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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

FINJAN, INC.,)	
)	
PLAINTIFF,)	NO. C-14-2998 HSG (JSC)
)	
VS.)	
)	
SYMANTEC CORP.,)	OAKLAND, CALIFORNIA
)	
DEFENDANT.)	MOTIONS TO STRIKE
_____)	

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 10:58 A.M. - 1:11 P.M.

APPEARANCES:

FOR PLAINTIFF:

KRAMER LEVIN NAFTALIS & FRANKEL
990 MARSH ROAD
MENLO PARK, CALIFORNIA 94025
BY: PAUL ANDRE, ESQUIRE
JAMES HANNAH, ESQUIRE
KRISTOPHER KASTENS, ESQUIRE

FOR DEFENDANT:

QUINN EMANUEL URQUHART & SULLIVAN
51 MADISON AVENUE, 22ND FLORR
NEW YORK, NEW YORK 10010
BY: KATE E. CASSIDY, ESQUIRE

QUINN EMANUEL URQUHART & SULLIVAN
500 W. MADISON, SUITE 2450
CHICAGO, ILLINOIS 60661
BY: NATHAN A. HAMSTRA, ESQUIRE

TRANSCRIBED BY:

DIANE E. SKILLMAN, TRANSCRIBER

1 THURSDAY, JANUARY 25, 2018

10:58 A.M.

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

3 **(TRANSCRIBER'S NOTE: DUE TO COUNSEL'S FAILURE TO IDENTIFY**
4 **THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER ATTRIBUTIONS ARE**
5 **BASED ON EDUCATED GUESS.)**

6 **THE CLERK:** CALLING C-14-2998 FINJAN, INC. VERSUS
7 SYMANTEC.

8 **MR. ANDRE:** GOOD MORNING, YOUR HONOR. PAUL ANDRE FOR
9 FINJAN. AND WITH ME TODAY ARE MY COLLEAGUES, JAMES HANNAH
10 AND --

11 **MR. HANNAH:** GOOD MORNING, YOUR HONOR.

12 **MR. ANDRE:** AND KRISTOPHER KASTENS.

13 **MR. KASTENS:** GOOD MORNING.

14 **THE COURT:** GOOD MORNING.

15 **MR. HAMSTRA:** YOUR HONOR, NATHAN HAMSTRA FOR
16 SYMANTEC. WITH ME IS KATE CASSIDY AS WELL AS IN-HOUSE COUNSEL
17 FOR SYMANTEC DAVID MAJORS.

18 **THE COURT:** GOOD MORNING.

19 OKAY. WOW. WHAT CAN I SAY. YOU REALLY ARE ASKING A LOT
20 OF ME, BUT NONETHELESS I WILL DO MY BEST.

21 LET'S START WITH FINJAN'S MOTION TO STRIKE SOME REFERENCES
22 IN THE EXPERT REPORTS EVEN THOUGH IT'S INVALIDITY AND SO WE'RE
23 GOING A LITTLE BACKWARDS.

24 AND I'M GOING TO NEED YOU -- I HAVE EVERYONE'S, WE ARE
25 GOING TO BE REFERRING TO, I'M GOING TO RELY ON YOU TO IDENTIFY

1 THE PAGES FROM THE, YOU KNOW, MOTIONS, FROM THE EXHIBIT
2 NUMBERS AND THE LIKE. SO BE PREPARED DO THAT.

3 **UNIDENTIFIED SPEAKER:** SO, YOUR HONOR, THIS IS JUST
4 FOR THE REFERENCES NOW, NOT THE SUPPLEMENTAL REPORT; IS THAT
5 CORRECT?

6 **THE COURT:** WELL, I'M DOING THE WHOLE --

7 **UNIDENTIFIED SPEAKER:** OKAY.

8 **THE COURT:** -- MOTION. WHAT I AM JUST SAYING IS --

9 **UNIDENTIFIED SPEAKER:** GOT IT.

10 **THE COURT:** -- EVERYBODY CAN STAND UP AND HELP,
11 WHATEVER, BUT EVERYONE NEEDS TO BE PREPARED TO DO THAT.

12 OKAY. SO THE FIRST ISSUE IS DR. RUBIN'S SUPPLEMENTAL
13 REPORT. AND I GUESS MY QUESTION HERE... FIRST, I FIND THAT
14 THE SOURCE CODE IS (UNINTELLIGIBLE). I JUST FIND -- SO WE ARE
15 NOT GOING TO HAVE ANY DISCUSSION ABOUT THAT.

16 THE NEXT THING WOULD BE IS, AND I WENT THROUGH AND I READ
17 THE ENTIRE TRANSCRIPT. AND WHAT I HAD INTENDED, AND I
18 ACTUALLY THINK WAS CLEAR, WAS THAT WHAT I INTENDED WAS, THAT
19 TO THE EXTENT AN ISSUE AROSE FROM FINJAN'S REBUTTAL REPORT
20 THAT SYMANTEC HADN'T BEEN AWARE OF BECAUSE THERE HADN'T BEEN
21 FULSOME RESPONSES TO THE CONTENTIONS OR INTERROGATORIES, THAT
22 THE PARTIES SHOULD REALLY AGREE AND ALLOW THAT CONTENTION TO
23 BE MET. BUT IF THERE WASN'T AGREEMENT, THEN IT NEEDED TO BE
24 BROUGHT TO THE COURT. I DIDN'T GIVE ANYBODY SORT OF A
25 UNILATERAL RIGHT IN THAT SENSE.

1 HOWEVER, HERE, WHAT I SAY TO FINJAN IS, WHERE IN DISCOVERY
2 DID YOU DISCLOSE YOUR POSITION THAT THE NAV 4.0 DID NOT
3 INCLUDE BLOODHOUND FUNCTIONALITY, WHICH IS WHAT I UNDERSTAND
4 THE SUPPLEMENTAL REPORT REFERS TO OR REBUTS.

5 **UNIDENTIFIED SPEAKER:** WHAT WE TOLD THEM WAS WAS THAT
6 NAV 4.0 WAS NOT PRIOR ART. SO -- AND THAT'S WHAT WE PUT IN
7 OUR REBUTTAL EXPERT REPORT. WE DID THAT. THAT'S EXHIBIT 4 TO
8 THE --

9 **THE COURT:** NO. WHAT I AM SAYING IS, BEFORE YOUR,
10 BEFORE YOUR SUPPLEMENTAL REPORT, WHERE IN DISCOVERY DID YOU
11 DISCLOSE? IN DISCOVERY.

12 **MR. ANDRE:** INTERROGATORY RESPONSE 13. THAT'S IN THE
13 CASSIDY DECLARATION, EXHIBIT 4. AND ON PAGE 42, THE
14 INTERROGATORY ASKED FOR -- IT'S A LITTLE BIT OF A DOOZY OF AN
15 INTERROGATORY --

16 **THE COURT:** EVERYTHING IN THIS CASE IS A DOOZY.

17 **MR. ANDRE:** IDENTIFY ALL LEGAL AND FACTUAL BASES FOR
18 YOUR CONTENTION THAT EACH ASSERTED CLAIM IS NOT INVALID.

19 AND SO -- AND THE BASIS FOR THE CONTENTION.

20 AND IT FURTHER ASKS: TO THE EXTENT YOU CONTEND THAT ANY
21 REFERENCE SET FORTH IN SYMANTEC'S INVALIDITY CONTENTION DOES
22 NOT QUALIFY AS PRIOR ART OR IS INADMISSIBLE AT TRIAL, IDENTIFY
23 YOUR BASIS.

24 THEN ON PAGE 52 OF THAT REPORT, WE PROVIDED IN VERY
25 FULSOME RESPONSES. WE WENT THROUGH SECONDARY DECLARATION. WE

1 PUT OUR OBJECTIONS --

2 THE COURT: THEY DON'T, IF I RECALL, THEY SAID THAT'S
3 ALL YOU DID.

4 MR. ANDRE: YES.

5 THE COURT: AND THAT WAS THE ISSUE.

6 SO WHERE -- SO MY QUESTION IS, WHERE DOES IT SAY THAT THE
7 NAV 4.0 DOES NOT INCLUDE THE BLOODHOUND FUNCTIONALITY?

8 MR. ANDRE: SO WHAT WE SAID WAS, NAV 4.0 IS NOT PRIOR
9 ART.

10 THE COURT: OKAY.

11 MR. ANDRE: OKAY. AND THAT'S WHAT WE SAID IN OUR --
12 OUR OPPOSITION --

13 THE COURT: THEY KNEW THAT. AND THEY ADDRESSED THAT
14 IN THEIR INVALIDITY CONTENTIONS. THEY SAY IT IS.

15 MR. ANDRE: EXACTLY.

16 THE COURT: BUT WHERE DOES IT SAY THAT IT -- THAT IT
17 DOES NOT -- IT'S PRIOR ART BECAUSE IT DOES NOT INCLUDE THE
18 BLOODHOUND FUNCTIONALITY?

19 MR. ANDRE: THAT SPECIFICITY?

20 THE COURT: YES.

21 MR. ANDRE: WHAT FUNCTIONALITY DOES NOT INCLUDE?

22 THE COURT: YES. IN THE INTERROGATORY RESPONSE. IT
23 DOESN'T, RIGHT?

24 MR. ANDRE: IT DOESN'T NO.

25 THE COURT: ALL RIGHT.

1 **MR. ANDRE:** IT'S NOT PRIOR ART.

2 **THE COURT:** I'M GOING TO ALLOW THE SUPPLEMENTAL
3 REPORT THEN. I THINK THAT'S EXACTLY -- I'M GOING TO ALLOW IT.

4 **MR. ANDRE:** MAY I JUST MAKE THE RECORD REAL QUICK
5 BECAUSE, IN ESSENCE, THIS IS NOT SOMETHING, THIS IS THE REPLY.
6 THIS IS A REPLY REPORT. AND THEY ACTUALLY TALK ABOUT
7 DR. MEDVIDOVIC'S --

8 **THE COURT:** YOU TOOK HIS DEPOSITION DR. RUBIN, AFTER
9 YOU HAD THE SUPPLEMENTAL REPORT, CORRECT?

10 **MR. ANDRE:** YES. AND WE POINTED OUT, FOR EXAMPLE,
11 THAT HE DIDN'T ADDRESS CLAIM 11. HE DOES AFTER THE FACT --

12 **THE COURT:** THAT'S ERRATIC. WE ARE TALKING ABOUT THE
13 SUPPLEMENTAL REPORT.

14 **MR. ANDRE:** AND WITH THE SUPPLEMENTAL REPORT, HE DID
15 NOT REVIEW ANY SOURCE CODE AT ALL BEFORE HE PUT IN HIS
16 ORIGINAL REPORT. HE DIDN'T REVEAL SOURCE CODE.

17 SO THEN AFTER OUR OPPOSITION REPORT GOES IN, HE GOES AND
18 REVIEWS SOURCE CODE, AND THEN GIVES EVIDENCE THAT IT WAS
19 THERE.

20 **THE COURT:** YES. AND THEN YOU DEPOSE HIM. AND THEY
21 SAY THEY DID IT BECAUSE YOU HADN'T REVEALED IN DISCOVERY THAT
22 YOUR POSITION WAS THAT IT WASN'T PRIOR ART BECAUSE IT DIDN'T
23 INCLUDE THE BLOODHOUND FUNCTIONALITY. AND THEN HE IDENTIFIES
24 THE SOURCE CODE TO SUPPORT THEIR POSITION, WHICH COULD BE
25 TOTALLY WRONG, THAT IT DOES INCLUDE THE BLOODHOUND

1 FUNCTIONALITY.

2 **MR. ANDRE:** I APPRECIATE WHAT YOU'RE SAYING, YOUR
3 HONOR. BUT -- AND ALL DUE RESPECT, YOU KNOW, OUR OBLIGATION
4 TO SAY IT'S NOT PRIOR ART. AND WE SAID THAT. AND THAT'S WHAT
5 WE SAID IN OUR OPPOSITION -- WE SAID IT IN OUR INTERROGATORY
6 RESPONSE AND WE SAY IT IN OUR OPPOSITION REPORT. WE GIVE THE
7 BASIS WHY IT'S NOT PRIOR ART BY LOOKING AT THE SOURCE CODE.
8 THEY DIDN'T LOOK AT THE SOURCE CODE. WE DID.

9 **THE COURT:** IN YOUR -- IN YOUR REBUTTAL REPORT.

10 **MR. ANDRE:** YES.

11 **THE COURT:** BUT NOT IN DISCOVERY. SO THEY DIDN'T
12 KNOW, AND SO DR. RUBIN COULDN'T ANTICIPATE THAT. THAT'S WHAT
13 I AM HOLDING. I'M ALLOWING IT. THERE'S NO PREJUDICE. YOU
14 TOOK HIS DEPOSITION.

15 AND THIS IS EXACTLY THE SITUATION THAT I HAD HOPED TO
16 IMPRESS UPON THE PARTIES THAT YOU SHOULD AGREE TO. BUT
17 NONETHELESS WE'RE HERE. IT WAS SENT TO ME, AND I'M ALLOWING
18 IT.

19 OKAY. NOW, THE ERRATA, I DON'T KNOW WHY THE ERRATA
20 ISN'T... ISN'T JUST THAT, AN ERRATA. HE EXPLAINS, I LOOKED AT
21 IT, IT'S TWO PAGES. HE'S JUST SAYING THOSE PARAGRAPHS OVER
22 THERE WHICH SET FORTH WERE MEANT TO ALSO APPLY TO THIS WHICH
23 IS CONSISTENT WITH WHAT IS IN THEIR INVALIDITY CONTENTIONS.

24 SO WHERE'S THE PREJUDICE?

25 **MR. ANDRE:** WELL, WE'RE SAYING IT'S NOT CONSISTENT

1 WITH WHAT WAS IN THE INVALIDITY CONTENTIONS AND WE'RE ALSO
2 SAYING THAT THAT CAME UP AFTER HIS DEPOSITION.

3 **THE COURT:** THEY OFFERED, THEY OFFERED TO MAKE HIM
4 AVAILABLE AGAIN, RIGHT, AND YOU TURNED IT DOWN.

5 **MR. ANDRE:** YOUR HONOR --

6 **THE COURT:** DID THEY?

7 **MR. ANDRE:** I DON'T KNOW.

8 DID THEY OFFER? YES, THEY DID.

9 **THE COURT:** OKAY. ALL RIGHT. SO THAT'S THAT. SO
10 I'M GOING TO ALLOW THE ERRATA AS WELL.

11 **MR. HAMSTRA:** YOUR HONOR, I'M GOING TO TURN OVER THE
12 REST OF THE ARGUMENTS TO MR. KASTENS. SINCE ONCE AGAIN I'VE
13 IMPRESSED UPON YOU SO WELL THAT --

14 **THE COURT:** MAYBE YOU SHOULDN'T ALWAYS GO FIRST.

15 **MR. ANDRE:** I WASN'T SUPPOSED TO COME HERE TODAY.
16 I'M SUBSTITUTING IN FOR ONE OF MY COLLEAGUES BECAUSE HE WASN'T
17 FEELING WELL, AND THIS IS WHAT HAPPENED TO ME. SO I'M GOING
18 TO A TRY TO AVOID YOU FROM NOW ON, YOUR HONOR.

19 (SIMULTANEOUS COLLOQUY)

20 **MR. ANDRE:** MR. KASTENS HOPEFULLY WILL DO BETTER THAN
21 I DID.

22 **MR. KASTENS:** GOOD MORNING, YOUR HONOR.

23 **THE COURT:** GOOD MORNING.

24 **MR. KASTENS:** (UNINTELLIGIBLE). WE ALSO HAVE SOME
25 SLIDES. I KNOW THERE'S A LOT OF DIFFERENT THINGS TO GO

1 THROUGH (UNINTELLIGIBLE) WITH THE ARGUMENTS.

2 **THE COURT:** MAYBE. WE CAN ONLY HOPE.

3 OKAY. SO THE NEXT ISSUE IS THE REFERENCE TO THE THESIS.
4 RIGHT?

5 **MR. KASTENS:** YES.

6 **THE COURT:** OKAY. AND THERE THEY SAY, AND IT LOOKS
7 LIKE THEY'RE NOT USING IT TO SATISFY ANY PARTICULAR ELEMENTS.
8 SO TO THE EXTENT YOU WANTED THEM TO SAY IT ON THE RECORD,
9 THEY SAY IT ON THE RECORD AND IT'S CLEAR.

10 **MR. KASTENS:** BUT, YOUR HONOR, THE ONLY THING THAT
11 THEY USE IT FOR IS TO SATISFY THE DATABASE ELEMENT.

12 **THE COURT:** NO. THEY SAY -- THEY DON'T. AND
13 DR. RUBIN CAN'T TESTIFY TO THAT BECAUSE THEY SAY THAT'S NOT
14 WHAT HE SAYS IN HIS REPORT, RIGHT?

15 **MS. CASSIDY:** CORRECT.

16 **THE COURT:** SO THEN HE CAN'T DO IT. IF HE STARTS
17 SAYING IT AT TRIAL, YOU STAND UP, YOU OBJECT. MAKE SURE YOU
18 HAVE THIS TRANSCRIPT THERE, RIGHT THERE. YOU SHOW IT TO JUDGE
19 GILLIAM, AND YOU WIN BECAUSE MS. CASSIDY SAID IT IS CORRECT.

20 **MR. KASTENS:** OKAY. SO I JUST WANT TO BE CLEAR, YOUR
21 HONOR. SO ON SLIDE NO. 2 HAS SOME INDICATIONS OF WHERE THE IS
22 USED WHICH IS CLEARLY SHOWING THAT THIS IS USED FOR DISCUSSING
23 THE DATABASE SYSTEM.

24 **THE COURT:** TO DISCUSS IT, NOT TO SATISFY THE
25 ELEMENT. I THINK THERE'S A DISTINCTION THERE. AND IF THEY

1 WERE DOING IT TO SATISFY THE ELEMENT, THEY DIDN'T WORD IT VERY
2 WELL BECAUSE IT'S NOT CLEAR. I UNDERSTAND, BUT IT'S CLEAR
3 NOW. IT'S NOT THERE.

4 OKAY. SO THEN THE NEXT ISSUE IS THE LUNT REFERENCE,
5 RIGHT?

6 **MR. KASTENS:** YES, YOUR HONOR.

7 SO THERE, I THINK, IT'S PRETTY CLEAR THAT THE RULES
8 REQUIRE YOU TO CHART THE REFERENCES THEY RELY ON, AND LUNT
9 WASN'T CHARTED. THEY DID -- THEY DO CLAIM THAT THEY HAVE SOME
10 STATEMENTS REGARDING 103 COMBINATIONS AND THAT, THAT'S IN THE
11 REPORT, BUT THEY ALSO INCLUDED 103 COMBINATIONS ACTUALLY IN
12 THE CHARTS. WE NOTIFIED THEM THAT IT WAS IMPROPER --

13 **THE COURT:** I KNOW. AND THEY SAID -- WELL, BUT DID
14 YOU -- DID YOU ATTACH THEIR AMENDED CONTENTIONS TO YOUR
15 MOTION?

16 **MS. CASSIDY:** YEAH. THERE WERE SOME MISSING PAGES, I
17 THINK, YOUR HONOR. CASSIDY EXHIBIT 1 IS OUR FULL AMENDED
18 CONTENTIONS. AND WHAT THAT WAS SUPPOSED TO DO WAS IT'S A
19 FAIRLY LENGTHY DOCUMENT, BUT INSTEAD OF SUPPLEMENTING HUNDREDS
20 OF OUR CLAIM CHARTS, WHAT WE DID IS WE SPECIFICALLY IDENTIFIED
21 THE CLAIM LIMITATIONS THAT APPLIED AND HOW, LIKE THE VARIOUS
22 ADDITIONAL RECORDS THAT WE CITED IN THE AMENDED WAS TO BE
23 INCORPORATED INTO THE CLAIM CHART.

24 SO THAT'S WHAT WE DID FOR LUNT STARTING ON PAGE 19 GOING
25 TO 20. SO INSTEAD OF ADDING THAT DETAIL, I DON'T REMEMBER HOW

1 MANY CLAIM CHARTS FOR THAT ONE, SO LET'S JUST SAY LIKE DOZENS.
2 WE DID THIS HERE. SO WE MENTION THE CLAIM THAT IT WAS
3 SUPPOSED TO APPLY TO, THE LIMITATIONS, AND WHAT IT WAS WITHIN
4 LUNT APPLIES.

5 **THE COURT:** ALL RIGHT. RIGHT THERE PAGES 19 TO 20.

6 THE FIRST IS THE SPECIFIC PAGES WITHIN LUNT. THEN IT
7 IDENTIFIES THE PARTICULAR CLAIMS AND LIMITATION OR ELEMENT.

8 I KNOW THERE'S A RULE, RIGHT, WHEN YOU ARE TALKING ABOUT
9 AN ELEMENT VERSUS A LIMITATION, OR IS THERE? YOU'RE THE
10 PATENT LAWYERS. WHEN DO WE USE ELEMENT AND WHEN DO WE USE
11 THE -- NO ONE KNOWS? GOOD. I WILL REFER TO IT --

12 **MR. HAMSTRA:** THEY ARE INTERCHANGEABLE.

13 **THE COURT:** THEY REALLY ARE?

14 **MR. HAMSTRA:** YEAH.

15 **THE COURT:** SOMEONE SAID TO ME IF YOU ARE SAYING IT'S
16 AN ELEMENT, THAT IF IT INFRINGES, IT'S A LIMITATION.

17 OKAY. EITHER WAY.

18 **MR. KASTENS:** YOU USE ELEMENT WHEN YOU'RE THE
19 PLAINTIFF AND LIMITATION WHEN YOU'RE A --

20 (LAUGHTER)

21 **THE COURT:** THAT DOESN'T HELP THE JUDGE.

22 **MR. KASTENS:** MY UNDERSTANDING OF THE RULES, YOUR
23 HONOR, IS THAT IT NEEDS TO BE INCLUDED WITHIN THE CHART FOR
24 THE PARTICULAR ELEMENTS, AND THAT GOES BACK TO THE BODY OF
25 THEIR INFRINGEMENT --

1 **THE COURT:** SO THIS DOESN'T MEAN ANYTHING? LIKE YOU
2 DIDN'T KNOW YOU READ IT AND YOU DIDN'T UNDERSTAND IT?

3 **MR. KASTENS:** I MEAN I DON'T THINK IT DISCLOSES WHAT
4 THE RULES REQUIRE REGARDING THE CHARTS.

5 **THE COURT:** WELL, WHAT THE RULES REQUIRE IS THAT YOU
6 UNDERSTAND WHAT THEIR CONTENTION IS. HOW, FROM THIS, DID YOU
7 NOT UNDERSTAND THAT THEY WERE SAYING, RIGHTLY OR WRONGLY, THAT
8 LUNT SATISFIES THAT PARTICULAR LIMITATION?

9 NO, IT DOESN'T. OKAY. ALL RIGHT. SO I'M GOING TO DENY,
10 I'M GOING TO DENY THAT.

11 THE CASE IS JUST TOO BIG AND THERE'S JUST TOO MUCH FOR
12 REALLY THESE KINDS OF DISPUTES. I REALLY JUST HAVE TO TELL
13 YOU THAT. I MEAN, I UNDERSTAND -- WELL, MAYBE I DON'T
14 UNDERSTAND. I ACTUALLY DON'T UNDERSTAND, BUT THAT -- THIS IS
15 REALLY ON THE EDGE THERE. ALL RIGHT.

16 SO NEXT WE HAVE THE ISLAM REFERENCES. AND WHAT I WAS
17 THINKING HERE IS THAT WE SHOULD STRIKE DR. RUBIN'S REFERENCE
18 TO TABLE 1 BECAUSE TABLE 1 WASN'T IN THE REFERENCE WHICH
19 SYMANTEC'S ACTUALLY CHARTED. AND I KNOW YOU RESERVE THE
20 RIGHT, PROBABLY DO THAT ALL THE TIME, IT'S MEANINGLESS.

21 **MS. CASSIDY:** TO ANSWER YOUR QUESTION, YOUR HONOR, WE
22 WOULD BE FINE WITH THAT.

23 BUT JUST TO ELABORATE FURTHER, WE -- THE REASON WE CITED
24 THE TABLE IS THAT WE BELIEVE IT'S JUST SUPPLEMENTAL AUTHORITY
25 THAT SUPPORTS HIS OPINIONS WITH SUPPLEMENTAL --

1 **THE COURT:** WELL, SUPPLEMENTAL CITATION, I DON'T
2 THINK YOU'RE REALLY ALLOWED FOR SUPPLEMENTAL CITATION --

3 **MS. CASSIDY:** WE ARE HAPPY --

4 **THE COURT:** THAT'S WHAT I PROPOSE. THAT'S WHAT YOU
5 IDENTIFIED, I STRIKE HIS REFERENCE TO THE TABLE.

6 **MR. KASTENS:** YES, YOUR HONOR.

7 **THE COURT:** OKAY. ALL RIGHT.

8 NOW, LET'S SEE. NOW WE ARE ON TO UNDISCLOSED THEORIES.
9 AND THIS IS WHETHER CLAIM 43 WAS IDENTIFIED AS A
10 MEANS-PLUS-FUNCTION CLAIM, RIGHT?

11 DO I HAVE THAT RIGHT?

12 **MR. KASTENS:** YES, YOUR HONOR. THEY JUST -- THEY PUT
13 THE WRONG CLAIM LANGUAGE FOR CLAIM 43, IT'S A VERY SPECIFIC
14 MEANS-PLUS-FUNCTION CLAIM. THEY JUST REFERENCE -- THEY PUT
15 THE LANGUAGE FOR ANOTHER CLAIM AND THEN REFERENCED YET ANOTHER
16 CLAIM AS MEAN THAT WAS (UNINTELLIGIBLE) HOW THE FUNCTION AND
17 THE STRUCTURE IS MET FOR A MEANS-PLUS-FUNCTION.

18 **THE COURT:** WELL, THEY DO IT -- AT SOME POINT THEY
19 DO, THEY DO IDENTIFY THEM AS A MEANS PLUS --

20 **MR. KASTENS:** THEY DO IN THEIR BODY SAY THAT CLAIM 43
21 (UNINTELLIGIBLE) MEANS-PLUS-FUNCTION ELEMENTS --

22 **THE COURT:** RIGHT.

23 **MR. KASTENS:** BUT THEY DON'T ACTUALLY DESCRIBE THE
24 REQUIREMENTS --

25 **THE COURT:** ALL RIGHT. WHAT YOU ARE SAYING IS THEY

1 HAVEN'T SAID HOW THOSE FUNCTIONS ARE MET.

2 **MR. KASTENS:** YES, YOUR HONOR.

3 **THE COURT:** ALL RIGHT.

4 **MR. HAMSTRA:** AND, YOUR HONOR, THE CLAIM LANGUAGE
5 THAT WE DID CITE, THERE WAS A LITTLE BIT OF A TYPOGRAPHIC
6 ERROR, BUT THE LANGUAGE IS NEARLY IDENTICAL. IT'S THE SAME --
7 IT'S THE SAME RECITED FUNCTION EXCEPT LACKING THE MEANS FOR IN
8 FRONT. AND WE --

9 **THE COURT:** SO POINT IT TO ME. EXHIBIT?

10 (PAUSE IN THE PROCEEDINGS.)

11 **THE COURT:** HOW ABOUT, IS IT EXHIBIT 10? NO. IT'S
12 9?

13 **MR. KASTENS:** KASTENS' DECLARATION 21, THE CHARTS....

14 **MR. HAMSTRA:** SO, YOUR HONOR, FOR INSTANCE, 43(B)
15 MEANS --

16 **THE COURT:** WAIT. TELL ME WHAT EXHIBIT.

17 **MR. HAMSTRA:** THE EXHIBIT MR. KASTENS JUST
18 REFERENCED. DOCKET 303-24. IT'S EXHIBIT 21 TO KASTENS'
19 OPENING DECLARATION.

20 **THE COURT:** SO THIS IS THEIR MOTION OR YOUR MOTION --
21 THEY FILED IT.

22 **MR. HAMSTRA:** THEIR MOTION. THE OPENING MR. KASTENS'
23 OPENING DECLARATION.

24 **THE COURT:** OKAY. EXHIBIT 21.

25 **MR. HAMSTRA:** AND WHAT YOU CAN CLEARLY SEE FROM THIS

1 IS THAT WE MISTAKENLY REPEATED THE LANGUAGE FROM CLAIM 41 IN
2 CLAIM 43.

3 **THE COURT:** THE CLAIM LANGUAGE.

4 **MR. HAMSTRA:** YES, THE CLAIM LANGUAGE.

5 **THE COURT:** YOU DON'T HAVE THE MEANS PLUS.

6 **MR. HAMSTRA:** WHEN -- BUT FOR CLAIM 43, WE LIMIT --
7 WHAT WE ARE RELYING ON IS WHAT WE RELIED ON FOR THE
8 LIMITATIONS -- WHAT WE ARE RELYING ON AS A CORRESPONDING
9 STRUCTURE IS WHAT WE RELIED ON FOR LIMITATIONS 1A, 1B, 1C AND
10 1D THAT YOU SEE THERE.

11 AND IF YOU LOOK AT CLAIM 1 OF THE '844 PATENT -- I AM NOT
12 SURE IF THAT WAS ATTACHED AS AN EXHIBIT ANYWHERE, BUT IT USES
13 THAT IDENTICAL LANGUAGE PRETTY MUCH.

14 SO FOR THE FIRST LIMITATION CLAIM 40 -- CLAIM 43 IS MEANS
15 FOR RECEIVING A DOWNLOADABLE. CLAIM 1 RECEIVING BY AND THEN
16 RECEIVING A DOWNLOADABLE.

17 **THE COURT:** OKAY. LET ME STOP YOU. IS YOUR
18 OBJECTION THAT HERE IT SAYS "RECEIVING A DOWNLOADABLE" INSTEAD
19 OF "MEANS FOR RECEIVING A DOWNLOADABLE"?

20 **MR. KASTENS:** YOUR HONOR, THE ISSUE IS THAT YOU HAVE
21 TO IDENTIFY THE FUNCTION'S STRUCTURE FOR A
22 MEANS-PLUS-FUNCTION. THERE'S MORE -- IT'S MORE THAN JUST WORD
23 MATCHING IN THIS PARTICULAR CASE. THEY -- THERE'S VERY
24 SPECIFIC RULES FOR MEANS-PLUS-FUNCTION. THOSE ARE SET FORTH
25 IN THE LOCAL RULES. YOU CAN'T JUST SAY THIS

1 MEANS-PLUS-FUNCTION. YOU ACTUALLY HAVE TO SET FORTH.

2 **THE COURT:** YOU HAVE TO IDENTIFY THE STRUCTURE.

3 **MR. KASTENS:** BECAUSE THERE'S MORE --

4 (SIMULTANEOUS COLLOQUY)

5 **THE COURT:** SO LET'S READ UNDER HERE, LET'S SAY IT
6 SAYS MEANS FOR RECEIVING A DOWNLOADABLE. WHAT IS THE
7 STRUCTURE THAT'S IDENTIFIED TO SATISFY THAT LIMITATION?

8 **MR. KASTENS:** THE -- WHAT WE IDENTIFIED IN CONNECTION
9 WITH LIMITATION 1B. AND I DON'T BELIEVE FINJAN IS SAYING THAT
10 WE ARE RELYING ON SOMETHING OUTSIDE WHAT WE IDENTIFY FOR
11 LIMITATION 1B AT THIS POINT.

12 **THE COURT:** BUT LIMITATION 1B WASN'T -- IS NOT A
13 MEANS-PLUS-FUNCTION. I MEAN, LIMITATION 1B IN -- OF WHAT
14 CLAIM?

15 **MR. KASTENS:** LIMITATION 1B OF THE '844 PATENT WHICH
16 IS THE RECEIVING LIMITATION IN CLAIM 1.

17 **THE COURT:** WHICH IS NOT A MEANS-PLUS-FUNCTION.

18 **MR. KASTENS:** WHICH IS NOT A MEANS-PLUS-FUNCTION,
19 BUT --

20 **THE COURT:** BUT YOU WANT TO DO SOMETHING DIFFERENT
21 WITH A MEANS-PLUS-FUNCTION. SO YOU CAN'T SATISFY JUST BY
22 RELYING ON WHAT YOU HAVE FOR A NONMEANS-PLUS-FUNCTION CLAIM.

23 **MR. KASTENS:** LOCAL RULES REQUIRE TWO THINGS. THEY
24 REQUIRE THAT... WHETHER WE CAN HANDLE LIMITATIONS GOVERNED BY
25 PARAGRAPH 112.6. WE DID THAT. I BELIEVE FINJAN RECOGNIZES WE

1 DID THAT IN OUR COVER PLEADING DOCUMENT.

2 AND THEN THE IDENTITY OF THE STRUCTURES, ACTS, AND
3 MATERIALS, AND EACH ITEM OF PRIOR ART THAT PERFORMS THE CLAIM
4 FUNCTION, AND WE DO THAT HERE WITH REFERENCE TO OUR ANALYSIS
5 FOR CLAIM 1.

6 **THE COURT:** SO WHERE IS THE ANALYSIS FOR CLAIM 1?
7 WHAT EXHIBIT?

8 **MR. KASTENS:** I DON'T KNOW THAT WE SUBMITTED THE
9 COMPLETE --

10 **THE COURT:** HOW CAN I DECIDE THAT YOU ACTUALLY
11 IDENTIFIED THE STRUCTURE?

12 **MR. KASTENS:** WELL, BECAUSE THAT ISN'T THEIR -- I
13 DON'T BELIEVE THEY ARE ARGUING THAT WE -- THAT THE ISSUE IS
14 THAT WE'RE EXPANDING BEYOND WHAT WE IDENTIFIED FOR LIMITATIONS
15 1B, 1C, AND 1D. I JUST DON'T THINK THAT THAT'S THEIR
16 ARGUMENT.

17 I THINK THAT THEY'RE ASKING -- THAT WE ARE SUPPOSED TO
18 INVOKE SOME SORT OF FORMULA AND SAY THIS IS
19 MEANS-PLUS-FUNCTION. THE CORRESPONDING STRUCTURE IS "X" WHERE
20 IT WOULD HAVE JUST IDENTIFIED THE SAME SUBJECT IDENTIFIED IN
21 LIMITATION 1B AND 1C.

22 **THE COURT:** SO YOU ACTUALLY IDENTIFY THE STRUCTURE
23 AND SAID THAT STRUCTURE MEANS THE FUNCTION.

24 **MR. KASTENS:** WE IDENTIFY STRUCTURES, ACTS, AND
25 MATERIALS, YES.

1 **THE COURT:** OKAY.

2 **MR. KASTENS:** WELL, I WOULD JUST SAY THAT I BELIEVE
3 CLAIM -- I HAVE THE LANGUAGE BACK THERE, BUT I THINK CLAIM 1
4 IS A METHOD CLAIM TO BEGIN WITH. IT'S NOT EVEN A SYSTEM CLAIM
5 WHERE THE STRUCTURE'S IDENTIFIED. THEY WERE IDENTIFYING
6 PERFORMANCE OF A METHOD.

7 AND THEN THEY DON'T -- THEY DON'T GO IN -- I DISAGREE THAT
8 DR. RUBIN, WHO WAS THEIR EXPERT IN THIS MATTER, DID NOT GO
9 BEYOND WHAT WAS DISCLOSED WITHIN THERE. I MEAN HE'S -- HE HAD
10 A LITANY OF DIFFERENT REQUIREMENTS THAT HE SAID AT LEAST IN
11 HIS NONINFRINGEMENT REPORT THAT REQUIRED FOR THE
12 MEANS-PLUS-FUNCTION.

13 **THE COURT:** OKAY. SO LET'S LOOK AT THAT PART OF THE
14 REPORT. WHAT EXHIBIT WILL THAT BE?

15 **MR. KASTENS:** I'M SORRY, I DON'T KNOW IF THAT WAS
16 ATTACHED AS AN EXHIBIT.

17 **THE COURT:** DR. RUBIN'S REPORT, I MEAN IT'S BEEN AN
18 EXHIBIT A FEW TIMES.

19 **MR. KASTENS:** THERE ARE EXCERPTS. I SUSPECT THAT
20 THAT PORTION OF THE REPORT WAS NOT ATTACHED ANYWHERE.

21 **UNIDENTIFIED SPEAKER:** IT'S EXHIBIT 5 OF THE REPORT.

22 (PAUSE IN THE PROCEEDINGS.)

23 **THE COURT:** EXHIBIT 5 TO YOURS OR TO THEIR'S?

24 **UNIDENTIFIED SPEAKER:** TO MINE.

25 **THE COURT:** SO WHERE IS IT THAT HE WENT BEYOND?

1 **UNIDENTIFIED SPEAKER:** SORRY. SO IT LOOKS LIKE THERE
2 IS A PAGE MISSING, BUT YOU CAN SEE ON PAGE 169 HE DISCUSSES
3 THE FUNCTION CORRESPONDING STRUCTURE, AND THEN GOES ON TO
4 DISCUSS SPECIFIC THINGS WHICH IN THE PRIOR ART REFERENCES THAT
5 RELATE TO THAT STRUCTURE --

6 **THE COURT:** HE'S TALKING ABOUT CLAIM -- THAT'S UNDER
7 CLAIM --

8 **UNIDENTIFIED SPEAKER:** I'M SORRY THIS IS 43 --

9 **THE COURT:** 41.

10 **MR. HAMSTRA:** UNFORTUNATELY THERE IS A --

11 **THE COURT:** I CAN SEE. THIS IS ALL DISCUSSING
12 CLAIM 43.

13 **MR. HAMSTRA:** IT LOOKS LIKE IT SHOWS FROM 165 TO 168
14 UNFORTUNATELY. SO THERE'S THE BEGINNING OF 43.

15 BUT YOU SEE HE DIDN'T JUST CITE BACK A PREVIOUS FINDING.
16 HE ACTUALLY DOES A COMPLETE ANALYSIS BASED ON WHAT WAS THE
17 ACTUAL STRUCTURE THAT WAS SET FORTH.

18 **MR. KASTENS:** YOUR HONOR, BUT FOR THIS INSTANCE, AT
19 LEAST IN MY READING OF THEIR MOTION, THEY AREN'T MAKING THE
20 ALLEGATION THAT, FOR EXAMPLE, WHAT'S DISCUSSED IN PARAGRAPHS
21 576 THROUGH... WELL, THEY DON'T EVEN INCLUDE THE ENTIRE
22 ANALYSIS FOR THIS LIMITATION. BUT WHAT'S DISCUSSED IN THIS
23 PARAGRAPH ACTUALLY EXPANDS BEYOND THE SCOPE OF THE STRUCTURE,
24 ACTS, AND FUNCTIONS WE IDENTIFIED WITH LIMITATION 1B.

25 **THE COURT:** WHAT THEY ARGUED WAS THAT THEY ARGUE,

1 ONE, YOU DIDN'T IDENTIFY IT AS A MEANS-PLUS-FUNCTION. THAT, I
2 DISAGREE IT WAS. IT INARTFUL, BUT YOU DID. THAT WAS CLEAR.

3 BUT THE SECOND THEY ARGUE IS THAT YOU DIDN'T -- THAT YOU
4 DIDN'T SATISFY THE LOCAL RULE THAT REQUIRES YOU TO, FOR A
5 MEANS-PLUS-FUNCTION CLAIM, IDENTIFY THE FUNCTION OR STRUCTURE
6 THAT MEETS THOSE ELEMENTS. THEY DID MAKE THAT ARGUMENT.

7 **UNIDENTIFIED SPEAKER:** RIGHT AND WE DID BY REFERENCE
8 TO OUR ANALYSIS FOR LIMITATIONS 1B, 1C AND 1D.

9 **THE COURT:** OKAY. SO WHERE IS THAT ANALYSIS? THAT
10 IS NOT IN THE RECORD, SO I DON'T KNOW HOW YOU CAN SAY THAT YOU
11 DID THAT.

12 I DON'T KNOW. YOU SAY -- I ACTUALLY DON'T KNOW HOW YOU
13 CAN JUST REFER TO AN ANALYSIS FOR A NONMEANS-PLUS-FUNCTION
14 CLAIM AND SATISFY YOUR OBLIGATION UNDER THE LOCAL RULE TO
15 IDENTIFY THE STRUCTURE. IT SORT OF MAKES IT MEANINGLESS THAT
16 YOU HAVE TO IDENTIFY THE STRUCTURE THEN.

17 WHY NOT -- WHY DO WE TREAT THEM DIFFERENTLY AT ALL?

18 **MR. HAMSTRA:** WE'RE RELYING ON THE SAME, THE SAME
19 ACTS -- STRUCTURES, ACTS, AND MATERIALS FOR THE
20 MEANS-PLUS-FUNCTION AND NONPLUS -- NONMEANS-PLUS-FUNCTION
21 VARIANCE OF THAT CLAIM LANGUAGE. SO OTHER THAN SORT OF THE
22 MECHANICAL OF THE MEANS-PLUS-FUNCTION WHICH WE DID, WHAT WE
23 DID HERE DOES, I THINK, SATISFY THE LOCAL RULES. THEY ARE ON
24 NOTICE --

25 **THE COURT:** ALTHOUGH I CAN'T SEE IT BECAUSE IT'S NOT

1 IN THE RECORD.

2 **MR. HAMSTRA:** BUT, AGAIN, I DON'T THINK THAT'S
3 THEIR -- I DON'T EVEN THINK THAT'S THE ARGUMENT THAT THEY'RE
4 MAKING WHICH IS WHY IT'S NOT IN THE RECORD. THEY NEVER PUT
5 THAT AT ISSUE.

6 **THE COURT:** SHOW ME WHERE IN YOUR BRIEF YOU MAKE THAT
7 ARGUMENT. THE ARGUMENT IS WE WEREN'T PUT ON NOTICE THAT WE
8 HAD TO IDENTIFY -- THAT WE HAD NOT IDENTIFIED THAT.

9 **MR. KASTENS:** I MEAN, I THINK WE WERE CLEAR THAT THEY
10 WERE REQUIRED IN THEIR CHART TO IDENTIFY THE SPECIFIC
11 STRUCTURES. I MEAN, I DISAGREE THAT REFERENCING A --

12 **THE COURT:** JUST SHOW ME WHERE YOU MADE THAT ARGUMENT
13 THOUGH.

14 (PAUSE IN THE PROCEEDINGS.)

15 PAGE 17. I SEE WHAT YOU'RE SAYING.

16 **MR. KASTENS:** I MEAN, IF YOU LOOK AT OUR REPLY IN
17 RESPONSE --

18 **THE COURT:** I'M NOT GOING TO REVIEW YOUR REPLY.
19 CAN'T MAKE THE ARGUMENT THERE.

20 ALL RIGHT. I DO THINK THEY DID IDENTIFY IT AS A
21 MEANS-PLUS-FUNCTION. THAT MAY HAVE BEEN A GOOD ARGUMENT THAT
22 EVEN IF ARE YOU TREAT IT AS A MEANS-PLUS-FUNCTION THEY DIDN'T
23 IDENTIFY THAT. BUT THEY WEREN'T PUT ON -- I CAN'T FAULT THEM
24 FOR THAT BECAUSE I DON'T THINK THEY WERE PUT ON NOTICE BY THAT
25 IN THAT MOTION.

1 I MEAN, REALLY IF IT'S INVALID UNDER CLAIM 1, WE DON'T
2 EVEN GET TO CLAIM 43. AND IF THEY ARE ALL THE SAME, IT
3 DOESN'T REALLY MATTER.

4 **MR. HAMSTRA:** I'M SORRY, YOUR HONOR. I MEAN
5 MEANS-PLUS-FUNCTION IS A VERY SPECIFIC REQUIREMENTS FOR -- IT
6 WOULDN'T BE INVALID UNDER CLAIM 43 BECAUSE THE REQUIREMENTS
7 ARE DIFFERENT FOR THE MEANS-PLUS-FUNCTION ELEMENT.

8 FIRST OF ALL, CLAIM 1 ISN'T EVEN LISTED. THEIR --

9 **THE COURT:** BUT -- THIS IS AN ANTICIPATION OR AN
10 OBVIOUSNESS REFERENCE?

11 **MR. HAMSTRA:** IT'S FOR EVERYTHING. THEY DON'T HAVE
12 ANYTHING FOR CLAIM 43. THEY HAVE NO REFERENCES. I BELIEVE
13 MR. KASTENS IS SAYING WE HAVE NO REFERENCES IN OUR INVALIDITY
14 CONTENTIONS BECAUSE OF THESE COMPLAINTS THEY ARE MAKING.

15 **THE COURT:** I SEE. I SEE. I GOT IT.

16 WELL, I SEE WHAT THE ARGUMENT IS, AND THAT ARGUMENT, I
17 THINK, IT WAS A MISTAKE. CLEARLY KNEW IT WAS A MISTAKE. YOU
18 SHOULD HAVE PUT THEM ON NOTICE THAT IT WAS A MISTAKE.

19 OKAY. ALL RIGHT. THE NEXT IS THE '926 AND THE
20 TRANSMITTING. RIGHT?

21 SO, LOOK, NOBODY MAILES ANYTHING ANYMORE, BUT ISN'T ALL
22 THEY'RE SAYING IS THAT -- ISN'T ALL THAT DR. RUBIN SAYING IS
23 THAT THIS EARLIER REFERENCE WHICH DISCUSSED MAILING THINGS, IT
24 WOULD HAVE BEEN OBVIOUS TO SOMEONE SKILLED IN THE ART; INSTEAD
25 OF MAILING IT, YOU WOULD ELECTRONICALLY TRANSMIT IT?

1 ISN'T -- THAT'S WHAT HE'S SAYING, NOT THAT MAILING
2 SATISFIES. NO ONE -- SYMANTEC DOESN'T MAIL ANYTHING.

3 **MR. KASTENS:** FAIR ENOUGH, YOUR HONOR. WHAT HE SAYS
4 IS THIS REFERENCE TO MAILING IN THE FILES IS -- SHOWS THAT YOU
5 WOULD -- COULD SUBMIT FILES TO SYMANTEC.

6 I THINK WHAT OUR POINT IS, IS THAT MAILING, SUBMITTING,
7 REGARDLESS, THAT'S THE ONLY THING THAT HE DISCLOSED FOR
8 TRANSMITTING FILES. AND THAT'S NOT IN OUR IC'S. NOTHING
9 RELATED TO MOVING THE FILE IS IN THEIR IC'S. YOU CAN SEE
10 WHAT -- IF YOU WANT TO LOOK AT THE SLIDES THAT I HAVE, YOU CAN
11 SEE WHAT THEY CITED. THEY JUST --

12 **THE COURT:** WHICH PAGE IS IT?

13 **MR. KASTENS:** SORRY. 10.

14 HIS -- HIS ANALYSIS IS ON 9, AND YOU CAN SEE THAT MAILING
15 IS DISCUSSED FOR THE BASIS FOR THAT ELEMENT, BUT 10 JUST SAYS
16 YOU CAN TELL A USER YOU HAVE A VIRUS. THERE'S NOTHING IN
17 THERE ABOUT SUBMITTING IT TO SYMANTEC.

18 I THINK THE REST OF THE CITATIONS ARE THE SAME WAY. THEY
19 ARE JUST -- THEY'RE NOT RELATED TO WHAT THEY'RE ARGUING.

20 **THE COURT:** OKAY.

21 **MR. HAMSTRA:** SO, YOUR HONOR, THERE'S TWO DISCLOSURES
22 IN BLOODHOUND, AND MR. KASTENS IS FOCUSING ON ONE. I WANT TO
23 FOCUS ON THE OTHER THAT WE HAVE CITED IN CONNECTION WITH THIS
24 TRANSMITTING LIMITATION, AND THAT DOES DESCRIBE REPORTING A
25 VIRUS INFECTION.

1 **THE COURT:** OKAY. AND THE EXHIBIT?

2 **MR. HAMSTRA:** IT'S ACTUALLY EXCERPTED AT PAGE 21 OF
3 OUR BRIEF, OF OUR RESPONSIVE BRIEF. IT IS EXHIBIT 13 TO THE
4 CASSIDY RESPONSE DECLARATION.

5 **THE COURT:** OKAY. 13, AT WHAT PAGE?

6 **MR. HAMSTRA:** OKAY. AT 135.

7 **THE COURT:** OKAY.

8 **MR. HAMSTRA:** WHAT THEY ARE TALKING ABOUT IS YOU CAN
9 CONTACT SYMANTEC FOR TECHNICAL HELP THROUGH MAIL. IT DOESN'T
10 SAY ANYTHING ABOUT SHIPPING THE FILES.

11 KATE IS LOOKING FOR THAT, BUT THERE'S A DESCRIPTION OF
12 BLOODHOUND REPORTING A VIRUS INFECTION. AND, IN FACT --

13 **THE COURT:** SHE CAN LOOK. WE'LL WAIT AND SHOW ME
14 WHERE.

15 I MEAN, IT ALMOST SEEMS LIKE THIS IS MORE OF A DISPUTE AS
16 TO WHETHER IT'S ACTUALLY PRIOR ART AS TO WHETHER THERE WAS --
17 IT SEEMS TO ME WHAT YOU ARE SAYING IT'S NOT BECAUSE IT DOESN'T
18 DISCLOSE THIS ELEMENT, OR IT DOESN'T DISCLOSE ENOUGH THAT
19 WOULD CONTRIBUTE TO THE OBVIOUSNESS ANALYSIS.

20 **MR. HAMSTRA:** WHAT OUR BASIS WOULD BE IS THEY ONLY
21 SET FORTH THAT MAILING IS THE REASON THAT YOU WOULD SUBMIT
22 FILES TO SYMANTEC. AND WHAT THEY SAID IN THEIR IC'S, THEY
23 DIDN'T SAY ANYTHING ABOUT IT. THEY SAID YOU ONLY -- THE ONLY
24 THING THEY POINT TO IS WHERE YOU CAN REPORT THE FILE -- THE
25 THING TO A USER.

1 **THE COURT:** AND THAT --

2 **MR. HAMSTRA:** THAT'S DIFFERENT. I MEAN --

3 **THE COURT:** OKAY. SO I UNDERSTAND IT. ALL RIGHT.

4 SO WHERE DOES IT SAY ABOUT SUBMITTING OR TELLING
5 SOMEONE -- THE BLOODHOUND CAN TELL USERS THEY HAVE A VIRUS,
6 BUT WHERE DOES IT SAY THE USERS TELL SOMEBODY ELSE?

7 **MR. HAMSTRA:** SO PAGE 145 OF CASSIDY EXHIBIT 13.
8 THERE'S A REFERENCE THERE IN THE MIDDLE PARAGRAPH, BLOODHOUND
9 MACRO. AT THE END TO REPORTING A VIRUS INFECTION. AND THIS
10 MAILING FORM THAT WE'RE TALKING ABOUT, WHICH IS EXHIBIT 27 TO
11 MR. KASTENS' OPENING DECLARATION, THAT'S ACTUALLY TALKING
12 ABOUT A VIRUS REPORT. IT ASKS FOR INFORMATION ABOUT THE QUOTE
13 "VIRUS REPORTED" IN THAT -- IN THAT FORM.

14 SO THIS IS -- THIS IS -- YOU KNOW, THERE ARE MULTIPLE WAYS
15 TO REPORT VIRUS. YOU CAN REPORT A VIRUS TO A USER, YOU REPORT
16 A VIRUS TO A VENDOR.

17 I MEAN, YOU CAN LOOK AT THE IC'S. I DON'T SEE ANY
18 DESCRIPTION THAT'S WHAT THEY ARE TALKING ABOUT. I THINK IT'S
19 JUST -- IF YOU DIDN'T -- IF THAT ISN'T THE RIGHT ELEMENT, I
20 THINK THERE'S NO THING SAYING THAT'S WHAT THEY ARE TALKING
21 ABOUT.

22 AND, YOUR HONOR, ADDITIONALLY KEEP IN MIND THAT AS YOU
23 VERY WELL REALIZE, WE ARE NOT ALLEGING THAT MAILING ACTUALLY
24 MEETS THE CLAIM LIMITATION. THIS IS JUST AN OBVIOUS
25 ANALYSIS -- OBVIOUSNESS ANALYSIS.

1 **THE COURT:** WELL, YOU CLEARLY WERE AWARE OF THE
2 REFERENCE AND THAT THEY WERE SAYING THAT THIS REFERENCE MAKES
3 IT OBVIOUS. IT MAY BE THAT IT'S NOT THERE.

4 LIKE, IT SEEMS -- IT DOES SEEM TO ME WHAT YOU ARE DOING IS
5 YOU'RE CHALLENGING DR. RUBIN'S OPINION.

6 **MR. KASTENS:** I MEAN WE'RE CHALLENGING THAT THEY
7 DISCLOSED THAT SUBMITTING -- THAT THE ELEMENT IS MET BY
8 SUBMITTING A SAMPLE FILE --

9 **THE COURT:** YES.

10 **MR. KASTENS:** TO SYMANTEC, AND THAT IS NOT DISCLOSED
11 IN THEIR INFRINGEMENT CONTENTIONS REPORTING -- I MEAN, AT MOST
12 REPORTING TO THE USERS --

13 **THE COURT:** WELL, WHAT THEY'RE SAYING IS THAT THAT
14 WOULD BE OBVIOUS FROM SOMEONE READING BLOODHOUND, RIGHT? AND
15 YOU'RE SAYING IT WOULD NOT BE.

16 **MR. KASTENS:** THAT IT WOULD BE OBVIOUS TO SUBMIT A
17 SAMPLE --

18 **THE COURT:** YES.

19 **MR. KASTENS:** -- AND GIVING RESULTS OF THE SAMPLE TO
20 SYMANTEC?

21 **THE COURT:** YES.

22 **MR. KASTENS:** I MEAN, WE ARE SAYING THAT AS WELL --

23 **THE COURT:** IT'S NOT NECESSARILY JUST TO, SYMANTEC,
24 RIGHT?

25 **MR. KASTENS:** I MEAN --

1 (SIMULTANEOUS COLLOQUY.)

2 **THE COURT:** IT'S TO MAKE IT -- IT'S WHOEVER IT IS.

3 (SIMULTANEOUS COLLOQUY.)

4 **MR. KASTENS:** SEND IT TO A DESTINATION.

5 **THE COURT:** RIGHT.

6 **MR. KASTENS:** AND THEY'RE SAYING THEY -- IN THEIR
7 CONTENTIONS THEY RELEASED, THEY ORIGINALLY SAID, I GUESS, THE
8 USER'S DESTINATION COMPUTER BECAUSE THEY WOULD REPORT THAT
9 THERE WAS A VIRUS DETECTION. THERE WAS NO INDICATION THAT
10 THEY SENT IT TO SOME OTHER -- SOME DESTINATION HERE.

11 THE FLOW MAP WAS A LOCAL....

12 **THE COURT:** YEAH. THAT'S -- I GUESS WHAT I'M SAYING
13 IS, WHAT YOU ARE SAYING IS THIS REFERENCE DOESN'T SUPPORT THE
14 INFERENCE THAT DR. RUBIN SAYS IT DOES. BECAUSE IT'S NOT
15 THERE. IT'S NOT THERE. HE'S NOT RELYING ON A DIFFERENT
16 REFERENCE. HE'S RELYING ON BLOODHOUND, RIGHT?

17 **MR. HAMSTRA:** I BELIEVE HE'S -- I DON'T -- I BELIEVE
18 HE'S RELYING ON A DIFFERENT BLOODHOUND REFERENCE FOR THE
19 SUBMISSION FORM. IT ACTUALLY SAYS YOU CAN SUBMIT. I DON'T
20 BELIEVE THE SUBMISSION FORM WAS IDENTIFIED ANYWHERE WITHIN
21 THEIR INFRINGEMENT CONTENTIONS WHICH WAS ACTUALLY RELIED ON,
22 WHICH IS THIS WHOLE LIKE, OH, IF HAVE SOMETHING THAT YOU NEED
23 TO SUBMIT TO SYMANTEC, JUST GO AHEAD AND SUBMIT IT ON YOUR
24 SUBMISSION FORM. AND THE FORM, YOU ATTACHED THE DISK, AND YOU
25 SENT IT IN. THAT'S WHAT RUBIN RELIED ON.

1 THE PRIOR ART REFERENCE IS NORTON ANTIVIRUS 4.0;
2 BLOODHOUND IS THE REFERENCE THAT WE'RE FOCUSING ON.

3 BUT I THINK WE SHOULD GO BACK, AND I THINK WHAT'S
4 IMPORTANT IS THAT THIS IS AN OBVIOUSNESS ANALYSIS. WE ARE NOT
5 SAYING NORTON ANTIVIRUS 4.0 MEETS THIS CLAIM LIMITATION.

6 IN OUR OBVIOUS EXAMINATIONS, ALTHOUGH WE DID NOT END UP
7 ELECTING THESE REFERENCES, ON PAGE 21 OF OUR OPPOSITION BRIEF,
8 WE DO CITE EXAMPLES WHERE WE DO SAY THAT SENDING THE SPECIMEN
9 TO A VENDOR DOES MEET THE CLAIM LIMITATION.

10 SO THEY WERE ON NOTICE IN, BOTH FROM THE VIRUS REPORTING
11 LANGUAGE AND FROM THE BLOODHOUND WHITE PAPER ITSELF, AS WELL
12 AS SOME OF OUR OTHER OBVIOUSNESS COMBINATIONS THAT WE WERE
13 ARGUING THAT TRANSMITTING TO A VENDOR CAN MEET THIS CLAIM
14 LIMITATION.

15 **THE COURT:** WELL, I DON'T KNOW ABOUT YOUR OTHER
16 OBVIOUSNESS COMBINATIONS.

17 **MR. KASTENS:** I'M JUST GOING TO VERY SIMPLY STATE
18 WHAT OUR POSITION IS --

19 **THE COURT:** YES.

20 **MR. KASTENS:** THEY IDENTIFIED ONE THEORY, WHICH IS
21 REPORTING TO THE USER AT A DESTINATION COMPUTER AND THEY ARE
22 RELYING ON ANOTHER THEORY, WHICH IS --

23 **THE COURT:** THEY, IN THEIR CONTENTIONS --

24 **MR. KASTENS:** SUBMISSION.

25 **THE COURT:** SO POINT OUT TO ME WHERE IN THEIR

1 CONTENTIONS THEY RELIED ON THAT THEORY?

2 **MR. KASTENS:** I MEAN THAT'S --

3 **THE COURT:** REPORTING TO THE USER, RIGHT? THAT'S
4 WHAT YOU'RE SAYING?

5 **MR. KASTENS:** YES.

6 **THE COURT:** WHEREAS NOW THEY ARE RELYING ON SOMETHING
7 ELSE IN THE REFERENCE.

8 **MR. KASTENS:** YES.

9 **THE COURT:** REPORTING -- BUT YOU'RE SAYING IT'S
10 ACTUALLY NOT IN THE REFERENCE.

11 **MR. KASTENS:** SO THE -- WELL, HERE IS THE CONFUSION,
12 YOUR HONOR. THEY'RE RELYING ON A PRODUCT. SO THEY HAVE
13 MULTIPLE REFERENCES THEY'RE SAYING DESCRIBE THIS PRODUCT.

14 **THE COURT:** YEAH.

15 **MR. KASTENS:** THEY CHOSE TO DESCRIBE IT WITH A SINGLE
16 REFERENCE. AND THEN IN THEIR INVALIDITY CONTENTIONS AND IN
17 THEIR EXPERT REPORTS THEY, YOU KNOW, ADDED IN ADDITIONAL
18 REFERENCES.

19 ONE OF THOSE INCLUDED A SUBMISSION FORM THAT ALLOWED YOU
20 TO SUBMIT FILES TO SYMANTEC FOR THAT PRODUCT. NOTHING -- I
21 THINK THAT'S A DIFFERENT THEORY THAN IT WAS. THEY SEEM TO
22 INDICATE THEY DISCLOSED, WHICH IS YOU CAN EVEN SEEN ON
23 SYMANTEC -- IN THEIR OPPOSITION BRIEF THE UNDERLINED, WHICH
24 IS, YOU KNOW, REPORT OF OUR VIRUS INFECTION --

25 **THE COURT:** MAYBE I NEED TO LOOK. LET'S LOOK AT

1 DR. RUBIN'S REPORT THEN WHERE HE RELIES ON THAT.

2 **MR. KASTENS:** I THINK I HAVE AN EXTRA OF IT IN YOUR
3 SLIDES. SLIDE 9. THIS IS THE RUBIN'S REPORT EXHIBIT 5 OF THE
4 KASTENS' DECLARATION. AND IT'S AT PARAGRAPH, I BELIEVE, THIS
5 IS 1071, WHERE IT TALKS ABOUT (UNINTELLIGIBLE) EXPERT
6 TRANSMISSION IS DESIRABLE AN AVAILABLE ALTERNATIVE TO MAILING
7 (UNINTELLIGIBLE) THIS MODIFICATION WOULD BE TRIVIAL.

8 TYPICALLY, THEY'RE SAYING THE BASIS OF THE UNDERSTANDING
9 IS MAILING, AND THAT HE'S MODIFYING THAT THROUGH AN ELECTRONIC
10 DISCOVERY SUBMISSION. I DON'T -- THERE'S NO DISCUSSION OF
11 ELECTRONIC SUBMISSION AS A THEORY FOR WHY THE ELEMENT IS MET.

12 (PAUSE IN THE PROCEEDINGS.)

13 **THE COURT:** OKAY. SO HERE REFERS TO THE USER GUIDE
14 AS REQUESTING THAT USERS SUBMIT INFECTED PROGRAMS TO SYMANTEC,
15 RIGHT? THAT'S WHAT DR. RUBIN -- AND WHAT YOU'RE SAYING IS
16 THAT WAS NOWHERE DISCLOSED.

17 **MR. KASTENS:** YES, YOUR HONOR.

18 **THE COURT:** SO, WHERE DID THE INVALIDITY CONTENTIONS
19 DISCLOSE THAT?

20 **MR. HAMSTRA:** THE REPORTING OF -- THE REFERENCE TO
21 REPORTING A VIRUS INFECTION ON PAGE 145 OF CASSIDY EXHIBIT 13
22 WE WERE DISCUSSING EARLIER.

23 **THE COURT:** OKAY, WHERE? BECAUSE I DON'T SEE THAT.

24 **MR. HAMSTRA:** OKAY. THE MIDDLE EXCERPTED PARAGRAPH
25 THERE BEGINNING WITH BLOODHOUND-MACRO. AT THE END IT TALKS

1 ABOUT HOW THE ULTIMATE GOAL OF THIS IS TO REPORT A VIRUS
2 INFECTION. AND WE WEREN'T --

3 **THE COURT:** IT SAYS, THIS BEHAVIOR ITSELF IS NOT
4 SUFFICIENT TO REPORT A VIRUS INFECTION. SO WHERE DOES IT SAY
5 THAT IT REQUESTS THE USERS TO SUBMIT INFECTED PROGRAMS TO
6 SYMANTEC?

7 **MR. HAMSTRA:** I DON'T THINK THOSE -- THOSE WORDS
8 WERE -- WERE PRECISELY THERE.

9 **THE COURT:** OKAY. ALL RIGHT. I APPRECIATE THAT.
10 ALL RIGHT. WELL THAT ONE I'LL STRIKE. I DON'T THINK THAT
11 ONE WAS DISCLOSED.

12 **MR. HAMSTRA:** ACTUALLY, YOUR HONOR, IF I MAY -- IF I
13 MAY RAISE ONE OTHER POINT IN THAT? THEY RAISED KIND OF TWO
14 REFERENCES WITH THIS; NAV 4.0 AND SWIMMER. AND I THINK THE
15 OTHER ONE, THE SWIMMER REFERENCE IS QUITE DIFFERENT.

16 **THE COURT:** OKAY.

17 **MR. HAMSTRA:** SO IF I CAN POINT YOU TO EXHIBIT 5.

18 **THE COURT:** TO?

19 **MR. HAMSTRA:** KASTENS' EXHIBIT 5, THE SAME REPORT YOU
20 WERE LOOKING AT?

21 **THE COURT:** YEAH.

22 **MR. HAMSTRA:** ON PAGE 344 PARAGRAPH 1277.

23 **THE COURT:** PARAGRAPH 344?

24 **MR. HAMSTRA:** YEAH. SORRY, PAGE 344, PARAGRAPH 1277.

25 **THE COURT:** OKAY.

1 **MR. HAMSTRA:** IT IS A REPRESENTATION THAT THE ONLY
2 THING WE WERE RELYING ON REGARDING SWIMMER, THE MOTIVATION,
3 THE MODIFIED SWIMMER TO SEND SAMPLES BACK TO THE VIRUS
4 RESEARCHERS WAS THAT NAV 4 PIECE WE JUST DISCUSSED, BUT
5 LOOKING AT PARAGRAPH 1277, THERE'S ANOTHER MOTIVATION FROM
6 WITHIN SWIMMER THAT COMES THERE -- THAT COMES FROM THE SWIMMER
7 REFERENCE ITSELF THAT TALKS ABOUT HOW VIRUS RESEARCHERS WANT
8 TO OBTAIN SAMPLES OF VIRUSES.

9 SO WE DON'T VIEW -- THIS SOUNDS LIKE YOUR HONOR HAS MADE
10 HER DECISION ON NORTON ANTIVIRUS 4.0. I DON'T THINK THAT SAME
11 MOTIVATION -- I -- I DON'T THINK THAT THEORY IS NEW WITH
12 RESPECT TO THE TRANSMITTING. WE DO RELY ON SOMETHING OUTSIDE
13 OF NAV 4.0.

14 **THE COURT:** WHERE IS SWIMMER THEN? WHERE IS THAT
15 DISCLOSED IN THE CONTENTIONS?

16 (PAUSE IN THE PROCEEDINGS.)

17 **MR. KASTENS:** WHILE HE'S LOOKING, YOUR HONOR, IF I
18 CAN JUST SAY ONE THING. I BELIEVE WE SAID THAT BECAUSE
19 DR. RUBIN SAID THAT'S THE ONLY THING HE IS RELYING ON. MAYBE
20 I CAN FIND IT IN HIS DEPOSITION TESTIMONY.

21 **THE COURT:** WELL, I AM NOT STRIKING HIS DEPOSITION
22 TESTIMONY. THAT'S -- THAT'S JUST CROSS-EXAMINATION. THAT'S
23 NOT -- SO, OKAY. ARE YOU WITHDRAWING THEN SWIMMER?

24 **MR. KASTENS:** NO, YOUR HONOR. YOUR HONOR, THEY DON'T
25 EVEN REFERENCE SWIMMER IN THEIR REPLY BRIEF.

1 **THE COURT:** WHAT ABOUT THEIR MOTION?

2 **MR. HAMSTRA:** I DON'T THINK WE PUT THAT IN BECAUSE
3 THE BASIS OF FINJAN'S MOTION WAS THAT THE ONLY BASIS FOR
4 SUBMITTING SAMPLES TO A BACKUP SYSTEM WAS THIS NAV 4.0
5 REFERENCE. AND THIS -- THE RESPONSE IS THERE'S THIS --
6 THERE'S THIS OTHER MOTIVATION IN SWIMMER FOR DOING THAT --

7 **THE COURT:** IN YOUR OPPOSITION?

8 **MR. HAMSTRA:** YEAH.

9 **THE COURT:** I SEE. OKAY. ALL RIGHT. I'LL TAKE A
10 LOOK AT THAT THEN.

11 **MR. HAMSTRA:** THANK YOU.

12 **THE COURT:** OKAY. NOW THIS IS THE --

13 **MR. KASTENS:** AND, YOUR HONOR, I MEAN WE DO REFERENCE
14 SWIMMER ON PAGE 19 OF OUR OPPOSITION.

15 **THE COURT:** YOU MEAN YOUR MOTION?

16 **MR. KASTENS:** I'M SORRY, IN MY MOTION, BEING THAT WAS
17 THE SAME THEORY THAT WAS NOT DISCLOSED, WHICH IS JUST THAT YOU
18 CAN TRANSMIT IT, THE FILE BACK TO THE RESEARCHERS.

19 **THE COURT:** BUT THEY'RE SAYING THAT THEY DID DISCLOSE
20 OR THAT THERE'S AN ADDITIONAL EXPLANATION. SO YOU ARE NOT
21 MOVING TO STRIKE THE PARAGRAPH THEN THAT COUNSEL JUST REFERRED
22 TO, PARAGRAPH 377 OR AROUND THERE?

23 **MR. HAMSTRA:** I THINK IT WAS 1277.

24 **THE COURT:** OR 1277. YOU ARE NOT CHALLENGING THAT
25 THEN?

1 **MR. KASTENS:** NO, I THINK THAT IS THE SAME EXACT
2 THEORY THAT WE'RE SAYING WAS NOT DISCLOSED.

3 **THE COURT:** NO, IT'S A DIFFERENT THEORY.

4 **MR. KASTENS:** I MEAN, TRANSMITTING MAILING BACK TO
5 RESEARCHERS IS THE SAME THEORY AS MAILING TO SYMANTEC.

6 **THE COURT:** WELL, IT'S A DIFFERENT MOTIVATION. IT'S
7 SAYING THAT RESEARCHERS NEED THE VIRUSES. AND SO THEY HAVE TO
8 GET THEM SOMEHOW.

9 SO WHAT HE'S SAYING IS, WHAT HE'S SAYING THERE IS THAT
10 WOULD PROVIDE A MOTIVATION THAT ONE WOULD UNDERSTAND THAT
11 WHATEVER INVENTION YOU CAME UP WITH WOULD HAVE TO TRANSMIT IT.

12 ARE WE REALLY ARGUING ABOUT WHETHER TRANSMITTING SOMETHING
13 IS REALLY WOULD BE OBVIOUS OR NOT? THAT'S ACTUALLY SOMETHING
14 THE JURY MIGHT UNDERSTAND FOR ONE THING.

15 **MR. HAMSTRA:** WELL, YOU KNOW, I JUST THINK IT'S --
16 WHAT THEY HAVE DESCRIBED FOR BOTH SWIMMER AND WITHIN THE
17 TRANSMITTING OF MAILING FILES I THINK THAT'S ALL THE EXACT
18 SAME THEORY, WHICH IS YOU CAN TRANSMIT THE FILE. YOU KNOW, IT
19 WOULD BE OBVIOUS TO TRANSMIT THE FILE. HERE'S MOTIVATION IT
20 WOULD BE OBVIOUS TO TRANSMIT THE FILE THROUGH -- TO
21 RESEARCHERS. IN ONE CASE SYMANTEC AND SWIMMER, AND THEY ARE
22 JUST SAYING RESEARCHERS. THE THEORY THAT THEY DISCLOSE IN
23 THEIR IC'S IS A DIFFERENT THEORY.

24 IT'S THE SAME THEORY, BUT IT'S A DIFFERENT MOTIVATION.
25 AND THEIR MOTION WAS STRIKING THE MOTIVATION THAT ARISED (SIC)

1 FROM THIS MAILING LABEL, NOT FROM THIS DIFFERENT
2 (UNINTELLIGIBLE) SWIMMER REFERENCE. I DON'T THINK THEY WERE
3 MOVING TO STRIKE SOMETHING THAT IS OUTSIDE OF THE SWIMMER IC'S
4 BECAUSE I DON'T BELIEVE THEY SUBMITTED THE SWIMMER
5 INFRINGEMENT CONTENTIONS -- I'M SORRY, INVALIDITY CONTENTIONS
6 AS PART OF THEIR PLEADINGS HERE, THEIR MOTION.

7 **THE COURT:** OKAY. ALL RIGHT.

8 NOW WE ARE ON TO THE ACTIVITY LOG.

9 **MR. HAMSTRA:** YOUR HONOR, THERE'S NO MENTION OF AN
10 ACTIVITY LOG.

11 **THE COURT:** THAT'S TRUE. THEY DON'T DISPUTE THAT.

12 **MR. HAMSTRA:** AND, YOUR HONOR, I CAN ACTUALLY SHOW
13 YOU EXACTLY WHAT THE ACTIVITY LOG -- SO LET'S START FIRST AND
14 SAY THAT, YOU KNOW, FINJAN ADMITS THAT WE RELIED ON REPORTING
15 THE VIRUS TO THE USER. AND IF YOU LOOK AT -- WE ACTUALLY HAVE
16 AN EXAMPLE OF WHAT THE ACTIVITY LOG LOOKS LIKE.

17 IF YOU TURN TO CASSIDY EXHIBIT 16....

18 **THE COURT:** OKAY.

19 **MR. HAMSTRA:** I'VE WRITTEN DOWN THE WRONG NUMBER
20 THERE.

21 **THE COURT:** OKAY. IT SAYS, HELP, I'VE GOT A VIRUS.

22 **MR. HAMSTRA:** THAT'S NOT THE ONE I AM LOOKING FOR.

23 **THE COURT:** IT'S THE USER GUIDE.

24 **MR. HAMSTRA:** SORRY. THAT WAS MY MISTAKE. I WROTE
25 IT DOWN WRONG.

1 IT'S ACTUALLY EXHIBIT 18 TO MS. CASSIDY'S DECLARATION.
2 OKAY.

3 **THE COURT:** OKAY.

4 **MR. HAMSTRA:** AND AT PAGE 40 OF THAT. AND THERE'S AN
5 EXAMPLE OF AN ACTIVITY LOG THERE. AND IT SAYS -- THERE ARE A
6 NUMBER OF ENTRIES. AND THEY SAY THAT THE FIRST ONE IN THE
7 FILE A\FUNZONE.EXE WAS INFECTED WITH THE DA.1800 VIRUS.

8 THAT SEEMS TO ME THAT'S EXACTLY REPORTING A VIRUS TO A
9 USER. I'M NOT SURE HOW THEY'RE TRYING TO PULL THE ACTIVITY
10 LOG AS ANYTHING OTHER THAN REPORTING A VIRUS TO A USER.

11 AND IN REPORTING A VIRUS TO A USER IS A POP-UP THAT SAYS
12 YOU HAVE A VIRUS. THAT WAS OUR UNDERSTANDING OF THEIR
13 INFRINGEMENT CONTENTIONS WHICH IS SOMEHOW THAT SUBMISSION
14 (UNINTELLIGIBLE) OF THE ELEMENT. STORING IN AN ACTIVITY LOG
15 IS STORING IN AN ACTIVITY LOG. I MEAN, I DON'T KNOW --

16 **THE COURT:** YOU SEE, AGAIN, I THINK THAT'S AN
17 ARGUMENT THEN AS TO WHETHER IT'S SUFFICIENT TO SUPPORT THEIR
18 OBVIOUSNESS --

19 **MR. HAMSTRA:** I THINK --

20 **THE COURT:** ARGUMENT NOT TO STRIKE IT FROM THEIR
21 CONTENTIONS.

22 **MR. KASTENS:** I WOULD JUST SAY THEY ARE DIFFERENT
23 THEORIES, YOUR HONOR.

24 **THE COURT:** OKAY. ALL RIGHT. I THINK IT'S THE SAME
25 THEORY, BY THE WAY, IT'S A THEORY THAT YOU THINK IS NOT GOOD

1 ENOUGH ANYWAY --

2 **MR. KASTENS:** WELL, NO. I MEAN, YOU CAN REPORT TO A
3 USER WITHOUT THE USE OF AN ACTIVITY LOG AT ALL. YOU CAN JUST
4 HAVE A POP-UP ON YOUR COMPUTER THAT SAYS YOU HAVE A VIRUS.

5 **THE COURT:** RIGHT, BUT IT'S PART OF THE SAME THEORY.
6 THIS IS HOW IT'S REPORTED TO THE USER, WHETHER THE USER
7 ACTUALLY LOOKS AT THE ACTIVITY LOG. I GET IT; MOST DON'T.

8 **MR. KASTENS:** YOUR HONOR, I DON'T KNOW HOW MUCH TIME
9 WE HAVE WITH YOU TODAY, SO I DON'T KNOW IF YOU WANT TO JUST
10 TAKE THE REMAINDER OF FINJAN'S OR IF YOU HAVE ANY SPECIFIC
11 QUESTIONS ON THE REMAINDER.

12 **THE COURT:** I AM HAPPY TO DO THAT.

13 LET ME JUST SAY, I THINK THAT THE SECURITY COMPUTER BEING
14 INDEFINITENESS, IF YOU ACTUALLY CARED ABOUT THIS, THEN YOU
15 WOULD HAVE FILED THE MOTION ON IT ALREADY. SO I DON'T KNOW
16 WHY WE'RE ARGUING ABOUT IT.

17 YOUR SECURITY COMPUTER THEORY, THAT IS NOT THE THEORY THAT
18 WAS DISCLOSED IN YOUR CONTENTIONS.

19 **MR. HAMSTRA:** SO --

20 **THE COURT:** TWO -- THERE'S ONE, AND ALSO IS
21 INDEFINITE BECAUSE IT'S NOT THE THEORY THAT'S DISCLOSED, AS I
22 READ IT.

23 **MR. HAMSTRA:** SO, YOUR HONOR, SO KASTENS' OPENING
24 DECLARATION EXHIBIT 2 AT PAGE 40.

25 (PAUSE IN THE PROCEEDINGS.)

1 **THE COURT:** I WAS LOOKING AT PAGE 43, 42 TO 43.

2 **MR. HAMSTRA:** SO THIS IS... I THINK IT SHOULD BE
3 PAGE 40 TO 41, RIGHT, YOUR HONOR?

4 **THE COURT:** YES, I SEE THAT.

5 **MR. HAMSTRA:** SO IF YOU LOOK AT PAGE 40.

6 **THE COURT:** YEP.

7 **MR. HAMSTRA:** JUST BELOW THE -- ABOUT HALFWAY DOWN
8 THE PAGE THERE'S A SENTENCE THAT BEGINS: AS ANOTHER EXAMPLE,
9 THE '289 PATENT DOES NOT CONTAIN AN ADEQUATE WRITTEN
10 DESCRIPTION OF. THEN THERE'S A LIMITATION. THEN THERE'S THE
11 SECOND SUBSTITUTE FUNCTION BEING OPERATIONAL TO SEND THE
12 SECOND INPUT TO THE SECURITY COMPUTER FOR INSPECTION.

13 **THE COURT:** YEP.

14 **MR. HAMSTRA:** AND THEN AT PAGE -- ON PAGE 41, WE SAY
15 THAT FOR THE SAME REASONS THAT THE FULL PARAGRAPH AFTER THE
16 BULLET -- FOR THE SAME REASONS THAT THESE LACK WRITTEN
17 DESCRIPTION, THEY ARE ALSO INDEFINITE.

18 **THE COURT:** AND WHAT REASON IS THAT?

19 **MR. HAMSTRA:** THAT THERE'S NO DESCRIPTION IN THE --

20 **THE COURT:** THAT'S NOT A REASON, THAT'S REPEATING THE
21 RULE. THAT'S NOT GOOD ENOUGH.

22 DR. RUBIN DOESN'T JUST SAY THAT. HE SAYS MORE THAN THAT.
23 HE SAYS -- RIGHT? HE SAYS MORE THAN THAT. WHERE IS WHAT
24 DR. RUBIN SAYS DISCLOSED HERE?

25 **MR. HAMSTRA:** YOUR HONOR, I DON'T THINK THE LAW

1 REQUIRES THE LEVEL OF SPECIFICITY.

2 **THE COURT:** WHY? WHAT YOU ARE SAYING IS IT'S
3 INDEFINITE.

4 **MR. HAMSTRA:** RIGHT.

5 **THE COURT:** YOU HAVE TO SAY MORE THAN IT'S
6 INDEFINITE, RIGHT? YOU HAVE TO SAY WHY IT'S INDEFINITE.

7 **MR. HAMSTRA:** YOUR HONOR, I ACTUALLY DON'T BELIEVE
8 YOU'RE REQUIRED TO SAY MORE THAN IT'S INDEFINITE INVALIDITY
9 CONTENTION.

10 **THE COURT:** TELL ME WHAT THE RULE SAYS. DOES IT SAY
11 JUST IDENTIFY THE LIMITATIONS THAT YOU BELIEVE IS INDEFINITE?

12 **MR. HAMSTRA:** YOU HAVE TO DISCLOSE THE INDEFINITENESS
13 THEORY.

14 **THE COURT:** THAT IS WHAT I THOUGHT. I HAVEN'T LOOKED
15 AT IT.

16 **MR. HAMSTRA:** YOUR HONOR, I KNOW --

17 **THE COURT:** LET'S NOT GUESS. LET'S FIND IT.

18 (PAUSE IN THE PROCEEDINGS.)

19 3-3. ANY GROUND OF INVALIDITY BASED ON 101 ENABLEMENT OR
20 WRITTEN DESCRIPTION.

21 SO SAYING IT DOESN'T NEED WRITTEN DESCRIPTION IS NOT A
22 GROUND. ANY THE GROUNDS FOR ARE THE REASONS FOR.

23 **MR. HAMSTRA:** THE GROUNDS IS THAT THAT PARTICULAR
24 LIMITATION LACKS WRITTEN DESCRIPTION.

25 **THE COURT:** THAT'S A CONCLUSION. THAT'S NOT STATING

1 IT. THAT'S NOT THE GROUNDS FOR IT.

2 WHY DOES IT LACK A WRITTEN DESCRIPTION? DR. RUBIN SAYS
3 MORE THAN THAT, DOESN'T HE?

4 **MR. HAMSTRA:** OF COURSE. WE --

5 **THE COURT:** I'LL JUST STRIKE THEN WHEN HE SAYS MORE.
6 THAT'S FINE. HE CAN JUST SAY IT LACKS A WRITTEN DESCRIPTION.

7 WHAT WOULD THAT TELL US? NOTHING, WHICH IS WHY THE RULE
8 REQUIRES MORE. IF IT SAYS JUST IDENTIFY THE LIMITATIONS THAT
9 LACK A WRITTEN DESCRIPTION, IT WOULD SAY THAT. IT SAYS
10 IDENTIFY THE GROUNDS FOR -- THE GROUNDS FOR WHY IT LACKS A
11 WRITTEN DESCRIPTION.

12 **MR. HAMSTRA:** THEN WE IDENTIFY PARTICULAR LIMITATIONS
13 THAT LACK WRITTEN DESCRIPTION. I'M NOT -- IT'S VERY DIFFICULT
14 TO PROVE THE ABSENCE OF SOMETHING BEYOND THAT. YOU KNOW WHAT
15 I MEAN --

16 **THE COURT:** BUT DR. RUBIN SAYS MORE THAN THAT.
17 THAT'S FINE. LET'S STRIKE THE MORE THAT DR. RUBIN SAYS AND
18 LEAVE IT. YOU ABSOLUTELY DISCLOSE THAT IT LACKS A WRITTEN
19 DESCRIPTION. YOU DIDN'T DISCLOSE WHY.

20 I MEAN, REALLY, HOW CAN WE SAY WHEN OUR INVALIDITY
21 CONTENTIONS, OUR INFRINGEMENT CONTENTIONS REQUIRE 500 PAGES OF
22 SPECIFICITY, BUT YOU'RE SAYING FOR 101 OR ENABLEMENT OR
23 WRITTEN DESCRIPTION ALL WE HAVE TO SAY IS IT LACKS A WRITTEN
24 DESCRIPTION? THAT DOESN'T MAKE ANY SENSE. DOES IT?

25 **MR. HAMSTRA:** I BELIEVE THAT'S THIS DISTRICT'S CASE

1 LAW.

2 **THE COURT:** I DON'T BELIEVE SO. I DON'T BELIEVE SO
3 AT ALL.

4 OKAY. ANYWAY THAT -- I UNDERSTOOD YOUR ARGUMENT. ANYWAY,
5 OKAY. THAT'S ONE I THINK -- OKAY, LET'S MOVE ON WITH THE
6 OTHER MOTION NOW.

7 OKAY. SO FOR THE NORTON SECURITY PRODUCTS UNDER THE '844
8 AND THE '926, WITH -- YOU DID NOT IDENTIFY -- FINJAN DID NOT
9 IDENTIFY THE NORTON ANTI-VIRUS, NORTON 360, OR NORTON INTERNET
10 SECURITY PRODUCTS, RIGHT? INSTEAD IT JUST SAID NORTON
11 SECURITY.

12 **MS. CASSIDY:** CORRECT, YOUR HONOR.

13 **THE COURT:** BUT WITH RESPECT TO OTHER PATENTS, YOU
14 DID IDENTIFY THE NORTON 360, THE NORTON INTENT SECURITY, AND
15 THE NORTON ANTIVIRUS, RIGHT?

16 **MR. HANNAH:** CORRECT. I MEAN, SO, YOUR HONOR, WHAT
17 HAPPENED WAS, PUT THIS ON A TIME LINE HERE. SO WE FILED THE
18 FIRST COMPLAINT THAT IDENTIFIED ALL THESE OTHER PATENTS. AND
19 AT THAT TIME, THEY HAD NORTON INTERNET AND NORTON 360, AND
20 NORTON ANTIVIRUS. THEN IN SEPTEMBER THEY CHANGED. THEY
21 CHANGED THE NAME AND THEY SAID THAT EVERYTHING IS NOW CALLED
22 NORTON SECURITY.

23 AND AT THAT TIME WE FILED OUR AMENDED COMPLAINT.

24 **THE COURT:** SORRY.

25 (PAUSE IN THE PROCEEDINGS.)

1 **MR. HANNAH:** SO AT THAT TIME WE FILED OUR AMENDED
2 COMPLAINT. AND OUR AMENDED COMPLAINT ADDED THE '844 AND '926
3 PATENTS. WHEN WE FILED OUR INFRINGEMENT CONTENTIONS --

4 **THE COURT:** YES.

5 **MR. HANNAH:** -- WE WANTED TO MAKE SURE THAT FOR THOSE
6 OTHER PATENTS WE COVERED WHEN THEY WERE CALLING IT SEPARATE
7 PRODUCTS, FOR THOSE THREE MONTHS, WE WANTED TO MAKE SURE THAT
8 WE WERE COVERING FOR DAMAGES PURPOSES WHAT WERE THOSE THREE
9 SEPARATE PRODUCTS.

10 AND FOR THE '844 AND '926 EVERYTHING WAS LUMPED TOGETHER
11 SO WE ONLY CALLED IT NORTON SECURITY BECAUSE THAT'S ONLY GOING
12 TO HAVE DAMAGES GOING FROM SEPTEMBER FORWARD.

13 SO THERE WAS -- WE -- WE FOLLOWED THE TREND THAT SYMANTEC
14 CALLED ITS PRODUCTS. AND WE HAVE -- I MEAN, TALK ABOUT
15 EXHIBITS, WE HAVE TONS OF EXHIBITS ATTACHED TO OUR MOTION THAT
16 SPECIFY EXACTLY WHEN THEY SWITCHED THE NAME, WHY THEY SWITCHED
17 THE NAME, AND THAT'S WHAT WE CALLED -- THAT'S WHAT WE CALLED
18 IT.

19 **THE COURT:** YOU ARE SAYING WHEN YOU IDENTIFY THOSE
20 PARTICULAR PRODUCTS, THOSE ARE GOING FARTHER BACK IN TIME?

21 **MR. HANNAH:** CORRECT. TO THE -- TO THE -- IT'S GOING
22 TO THE FILING OF THE FIRST -- OF THE ORIGINAL COMPLAINT.

23 SO WE'RE NOT GOING TO SEEK DAMAGES FOR THE '844 PASSED THE
24 FILING OF THE AMENDED COMPLAINT. AND SO THERE'S NO REASON TO
25 PUT IT IN OUR INFRINGEMENT CONTENTIONS BECAUSE WE'RE NOT

1 TRYING TO CAPTURE THOSE THREE MONTHS.

2 **THE COURT:** OKAY.

3 **MR. HANNAH:** FOR THE OTHER PATENTS WE HAVEN'T
4 CAPTURED THOSE THREE MONTHS, THUS WE'VE PUT IT IN THERE.

5 **MS. CASSIDY:** THE PROBLEM IS, YOUR HONOR, IS THAT
6 THEY ARE TRYING TO CLAIM DAMAGES FOR THE '844 AND THE '926 FOR
7 NORTON 360, NORTON ANTIVIRUS, AND NORTON INTERNET SECURITY
8 SEPARATELY FROM NORTON SECURITY. THESE ARE ALSO GENERATING
9 REVENUE.

10 SO WHAT WE ARE DOING IS WE ARE CONSOLIDATING THE BRAND.
11 AND WE DID THAT BECAUSE SYMANTEC NO LONGER OFFERS THESE OLDER
12 LEGACY PRODUCTS ONLINE. BUT TO THE EXTENT THAT THEY ARE
13 ALREADY IN -- AT BEST BUY ON THE SHELF, YOU CAN STILL BUY
14 THEM.

15 SO THAT'S WHY WE ATTACHED IN OUR EXHIBIT, WHICH I CAN
16 POINT OUT IN A SECOND SO YOU CAN SEE IT HERE, BUT THE EXPERT
17 REPORT WHERE IT ACTUALLY SAYS THAT THESE PRODUCTS ARE STILL
18 GENERATING REVENUE INDEPENDENTLY OF ONE ANOTHER. SO THEY ARE
19 ALL DIFFERENT.

20 SO I'M NOT REALLY SURE --

21 **THE COURT:** SO, IN OTHER WORDS, SO ANY PRODUCT THAT
22 WAS MANUFACTURED AFTER THE DATE OF THE AMENDED COMPLAINT WOULD
23 NOT HAVE HAD THOSE NAMES, BUT WHAT YOU CLAIM IS THAT THEY'RE
24 TRYING TO CAPTURE DAMAGES FOR ANY OF THOSE PRODUCTS THAT HAVE
25 THOSE NAMES, THEY MAY HAVE BEEN MANUFACTURED EARLIER, BUT SOLD

1 LATER.

2 **MR. HANNAH:** SO, YOUR HONOR, THAT'S A DAMAGES ISSUE
3 THAT THEY CAN -- THAT'S CHALLENGING THE SUFFICIENCY OF THE
4 DAMAGES --

5 **THE COURT:** NO, NO. NO, IT'S NOT. IT'S CHALLENGING
6 WHETHER THEY WERE PUT ON NOTICE THAT YOU WERE SEEKING DAMAGES
7 FOR THOSE PRODUCTS.

8 **MR. HANNAH:** RIGHT. AND THEY WERE ABSOLUTELY PUT ON
9 NOTICE THAT WE'RE SEEKING DAMAGES OF THOSE PRODUCTS IN THE
10 INTERROGATORIES.

11 **THE COURT:** AS TO THE '844 AND '926?

12 **MR. HANNAH:** ABSOLUTELY, YOUR HONOR.

13 IN THE -- IN OUR INTERROGATORY RESPONSES, AND ACTUALLY A
14 RESPONSE FROM THEM WHEN THEY IDENTIFIED NORTON AND NORTON
15 SECURITY, AND THEY SAY, OKAY, HERE ARE THE LINE ITEMS OF
16 NORTON SECURITY, AND THEY IDENTIFY NORTON INTERNET, NORTON
17 360, AND NORTON ANTIVIRUS.

18 SO IT'S IN THE RESPONSE FROM THEM. AND THEN OUR DAMAGES
19 EXPERT TAKES THAT AND SAYS, OKAY, BASED ON THEIR
20 REPRESENTATIONS THAT THEY ARE LUMPING ALL THESE UP INTO NORTON
21 SECURITY AND HOW THEY ARE DOING THEIR ACCOUNTING, THEN, YOU
22 KNOW, THEY GO THROUGH THE DAMAGES CALCULATIONS. SO --

23 **THE COURT:** SO WHAT WAS THE INTERROGATORY REQUEST
24 THAT WAS MADE TO THEM THAT YOU SAID --

25 **MR. HANNAH:** I BELIEVE IT WAS PROVIDE THE

1 ACCOUNTING -- NOW WE ARE GETTING TO THE DAMAGES ISSUES, WHICH
2 I HAVE TO -- THAT'S A LITTLE BIT OF VODOO TO ME, BUT I AM
3 MORE OF A TECHNICAL GUY -- BUT I BELIEVE THE -- IT WAS
4 IDENTIFY THE LINE ITEMS IN THE SPREADSHEET -- BECAUSE THEY
5 GAVE US THIS HUGE SPREADSHEET THAT HAS, YOU KNOW, A MASSIVE
6 SPREADSHEET. AND IT SAID IDENTIFY THE LINE ITEM THAT
7 CORRESPONDS TO NORTON SECURITY.

8 AND THEN -- SO THEN THEY'LL HAVE LINE ITEMS THAT HAVE
9 THESE DIFFERENT, THESE DIFFERENT TECHNOLOGIES IN THERE. SO
10 OUR DAMAGES FOLKS TAKE THAT --

11 **THE COURT:** I SEE -- I SEE THAT ANYTHING CALLED
12 "NORTON SECURITY" YOU DISCLOSE. BUT FOR THOSE TWO PATENTS,
13 THAT'S WHAT YOU'RE SEEKING.

14 **MR. HANNAH:** CORRECT.

15 **THE COURT:** WHERE DID YOU DISCLOSE THAT FOR THOSE TWO
16 PATENTS WERE ALSO SEEKING DAMAGES FOR ANYTHING THAT WAS SOLD
17 AS NORTON 360?

18 **MR. HANNAH:** SO THAT WOULD BE THROUGHOUT THE NORMAL
19 COURSE OF DISCOVERY IN OUR INTERROGATORIES.

20 FOR THE INFRINGER PURPOSES, OUR INFRINGEMENT EXPERTS ARE
21 GOING -- ARE TAKING -- THAT'S WHAT THIS IS ABOUT, THAT'S WHAT
22 THEIR MOTION WAS ABOUT.

23 THEN I THINK WHAT THEY ARE TRYING TO DO IS TRY TO MORPH IT
24 INTO A DAMAGES THING. THAT'S NOT IN THEIR MOTION.

25 **THE COURT:** NO, THAT'S NOT --

1 **MR. HANNAH:** THEIR MOTION -- OKAY. BUT THEIR MOTION
2 IS FOR NORTON SECURITY, DID WE PROVIDE -- ON THEIR
3 INFRINGEMENT ANALYSIS NORTON SECURITY.

4 **THE COURT:** NO. NO. THEY ARE SAYING -- NO. THEY
5 ARE SAYING DID YOU ACCUSE NORTON 360 OF VIOLATING THE '926.
6 THAT'S WHAT THEY'RE SAYING.

7 **MR. HANNAH:** NORTON 360. SO WHAT WE'RE SAYING FOR
8 THE '926, FINE. FOR THE '926, WE'RE SAYING AS OF SEPTEMBER
9 WHEN WE FILED THE AMENDED COMPLAINT, NORTON 360 WAS WRAPPED UP
10 INTO NORTON SECURITY.

11 **MS. CASSIDY:** THAT'S NOT TRUE.

12 **THE COURT:** NO. BECAUSE THERE WAS NORTON 360 THAT
13 STILL EXISTED OUT THERE. IT'S CALLED NORTON 360. IT'S NOT
14 CALLED NORTON SECURITY. IT'S CALLED NORTON 360. AND IT WAS
15 SOLD AFTER YOU FILED YOUR AMENDED COMPLAINT.

16 AND THEY'RE SAYING YOU NEVER ACCUSED NORTON 360 THAT WAS
17 MANUFACTURED AND CALLED BEFORE THE FILING OF THE AMENDED
18 COMPLAINT.

19 **MR. HANNAH:** SO, YOUR HONOR, BY... BY VIRTUE OF
20 SAYING NORTON SECURITY INFRINGES, WE'RE SAYING THAT NORTON 360
21 INFRINGEMENTS. IT'S THE SAME -- THEIR INTERNAL DOCUMENTS SAY IT'S
22 THE EXACT SAME THING. THEY'VE ROLLED IT UP INTO NORTON
23 SECURITIES.

24 SO IN OUR INFRINGEMENT CONTENTIONS, BECAUSE WE ARE TRYING
25 TO MAKE THEM AS SIMPLE AS POSSIBLE. AS YOU KNOW, THERE ARE

1 THOUSANDS AND THOUSANDS OF PAGES. TO MAKE IT AS SIMPLE AS
2 POSSIBLE, WE SAID, OKAY, WHAT IS THE MARKETING -- FOR THE
3 MARKETING -- HOW ARE THEY MARKETING THESE PRODUCTS TODAY WHEN
4 WE -- WHEN WE HAVE IT IN SEPTEMBER? THEY MARKETED IT AS
5 NORTON SECURITY.

6 WHY WOULD WE SPLIT -- WHY WOULD WE SPLIT IT OUT BECAUSE
7 ALL WE ARE TRYING TO DO IS PROVE INFRINGEMENT.

8 **THE COURT:** BUT YOU SPLIT IT OUT FOR THE OTHER
9 PATENTS.

10 **MR. HANNAH:** BECAUSE WHEN WE -- WHEN WE FILED THE
11 ORIGINAL COMPLAINT THEY -- IT WAS SPREAD OUT. THEY DIDN'T
12 HAVE -- THEY DIDN'T ROLL IT ALL UP INTO NORTON SECURITY. THAT
13 WAS IN JUNE.

14 **THE COURT:** MS. CASSIDY.

15 **MS. CASSIDY:** YES.

16 **THE COURT:** IS NORTON 360, THE NORTON 360 PRODUCT
17 THAT YOU'RE TALKING ABOUT THAT WAS ON THE SHELF AT BEST BUY,
18 HOW TECHNICALLY DOES IT DIFFER FROM THE NORTON SECURITY
19 PRODUCT THAT'S ON THE SHELF TODAY?

20 **MS. CASSIDY:** WELL, YOU CAN CHECK OUT
21 DR. MEDVIDOVIC'S REPORT. HE HAS A FEATURE ANALYSIS. AND HE
22 HAS IDENTIFIES DIFFERENT FEATURES FOR NORTON 360 VERSUS NORTON
23 SECURITY. SO THERE ARE DIFFERENCES.

24 AND HE COULD SEE THEM AND THEY ACTUALLY RELY ON THIS TO
25 COME UP WITH THE DIFFERENT FEATURE APPORTIONMENT FOR THE

1 DAMAGES REPORT.

2 SO I'M NOT SAYING THAT THEY DON'T SHARE SOME OF THE
3 TECHNOLOGY, BUT THEIR OWN EXPERT HAS SUBMITTED A REPORT SAYING
4 THAT THERE'S DIFFERENCES.

5 **THE COURT:** SO YOU'RE SAYING THAT NORTON -- THE
6 PRODUCT THAT'S IDENTIFIED AS NORTON 360, THAT WHEN CHANGED THE
7 NAME TO NORTON SECURITY, THAT'S A DIFFERENT PRODUCT.

8 **MS. CASSIDY:** RIGHT.

9 **MR. HANNAH:** SO, YOUR HONOR, ALL YOU HAVE TO -- LET'S
10 POINT TO SOME EXHIBITS. I MEAN, ALL YOU HAVE TO DO IS POINT
11 TO THEIR INTERNAL PRESENTATION WHICH SAYS IT'S ALL WRAPPED UP
12 INTO THE SAME THING. I MEAN --

13 **THE COURT:** WHAT DOES THAT MEAN? THAT'S A DIFFERENT
14 QUESTION.

15 **MR. HANNAH:** NO --

16 (SIMULTANEOUS COLLOQUY.)

17 **MR. HANNAH:** NO. YOUR QUESTION TO HER WAS, DOES IT
18 HAVE THE SAME TECHNOLOGY.

19 **THE COURT:** YES.

20 **MR. HANNAH:** ABSOLUTELY. THAT'S EXACTLY WHAT IT IS,
21 IT'S THE EXACT SAME TECHNOLOGY.

22 **THE COURT:** IT MAY HAVE THE SAME BASIC TECHNOLOGY,
23 BUT IT MAY HAVE DIFFERENT FEATURES --

24 **MR. HANNAH:** NO, BUT --

25 (SIMULTANEOUS COLLOQUY.)

1 **THE COURT:** IT'S A CONVERGENCE.

2 **MS. CASSIDY:** AND, YOUR HONOR, I DON'T -- I DON'T
3 REALLY FOLLOW LIKE THE STORY ABOUT THE DIFFERENT COMPLAINTS OR
4 WHATEVER, BUT AS OF APRIL 23RD, 2015, WHEN THEY SENT THEIR
5 CONTENTIONS, THEY GAVE NOTICE ABOUT WHAT PRODUCTS INFRINGED
6 EACH PATENT. AND FOR SOME PATENTS, THEY LISTED SEPARATELY
7 NORTON 360, NORTON ANTIVIRUS, NORTON INTERNET SECURITY. AND
8 FOR THE '844 AND THE '926 PATENTS, THEY JUST LISTED NORTON
9 SECURITY, WHICH IS A PRODUCT.

10 AND UNDER JUDGE GILLIAM'S ORDER IN THE *PROOFPOINT* CASE, WE
11 HAD EVERY RIGHT TO RELY ON THAT TO SAY, OKAY, SO YOU'RE NOT
12 PURSUING AN INFRINGEMENT CLAIM FOR NORTON 360, NORTON
13 ANTIVIRUS, AND NORTON INTERNET SECURITY FOR THAT '844 AND THE
14 '926 PATENT.

15 I'M NOT SURE HOW WE COULD HAVE DEVISED THIS -- HOW THEY
16 DECIDED TO FILE A COMPLAINT AND THEN AN AMENDED COMPLAINT AND
17 WHAT THEY MEANT WHEN THEY SERVED IT, BUT ALL I CAN TELL YOU IS
18 WHAT IT SAID IN THEIR CONTENTIONS. AND IT DID NOT SAY THESE
19 ADDITIONAL PRODUCTS.

20 **THE COURT:** OKAY.

21 **MR. HANNAH:** SO, YOUR HONOR, FOR THE -- LET ME JUST
22 ADDRESS THE -- WHAT I WAS GOING TO TALK ABOUT.

23 DR. MEDVIDOVIC, WHAT HE OFFERS AN OPINION ON IS DIFFERENT
24 FEATURES FOR DIFFERENT PATENTS. HE'S NOT AN INFRINGEMENT
25 EXPERT.

1 SO ALL HE DOES IS SUPPORT THE DAMAGE -- HE SUPPORTS
2 PRIMARILY, BUT IN ADDITION TO OTHER THINGS, HE SUPPORTS THE
3 DAMAGES EXPERT IN TERMS OF WHAT ARE THE DIFFERENT FEATURES,
4 HOW ARE THEY IMPORTANT, THINGS LIKE THAT. SO THE DAMAGES
5 EXPERT GIVES AN OPINION IN TERMS OF WHAT THE VALUE SHOULD BE.

6 OUR INFRINGEMENT EXPERTS WHO LOOK AT THE TECHNOLOGY,
7 LOOKED AT NORTON SECURITY, AND THEY SAID NORTON SECURITY, AS
8 OF SEPTEMBER, INCLUDED EVERYTHING.

9 SO WHY WOULD -- IT DOESN'T MAKE SENSE THAT WE WOULD SPLIT
10 THEM OUT WHEN NORTON IS MARKETING ALL OF THEIR PRODUCTS AS
11 NORTON SECURITY.

12 **THE COURT:** YES. SO THEN YOU -- THAT'S THE ONLY
13 PRODUCTS THAT YOU WANT TO SEEK DAMAGES FOR. OKAY. THEY ARE
14 SAYING THERE ARE OTHER PRODUCTS CALLED NORTON 360 -- THEY
15 DON'T EVEN CALL THEM THAT ANYMORE, SO I DON'T EVEN HOW MUCH WE
16 ARE TALKING ABOUT. I LOOKED AT SOME THING AND IT DIDN'T EVEN
17 LOOK LIKE VERY MUCH.

18 **MS. CASSIDY:** IT ADDS UP, YOUR HONOR.

19 **THE COURT:** IT DOES?

20 **MR. HANNAH:** YOUR HONOR, THAT'S THE ISSUE; WHAT THEY
21 ARE TRYING TO DO IS PLAY THESE ACCOUNTING GAMES. WHEN THEY --
22 FOR THE DAMAGES, WHAT THEY ARE TRYING TO SAY IS, OKAY, SO FOR
23 DAMAGES, NOW WE ARE NOT GOING TO GIVE UP THE REVENUES THAT WE
24 ASSOCIATE, EVEN THOUGH WE DON'T ASSOCIATE IT TO THE PUBLIC,
25 BUT INTERNALLY WE ASSOCIATE NORTON 360, NORTON INTERNET, AND

1 NORTON ANTIVIRUS DIFFERENTLY. AND THEN THEY WRAP THAT ALL UP
2 INTO NORTON SECURITY. BUT THEY HAVE DIFFERENT LINE ITEMS FOR
3 THIS. THAT'S A DAMAGES ISSUE.

4 AND SO THE WAY THAT THEY ARE GOING TO DO THEIR ACCOUNTING
5 GAMES, WE CAN'T USE THAT IN TERMS OF OUR INFRINGEMENT -- OUR
6 INFRINGEMENT EXPERTS, WHEN THEY LOOK AT THE TECHNOLOGY, THEY
7 ARE LOOKING AT THIS IS THE TECHNOLOGY, THESE ARE THE PRODUCTS
8 THAT ARE OFFERED, AND THIS IS THE TECHNOLOGY THAT IT
9 INFRINGES. AND THAT'S THE SAME ACROSS NORTON 360, INTERNET
10 AND ANTIVIRUS.

11 **MS. CASSIDY:** IF THAT IS TRUE, YOUR HONOR, THERE WERE
12 RULES REQUIRES THEM TO SPECIFICALLY IDENTIFY THEM BY NAME AND
13 WE ARE NOT SUPPOSED TO ASSUME REPRESENTATIVE LABELS FOR A
14 WHOLE GROUP OF PRODUCTS THAT ALL EXIST.

15 AND LIKE TO HAVE THIS UNDERSTANDING COME OUT IN EXPERT
16 REPORTS? THAT'S THE WHOLE POINT OF THE CONTENTIONS.

17 **MR. HANNAH:** YOUR HONOR, IT DIDN'T COME OUT IN THE
18 EXPERT REPORTS. THIS HAS BEEN -- AGAIN, WE'RE GETTING INTO
19 THE DAMAGES ISSUES, BUT THIS HAS BEEN DISCLOSED TIME AND TIME
20 AGAIN IN THE INTERROGATORIES.

21 **THE COURT:** IT IS A DAMAGES ISSUE BECAUSE THE -- BUT
22 THE LOCAL RULES REQUIRE YOU IDENTIFY THE PRODUCTS YOU'RE
23 ACCUSING.

24 **MR. HANNAH:** AGREED, YOUR HONOR. WE IDENTIFIED THE
25 PRODUCTS THAT WE ARE ACCUSING. SO AS OF SEPTEMBER, THE ONLY

1 PRODUCTS THAT THEY WERE OFFERING WAS NORTON SECURITY. THAT'S
2 WHAT THEY WERE OFFERING.

3 **THE COURT:** BUT THEY WERE ALSO OFFERING, THEY WERE
4 ALSO OFFERING NORTON 360. IT WAS STILL OUT THERE.

5 **MR. HANNAH:** SO --

6 **THE COURT:** IF IT WASN'T, WE WOULDN'T HAVE AN ISSUE,
7 RIGHT?

8 **MR. HANNAH:** BUT THE ISSUE ISN'T THAT THE TECHNOLOGY
9 IS DIFFERENT BETWEEN -- THE ISSUE ISN'T THAT THE TECHNOLOGY IS
10 DIFFERENT. THAT'S ALL THAT MATTERS FOR THESE INFRINGEMENT
11 CONTENTIONS. THE TECHNOLOGY IS EXACTLY THE SAME FOR
12 INFRINGEMENT PURPOSES.

13 WHAT THEY ARE TRYING DO IS WHEN YOU LOOK AT THE PARTICULAR
14 INTERROGATORIES AND HOW THEY ARE RESPONDING AND HOW THEY DO
15 THE ACCOUNTING, WHEN THEY DO THE ACCOUNTING INTERNALLY, THEY
16 ACTUALLY SPLIT IT UP.

17 **THE COURT:** I DON'T THINK HOW THEY DO THE ACCOUNTING
18 MATTERS. I THINK WHAT MATTERS IS WHAT THE PRODUCT IS AND WHAT
19 IT'S NAMED WHEN IT IS SOLD TO THE PUBLIC.

20 CAN YOU SHOW ME IN THE OPPOSITION YOU GAVE THIS
21 EXPLANATION AS TO WHY, WITH RESPECT TO SOME PATENTS YOU WERE
22 ABLE TO ACCUSE THE 360 AND BLAH, BLAH, BLAH, AND THAT YOU DID
23 NOT WITH RESPECT TO THE '926 AND THE '844?

24 **MR. HANNAH:** SO ON PAGE 2, YOUR HONOR, IT SAYS
25 THERE'S OVERWHELMING EVIDENCE THAT SYMANTEC STOPPED USING THE

1 NORTON LEGACY NAMES IN LATE --

2 **THE COURT:** NO, I KNOW THAT. YOU SAID THAT. YOU
3 SAID SOMETHING ELSE. BECAUSE JUDGE GILLIAM DOES HAVE THIS
4 DECISION OUT THERE. BECAUSE OF COURSE THERE IS AN INFERENCE
5 WHEN YOU SPECIFICALLY IDENTIFY PRODUCTS FOR SOME PATENTS AND
6 YOU DON'T IDENTIFY FOR THE OTHER, THE REASONABLE INFERENCE IS
7 YOU ARE NOT ACCUSING THOSE PRODUCTS FOR THAT.

8 THAT'S WHAT WE'RE TALKING ABOUT. YOU GAVE ME AN
9 EXPLANATION HERE ABOUT WHEN COMPLAINTS AND AMENDED COMPLAINTS
10 AND STUFF WERE FILED. WHAT I AM SAYING IS, WHERE IN YOUR
11 OPPOSITION DID YOU GIVE THAT EXPLANATION.

12 **MR. HANNAH:** I MEAN IT'S THROUGHOUT PAGES 2 AND 3,
13 YOUR HONOR.

14 **THE COURT:** POINT ME TO A LINE.

15 **MR. HANNAH:** I MEAN, SO WHAT I AM TALKING ABOUT IS
16 LIKE FINJAN'S IDENTIFYING NORTON SECURITY IN ITS IC'S AS AN
17 ACCUSED PRODUCT AND FOR THE '844 AND THE '926 IDENTIFIES ALL
18 NORTON PRODUCTS THAT FINJAN ACCUSED IN ITS EXPERT REPORT.
19 THIS IS BECAUSE SYMANTEC PUBLICLY ANNOUNCED IT WAS
20 DISCONTINUING THE USE OF NORTON --

21 **THE COURT:** I'M SORRY YOU'RE NOT LISTENING TO ME, BUT
22 JUST SAY THE ANSWER IS IT'S NOT IN THERE. YOU STOOD UP AND
23 GAVE ME AN EXPLANATION, RIGHT? ANSWER ME THIS.

24 **MR. HANNAH:** OKAY.

25 **THE COURT:** IF SOMEBODY ACCUSES X PRODUCT FOR THESE

1 PATENTS AND NOT FOR THESE PATENTS, ISN'T THERE AN INFERENCE
2 THAT THOSE PRODUCTS ARE NOT BEING ACCUSED FOR THESE PATENTS?
3 THE VERY NAME, THE VERY NAME, OKAY.

4 YES, THERE IS.

5 NOW, YOU SAID THE REASON WE DID THAT IS BECAUSE OF THE
6 COMPLAINT, AND THE AMENDED COMPLAINT, AND ALL THAT KIND OF
7 STUFF. WHAT I ASKED YOU THEN IS, WHERE IN YOUR OPPOSITION YOU
8 GAVE THAT EXPLANATION WITH RESPECT TO THE TIMING OF THE
9 AMENDED COMPLAINT AND THE COMPLAINT.

10 **MR. HANNAH:** NOW I UNDERSTAND, YOUR HONOR. THAT WAS
11 FOR CONTEXT IN TERMS OF THE WHEN WE FILED THE FIRST COMPLAINT
12 AND THE SECOND COMPLAINT.

13 AS FOR --

14 **THE COURT:** IT'S NOT IN YOUR OPPOSITION. NO. SO
15 WHAT I KNOW, WHAT I KNOW AND WHAT'S IN THE RECORD IS THAT WITH
16 RESPECT TO THESE PATENTS YOU VERY SPECIFICALLY ACCUSE THESE
17 PRODUCTS, AND FOR THESE PATENTS YOU DID NOT. AND THEN I HAVE
18 *PROOFPOINT*, WHICH IS RIGHT ON *PROOFPOINT*.

19 **MR. HANNAH:** SO *PROOFPOINT* IS ACTUALLY -- SO I ARGUED
20 THAT MOTION AS WELL, YOUR HONOR, AND IT IS --

21 **THE COURT:** ON WHICH SIDE?

22 **MR. HANNAH:** IT'S THE OPPOSITE. WELL, I WON ON MOST,
23 I'D SAY. I LOST ON SOME.

24 BUT, YOUR HONOR, SO THAT WAS ACTUALLY THE OPPOSITE IN
25 THAT -- SEE, WHAT HAPPENED IN *PROOFPOINT* IS THEY TOOK THE NAME

1 AND THEY STOPPED -- THEY DISCONTINUED THE NAME ALTOGETHER.
2 THEY DIDN'T WRAP IT UP INTO A TECHNOLOGY AND CALL IT SOMETHING
3 ELSE THAT WAS LIKE AN OVERARCHING TECHNOLOGY.

4 IF YOU LOOK AT THAT, THAT WAS TALKING ABOUT TAFT AND
5 THAT'S TALKING ABOUT... WHAT WAS IT, MALWARE ADVERTISING --
6 ANYWAY, IT WAS A DIFFERENT TECHNOLOGY.

7 WHAT HAPPENED WAS IT WAS THE OPPOSITE. THEY TOOK THOSE
8 TECHNOLOGIES AND SPLIT THEM OUT. HERE, THEY TOOK THE
9 TECHNOLOGIES AND THEY WRAPPED THEM UP TOGETHER. SO FOR OUR
10 INFRINGEMENT PURPOSES, FOR OUR TECHNICAL ANALYSIS ON OUR
11 INFRINGEMENT --

12 **THE COURT:** WHAT DO YOU MEAN THEY WRAPPED THEM UP
13 ALTOGETHER? THEY COMBINED THEM INTO A SINGLE PRODUCT?

14 **MR. HANNAH:** YES, THAT'S --

15 **THE COURT:** THEN THAT'S A NEW PRODUCT. THE CASE LAW
16 IS QUITE CLEAR IF YOU TAKE DIFFERENT PRODUCTS AND YOU COMBINE
17 THEM INTO ONE PRODUCT, THAT'S A NEW PRODUCT. THAT'S A
18 DIFFERENT PRODUCT.

19 **MR. HANNAH:** YOUR HONOR, AND THAT'S-- THAT'S
20 EXACTLY -- THAT'S WHY WE ACCUSED THE '844 AND '926. WE
21 ACCUSED THE PRODUCT THAT WAS IN THE MARKET.

22 **THE COURT:** YES. AS A VYING PRODUCT. THAT ONE YOU
23 DID ACCUSE. BUT THE NORTON 360 IS NOT THAT COMPLIANT PRODUCT.

24 **MR. HANNAH:** I DIDN'T --

25 **THE COURT:** -- NORTON SECURITY --

(SIMULTANEOUS COLLOQUY.)

MR. HANNAH: I'D AGREE --

THE COURT: IT DOESN'T HAVE EVERYTHING ELSE.

MR. HANNAH: SO I UNDERSTOOD, YOUR HONOR, SO FOR THOSE THREE MONTHS, THAT IS WHAT I WOULD SAY. FOR THOSE, ABSOLUTELY. FOR THOSE THREE MONTHS -- FOR THE '844 BEFORE THE SEPTEMBER 2014, WE CAN'T GO AFTER 360, WE CAN'T GO AFTER NORTON ANTIVIRUS, NORTON INTERNET SECURITY. I -- I TOTALLY AGREE WITH THAT.

THE COURT: OKAY. AND AFTER THAT, TO THE EXTENT NORTON 360, WHICH IS NOT THE COMBINED PRODUCT, YOU ALSO CAN'T GO OVER THAT.

MR. HANNAH: YOUR HONOR, THAT'S WHAT I AM SAYING THEY ARE JUST DOING ACCOUNTING TRICKS. IN THEIR FINANCIALS, THEY WRAP IT ALL UP INTO NORTON SECURITY.

THE COURT: I DON'T CARE WHAT THEY DO IN THEIR FINANCIALS BECAUSE THAT IS AN ACCOUNTING. I CARE WHETHER IT IS A DIFFERENT PRODUCT OR NOT.

SO I HAVE THE NORTON 360 AND TWO OTHER PRODUCTS, RIGHT? AND NOW I HAVE NORTON SECURITY. AND NORTON SECURITY NOW INCLUDES ALL THESE THINGS OF THESE THREE PRODUCTS, RIGHT?

MR. HANNAH: SO WHAT THEY DID, AND IT'S IN OUR -- THROUGHOUT OUR BRIEFING, BUT WHAT THEY DID WAS, THEY TOOK THESE LEGACY NAMES AND THEY JUST STOPPED CALLING THEM THAT AND STARTED CALLING THEM NORTON SECURITY.

1 **THE COURT:** YES.

2 **MR. HANNAH:** I JUST WANT TO MAKE SURE THE TECHNOLOGY
3 IS EXACTLY THE SAME. THEY DIDN'T CHANGE THE TECHNOLOGY. THEY
4 JUST CHANGED THE NAME.

5 **THE COURT:** I THOUGHT YOU SAID THEY COMBINED THEM
6 INTO --

7 **MR. HANNAH:** SO, YOUR HONOR, CAN I SHOW YOU AN
8 EXHIBIT?

9 **THE COURT:** SURE.

10 **MR. HANNAH:** OKAY.

11 (PAUSE IN THE PROCEEDINGS.)

12 SO IF WE LOOK AT... LET'S SEE HERE.

13 SO IF YOU LOOK AT EXHIBIT 2, FOR INTENTION --

14 **THE COURT:** TO YOUR OPPOSITION?

15 **MR. HANNAH:** NO. IT'S TO A KASTENS DECLARATION.

16 SO THIS IS A HIGHLY CONFIDENTIAL INTERNAL DOCUMENT. AND
17 THEY ARE DESCRIBING THE (UNINTELLIGIBLE) AND WHAT THEY ARE
18 DOING. AND ON PAGE 9, WHICH ENDS IN BATES NO. 372, THEY SAY:
19 TO START THIS MISSION WE SIMPLIFIED THE PORTFOLIO TO A
20 SINGLE-BASE OFFERING.

21 THEN IF YOU GO TO PAGE 11, THEY SHOW ALL THE TECHNOLOGIES
22 COMING INTO NORTON SECURITY.

23 THIS IS -- WHAT THEY DID WAS THEY TOOK -- THEY JUST TOOK A
24 PRODUCT NAME AND THEY CHANGED IT TO NORTON SECURITY TO
25 SIMPLIFY IT BECAUSE THEY WERE GETTING -- IT WAS, YOU KNOW,

1 CONFUSION IN THE MARKETPLACE.

2 SO AS FAR AS INFRINGEMENT CONTENTIONS WHICH LOOKS AT THE
3 TECHNOLOGY, THAT'S WHAT WE IDENTIFY. WE IDENTIFY THAT
4 TECHNOLOGY.

5 NOW WHEN THEY ARE PLAYING -- WHEN THEY ARE DOING THE
6 ACCOUNTING AND HOW THEY ARE GOING TO ATTRIBUTE THE REVENUE,
7 THAT'S FOR A DAMAGES PERSON TO DETERMINE AND THEY CAN
8 CROSS-EXAMINE HER IN TERMS OF HOW SHE, YOU KNOW, ACCOUNTED FOR
9 NORTON SECURITY OR NOT, AND IF SHE DID IT CORRECTLY.

10 THAT'S THE -- HERE WE ARE FOCUSED ON THE TECHNOLOGIES THAT
11 ARE IN NORTON SECURITY.

12 **THE COURT:** IS NORTON INTERNET SECURITY DIFFERENT
13 FROM NORTON 360?

14 **MR. HANNAH:** IN TERMS OF INFRINGEMENT? NO.

15 **THE COURT:** NO. BECAUSE THAT'S NOT WHAT THE -- IS IT
16 A DIFFERENT PRODUCT? IS NORTON INTERNET SECURITY DIFFERENT
17 FROM THE NORTON 360?

18 **MS. CASSIDY:** YES.

19 **MR. HANNAH:** DIFFERENT IN WHICH WAY? DIFFERENT
20 PRODUCTS THAT ARE SOLD? YES, THEY ARE DIFFERENT PRODUCTS THAT
21 ARE SOLD -- WERE SOLD, I SHOULD SAY. I WANT TO MAKE IT VERY
22 CLEAR, THAT WERE SOLD.

23 **THE COURT:** WELL, THE REPRESENTATION IS THERE'S STILL
24 SOME BEING SOLD.

25 **MS. CASSIDY:** YES.

1 **THE COURT:** I UNDERSTAND THEY ARE NOT -- SO MY
2 UNDERSTANDING IS NORTON SECURITY NOW COMBINES NORTON 360 AND
3 NORTON ANTIVIRUS AND NORTON INTERNET SECURITIES; IS THAT
4 RIGHT?

5 **MS. CASSIDY:** I DO THINK THEY TOOK OUT THE BEST
6 FUNCTIONALITY FROM THESE PRODUCTS AND PUT THEM INTO ONE, AND
7 THEY KEPT OUT THE FUNCTIONALITY THAT PEOPLE DIDN'T LIKE AND
8 WHATEVER IT IS --

9 **THE COURT:** I DON'T UNDERSTAND WHY THAT'S NOT A NEW
10 PRODUCT. WHAT CASE SAYS THAT, THAT THAT'S NOT A NEW PRODUCT?

11 **MR. HANNAH:** OKAY. BUT, YOUR HONOR, SO IN TERMS OF
12 IT'S A NEW PRODUCT OR NOT, WHAT OUR DAMAGES EXPERT DID --

13 **THE COURT:** I DON'T NEED ANY MORE --

14 **MR. HANNAH:** OKAY. SO --

15 **THE COURT:** I UNDERSTAND YOUR ARGUMENT. I UNDERSTAND
16 IT. I DON'T -- I AM NOT PERSUADED BY IT, BUT I UNDERSTAND IT.
17 IT SAYS YOU HAVE TO ACCUSE EACH PRODUCT. YOU HAVE TO
18 ACCUSE EACH VERSION OF THE PRODUCT BECAUSE IT CHANGES, BECAUSE
19 IT CHANGES. ONE VERSION MAY INFRINGE, ANOTHER MAY NOT.

20 THERE'S CASE LAW THAT SAYS WHEN YOU COMBINE PRODUCTS, THAT
21 IS A NEW PRODUCT WHICH ALSO HAS TO BE ACCUSED. I DON'T THINK
22 ACTUALLY WE HAVE ANY DISPUTE.

23 NOW, IF WHAT THEY WERE DOING IS THEY WERE TAKING THE
24 COMBINED PRODUCTS AND CALLING SOME OF THEM NORTON 360, THEN I
25 AGREE WITH YOU. THEN I AGREE WITH YOU. BUT THAT'S NOT WHAT I

1 UNDERSTAND THEY ARE SAYING.

2 THEY ARE SAYING IS WE HAVE THESE LEGACY PRODUCTS OUT THERE
3 WHICH ARE THE OLD NORTON 360'S THAT DO NOT INCLUDE THE
4 COMBINATION THAT IS IN NORTON SECURITY, AND YOU DIDN'T ACCUSE
5 THAT PRODUCT WITH RESPECT TO THOSE TWO PATENTS.

6 SO --

7 **MR. HANNAH:** SO NOW I AM CONFUSED, YOUR HONOR.

8 IN TERMS OF WHAT WE'RE ACCUSING, WE ARE ACCUSING NORTON
9 SECURITY.

10 **THE COURT:** YES. WHICH IS -- NORTON SECURITY IS A
11 COMBINATION OF AND THE BEST PARTS OF NORTON ANTIVIRUS, NORTON
12 360, AND NORTON SOMETHING ELSE.

13 **MR. HANNAH:** OKAY. SO WHAT -- I MEAN, I WOULDN'T SAY
14 IT'S THE BEST PARTS. THEY TOOK THE EXACT SAME TECHNOLOGY AND
15 PUT IT -- THE ENGINE IS THE THING THAT -- THE ENGINE --

16 **THE COURT:** DOES NORTON 360 --

17 **MR. HANNAH:** YES.

18 **THE COURT:** -- INCLUDE EVERYTHING THAT NORTON
19 SECURITY HAS?

20 **MR. HANNAH:** AS A COMPLETE PRODUCT? NO. DOESN'T
21 INCLUDE --

22 **THE COURT:** THANK YOU. THAT'S THE ANSWER. THEN IT
23 WASN'T ACCUSED. IT'S A DIFFERENT PRODUCT.

24 **MR. HANNAH:** OKAY. THEN, YOUR HONOR, I JUST WANT TO
25 MAKE CLEAR THEN, SO OUR INFRINGEMENT EXPERTS CAN TALK ABOUT

1 HOW NORTON SECURITY -- NORTON SECURITY INFRINGES.

2 **THE COURT:** OF COURSE.

3 **MR. HANNAH:** OKAY.

4 **THE COURT:** THIS HAS NOTHING TO DO --

5 **MR. HANNAH:** IT HAS NOTHING TO DO WITH DAMAGES EITHER
6 IN TERMS OF HOW THE DAMAGES PERSON IS GOING TO LOOK AT THEIR
7 LINE ITEM THAT SAYS NORTON SECURITY, AND THEY -- WHEN THEY
8 BUNDLE EVERYTHING UP AND THEN --

9 **THE COURT:** I'M NOT RULING ON DAMAGES OR WHATEVER.
10 I'M JUST SAYING --

11 **MR. HANNAH:** OKAY.

12 **THE COURT:** -- THAT YOU'RE -- THAT THE -- I DON'T
13 KNOW. THAT'S UP TO JUDGE GILLIAM.

14 ALL I'M SAYING -- I THINK YOU'RE MISTAKEN TO THE EXTENT
15 THAT YOU BELIEVE IN YOUR INFRINGEMENT CONTENTIONS YOU CAN JUST
16 ACCUSE A NEW PRODUCT THAT COMBINES EARLIER PRODUCTS AND THAT
17 SWEEPS IN THE EARLIER PRODUCT. THAT'S JUST -- THAT'S JUST
18 WRONG.

19 **MR. HANNAH:** I AGREE, YOUR HONOR. AND WHAT I'M
20 TRYING TO GET AT IS WE ARE NOT TRYING TO DO THAT AT ALL. WE
21 ARE TRYING TO ACCUSE THE PRODUCT THAT WAS SOLD AS OF SEPTEMBER
22 2014 GOING FORWARD. THAT PRODUCT SWEEP. IT'S WHAT WE --

23 **THE COURT:** WHAT HAVE WE BEEN TALKING ABOUT FOR THE
24 LAST 30 MINUTES?

25 **MS. CASSIDY:** BECAUSE THE EXPERT REPORT INCLUDES FOR

1 THE '844 PATENT, NORTON 360 AND ALL OF THESE OTHER OLD LEGACY
2 PRODUCTS.

3 **THE COURT:** THAT, IN FACT, DOES TRY TO SWEEP IN THOSE
4 NORTON 360 THAT DOESN'T INCLUDE EVERYTHING THAT NORTON
5 SECURITY -- THE OLD 360 IS INCLUDED IN YOUR EXPERT'S REPORT.

6 BUT YOU JUST SAID THAT YOU ACTUALLY AREN'T TRYING TO. SO
7 WHY IS IT INCLUDED IN THE REPORT?

8 **MR. HANNAH:** BECAUSE -- SO THERE'S TECHNICAL PROOFS
9 FROM -- THAT'S WHAT I'M TRYING TO GET IN -- TECHNICAL OPINION.
10 THERE'S PROOFS FROM NORTON 360 THAT ARE GOING TO SUPPORT THE
11 FACT THAT NORTON SECURITY INFRINGES. IT'S THE SAME
12 TECHNOLOGY. AND THAT'S WHAT I AM TRYING TO GET AT, IS THAT WE
13 HAVE TO BE ABLE TO RELY UPON THOSE TYPES --

14 **THE COURT:** SO THE REPRESENTATION IS YOU ARE NOT
15 SEEKING TO ACCUSE FOR THE '944 -- NO, THE '844 AND THE '926
16 NORTON 360 STANDING ALONE BEFORE IT WAS COMBINED AS INFRINGING
17 THOSE PATENTS.

18 **MR. HANNAH:** EXACTLY. BEFORE IT WAS COMBINED, NO.
19 THAT'S WHAT I WAS TRYING TO GET AT. SEPTEMBER -- BEFORE
20 SEPTEMBER 2014 --

21 **THE COURT:** THERE IS NOTHING THERE. WE JUST SPENT 45
22 MINUTES ON NOTHING. THERE'S NO DISPUTE THEN. THEY ARE NOT
23 ACCUSING IT. HE JUST SAID IT. IT'S ON THE RECORD.

24 **MS. CASSIDY:** ALL RIGHT. THANK YOU, YOUR HONOR.

25 **THE COURT:** MAYBE IT WASN'T A WASTE OF TIME BECAUSE

1 IT'S ON THE RECORD. THEY ARE NOT ACCUSING IT.

2 NORTON 360, AS IT EXISTED BEFORE IT WAS COMBINED WITH THE
3 OTHER TECHNOLOGY, WITH THE OTHER PRODUCTS THAT CREATE THE
4 COMBINED NORTON SECURITY, THEY ARE NOT ACCUSING OF
5 INFRINGEMENT; THAT THE REFERENCES TO IT IN THE INFRINGEMENT
6 EXPERT REPORT ARE MERELY TO LAY THE GROUNDWORK TO SHOW WHY
7 NORTON SECURITY INFRINGES.

8 DID I SAY THAT CORRECTLY?

9 **MR. HANNAH:** YES, BASED -- BUT ON THE CAVEAT THAT THE
10 SEPTEMBER 2014 DATE WHEN THEY -- WHEN THEY CHANGED THE NAME.
11 SO ANYTHING BEFORE 2014, YES, WE ARE NOT ACCUSING THAT.

12 IT'S ONLY GOING TO BE WHEN THEY INCORPORATED THE
13 TECHNOLOGY IN THE NORTON INTERNET SECURITY PASSED 2014, THAT'S
14 WHEN THEY STARTED CALLING THE PRODUCT, WE'RE GOING TO BE ABLE
15 TO -- THAT'S WHAT OUR EXPERT IS GOING TO SAY INFRINGES. THEN
16 OUR DAMAGES EXPERT IS GOING TO DO AN ACCOUNTING BASED ON THE
17 SPREADSHEETS THAT WE GOT AND HOW SHE BELIEVES IT WAS
18 CALCULATED.

19 **THE COURT:** ALL RIGHT.

20 **MS. CASSIDY:** YOUR HONOR, I AM NOT FOLLOWING, AND I'M
21 A BIT NERVOUS WITH ALL THIS WIGGLING AROUND. IT'S NOT A CLEAR
22 STATEMENT THAT SAYS WE ARE NOT ACCUSING IT.

23 IF THEY ARE ACCUSING NORTON SECURITY, THEN THEY CAN LOOK
24 AT THE NORTON SECURITY SOURCE CODE, THEY CAN LOOK AT THE
25 NORTON SECURITY PRODUCTS SPECIFICATIONS, AND THEY CAN LOOK AT

1 ALL OF THAT STUFF.

2 **THE COURT:** THEY CAN ALSO LOOK AT NORTON 360. THEY
3 CAN --

4 (SIMULTANEOUS COLLOQUY)

5 **MS. CASSIDY:** WHAT I KEEP HEARING IS A WALK-BACK FROM
6 WE'RE NOT SPECIFICALLY ACCUSING NORTON ANTIVIRUS, NORTON 360,
7 AND NORTON INTERNET SECURITY OF INFRINGING THE '844 PATENT.

8 **THE COURT:** THEY ARE SEPARATELY. THE ORDER WILL MAKE
9 IT CLEAR THEY ARE NOT.

10 **MS. CASSIDY:** OKAY. THANK YOU, YOUR HONOR.

11 THE SAME WITH -- THERE WAS ANOTHER PRODUCT IN THERE THAT
12 WAS -- NORTON WAS PROBLEMATIC ENOUGH. SYMANTEC ENDPOINT
13 PROTECTION SMALL BUSINESS EDITION, ON PAGE 5 OF OUR MOTION,
14 LINE 26. IT'S THE SAME ISSUE. INCLUDED --

15 **THE COURT:** IS THAT A TIMING ISSUE? IS THAT WHAT
16 THAT ONE... I MEAN, IS THAT ACTUALLY A DIFFERENT PRODUCT --

17 **MS. CASSIDY:** YES.

18 **THE COURT:** OR A MARKETING NAME?

19 **MS. CASSIDY:** DIFFERENT PRODUCT.

20 **MR. HANNAH:** WELL, YOUR HONOR, THEY CALL IT A
21 DIFFERENT PRODUCT BASED ON THEIR SKUS AND THEIR INTERNAL
22 ACCOUNTING. BUT TO THE PUBLIC THEY'RE NOT CALLING IT -- THEY
23 DON'T MARKET IT AS A DIFFERENT PRODUCT WITH DIFFERENT
24 TECHNOLOGIES.

25 THIS IS WHY -- THIS IS WHY -- THIS IS WHY I'M CONCERNED IS

1 BECAUSE WHAT THEY ARE TRYING TO DO IS PLAY THESE ACCOUNTING
2 GAMES SAYING THAT THERE ARE INTERNAL SKUS AREN'T GOING TO BE
3 RELEVANT BECAUSE THEY INTERNALLY --

4 **THE COURT:** THIS IS WHAT CONCERNED ME WITH THIS ONE
5 IS THE ONLY EVIDENCE I SAW THAT YOU CITED WAS SORT OF HOW YOU
6 ACCOUNT FOR IT, WHICH TO ME DIDN'T MEAN ANYTHING.

7 WHERE IS THE EVIDENCE THAT IT'S ACTUALLY A DIFFERENT
8 PRODUCT, THAT SOMETHING WAS CHANGED, THAT IT'S A DIFFERENT
9 PRODUCT?

10 **MS. CASSIDY:** I MEAN IT HAS ITS OWN -- I AM NOT SURE
11 WHAT YOU ARE LOOKING FOR. IT HAS ITS OWN NAME. LIKE IT
12 HAS --

13 **THE COURT:** RIGHT. PEOPLE SELL THE SAME EXACT
14 PRODUCT WITH TEN DIFFERENT NAMES ALL THE TIME BECAUSE THAT'S
15 MARKETING. IT HAS A DIFFERENT NAME.

16 BUT WHAT IS THE -- BUT IT'S THE SAME PRODUCT, RIGHT? SO
17 WHAT I'M ACTUALLY CONCERNED ABOUT IS THE PRODUCT.

18 SO WHERE IS THE EVIDENCE THAT IT'S ACTUALLY A DIFFERENT
19 PRODUCT? IF IT'S A DIFFERENT PRODUCT, IT'S A DIFFERENT
20 PRODUCT.

21 THE FIRST ONE I AM CONVINCED IT IS A DIFFERENT PRODUCT.
22 THERE WERE THREE DIFFERENT THINGS COMBINED INTO ONE. IF THIS
23 IS THE SAME PRODUCT WITH A DIFFERENT NAME, THEN I DON'T THINK
24 IT'S NECESSARILY A DIFFERENT PRODUCT AND I DON'T THINK THERE'S
25 ANY PREJUDICE EITHER.

1 **MS. CASSIDY:** I WILL HAVE MY TECHNICAL EXPERT.

2 **MR. HAMSTRA:** NO, YOUR HONOR. IF THAT'S -- EVEN IF
3 THEY ARE SOLD UNDER DIFFERENT NAMES AND DIFFERENT SKUS, WELL,
4 IF THAT'S THE POINT YOU ARE TAKING --

5 **THE COURT:** I APPRECIATE THAT. I APPRECIATE THAT. A
6 LOT OF CREDIBILITY FROM THAT. OKAY.

7 ALL RIGHT. SO THAT ONE I DENY. OKAY.

8 ALL RIGHT. THEN WE HAVE THE CLOUD PRODUCTS UNDER THE
9 '494, RIGHT? THAT'S THE ENDPOINT PROTECTION WITH ATP, HOWEVER
10 THE CONTENTIONS DID ACCUSE ENDPOINT PROTECTION.CLOUD IN
11 COMBINATION WITH ATP.

12 SO ARE THOSE THE SAME PRODUCTS?

13 **MR. KASTENS:** YOUR HONOR, WHAT THEY DO IS THEY --
14 ONE, ATP IS AN ADD-ON FOR THE CLOUD PRODUCT.

15 **THE COURT:** YES.

16 **MR. KASTENS:** THAT IS WHERE THE CONFUSION CAME IN.

17 **THE COURT:** YEAH.

18 **MR. KASTENS:** WHAT WE WERE ACCUSING IS THE BYPRODUCT
19 OF THE ATP ADD-ON. SOMETIMES THEY REFER TO IT AS ATP
20 ENDPOINT, OTHER TIMES IT'S CLOUD ENDPOINT WITH ATP. WHAT WE
21 HAVE DONE IS WE HAVE A CHART THAT SHOWS WE ARE ACCUSING THE
22 ENTIRE PRODUCT WITH ATP, WHICH IS EXACTLY --

23 **THE COURT:** RIGHT. YOUR INFRINGEMENT CONTENTIONS
24 ACCUSED M.PRODUCTION.CLOUD WITH ATP, RIGHT?

25 **MR. KASTENS:** YES.

1 **THE COURT:** YES. AND DR. COLE USES M.PRODUCTION WITH
2 ATP. AND I DON'T KNOW WHY THOSE ARE DIFFERENT.

3 **MR. HAMSTRA:** YOUR HONOR, THOSE ARE VERY MUCH
4 DIFFERENT PRODUCTS. ENDPOINT PROTECTION.CLOUD IS A CLOUD
5 MANAGED VERSION OF ENDPOINT PROTECTION, WHEREAS THE NORMAL
6 ENDPOINT PROTECTION -- YOU KNOW, BIG COMPANIES INSTALL THEIR
7 OWN MANAGEMENT SERVERS THERE AND WILL MANAGE IT THEMSELVES.

8 **THE COURT:** SO IT IS NOT A CLOUD PRODUCT.

9 **MR. HAMSTRA:** CORRECT.

10 **THE COURT:** AND YOU HAVE AN ENDPOINT PROTECTION CLOUD
11 PRODUCT AND AN ENDPOINT PROTECTION PRODUCT NOT A CLOUD.

12 **MR. HAMSTRA:** YEAH. SO IT SEEMED LIKE THROUGH THIS
13 ATP ENDPOINT PROTECTION.CLOUD COMBINATION THEY ARE TRYING TO
14 GET IN, ENDPOINT PROTECTION ARE SORT OF MAINLINE ENTERPRISE
15 SECURITY SOFTWARE.

16 **THE COURT:** OKAY. SO YOU DON'T DISPUTE THAT ENDPOINT
17 PROTECTION.CLOUD WITH ATP, THAT'S APPROPRIATE THAT THAT WAS
18 DISCLOSED.

19 **MR. HAMSTRA:** CORRECT.

20 **THE COURT:** OKAY. WHERE DID YOU MAKE IT CLEAR THAT
21 IT WAS ENDPOINT PROTECTION THE CLOUD VERSION?

22 **MR. HAMSTRA:** SORRY. TO BE CLEAR, YOUR HONOR, IT'S
23 THE ENDPOINT PROTECTION --

24 **THE COURT:** NOT THE CLOUD. NOT THE CLOUD. I
25 ACTUALLY THINK I'M DOING PRETTY WELL. PRETTY WELL.

1 **MR. KASTENS:** WELL, I THINK THAT'S -- I'M A LITTLE
2 CONFUSED HONESTLY BY WHAT HE JUST SAID. SO WE'RE ACCUSING
3 ENDPOINT PROTECTION --

4 **THE COURT:** WHAT IS THAT?

5 **MR. KASTENS:** IT'S ENDPOINT SOFTWARE THAT YOU CAN
6 INSTALL ON A USER. AND WHAT WE'RE ACCUSING IS YOU CAN ALSO
7 BUY AN APPLIANCE WITH THAT, RIGHT, AND THEN IT'S THE
8 COMBINATION OF THAT, THAT'S THE PRODUCT.

9 **THE COURT:** THE COMBINATION IS NOT A PROBLEM BECAUSE
10 YOU DISCLOSED THE COMBINATION.

11 THE PROBLEM IS, AS I UNDERSTAND IT, WHAT YOU DISCLOSED IT
12 WITH, THAT YOU DISCLOSED IT WITH ENDPOINT PROTECTION.CLOUD NOT
13 ENDPOINT PROTECTION.

14 AND THEY SAY THOSE ARE TWO DIFFERENT PRODUCTS. ONE IS A
15 CLOUD-BASED PRODUCT AND THE OTHER IS NOT.

16 **MR. KASTENS:** I'M EXTREMELY CONFUSED BECAUSE I THINK
17 WE ARE CONFLATING HONESTLY TWO DIFFERENT PRODUCTS TOGETHER.

18 I THINK YOU CAN SEE THAT WE SAY, STATED IN IC'S, THE
19 ACCUSED PRODUCTS ARE ENDPOINT PROTECTION.CLOUD. THAT'S WHAT
20 WE'RE ACCUSING. AND THEN THERE'S AN ATP ADD-ON THAT YOU CAN
21 ADD ON. AND THEY --

22 **THE COURT:** YOU'RE ACCUSED IN YOUR -- I GOT IT.

23 BUT IN DR. COLE'S REPORT, HE REFERENCES ENDPOINT
24 PROTECTION, NOT CLOUD.

25 **MS. CASSIDY:** EXHIBIT 5 OF MY DECLARATION, YOUR

1 HONOR, ON PAGE 6 IS -- LISTS OUT ALL THE PRODUCTS THAT
2 DR. COLE IS PROVIDING OPINION ON.

3 **MR. HAMSTRA:** LET ME JUST BE CLEAR. ARE YOU GUYS
4 ACCUSING THE NONCLOUD ENDPOINT PATENT THAT'S REFERRED TO IN
5 THE '494 PATENT, ALONE OR IN COMBINATION?

6 **MR. KASTENS:** SYMANTEC ENDPOINT PROTECTION ON ITS OWN
7 ISN'T -- I MEAN THAT WAS -- WE CHARTED A SEPARATE CHART TO
8 INCLUDE THE '494.

9 I THINK WE EVEN SAY SYMANTEC CLAIMS THAT FINJAN ACCUSES
10 SYMANTEC ENDPOINT PROTECTION OF INDIVIDUALLY OF INFRINGING THE
11 '494 PATENT, WHICH IS WRONG, BUT TO THE EXTENT THAT WE ARE
12 ACCUSING SYMANTEC ENDPOINT PROTECTION.CLOUD WHICH INCLUDES AS
13 PARTLY -- WHAT IT IS IS A SERVICE, CLOUD SERVICE WITH ENDPOINT
14 PROTECTION.

15 SO, JUST SYMANTEC ENDPOINT PROTECTION ON SOME, WE SAY WE
16 ARE NOT ACCUSING.

17 **THE COURT:** YOU ARE NOT ACCUSING.

18 THEY ARE NOT ACCUSING. THEY ARE ACCUSING CLOUD WITH ATP.
19 GOT IT. AND WHATEVER IS ENCOMPASSED WITHIN CLOUD --

20 **MR. KASTENS:** IT'S SYMANTEC ENDPOINT
21 PROTECTION.CLOUD, JUST TO BE --

22 **THE COURT:** WHAT DID I JUST SAY?

23 **MR. KASTENS:** JUST CLOUD.

24 UNFORTUNATELY, YOUR HONOR, AS YOU'VE NOTICED, THEY HAVE
25 NUMEROUS SKUS WHICH CAN LEAD TO GREAT CONFUSION ON, YOU

1 KNOW --

2 **THE COURT:** THEY HAVE TO DO SOMETHING. THEY ARE
3 DEFENDANTS, THOUGH, RIGHT?

4 OKAY. ALL RIGHT. SO I THINK THERE, THERE'S AN AGREEMENT
5 THAT THEY ARE NOT -- THAT THEY ARE ACCUSING THE CLOUD PRODUCT.
6 OKAY. GREAT. OKAY.

7 NOW WE HAVE ATP EMAIL. AND HERE --

8 **MS. CASSIDY:** I'M SORRY. JUST TO BE CLEAR, SO THE
9 '926 PATENT, THAT'S THE SAME ISSUE AS THE '844. TOP OF PAGE 8
10 OF OUR MOTION.

11 **THE COURT:** WITH RESPECT TO WHAT?

12 **MS. CASSIDY:** THAT'S THE WHOLE NORTON THING AGAIN.
13 NORTON ANTIVIRUS --

14 **THE COURT:** YEAH, YEAH, YEAH. WHEN I WAS TALKING
15 ABOUT -- ACTUALLY, WHEN I WAS TALKING ABOUT IT, I HAD COMBINED
16 THE TWO.

17 **MS. CASSIDY:** OKAY. I JUST WANTED TO PUT THAT OUT
18 THERE. OKAY.

19 SO THEN WE HAVE THE ATP EMAIL WHICH WAS A PRODUCT THAT WAS
20 NOT RELEASED UNTIL A YEAR AND A HALF AFTER THEIR CONTENTIONS.

21 **THE COURT:** RIGHT. WHAT ABOUT THAT?

22 **MR. KASTENS:** YOUR HONOR, I THINK WE MADE CLEAR THAT
23 THERE WAS IMMINENTLY GOING TO BE -- WHEN WE FILED OUR --
24 SERVED OUR INFRINGEMENT CONTENTIONS IMMINENTLY GOING TO BE
25 RELEASED THE ATP EMAIL PRODUCT. AND WHAT WE DID IS WE -- IT

1 INDICATED THE TECHNOLOGY WOULD BE INCLUDED. WE DID
2 INFRINGEMENT CONTENTIONS FOR ATP EMAIL, AND IT WAS REALLY SOON
3 AFTER --

4 **THE COURT:** YOU DID INFRINGEMENT CONTENTIONS FOR ATP
5 EMAIL?

6 **MR. KASTENS:** YES, YOUR HONOR.

7 **THE COURT:** WHERE ARE THEY?

8 **MR. KASTENS:** I THINK THEY ARE A GROUP UNDER THE ATP
9 PRODUCTS.

10 **MS. CASSIDY:** YOUR HONOR, I DON'T THINK ATP EMAIL
11 EVEN HAD A NAME, SO I'M NOT REALLY SURE.

12 **THE COURT:** YOU DON'T THINK IT WHAT?

13 **MS. CASSIDY:** EVEN HAD A NAME AT THAT POINT.

14 **MR. KASTENS:** IT'S EXHIBIT 15 OF THE KASTENS'
15 DECLARATION.

16 LET ME MAKE SURE I HAVE THE RIGHT REFERENCE.

17 ATP EMAIL IS ONCE AGAIN ATP IS AN ADD-ON FOR WHAT'S CALLED
18 THEIR EMAIL SECURITY SERVICE.

19 **THE COURT:** YOU ARE POINTING ME TO THE PARAGRAPH OR
20 THE PAGE? WHAT AM I LOOKING AT?

21 **MR. KASTENS:** I'M JUST TRYING TO FIND IT. I AM
22 SORRY.

23 **THE COURT:** IT'S OKAY.

24 **MR. KASTENS:** THERE'S A LOT LISTED IN HERE.

25 (PAUSE IN THE PROCEEDINGS.)

1 IN THE PARAGRAPH WE CLEARLY... LIST THAT EMAIL
2 SECURITY.CLOUD AND THE ADVANCED THREAT PROTECTION ARE BOTH
3 ACCUSED. WHAT WE ACCUSE IS THE COMBINATION OF THOSE TWO.

4 **MS. CASSIDY:** WHICH PAGE AND LINE ARE YOU ON?

5 **MR. KASTENS:** I'M SORRY, PAGE 3, THEN LINE 11 AND
6 LINE 14.

7 YOU KNOW, AND HONESTLY THERE'S NO DISPUTE THAT WE
8 ACCURATELY DESCRIBED HOW THEIR PRODUCT WORKS AND THE
9 TECHNOLOGY THAT'S INCLUDED IN THE PRODUCT.

10 **MS. CASSIDY:** THE PROBLEM IS YOU CAN'T IDENTIFY
11 PRODUCTS PURSUANT TO PATENT LOCAL 3-1(B) BY FUNCTIONALITY,
12 YOUR HONOR, YOU HAVE TO IDENTIFY IT BY NAME.

13 **MR. KASTENS:** AND I THINK WE DID. WE IDENTIFIED THAT
14 THE EMAIL SECURITY SERVICE --

15 **THE COURT:** WELL, BUT IS THAT THE NAME THAT IT HAD
16 WHEN IT WAS RELEASED?

17 **MS. CASSIDY:** NO, YOUR HONOR. AND ATP HAS ACTUALLY
18 GOT FOUR DIFFERENT VARIATIONS. THERE'S ATP NETWORK, THERE'S
19 ATP EMAIL, THERE'S ATP MSS, AND THERE'S ATP ENDPOINT.

20 SO, TO THE EXTENT, AGAIN, LIKE THIS IS SUPPOSED TO BE
21 REPRESENTATIVE --

22 **THE COURT:** ALSO WHERE DOES IT SAY THAT EMAIL
23 SECURITY CLOUD AND ATP ARE COMBINED, IF THAT'S WHAT YOU'RE
24 ACCUSING.

25 **MR. KASTENS:** YEAH. LET ME PULL THAT UP, YOUR HONOR.

1 **THE COURT:** HOW DID YOU KNOW WHAT IT WAS IF IT HADN'T
2 BEEN RELEASED?

3 **MR. KASTENS:** THEY HAD ATP FOR OTHER PRODUCTS AT THAT
4 POINT, SO THEY JUST ADDED THEIR EMAIL SECURITY SERVICE.

5 **MS. CASSIDY:** ATP WAS -- ATP EMAIL IS NOW THE
6 INFRINGEMENT COMPLAINANT THAT THEY'RE ACCUSING FOR THE '289 AND
7 FOR THE '926, YOUR HONOR.

8 **MR. KASTENS:** SO IF YOU LOOK AT EXHIBIT 16, AT THE
9 TOP WE TALK ABOUT THE ACCUSED PRODUCTS ARE THE SEP CLOUD,
10 EMAIL SECURITY.CLOUD. AND IF YOU LOOK AT THE NEXT PARAGRAPH
11 WE SAY ELEMENTS ARE MET WITH THE ADVANCE THREAT PROTECTION.

12 **THE COURT:** SO WHAT WAS THE PRODUCT THEN CALLED WHEN
13 IT WAS RELEASED?

14 **MR. KASTENS:** ADVANCED THREAT PROTECTION EMAIL, I
15 BELIEVE.

16 **THE COURT:** WHEN IT WAS RELEASED, WHY DIDN'T YOU JUST
17 MOVE TO AMEND OR HOPEFULLY THEY WOULD HAVE ALLOWED YOU TO JUST
18 ADD IT?

19 **MR. KASTENS:** YOUR HONOR, I BELIEVE THAT WE HAD IT
20 COVERED. YOU KNOW HOW FRAUGHT THEY CAN BE TO MOVE TO AMEND
21 INFRINGEMENT CONTENTIONS. AND PARTICULARLY IF THEY SAY, NOW
22 THEY TURN IT ON THE HEAD AND SAY, WE HAD THIS WHITE PAPER THAT
23 SAID THIS WAS IMMINENT. YOU ALREADY KNEW THAT, WHY DIDN'T YOU
24 PUT IT IN YOUR INFRINGEMENT CONTENTIONS?

25 **MS. CASSIDY:** TWO POINTS, YOUR HONOR.

1 THE WHITE PAPER WAS DATED IN 2010. IT'S NOT REALLY
2 IMMINENT AS OF 2015. AND ALSO WHEN THEY SERVED DISCOVERY
3 ASKING FOR ATP EMAIL, WE SAID THAT THIS IS NOT IN YOUR
4 INFRINGEMENT CONTENTIONS. WE OBJECT TO THE BURDEN --

5 **THE COURT:** WHEN WAS THAT?

6 **MS. CASSIDY:** I HAVE IT RIGHT HERE, YOUR HONOR.

7 (PAUSE IN THE PROCEEDINGS.)

8 **THE COURT:** WHILE SHE'S LOOKING, YOU CAN TELL ME, YOU
9 CAN LOOK FOR WHERE YOUR IC'S SAY THAT MUTANTX ALONE MEETS EACH
10 LIMITATION OF THE ASSERTED CLAIMS OF THE '844 AND '494.

11 **MR. KASTENS:** I MEAN THOSE EXACT WORDS I DON'T THINK
12 ARE NOT IN THE --

13 **THE COURT:** NOT THE EXACT WORDS ALONE. WHEN I LOOKED
14 IT WAS ALSO IN COMBINATION.

15 **MR. KASTENS:** BUT I THINK THE ISSUE IS THAT WE ARE --
16 IT IS ALWAYS USED IN COMBINATION. SO --

17 **THE COURT:** OKAY. SO THEN WHAT YOU ARE SAYING IS
18 YOUR EXPERT IS NOT ARGUING ANYMORE, NOT TAKING THE POSITION
19 THAT MUTANT -- IS IT X OR 10?

20 **MR. KASTENS:** MUTANTX.

21 **THE COURT:** MUTANTX ALONE INFRINGES.

22 **MR. KASTENS:** WELL, I MEAN, IT ALWAYS HAS SOME
23 RECEIPT. SO, FOR INSTANCE, CLAIMS ALWAYS ASK TO RECEIVE A
24 FILE FROM AN ENDPOINT OR AN ENDPOINT OR ANOTHER PRODUCT. SO
25 THAT'S WHAT WE ARE SAYING INFRINGES. THE SYMANTEC PRODUCTS

1 WILL -- I MEAN --

2 (SIMULTANEOUS COLLOQUY.)

3 **THE COURT:** IT'S NOT ALONE.

4 **MR. KASTENS:** YEAH. I MEAN ALL THESE WOULD --

5 **THE COURT:** SO YOU ARE NOT ACCUSING IT ALONE, RIGHT?

6 **MR. KASTENS:** YES. IT IS ALWAYS USED WITH A SYMANTEC
7 PRODUCT.

8 **THE COURT:** SO ON THAT ONE THERE'S NO DISAGREEMENT,
9 IT'S NOT ALONE. BECAUSE THAT'S WHAT I UNDERSTOOD THE ARGUMENT
10 WAS.

11 **MS. CASSIDY:** SORRY, YOUR HONOR. MY CLOUD IS -- MY
12 CLOUD IS CLOUDING MY JUDGMENT.

13 **THE COURT:** NO PUN INTENDED.

14 **MR. KASTENS:** HONESTLY, I CAN BOIL DOWN WHAT I THINK
15 THEIR ARGUMENT IS.

16 THIS PRODUCT CAME OUT AFTER YOU DID YOUR IC'S EVEN THOUGH
17 YOU DESCRIBED EXACTLY HOW IT INFRINGES. WE DON'T THINK IT IS
18 ACCUSED BECAUSE YOU SAID EMAIL SECURITY CLOUD WITH ATP INSTEAD
19 OF ATP EMAIL. I MEAN THAT'S BASICALLY WHAT IT BOILS DOWN TO.

20 **MS. CASSIDY:** ACTUALLY --

21 **THE COURT:** JUST SHOW ME -- JUST TELL ME THE
22 PARAGRAPH.

23 **MS. CASSIDY:** IF YOU GO TO PAGE 6, BOTTOM OF PAGE 5.

24 **MR. KASTENS:** IT'S IN THE EXHIBITS?

25 **THE COURT:** ACTUALLY --

1 **MS. CASSIDY:** PAGE 5, THEY ASKED FOR VALID
2 CREDENTIALS FOR FULLY OPERATIONAL ACCESS TO EMAIL
3 SECURITY.CLOUD AND ADVANCE THREAT PROTECTION.

4 AND ON PAGE 6, THEY SAY IT SEEKS INFORMATION NOT
5 IDENTIFIED IN THE INFRINGEMENT CONTENTIONS.

6 **MR. KASTENS:** OBJECTIONS SAY A LOT OF THINGS, BUT I
7 BELIEVE THEY AGREED TO GIVE US THE CREDENTIALS. IF THEY TRULY
8 BELIEVED THERE WASN'T --

9 **THE COURT:** IT SAYS YOU'LL PRODUCE RESPONSIVE
10 DOCUMENTS.

11 **MS. CASSIDY:** RIGHT, BUT WE DID SAY THAT IT'S NOT IN
12 YOUR CONTENTIONS. I MEAN WE GET --

13 **THE COURT:** THAT'S -- THAT'S -- OKAY. THAT'S NOT
14 PUTTING THEM ON NOTICE THEN THAT THEY -- THEN YOU WOULD REFUSE
15 TO PRODUCE THEM, RIGHT? BECAUSE I GET THOSE ALL THE TIME,
16 MOTIONS ALL THE TIME. I AM NOT PRODUCING THESE DOCUMENTS THEY
17 HAVEN'T ACCUSED THAT PRODUCT --

18 **MS. CASSIDY:** WE TRIED TO --

19 **THE COURT:** THIS SEEMS TO BE A LITTLE BIT OF
20 SEMANTICS AND NOT PREJUDICE. I AM JUST TRYING TO MAKE SURE
21 THERE'S FAIRNESS HERE. SO THIS ONE I'M GOING TO DENY.

22 **MS. CASSIDY:** YOUR HONOR, SO THIS ONE, ACTUALLY, THIS
23 IS LIKE THE ONE THAT HAS THE MOST PREJUDICE BECAUSE FOR THE
24 '289 PATENT, THEY DROP ALL THEIR CONTENTIONS FROM WHAT THEY
25 SAID. AND NOW ARE ONLY PURSUING EMAIL SECURITY.CLOUD -- ATP

1 EMAIL. NOW I AM GETTING THEM CONFUSED, TOO.

2 SO EVERYTHING THAT THEY HAD DISCLOSED BEFORE, IT'S NO
3 LONGER OPERABLE. NOW THEY ARE MOVING FORWARD WITH CONTENTIONS
4 FOR A PRODUCT THAT DIDN'T EXIST AND THAT THEY NEVER NAMED AND
5 THEY NEVER MOVED TO ADD IT TO THE CASE.

6 **THE COURT:** BUT YOU DID DISCOVERY ON IT.

7 (SIMULTANEOUS COLLOQUY.)

8 SO THEN WHERE'S THE PREJUDICE BECAUSE YOU DID DISCOVERY ON
9 IT.

10 **MS. CASSIDY:** BECAUSE WE DIDN'T KNOW THEY WERE GOING
11 TO DROP EVERYTHING ELSE AND THEN CHANGE ALL THEIR CONTENTIONS
12 TO THIS.

13 **THE COURT:** THAT DOESN'T CREATE THE PREJUDICE. YOU
14 KNEW THEY WERE ASSERTING IT. THEY ASKED YOU FOR DISCOVERY ON
15 IT. YOU KNEW YOU WERE DOING THE SECURITY.CLOUD. YOU TOOK THE
16 POSITION, WELL, THAT PRODUCT HAD NOT BEEN RELEASED AT THE TIME
17 YOU ACCUSED IT. YOU COULD HAVE STOOD FAST AND SAY I AM NOT
18 GOING TO GIVE YOU DISCOVERY AND THEN THEY WOULD HAVE BEEN
19 FORCED TO MOVE TO AMEND. YOU GAVE -- YOU DID DISCOVERY ON IT,
20 SO THERE IT IS. OKAY.

21 SO THE MUTANTX, THEY ARE NOT ACCUSING IT ALONE.

22 **MR. KASTENS:** YOUR HONOR, I APOLOGIZE, MR. HANNAH IS
23 GOING --

24 **MS. CASSIDY:** I'M SORRY. MUTANTX AS A STAND-ALONE IS
25 NOT BEING ACCUSED?

1 **THE COURT:** IT IS NOT.

2 **MS. CASSIDY:** OKAY. THANK YOU VERY MUCH.

3 **THE COURT:** SO ON THIS ONE, ISN'T IT THE CASE THAT
4 FINJAN ACTUALLY IDENTIFIED NEXT GENERATION ANTI-MALWARE ENGINE
5 AS SOMETHING DIFFERENT FROM THE ANTIVIRUS ENGINE PRODUCT
6 THAT'S IN THE REPORT; NAMELY, IN THE CONTENTIONS IT WAS
7 IDENTIFIED AS SYMANTEC PRODUCT PROTECTION ENGINE.

8 DID I GET THAT RIGHT?

9 **MR. HAMSTRA:** YEAH. IN THEIR '494 CONTENTIONS, THEY
10 SAY NEXT GENERATION ANTI-MALWARE ENGINE, THEN IN THE
11 PARENTHETICAL --

12 **THE COURT:** YEAH.

13 **MR. HAMSTRA:** -- IT'S ANTI-PROTECTION ENGINE.

14 **MR. HANNAH:** SO, YOUR HONOR, I MEAN I DON'T THINK
15 THERE COULD BE A CREDIBLE DISPUTE THAT ALL OF THEIR PAPERS
16 REFER TO THE ENGINE AS A NEXT GENERATION ANTI-MALWARE ENGINE.
17 WE'VE CITED TONS OF EXHIBITS IN TERMS OF WHAT THEY SAY THAT
18 THAT IS WHAT THE ENGINE IS SINCE THAT'S WHAT WE PUT IN OUR
19 INFRINGEMENT CONTENTIONS.

20 TO THE EXTENT THAT THEY WANT TO DISAGREE AND GET A WITNESS
21 ON THE STAND AT TRIAL AND SAY NEXT GENERATION ANTI-MALWARE
22 ENGINE IS NOT THE SAME ENGINE, WELL THEN THAT'S A FACTUAL
23 DISPUTE.

24 OUR EXPERT WILL TESTIFY ON THE STAND THAT SYMANTEC
25 ANTI-MALWARE NEXT GENERATION ENGINE EXACTLY ALIGNED WITH THE

1 INFRINGEMENT CONTENTIONS IN HIS EXPERT REPORT.

2 THEIR -- IT'S A FACTUAL DISPUTE TO THE EXTENT THAT THEY
3 ARE TRYING TO SAY, NO, NO, NO, WE DON'T KNOW WHAT THE
4 ANTI-MALWARE ENGINE MEANS. I WOULD LOVE FOR THEM TO GET ONE
5 OF THEIR --

6 **THE COURT:** NO. WHAT YOU SAID IT MEANS IS SYMANTEC
7 PROTECTION ENGINE, RIGHT? THAT'S WHAT YOU SAID IN YOUR
8 INFRINGEMENT CONTENTIONS.

9 **MR. HANNAH:** NO. IN OUR INFRINGEMENT CONTENTIONS WE
10 STATED THE NEXT GENERATION --

11 **THE COURT:** THEN I'M CONFUSED. I THOUGHT THAT WAS
12 YOUR ARGUMENT THEY HAD ACTUALLY CALLED IT -- THAT THEY HAD
13 ACTUALLY DEFINED IT AS SOMETHING DIFFERENT.

14 **MR. HAMSTRA:** NO. THAT IS THE ARGUMENT AND THAT IS
15 THE CORRECT ARGUMENT. I'LL PULL IT FORWARD IN A MOMENT HERE.

16 **MR. HANNAH:** I MEAN, YOUR HONOR, IF WE LOOK AT
17 EXHIBIT 9 --

18 **THE COURT:** EXHIBIT 9 TO?

19 **MR. HANNAH:** THE KASTENS DECLARATION. TALKING ABOUT
20 THE '844 PATENT. SYMANTEC NEXT GENERATION ANTI-MALWARE ENGINE
21 RELIES ON CLOUD LINKED SCANNER. IT'S IN THE FIFTH
22 PARAGRAPH -- FOURTH PARAGRAPH.

23 THAT IS HOW WE REFER TO IT THROUGHOUT. WE TALKED ABOUT
24 THIS --

25 **THE COURT:** WHAT PAGE ARE YOU ON?

1 **MR. HANNAH:** PAGE 1, FOURTH PARAGRAPH DOWN IN THE
2 CHART ITSELF.

3 **THE COURT:** OH, IN THE CHART ITSELF.

4 **MR. HANNAH:** IN THE CHART ITSELF. AND WE TALK ABOUT
5 SYMANTEC NEXT GENERATION ANTI-MALWARE ENGINE AND WE DESCRIBE
6 ITS FUNCTIONALITY. AND WE DID THAT BASED ON HOW THEY WERE --
7 HOW IN THE PUBLIC THEY ARE DESCRIBING THEIR ENGINE.

8 AND IF YOU CONTINUE THROUGH -- I'LL LET YOU DO THAT.

9 **MR. HAMSTRA:** YOUR HONOR, IF I COULD JUST PROVIDE A
10 LITTLE COLOR ON THIS.

11 **MR. HANNAH:** YOUR HONOR, I WAS GOING TO --

12 **THE COURT:** NO, NO, NO. I ASKED HIM A QUESTION FIRST
13 JUST TO FIND WHERE.

14 **MR. HAMSTRA:** OH, OKAY. SO IT'S EXHIBIT 7 TO
15 MS. CASSIDY'S OPENING DECLARATION AT PAGE 1. IT SAYS SYMANTEC
16 PROTECTION ENGINE AKA SYMANTEC NEXT GENERATION ANTI-MALWARE
17 ENGINE.

18 **THE COURT:** EXHIBIT 7?

19 **MR. HAMSTRA:** APPENDIX H-1 IN THE SECOND PARAGRAPH.

20 **THE COURT:** YEAH, YEAH.

21 (PAUSE IN THE PROCEEDINGS.)

22 **MR. HAMSTRA:** AND, YOUR HONOR, IF I CAN ADD JUST A
23 LITTLE COLOR TO THIS.

24 SO THE ANTIVIRUS ENGINE WAS DISCUSSED IN THE FIRST CASE.
25 MR. ANDRE MENTIONED IT IN HIS OPENING STATEMENT. IT'S A

1 PUBLIC -- PUBLICLY DESCRIBED ON SYMANTEC'S WEBSITE.

2 EVEN IF IT WEREN'T, THESE INFRINGEMENT CONTENTIONS WERE
3 SERVED MONTHS AFTER WE MADE A VERY SUBSTANTIAL
4 (UNINTELLIGIBLE) FOR PRODUCTION. SO JUST ANY ARGUMENT THAT
5 THEY SHOULDN'T HAVE TO IDENTIFY THINGS AS WE IDENTIFY THEM
6 SHOULD -- SHOULD FALL ON DEAF EARS.

7 **MR. HANNAH:** YOUR HONOR, WE IDENTIFIED EXACTLY HOW
8 THEY DEAL. I MEAN, SO IF YOU LOOK AT -- WHAT I AM LOOKING AT,
9 THE '844 PATENT, NOT THE ONE THAT THEY SHOWED YOU ON
10 EXHIBIT 9 --

11 **THE COURT:** SO FOR DR. COLE'S -- IS IT DR. COLE'S
12 REPORT?

13 **MR. HANNAH:** I MEAN, THEIR ARGUMENT IS THAT THEY
14 DON'T KNOW WHAT THE ANTI-MALWARE ENGINE IS. AND THAT CAN'T BE
15 THE CASE BECAUSE IT'S THROUGHOUT THEIR DOCUMENTATION.

16 HOW CAN THEY NOT KNOW WHAT THE ANTI-MALWARE ENGINE IS?
17 IT'S -- IT'S IN ALL THEIR MARKETING LITERATURE. THEY
18 TESTIFIED TO IT IN THEIR 30(B)(6) DEPOSITIONS. AND IF THEY
19 REALLY WANT TO MAKE THAT ARGUMENT, WHICH I GUARANTEE THEY'LL
20 DROP THAT IF IT GETS TO TRIAL, THEY'RE NOT GOING TO PUT --

21 **THE COURT:** I GUARANTEE YOU THAT 90 PERCENT OR 95
22 IT'S GOING TO RESOLVE. MAYBE EVEN A HUNDRED PERCENT.

23 **MR. HANNAH:** YOUR HONOR, THEY ARE NOT GOING TO RAISE
24 THE ARGUMENT THAT THEY DON'T KNOW WHAT THE ANTI-MALWARE ENGINE
25 IS. AND THAT'S WHAT THEIR BRIEFING IS COMPLETELY ABOUT. THEY

1 SAY THAT THEY DON'T KNOW WHAT THE ANTI-MALWARE --

2 (SIMULTANEOUS COLLOQUY.)

3 **THE COURT:** WHY DON'T YOU GO AHEAD.

4 **MR. HAMSTRA:** YOUR HONOR, AS YOU CAN SEE QUOTED ON
5 PAGE 13 OF OUR MOTION, OUR NORTON 30(B)(6) WITNESS WILL ASK
6 ABOUT WHAT THIS MEANS. AND IT IS NOT THAT WE DON'T KNOW WHAT
7 IT IS MEANS, IT'S JUST -- IT JUST MEANS EVERYTHING. IT'S AN
8 UMBRELLA TERM THAT HAS NO PARTICULAR MEANING.

9 HE SAID IN PARTICULAR THAT THE MARKETING CONSTRUCT, IT'S
10 NOT TALKING ABOUT QUOTE "ANY PARTICULAR TECHNOLOGY. IT'S JUST
11 TALKING ABOUT THE PROTECTION IMPROVING GENERICALLY."

12 **THE COURT:** OKAY. SO THEN WHEN YOU GOT THAT IN THE
13 CONTENTIONS, THEN DID YOU MOVE -- FOR THAT SAKE, THIS ISN'T
14 TELLING ME EVERYTHING. I DON'T KNOW WHAT YOU ARE --

15 **MR. HAMSTRA:** WE ABSOLUTELY MOVED TO STRIKE THEIR
16 INFRINGEMENT CONTENTIONS WHICH WAS DENIED BY JUDGE GILLIAM.

17 **THE COURT:** BY ME?

18 **MR. HAMSTRA:** NO, IT WAS NOT BY YOU, BY JUDGE
19 GILLIAM. AND WE PUT A QUOTE FROM THAT IN THE FRONT OF OUR
20 MOTION. AND HE SAID TO FINJAN, IF YOU ARE GOING TO COME IN
21 HERE, YOU SAY YOUR CONTENTIONS ARE GREAT. IF YOU ARE GOING TO
22 COME IN HERE AND SAY... AND IT'S NOT THERE, I'M GOING TO HAVE
23 TO STRIKE IT. AND WE THINK THAT'S WHAT YOU SHOULD DO HERE.

24 **MR. HANNAH:** THE SHORT ANSWER IS, YOUR HONOR, THEY
25 LOST ON THAT ISSUE. AND THEY ARE NOT SHY ABOUT FILING MOTIONS

1 FOR RECONSIDERATION, WHICH THEY HAVE DONE ON CLAIM
2 CONSTRUCTION --

3 **THE COURT:** YOU CAN TAKE IT BACK TO JUDGE GILLIAM.

4 **MR. HANNAH:** YOUR HONOR, THROUGHOUT THE BRIEFING, THE
5 ISSUE IS WHETHER THEY KNOW WHAT THE ANTI-MALWARE ENGINE IS.
6 WE HAVE -- WE GOT TESTIMONY ON IT. WE'VE GOT DISCOVERY ON IT.

7 **THE COURT:** SO THAT'S ACTUALLY NOT WHAT THE ISSUE IS.
8 THE ISSUE IS WHAT THAT -- WELL, IT IS PARTIALLY THE ISSUE, WAS
9 IT IDENTIFIED.

10 SO WHAT IS THIS SYMANTEC PROTECTION ENGINE?

11 **MR. HANNAH:** IT'S ALL -- THEY HAVE MULTIPLE NAMES FOR
12 THE SAME ENGINE. SO WE -- THAT'S WHY IF YOU LOOK AT THE
13 APRIL 4TH, FOR INSTANCE, I'M TRYING TO WALK YOU THROUGH IT, IS
14 FOR THE APRIL 4TH, FOR INSTANCE, WE IDENTIFY ALL THE DIFFERENT
15 NAMES AS BEST WE CAN --

16 **THE COURT:** WHERE IS THAT?

17 **MR. HANNAH:** SO IF YOU LOOK AT EXHIBIT 9. WE SAY
18 SPECIFICALLY IN OUR NARRATIVE ON PARAGRAPH -- FOURTH
19 PARAGRAPH, THE NEXT GENERATION ANTI-MALWARE ENGINE. AND THEN
20 WE HAVE A SCREEN SHOT BELOW THAT, THAT'S A SCREEN SHOT FROM
21 ONE OF THE TECHNICAL DOCUMENTS AVAILABLE ON THE WEBSITE.
22 OKAY?

23 THEN YOU GO TO THE NEXT PAGE, AND IT SAYS WE HAVE --
24 TALKING ABOUT THE SYMANTEC PROTECTION ENGINE. AND WE HAVE THE
25 SCREEN SHOT FOR WHAT THEY ARE TALKING ABOUT THERE.

1 AND THEN ON THE NEXT PAGE, WE HAVE THE PROTECTION ENGINE
2 FOR CLOUD SERVICES, FORMALLY THE SCAN MENU. AND WE HAVE AN
3 ENTIRE DESCRIPTION BELOW THAT.

4 AND EVEN WITHIN THAT, THE SYMANTEC SCAN ENGINE AND IT
5 IDENTIFIED THOSE PRODUCTS. THIS KIND OF GOES BACK TO THE
6 NORTON ANTIVIRUS, NORTON SECURITY PRODUCTS EARLIER. BUT IF
7 YOU LOOK IN THERE, IT SAYS IT SUPPORTS THE FOLLOWING VERSIONS
8 OF SYMANTEC ANTIVIRUS, NORTON ANTIVIRUS, NORTON INTERNET
9 SECURITY. WITHIN THAT BOX IS A SCREEN SHOT FROM THEIR SITE.

10 SO IT CONTINUES. WE HAVE SYMANTEC PROTECTION ENGINE ON
11 THE NEXT SLIDE AND IT SAYS NORTON 360 WITHIN ONE OF THOSE
12 BOXES THAT IT APPLIES TO.

13 **THE COURT:** OKAY. ANYTHING FURTHER?

14 **MR. HAMSTRA:** YOUR HONOR, I'M NOT SURE WHAT HE'S
15 DESCRIBING. SYMANTEC PROTECTION ENGINE --

16 **THE COURT:** HE'S TAKING, RIGHT, SCREEN SHOTS FROM
17 YOUR MATERIAL.

18 **MR. HAMSTRA:** NONE OF WHICH ASSOCIATE NEXT GENERATION
19 ANTI-MALWARE ENGINE WITH THE ANTIVIRUS ENGINE.

20 AND ADDITIONALLY THERE'S A FURTHER STEP BEYOND THAT. THE
21 ANTIVIRUS ENGINE CONTAINS BY DIFFERENT COUNTS, 18 DIFFERENT
22 SUBCOMPONENTS. AND SO WHAT THEY'RE SAYING IS THAT THEIR
23 REFERENCE TO THE NEXT GENERATION ANTI-MALWARE ENGINE THAT OUR
24 EXPERT SAID WAS -- I'M SORRY, THAT OUR 30(B)(6) WITNESS SAID
25 WAS A GENERIC TERM TO DESCRIBE IMPROVING PROTECTION, THAT WE

1 WERE SUPPOSED TO UNDERSTAND THAT TO REFER TO THE ANTIVIRUS
2 ENGINE. AND THEN WE WERE SUPPOSED TO UNDERSTAND THE ANTIVIRUS
3 ENGINE AS LEVELING THE ACCUSATIONS AGAINST EVERY PARTICULAR
4 TECHNOLOGY THAT HAPPENS (UNINTELLIGIBLE) WITHIN THE ANTIVIRUS
5 ENGINE.

6 AND I WANT TO RAISE SOMETHING THAT I THOUGHT WAS KIND OF
7 REMARKABLE WITH RESPECT TO THE MATRIX PRODUCTS.

8 IF YOU LOOK AT THE MATRIX TECHNOLOGY. IF YOU LOOK AT
9 PAGE 16 OF THEIR OPPOSITION. SO THE MATRIX WAS THE BIG FOCUS
10 OF OUR LAST CASE. AND IN THE SECOND PARAGRAPH THERE --

11 **THE COURT:** IS THIS ALL YOU GUYS DO?

12 (LAUGHTER)

13 **MR. KASTENS:** YES.

14 **MR. HANNAH:** THAT ONE --

15 **MR. HAMSTRA:** I DO THEM PERSONALLY. I DID THE FIRST
16 CASE.

17 SO THE SECOND PARAGRAPH THERE --

18 **THE COURT:** YOU KNOW WHAT YOU NEED? YOU REALLY NEED
19 A GOOD -- YOU NEED TO GO TO JAMS. I THINK YOU NEED TO GO TO
20 JAMS. THIS IS A WASTE OF EVERYBODY'S MONEY AND TIME AND
21 ENERGY AND PLOYS. THERE'S A LOT OF LIKE -- YEAH, REALLY. GO
22 GET JUDGE INFANTE OR SOMEBODY REALLY, REALLY -- I MEAN, IT'S
23 JUST LIKE MILLIONS AND MILLIONS AND MILLIONS AND MILLIONS OF
24 DOLLARS. IN THE MEANTIME THE TECHNOLOGY'S TAKING OFF. SOON
25 IT WON'T MATTER, THESE PATENTS WILL EXPIRE AND NOT EVEN SO

1 FAR, SO IF WE CAN JUST GET A TRUCE, AND EVERYBODY GO OUT AND
2 HELP THE PUBLIC AND, GOSH, THE VIRUSES REALLY NEEDS TO STOP
3 BECAUSE WE ARE ALL UNDER ATTACK.

4 **MR. HAMSTRA:** I WANT TO POINT OUT ONE THING HERE,
5 WHICH IS JUST SORT OF HOW FINJAN VIEWS THEIR INFRINGEMENT
6 CONTENTIONS.

7 THEY SAY THAT IN THE SECOND PARAGRAPH ON PAGE 16 OF THEIR
8 OPPOSITION, THEY SAY THAT THEY WERE NOT -- WHEN THEY SERVED
9 THEIR CONTENTIONS, THEY DIDN'T THINK MATRIX IN PRINT. THEY
10 THOUGHT IT DIDN'T HAVE THE ADVANCE SCANNING FUNCTIONALITY.
11 BUT THEN AFTER -- AT LINE 25, AFTER REVIEW OF MILLIONS OF
12 PAGES OF TECHNICAL DOCUMENTS, THEY SAY, OH, SYMANTEC
13 RE-IMPLEMENTED THIS ENGINE TECHNOLOGY.

14 THAT'S FALSE FOR THE REASONS WE SET OUT IN OUR REPLY, BUT
15 THAT'S NOT THE POINT HERE.

16 THE POINT IS -- SO THEY THEN DECIDED THEY ARE GOING TO
17 ACCUSE MATRIX AGAIN. DID THEY AMEND THEIR CONTENTIONS? NO.
18 THEY ARE JUST VIEWING THEIR CONTENTIONS AS SORT OF A MENU OF
19 WORDS IN WHICH THEY CAN -- THEY INTEND TO FIT WHATEVER THEY
20 END UP ACCUSING --

21 **THE COURT:** YOU KNOW THEY CAN'T DO THAT, RIGHT? THE
22 LAW IS PRETTY CLEAR THAT YOU CAN'T DO THAT.

23 **MR. HANNAH:** YOUR HONOR, NOW WE ARE MOVING -- I GUESS
24 ARE WE MOVING AWAY FROM THE ANTI-MALWARE ENGINE? BECAUSE THIS
25 IS A SEPARATE ARGUMENT.

1 THE FIRST ARGUMENT WAS THAT THE ANTI-MALWARE ENGINE WASN'T
2 DISCLOSED. I JUST SHOWED HOW IT WAS THOROUGHLY DISCLOSED.

3 **MR. HAMSTRA:** THAT'S NOT THE ARGUMENT FOR THE RECORD.
4 THE RECORD IS THAT THE ANTI-MALWARE ENGINE WASN'T DISCLOSED.

5 **MR. HANNAH:** FINE. AND THEN A SEPARATE THING WAS
6 WHETHER THESE OTHER SUBCOMPONENTS --

7 **THE COURT:** YEAH.

8 **MR. HANNAH:** OKAY. I JUST WANT TO MAKE SURE THAT WE
9 ARE MOVING ON. BECAUSE I THINK IT IS CLEAR THE ANTIVIRUS
10 ENGINE WAS DISCLOSED, YOU KNOW, FOR THE RECORD.

11 SO IF WE ARE MOVING ON TO THE SECOND PART, WHAT WE -- WHAT
12 WE DISCLOSED WAS THE ANTIVIRUS ENGINE, WHICH I THINK WE CAN
13 AGREE UPON NOW, AND THEN THEY CAME BACK AND --

14 **THE COURT:** HOLD ON ONE SECOND.

15 IF YOU WANT TO GO TO LUNCH, YOU CAN GO.

16 **THE CLERK:** THAT'S OKAY.

17 (CONVERSATION HELD WITH COURTROOM DEPUTY.)

18 **MR. HANNAH:** AND SO WE ACCUSED THE ANTI-MALWARE
19 AGENT. THAT'S THE CORE FUNCTIONALITY.

20 AND THEN TO FURTHER GIVE THEM NOTICE, NO SURPRISE, THEY
21 SERVED INTERROGATORY, AND THEY SAID, OKAY, WHAT FUNCTIONALITY
22 OF THAT ANTIVIRUS ENGINE ARE AT ISSUE HERE?

23 SO IF YOU LOOK AT EXHIBIT 27 TO THE KASTENS' DEC, WHICH IS
24 AN INTERROGATORY, WE SPECIFICALLY NAME THE TECHNOLOGIES THAT
25 CREATE THE DSP'S. AND THAT'S WHERE WE INCLUDED CYNIC,

1 SKEPTIC. WE INCLUDED MVP, SAPE, MATRIX, SKEPTIC, ALL THE
2 SUBCOMPONENTS. BECAUSE -- AND SO -- AND WE GOT DEPOSITION
3 TESTIMONY AND ACTUALLY GOT WITNESSES THAT WERE SPECIFIC TO
4 THOSE TECHNOLOGIES ONLY. SO THERE'S NO SURPRISE HERE IN TERMS
5 OF WHAT WAS THE TECHNOLOGIES THAT WERE AT ISSUE.

6 WE DISCLOSED THE ANTI-MALWARE ENGINE, THE ANTIVIRUS
7 ENGINE. AND THEY CAME BACK AND SAID, OKAY, WHAT COMPONENTS OF
8 THAT? AND WE SAID, OKAY, WE WILL GIVE YOU -- WE WILL GIVE YOU
9 A LISTING, THIS IS IT, AND THEN WE WENT OFF ON DISCOVERY. AND
10 THEY GAVE US SOMEBODY ON MATRIX. THEY GAVE US SOMEBODY ON THE
11 MCPP, AND THE SAPE.

12 **THE COURT:** WHAT ABOUT THAT INTERROGATORY RESPONSE?

13 **MR. HAMSTRA:** ONE CANNOT AMEND INFRINGEMENT
14 CONTENTIONS BY INTERROGATORIES.

15 **THE COURT:** I UNDERSTAND THAT. I UNDERSTAND THAT.
16 BUT WHAT I AM TRYING TO REALLY GET AT IS WHAT'S SEEMS FAIR AND
17 NOT FAIR AS I SAID TO MS. CASSIDY EARLIER WITH RESPECT TO ONE
18 OF THOSE ISSUES.

19 **MR. HANNAH:** AND WHAT'S NOT FAIR -- SO, FOR INSTANCE,
20 WE -- WE TRIED TO PRODUCE ALL OUR TECHNICAL DOCUMENTS ON THESE
21 PRODUCTS. SO THERE WAS NO BURDEN FROM A DOCUMENT PRODUCTION
22 PERSPECTIVE FOR US TO TRY TO AVOID BY, YOU KNOW, MOVING FOR A
23 PROTECTIVE ORDER OR THAT SORT OF THING.

24 IT JUST TAKES MORE EFFORT FOR US TO, YOU KNOW, IDENTIFY
25 SPECIFIC DOCUMENTS RELATING TO SPECIFIC TECHNOLOGY VERSUS THEM

1 JUST, YOU KNOW, DUMPING ALL OUR DOCUMENTS AND LEFT THEM TO
2 SORT IT OUT.

3 THE ONE POINT I WANT TO RAISE, THOUGH, IS WE DID HAVE SOME
4 ISSUE WITH SOME OF THESE TECHNOLOGIES. SO, FOR INSTANCE,
5 MATRIX: THE ONLY WITNESS WHO ACTUALLY PROGRAMMED MATRIX WHO
6 WAS DEPOSED IN THIS CASE WAS DEPOSED FOR AN ENTIRELY DIFFERENT
7 REASON, MR. COLEMAN, AND HE HADN'T WORKED ON MATRIX SINCE
8 2012. WE DON'T HAVE A DEPONENT OR A WITNESS ON OUR INITIAL
9 DISCLOSURES THAT CAN REALLY TALK ABOUT MATRIX THAT HAS WORKED
10 IN THE DEVELOPMENT OF MATRIX.

11 **THE COURT:** THEY ARE GOING TO LOSE ON THAT BECAUSE
12 THEY DIDN'T --

13 **MR. HANNAH:** YOUR HONOR, WE HAD THE SPECIFIC 30(B)(6)
14 TOPIC ON THAT AND THAT'S WHO THEY GAVE US. SO WE TOOK WHAT
15 THEY GAVE US.

16 **MR. HAMSTRA:** NO, YOUR HONOR, THAT IS A FALSE
17 STATEMENT. THEY ASKED FOR A WITNESS ON THE ANTIVIRUS.

18 **THE COURT:** OKAY. ALL RIGHT.

19 I'M GOING TO TURN INTO A PUMPKIN. SO TELL ME WHICH ONE --
20 WHAT'S LEFT THAT YOU WANT TO TALK ABOUT.

21 **MR. HAMSTRA:** THE ONLY THING I WANT TO HIGHLIGHT IS
22 SAPIENT. SO SAPIENT WAS SOMETHING THAT... IT'S ANOTHER
23 SUBCOMPONENT OF THE ANTIVIRUS ENGINE THAT INDISPUTABLY DENIES
24 THIS AT THE TIME OF THEIR CONTENTIONS.

25 **THE COURT:** SAPIENT?

1 **MR. HAMSTRA:** SAPIENT. AND THEY NEVER, THEY NEVER
2 AMENDED THEIR CONTENTIONS TO ACCUSE THAT.

3 **THE COURT:** OKAY. THAT'S NOT IN THE INTERROGATORY
4 RESPONSE?

5 **MR. HANNAH:** IT IS IN THE INTERROGATORY RESPONSE,
6 YOUR HONOR. AGAIN EXHIBIT 27, WE SPECIFICALLY CALLED SAPIENT.
7 WE HAD A 30(B)(6) ON SAPIENT. SO, I MEAN, THEY HAD COMPLETE
8 NOTICE OF THAT. AGAIN, WE ACCUSE THE ANTIVIRUS ENGINE. WE
9 IDENTIFIED THE SPECIFICS AND COMPONENTS IN DISCOVERY.
10 (UNINTELLIGIBLE).

11 **THE COURT:** OKAY.

12 **MR. HAMSTRA:** YOUR HONOR, IF THIS IS THE APPROACH YOU
13 ARE GOING TO TAKE WITH THIS, THEN WE WILL HAVE NO CHOICE BUT
14 TO FILE CONSTANT DISCOVERY MOTIONS SEEKING PROTECTIVE ORDERS
15 BASED ON THE INFRINGEMENT CONTENTIONS. FROM A POLICY
16 PERSPECTIVE, I DON'T THINK THAT IS A GOOD APPROACH.

17 **THE COURT:** I DON'T KNOW WHAT I'M GOING TO DO, BUT
18 DON'T -- I DON'T CARE. YOU DO WHAT YOU HAVE TO DO.

19 THAT'S NOT AN ARGUMENT THAT ACTUALLY RESONATES WITH ME AT
20 ALL, WHICH I VIEW SOMEWHAT AS A THREAT A LITTLE BIT. SO IF
21 YOU WANT TO MAKE --

22 (SIMULTANEOUS COLLOQUY.)

23 **MR. HAMSTRA:** -- DISCOVERY IT IS NOT A THREAT TO
24 YOU --

25 **THE COURT:** YOU'RE WHAT?

1 **MR. HAMSTRA:** WE'RE AFTER THE CLOSE OF FACT
2 DISCOVERY --

3 **THE COURT:** I MEAN GOING FORWARD. I KNOW YOU'RE
4 AFTER DISCOVERY IN THIS CASE AND IT IS GOING FORWARD, BUT
5 THAT'S, YOU KNOW, THAT IS NOT AN ARGUMENT.

6 THAT IS, YOU KNOW -- THERE IS A RULE AS TO THE
7 INFRINGEMENT CONTENTIONS AND THAT THEY DO HAVE TO BE DONE.
8 AND THERE IS NO RULE THAT SAYS THAT IF YOU JUST DISCLOSE IT IN
9 DISCOVERY THAT SOMEHOW THAT MAKES UP FOR.

10 WHAT'S SUPPOSED TO HAPPEN IS YOU LEARN IT IN DISCOVERY AND
11 THEN YOU AMEND YOUR INFRINGEMENT CONTENTIONS. RIGHT?

12 **MR. HANNAH:** YES, YOUR HONOR.

13 BUT -- AND, ACTUALLY, YOU CAN LOOK AT THE *PROOFPOINT* ORDER
14 WITH JUDGE GILLIAM. YOU DON'T HAVE TO -- IF YOU IDENTIFY THE
15 TECHNOLOGIES AND THEY HAVE NOTICE OF IT, YOU DON'T HAVE TO
16 IDENTIFY EVERY NAME OF THE SUBCOMPONENTS THAT DO -- THAT --
17 THEN WE ARE GOING TO BE AMENDING OUR INFRINGEMENT CONTENTIONS
18 AFTER EVERY SINGLE 30(B)(6) DEPOSITION, AFTER EVERY SINGLE
19 TECHNICAL WITNESS.

20 SO THEY HAD NOTICE THAT WE ACCUSED THE ANTIVIRUS ENGINE
21 AND SO WE TOOK DISCOVERY ON THAT. THEY TRIED TO GET -- THEY
22 TRIED TO MOVE FOR MORE SPECIFIC SPECIFICITY. THEY LOST ON
23 THAT BECAUSE ANTI-MALWARE ENGINE IS SUFFICIENT DISCLOSURE.
24 THEY KNOW THEIR TECHNOLOGY. AND THEN DISCOVERY IS, THOUGH,
25 THERE TO IDENTIFY THE PARTICULARS SO WE ARE NOT WASTING A

1 BUNCH OF TIME, AND THAT'S WHAT WE DID. WE, IT WAS FAIR, WE
2 GAVE THEM NOTICE. THERE WAS NO SURPRISE.

3 YOUR HONOR, I DID GET PASSED UP A NOTE. FOR THE RECORD,
4 YOU ASKED EARLIER ABOUT THE INTERROGATORY IN WHICH THEY
5 RESPONDED FOR THE NORTON SECURITY AND HOW IT IDENTIFIES THE
6 PRODUCT FAMILIES? AND I DID FIND IT FOR YOU.

7 I JUST WANT TO PUT IT INTO THE RECORD. IT'S ACTUALLY
8 EXHIBIT 1 TO THE OPPOSITION TO SYMANTEC MOTION TO STRIKE. AND
9 IT'S ON PAGE 31 WHERE SYMANTEC RESPONDED THAT THE ACCUSED
10 INSTRUMENTALITIES NORTON SECURITY INCLUDES NAV CONSUMER,
11 NORTON 360 PRODUCTS, NORTON INTERNET SECURITY --

12 **THE COURT:** I THOUGHT WE WERE DONE WITH THAT ISSUE.

13 **MR. HANNAH:** I KNOW. I JUST WANTED TO PUT IT ON THE
14 RECORD.

15 **THE COURT:** YOU ARE NOT ACCUSING THE EARLIER VERSIONS
16 THAT WERE NOT THE COMBINATION. YOU ARE NOT ACCUSING THEM.

17 **MR. HANNAH:** CORRECT.

18 **MR. HAMSTRA:** ONE LAST POINT I WOULD LIKE TO MAKE,
19 YOUR HONOR, WHICH IS A LITTLE BIT, A LITTLE BIT DIFFERENT ONE,
20 AND THAT IS THIS DYNAMICALLY UPDATING PIECE.

21 **THE COURT:** YES.

22 **MR. HAMSTRA:** THAT IS AN EXAMPLE WHERE FINJAN IN
23 NARRATIVE FORM EXPRESSLY SAID WHAT THEIR THEORY WAS;
24 DYNAMICALLY UPDATING IS DYNAMICALLY IS UPDATING AN ICON NEXT
25 TO A SEARCH RESULT.

1 **THE COURT:** YES.

2 **MR. HAMSTRA:** NOW IN THEIR OPPOSITION, AS YOU CAN
3 SEE, THEY ARE JUST POINTING TO THINGS THAT APPEAR IN FIGURES
4 AND THAT SORT OF THING.

5 AND THAT'S EXACTLY WHAT THE *ASUS COMPUTER* CASE SAID THAT
6 YOU CAN'T DO. YOU CAN'T JUST PICK SOMETHING OUT OF A RANDOM
7 FIGURE AND SAY, OH, THAT'S AN ADEQUATE DISCLOSURE.

8 **MR. KASTENS:** CAN I JUST SHOW YOUR HONOR SOMETHING?
9 IT'S IN THE SLIDES THOUGH.

10 **THE COURT:** THE NEW SLIDE?

11 **MR. KASTENS:** YES. THIS IS A NEW SLIDE DECK. RATHER
12 THAN FUMBLING THROUGH ALL THE INFRINGEMENT CONTENTIONS.

13 SO THIS IS ACTUALLY WHAT WAS, I BELIEVE, MAYBE THE SECOND
14 THING IN THE INFRINGEMENT CONTENTIONS FOR DYNAMICALLY
15 UPDATING. AND THEN YOU SEE THAT TOP PART, THAT'S OUR TEXT WE
16 WROTE.

17 **THE COURT:** WHAT PAGE ARE YOU ON?

18 **MR. KASTENS:** SORRY. FOURTH PAGE, THE VERY LAST
19 PAGE.

20 AND I AM LOOKING AT EXHIBIT 39 OF THE KASTENS' DECLARATION
21 AT PAGES 56 THROUGH 57. YOU CAN SEE THE ELEMENT THAT WE ARE
22 TALKING ABOUT IS ON THE LEFT. IT'S DYNAMICALLY UPDATING, THE
23 ONE THEY SAID WE DIDN'T DISCLOSE TO THIS COURT.

24 **THE COURT:** YEAH.

25 **MR. KASTENS:** ON THE RIGHT IT SAYS, THE DYNAMICALLY

1 UPDATE SEARCH AND SECURITY INFORMATION, ADDITIONAL INFORMATION
2 IS RECEIVED, AND THEN WE CITE THE EXAMPLE OF HOW THEY DO THAT
3 BELOW.

4 SO, I MEAN, THAT'S THE EXAMPLE OF WHAT WE'RE GETTING IN
5 OUR OWN WORDS FOR UPDATING -- TO MEAN DYNAMICALLY UPDATING.
6 IT IS EXACTLY, EXACTLY IT.

7 **MR. HAMSTRA:** YOUR HONOR, IF YOU LOOK AT THE ACTUAL
8 EXHIBIT, THERE IS A LOT OF TEXTS BETWEEN THESE TWO THINGS --

9 **THE COURT:** I DID LOOK AT IT.

10 **MR. HAMSTRA:** I'M SORRY, I DID NOT MEAN TO IMPLY
11 OTHERWISE.

12 **THE COURT:** NO, NO. SORRY, I DIDN'T MEAN IT THAT
13 WAY. I DID LOOK AT IT AND THAT WAS MY --

14 **MR. HAMSTRA:** NORTON PRODUCTS MEET THE RECITED CLAIM
15 LANGUAGE BECAUSE NORTON PRODUCTS UPDATE THE DISPLAY SECURITY
16 ICONS NEXT TO SEARCH RESULT --

17 **THE COURT:** I MEAN, THAT'S WHAT IT DID, IT'S UPDATING
18 THE ICONS. SO THAT'S WHAT IT REPRESENTED. MAYBE IT UPDATES
19 THE ICON BY MOVING THE MOUSE, BUT THE DYNAMICALLY UPDATING, IN
20 OTHER WORDS, TO ME IT MAY BE ALL A BUNCH OF NOTHING. I MEAN,
21 IT'S THE ICON.

22 **MR. KASTENS:** YEAH, I THINK -- BUT THE VERY FIRST
23 THING WE DESCRIBE IS THIS EXACT THING I JUST WENT OVER WITH
24 YOU, WHICH IS HOW THE DYNAMICALLY UPDATING IS DONE.

25 **THE COURT:** IT'S DONE WITH THE ICON.

1 **MR. KASTENS:** IT'S DONE THROUGH RECEIVING NEW
2 INFORMATION, WHICH IS BOTH THE ICONS, THE POP-UP, AND THE FULL
3 REPORT WHICH IS ALL LISTED HERE.

4 **MR. HAMSTRA:** YOUR HONOR --

5 **THE COURT:** THEY DYNAMICALLY UPDATE THE PRESENTATION
6 WHEN ADDITIONAL SECURITIES ASSESSMENTS ARE RECEIVED. RIGHT?
7 THAT IS WHAT IT SAYS.

8 **MR. KASTENS:** UH-HUH. AND THEN THE NEXT ONE IS
9 DESCRIBING THE MEANS... I MEAN, THIS IS --

10 **THE COURT:** IT SAYS BECAUSE THEY MEET THE RECITED
11 LANGUAGE BECAUSE THEY UPDATE THE DISPLAY SECURITY ICONS NEXT
12 TO THE SEARCH RESULTS TO DIFFERENT LEVELS OF SECURITY. THE
13 ICONS ARE UPDATING -- THE WHOLE THING JUST IS FOCUSING ON THE
14 ICONS, NOT THE MOUSE OR ANYTHING.

15 **MR. KASTENS:** YOUR HONOR, YOU KNOW, IT MAY BE A MOOT
16 POINT BECAUSE WHAT WE'RE SAYING IS YOU CAN UPDATE THE ICONS
17 WITH THESE POP-UPS WHEN ADDITIONAL SECURITY INFORMATION IS
18 RECEIVED AND WHEN YOU CAN REQUEST NEW ADDITIONAL REPORT
19 INFORMATION THROUGH THESE ICONS. THAT'S WHAT'S DESCRIBED.
20 THE VERY FIRST PIECE OF EVIDENCE IS DESCRIBING THAT.

21 SO I'M AFRAID WHAT -- THEY'RE TRYING TO TAKE A VERY NARROW
22 READING OF THIS WHERE THEY JUST SAY THE COLOR OF THE ICON OR
23 SOMETHING.

24 **MR. HAMSTRA:** YOUR HONOR, IT'S CERTAINLY NOT -- NOT A
25 MOOT POINT. THEY ARE TALKING ABOUT ADDING DIFFERENT ICONS OR

1 ADDING AN ENTIRELY DIFFERENT POP-UP OR BROWSING TO A
2 COMPLETELY DIFFERENT PAGE. THOSE ARE THE THEORIES THEY HAVE
3 NOW.

4 THE ICON THAT THEY ARE POINTING TO NOW NEVER CHANGES.
5 THIS IS A VERY REAL DISPUTE, AND THEIR ALLEGATIONS RIGHT NOW
6 ARE NOT CONSISTENT WITH WHAT -- WITH THAT --

7 (SIMULTANEOUS COLLOQUY.)

8 **THE COURT:** THE ONE THING DR. COLE SAYS, IS WHEN THE
9 USER CLICKS ON THE NEXT PAGE OF THE SEARCH RESULTS, THAT'S NOT
10 DISCLOSED THERE, RIGHT?

11 **MR. KASTENS:** I THINK THIS IS DISCLOSED IN DIFFERENT
12 SECTIONS BY TALKING ABOUT WHEN YOU GET NEW PAGES SEARCH
13 RESULTS -- I THINK WHAT WE ARE TALKING ABOUT HERE IS THE
14 POP-UP ICON.

15 SO -- SORRY. SO YOU GET -- AND MAYBE JUST AN EXPLANATION
16 WOULD BE HELPFUL.

17 YOU HAVE A SEARCH RESULT. YOU HAVE AN ICON NEXT TO IT.
18 YOU CAN UPDATE THAT ICON THROUGH CHANGING ITS COLOR. YOU CAN
19 ALSO UPDATE THAT ICON IF YOU HOVER YOUR MOUSE OVER IT AND A
20 POP-UP PULLS UP. YOU CAN SELECT A FULL REPORT INFORMATION
21 WHICH GIVES YOU ADDITIONAL INFORMATION ON THAT.

22 SO THAT'S WHAT WE'RE TALKING ABOUT. AND THAT'S WHAT'S
23 DISCLOSED IN THE VERY FIRST PIECE OF EVIDENCE THAT WE
24 DESCRIBED -- VERY FIRST DESCRIPTION OF HOW THIS IS DONE WITHIN
25 OUR INFRINGEMENT CONTENTIONS.

1 **THE COURT:** BECAUSE THEY DYNAMICALLY UPDATE THE
2 PRESENTATION.

3 **MR. KASTENS:** YEAH.

4 **THE COURT:** WELL, I GUESS, IT DOES SEEM SORT OF
5 SEMANTICALLY. YOU ARE STILL TALKING ABOUT THE ICON AND YOU
6 ARE TALKING ABOUT WHAT CHANGES THE ICON. THERE'S DIFFERENT
7 THINGS THAT CHANGE THE ICON.

8 **MR. HAMSTRA:** THAT'S -- THE ICON IS NEVER -- I'M
9 PRETTY SURE THAT IS NOT DISPUTED AT THIS POINT.

10 **THE COURT:** THAT'S WHAT IT SAYS HERE. SAYS THE ICONS
11 ARE UPDATED.

12 **MR. HAMSTRA:** YEAH. AND THEY WERE WRONG ABOUT THAT
13 CONTENTION AND NOW THEY COME IN THEIR EXPERT REPORT AND THEY
14 SAY SOMETHING ELSE.

15 **MR. KASTENS:** WELL, I MEAN, THERE'S NOTHING IN THAT
16 ENTIRE DESCRIPTION VERY FIRST THING WE DESCRIBE WHICH SAY THAT
17 THE COLOR OF THE ICON, WHICH IS WHAT HE'S SAYING IS UPDATED.
18 THE VERY FIRST THING WE DO TO DESCRIBE WHAT UPDATING WE ARE
19 TALKING ABOUT IS THE POP-UP WITH THE POLE SAVE RESEARCH.

20 **MR. HAMSTRA:** I BELIEVE MR. KASTENS JUST SAID THERE'S
21 NOTHING ABOUT UPDATING THE ICON TO A DIFFERENT COLOR.

22 AGAIN, ON THAT FIRST SENTENCE THERE, NORTON PRODUCTS MEET
23 THE RECITED CLAIM LANGUAGE BECAUSE NORTON PRODUCTS UPDATE THE
24 DISPLAY SECURITY ICONS NEXT TO SEARCH RESULT URL'S TO
25 DIFFERENT LEVELS OF SECURITY SUCH AS DOT, DOT, DOT, RED,

1 ORANGE, GREEN, AND GRAY.

2 **MR. KASTENS:** AND EVEN IF I SAID THAT, WOULD IT HAVE
3 MET IT? I APOLOGIZE. THAT'S NOT WHAT I MEANT TO SAY. MY
4 IMPLICATION WAS, YOU KNOW, WE GIVE EXAMPLES OF EXACTLY WHAT WE
5 ARE TALKING ABOUT. THESE ARE SOME EXAMPLES. YOU KNOW, WE
6 JUST HAPPEN TO HAVE A REALLY GOOD DOCUMENT DESCRIBING EXACTLY
7 WHAT WE'RE TALKING ABOUT, AND WE PROVIDED THAT. AND WE SAID
8 ABOVE IT, YOU KNOW, THIS IS WHAT WE'RE TALKING ABOUT FOR THIS
9 ELEMENT.

10 I MEAN THIS -- OTHERWISE, THIS SECTION LITERALLY HAS
11 NOTHING TO DO WITH WHAT HE JUST SAID. OTHERWISE IT'S
12 SUPERFLUOUS. IT'S EXACTLY WHAT WE DESCRIBED.

13 THEY ARE JUST -- YOU KNOW, WE GAVE SOME EXAMPLES, AND THEN
14 WE GIVE A FURTHER EXAMPLE THAT EXACTLY DESCRIBES WHAT WE ARE
15 TALKING ABOUT, AND THEY ARE TRYING TO READ IT OUT OF OUR
16 DISCLOSURES.

17 **THE COURT:** I -- I -- I DON'T UNDERSTAND. I DON'T
18 UNDERSTAND. I MEAN, DYNAMICALLY UPDATING IS NOT REALLY A HARD
19 TERM. A MOUSE DOESN'T DYNAMICALLY UPDATE. IT MAY LEAD TO
20 SOMETHING THAT'S DYNAMICALLY UPDATED, RIGHT?

21 **MR. KASTENS:** YEAH.

22 **THE COURT:** WHAT IT MEANS IS THE INFORMATION IS
23 UPDATED; ISN'T THAT WHAT IT MEANS?

24 **MR. KASTENS:** AND THIS IS -- AND WE GAVE EXAMPLES OF
25 HOW THE INFORMATION IS UPDATED.

1 **MR. HAMSTRA:** THEY GAVE ONE CLEAR ALLEGATION AND
2 THEY'RE ACCUSING SOMETHING DIFFERENTLY.

3 NOW HE MAY HAVE IMPLIED THAT THERE ARE NO DISCUSSION OF
4 THE ICONS. I DON'T THINK HE CAN SAY THAT, BUT ON PAGE 57, HE
5 DOES, YOU KNOW, THERE IS A REFERENCE TO THE ICONS THERE.

6 SO THOSE ARE THE ICONS WE'RE TALKING ABOUT AND THOSE ARE
7 THE ONES THAT THEY ARE SAYING ARE CHANGED DURING THIS
8 DYNAMICALLY UPDATING PROCESS.

9 **MR. KASTENS:** I DON'T DISPUTE THAT, YOUR HONOR, THAT
10 THAT WAS ONE OF THE (UNINTELLIGIBLE) SERIES THAT WE
11 PROVIDED --

12 **THE COURT:** WHERE IS THE SCENARIO THAT'S IN
13 DR. COLE'S EXPERT REPORT?

14 **MR. KASTENS:** IT'S IN THAT DESCRIPTION AT THE TOP OF
15 PAGE 57. WHEN YOU SEARCH THE INTERNET, IT'S THE -- YOU CAN
16 CLICK THE ICON NEXT TO SEARCH RESULTS --

17 **THE COURT:** YES.

18 **MR. KASTENS:** -- REPORT --

19 (SIMULTANEOUS COLLOQUY.)

20 **THE COURT:** WHAT ABOUT THE CHANGE IN THE PAGE?

21 **MR. KASTENS:** OH. SORRY, YOUR HONOR.

22 **THE COURT:** THE USER CLICKS ON THE NEXT PAGE OF
23 SEARCH RESULTS.

24 (PAUSE IN THE PROCEEDINGS.)

25 **MR. KASTENS:** SORRY, I THINK I'M GOING TO HAVE TO GO

1 BACK --

2 **THE COURT:** WHAT HE'S SAYING IN THE REPORT IS
3 DIFFERENT FROM WHAT'S HERE WITH THE EMPHASIS --

4 **MR. HAMSTRA:** YOUR HONOR --

5 **MR. KASTENS:** I THINK WE'RE TALKING ABOUT THERE WAS
6 TWO SEPARATE INFRINGEMENT SCENARIOS. SO WE ARE TALKING ABOUT
7 ONE THROUGH THE POP-UP, THE ICON POP-UP. SO THAT'S --

8 **THE COURT:** YES.

9 **MR. KASTENS:** -- AND THEN FULL REPORT BUTTON, AND
10 THEN THERE'S ONE FOR ADDITIONAL PAGES.

11 I AM SORRY, I AM JUST TRYING TO FIND --

12 **THE COURT:** OKAY.

13 **MR. KASTENS:** WE GET A LITTLE CONFUSED WITH ALL THE
14 DIFFERENT BRIEFING UP HERE. SO I'M PRETTY CONFIDENT THAT
15 THERE'S NO REFERENCE TO CLICKING ON THE NEXT PAGE OF SEARCH
16 RESULTS.

17 **THE COURT:** THERE IS A REFERENCE TO MOVING YOUR MOUSE
18 OVER THE ICON.

19 **MR. HAMSTRA:** AN EXCERPT OF A WEB PAGE DOES REFERENCE
20 THAT, BUT THAT'S NOT CONSISTENT WITH THE DESCRIPTION OF WHAT
21 THEY ARE ACCUSING.

22 **MR. KASTENS:** YOUR HONOR, I AM JUST GOING TO SAY FOR
23 THE RECORD THAT IF YOU LOOK AT THEIR INVALIDITY CONTENTIONS,
24 THEY ACTUALLY HAVE NO DESCRIPTION OF -- JUST SCREEN SHOTS. SO
25 I THINK IT'S DISINGENUOUS --

1 **THE COURT:** NO, IT'S THERE. THEY WERE PUT ON NOTICE.

2 **MR. KASTENS:** OKAY. I'M SORRY, I THINK I LOST OUR
3 OPPOSITION BINDER.

4 **THE COURT:** I DON'T THINK IT WAS IN THERE. I DON'T
5 THINK YOUR OPPOSITION IDENTIFIED THOSE THINGS.

6 (PAUSE IN THE PROCEEDINGS.)

7 **MR. KASTENS:** I THINK WHAT WE'RE GENERALLY TALKING
8 ABOUT IS WHERE THIS DISCUSSIONS OF NEW SEARCH RESULTS BEING
9 RETURNED. WE TALK ABOUT DYNAMICALLY UPDATING THROUGH NEW
10 SEARCH RESULTS, AND I AM JUST TRYING TO FIND....

11 AND I THINK JUST -- IT'S JUST THE FACT THAT IN THE
12 DESCRIPTION WE SAY THAT YOU UPDATE BASED ON THE NEW UPDATES TO
13 THE SEARCH ENGINE, THE NEW PAGES IS RETURNING THE NEW
14 SEARCH --

15 **THE COURT:** BUT HE ALSO SAYS THAT, TOO, I THOUGHT,
16 DOES HE NOT?

17 **MR. KASTENS:** I'M SORRY, WHAT ARE YOU REFERRING TO?

18 **THE COURT:** HE ALSO -- DR. COLE SAYS IT UPDATES WHEN
19 THE SEARCH RESULTS ARE RECEIVED. THAT'S ONE. THE USER CLICKS
20 THE LINK IN A POP-UP, SUCH ON UPDATING THE ICON. SAYS THE
21 SEARCH RESULTS ARE RECEIVED. AND THEN ANOTHER, OR WHEN THE
22 USER CLICKS ON TO THE NEXT PAGE OF SEARCH.

23 **MR. KASTENS:** I AM NOT SURE THE NEXT PAGE THE SEARCH
24 RESULTS IS STATED. I THINK WHAT WAS DISCUSSED WAS --

25 **THE COURT:** OKAY.

1 **MR. KASTENS:** -- AS SEARCH RESULTS (UNINTELLIGIBLE)
2 THAT WAS AN EXAMPLE.

3 **THE COURT:** NOT GREAT, BUT WHY ISN'T THAT SORT OF
4 WHEN SEARCH RESULTS ARE RECEIVED?

5 **MR. HAMSTRA:** I NEVER QUITE UNDERSTOOD WHAT HE WAS
6 POINTING TO.

7 **THE COURT:** PAGE 57. DISPLAY THE --

8 **MR. HAMSTRA:** THERE'S NOTHING ABOUT CLICKING ON TO A
9 NEXT PAGE. ALL OF THAT --

10 **THE COURT:** HE CONCEDED THAT.

11 **MR. HAMSTRA:** OKAY. BUT IT IS -- AND IT IS DIFFERENT
12 BECAUSE ALL OF THIS HERE IS APPLICABLE TO THE FIRST PAGE OF
13 THE SEARCH ENGINE.

14 **THE COURT:** NO, I AGREE WITH THAT. OKAY.

15 **MR. KASTENS:** YOUR HONOR, I JUST WANT FOR THE RECORD
16 CAN I JUST CITE AN ADDITIONAL PIECE OF EVIDENCE. EXHIBIT 39,
17 PAGE 59, THE ENTIRE PAGE IS JUST DESCRIBING EXACTLY WHAT THAT
18 OTHER (UNINTELLIGIBLE) WHICH IS THE FULL -- THE POP-UP AND THE
19 FULL SEARCH RESULTS.

20 **THE COURT:** SO THIS ISN'T THE NEXT PAGE.

21 **MR. KASTENS:** NO. I'M AM SORRY.

22 **THE COURT:** OH, OKAY. FINE.

23 OKAY. I THINK THAT'S ENOUGH.

24 **MR. HAMSTRA:** WE WILL PUT IN WHAT REMAINS ON THE
25 PAPERS?

