p>11:33:20 12 A. No. That I understand. The second part of your</p> <p>11:33:23 13 question, I didn't understand.</p> <p>11:33:24 14 Q. Okay. Let me start over. So, during your direct</p> <p>11:33:27 15 testimony, you discussed the operation of the SurfinBoard</p> <p>11:33:31 16 product. Correct?</p> <p>17 A. Yes.</p> <p>11:33:33 18 Q. And that, your understanding, that was Finjan's first</p> <p>11:33:36 19 product. Is that right?</p> <p>11:33:37 20 A. Yes.</p> <p>11:33:38 21 Q. Now, if we go back again to the time of your</p> <p>11:33:42 22 deposition in February, isn't it the case that you had no</p> <p>11:33:47 23 memory of how the SurfinBoard product worked?</p> <p>11:33:50 24 A. That may be the case, yes.</p> <p>11:33:53 25 Q. Okay. So, let me just refresh your recollection. If</p>	<p style="text-align: right;">582</p> <p>11:35:12 1 were trying to solve with the inventions that are reflected</p> <p>11:35:15 2 in your patents. Right?</p> <p>11:35:17 3 A. Yeah. What happened to me in 2011 -- during 2005 and</p> <p>11:35:20 4 2011, I was fully engaged in the brand new company in the</p> <p>11:35:24 5 security area, which, at the end of 2010, didn't have</p> <p>11:35:27 6 funding and needed to be disclosed. And then I was working</p> <p>11:35:30 7 very hard in 2011 in trying to find somebody to buy the</p> <p>11:35:33 8 assets of this company that we would continue, which, by the</p> <p>11:35:36 9 way, happened in the end of 2011. I was totally in a</p> <p>11:35:40 10 different space. Totally in a different area. I didn't</p> <p>11:35:43 11 have the time to engage in that. I didn't, you know, go</p> <p>11:35:46 12 back and try to remember what's going on.</p> <p>11:35:48 13 Only when I finished the chapter on the Yoggie</p> <p>11:35:53 14 Security System and it was acquired and then I returned back</p> <p>11:35:56 15 to help Finjan on the IP and started to read through the</p> <p>11:36:00 16 documents and stuff, it started to bring back my memory, and</p> <p>11:36:03 17 that's true, absolutely.</p> <p>11:36:05 18 Q. So, if you can go to DX-4031. It should be in your</p> <p>11:36:10 19 witness binder. If we can put up SMDX 2-3.</p> <p>11:36:42 20 Do you have it?</p> <p>11:36:42 21 A. I may have it.</p> <p>11:36:45 22 Q. It should be 4031-2. Kind of maybe the fourth tab in.</p> <p>11:36:53 23 MR. ANDRE: Objection, Your Honor. Can I have a</p> <p>11:36:57 24 sidebar on this?</p> <p>11:36:59 25 THE COURT: On the declaration?</p>
<p style="text-align: right;">581</p> <p>11:33:56 1 you could go to, this would be February 2nd, February 2nd</p> <p>11:34:02 2 version of your deposition, 2012, Page 167, about Line 26.</p> <p>11:34:10 3 A. Which page number, please?</p> <p>11:34:12 4 Q. 167. February 2nd.</p> <p>11:34:23 5 A. Yep.</p> <p>11:34:24 6 Q. Do you have that?</p> <p>11:34:27 7 "Question: Do you recall how the SurfinBoard</p> <p>11:34:29 8 product worked?</p> <p>11:34:31 9 "Answer: Absolutely not."</p> <p>11:34:33 10 THE WITNESS: True.</p> <p>11 BY MR. NELSON:</p> <p>11:34:34 12 Q. Does that refresh your recollection?</p> <p>11:34:37 13 A. Yes.</p> <p>11:34:37 14 Q. So, just to summarize, as of February, your</p> <p>11:34:41 15 deposition, you didn't remember when you conceived of the</p> <p>11:34:44 16 ideas that are in the patent. Right?</p> <p>11:34:46 17 A. Well, maybe I should explain better if you allow me.</p> <p>11:34:50 18 Q. Well, can you just answer that question first.</p> <p>11:34:52 19 A. Sure. Yes, that's true.</p> <p>11:34:54 20 Q. And it's also true that as of February of this year,</p> <p>11:34:57 21 before you met with Finjan's lawyers, you didn't remember</p> <p>11:35:01 22 how the SurfinBoard product worked. Right?</p> <p>11:35:04 23 A. Right. I didn't remember a lot of stuff, that's true.</p> <p>11:35:07 24 Q. And it's also true that as of February, before you met</p> <p>11:35:09 25 with Finjan's lawyers, you didn't remember the problems you</p>	<p style="text-align: right;">583</p> <p>11:37:01 1 MR. ANDRE: It's -- there is a motion in limine</p> <p>11:37:04 2 on this issue, Your Honor, regarding the reexamination.</p> <p>11:37:08 3 MR. NELSON: I believe we have resolved this</p> <p>11:37:09 4 specific issue, Your Honor. If they want to approach, I am</p> <p>11:37:12 5 happy to do that.</p> <p>11:37:29 6 (The following took place at sidebar:</p> <p>11:37:29 7 THE COURT: I don't enjoy revisiting evidentiary</p> <p>11:37:32 8 rulings that I have already made and spent a lot of time</p> <p>11:37:35 9 thinking about. I really don't like that.</p> <p>11:37:37 10 What's the problem here?</p> <p>11:37:38 11 MR. ANDRE: Your Honor, you did a rule on this.</p> <p>11:37:40 12 THE COURT: That's addressed to all of you.</p> <p>11:37:42 13 MR. ANDRE: The reexamination issue was supposed</p> <p>11:37:43 14 to be off the table. We are talking about reexaminations,</p> <p>11:37:46 15 and this is a declaration that this witness put in a</p> <p>11:37:49 16 currently pending interparty reexamination. You ruled that</p> <p>11:37:53 17 that was not coming into the record.</p> <p>11:37:55 18 THE COURT: Inevitably this happens. You say I</p> <p>11:37:58 19 ruled one way. Miss Kash over here is shaking her head, oh,</p> <p>11:38:03 20 no. Unless we pull the transcript, I didn't issue any</p> <p>11:38:06 21 written orders on my rulings, which I used to do, which I</p> <p>11:38:10 22 have since stopped doing. So --</p> <p>11:38:12 23 MR. NELSON: Your Honor, maybe I can explain so</p> <p>11:38:15 24 I am not -- studiously avoid.</p> <p>11:38:18 25 THE COURT: Not stopped doing completely, but</p>

<p style="text-align: right;">584</p> <p>11:38:20 1 when I can avoid it, I don't do it.</p> <p>11:38:22 2 MR. NELSON: I understand that. Studiously</p> <p>11:38:25 3 avoid, I am not going to talk about the reexamination in the</p> <p>11:38:28 4 sense that it's been reexamined. It's in the case for</p> <p>11:38:31 5 reexamination. Just exactly like they are not supposed to</p> <p>11:38:34 6 be talking about the patent, but they can say, you might</p> <p>11:38:38 7 recall that, well, this argument was considered by the</p> <p>11:38:40 8 Patent Office.</p> <p>11:38:41 9 THE COURT: Okay.</p> <p>11:38:42 10 MR. NELSON: Additional art, so they can use</p> <p>11:38:44 11 that. These are inconsistent statements that he made. He</p> <p>11:38:47 12 testifies in February, I don't know where any of these</p> <p>11:38:49 13 things are and then he files a declaration with the Patent</p> <p>11:38:53 14 Office in March.</p> <p>11:38:54 15 THE COURT: The point of it is not the</p> <p>11:38:55 16 reexamination process. It's impeachment. Are you having</p> <p>11:39:00 17 difficulty with that?</p> <p>11:39:01 18 MS. KOBIALKA: I think the issue is it says</p> <p>11:39:03 19 interparty reexamination. We said you can use the</p> <p>11:39:05 20 declaration portion, but they have got it highlighted on the</p> <p>11:39:09 21 particular --</p> <p>11:39:10 22 THE COURT: Do you think the jury knows what a</p> <p>11:39:12 23 reexamination is, really? Have we talked about that? Am I</p> <p>11:39:15 24 going to be talking about that in my instructions? I know I</p> <p>11:39:18 25 haven't said anything about reexamination in the preliminary</p>	<p style="text-align: right;">586</p> <p>11:40:24 1 that.</p> <p>11:40:52 2 (End of sidebar discussion.)</p> <p>11:40:52 3 BY MR. NELSON:</p> <p>11:40:59 4 Q. Put up DX-4031 on the screen, please?</p> <p>11:41:03 5 Come back and just show the whole document.</p> <p>11:41:20 6 That is perfect.</p> <p>11:41:21 7 So in March, I believe the date here is March</p> <p>11:41:25 8 26th of 2012. Right?</p> <p>11:41:28 9 A. Say that again?</p> <p>11:41:30 10 Q. March 26, 2012. Do you see the date?</p> <p>11:41:32 11 A. Yes.</p> <p>11:41:33 12 Q. So you filed a declaration with the Patent Office.</p> <p>11:41:35 13 Correct?</p> <p>11:41:36 14 A. That's what it is?</p> <p>11:41:39 15 Q. That's what this document is. Correct?</p> <p>11:41:41 16 A. Yes.</p> <p>11:41:43 17 Q. And you recall doing that. In fact, if you go to the</p> <p>11:41:46 18 fourth page of the document, I think you will see your</p> <p>11:41:48 19 signature?</p> <p>11:41:48 20 A. Yes.</p> <p>11:41:49 21 Q. Do you see that?</p> <p>11:41:50 22 A. Yes.</p> <p>11:41:50 23 Q. So you recall preparing a declaration with the -- to</p> <p>11:41:54 24 file with the Patent Office. Correct?</p> <p>11:41:57 25 A. I don't remember too much. But probably, yes. It's</p>
<p style="text-align: right;">585</p> <p>11:39:22 1 instructions. I don't think there is anything about</p> <p>11:39:24 2 reexamination in the video they have shown. Unless the</p> <p>11:39:27 3 lawyer calls that out to them, I don't think it's going to</p> <p>11:39:29 4 be a problem.</p> <p>11:39:30 5 Go ahead, Ms. Kobialka.</p> <p>11:39:33 6 MS. KOBIALKA: For purposes of the prior art,</p> <p>11:39:35 7 you ruled at the pretrial conference, if there was art that</p> <p>11:39:39 8 was already considered, the weight of the art can come in,</p> <p>11:39:41 9 and that very well may be under the reexamination.</p> <p>11:39:45 10 Additionally, the '962 asserted claims is on the</p> <p>11:39:49 11 reexamination certificate.</p> <p>11:39:50 12 THE COURT: Without unduly complicating this,</p> <p>11:39:52 13 which really isn't all that complicated, what you are</p> <p>11:39:55 14 concerned about is the fact that the heading said</p> <p>11:39:57 15 "reexamination." Is there some way to deal with that?</p> <p>11:40:00 16 MR. NELSON: I can probably block it off.</p> <p>11:40:02 17 MR. ANDRE: They put it in a PowerPoint and they</p> <p>11:40:04 18 highlighted it. They could have just put that document up</p> <p>11:40:07 19 there.</p> <p>11:40:07 20 MR. NELSON: I thought it was just highlighted</p> <p>11:40:09 21 that it was a declaration. I can just put the document up.</p> <p>11:40:12 22 THE COURT: Let's do it that way.</p> <p>11:40:14 23 Counsel, by the way, Mr. Allcock, I insist that</p> <p>11:40:18 24 our IT folks and all folks associated with this be</p> <p>11:40:22 25 referenced by their surname, not by John or anything like</p>	<p style="text-align: right;">587</p> <p>11:42:01 1 hard.</p> <p>11:42:01 2 Q. So can you look at Paragraph 4, if we go to the second</p> <p>11:42:06 3 page and look at Paragraph 4 of DX-4031.</p> <p>11:42:13 4 A. Yes.</p> <p>11:42:13 5 Q. So you see there where it says, The technology</p> <p>11:42:24 6 designed to run on the local or client computer that is</p> <p>11:42:27 7 described in the '962 patent was in my mind when I decided</p> <p>11:42:31 8 to form Finjan at the beginning of 1996?</p> <p>11:42:35 9 Do you see that?</p> <p>11:42:35 10 A. Yes.</p> <p>11:42:36 11 Q. And then, if you continue down to the end, the last</p> <p>11:42:44 12 sentence, it says:</p> <p>11:42:46 13 We worked on writing the program diligently on a</p> <p>11:42:49 14 full-time basis (every day except holidays and the Sabbath)</p> <p>11:42:55 15 from the founding of Finjan and throughout 1996, including</p> <p>11:42:58 16 until the filing of the '639 provisional application.</p> <p>11:43:02 17 Do you see that?</p> <p>11:43:03 18 A. Yes.</p> <p>11:43:03 19 Q. So here you are saying that you conceived of the ideas</p> <p>11:43:06 20 that you put into that provisional application that we</p> <p>11:43:13 21 discussed earlier when you formed Finjan. Right?</p> <p>11:43:16 22 A. Right.</p> <p>11:43:16 23 Q. So that's what you told the Patent Office in March of</p> <p>11:43:19 24 2012?</p> <p>11:43:20 25 A. Right.</p>

<p style="text-align: right;">588</p> <p>11:43:20 1 Q. But in February of 2012, when you were deposed in this</p> <p>11:43:24 2 case, under oath, to give information to the defendants, you</p> <p>11:43:27 3 didn't have any idea when you conceived of --</p> <p>11:43:29 4 A. That's true.</p> <p>11:43:30 5 Q. Now, let's also go to Paragraph 6. This is Paragraph</p> <p>11:43:43 6 6 from your declaration. I believe it's on the third page.</p> <p>11:43:47 7 Is that right? I want to make sure you are on the same page</p> <p>11:43:56 8 before I ask you questions about it. You should be on the</p> <p>11:43:59 9 third page. Do you have that?</p> <p>11:44:00 10 A. Yes, it is.</p> <p>11:44:01 11 Q. So you see here in that first paragraph you describe</p> <p>11:44:07 12 the operation of SurfinBoard. Right?</p> <p>11:44:11 13 A. Yes.</p> <p>11:44:11 14 Q. In fact, you say that SurfinBoard embodies the ideas</p> <p>11:44:17 15 or the inventions that you had reflected in that provisional</p> <p>11:44:20 16 application. Right?</p> <p>11:44:21 17 A. Yes.</p> <p>11:44:21 18 Q. And this is March 26, 2012, right, when you said this?</p> <p>11:44:31 19 A. Absolutely.</p> <p>11:44:31 20 Q. But again, in February, when you were deposed under</p> <p>11:44:36 21 oath, when the defendants had an opportunity to get</p> <p>11:44:39 22 information from you, you said you had no idea how the</p> <p>11:44:43 23 SurfinGate product worked?</p> <p>11:44:45 24 A. Yeah, that's true. I came back to Finjan in January</p> <p>11:44:48 25 2012. I came back on board, to the company I founded many</p>	<p style="text-align: right;">590</p> <p>11:46:09 1 A. Yes. Concerning two patents, yes.</p> <p>11:46:11 2 Q. As of 2007, isn't it true that at that time you</p> <p>11:46:16 3 believed that your patents, at least the '194 patent, had no</p> <p>11:46:21 4 connection to the SurfinBoard product?</p> <p>11:46:24 5 A. I don't remember that.</p> <p>11:46:25 6 Q. So you should have this in your binder, it will be the</p> <p>11:46:35 7 2007, October 23rd.</p> <p>11:46:41 8 A. Which binder, please?</p> <p>11:46:42 9 Q. It should be the green one. The green one. That has</p> <p>11:46:46 10 your prior deposition testimony in that.</p> <p>11:46:48 11 A. Right.</p> <p>11:46:48 12 Q. So if you are there, go to Page 112?</p> <p>11:47:00 13 A. On which day?</p> <p>11:47:02 14 Q. It should be October 23rd. I believe it's the first</p> <p>11:47:04 15 one.</p> <p>11:47:05 16 A. November 1st.</p> <p>11:47:07 17 Q. No, no. The October 23rd, 2007 one?</p> <p>11:47:10 18 A. Right.</p> <p>11:47:10 19 Q. If you go to Page 112 of that deposition --</p> <p>11:47:20 20 A. Page 12, yes.</p> <p>11:47:21 21 Q. 112, sir.</p> <p>11:47:24 22 A. Sorry. Apologize for not hearing well.</p> <p>11:47:26 23 Q. I apologize for not speaking well.</p> <p>11:47:28 24 A. No, it's my fault, probably.</p> <p>11:47:30 25 Q. No, no.</p>
<p style="text-align: right;">589</p> <p>11:44:52 1 years ago, in and out, in and out. And came again, after</p> <p>11:44:57 2 folding a chapter that was not so successful. It was I</p> <p>11:45:01 3 think like from 2005 to 2011, we are talking about six years</p> <p>11:45:05 4 here, which we have been investing a lot of effort,</p> <p>11:45:08 5 different space, I was in a very different mindset. If you</p> <p>11:45:12 6 would ask me in February or January 2012 what is the patent</p> <p>11:45:17 7 which I filed, which I filed new patents, new product, new</p> <p>11:45:20 8 space, I probably in the middle of the night would tell you.</p> <p>11:45:23 9 I was not on the page of Finjan that I filed many years</p> <p>11:45:26 10 before.</p> <p>11:45:27 11 But since generally when I started to work with</p> <p>11:45:29 12 Finjan, yes, my goal now is to cultivate this and to go back</p> <p>11:45:34 13 into that, learn it. If you ask me two months from now, I</p> <p>11:45:38 14 will know a little better than today.</p> <p>11:45:41 15 Q. I think we just said that you believe that SurfinBoard</p> <p>11:45:45 16 embodied the ideas that were reflected in that provisional</p> <p>11:45:48 17 application. Right?</p> <p>11:45:49 18 A. Yes.</p> <p>11:45:49 19 Q. And those, you say, made it into both the '194 patent</p> <p>11:45:53 20 and the '962 patent. Is that right?</p> <p>11:45:55 21 A. Yes.</p> <p>11:45:56 22 Q. So you recall -- let's go back to 2007. I think you</p> <p>11:46:01 23 mentioned that you had been deposed again in 2007.</p> <p>11:46:06 24 A. True.</p> <p>11:46:06 25 Q. Concerning the '194 patent. Right?</p>	<p style="text-align: right;">591</p> <p>11:47:30 1 So 112. The line will be 22 through 25?</p> <p>11:47:37 2 A. Yes.</p> <p>11:47:38 3 Q. Do you see the question there, Did you file any</p> <p>11:47:41 4 patents on the technology in SurfinBoard?</p> <p>11:47:44 5 And the answer is, There is no connection</p> <p>11:47:46 6 between the patent and the product?</p> <p>11:47:47 7 Do you see that?</p> <p>11:47:48 8 A. Yes, I do.</p> <p>11:47:49 9 Q. At least as of 2007 your belief was there was no</p> <p>11:47:52 10 connection between the patent and the product. Correct?</p> <p>11:47:55 11 A. Well, it depends what context you are talking about</p> <p>11:47:57 12 it. Right? I have to read all of it, if you give me just a</p> <p>11:48:02 13 second to look at it, to see that's what I meant, that you</p> <p>11:48:05 14 specified.</p> <p>11:48:05 15 Q. Although your counsel can ask you some more questions.</p> <p>11:48:08 16 It takes some time.</p> <p>11:48:10 17 A. There are many aspects to that.</p> <p>11:48:12 18 Q. Let me just ask you, do you remember any qualification</p> <p>11:48:17 19 to that?</p> <p>11:48:17 20 A. In 2007?</p> <p>11:48:19 21 Q. Yes.</p> <p>11:48:19 22 A. I am sorry, no.</p> <p>11:48:20 23 Q. You don't recall. Okay.</p> <p>11:48:28 24 So now let me go back to that 1995-1996 time</p> <p>11:48:34 25 frame that you were talking about during your direct</p>

<p style="text-align: right;">592</p> <p>11:48:36 1 testimony. You were aware that there were other companies</p> <p>11:48:40 2 in the antivirus base in that 1995-1996 time frame. Right?</p> <p>11:48:45 3 A. Absolutely.</p> <p>11:48:45 4 Q. And, in fact, Symantec was one of the ones that you</p> <p>11:48:50 5 are aware of?</p> <p>11:48:51 6 A. Absolutely.</p> <p>11:48:51 7 Q. And you were aware of the Norton AntiVirus product at</p> <p>11:48:54 8 that time. Right?</p> <p>11:48:55 9 A. Definitely.</p> <p>11:48:55 10 Q. It's true, though, that you didn't provide any</p> <p>11:48:59 11 information to your attorney, I think you said that when you</p> <p>11:49:02 12 filed the application you gave all the information you had</p> <p>11:49:05 13 to your attorney. Right?</p> <p>11:49:09 14 A. For submitting the patent.</p> <p>11:49:10 15 Q. Correct.</p> <p>11:49:12 16 A. Yes.</p> <p>11:49:12 17 Q. So it's true, then, at that time you didn't provide</p> <p>11:49:15 18 any information concerning the Norton AntiVirus product to</p> <p>11:49:18 19 your attorney. Correct?</p> <p>11:49:19 20 A. I don't remember that.</p> <p>11:49:20 21 Q. You don't remember doing that?</p> <p>11:49:22 22 A. I don't remember what I gave him in the documents.</p> <p>11:49:24 23 Q. But you were aware of Norton AntiVirus at that time.</p> <p>11:49:28 24 Right?</p> <p>11:49:29 25 A. I believe -- you know, I heard about it. There have</p>	<p style="text-align: right;">594</p> <p>11:51:03 1 back in February 2012 for seven years. And I have been in a</p> <p>11:51:08 2 different domain, so, yes. That makes sense.</p> <p>11:51:11 3 Q. Now, let me ask you -- it should be in your witness</p> <p>11:51:21 4 binder. Can we put up DX-4045?</p> <p>11:51:28 5 A. 4045?</p> <p>11:51:30 6 Q. Yes. It's in the same binder.</p> <p>11:51:38 7 A. Yes.</p> <p>11:51:39 8 Q. It should be in that same one with the documents. The</p> <p>11:51:42 9 first page of it, it's got that Finjan Bates number 16763.</p> <p>11:51:54 10 A. I don't have it, but I am looking at the screen.</p> <p>11:51:58 11 Maybe I don't find it.</p> <p>11:52:00 12 Q. Well, I will show you the things on the screen while</p> <p>11:52:04 13 they are looking for it. My understanding is they put it in</p> <p>11:52:06 14 the binder.</p> <p>11:52:07 15 A. They are --</p> <p>11:52:09 16 THE COURT: You can show it on the screen.</p> <p>11:52:10 17 BY MR. NELSON:</p> <p>11:52:11 18 Q. Here it is. This is an IDC report. Right? And you</p> <p>11:52:15 19 see, if we can blow up the bottom, there is a copyright date</p> <p>11:52:18 20 2005?</p> <p>11:52:19 21 A. Yes.</p> <p>11:52:19 22 Q. So that 2005, that's the year that you were</p> <p>11:52:23 23 negotiating this license agreement with Microsoft. Correct?</p> <p>11:52:27 24 A. November 2005 I wasn't in Finjan. I already was in</p> <p>11:52:33 25 Yoggie.</p>
<p style="text-align: right;">593</p> <p>11:49:35 1 been many antivirus products out. It was one of the biggest</p> <p>11:49:42 2 ones. Sure.</p> <p>11:49:43 3 Q. You talked about a license agreement with Microsoft.</p> <p>11:49:49 4 A. The one in 2005?</p> <p>11:49:51 5 Q. Correct. The one in 2005. I believe that should be,</p> <p>11:50:01 6 I will give you the exhibit number so we are all on the same</p> <p>11:50:04 7 page, DJX-139. It should be right at the front of your</p> <p>11:50:08 8 binder, I think?</p> <p>11:50:10 9 A. It's still in the green.</p> <p>11:50:11 10 Q. No. In the one that looks like this (indicating)?</p> <p>11:50:14 11 A. Yes. I have it.</p> <p>11:50:23 12 Q. So let's just put the first page up, so we all know</p> <p>11:50:27 13 what we are talking about.</p> <p>11:50:28 14 On your direct testimony you talked about quite</p> <p>11:50:33 15 a bit of the details of the negotiations with Microsoft.</p> <p>11:50:36 16 Correct?</p> <p>11:50:37 17 A. Right.</p> <p>11:50:37 18 Q. Now let me go back again to your February deposition.</p> <p>11:50:43 19 Isn't it true that at the time of your February deposition</p> <p>11:50:47 20 in this case, February of 2012, that you didn't have any</p> <p>11:50:52 21 recollection of the details of the negotiation with</p> <p>11:50:55 22 Microsoft?</p> <p>11:50:55 23 A. Yes, probably that's the case.</p> <p>11:50:57 24 Q. So at that time, no recollection of the details?</p> <p>11:51:01 25 A. I don't remember a lot -- I didn't see the contract</p>	<p style="text-align: right;">595</p> <p>11:52:33 1 Q. Understood, sir. That wasn't my question. In 2005,</p> <p>11:52:36 2 that is the year that you did the negotiation with Microsoft</p> <p>11:52:39 3 concerning a license agreement. Right?</p> <p>11:52:41 4 A. Right.</p> <p>11:52:41 5 Q. And that license agreement was signed in 2005. Right?</p> <p>11:52:44 6 A. In mid-2005.</p> <p>11:52:46 7 Q. Mid-2005. IDC, that is one of these market analysts</p> <p>11:52:51 8 that you talked about. I think you talked about some other</p> <p>11:52:54 9 IDC reports?</p> <p>11:52:55 10 A. Yes, definitely.</p> <p>11:52:56 11 Q. If we can go to, it's DX-4045-12.</p> <p>11:53:11 12 I think one of the things that you said during</p> <p>11:53:16 13 your direct examination was that Microsoft was not in the</p> <p>11:53:21 14 security software space at the time. Right?</p> <p>11:53:24 15 A. When we negotiated with them.</p> <p>11:53:26 16 Q. So here, if we look at that last paragraph, do you see</p> <p>11:53:39 17 that first sentence, it says, Microsoft's recent</p> <p>11:53:42 18 acquisitions of FrontBridge and Sybari are clear indications</p> <p>11:53:46 19 of a move into the enterprise security market.</p> <p>11:53:48 20 Do you see that?</p> <p>11:53:50 21 A. Yes, I do.</p> <p>11:53:51 22 Q. So by 2005, certainly by November of 2005, Microsoft</p> <p>11:53:56 23 had acquired FrontBridge. Right?</p> <p>11:53:58 24 A. Isn't it amazing -- well, part of the reason we</p> <p>11:54:02 25 negotiated with them --</p>

<p style="text-align: right;">596</p> <p>11:54:03 1 THE COURT: Mr. Touboul, you can answer that</p> <p>11:54:05 2 question yes or no.</p> <p>11:54:07 3 THE WITNESS: I am sorry.</p> <p>11:54:07 4 Can you repeat the question, please?</p> <p>11:54:08 5 BY MR. NELSON:</p> <p>11:54:09 6 Q. So by 2005, Microsoft had acquired FrontBridge.</p> <p>11:54:14 7 Right?</p> <p>11:54:14 8 A. In November, yes, I think so.</p> <p>11:54:16 9 Q. At least by November?</p> <p>11:54:17 10 A. Yes.</p> <p>11:54:18 11 Q. During your negotiations, did you know that they</p> <p>11:54:20 12 acquired FrontBridge?</p> <p>11:54:23 13 A. I don't remember. I remember they bought the company</p> <p>11:54:25 14 which we believed acquired our license. I don't remember</p> <p>11:54:28 15 the name of the company. But yes, they did acquisition</p> <p>11:54:31 16 during that time.</p> <p>11:54:32 17 Q. And Sybari by November of 2005, Microsoft had acquired</p> <p>11:54:37 18 Sybari. Right?</p> <p>11:54:38 19 A. Yeah.</p> <p>11:54:38 20 Q. So were you aware of that during your negotiations?</p> <p>11:54:42 21 A. No, because that happened after negotiations.</p> <p>11:54:44 22 Q. You remember that they acquired Sybari shortly after</p> <p>11:54:48 23 your negotiations?</p> <p>11:54:49 24 A. No. You tell me it happened in November. I don't</p> <p>11:54:52 25 remember it happened in November. But if it's November,</p>	<p style="text-align: right;">598</p> <p>11:56:25 1 but also the foundation for an enterprise client solution in</p> <p>11:56:29 2 the near future.</p> <p>11:56:29 3 Do you see that?</p> <p>11:56:31 4 A. Yes.</p> <p>11:56:31 5 Q. Then it says, We fully expect Microsoft to compete</p> <p>11:56:35 6 directly with established security vendors Symantec, McAfee,</p> <p>11:56:39 7 TrendMicro, Computer Associates, and Sophos for both</p> <p>11:56:43 8 enterprise and consumer deals.</p> <p>11:56:46 9 Do you see that?</p> <p>11:56:47 10 A. Yes.</p> <p>11:56:47 11 Q. So at least as of November of 2005, which is shortly</p> <p>11:56:52 12 after you signed the agreement with Microsoft, IDC was</p> <p>11:56:56 13 saying Microsoft is getting into this antivirus security</p> <p>11:57:01 14 space. Right?</p> <p>11:57:02 15 A. What I understand here, Microsoft expects -- I am</p> <p>11:57:05 16 sorry, IDC expects Microsoft to go into that market, yes.</p> <p>11:57:10 17 Q. That is right at the time you are negotiating this</p> <p>11:57:12 18 8-million-dollar license with Microsoft. Right?</p> <p>11:57:16 19 A. No. I negotiated -- my negotiation with Microsoft, if</p> <p>11:57:20 20 I am not wrong, was like a year-and-a-half time frame. It</p> <p>11:57:23 21 finished in the middle of 2005 but it started a year and a</p> <p>11:57:28 22 half before that. I think that happened after.</p> <p>11:57:30 23 Q. Let's just put up the date. Go back to DJX-139. This</p> <p>11:57:36 24 would be Page 2 of that document. Just blow up the first</p> <p>11:57:42 25 paragraph.</p>
<p style="text-align: right;">597</p> <p>11:54:55 1 it's after negotiations. But I don't remember exactly.</p> <p>11:54:57 2 Q. So sometime in that time frame?</p> <p>11:54:59 3 A. Yes.</p> <p>11:54:59 4 Q. If we go to the next page, and let's blow up that</p> <p>11:55:04 5 first paragraph, the next page, for the record, is D0405-13.</p> <p>11:55:12 6 You see here, it says, The recent moves by Microsoft follow</p> <p>11:55:15 7 its acquisition of antivirus vendor GeCad in 2003 and</p> <p>11:55:21 8 anti-spyware vendor Giant Software in 2004.</p> <p>11:55:28 9 A. Right. That is the company I remember I referred to</p> <p>11:55:34 10 they acquired. The small company that's called Giant.</p> <p>11:55:37 11 Q. By the time of the negotiations, you remember that</p> <p>11:55:40 12 Microsoft had acquired GeCad, that was an anti-spyware</p> <p>11:55:45 13 vendor?</p> <p>11:55:46 14 A. Giant I remember. I definitely remember.</p> <p>11:55:49 15 Q. I actually said those backwards. Giant was the</p> <p>11:55:51 16 anti-spyware vendor, GeCad was the antivirus vendor.</p> <p>11:55:56 17 Correct?</p> <p>11:55:59 18 A. Sorry. I remember the Giant. I don't remember the</p> <p>11:56:02 19 GeCad. But the Giant I remember.</p> <p>11:56:03 20 Q. But GeCad, at least as described here, is an antivirus</p> <p>11:56:09 21 vendor?</p> <p>11:56:10 22 A. Yes.</p> <p>11:56:10 23 Q. So, if we go right to the next sentence, it says, IDC</p> <p>11:56:15 24 believes GeCad and Giant will serve as not only the</p> <p>11:56:19 25 foundation of Microsoft's consumer one-care security service</p>	<p style="text-align: right;">599</p> <p>11:57:43 1 That is June 24th, 2005. Right?</p> <p>11:57:49 2 A. Right.</p> <p>11:57:50 3 Q. So maybe three months before November?</p> <p>11:57:54 4 A. We started negotiation, as I said, around a year and a</p> <p>11:57:58 5 half before this. A year and a half negotiating with them.</p> <p>11:58:01 6 Q. Your negotiations took place over a year and a half.</p> <p>11:58:03 7 Right?</p> <p>11:58:04 8 A. Exactly.</p> <p>11:58:04 9 Q. And they acquired a number of companies during that</p> <p>11:58:07 10 time period. Correct?</p> <p>11:58:08 11 A. True.</p> <p>11:58:09 12 Q. And you would expect that would come up in the</p> <p>11:58:11 13 negotiations. Correct?</p> <p>11:58:13 14 A. The acquisitions?</p> <p>11:58:14 15 Q. Yes.</p> <p>11:58:15 16 A. Yes. That's why we thought they needed us, because of</p> <p>11:58:18 17 the Giant acquisition.</p> <p>11:58:19 18 Q. All right. Now, you mentioned that while you were at</p> <p>11:58:33 19 Finjan that Finjan tried to mark its patent numbers on its</p> <p>11:58:40 20 products. Right?</p> <p>11:58:41 21 A. I am sorry. Can you repeat that, please?</p> <p>11:58:42 22 Q. During your direct testimony you said that Finjan</p> <p>11:58:45 23 tried to put its patent number markings on its products.</p> <p>11:58:49 24 Right?</p> <p>11:58:49 25 A. Yes.</p>

<p style="text-align: right;">600</p> <p>11:58:50 1 Q. You recall that?</p> <p>11:58:51 2 A. Yes.</p> <p>11:58:51 3 Q. But you know that Finjan sold off all its assets, its</p> <p>11:58:57 4 operating assets, its product lines, to M86 in 2009. Right?</p> <p>11:59:02 5 A. Yes, I know that.</p> <p>11:59:03 6 Q. And you are also aware that M86 has a license to the</p> <p>11:59:08 7 Finjan patents. Is that right?</p> <p>11:59:10 8 A. I don't know. I didn't have any access to the</p> <p>11:59:12 9 information.</p> <p>11:59:12 10 Q. Do you have any idea whether M86 marks its products</p> <p>11:59:17 11 with any of the Finjan patent numbers?</p> <p>11:59:19 12 A. I don't know.</p> <p>11:59:20 13 Q. You don't know.</p> <p>11:59:20 14 So let me talk a little bit about this meeting</p> <p>11:59:31 15 that you had with Symantec.</p> <p>11:59:32 16 A. Yes.</p> <p>11:59:33 17 Q. You said that you had one meeting in Los Angeles in</p> <p>11:59:36 18 the '97-98 time frame that you recall?</p> <p>11:59:40 19 A. Yes.</p> <p>11:59:40 20 Q. And you, I think you said that you discussed with</p> <p>11:59:47 21 Symantec potentially partnering on some of your technology.</p> <p>11:59:51 22 Is that right?</p> <p>11:59:51 23 A. Well, I think we started by me trying to convince them</p> <p>11:59:55 24 that the new technology, they needed to move to the new</p> <p>11:59:58 25 technology and they should license our technology. But the</p>	<p style="text-align: right;">602</p> <p>12:01:20 1 A. Right. I think at that time I was still on the board.</p> <p>12:01:22 2 That was like two months after the board of directors for</p> <p>12:01:26 3 Finjan.</p> <p>12:01:26 4 Q. So the NDA here is signed after you had the meeting</p> <p>12:01:30 5 with Symantec in 1997?</p> <p>12:01:32 6 A. Much after.</p> <p>12:01:34 7 Q. Now, you are aware, because of your involvement with</p> <p>12:01:40 8 the board, that there were some discussions between Symantec</p> <p>12:01:43 9 and Finjan in 1999 about a potential acquisition. Is that</p> <p>12:01:48 10 right?</p> <p>12:01:48 11 A. Not at that time. I was on the board.</p> <p>12:01:50 12 Q. You are not aware of that one way or the other?</p> <p>12:01:53 13 A. When I was on the board, I didn't participate in such</p> <p>12:01:55 14 discussions.</p> <p>12:01:57 15 Q. You don't know whether Finjan approached Symantec</p> <p>12:02:00 16 about being acquired in the 1999 time frame?</p> <p>12:02:02 17 A. No.</p> <p>12:02:02 18 Q. And you don't know what was discussed between Finjan</p> <p>12:02:05 19 and Symantec --</p> <p>12:02:07 20 A. I heard rumors in the market. But that's all I heard.</p> <p>12:02:10 21 Rumors in the market.</p> <p>12:02:11 22 Q. I am not going to -- probably that would be hearsay if</p> <p>12:02:14 23 I asked him another question there. I won't do that.</p> <p>12:02:17 24 But just so we are cleared up, I want to make</p> <p>12:02:22 25 sure, you had a meeting in 1998 where you attended and</p>
<p style="text-align: right;">601</p> <p>12:00:00 1 basis was first to get into agreement that, yeah, we believe</p> <p>12:00:03 2 in your vision, Shlomo, which I wasn't so successful back</p> <p>12:00:07 3 then.</p> <p>12:00:07 4 Q. So nothing came out of that meeting. Is that right?</p> <p>12:00:10 5 A. No.</p> <p>12:00:10 6 Q. During your direct examination, you referenced the</p> <p>12:00:16 7 nondisclosure agreement that was signed in 1999, do you</p> <p>12:00:20 8 remember that, with Symantec?</p> <p>12:00:22 9 A. I remember that somebody showed me, that Paul already</p> <p>12:00:42 10 showed me that document.</p> <p>12:00:43 11 Q. Maybe we can put it back up there.</p> <p>12:00:51 12 A. I remember the document that was shown to me. No need</p> <p>12:00:54 13 for that. But I don't remember that specific document in my</p> <p>12:00:58 14 mind.</p> <p>12:00:58 15 Q. You don't remember anything about this nondisclosure</p> <p>12:01:01 16 agreement?</p> <p>12:01:02 17 A. No. I remember there being discussion. I didn't</p> <p>12:01:04 18 remember that specific NDA. As I said before, there have</p> <p>12:01:07 19 been a couple of NDA's. But I didn't remember that specific</p> <p>12:01:09 20 one.</p> <p>12:01:10 21 Q. If we blow this up, that is January 4th of 1999.</p> <p>12:01:17 22 Right?</p> <p>12:01:17 23 A. Right.</p> <p>12:01:17 24 Q. That was after you said that you left Finjan the first</p> <p>12:01:19 25 time?</p>	<p style="text-align: right;">603</p> <p>12:02:26 1 discussed some products. Right?</p> <p>12:02:27 2 A. Right. Between '97 to '98, yes.</p> <p>12:02:30 3 Q. But there were later discussions about a potential</p> <p>12:02:34 4 acquisition, you weren't involved in those discussions?</p> <p>12:02:38 5 A. That's correct.</p> <p>12:02:38 6 Q. You don't know any information that went back and</p> <p>12:02:40 7 forth. Correct?</p> <p>12:02:41 8 A. That's correct.</p> <p>12:02:41 9 Q. Now, you met with Symantec in 1998 and discussed a</p> <p>12:02:51 10 potential cooperation with them?</p> <p>12:02:53 11 A. Yeah, '97-98.</p> <p>12:02:57 12 Q. At that point you thought Symantec was an honorable</p> <p>12:03:00 13 company. Right?</p> <p>12:03:00 14 A. I still think.</p> <p>12:03:01 15 Q. You still believe Symantec is an honorable company?</p> <p>12:03:04 16 A. Yes. Symantec is a big company. Of course.</p> <p>12:03:06 17 Q. And they are honorable?</p> <p>12:03:08 18 A. I think so, yes.</p> <p>12:03:09 19 Q. Now, let me just talk a little bit about your return</p> <p>12:03:13 20 to Finjan.</p> <p>12:03:14 21 You said you came back in 2001. Correct?</p> <p>12:03:18 22 A. Yes.</p> <p>12:03:18 23 Q. And that was because the CEO that you brought in when</p> <p>12:03:26 24 you left the first time, he had left. Right?</p> <p>12:03:29 25 A. Right.</p>

<p style="text-align: right;">604</p> <p>12:03:29 1 Q. And most of the employees had left at that time. Is</p> <p>12:03:34 2 that right?</p> <p>12:03:34 3 A. Yes, a lot of the employees left.</p> <p>12:03:36 4 Q. And there was big debt at the company?</p> <p>12:03:40 5 A. Yeah, there was debt, a significant amount of money.</p> <p>12:03:47 6 Q. And you were brought in to try to turn it around. Is</p> <p>12:03:52 7 that right?</p> <p>12:03:53 8 A. Yes.</p> <p>12:03:53 9 Q. And that was in 2001?</p> <p>12:03:55 10 A. Yes.</p> <p>12:03:55 11 Q. You mentioned in 2005 you left the company again.</p> <p>12:04:00 12 Right?</p> <p>12:04:01 13 A. Right. I was fired from the company.</p> <p>12:04:03 14 Q. You were fired in 2005?</p> <p>12:04:05 15 A. Right.</p> <p>12:04:05 16 Q. The board let you go?</p> <p>12:04:07 17 A. Yes.</p> <p>12:04:07 18 Q. There was no turnaround of the company in 2005?</p> <p>12:04:13 19 A. No.</p> <p>12:04:15 20 MR. NELSON: Thank you, sir. I do not have any</p> <p>12:04:17 21 further questions for you.</p> <p>12:04:19 22 THE COURT: Mr. Stiegler.</p> <p>12:04:22 23 MR. STIEGLER: Thank you, Your Honor.</p> <p>12:04:39 24 May I approach, Your Honor?</p> <p>12:04:41 25 MR. NELSON: Your Honor, I did think of one more</p>	<p style="text-align: right;">606</p> <p>12:06:18 1 we blow that up. Blow up the two paragraphs, like the</p> <p>12:06:25 2 second one -- the third one and the fourth one.</p> <p>12:06:27 3 So here IDC is discussing some behavioral-based</p> <p>12:06:38 4 tools for use in network security. Correct?</p> <p>12:06:42 5 A. Yes.</p> <p>12:06:43 6 Q. And one of those that's discussed is the Finjan</p> <p>12:06:47 7 software. Is that right?</p> <p>12:06:52 8 A. Yes.</p> <p>12:06:53 9 Q. And Mr. Andre highlighted for you that first sentence</p> <p>12:06:57 10 that says, Behavior-based tools have not been widely adopted</p> <p>12:07:01 11 to date. Do you see that?</p> <p>12:07:03 12 A. Yes.</p> <p>12:07:03 13 Q. But then something we didn't discuss that I want to</p> <p>12:07:08 14 discuss with you, let's look at that next sentence. See, it</p> <p>12:07:11 15 says, Although organizations like the benefit of no longer</p> <p>12:07:14 16 needing to wait for an antivirus vendor to create a virus</p> <p>12:07:18 17 signature in the early stages of an outbreak, performance</p> <p>12:07:22 18 issues, false positives, and the lack of skill sets in most</p> <p>12:07:26 19 enterprises to write and implement updated policies have</p> <p>12:07:29 20 stalled widespread implementation so far.</p> <p>12:07:32 21 Right?</p> <p>12:07:33 22 A. Yes, that's what he says.</p> <p>12:07:35 23 Q. So false positives was a problem with the</p> <p>12:07:38 24 behavior-based technology. Correct?</p> <p>12:07:40 25 A. I personally don't think so.</p>
<p style="text-align: right;">605</p> <p>12:04:44 1 thing that I forgot. Could I please do that very quickly?</p> <p>12:04:48 2 I apologize.</p> <p>12:04:49 3 BY MR. NELSON:</p> <p>12:04:58 4 Q. This is something that came up in your direct</p> <p>12:05:00 5 testimony. I apologize.</p> <p>12:05:02 6 I appreciate Your Honor's indulgence.</p> <p>12:05:04 7 So could we put up PTX-2003. It might not be</p> <p>12:05:11 8 the same exhibit number. It's that IDC report?</p> <p>12:05:16 9 A. Yes.</p> <p>12:05:17 10 Q. You have it in your binder. PTX-23.</p> <p>12:05:21 11 A. Yes.</p> <p>12:05:22 12 Q. So you recall discussing this IDC report on your</p> <p>12:05:27 13 direct examination?</p> <p>12:05:35 14 A. They all look alike. That is the one that was here.</p> <p>12:05:39 15 No?</p> <p>12:05:40 16 Q. It should be the same one that you talked about with</p> <p>12:05:42 17 Mr. Andre. Do you recall that?</p> <p>12:05:45 18 A. It looked different before.</p> <p>12:05:47 19 Q. Well, you can go to the one that's in your binder</p> <p>12:05:51 20 from -- is it a different copy?</p> <p>12:06:04 21 A. Yes. Probably that's it.</p> <p>12:06:05 22 Q. 2003. Right?</p> <p>12:06:07 23 A. Yeah.</p> <p>12:06:07 24 Q. So if you go to Page 20 of that document, there was</p> <p>12:06:14 25 some discussion that you had with Mr. Andre about that. Can</p>	<p style="text-align: right;">607</p> <p>12:07:41 1 Q. Okay. IDC thought so, right, in 2003?</p> <p>12:07:45 2 A. IDC thinks that that was part of -- that stalled the</p> <p>12:07:53 3 implementation of the information.</p> <p>12:07:56 4 MR. NELSON: At this time I am done. And I</p> <p>12:07:59 5 appreciate that. Thank you.</p> <p>12:08:00 6 THE WITNESS: You are welcome.</p> <p>12:08:01 7 THE COURT: Mr. Stiegler.</p> <p>12:08:09 8 BY MR. STIEGLER:</p> <p>12:08:10 9 Q. Good morning, Mr. Touboul. My name is Tony Stiegler.</p> <p>12:08:14 10 And I represent Websense.</p> <p>12:08:18 11 A. Hi.</p> <p>12:08:18 12 Q. Let me pick up perhaps right where Mr. Nelson left</p> <p>12:08:21 13 off. I think I just heard you say that over-blocking was</p> <p>12:08:25 14 not a problem for Finjan. Did I hear that correctly?</p> <p>12:08:31 15 A. Well, you say over-blocking. Before it was said false</p> <p>12:08:35 16 positives. False positives, it's a basic part of every</p> <p>12:08:39 17 security product. And if you take any product today, or</p> <p>12:08:44 18 yesterday or at the time, you would have false positives.</p> <p>12:08:46 19 It's part of the nature of the product.</p> <p>12:08:49 20 If you think a bit about false positives, they</p> <p>12:08:53 21 will turn to the false negatives. So many times you agree</p> <p>12:08:56 22 to get some false positives, but you don't have spyware, and</p> <p>12:09:04 23 you have to penetrate. So for that purpose of avoiding any</p> <p>12:09:06 24 false negative attack, you agree to have and manage some</p> <p>12:09:10 25 false positives. That is part of every security system.</p>

<p style="text-align: right;">608</p> <p>12:09:13 1 Q. If you could turn to the binder that I just handed to</p> <p>12:09:17 2 you, it looks like our binders are all black. The one I</p> <p>12:09:22 3 just put in front of you. Turn to Trial Exhibit DX-7171,</p> <p>12:09:27 4 please.</p> <p>12:09:30 5 A. Yes.</p> <p>12:09:30 6 Q. At the very first page, if I could have that up, Mr.</p> <p>12:09:44 7 Grimm. And this is a series of e-mails between you and some</p> <p>12:09:49 8 of the people who are your employees at Finjan in the 2005</p> <p>12:09:55 9 time frame. Correct?</p> <p>12:09:57 10 A. Yes.</p> <p>12:09:58 11 Q. And if we go to the bottom e-mail, which is the first</p> <p>12:10:02 12 one?</p> <p>12:10:02 13 A. Right.</p> <p>12:10:02 14 Q. That is an e-mail from you, January 31, 2005, talking</p> <p>12:10:09 15 about your default policy, to Gil Arditì. Is he a former</p> <p>12:10:16 16 Finjan employee?</p> <p>12:10:16 17 A. Yes, he is.</p> <p>12:10:20 18 Q. This is your e-mail. You say, Currently the default</p> <p>12:10:26 19 or the def policy -- I assume you are referring to default.</p> <p>12:10:31 20 Right?</p> <p>12:10:31 21 A. Yes. I am trying to look at the entire thread.</p> <p>12:10:35 22 Q. Currently the default policy is doing a lot of</p> <p>12:10:39 23 over-blocking.</p> <p>12:10:40 24 Does that refresh your recollection about</p> <p>12:10:42 25 whether Finjan had an over-blocking problem?</p>	<p style="text-align: right;">610</p> <p>12:12:12 1 security policy.</p> <p>12:12:12 2 I can tell you, I can tell you we had a major</p> <p>12:12:17 3 problem on the false positive problem in general. I can</p> <p>12:12:20 4 tell you, in general, yes, we were allowed to have some</p> <p>12:12:25 5 false positives as long as we don't have false negatives --</p> <p>12:12:28 6 the damage from false negative --</p> <p>12:12:30 7 Q. Maybe I can ask you a question here to keep us moving.</p> <p>12:12:34 8 This was in 2005. Is that correct?</p> <p>12:12:37 9 A. Yes.</p> <p>12:12:37 10 Q. And you also recognized that you had an over-blocking</p> <p>12:12:42 11 problem back in 2002. Isn't that right?</p> <p>12:12:51 12 Maybe if we could turn to Trial Exhibit 6190.</p> <p>12:13:02 13 Are you there with us?</p> <p>12:13:04 14 A. Yes, I have it now.</p> <p>12:13:05 15 Q. This is a proprietary document written by Finjan as of</p> <p>12:13:12 16 August 25th, 2002?</p> <p>12:13:16 17 A. Right.</p> <p>12:13:16 18 Q. And if we could go to Page 3, it's DX-6190-3. If I</p> <p>12:13:26 19 could have that blown up a little bit. Introduction, the</p> <p>12:13:30 20 second bullet point. Commented scripts and comments within</p> <p>12:13:35 21 scripts should not be scanned. They produce over-blocking.</p> <p>12:13:39 22 Does that refresh your recollection as to</p> <p>12:13:41 23 whether Finjan had an over-blocking problem back in 2002?</p> <p>12:13:47 24 A. Well, again, my understanding is that, you know, the</p> <p>12:13:53 25 biggest challenge was false negatives. My view, again, that</p>
<p style="text-align: right;">609</p> <p>12:10:45 1 A. Well, I don't think that's what this means, that we</p> <p>12:10:48 2 have a problem of over-blocking. Okay. If you look on the</p> <p>12:10:53 3 entire string, they also said, I suggest that we open Finjan</p> <p>12:10:58 4 common business category.</p> <p>12:11:00 5 In the organization, many times they have white</p> <p>12:11:02 6 lists. And you want to enable white lists. The idea of</p> <p>12:11:06 7 white lists is if I notice I am working for somebody which</p> <p>12:11:10 8 is decent, I don't need to start to block him or even scan</p> <p>12:11:14 9 him because it is a trustable site I just want to connect</p> <p>12:11:18 10 to. So I don't want to engage all the secure systems, and</p> <p>12:11:21 11 it may have a false positive there.</p> <p>12:11:24 12 Q. If we go to the e-mail that follows that, that looks</p> <p>12:11:27 13 like it's at 159, back from Mr. Arditì to you, the second</p> <p>12:11:33 14 sentence, he says, We will work repetitiously with QA --</p> <p>12:11:38 15 quality assurance. Is that what QA stands for?</p> <p>12:11:41 16 A. Yes.</p> <p>12:11:41 17 Q. -- the QA team to test the over-blocking.</p> <p>12:11:46 18 Does that refresh your recollection as to</p> <p>12:11:48 19 whether Finjan was suffering an over-blocking problem?</p> <p>12:11:52 20 A. You know, Finjan had many, many bugs in the products.</p> <p>12:11:56 21 Part of the life cycle of the product is you have something</p> <p>12:11:59 22 which is functioning better, functioning less, and you fix</p> <p>12:12:01 23 it. And the QA process is actually there for that, to help</p> <p>12:12:05 24 you solve different issues with the products or to fine-tune</p> <p>12:12:08 25 it, and sometimes to secure the policy or the default</p>	<p style="text-align: right;">611</p> <p>12:13:59 1 my vision, how I see the situation, because there is an</p> <p>12:14:03 2 argument about false negative, false positive, I always tend</p> <p>12:14:06 3 to agree to have in some false positives as long as I don't</p> <p>12:14:11 4 have false negatives, because false negatives means an</p> <p>12:14:14 5 attack on the company and a huge expense and huge problem.</p> <p>12:14:17 6 Q. I am sorry, are you finished?</p> <p>12:14:19 7 A. My understanding is that false positives is part of</p> <p>12:14:22 8 the business that you need to manage. It's like --</p> <p>12:14:24 9 Q. Okay --</p> <p>12:14:26 10 A. -- part of the issue.</p> <p>12:14:26 11 Q. Over-blocking is a problem that has to be managed.</p> <p>12:14:29 12 If we go --</p> <p>12:14:31 13 A. That's all I said.</p> <p>12:14:32 14 Q. -- to the fourth bullet point, it says, Remove obvious</p> <p>12:14:36 15 strings that cause massive over-blocking. Does that help</p> <p>12:14:40 16 refresh your recollection about Finjan's over-blocking</p> <p>12:14:41 17 problems in 2002?</p> <p>12:14:45 18 A. No.</p> <p>12:14:46 19 Q. You had massive ones, didn't you?</p> <p>12:14:50 20 A. You know, what IDC does, they take millions of</p> <p>12:14:54 21 websites and they will run and see the results. If that's</p> <p>12:14:57 22 part of their fine tuning, that's fine. As a product in the</p> <p>12:15:00 23 market, I didn't feel we had an issue with false positives</p> <p>12:15:04 24 more than any other product, by the way.</p> <p>12:15:07 25 Q. Let's change subjects a little bit.</p>

<p style="text-align: right;">612</p> <p>12:15:11 1 I think that you have agreed in the past that</p> <p>12:15:15 2 you believe that computer security should be a layered</p> <p>12:15:19 3 effort. Right?</p> <p>12:15:21 4 A. True.</p> <p>12:15:22 5 Q. You need to have multiple layers of security in order</p> <p>12:15:25 6 to be effective?</p> <p>12:15:27 7 A. True.</p> <p>12:15:27 8 Q. Not a single type of protection is sufficient by</p> <p>12:15:33 9 itself. Right?</p> <p>12:15:34 10 A. True.</p> <p>12:15:35 11 Q. That goes for behavior blocking or the list of</p> <p>12:15:39 12 suspicious operations as well, what Finjan claims in this</p> <p>12:15:41 13 case. Right?</p> <p>12:15:43 14 A. Right. That's why we came with the two products.</p> <p>12:15:46 15 Q. And you answered some questions in response to Mr.</p> <p>12:15:50 16 Allcock and Mr. Nelson about Finjan licensing various other</p> <p>12:15:57 17 antiviruses or other products. Correct?</p> <p>12:15:59 18 A. True.</p> <p>12:15:59 19 Q. Finjan also licensed my client's product, didn't they?</p> <p>12:16:07 20 A. Websense?</p> <p>12:16:08 21 Q. Yes.</p> <p>12:16:10 22 A. I think SurfControl.</p> <p>12:16:12 23 Q. Right. And you are aware that Websense purchased</p> <p>12:16:15 24 SurfControl. Right?</p> <p>12:16:16 25 A. I am not sure if that was when I was there. Maybe, I</p>	<p style="text-align: right;">614</p> <p>12:17:37 1 DJX 03139?</p> <p>12:17:46 2 A. Yes.</p> <p>12:17:46 3 Q. Let's just walk our way through the key terms of this</p> <p>12:17:49 4 license agreement. If we go to page 2.</p> <p>12:17:52 5 A. Yes.</p> <p>12:18:00 6 Q. Very good. The top paragraph, this is -- this tells</p> <p>12:18:05 7 us that this is the license agreement between Finjan and</p> <p>12:18:08 8 Microsoft between June 24th, 2005. Correct?</p> <p>9 A. Yes.</p> <p>12:18:13 10 Q. And if we highlight, please, paragraph 1.3 and just</p> <p>12:18:17 11 the top of 1.4, 1.3 tells us that this is a license between</p> <p>12:18:24 12 Finjan and Microsoft. Correct?</p> <p>12:18:26 13 A. True.</p> <p>12:18:28 14 Q. And paragraph 1.4 talks about the patents that Finjan</p> <p>12:18:32 15 is going to license to Microsoft. Correct?</p> <p>12:18:35 16 A. True.</p> <p>12:18:38 17 Q. And it says that those patents are all patents and</p> <p>12:18:41 18 patent applications that are owned by Finjan. Right?</p> <p>12:18:44 19 A. True.</p> <p>12:18:45 20 Q. Not just the '194 patent? It was everything?</p> <p>12:18:49 21 A. Right.</p> <p>12:18:49 22 Q. So we call that a portfolio-wide license. Is that</p> <p>12:18:53 23 familiar to you?</p> <p>12:18:54 24 A. Yeah. True.</p> <p>12:18:55 25 Q. If we could then go to the next page, paragraph 2.1.</p>
<p style="text-align: right;">613</p> <p>12:16:19 1 don't remember.</p> <p>12:16:19 2 Q. You are aware of that today?</p> <p>12:16:20 3 A. Yes.</p> <p>12:16:20 4 Q. So if we could go to Trial Exhibit DJX-0199, please.</p> <p>12:16:37 5 And Page 1 of 13, the next page, please, Mr. Grimm. Just</p> <p>12:16:45 6 the first seven or eight lines that are pre-highlighted.</p> <p>12:16:49 7 This is the license agreement that Finjan entered into with</p> <p>12:16:53 8 SurfControl. Isn't that right?</p> <p>12:16:55 9 A. Yes.</p> <p>12:16:19 10 Q. And this is dated as of March 2002. Right?</p> <p>11 A. Yes.</p> <p>12:16:48 12 Q. It's about the same time that Finjan was saying that</p> <p>12:16:50 13 it had massive over blocking problems. Isn't it?</p> <p>12:16:56 14 A. Are you asking me?</p> <p>12:16:57 15 Q. Yes.</p> <p>12:16:58 16 A. I don't see the connection between the events.</p> <p>12:17:00 17 Q. You don't see those two dates are about the same? You</p> <p>12:17:04 18 said a few minutes ago -- well, your documents said you had</p> <p>12:17:07 19 massive over blocking problems in 2002, and here is a</p> <p>12:17:10 20 license agreement with SurfControl of 2002. Right?</p> <p>12:17:13 21 A. I don't see the two events are related.</p> <p>12:17:17 22 Q. Okay. And let's go quickly to the Microsoft License</p> <p>12:17:28 23 Agreement that Mr. Nelson was talking to you about a few</p> <p>12:17:32 24 minutes ago.</p> <p>12:17:33 25 Mr. Grimm, if you could bring up Trial Exhibit</p>	<p style="text-align: right;">615</p> <p>12:19:03 1 This is the provision of the company -- of the license</p> <p>12:19:08 2 agreement that grants the license to Microsoft. Correct?</p> <p>12:19:13 3 A. Yes.</p> <p>12:19:14 4 Q. And I have highlighted there the phrase, "royalty-free</p> <p>12:19:19 5 license under the company patents." Do you see that?</p> <p>6 A. Yes.</p> <p>12:19:24 7 Q. And that's what this license agreement was about; it</p> <p>12:19:28 8 was a royalty-free license agreement?</p> <p>12:19:32 9 A. What do you mean? You want me to interpret the</p> <p>12:19:33 10 meaning of the contract?</p> <p>12:19:35 11 Q. No. I am just asking you if you understood that. You</p> <p>12:19:39 12 received \$8 million up front, didn't you?</p> <p>13 A. Yes.</p> <p>12:19:42 14 Q. There was no ongoing running royalty?</p> <p>12:19:44 15 A. Right. Now I understand. Sorry. Yes, you are right.</p> <p>12:19:47 16 Q. So you got all the money up front one time?</p> <p>12:19:51 17 A. True.</p> <p>12:19:51 18 Q. That was for a fully paid up, what we call a lump sum</p> <p>12:19:54 19 license. Right?</p> <p>12:19:56 20 A. True. I apologize. I didn't understand you before.</p> <p>12:19:59 21 Q. No problem.</p> <p>12:20:01 22 If we could then turn to Page 6 of the</p> <p>12:20:04 23 agreement, it's Page 7 of the trial exhibit. It's Section</p> <p>12:20:08 24 3, "Payments."</p> <p>12:20:11 25 This is the provision that says how much -- or</p>

<p style="text-align: right;">616</p> <p>12:20:14 1 will tell us if Microsoft will pay the license fee in</p> <p>12:20:20 2 30 days. Right?</p> <p>12:20:22 3 A. Yes.</p> <p>12:20:22 4 Q. So that helps us understand that it was a one-time up</p> <p>12:20:26 5 front payment to Finjan. Right?</p> <p>12:20:28 6 A. Absolutely.</p> <p>12:20:29 7 Q. And then I think you said, on some of your testimony</p> <p>12:20:33 8 this morning, that you thought that the Microsoft license</p> <p>12:20:36 9 agreement was very important because it gave credibility to</p> <p>12:20:41 10 Finjan?</p> <p>12:20:41 11 A. Among our assets, it also gave us credibility, yes.</p> <p>12:20:46 12 Q. And that was one of the most important things that you</p> <p>12:20:48 13 thought was of value in this agreement. Right?</p> <p>12:20:51 14 A. I don't think that's what I said. I said -- I said</p> <p>12:20:55 15 there have been different values in that -- in that</p> <p>12:20:58 16 business. I said, it's probably one of the best businesses</p> <p>12:21:00 17 I ever done in my career, and part of that was the awareness</p> <p>12:21:06 18 because they also invested \$2 million in the company. So</p> <p>12:21:11 19 the investment they made in Finjan added to the credibility.</p> <p>12:21:14 20 I don't think that's the greatest value but it's a very</p> <p>12:21:17 21 important value.</p> <p>12:21:18 22 Q. I think I heard you say that the credibility that it</p> <p>12:21:21 23 gave you was at least an important factor to you?</p> <p>12:21:24 24 A. Oh, yes.</p> <p>12:21:24 25 Q. Because you were a tiny little company?</p>	<p style="text-align: right;">618</p> <p>12:22:41 1 A. Didn't we agree on a press release?</p> <p>12:22:43 2 Q. You did. Let's go down to the bottom of Section 7.</p> <p>12:22:47 3 You were entitled to one press release with Microsoft. Am I</p> <p>12:22:50 4 right?</p> <p>5 A. Yes.</p> <p>12:22:51 6 Q. So here is the exception. It says, "Either party may</p> <p>12:22:55 7 disclose the existence (but not the terms) of this agreement</p> <p>12:22:59 8 to third parties, but solely to the extent that the</p> <p>12:23:02 9 disclosure of the existence of this agreement is</p> <p>12:23:05 10 characterized in a single press release that is agreed to my</p> <p>12:23:09 11 Microsoft in its sole discretion. Except as is otherwise</p> <p>12:23:13 12 provided by the aforementioned press release, neither party</p> <p>12:23:17 13 shall use any name, trademark, logo, or designation of the</p> <p>12:23:22 14 other party in any" -- Mr. Grimm, if you can carry on to the</p> <p>12:23:30 15 next page -- "advertising, publicity, or other promotional</p> <p>12:23:36 16 activities with regard to the company patents or other</p> <p>12:23:40 17 subject matter of this agreement without the prior written</p> <p>12:23:42 18 consent of such other party."</p> <p>12:23:45 19 Does that refresh your recollection on what your</p> <p>12:23:47 20 restrictions were about publicizing the relationship with</p> <p>12:23:50 21 Microsoft?</p> <p>12:23:51 22 A. Yeah. Yeah. Once they announce it, it's not news</p> <p>12:23:54 23 anymore. Everybody knows about it. And we have also a lot</p> <p>12:23:58 24 of marketing activity together with them, I don't remember</p> <p>12:24:00 25 exactly which one, but we had trade shows and some marketing</p>
<p style="text-align: right;">617</p> <p>12:21:27 1 A. Right.</p> <p>12:21:27 2 Q. Microsoft was huge?</p> <p>12:21:28 3 A. Right.</p> <p>12:21:29 4 Q. So you thought that that affiliation would be helpful</p> <p>12:21:31 5 to Finjan. Right?</p> <p>12:21:34 6 A. Absolutely.</p> <p>12:21:34 7 Q. Now, if we could turn to Section 7 of the agreement,</p> <p>12:21:37 8 which is on page 8. And it's trial Exhibit 9, Mr. Grimm.</p> <p>12:21:47 9 "Confidentiality."</p> <p>12:21:50 10 What I have highlighted there, is that what</p> <p>12:21:52 11 says, "Subject to the following provisions of Section 7.1,</p> <p>12:21:55 12 the terms and existence of this agreement and the investment</p> <p>12:22:00 13 referenced in Section 4 are confidential to each party.</p> <p>12:22:05 14 Neither party shall publish or otherwise disclose the terms</p> <p>12:22:08 15 or existence of this agreement."</p> <p>12:22:12 16 Does that help refresh your recollection about</p> <p>12:22:16 17 whether the agreement was supposed to be confidential?</p> <p>12:22:18 18 A. Yes. It's always like that. But when we needed to go</p> <p>12:22:21 19 to investors who get their permission in them as investors</p> <p>12:22:24 20 allow us to go to investors to raise money and tell them</p> <p>12:22:28 21 that we have this contract. So you are right. But it</p> <p>12:22:31 22 doesn't mean we couldn't use it.</p> <p>12:22:32 23 Q. Well, you couldn't use it -- we will explore how you</p> <p>12:22:35 24 could use it, but you certainly couldn't publicize it to the</p> <p>12:22:38 25 world. Right?</p>	<p style="text-align: right;">619</p> <p>12:24:04 1 activity together. Finjan and Microsoft approached their</p> <p>12:24:08 2 customers.</p> <p>12:24:09 3 Q. I am sorry. Let's talk about that.</p> <p>12:24:11 4 A. Sure.</p> <p>12:24:12 5 Q. First of all, if we just go to DX -- it's this trial</p> <p>12:24:17 6 exhibit, but page 13, which is the signature block. I just</p> <p>12:24:22 7 wanted to make sure. That's your signature on this</p> <p>12:24:25 8 agreement?</p> <p>9 A. Yes.</p> <p>12:24:26 10 Q. And then if we go to appendix -- or Exhibit A-1, it's</p> <p>12:24:33 11 dash 15, Mr. Grimm, of the trial exhibit.</p> <p>12:24:37 12 This tells us what the patents were that Finjan</p> <p>12:24:41 13 licensed to Microsoft, and the there were eight United</p> <p>12:24:48 14 States Patents licensed to Microsoft by Finjan. Correct?</p> <p>12:24:51 15 A. True.</p> <p>12:24:52 16 Q. And in addition to that, there were 19 United States</p> <p>12:24:57 17 Patent Applications. Correct?</p> <p>12:24:59 18 A. True.</p> <p>12:25:00 19 Q. And beyond that, there were 14 International Patent</p> <p>12:25:03 20 Applications. If we carry onto the next page, that would be</p> <p>12:25:09 21 dash 16 of the trial exhibit. Correct?</p> <p>12:25:11 22 A. True.</p> <p>12:25:12 23 Q. So you received the \$8 million for all of those</p> <p>12:25:15 24 patents and patent applications, not just the '194 patent.</p> <p>12:25:21 25 Isn't that true?</p>

<p style="text-align: right;">620</p> <p>12:25:21 1 A. True.</p> <p>12:25:23 2 Q. And then if we go Exhibit C, which is dash 19 of this</p> <p>12:25:28 3 trial exhibit, this is the marketing assistance that you and</p> <p>12:25:33 4 Microsoft agreed to. Isn't that right?</p> <p>5 A. Yes.</p> <p>12:25:35 6 Q. So the first bullet point is that, "Microsoft will</p> <p>12:25:42 7 make space available in the Microsoft booth at the 2006 RSA</p> <p>12:25:48 8 conference."</p> <p>12:25:49 9 The RSA conference is a huge one that happens</p> <p>12:25:52 10 every year. Right?</p> <p>12:25:53 11 A. Absolutely, in San Francisco.</p> <p>12:25:55 12 Q. "And such space will be in a location which size and</p> <p>12:25:58 13 cost will be determined by Microsoft in its discretion."</p> <p>12:26:01 14 Correct?</p> <p>12:26:01 15 A. Right.</p> <p>12:26:02 16 Q. Are you familiar with the testimony in this case from</p> <p>12:26:05 17 one of Finjan's other employees about the size of the space</p> <p>12:26:09 18 that was provided by Microsoft?</p> <p>12:26:13 19 A. No.</p> <p>12:26:14 20 Q. Do you know how many other companies shared that</p> <p>12:26:18 21 Microsoft booth with you that year?</p> <p>12:26:22 22 A. Well, they usually have available pavilions.</p> <p>12:26:27 23 Q. I am sorry?</p> <p>12:26:28 24 A. They would have pavilions.</p> <p>12:26:31 25 Q. And that was -- so there were multiple parties in that</p>	<p style="text-align: right;">622</p> <p>12:27:48 1 with somebody at Finjan to talk about the RSA conference and</p> <p>12:27:51 2 this webinar. Right?</p> <p>12:27:54 3 A. Where is that?</p> <p>12:27:55 4 Q. The third bullet point. Correct?</p> <p>5 A. Yes.</p> <p>12:28:00 6 Q. And when we asked you whether that one-hour</p> <p>12:28:02 7 conversation took place when we took your deposition this</p> <p>12:28:06 8 year, you said, I don't know whether that ever happened?</p> <p>12:28:11 9 A. I don't remember exactly which specific marketing</p> <p>12:28:14 10 event happened.</p> <p>12:28:19 11 Q. Mr. Grimm, you can take that down. Thank you.</p> <p>12:28:25 12 You are an engineer by training?</p> <p>13 A. Yes.</p> <p>12:28:27 14 Q. You have worked with marketing people throughout your</p> <p>12:28:32 15 career?</p> <p>12:28:32 16 A. Yes.</p> <p>12:28:33 17 Q. You realize, I believe, when you said that there is a</p> <p>12:28:38 18 great difference between marketing speak and technology or</p> <p>12:28:43 19 engineering language. Right?</p> <p>12:28:45 20 A. Yeah. It's -- it's different languages probably.</p> <p>12:28:48 21 Q. And it can be dangerous to rely on marketing documents</p> <p>12:28:52 22 if you want to know really how a product works. Right?</p> <p>12:28:57 23 A. Yeah, technical specs.</p> <p>12:29:02 24 Q. You need technical specifications or source codes or</p> <p>12:29:05 25 something through which an engineer can determine exactly</p>
<p style="text-align: right;">621</p> <p>12:26:33 1 pavilion. Right?</p> <p>12:26:34 2 A. Yeah.</p> <p>12:26:37 3 Q. And now, Mr. Nelson asked you some questions about</p> <p>12:26:44 4 whether you recalled, in just February of this year, some</p> <p>12:26:48 5 details when you were deposed.</p> <p>12:26:51 6 You were asked some questions about this</p> <p>12:26:53 7 Microsoft agreement, too, weren't you?</p> <p>8 A. Yes.</p> <p>12:26:58 9 Q. One of the questions I think you were asked was</p> <p>12:27:00 10 whether that space, at this RSA conference in 2006, was even</p> <p>12:27:05 11 provided to you by Microsoft?</p> <p>12:27:08 12 A. Right.</p> <p>12:27:08 13 Q. And in February of this year, you said, "I don't</p> <p>12:27:12 14 know"?</p> <p>12:27:13 15 A. I believe I said that, yes, probably.</p> <p>12:27:16 16 Q. And then one of the other bullet points here, the</p> <p>12:27:22 17 second bullet point is that, Microsoft will conduct a</p> <p>12:27:26 18 one-hour webinar with the company sometime in calendar year</p> <p>12:27:29 19 2005. Right?</p> <p>12:27:32 20 A. Right.</p> <p>12:27:32 21 Q. And you don't know whether that webinar ever took</p> <p>12:27:36 22 place, do you?</p> <p>12:27:36 23 A. I don't remember.</p> <p>12:27:39 24 Q. And the third bullet point, the marketing assistance,</p> <p>12:27:43 25 was that Microsoft would set up a one-hour telephone call</p>	<p style="text-align: right;">623</p> <p>12:29:09 1 what a product does?</p> <p>12:29:10 2 A. That's my belief.</p> <p>12:29:12 3 Q. And, indeed, it's your view that marketing people</p> <p>12:29:17 4 sometimes invent terms to describing products?</p> <p>12:29:21 5 A. That may happen. I have seen that in many companies,</p> <p>12:29:25 6 yes.</p> <p>12:29:26 7 Q. And marketing terms speak to a consumer or to some</p> <p>12:29:31 8 non-technically trained person to tell them what the product</p> <p>12:29:34 9 might do. Is that fair?</p> <p>12:29:38 10 A. Can you say that again, please?</p> <p>12:29:40 11 Q. Sure. Do you agree that marketing documents try to</p> <p>12:29:43 12 convey a message about what a product might do?</p> <p>12:29:47 13 A. I would say marketing documents should provide the</p> <p>12:29:51 14 message about the value and the benefits for the customer.</p> <p>12:29:53 15 Q. Features and benefits?</p> <p>12:29:54 16 A. Right.</p> <p>12:29:55 17 Q. That's a good buzz word?</p> <p>12:29:56 18 A. Right.</p> <p>12:29:57 19 Q. That's what the marketing people call "features and</p> <p>12:30:00 20 benefits"?</p> <p>12:30:01 21 A. And values.</p> <p>12:30:02 22 Q. And values.</p> <p>12:30:03 23 But an engineering document or a source code</p> <p>12:30:05 24 would tell you exactly what the product does?</p> <p>12:30:10 25 A. Yes. This source code tells you what a product do,</p>

<p style="text-align: right;">624</p> <p>12:30:12 1 yes.</p> <p>12:30:14 2 Q. And in your view, indeed, there is no connection</p> <p>12:30:17 3 whatsoever between marketing materials and the technical</p> <p>12:30:20 4 aspects of how products operate. Correct?</p> <p>12:30:24 5 A. I wouldn't put it as a generic statement. It depends</p> <p>12:30:27 6 on each and every scenario. You may have marketing people</p> <p>12:30:31 7 that may write documents which are more technical. If you</p> <p>12:30:36 8 sell -- if marketing is selling to engineers, then the</p> <p>12:30:39 9 document would be more the engineering style, so it's very</p> <p>12:30:41 10 generic when you say it like that.</p> <p>12:30:45 11 Q. So you remember when we deposed you on February 2nd of</p> <p>12:30:48 12 this year, and you have that deposition transcript in front</p> <p>12:30:50 13 of you. If you would turn to page 162?</p> <p>12:30:54 14 A. On which?</p> <p>12:30:55 15 Q. It's the February 2nd date.</p> <p>12:31:08 16 A. Which page?</p> <p>12:31:09 17 Q. 162, Lines 2 through 9. I will read them and see if</p> <p>12:31:15 18 this refreshes your recollection.</p> <p>12:31:18 19 "Question: Does this exhibit accurately depict</p> <p>12:31:20 20 that Finjan software was focused on Layer 7 of the OSI</p> <p>12:31:25 21 Network Layer Model? There was an objection.</p> <p>12:31:29 22 "The Witness: We have already seen, and I think</p> <p>12:31:31 23 that even you have showed us that there is no connection</p> <p>12:31:34 24 between the marketing material and the technical aspect. No</p> <p>12:31:39 25 connection whatsoever."</p>	<p style="text-align: right;">626</p> <p>12:32:55 1 Q. Thank you.</p> <p>12:32:56 2 A. Thank you.</p> <p>12:32:57 3 Q. Now, there has been a lot of talk about the Microsoft</p> <p>12:33:01 4 license from counsel's particular cross-examination.</p> <p>12:33:06 5 What was the value of the Microsoft license to</p> <p>12:33:10 6 you when you signed that deal?</p> <p>12:33:12 7 A. Business wise, I think every businessperson will tell</p> <p>12:33:15 8 you, when you take a legal document like a contract to try</p> <p>12:33:18 9 to measure the weight and the values of the marketing, you</p> <p>12:33:22 10 can't really get a good assessment of what's the marketing</p> <p>12:33:26 11 value because sometimes you have long target with many</p> <p>12:33:29 12 closes on the marketing but nothing happens, and sometimes</p> <p>12:33:32 13 you may have a few of them that are very significant that</p> <p>12:33:34 14 have a huge influence.</p> <p>12:33:37 15 And I think that's the exact example in our</p> <p>12:33:40 16 contract with Microsoft. There are not many closed in the</p> <p>12:33:44 17 marketing, but each of them have been extremely significant.</p> <p>12:33:47 18 ^ Para when we did end up the announcement, the</p> <p>12:33:50 19 release with Microsoft, everybody knew about it instantly.</p> <p>12:33:55 20 It was like fire spreading quickly, so the value is huge.</p> <p>12:33:58 21 Then our saying yes, we have been invited to their pavilion,</p> <p>12:34:03 22 which has never happened before, but our saying is like the</p> <p>12:34:06 23 event of all the security companies, if you announce that</p> <p>12:34:10 24 licensing to Microsoft pure to /R*E SC and then you go into</p> <p>12:34:14 25 Microsoft booth in RSA, all the players in the security</p>
<p style="text-align: right;">625</p> <p>12:31:41 1 Does that help you refresh your recollection in</p> <p>12:31:44 2 this case?</p> <p>12:31:46 3 A. Yes. And --</p> <p>12:31:46 4 MR. STIEGLER: Thank you. Nothing further.</p> <p>12:31:48 5 THE COURT: Redirect, Mr. Andre?</p> <p>12:31:55 6 REDIRECT EXAMINATION</p> <p>12:31:55 7 BY MR. ANDRE:</p> <p>12:31:58 8 Q. Mr. Touboul, would you please finish the answer you</p> <p>12:32:01 9 were about ready to give.</p> <p>12:32:03 10 A. I am sorry?</p> <p>12:32:04 11 Q. Would you finish your answer?</p> <p>12:32:06 12 A. Yes. Thank you very much. We were talking here about</p> <p>12:32:09 13 the OSI model for describing the network. That's a</p> <p>12:32:13 14 technical document that divides the network into seven</p> <p>12:32:20 15 layers, and trying to explain, what is Finjan doing, it</p> <p>12:32:23 16 would not fit the 7 Layer Models.</p> <p>12:32:27 17 So the marketing team took the 7 Layer Model,</p> <p>12:32:29 18 the technical terms, and tried to tell the customers that</p> <p>12:32:35 19 we, they call it Layer 8, doesn't exist. So I was referring</p> <p>12:32:40 20 to the fact that there is no Layer 8 technically, but</p> <p>12:32:42 21 marketing will use that term to make people quickly</p> <p>12:32:45 22 understand that we are operating ahead of Layer 7.</p> <p>12:32:49 23 So that's what I meant, that marketing will</p> <p>12:32:51 24 take, you know, take the technical document and twist them</p> <p>12:32:53 25 to their need.</p>	<p style="text-align: right;">627</p> <p>12:34:18 1 market, all the customers that come to that very important</p> <p>12:34:22 2 security haven't, they immediately know what happened</p> <p>12:34:24 3 between the two companies. So I still think it was a great</p> <p>12:34:29 4 asset on marketing even though there is the only three</p> <p>12:34:34 5 paragraphs speaking about it. Even though there is only</p> <p>12:34:37 6 ^ REPORTER NOTE TO CHECK.</p> <p>12:34:38 7 Q. If we go to the exhibit that Mr. Nelson started,</p> <p>12:34:43 8 DX-4045, and this was the IDC report?</p> <p>12:34:48 9 A. Yeah, which I don't have.</p> <p>12:34:49 10 Q. We are going to show it on the screen.</p> <p>12:34:55 11 Turn to the one with the Bates numbers 775,</p> <p>12:34:58 12 ^ SPELL Mr. /SHRAEUer. Mr. Stayer maybe ^ REPORTER NOTE TO</p> <p>12:35:02 13 CHECK.</p> <p>12:35:05 14 This top paragraph that was highlighted by</p> <p>12:35:09 15 Mr. Nelson said that the IDC fully expected Microsoft to</p> <p>12:35:13 16 compete directly with established security vendors,</p> <p>12:35:16 17 Symantec, McAfee, TrendMicro, Computer Associates, and</p> <p>12:35:20 18 Sophos for both enterprise and consumer deals.</p> <p>12:35:25 19 You were asked a question about that, right.</p> <p>12:35:26 20 Did Microsoft ever get into the computer</p> <p>12:35:30 21 security software space; do you know?</p> <p>12:35:31 22 A. I don't think they entered into the security market as</p> <p>12:35:34 23 was proposed by IDC. And, you know, Microsoft is a big</p> <p>12:35:38 24 company. There are two big companies in the industry,</p> <p>12:35:42 25 Microsoft and Intel. Even if they would get into a security</p>

<p style="text-align: right;">628</p> <p>12:35:45 1 market, they must make all their APIs that I described</p> <p>12:35:49 2 before to all data parties; otherwise, it's not a fair game</p> <p>12:35:54 3 and there would be an antitrust evaluation.</p> <p>12:35:58 4 MR. NELSON: I am going to object, Your Honor.</p> <p>12:36:00 5 Legal opinions here.</p> <p>12:36:01 6 THE COURT: I am going to sustain that objection</p> <p>12:36:03 7 and instruct the jury to disregard that last response.</p> <p>12:36:07 8 THE WITNESS: I am sorry.</p> <p>12:36:08 9 BY MR. ANDRE:</p> <p>12:36:08 10 Q. You discussed that it was a big deal when Finjan and</p> <p>12:36:12 11 Microsoft entered in for a public relations point of view.</p> <p>12:36:15 12 If you look at the very next sentence, it says, "In addition</p> <p>12:36:19 13 to the acquisitions, Microsoft signed a non-exclusive</p> <p>12:36:22 14 worldwide agreement with Finjan to license patents for</p> <p>12:36:26 15 computer security technologies. Finjan is a leading</p> <p>12:36:29 16 provider of behavior-based technology security content</p> <p>12:36:32 17 management solutions that complement signature-based</p> <p>12:36:38 18 antivirus and intrusion detection solutions." Do you see</p> <p>12:36:41 19 that?</p> <p>12:36:41 20 A. Yes.</p> <p>12:36:41 21 Q. Is that what you were talking about when you said,</p> <p>12:36:43 22 shortly after you signed the Microsoft agreement, a company</p> <p>12:36:48 23 like IDC was tallying the importance of it?</p> <p>12:36:52 24 MR. NELSON: Objection. That's a leading</p> <p>12:36:54 25 question.</p>	<p style="text-align: right;">630</p> <p>12:38:12 1 one so we have better security.</p> <p>12:38:22 2 Q. I believe when the Sophos' counsel was cross-examining</p> <p>12:38:25 3 you, you were talking about the OEM relationship that you</p> <p>12:38:28 4 developed with Sophos. Is that correct?</p> <p>12:38:30 5 A. True.</p> <p>12:38:31 6 Q. And you said you had OEM relationships with several</p> <p>12:38:35 7 companies. Is that correct?</p> <p>12:38:36 8 A. That's true.</p> <p>12:38:37 9 Q. If you go to DJX-0 -- DJX-0359. This was the OEM</p> <p>12:38:51 10 agreement that was shown to you earlier today. Correct?</p> <p>11 A. Yes.</p> <p>12:38:56 12 Q. I want to go to the page with DJX-0359-13. This was</p> <p>12:39:07 13 the price structure that you agreed to with Sophos.</p> <p>12:39:11 14 Correct?</p> <p>12:39:12 15 A. True.</p> <p>12:39:13 16 Q. And you said that you were paying cents, meaning less</p> <p>12:39:18 17 than a dollar per each time you got a copy of the Sophos' AB</p> <p>12:39:25 18 engine?</p> <p>12:39:25 19 A. That's true.</p> <p>12:39:27 20 Q. And you sold your product for 35 --</p> <p>12:39:31 21 A. \$45 per copy, exactly.</p> <p>12:39:34 22 Q. And so, you would give your customers, for free, the</p> <p>12:39:36 23 AB engine that you licensed from Sophos?</p> <p>12:39:40 24 MR. NELSON: Objection, Your Honor. These are</p> <p>12:39:42 25 leading questions.</p>
<p style="text-align: right;">629</p> <p>12:36:54 1 THE COURT: Sustained.</p> <p>12:36:57 2 BY MR. ANDRE:</p> <p>12:36:57 3 Q. What type of value would you, as CEO of Finjan,</p> <p>12:37:05 4 attribute to the statement I just read?</p> <p>12:37:08 5 A. So, you know, beyond what we have said in the</p> <p>12:37:12 6 contract, they are saying that, by far, the bigger value is</p> <p>12:37:16 7 that I believe that it didn't happen. But if it would</p> <p>12:37:19 8 happen, Microsoft would become our largest distributor into</p> <p>12:37:24 9 the security market just because they will be able to</p> <p>12:37:26 10 distribute with Windows APIs on behavioral analysis, and</p> <p>12:37:30 11 then everybody that needs to use it needs to license it from</p> <p>12:37:33 12 us, that was, in my mind, the dream come true.</p> <p>12:37:39 13 Q. You also testified about the fact that you felt</p> <p>12:37:42 14 layered security was an important aspect?</p> <p>12:37:44 15 A. Yes.</p> <p>12:37:45 16 Q. What were you referring to when you said "layered</p> <p>12:37:47 17 security"?</p> <p>12:37:48 18 A. Well, if you want to combat properly the new track of</p> <p>12:37:52 19 mobile code, I believe you need to have, an example of</p> <p>12:37:56 20 corporation, more than one security line.</p> <p>12:37:58 21 That's why we put one security line on the</p> <p>12:38:00 22 client that is doing run time examination and one security</p> <p>12:38:04 23 line in the gateway where everything is getting into the</p> <p>12:38:07 24 corporation, so we have multiple line of defense.</p> <p>12:38:10 25 If we miss one, hopefully we will get the second</p>	<p style="text-align: right;">631</p> <p>12:39:44 1 THE COURT: They are. Sustained.</p> <p>12:39:45 2 BY MR. ANDRE:</p> <p>12:39:46 3 Q. Would you give your customers the AB engine that you</p> <p>12:39:48 4 licensed from Sophos free?</p> <p>12:39:50 5 A. Yes. I mean, the whole concept was we bared that as a</p> <p>12:39:56 6 cost of the product.</p> <p>12:39:57 7 When you build the product, you have different</p> <p>12:40:00 8 costs of the product. That would be one of the costs of the</p> <p>12:40:03 9 product. We build the product into the budget of the AB</p> <p>12:40:17 10 engine.</p> <p>12:40:18 11 Q. I believe Symantec's counsel also discussed the fact</p> <p>12:40:22 12 that you had a license -- or that you had known about the</p> <p>12:40:26 13 Norton AntiVirus product back in 1995?</p> <p>12:40:30 14 A. Can you say it again?</p> <p>12:40:32 15 Q. I believe the Symantec counsel also asked you if you</p> <p>12:40:34 16 were aware of the Norton AntiVirus product in 1995. Do you</p> <p>12:40:38 17 recall that?</p> <p>12:40:38 18 A. Yes.</p> <p>12:40:39 19 Q. What was your understanding of what that product was</p> <p>12:40:41 20 in 1995?</p> <p>12:40:42 21 A. Signature-based antivirus.</p> <p>12:40:59 22 Q. If you go to DX-4031. Mr. Touboul, this is a</p> <p>12:41:29 23 declaration that Symantec's counsel showed you, I believe.</p> <p>12:41:32 24 A. Right.</p> <p>12:41:33 25 Q. I am going to ask you to turn to the second page of</p>

<p style="text-align: center;">632</p> <p>12:41:35 1 this document. No. 2, Page No. 2, the next page. There is</p> <p>12:41:40 2 a heading, No. 4, that counsel asked you about. It talks</p> <p>12:41:51 3 about the, this is when you came up with the idea for Finjan</p> <p>12:41:56 4 and Finjan technology. Correct?</p> <p>12:41:58 5 A. Right.</p> <p>12:41:58 6 MR. NELSON: That is a leading question as well,</p> <p>12:42:00 7 Your Honor.</p> <p>12:42:02 8 THE COURT: Try to avoid the leading, please,</p> <p>12:42:05 9 Mr. Andre.</p> <p>12:42:05 10 BY MR. ANDRE:</p> <p>12:42:06 11 Q. Do you recall when Symantec's counsel asked you about</p> <p>12:42:09 12 Paragraph 4?</p> <p>12:42:09 13 A. Yes.</p> <p>12:42:09 14 Q. What is your recollection of Paragraph 4, what were</p> <p>12:42:13 15 you asked about?</p> <p>12:42:15 16 A. I am sorry?</p> <p>12:42:16 17 Q. Do you recall what Mr. Nelson asked you about</p> <p>12:42:18 18 Paragraph 4?</p> <p>12:42:19 19 A. Yes.</p> <p>12:42:19 20 Q. What was that?</p> <p>12:42:25 21 A. I am sorry. I don't remember now. Please refresh my</p> <p>12:42:30 22 memory.</p> <p>12:42:30 23 Q. Well, there is also a green binder with your</p> <p>12:42:34 24 deposition testimony. Is that correct?</p> <p>12:42:35 25 A. Yes.</p>	<p style="text-align: center;">634</p> <p>12:44:15 1 programmers in the beginning of '96. I don't know exactly</p> <p>12:44:19 2 when. One of them who was -- who was responsible for -- for</p> <p>12:44:24 3 GUI, and the second one, I'm not quite sure what he did.</p> <p>12:44:27 4 Q. Then the next question was, You mentioned</p> <p>12:44:31 5 crystallizing an idea. What was the idea?</p> <p>12:44:33 6 Do you see that?</p> <p>12:44:35 7 A. Yes.</p> <p>12:44:35 8 Q. And you answered?</p> <p>12:44:36 9 A. The first product in Finjan.</p> <p>12:44:40 10 Q. And then it was asked, what was the first product of</p> <p>12:44:43 11 Finjan.</p> <p>12:44:43 12 Do you see that?</p> <p>12:44:44 13 A. Yes, I reply: SurfinBoard.</p> <p>12:44:48 14 MR. NELSON: I am going to object. I don't see</p> <p>12:44:50 15 how any of these are prior consistent statements, Your</p> <p>12:44:54 16 Honor. I am not sure where we are going with this.</p> <p>12:44:56 17 THE COURT: How much more of this do you have?</p> <p>12:44:58 18 MR. ANDRE: That was it, Your Honor. Mr. Nelson</p> <p>12:45:00 19 tried to establish that he didn't remember --</p> <p>12:45:03 20 MR. NELSON: Your Honor, we can stop that.</p> <p>12:45:05 21 THE COURT: The objection is overruled. A</p> <p>12:45:08 22 little untimely.</p> <p>12:45:09 23 MR. NELSON: I understand. I just didn't know</p> <p>12:45:10 24 where we were going.</p> <p>12:45:15 25 BY MR. ANDRE:</p>
<p style="text-align: center;">633</p> <p>12:42:35 1 Q. And you have been deposed related to Finjan cases for</p> <p>12:42:40 2 four days. Correct?</p> <p>12:42:41 3 A. Yes.</p> <p>12:42:41 4 Q. I want you to turn to the date of October 23rd, 2007.</p> <p>12:42:47 5 A. Yes.</p> <p>12:42:47 6 Q. And turn to Page 66 of that deposition?</p> <p>12:43:03 7 A. Yes.</p> <p>12:43:05 8 Q. There is a question starting on Line 10 that reads, In</p> <p>12:43:09 9 roughly January 1996, were you the only employee of Finjan?</p> <p>12:43:13 10 Do you see that?</p> <p>12:43:14 11 A. Yes, I do.</p> <p>12:43:15 12 Q. Would you read your answer to that?</p> <p>12:43:19 13 A. Yes. The chronology, the exact chronology I don't</p> <p>12:43:23 14 remember. You can have a look at the certificate of</p> <p>12:43:26 15 incorporation or certificate of Finjan where it says when I</p> <p>12:43:34 16 registered the name in the computer register.</p> <p>12:43:39 17 Q. Continue, please.</p> <p>12:43:40 18 A. Usually, when you establish companies, I do it at a</p> <p>12:43:43 19 relatively early stage. There may be a situation in which I</p> <p>12:43:46 20 establish the company, and only afterwards I begin to put</p> <p>12:43:51 21 content into it, but the difference is about a month or two.</p> <p>12:43:56 22 The first stage is usually -- this is the way it</p> <p>12:43:59 23 was in Finjan, at least -- I studied. I crystallized the</p> <p>12:44:04 24 idea. I built a kind of prototype, if I'm not mistaken. I</p> <p>12:44:10 25 worked on a patent, or the patent, and then I enlisted two</p>	<p style="text-align: center;">635</p> <p>12:45:16 1 Q. Mr. Touboul, is the deposition testimony that you just</p> <p>12:45:18 2 read consistent with Paragraph 4 of the declaration you put</p> <p>12:45:22 3 in?</p> <p>12:45:23 4 MR. NELSON: Objection.</p> <p>12:45:23 5 THE COURT: Isn't that for the jury?</p> <p>12:45:40 6 You will be free to make that argument at the</p> <p>12:45:43 7 appropriate time.</p> <p>12:45:44 8 MR. ANDRE: Thank you, Your Honor. Appreciate</p> <p>12:45:47 9 it.</p> <p>12:46:01 10 BY MR. ANDRE:</p> <p>12:46:02 11 Q. On the same deposition, there is also, on Page 112 of</p> <p>12:46:06 12 that deposition --</p> <p>12:46:08 13 A. Yes.</p> <p>12:46:08 14 Q. Mr. Nelson directed your attention to the question at</p> <p>12:46:12 15 the bottom of that, it says, Did you file any patents on the</p> <p>12:46:17 16 technology in SurfinBoard?</p> <p>12:46:18 17 And you answered, There is no connection between</p> <p>12:46:20 18 the patent and the product.</p> <p>12:46:21 19 Do you remember that testimony?</p> <p>12:46:22 20 A. Yes.</p> <p>12:46:23 21 Q. Would you look on the next page of the testimony, and</p> <p>12:46:29 22 read that into the record, just to give the full response?</p> <p>12:46:35 23 A. The full response, I said, There is no connection</p> <p>12:46:36 24 between the patent and the product. ...code and I thought</p> <p>12:46:40 25 it would open tremendous opportunities for the whole</p>

<p style="text-align: right;">636</p> <p>12:46:43 1 computer business world, but also posed a number of -- a lot</p> <p>12:46:48 2 of big dangers, and I wanted to verify to what extent these</p> <p>12:46:52 3 dangers really existed.</p> <p>12:46:53 4 Q. I believe you are -- the way the page breaks it's a</p> <p>12:46:57 5 little different. It should be:</p> <p>12:46:58 6 The next question is, So SurfinBoard does not</p> <p>12:47:00 7 practice any of the Finjan patents?</p> <p>12:47:03 8 A. My mistake. I looked to the wrong page.</p> <p>12:47:05 9 So SurfinBoard does not practice any of the</p> <p>12:47:09 10 Finjan patents.</p> <p>12:47:09 11 What I said is that generally speaking is the</p> <p>12:47:13 12 aspect of patent and the aspect of -- and then there were</p> <p>12:47:19 13 attorney discussions. And I said, I don't recall what the</p> <p>12:47:23 14 overlap was between them.</p> <p>12:47:29 15 THE COURT: Mr. Andre.</p> <p>12:47:33 16 BY MR. ANDRE:</p> <p>12:47:36 17 Q. So when you followed up with that question -- strike</p> <p>12:47:42 18 that.</p> <p>12:47:43 19 MR. ANDRE: I have no further questions, Your</p> <p>12:47:45 20 Honor.</p> <p>12:47:45 21 THE COURT: All right. Thank you, sir. You are</p> <p>12:47:47 22 excused.</p> <p>12:47:48 23 (Witness excused.)</p> <p>12:47:49 24 THE COURT: Members of the jury, let's take</p> <p>12:47:51 25 lunch. We will come back in about an hour.</p>	<p style="text-align: right;">638</p> <p>13:51:33 1 THE COURT: Ladies and gentlemen, welcome back.</p> <p>13:51:35 2 I hope you got out a little bit, enjoyed this wonderful</p> <p>13:51:40 3 weather.</p> <p>13:51:41 4 You may be seated. All right.</p> <p>13:51:44 5 MS. KOBIALKA: Good afternoon, Your Honor. Lisa</p> <p>13:51:46 6 Kobialka for Finjan. We would like to call our next</p> <p>13:51:49 7 witness, Mr. Ben-Itzhak.</p> <p>13:51:50 8 Also, Your Honor, at this time we have some</p> <p>13:52:06 9 exhibits to add to what we already have.</p> <p>13:52:11 10 THE COURT: Let Ms. Walker get the witness</p> <p>13:52:14 11 sworn.</p> <p>13:52:15 12 ... YUVAL BEN-ITZHAK, having been duly sworn as</p> <p>13:52:51 13 a witness, was examined and testified as follows ...</p> <p>13:55:02 14 (Documents distributed to jury.)</p> <p>13:55:05 15 DIRECT EXAMINATION</p> <p>13:55:05 16 BY MS. KOBIALKA:</p> <p>13:55:05 17 Q. Good afternoon. Could you state your full name so</p> <p>13:55:07 18 everyone can hear it, please?</p> <p>13:55:08 19 A. My name is Yuval Ben-Itzhak.</p> <p>13:55:10 20 Q. Where do you currently work?</p> <p>13:55:12 21 A. Currently I work for AVG.</p> <p>13:55:14 22 Q. What is AVG?</p> <p>13:55:15 23 A. AVG is a software security company.</p> <p>13:55:18 24 Q. Where did you work before you started to work for AVG?</p> <p>13:55:22 25 A. Before joining AVG I worked for Finjan.</p>
<p style="text-align: right;">637</p> <p>12:47:53 1 I am going to stay and talk to the lawyers.</p> <p>12:47:56 2 (Jury leaves courtroom at 12:48 p.m.)</p> <p>12:48:25 3 THE COURT: Those who wish to remain can do so.</p> <p>12:48:27 4 You can sit, if you would like. Or you can go take lunch.</p> <p>12:48:31 5 But the lawyers need to stay.</p> <p>12:48:32 6 I am told, if memory serves, that we have an</p> <p>12:48:43 7 issue with regard to the next witness. Or has that been</p> <p>12:48:47 8 resolved?</p> <p>12:48:47 9 MR. BAKER: We do have an issue, Your Honor.</p> <p>12:48:57 10 Mark Baker from Quinn Emanuel on behalf of Symantec. We</p> <p>12:49:00 11 just have one issue. It relates to a demonstrative that</p> <p>12:49:03 12 plaintiff intends to use with Dr. Medvidovic.</p> <p>12:49:08 13 MR. ANDRE: Your Honor, he is not the next</p> <p>12:49:10 14 witness. But we can address this now. He will be the next</p> <p>12:49:12 15 witness after that.</p> <p>12:49:13 16 THE COURT: Will we get to him today?</p> <p>12:49:16 17 MR. ANDRE: We have the former CTO coming on the</p> <p>12:49:20 18 stand for Finjan. With three cross-examinations, we might</p> <p>12:49:22 19 not. I don't know.</p> <p>12:49:23 20 THE COURT: Let's go eat.</p> <p>12:49:25 21 (Luncheon recess taken.)</p> <p>13:50:42 22 THE COURT: Good afternoon. Are we ready for</p> <p>13:50:45 23 the jury?</p> <p>13:50:48 24 MR. NELSON: I think so, Your Honor.</p> <p>13:50:49 25 (Jury enters courtroom at 1:51 p.m.)</p>	<p style="text-align: right;">639</p> <p>13:55:24 1 Q. What was your title when you worked at Finjan?</p> <p>13:55:28 2 A. I was the chief technology officer at Finjan.</p> <p>13:55:30 3 Q. What was Finjan's business at the time that you were</p> <p>13:55:34 4 the chief technology officer?</p> <p>13:55:38 5 A. Finjan was in the security software business.</p> <p>13:55:43 6 Q. How long were you the CTO for Finjan?</p> <p>13:55:47 7 A. I joined in 2005, until 2009.</p> <p>13:55:51 8 Q. And today, do you still do some work for Finjan?</p> <p>13:55:55 9 A. Today I am a consultant for Finjan.</p> <p>13:55:57 10 Q. What kind of services do you provide as a consultant?</p> <p>13:56:04 11 A. It's a very broad service around the technology that</p> <p>13:56:07 12 we developed at Finjan. So helping the company in the</p> <p>13:56:11 13 prosecution process with the Patent Office, helping them on</p> <p>13:56:15 14 different questions, helping them if the Patent Office is</p> <p>13:56:20 15 calling for a meeting or has questions. All these kinds of</p> <p>13:56:25 16 services around the patents.</p> <p>13:56:26 17 Q. If you could just speak up a little bit more, because</p> <p>13:56:29 18 I am even having a hard time hearing.</p> <p>13:56:31 19 A. Sorry.</p> <p>13:56:31 20 Q. We will talk a little bit more about Finjan. Could</p> <p>13:56:34 21 you just briefly describe your educational background since</p> <p>13:56:37 22 high school?</p> <p>13:56:38 23 A. Sure. After high school -- I grew up in Israel, and</p> <p>13:56:43 24 after high school you have to go to military service. And</p> <p>13:56:46 25 that's what I did, for three years. I served in Israeli</p>