

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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|-----------------|---|-----------------------------|
| NETSKOPE, INC., | ) |                             |
|                 | ) |                             |
| Petitioner,     | ) | PTAB Case No. IPR2023-00456 |
|                 | ) |                             |
| vs.             | ) | Patent No. 11,036,856 B2    |
|                 | ) |                             |
| FORTINET, INC., | ) |                             |
|                 | ) |                             |
| Patent Owner.   | ) |                             |
| _____           | ) |                             |

DEPOSITION OF MICHAEL FRANZ

Sacramento, California

Wednesday, November 29, 2023

REPORTED BY: Matthew Sculatti  
CSR No. 13558

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| 1  | UNITED STATES PATENT AND TRADEMARK OFFICE                | 1  | I N D E X                                                 |                                  |
| 2  | BEFORE THE PATENT TRIAL AND APPEAL BOARD                 | 2  | WITNESS                                                   | EXAMINATION                      |
| 3  |                                                          | 3  | MICHAEL FRANZ                                             | By Mr. Zivojnovic                |
| 4  |                                                          | 4  |                                                           |                                  |
| 5  | NETSKOPE, INC., )                                        | 5  |                                                           |                                  |
| 6  | Petitioner, ) PTAB Case No. IPR2023-00456                | 6  |                                                           | E X H I B I T S                  |
| 7  | vs. ) Patent No. 11,036,856 B2                           | 7  | EXHIBIT                                                   | DESCRIPTION                      |
| 8  | FORTINET, INC., )                                        | 8  | Exhibit 1001                                              | United States Patent             |
| 9  | Patent Owner. )                                          | 9  | Exhibit 1002                                              | Declaration of Dr. Michael Franz |
| 10 |                                                          | 10 |                                                           |                                  |
| 11 |                                                          | 11 |                                                           |                                  |
| 12 | Deposition of MICHAEL FRANZ, taken before                | 12 |                                                           |                                  |
| 13 | Matthew Sculatti, a Certified Shorthand Reporter for the | 13 |                                                           |                                  |
| 14 | State of California, commencing at 9:00 A.M.,            | 14 |                                                           |                                  |
| 15 | Wednesday, November 29, 2023. This deposition was        | 15 |                                                           |                                  |
| 16 | reported remotely.                                       | 16 |                                                           |                                  |
| 17 |                                                          | 17 |                                                           |                                  |
| 18 |                                                          | 18 |                                                           |                                  |
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| 24 |                                                          | 24 |                                                           |                                  |
| 25 |                                                          | 25 |                                                           |                                  |
|    | Page 2                                                   |    | Page 4                                                    |                                  |
| 1  | APPEARANCES:                                             | 1  | Sacramento, California; Wednesday, November 29, 2023;     |                                  |
| 2  |                                                          | 2  | 9:00 A.M.                                                 |                                  |
| 3  |                                                          | 3  |                                                           |                                  |
| 4  | FOR THE PETITIONER:                                      | 4  | MICHAEL FRANZ,                                            |                                  |
| 5  | PERKINS COIE LLP                                         | 5  | having been administered an oath, was examined and        |                                  |
| 6  | BY: BABAK TEHRANCHI, ATTORNEY AT LAW                     | 6  | testified as follows:                                     |                                  |
| 7  | BY: KRISTEN SCHUNTER, ATTORNEY AT LAW                    | 7  |                                                           |                                  |
| 8  | BY: ANDREW KLEIN, ATTORNEY AT LAW                        | 8  | EXAMINATION                                               |                                  |
| 9  | 11452 El Camino Real                                     | 9  | BY MR. ZIVOJNOVIC:                                        |                                  |
| 10 | Suite 300                                                | 10 | Q Good morning. I want to start by going over some        |                                  |
| 11 | San Diego, California 92130-2080                         | 11 | ground rules. You understand that you're under oath to    |                                  |
| 12 | TEL: (858) 720-5700                                      | 12 | tell the truth today; right?                              |                                  |
| 13 | FAX: (858) 720-5799                                      | 13 | A Yes.                                                    |                                  |
| 14 | btehranchi@perkinscoie.com                               | 14 | Q The court reporter is creating a written                |                                  |
| 15 |                                                          | 15 | transcript of today's deposition. To create a clear       |                                  |
| 16 | FOR THE PATENT OWNER:                                    | 16 | transcript, one important rule is that you let me finish  |                                  |
| 17 | QUINN EMANUEL URQUHART & SULLIVAN, LLP                   | 17 | my questions before responding, and I will let you finish |                                  |
| 18 | BY: OGNJEN ZIVOJNOVIC, ATTORNEY AT LAW                   | 18 | your answers before asking the next question. Agreed?     |                                  |
| 19 | 50 California Street                                     | 19 | A I'll do my best.                                        |                                  |
| 20 | 22nd Floor                                               | 20 | Q It is also important you give verbal responses to       |                                  |
| 21 | San Francisco, California 94111                          | 21 | my questions rather than nodding or otherwise answering   |                                  |
| 22 | TEL: (415) 875-6600                                      | 22 | nonverbally. Agreed?                                      |                                  |
| 23 | FAX: (415) 875-6700                                      | 23 | A Again, I'll do my best.                                 |                                  |
| 24 | ogizivojnovic@quinnemanuel.com                           | 24 | Q This is not intended to be a marathon; so if you        |                                  |
| 25 |                                                          | 25 | need a break, just let me know. Agreed?                   |                                  |
|    | Page 3                                                   |    | Page 5                                                    |                                  |

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| <p>1 A Yes.</p> <p>2 Q At some point, I may ask a question that you do</p> <p>3 not understand. If I do, please let me know. I'll be</p> <p>4 happy to rephrase or to try to clarify. Agreed?</p> <p>5 A Okay.</p> <p>6 Q If you answer my question without asking for</p> <p>7 clarification, however, I will assume you understood it.</p> <p>8 Agreed?</p> <p>9 A I understand what you said, yes.</p> <p>10 Q Your attorney may state objections on the record.</p> <p>11 Actually, never mind.</p> <p>12 Is there any reason at all why you cannot provide</p> <p>13 full, true, and accurate testimony today?</p> <p>14 A I don't see a reason.</p> <p>15 MR. ZIVOJNOVIC: Okay. So I would like to start</p> <p>16 by dropping into the chat a copy of Exhibit 1002 from this</p> <p>17 IPR proceeding.</p> <p>18 (Exhibit 1002 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. ZIVOJNOVIC:</p> <p>21 Q Please let me know when you've had a chance to</p> <p>22 download and review this document.</p> <p>23 A That is my declaration; is that correct?</p> <p>24 Q Yes. That will be my first question to confirm.</p> <p>25 But yes, that will be a declaration.</p> <p style="text-align: right;">Page 6</p>                                                                                                                                                     | <p>1 BY MR. ZIVOJNOVIC:</p> <p>2 Q So you should now see in your chat a copy of</p> <p>3 Exhibit 1002 from this IPR proceeding. Please let me know</p> <p>4 when you've had a chance to download and open this</p> <p>5 document. And I will just want to confirm that it is the</p> <p>6 same -- that it is, indeed, your declaration, for the</p> <p>7 record.</p> <p>8 A Okay. Let's see -- I have no idea where it</p> <p>9 downloaded to; so... Okay, there it is. Yes. It looks</p> <p>10 exactly the same. Yes. Yes, sir.</p> <p>11 Q So if you could please go to paragraph 79 in your</p> <p>12 declaration. Please let me know when you're there.</p> <p>13 A Yes.</p> <p>14 Q And in paragraph 79 you address the claim term</p> <p>15 "public cloud file store"; right?</p> <p>16 A That's what it says there, yes, sir.</p> <p>17 Q And you write, "A POSITA also would have</p> <p>18 generally understood a 'public cloud file store' to be a</p> <p>19 file store maintained on shared infrastructure, as opposed</p> <p>20 to an enterprise's private infrastructure."</p> <p>21 Do you see that?</p> <p>22 A That's what it says.</p> <p>23 Q And then you go on to write, "The Seese</p> <p>24 reference, cited in Ground 2, describes example</p> <p>25 implementations of cloud storage systems as follows:"</p> <p style="text-align: right;">Page 8</p> |
| <p>1 A Yes. So the attorneys provided me with clean</p> <p>2 copies of the declaration and the patents that I'm citing</p> <p>3 in advance of this. And so that's actually already on my</p> <p>4 computer.</p> <p>5 Q Okay. Do the documents that you have access to</p> <p>6 right now, from this IPR proceeding, include any notes</p> <p>7 from you?</p> <p>8 A No.</p> <p>9 Q Besides the documents submitted in the IPR</p> <p>10 proceeding, do you have -- do you have access to any other</p> <p>11 notes or documents related to this IPR proceeding?</p> <p>12 A So right now I have -- the documents on my</p> <p>13 computer here are the -- my declaration and the exhibits.</p> <p>14 It's missing actually the Exhibit 3 because that's the</p> <p>15 file history. It was too big to send. And I have the</p> <p>16 Institution decision, and I have the -- yeah. That's</p> <p>17 everything. Oh, and I have the declaration of Dr. Black.</p> <p>18 Q All right.</p> <p>19 MS. SCHUNTER: Ogi, should we have seen that --</p> <p>20 something come through in the chat?</p> <p>21 MR. ZIVOJNOVIC: So let me fix that. I realized</p> <p>22 I did not send it to everybody, by accident. So it's</p> <p>23 uploading again now.</p> <p>24 MS. SCHUNTER: Okay. Thanks.</p> <p>25 MR. ZIVOJNOVIC: It takes a little bit.</p> <p style="text-align: right;">Page 7</p> | <p>1 Do you see that?</p> <p>2 A I see that.</p> <p>3 Q And then quoting from Seese, you write, "There</p> <p>4 are three traditional types of cloud storage systems."</p> <p>5 Do you see that?</p> <p>6 A I see that.</p> <p>7 Q So the first type of cloud storage system would</p> <p>8 be a public -- would be public cloud storage; right?</p> <p>9 A That's what it says there.</p> <p>10 Q And a different, second type of cloud storage</p> <p>11 would be private cloud storage; right?</p> <p>12 A That's what I'm quoting from Seese, yes.</p> <p>13 Q And then the third type of cloud storage would be</p> <p>14 a hybrid cloud storage; right?</p> <p>15 A That is the -- yeah, that is what Seese -- that</p> <p>16 is what I'm quoting there, yes.</p> <p>17 Q And you quoted this -- this description --</p> <p>18 discussion from Seese; right?</p> <p>19 A Yes.</p> <p>20 Q And you agreed with Seese that there are, indeed,</p> <p>21 at least three different types of cloud storage systems;</p> <p>22 right?</p> <p>23 A This was terminology that was in use at the time.</p> <p>24 Q So it's fair to say that not every cloud file</p> <p>25 store is necessarily a public cloud file store; right?</p> <p style="text-align: right;">Page 9</p>                                                                                                    |

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| <p>1 A Well, yes, of course. So you can have -- I mean,<br/>2 obviously, we have public; we have private, at least, yes.<br/>3 <b>Q So the prior art reference just discusses a cloud<br/>4 file store without specifying a type. That doesn't mean<br/>5 it's necessarily a public cloud file store, does it?</b><br/>6 MS. SCHUNTER: Objection to form.<br/>7 THE WITNESS: Well, as I write in paragraph 79,<br/>8 even though it doesn't -- it doesn't explicitly find a<br/>9 public cloud store, it provides an example implementation<br/>10 in which -- and it uses the term, the public cloud file<br/>11 store is provided by third-party's cloud storage provider<br/>12 such as Amazon, Microsoft Azure, Google Cloud Platform,<br/>13 IBM Cloud.<br/>14 You know, a person of ordinary skill in the art<br/>15 at the time would have understood that those were fairly<br/>16 big -- you know, everyone knew them -- providers of public<br/>17 cloud storage systems.<br/>18 BY MR. ZIVOJNOVIC:<br/>19 <b>Q I'm going to try to get something even more basic<br/>20 here and seeing if we can just agree that if you see the<br/>21 words "cloud file store" without further context in the<br/>22 prior art, that doesn't mean it's describing a public<br/>23 cloud file store, does it?</b><br/>24 MS. SCHUNTER: Objection to form.<br/>25 THE WITNESS: But it's not just saying that.<br/>Page 10</p> | <p>1 A Well, since, obviously, you know, we already have<br/>2 the example implementations, you know, I -- the<br/>3 classification that I'm quoting, you know, if there's --<br/>4 there are public cloud stores, there are private cloud<br/>5 storage, and there may be things in the middle.<br/>6 <b>Q Let's go on to paragraph 85, please. Please let<br/>7 me know when you're there.</b><br/>8 A I'm there.<br/>9 <b>Q Now, here you write, "Burdett did not explicitly<br/>10 describe natively mounting the public file store."<br/>11 Do you see that?</b><br/>12 A I see that.<br/>13 <b>Q And then you go on to write, "FortiSandbox<br/>14 disclosed this operation."<br/>15 Do you see that?</b><br/>16 A I see that.<br/>17 So is it fair to say that in your Ground 1,<br/>18 obviousness combination, you're relying on FortiSandbox<br/>19 for the claim limitation natively mounting the public file<br/>20 store.<br/>21 MS. SCHUNTER: Objection to form.<br/>22 THE WITNESS: Can you repeat your question,<br/>23 please?<br/>24 BY MR. ZIVOJNOVIC:<br/>25 <b>Q In your obviousness combination for Ground 1, am<br/>Page 12</b></p>                                                                                                                                                                                                                                              |
| <p>1 It's actually using the term "third-party cloud server" --<br/>2 cloud -- "third-party cloud storage service provider,"<br/>3 such as Amazon, and then it enumerates several well-known<br/>4 public cloud storage providers.<br/>5 BY MR. ZIVOJNOVIC:<br/>6 <b>Q And that is a quote from the '856 patent;<br/>7 correct?</b><br/>8 A Well, the Burdett patent, as I write in 80:<br/>9 "Like the '856 patent, Burdett describes its cloud<br/>10 infrastructure, including the cloud data store, as being<br/>11 implementable 'with any suitable cloud service and related<br/>12 storage system,' such as" -- and then Amazon S3 is<br/>13 actually elaborated in that patent, and then, "or<br/>14 Microsoft Azure, CenturyLink Cloud, VMware, Rackspace,<br/>15 Joyent or Google or other cloud infrastructure,<br/>16 infrastructure-as-a-service providers."<br/>17 So, you know, it mentions some of the exact same<br/>18 well-known public cloud service providers, you know,<br/>19 almost even the same ordering as the other patent.<br/>20 <b>Q So I'm just asking more generally -- I want to<br/>21 make sure we're on the same page -- that the words "cloud<br/>22 file store" do not -- let me start over.</b><br/>23 <b>But we can agree that not every cloud-based<br/>24 storage system is necessarily a public cloud file store;<br/>25 right?</b><br/>Page 11</p>                          | <p>1 <b>I correct that you're relying on FortiSandbox for the<br/>2 claim limitation natively mounting the public file store?</b><br/>3 MS. SCHUNTER: Same objection.<br/>4 THE WITNESS: It's actually the combination --<br/>5 right? -- that I'm relying on. So the -- the FortiSandbox<br/>6 discloses natively mounting it. In particular, it<br/>7 describes how to mount a network store including CIFS and<br/>8 NFS, different versions, and so on. And -- and the -- you<br/>9 know, the -- you know, that would have taught a person of<br/>10 ordinary skills how to configure a device to -- to be able<br/>11 to mount a -- a network share to do these scanning<br/>12 operations.<br/>13 So it's the combination that is creating the<br/>14 functionality of natively mounting the public cloud data<br/>15 store on a network security device.<br/>16 BY MR. ZIVOJNOVIC:<br/>17 <b>Q So you are not contending, then, that<br/>18 FortiSandbox alone discloses natively mounting a public<br/>19 file store; is that correct?</b><br/>20 A So FortiSandbox discloses natively mounting a<br/>21 network share, and Burdett discloses a public cloud store.<br/>22 And the combination would teach a person of ordinary skill<br/>23 in the art at the time to natively mount a public cloud<br/>24 store.<br/>25 <b>Q But just to be clear, FortiSandbox -- let me<br/>Page 13</b></p> |

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| <p>1 start over.</p> <p>2 Just to be clear, you are not contending that</p> <p>3 FortiSandbox discloses that its network share is a public</p> <p>4 file store, are you?</p> <p>5 MS. SCHUNTER: Objection to form.</p> <p>6 THE WITNESS: The FortiSandbox is -- is able to</p> <p>7 mount a network store selected from multiple mount types</p> <p>8 including CIFS and multiple versions of network file</p> <p>9 system. A person of ordinary skill would have understood</p> <p>10 that these are protocols that I use to access files from</p> <p>11 cloud storage. I'm done.</p> <p>12 BY MR. ZIVOJNOVIC:</p> <p>13 Q But you're not -- so let me start -- let me ask</p> <p>14 again then.</p> <p>15 So you're saying that FortiSandbox teaches user</p> <p>16 protocols that can be used to mount cloud storage; right?</p> <p>17 A FortiSandbox teaches protocol -- protocols that</p> <p>18 can be used to mount -- natively mount file storage.</p> <p>19 Q But do you agree that FortiSandbox, the</p> <p>20 publication itself, does not disclose that the cloud</p> <p>21 storage described in this publication is, in fact, public</p> <p>22 cloud storage?</p> <p>23 MS. SCHUNTER: Objection to form.</p> <p>24 THE WITNESS: So I mean, I can go and search for</p> <p>25 the term "public" in the FortiSandbox document. I -- I --</p> <p style="text-align: right;">Page 14</p>                                                                                                                | <p>1 use these services using long-established, prior-existing</p> <p>2 protocols that came from the word -- before public file</p> <p>3 storage.</p> <p>4 Q I want to make sure I understand. I want to</p> <p>5 break it down a little bit.</p> <p>6 So Amazon's public file store system was capable</p> <p>7 of native mounting using CIFS. Is that your testimony?</p> <p>8 MS. SCHUNTER: Objection to form.</p> <p>9 THE WITNESS: I am saying that, to the best of my</p> <p>10 knowledge, Amazon's public cloud system supported CIFS.</p> <p>11 BY MR. ZIVOJNOVIC:</p> <p>12 Q And sitting here today, you do not know one way</p> <p>13 or the other if other examples of public file store</p> <p>14 systems at the time also supported CIFS or a version of</p> <p>15 NFS. Is that fair?</p> <p>16 A I would say I would be surprised if they didn't,</p> <p>17 but I -- Amazon is the one that I actually looked into and</p> <p>18 confirmed that at the time they did announce or had</p> <p>19 announced CIFS support.</p> <p>20 Q All right. And it is your understanding, thus,</p> <p>21 that a physical FortiSandbox system could be used, via at</p> <p>22 least CIFS, to mount an Amazon public file store system;</p> <p>23 correct?</p> <p>24 MS. SCHUNTER: Objection. Form.</p> <p>25 THE WITNESS: I have never touched a physical</p> <p style="text-align: right;">Page 16</p>                                                                                                                                                                              |
| <p>1 I -- as far as I can recall right now, without reviewing</p> <p>2 the original document, I believe that FortiSandbox is</p> <p>3 silent on -- doesn't use the word "public." So it just</p> <p>4 talks about cloud storage data.</p> <p>5 BY MR. ZIVOJNOVIC:</p> <p>6 Q The mount types described in FortiSandbox are</p> <p>7 CIFS and multiple versions of NFS; right?</p> <p>8 A That's what it says.</p> <p>9 Q Can you mount a public file store using solely</p> <p>10 the CIFS or an NFS protocol?</p> <p>11 A I don't know what you mean by "solely," but I</p> <p>12 understand that, you know, at the time of the alleged</p> <p>13 invention, several of these cloud -- public cloud storage</p> <p>14 providers actually created compatibility solutions. I</p> <p>15 mean, obviously, they weren't market share.</p> <p>16 And so -- so, for example, Amazon's cloud</p> <p>17 actually supported CIFS mounts because, of course, you</p> <p>18 know, there are lots of existing people who would like to</p> <p>19 migrate to a public cloud; so it makes sense.</p> <p>20 I know this for the Amazon Cloud for sure. I</p> <p>21 would very much assume that Microsoft for their Azure</p> <p>22 product would be offering a backward compatibility</p> <p>23 solution, especially since that's their own protocol.</p> <p>24 And so yes, these cloud storage providers did</p> <p>25 offer backward compatibility solutions so that you could</p> <p style="text-align: right;">Page 15</p> | <p>1 FortiSandbox system. I -- I do not know the specifics of</p> <p>2 the physical FortiSandbox system, but a person of ordinary</p> <p>3 skill would have understood that the FortiSandbox system</p> <p>4 is able to mount CIFS on the one hand, and would have</p> <p>5 understood that, you know, the Amazon Cloud could be used</p> <p>6 as a CIFS storage system, and that's sufficient; right?</p> <p>7 The specifics of the FortiSandbox, hardware box, are not</p> <p>8 material for the -- for the combination here.</p> <p>9 BY MR. ZIVOJNOVIC:</p> <p>10 Q Now, the FortiSandbox publication cited in your</p> <p>11 Ground 1 does not discuss Amazon public file store; right?</p> <p>12 A It does not, as far as I know.</p> <p>13 Q The FortiSandbox publication does not disclose</p> <p>14 that Amazon public file store, or any other file store,</p> <p>15 public file store, supports CIFS or NFS; right?</p> <p>16 A The FortiSandbox is a manual that's for a -- for</p> <p>17 a specific device. I'm saying a person of ordinary skill</p> <p>18 would have known about these public cloud storage</p> <p>19 providers and would have understood that.</p> <p>20 So CIFS and NFS were the most common file</p> <p>21 protocols at the time. You know, CIFS might still be.</p> <p>22 You know, we're talking about a person of ordinary skill</p> <p>23 in the art with experience. You know, they would have</p> <p>24 come across this, and they would know this quite</p> <p>25 intimately, these protocols.</p> <p style="text-align: right;">Page 17</p> |

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| <p>1 Q But I'm just asking specifically about the<br/>2 FortiSandbox publication. The publication itself does not<br/>3 disclose a public file store that supports CIFS or NFS,<br/>4 does it?</p> <p>5 MS. SCHUNTER: Objection. Form.</p> <p>6 THE WITNESS: The publication discusses that this<br/>7 is a box that speaks CIFS and NFS, and a person of<br/>8 ordinary skill would have understood that it can, hence,<br/>9 speak to any other end that speaks CIFS and NFS.</p> <p>10 And if the person of ordinary skill would have<br/>11 understood that Amazon speaks CIFS in their cloud storage<br/>12 solution, they would have understood that, hence, the box<br/>13 that speaks CIFS can speak to Amazon's cloud storage<br/>14 system using CIFS because that is their common language.</p> <p>15 BY MR. ZIVOJNOVIC:</p> <p>16 Q I'm not asking about outside knowledge. I'm<br/>17 asking just about the actual disclosure of the<br/>18 FortiSandbox publication. Do you understand -- do you<br/>19 have that -- can you keep that in mind?</p> <p>20 A I think I answered that question. So the<br/>21 FortiSandbox publication says this is a device that speaks<br/>22 these languages and can do native mounts in these<br/>23 protocols to any network share name that speaks these<br/>24 protocols. That's what it says.</p> <p>25 Q And it doesn't identify any public file stores --</p> <p style="text-align: right;">Page 18</p> | <p>1 BY MR. ZIVOJNOVIC:</p> <p>2 Q Yeah, one second. Let me just make sure I got<br/>3 one thing right.</p> <p>4 You do not contend that the Burdett patent itself<br/>5 discloses that Amazon's S3 services support CIFS or NFS,<br/>6 do you?</p> <p>7 MS. SCHUNTER: Same objection.</p> <p>8 THE WITNESS: Burdett discloses, you know, a<br/>9 suitable cloud service and related storage system and just<br/>10 lists -- yeah it doesn't -- it doesn't -- you know, it<br/>11 doesn't list all the features of commercial offerings by<br/>12 other people, no.</p> <p>13 A person of ordinary skill in the art would have<br/>14 understood that, in order to be reasonably usable, you<br/>15 know, many of these existing public cloud storage systems<br/>16 would actually need to speak, you know, languages that<br/>17 were compatible with things that were already out there.<br/>18 They wanted customers, market share; right?</p> <p>19 So a person of ordinary skill in the art would<br/>20 have understood that, you know, many of these services<br/>21 spoke available protocols that were used at the time.</p> <p>22 BY MR. ZIVOJNOVIC:</p> <p>23 Q When you say at that time, what time frame are<br/>24 you referring to?</p> <p>25 A I believe it was September 2018.</p> <p style="text-align: right;">Page 20</p>                                                                                                  |
| <p>1 let me start over.</p> <p>2 And the FortiSandbox application does not itself<br/>3 identify any public file stores that speak CIFS or NFS,<br/>4 does it?</p> <p>5 A It doesn't need to.</p> <p>6 Q And then if we go back to Burdett. What -- I<br/>7 believe in paragraph 80 you stated that one of the cloud<br/>8 storage systems described in Burdett is Amazon S3; right?</p> <p>9 A In paragraph 80 I say, "Burdett described its<br/>10 cloud infrastructure, including the cloud data store, as<br/>11 being implementable 'with any suitable cloud service and<br/>12 related storage system,'" and then it does mention a few<br/>13 examples.</p> <p>14 And it -- you can see the Amazon S3 is not in<br/>15 quotes there because it's actually longer in the patent.<br/>16 I would have to bring up the patent to look at it.</p> <p>17 But yeah, Amazon S3 is an abbreviation for<br/>18 something like simple storage solutions, something like<br/>19 that. And so it is used as an example.</p> <p>20 Q Now, you do not contend, do you, that the Burdett<br/>21 patent itself discloses that Amazon's S3 services support<br/>22 CIFS or NFS, do you?</p> <p>23 MS. SCHUNTER: Objection to form.</p> <p>24 THE WITNESS: Can you ask the question again<br/>25 exactly how you phrased it, please?</p> <p style="text-align: right;">Page 19</p>                                                                                       | <p>1 Q And that's the priority date for the '856 patent;<br/>2 right?</p> <p>3 A That is the -- I believe, yes.</p> <p>4 Q You did not analyze, did you, when Amazon or<br/>5 other public cloud storage providers first began<br/>6 supporting CIFS or NFS, did you?</p> <p>7 A I did not begin to -- I did not analyze when<br/>8 Amazon and other cloud providers first began to support<br/>9 these things; however, I did do a quick Google search to<br/>10 confirm that Amazon, in particular, supported CIFS prior<br/>11 to September 2018.</p> <p>12 Q You don't know -- let me start over.</p> <p>13 So you did a Google search and found additional<br/>14 other publications that told you that Amazon supported<br/>15 CIFS in 2018; right?</p> <p>16 A No, sir. I was pretty -- you know, from -- from<br/>17 my -- from my background, I was aware of these cloud<br/>18 storage services, and I recall that, out of curiosity, I<br/>19 did a Google search just to make sure that my recollection<br/>20 wasn't -- wasn't wrong and after that search confirmed<br/>21 that, yes, Amazon did support CIFS at the time. That --<br/>22 that was -- that pleased me, and you know, I did not<br/>23 believe that I needed to further corroborate that with any<br/>24 written documents because the case was so clear.</p> <p>25 So if you look for NFS support, I'm sure you are</p> <p style="text-align: right;">Page 21</p> |

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| <p>1 going to find even more because that was the previously<br/>2 most common network storage protocol, and I actually<br/>3 believe that NFS means something to that effect, the<br/>4 abbreviation.</p> <p>5 <b>Q But Burdett itself does not teach one way or the<br/>6 other whether public file stores described therein support<br/>7 CIFS or NFS, does it?</b></p> <p>8 A Burdett describes its cloud infrastructure as<br/>9 being implementable with any suitable cloud service and<br/>10 related storage system, and then it enumerates a few of<br/>11 them.</p> <p>12 A person of ordinary skill, you know, and a<br/>13 person that -- that -- I am, you know, defining in my<br/>14 expert report, has some experience with networking. So<br/>15 they would understand that, you know, these cloud<br/>16 services -- you don't start a cloud service and expect<br/>17 people to use it if they have to rewrite all their<br/>18 existing software; right?</p> <p>19 So the service comes on and wants to be a drop-in<br/>20 replacement for an existing solution; so, of course, these<br/>21 services are going to speak protocols that are already in<br/>22 use.</p> <p>23 <b>Q Burdett's public cloud storage systems don't<br/>24 necessarily support native mounting, do they?</b></p> <p>25 MS. SCHUNTER: Objection to form.</p> <p style="text-align: right;">Page 22</p>                                                                                | <p>1 BY MR. ZIVOJNOVIC:</p> <p>2 <b>Q Let me ask -- let me start over.</b></p> <p>3 <b>We agree that a public file -- let me start over.</b></p> <p>4 A public file -- let me start over for a third<br/>5 time.</p> <p>6 A public cloud file storage needs to be able to<br/>7 communicate with end-user devices; right?</p> <p>8 A Not just end-user devices, but it needs to<br/>9 communicate with the outside world, yes.</p> <p>10 <b>Q And there's different protocols that a public<br/>11 cloud file storage can use to communicate with the outside<br/>12 world; right?</b></p> <p>13 A There are different protocols, yes.</p> <p>14 <b>Q Not all protocols usable by public cloud file<br/>15 storage to communicate with the outside world necessarily<br/>16 qualify as native mounting, do they?</b></p> <p>17 MS. SCHUNTER: Objection to form.</p> <p>18 THE WITNESS: I don't know, but -- but<br/>19 specifically, CIFS and NFS do, and a person of ordinary<br/>20 skill would have read the FortiSandbox reference to<br/>21 understand that you could use these two protocols to<br/>22 natively mount, and they would also have understood that<br/>23 some of these commercial public clouds use exactly the<br/>24 same protocols to speak to the outside world.</p> <p>25 And then when you put one and one together, you</p> <p style="text-align: right;">Page 24</p>                                                             |
| <p>1 THE WITNESS: Burdett's services are -- were --<br/>2 the ones that he's -- he's citing here are widely used<br/>3 cloud storage services, and, you know, the ones that he's<br/>4 listing are public cloud service -- cloud storage<br/>5 services. And he -- he actually uses -- yeah, service<br/>6 providers; right?</p> <p>7 So a person of ordinary skill would have<br/>8 understood that, you know, these speak certain protocols,<br/>9 and the common protocols at the time were included, the<br/>10 dialects of NFS and CIFS. And a person of ordinary skill<br/>11 in the art would then have understood the -- what was it<br/>12 called? -- the reference to the -- the FortiSandbox to<br/>13 understand that teaches native mounting.</p> <p>14 And on this end, you have a box that speaks a<br/>15 protocol; on this end, you have a cloud provider that<br/>16 speaks the same protocol for a reason, because they<br/>17 want -- they want markets, they want people to use this.<br/>18 And they can speak together, and, hence, they can do the<br/>19 function using the common language. And that function in<br/>20 this case is native mounting.</p> <p>21 BY MR. ZIVOJNOVIC:</p> <p>22 <b>Q But a public cloud file storage doesn't<br/>23 necessarily need to support native mounting, does it?</b></p> <p>24 MS. SCHUNTER: Objection to form.</p> <p>25 THE WITNESS: Can you rephrase that question?</p> <p style="text-align: right;">Page 23</p> | <p>1 get the idea that, yes, you can natively mount that public<br/>2 cloud file storage to do these operations.</p> <p>3 BY MR. ZIVOJNOVIC:</p> <p>4 <b>Q Can we agree that on the basic principle that not<br/>5 every communication protocol is necessarily -- let me<br/>6 start over.</b></p> <p>7 <b>Can we agree, though, that not every<br/>8 communication protocol used by public cloud file storage<br/>9 to communicate with the outside world qualifies as native<br/>10 mounting?</b></p> <p>11 MS. SCHUNTER: Objection to form.</p> <p>12 THE WITNESS: I could, of course, come and design<br/>13 one right now, a -- you know, a protocol that is designed<br/>14 specifically so you can't do native mounting; right? I<br/>15 could -- I might be doing that, but that's just a futile<br/>16 exercise.</p> <p>17 You know, the protocols that a person of ordinary<br/>18 skill in the art would have known at the time -- we're<br/>19 talking about someone who has some networking experience.<br/>20 The commonly used protocols that were the lingua franca of<br/>21 networking, they include protocols that, of course, cloud<br/>22 providers would be commercially incentivized to support;<br/>23 right? You want to speak the language that everybody else<br/>24 speaks because you want to offer your services, and your<br/>25 services require that someone can talk to you.</p> <p style="text-align: right;">Page 25</p> |

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| <p>1           So a person of ordinary skill would have</p> <p>2 understood, you know, oh, NFS, CIFS, probably the two most</p> <p>3 commonly used protocols on the internet, and they would</p> <p>4 know that this -- these protocols would come with this</p> <p>5 functionality, and that functionality that came as a</p> <p>6 package with CIFS and NFS. And that included mounting.</p> <p>7 BY MR. ZIVOJNOVIC:</p> <p>8       <b>Q   Do you consider FTP a type of native mounting?</b></p> <p>9       A   FTP is a file transfer protocol. That's -- I</p> <p>10 would have to -- I have not analyzed FTP in detail. I</p> <p>11 could do that if you give me some time and you give me the</p> <p>12 resources to do that. I don't know if it includes the</p> <p>13 capability for that. And, you know, there's lots of</p> <p>14 protocols for certain -- for different purposes. I</p> <p>15 believe FTP's purpose was slightly different from that of</p> <p>16 CIFS and NFS.</p> <p>17       <b>Q   And a public cloud file storage system could use</b></p> <p>18 <b>FTP to communicate with the outside world, could it not?</b></p> <p>19       A   I am sure it could use a lot of protocols in</p> <p>20 parallel; however, you know, if you are trying to build a</p> <p>21 system that is commercially successful, you'd probably</p> <p>22 have to support protocols that allow end users and --</p> <p>23 and -- and, you know -- to actually accomplish something</p> <p>24 useful; right? So it's probably -- you probably would</p> <p>25 like to support the most commonly used protocols at the</p> <p style="text-align: right;">Page 26</p> | <p>1           Do you see that?</p> <p>2       A   I see that I wrote that, yes.</p> <p>3       <b>Q   And then in paragraph 93 you go on to write,</b></p> <p>4 <b>"Based on the scan, Burdett's scanning service could also</b></p> <p>5 <b>prevent the file from being distributed if the scan</b></p> <p>6 <b>determined that the file contained malware, disruptive</b></p> <p>7 <b>computer instructions, exploits, or content that may</b></p> <p>8 <b>compromise infrastructure."</b></p> <p>9       <b>Do you see that?</b></p> <p>10       A   I see that I wrote that, yes.</p> <p>11       <b>Q   All right. So is it fair to say that for the</b></p> <p>12 <b>network security device claim element, you're pointing to</b></p> <p>13 <b>Burdett's scanning service?</b></p> <p>14           MS. SCHUNTER: Object to the form.</p> <p>15           THE WITNESS: Can you ask the question, please?</p> <p>16 BY MR. ZIVOJNOVIC:</p> <p>17       <b>Q   Of course. Is it fair to say that for the</b></p> <p>18 <b>network security device claim element, you're pointing to</b></p> <p>19 <b>Burdett's scanning service?</b></p> <p>20       A   So the scanning service gives you the information</p> <p>21 of whether or not, you know, the -- it just tells you</p> <p>22 whether or not something is in there; right? But there's</p> <p>23 more -- there's more there; right? There's a security</p> <p>24 manager that has policies, et cetera.</p> <p>25       <b>Q   Let me break down the question further.</b></p> <p style="text-align: right;">Page 28</p>                        |
| <p>1 time.</p> <p>2       <b>Q   Do you know if Amazon S3 supported CFS -- let me</b></p> <p>3 <b>start over. I need to get the right acronym.</b></p> <p>4           <b>Do you know if Amazon S3 storage supported CIFS</b></p> <p>5 <b>or NFS from the day the service launched?</b></p> <p>6       A   I have no idea. I don't believe that is relevant</p> <p>7 here. What is relevant is that a person of ordinary skill</p> <p>8 in September 2018 would have understood that these</p> <p>9 well-known, common protocols were supported by some cloud</p> <p>10 file service providers.</p> <p>11       <b>Q   If you could please go now to paragraph 92 in</b></p> <p>12 <b>your report. Please let me know when you're there.</b></p> <p>13       A   I am there.</p> <p>14       <b>Q   And here, you're addressing a limitation that</b></p> <p>15 <b>requires, among other things, "causes the network security</b></p> <p>16 <b>device to make a determination regarding whether the</b></p> <p>17 <b>untrusted file is a clean file."</b></p> <p>18           <b>Do you see that?</b></p> <p>19       A   I see that.</p> <p>20       <b>Q   And then below the quote from the claim language,</b></p> <p>21 <b>you write, "Burdett disclosed the scanning service</b></p> <p>22 <b>included functionality (e.g., as part of an untrusted file</b></p> <p>23 <b>processing module) to apply one or more security checks to</b></p> <p>24 <b>an untrusted file such as an anti-malware scan or an</b></p> <p>25 <b>antivirus scan)."</b></p> <p style="text-align: right;">Page 27</p>                                                                       | <p>1           <b>Am I correct that you're relying on Burdett's</b></p> <p>2 <b>disclosure for the claim element network security device?</b></p> <p>3           MS. SCHUNTER: Objection to form.</p> <p>4           THE WITNESS: Burdett discloses that -- discloses</p> <p>5 the -- that there's a -- both, that there is a -- an</p> <p>6 entity that -- that does the scanning service, and then</p> <p>7 also the security manager that then -- then acts on the</p> <p>8 files after they have been scanned to, for example, deny</p> <p>9 access to them to users if they are not clean.</p> <p>10 BY MR. ZIVOJNOVIC:</p> <p>11       <b>Q   So my question, I think, is actually simpler than</b></p> <p>12 <b>that. It is, are you relying on Burdett's disclosure for</b></p> <p>13 <b>the network security device claim element?</b></p> <p>14           MS. SCHUNTER: Objection to form.</p> <p>15           THE WITNESS: I'm relying on two references for</p> <p>16 this, no?</p> <p>17 BY MR. ZIVOJNOVIC:</p> <p>18       <b>Q   So I just want to understand your obviousness</b></p> <p>19 <b>combination here. What do you point to for the claimed</b></p> <p>20 <b>network security device?</b></p> <p>21       A   So -- so the device is the -- the device that</p> <p>22 runs the services that Burdett is -- is teaching; right?</p> <p>23 So Burdett says -- talks about virtual machines within the</p> <p>24 cloud infrastructure that run services.</p> <p>25       <b>Q   So for the network security device claim element,</b></p> <p style="text-align: right;">Page 29</p> |

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| <p>1 you are pointing to Burdett's virtual machines running in<br/>2 Burdett's cloud infrastructure; is that right?<br/>3 MS. SCHUNTER: Objection to form.<br/>4 THE WITNESS: Can you rephrase the question,<br/>5 please? Or restate the question.<br/>6 BY MR. ZIVOJNOVIC:<br/>7 Q Let me restate it, stop there, and then I can<br/>8 rephrase if necessary.<br/>9 For the network security device claim element,<br/>10 you're pointing to Burdett's virtual machines running in<br/>11 Burdett's cloud infrastructure; is that correct?<br/>12 A So I'm referring to services that are running in<br/>13 some infrastructure. I don't -- I'm not sure that virtual<br/>14 machines are necessary -- necessary, but yes, they're<br/>15 services that are running on the infrastructure.<br/>16 Q Okay. So let me rephrase the question. That<br/>17 might clear it up.<br/>18 For the network security device claim element,<br/>19 you're pointing to Burdett's services running in cloud<br/>20 infrastructure 302; is that correct?<br/>21 MS. SCHUNTER: Objection to form.<br/>22 THE WITNESS: Well -- no. I'm talking about --<br/>23 so 302 is the infrastructure, but there's -- you can see<br/>24 Burdett has quite a complicated setup. There's a scanning<br/>25 service; there's a security manager, you know. All these<br/>Page 30</p> | <p>1 BY MR. ZIVOJNOVIC:<br/>2 Q I mean, that's in the claims. My question is<br/>3 what is the -- what is the network security device in<br/>4 Burdett?<br/>5 MS. SCHUNTER: Objection to form.<br/>6 THE WITNESS: So in the combination, it is the<br/>7 FortiSandbox system that, you know, would be a network<br/>8 security device specifically that does this -- that does<br/>9 this -- this mounting and then does the scan. It's the<br/>10 combination that -- that -- that teaches the obviousness<br/>11 of these claims.<br/>12 BY MR. ZIVOJNOVIC:<br/>13 Q In paragraphs 94 through 97, in particular -- let<br/>14 me start over.<br/>15 So is it your testimony that Burdett's scanning<br/>16 service is not the claimed network security device?<br/>17 MS. SCHUNTER: Objection to form.<br/>18 THE WITNESS: Burdett teaches a service that does<br/>19 all these functions. And -- and yeah. And so all<br/>20 these -- all these services are running on some device.<br/>21 They have to. Software needs to run on a processor to<br/>22 execute.<br/>23 BY MR. ZIVOJNOVIC:<br/>24 Q So do you or do you not contend that Burdett's<br/>25 services disclosed the claimed network security device?<br/>Page 32</p>                                                                                                 |
| <p>1 are software programs that run somewhere; right? They<br/>2 necessarily need to run somewhere; otherwise, they -- the<br/>3 software couldn't run. And the security devices -- the<br/>4 process that executes these instructions.<br/>5 BY MR. ZIVOJNOVIC:<br/>6 Q Can the device in the '856 patent claims be a<br/>7 virtual machine?<br/>8 MS. SCHUNTER: Objection to form.<br/>9 THE WITNESS: I think I would need some time to<br/>10 analyze that question right now.<br/>11 BY MR. ZIVOJNOVIC:<br/>12 Q But I'm at least correct that it is your position<br/>13 that the claim element network security device is met<br/>14 because cloud infrastructure 302 necessarily includes<br/>15 processors executing the services disclosed in Burdett?<br/>16 MS. SCHUNTER: Objection to form.<br/>17 THE WITNESS: So the device is what is protecting<br/>18 the enterprise network. And so -- that's it.<br/>19 Now, we have the storage device, and we have<br/>20 processors that are coupled to the non-transitory storage<br/>21 device, and those are the processors that execute the<br/>22 routines. And then we have the network security device<br/>23 that is protecting the enterprise network. And so the<br/>24 device is the entity that is protecting the enterprise<br/>25 network.<br/>Page 31</p>                            | <p>1 A I mean, obviously, there is a device in -- in --<br/>2 in Burdett that executes these -- these functions. There<br/>3 is a -- there is a service that is -- that is -- that is<br/>4 doing these things, in the cloud infrastructure.<br/>5 Q And is that service in Burdett's cloud<br/>6 infrastructure, as you say necessarily runs on hardware,<br/>7 is that a network security device?<br/>8 MS. SCHUNTER: Objection to form.<br/>9 THE WITNESS: It is the network security device<br/>10 that -- that, you know -- it is of these claims, yes.<br/>11 BY MR. ZIVOJNOVIC:<br/>12 Q And in your obviousness combination, am I correct<br/>13 that you are applying the teachings of FortiSandbox to<br/>14 Burdett's alleged network security device?<br/>15 MS. SCHUNTER: Objection to form.<br/>16 THE WITNESS: So in the combination of Burdett<br/>17 and FortiSandbox, that would enable a network security<br/>18 device to scan files after natively mounting a cloud<br/>19 storage repository.<br/>20 BY MR. ZIVOJNOVIC:<br/>21 Q Again, I'm just trying to understand your<br/>22 obviousness combination here. Are you taking -- am I<br/>23 correct that you're taking the teachings of FortiSandbox<br/>24 and applying them to Burdett's scanning service to do the<br/>25 native mounting?<br/>Page 33</p> |

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| <p>1 A No. I'm taking -- I am taking the idea of</p> <p>2 doing -- having a scanning service that might operate on a</p> <p>3 public cloud and -- from Burdett, that has these</p> <p>4 functions, and I am -- a person of ordinary skill would</p> <p>5 learn from FortiSandbox that you could do all this after</p> <p>6 natively mounting a cloud repository.</p> <p>7 So it is the combination that gives you scanning</p> <p>8 for malware on files in a natively mounting -- mounted</p> <p>9 public cloud repository.</p> <p>10 Q So I am -- I think we've been going for about an</p> <p>11 hour. I'm about to move on to a slightly different topic</p> <p>12 and would propose we take a break. Now would be a</p> <p>13 convenient time. Up to you, of course?</p> <p>14 A Okay. How long do you want to take a break?</p> <p>15 Q Let's go off the record first.</p> <p>16 A Okay.</p> <p>17 (A brief recess was taken.)</p> <p>18 BY MR. ZIVOJNOVIC:</p> <p>19 Q If you could please go to paragraph 69 of your</p> <p>20 report.</p> <p>21 A Okay.</p> <p>22 Q In paragraph 69 and 70, you present your general</p> <p>23 motivation to combine Burdett and FortiSandbox; right?</p> <p>24 A Correct.</p> <p>25 Q The motivation to combine paragraph 69 and 70 is</p> <p style="text-align: right;">Page 34</p>                                                                                                                                                                                                          | <p>1 BY MR. ZIVOJNOVIC:</p> <p>2 Q The motivation to combine in paragraph 69 and 70</p> <p>3 is not specifically any -- is not specifically addressing</p> <p>4 any motivation to use native mounting, is it?</p> <p>5 A I mean, it's the other way around. So you have</p> <p>6 this -- you have this device that is -- that can be</p> <p>7 deployed within an enterprise network infrastructure. And</p> <p>8 the interesting thing is that it can -- you can do these</p> <p>9 things via NFS and CIFS. And you also have this service</p> <p>10 that does these things that are very nice to have because</p> <p>11 malware was a real problem at the time.</p> <p>12 And so by performing these things that the</p> <p>13 service does, you know, using the FortiSandbox system, you</p> <p>14 actually get the best of both worlds, most importantly as</p> <p>15 I quote here, it would have enabled an enterprise to</p> <p>16 preserve privacy of the enterprise's --</p> <p>17 (Reporter interruption.)</p> <p>18 THE WITNESS: It would have enabled an enterprise</p> <p>19 to preserve the privacy of the enterprise's files stored</p> <p>20 within a cloud storage system while ensuring that users</p> <p>21 within the enterprise cannot access malicious files.</p> <p>22 So that leads to a combination with a reasonable</p> <p>23 expectation of success.</p> <p>24 BY MR. ZIVOJNOVIC:</p> <p>25 Q Let me move to a different topic for a little</p> <p style="text-align: right;">Page 36</p> |
| <p>1 not specifically addressing any motivation to add</p> <p>2 FortiSandbox's native mounting to Burdett, is it?</p> <p>3 MS. SCHUNTER: Objection to form.</p> <p>4 THE WITNESS: So -- so during the break, I</p> <p>5 actually had a quick look at this, and I think the</p> <p>6 paragraph that under pressure I couldn't find quickly</p> <p>7 enough was paragraph 88, where I write, "A person of</p> <p>8 ordinary skill would have found it obvious to configure a</p> <p>9 device like the FortiSandbox system (a network security</p> <p>10 device) to perform at least some of the operations</p> <p>11 conducted by Burdett's scanning service, since this would</p> <p>12 have been a combination of prior art elements according to</p> <p>13 known methods" (inaudible).</p> <p>14 (Reporter interruption.)</p> <p>15 THE WITNESS: "...scanning service, since this</p> <p>16 would have been a combination of prior art elements</p> <p>17 according to known methods to yield predictable results."</p> <p>18 So the person of ordinary skills in the art would</p> <p>19 have understood that the service that Burdett describes</p> <p>20 has all these nice-to-have features and would have been</p> <p>21 able to configure the FortiSandbox device to perform at</p> <p>22 least some of these operations. That is -- that is what</p> <p>23 the combination is here.</p> <p>24 And, you know, the motivation -- can you ask your</p> <p>25 question again, please?</p> <p style="text-align: right;">Page 35</p> | <p>1 bit. Could you please go to paragraph 96 of your report.</p> <p>2 Let me know when you're there.</p> <p>3 A I'm there now.</p> <p>4 Q In paragraph 96, you write, "In light of</p> <p>5 Burdett's disclosure of at least moving a file to control</p> <p>6 access by applications, it would have been obvious to copy</p> <p>7 a clean file to a second repository that is accessible to</p> <p>8 the applications."</p> <p>9 Do you see that?</p> <p>10 A I see that.</p> <p>11 Q So Burdett discloses moving a file to control</p> <p>12 access; right?</p> <p>13 A I believe that's what it does, yes.</p> <p>14 Q And your position is that Burdett renders obvious</p> <p>15 copying a file to control access; is that right?</p> <p>16 A I think a person of ordinary skill would have</p> <p>17 found it obvious that moving and copying are very closely</p> <p>18 related, and actually, depending on which level of the</p> <p>19 software stack you look at things, one sometimes uses</p> <p>20 function of the other; right?</p> <p>21 When you are moving a file from one physical</p> <p>22 storage medium to another, you actually first need to copy</p> <p>23 it and then delete the original, which doesn't actually</p> <p>24 typically erase the bits but simply changes a directory</p> <p>25 entry.</p> <p style="text-align: right;">Page 37</p>                                                                                                                                       |

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| <p>1           Whereas on the other hand, in many file systems</p> <p>2   that have copy-on-write, when you make a copy, you</p> <p>3   actually also don't move the physical bits, but you create</p> <p>4   a second directory entry that points to the same storage</p> <p>5   blocks; and only when you modify the data is the actual</p> <p>6   physical copy created where the two differ.</p> <p>7           So at the file system level, copying and moving</p> <p>8   might entail copying and/or moving at the bit level.</p> <p>9       <b>Q   So let's break that down. Do you agree that,</b></p> <p>10   <b>conceptually, moving files is not synonymous with the</b></p> <p>11   <b>claimed copying of files?</b></p> <p>12           MS. SCHUNTER: Objection to form.</p> <p>13           THE WITNESS: So the interesting thing is that</p> <p>14   the '856 patent also used the term "move," for example, in</p> <p>15   one of the initial figures that -- that, you know, it</p> <p>16   actually talks about moving to the other repository.</p> <p>17           What matters in this, for the functionality of</p> <p>18   this, is that at the end of the process, the clean file is</p> <p>19   in the second repository of the -- the repository of the</p> <p>20   clean files. So the difference between copying and moving</p> <p>21   is whether there still is a copy of that same file in the</p> <p>22   original dirty repository.</p> <p>23           But the end result for the functionality here</p> <p>24   we're interested in is simply after the process is done,</p> <p>25   there's a clean file in the clean file repository.</p> <p style="text-align: right;">Page 38</p> | <p>1                                           (Exhibit 1001 was marked for</p> <p>2                                           identification.)</p> <p>3   BY MR. ZIVOJNOVIC:</p> <p>4       <b>Q   If you could please go to the language of Claim 1</b></p> <p>5   <b>of the '856 patent.</b></p> <p>6           A   I see that, yes.</p> <p>7       <b>Q   Claim 1 of the '856 requires copying files. It</b></p> <p>8   <b>uses the word "copying," does it not?</b></p> <p>9           A   It uses the word "copying." I do note that</p> <p>10   Figure 1 and 2 actually talk about clean files and moved</p> <p>11   to the clean files store 1A and 1B.</p> <p>12       <b>Q   I'm just asking about Claim 1. Claim 1 uses the</b></p> <p>13   <b>word "copy"; right?</b></p> <p>14           A   The patent claims use the word "copying" where</p> <p>15   you're citing it, correct. Unfortunately, the patent is</p> <p>16   not searchable; so...</p> <p>17       <b>Q   Now, you also mentioned that elsewhere the patent</b></p> <p>18   <b>uses the term "moving files" as well; right?</b></p> <p>19           A   I believe it -- it -- it used these terms</p> <p>20   interchangeably. It also uses an even stranger term,</p> <p>21   saying "copy by sharing."</p> <p>22       <b>Q   Now, I want to make sure I understand your</b></p> <p>23   <b>position. Is it your position that Burdett discloses the</b></p> <p>24   <b>claimed copying or just that it renders obvious the</b></p> <p>25   <b>claimed copy?</b></p> <p style="text-align: right;">Page 40</p>                                                           |
| <p>1   BY MR. ZIVOJNOVIC:</p> <p>2       <b>Q   So the independent claims of the '856 patent</b></p> <p>3   <b>specifically require copying files; right?</b></p> <p>4           A   Which one, for example?</p> <p>5       <b>Q   I believe they all require copying files.</b></p> <p>6           A   There's even some language that says copying by</p> <p>7   sharing somewhere, which I'm not sure what, you know --</p> <p>8   copying by sharing, is that what you mean by copying?</p> <p>9       <b>Q   Sir, I'm just asking a question. Please focus on</b></p> <p>10   <b>my question.</b></p> <p>11           <b>In the independent claims of the '856 patent, it</b></p> <p>12   <b>requires copying files, does it not?</b></p> <p>13           A   I believe that the patent uses these terms pretty</p> <p>14   interchangeably, and it so happens that the claims use the</p> <p>15   word "copying" in some places.</p> <p>16           Now I lost the paragraph that we were at. Could</p> <p>17   you please tell me again which one it was?</p> <p>18       <b>Q   Let me just -- let me actually just admit the</b></p> <p>19   <b>patent and also -- and add it to the chat so we're all on</b></p> <p>20   <b>the same page.</b></p> <p>21           A   Okay.</p> <p>22       <b>Q   I'm uploading Exhibit 1001 which is a copy of the</b></p> <p>23   <b>'856 patent.</b></p> <p>24           A   Okay.</p> <p>25</p> <p style="text-align: right;">Page 39</p>                                                                                                                                                                                                                              | <p>1           MS. SCHUNTER: Objection to form.</p> <p>2           THE WITNESS: So Burdett talks about -- well, in</p> <p>3   94 I'm saying, "Burdett taught or suggested this</p> <p>4   limitation."</p> <p>5           So "...Burdett explained there were several</p> <p>6   interchangeable mechanisms to control access to a file.</p> <p>7   In 'some implementations,' the file was made accessible to</p> <p>8   the user by changing the file permission. Other</p> <p>9   mechanisms included changing a file name of the file or</p> <p>10   changing the storage location of the file. 'In some</p> <p>11   implementations, the scanning service may move files or</p> <p>12   change the names of files in order to control access.'"</p> <p>13           So these are all ways that a person of ordinary</p> <p>14   skill in the art would have understood that you can</p> <p>15   control access to a file.</p> <p>16           You know, the objective here is that the file is</p> <p>17   not accessible before it's been scanned and that it is</p> <p>18   accessible after it's been found to be harmless. And, you</p> <p>19   know, a person of ordinary skill would have understood</p> <p>20   that moving it or copying it to a repository that is</p> <p>21   generally accessible to anyone who has opened that</p> <p>22   repository would be a way of achieving that objective.</p> <p>23   BY MR. ZIVOJNOVIC:</p> <p>24       <b>Q   So we will get into those technical details in a</b></p> <p>25   <b>bit. Right now I just want to understand your position.</b></p> <p style="text-align: right;">Page 41</p> |

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| <p>1 Is it your position that Burdett discloses the</p> <p>2 claimed copying, or is it your position that Burdett</p> <p>3 renders obvious the claimed copying?</p> <p>4 MS. SCHUNTER: Objection.</p> <p>5 THE WITNESS: I'm saying he suggested -- or he or</p> <p>6 she, suggested this limitation. Because the -- Burdett</p> <p>7 actually gives examples of interchangeable mechanisms to</p> <p>8 control access to a file, and a person of ordinary skill</p> <p>9 would have been -- would have found it totally obvious</p> <p>10 that, you know, moving it to the -- to the final location</p> <p>11 or copying it would achieve the same end result, namely,</p> <p>12 that it's accessible in that second repository after that</p> <p>13 operation has finished.</p> <p>14 BY MR. ZIVOJNOVIC:</p> <p>15 Q So am I correct, then, that it is your position</p> <p>16 that Burdett renders obvious the claimed copying?</p> <p>17 MS. SCHUNTER: Objection to form.</p> <p>18 THE WITNESS: So Burdett has "...a clean file</p> <p>19 transfer module, which when executed by one or more</p> <p>20 processors, makes the clean file accessible to the</p> <p>21 users by, when a result of the" --</p> <p>22 (Reporter interruption.)</p> <p>23 THE WITNESS: I'm just reading from</p> <p>24 Claim Element [e]. So --</p> <p>25 THE REPORTER: Can you read it a little slower,</p> <p style="text-align: right;">Page 42</p> | <p>1 Q Do you understand that a prior art reference can</p> <p>2 disclose a claim limitation?</p> <p>3 A Yes.</p> <p>4 Q Does Burdett disclose the claimed copying? Yes</p> <p>5 or no?</p> <p>6 MS. SCHUNTER: Objection to form.</p> <p>7 THE WITNESS: Burdett does not -- first of all,</p> <p>8 what is the claimed copying? That -- the patent uses</p> <p>9 these terms itself interchangeably, and Burdett teaches a</p> <p>10 mechanism that makes the clean file accessible only after</p> <p>11 the determination has been made that it's clean.</p> <p>12 BY MR. ZIVOJNOVIC:</p> <p>13 Q So does Burdett disclose the claimed copying as</p> <p>14 you interpret the term "copying" in the claim language?</p> <p>15 MS. SCHUNTER: Objection. Form. Asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: Burdett teaches enough that a</p> <p>18 person of ordinary skill in the art would have found it</p> <p>19 obvious that one alternative to control access to a</p> <p>20 contaminated file was to move the file to a different</p> <p>21 location. And a person of ordinary skill would have</p> <p>22 understood that that is what this is all about; mainly,</p> <p>23 the end result that the clean file is accessible to the</p> <p>24 end user.</p> <p>25</p> <p style="text-align: right;">Page 44</p>                                                                                                                                                                                                                                      |
| <p>1 though?</p> <p>2 THE WITNESS: I don't think I need to read it.</p> <p>3 I'm saying Burdett taught or suggested it. So it is not</p> <p>4 explicit where "copy" does not appear in Burdett, but</p> <p>5 Burdett is explaining several interchangeable mechanisms</p> <p>6 to control file access.</p> <p>7 And a person of ordinary skill would know that</p> <p>8 these are -- not only have the same end result; a person</p> <p>9 of ordinary skill would also have understood that in many</p> <p>10 cases, you know, copying and moving actually entails</p> <p>11 copying, and copying might even entail just a directory</p> <p>12 update rather than requiring or causing any bits to be --</p> <p>13 to be copied of the actual file data.</p> <p>14 So a person of ordinary skill in the art would</p> <p>15 have understood that these things are, you know, very</p> <p>16 often -- they're very closely related, and they're kind of</p> <p>17 intertwined.</p> <p>18 BY MR. ZIVOJNOVIC:</p> <p>19 Q Approximately how many patent cases or IPR</p> <p>20 proceedings have you worked on?</p> <p>21 A Oh, I don't think I have counted them, but -- so</p> <p>22 in the order of 15, something like that.</p> <p>23 Q So you understand that a prior art reference can</p> <p>24 disclose a claim limitation; right?</p> <p>25 A Say that again, please.</p> <p style="text-align: right;">Page 43</p>              | <p>1 BY MR. ZIVOJNOVIC:</p> <p>2 Q Is it your position that the claimed language</p> <p>3 "copying" is synonymous with "moving a file"?</p> <p>4 A I never said that. I said that the patent</p> <p>5 specification uses these terms somewhat interchangeably.</p> <p>6 In particular, in Figures 1A and 1B, you know, it actually</p> <p>7 uses the term "moving" rather than "copying."</p> <p>8 And a person of ordinary skill would have</p> <p>9 understood that these terms are related and that, you</p> <p>10 know, in the implementation of how a file system works, as</p> <p>11 I already mentioned, there are many cases where, when you</p> <p>12 do a move, it actually entails copying under the hood, and</p> <p>13 when you entail copying, it might simply be a file</p> <p>14 directory update rather than any actual data being in any</p> <p>15 way duplicated.</p> <p>16 And a person of ordinary skill would have</p> <p>17 understood this, and in view of the objective of the</p> <p>18 operation here, namely, that the clean file is accessible</p> <p>19 to the end users, it doesn't make any difference.</p> <p>20 Q Let's focus on the next sentence then. Do you</p> <p>21 see where you write, "A POSITA would have found it obvious</p> <p>22 that 'moving' files in many circumstances (such as moving</p> <p>23 from one physical storage device to another) actually</p> <p>24 reduces to first copying the file to the new location and</p> <p>25 then deleting the original"?</p> <p style="text-align: right;">Page 45</p> |

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| <p>1 Do you see that?</p> <p>2 A I see that.</p> <p>3 Q Okay. So your view is that moving files in many</p> <p>4 circumstances includes the step of copying the file;</p> <p>5 right?</p> <p>6 A I believe I -- I expressed this not very well,</p> <p>7 and I believe I have actually in our interview today</p> <p>8 specified this more clearly.</p> <p>9 You know, so, you know, as I said, this can</p> <p>10 happen at different levels in the software stack. So what</p> <p>11 you see as like an internet, you know, in File Explorer or</p> <p>12 in the Macintosh Finder, when you move a file, that is the</p> <p>13 high-level view of moving a file from one directory to</p> <p>14 another.</p> <p>15 There's a second operation which is what happens</p> <p>16 at the storage bucket, you know, bit level, and obviously,</p> <p>17 when I'm -- when I'm writing here that moving from one</p> <p>18 physical storage device to another, it actually -- I</p> <p>19 actually mean -- actually reduces to not -- to copying the</p> <p>20 storage bits, the contents of the file, to the new</p> <p>21 location, and then pointing a directory entrance to that</p> <p>22 new content on the new storage device, and then deleting</p> <p>23 the original directory entrance that pointed to the bits</p> <p>24 of the previous storage device. That's what I should have</p> <p>25 written here.</p> <p style="text-align: right;">Page 46</p> | <p>1 BY MR. ZIVOJNOVIC:</p> <p>2 Q So high-level moving can be done with or without</p> <p>3 low-level copying. Is that your testimony?</p> <p>4 A Yes.</p> <p>5 Q Okay. And is it fair to say that Burdett is</p> <p>6 silent on how its moving is implemented at the bit level?</p> <p>7 A Burdett actually talks about making the clean</p> <p>8 file available to the customer and gives examples. So you</p> <p>9 know, one of the examples is changing permissions. One of</p> <p>10 them -- et cetera.</p> <p>11 So a person of ordinary skill would have well</p> <p>12 understood that, you know -- so it says, yeah -- "In 'some</p> <p>13 implementations,' the file was made accessible to the user</p> <p>14 by changing the file permission. Other mechanisms</p> <p>15 included changing a file name of the file or changing the</p> <p>16 storage location of the file."</p> <p>17 So -- "In some implementations, the scanning</p> <p>18 service may move files or change the names of files in</p> <p>19 order to control access."</p> <p>20 So it generally circumscribes things that cause</p> <p>21 the file to be in the desired accessible state after it's</p> <p>22 done. A person of ordinary skill would have found it</p> <p>23 totally obvious that, you know -- all that matters is at</p> <p>24 the end of this, you have the file in the target</p> <p>25 repository and accessible.</p> <p style="text-align: right;">Page 48</p> |
| <p>1 Because, again, it's -- this can be understood at</p> <p>2 different layers, and you know, copying can involve no</p> <p>3 bits at the storage level -- layer moving at all, and</p> <p>4 moving can involve copying of bits at the storage layer.</p> <p>5 Q So you agree, though, then, that there are, at</p> <p>6 the high level, examples of moving files without copying</p> <p>7 the bits corresponding to the file?</p> <p>8 MS. SCHUNTER: Objection.</p> <p>9 THE WITNESS: Also -- there are also examples of</p> <p>10 high-level copying files without actually any moving or --</p> <p>11 any data being touched at all.</p> <p>12 BY MR. ZIVOJNOVIC:</p> <p>13 Q Sir, I believe you did not answer my question.</p> <p>14 Do you agree that there are examples of</p> <p>15 high-level moving files without copying the bits</p> <p>16 corresponding to that file?</p> <p>17 MS. SCHUNTER: Objection. Form.</p> <p>18 THE WITNESS: As I said, a person of ordinary</p> <p>19 skill in the art would have well understood that these</p> <p>20 things are very tightly intertwined and that, depending</p> <p>21 on -- you know, depending on the specific setup, one</p> <p>22 high-level operation can cause either of the lower-level</p> <p>23 operations to occur. And either of these can cause either</p> <p>24 of the other to occur at the low level.</p> <p>25</p> <p style="text-align: right;">Page 47</p>                         | <p>1 Q If you could please go to paragraph 89 in your</p> <p>2 report. Let me know when you're there.</p> <p>3 A Yes.</p> <p>4 Q In the first sentence you write, "A POSITA would</p> <p>5 have found it obvious to make the combination of Burdett</p> <p>6 and FortiSandbox by natively mounting the public cloud</p> <p>7 data store on the network security device."</p> <p>8 Do you see that?</p> <p>9 A I see that.</p> <p>10 Q And then you go on to write, "For example, the</p> <p>11 combination would have enabled the scanning service taught</p> <p>12 by Burdett to access files in the cloud file store and to</p> <p>13 natively communicate with the cloud file store to perform</p> <p>14 actions such as controlling access to the files, which</p> <p>15 would have enabled the scanning service to use the</p> <p>16 functionality of native cloud APIs such as callback."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q All right. Now, Burdett's scanning service, even</p> <p>20 without the teachings of FortiSandbox, was able to access</p> <p>21 files in the cloud file store; right?</p> <p>22 A In cloud infrastructure, yes.</p> <p>23 Q And Burdett's scanning service, even without the</p> <p>24 teachings of FortiSandbox, was able to control access to</p> <p>25 the files in the cloud file store; right?</p> <p style="text-align: right;">Page 49</p>                                                           |

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| <p>1 A Can you say that again? Without the...</p> <p>2 Q Burdett's scanning service, even without the</p> <p>3 teachings of FortiSandbox, was able to control access to</p> <p>4 files in the cloud file store; right?</p> <p>5 A Yes.</p> <p>6 Q And Burdett's scanning service, even without the</p> <p>7 teachings of FortiSandbox, was able to interface with</p> <p>8 cloud storage using API calls; right?</p> <p>9 MS. SCHUNTER: Objection to form.</p> <p>10 THE WITNESS: Can you please repeat that -- that</p> <p>11 sentence? So -- yeah, please.</p> <p>12 BY MR. ZIVOJNOVIC:</p> <p>13 Q Oh, yes. Sorry.</p> <p>14 Burdett's scanning service, even without the</p> <p>15 teachings of FortiSandbox, was able to interface with</p> <p>16 cloud storage using API calls?</p> <p>17 A Well, it had -- I mean, it -- it had a way of</p> <p>18 talking to its cloud store, but we don't know what it was,</p> <p>19 yes. So I assume there is some API for that</p> <p>20 communication.</p> <p>21 Q The next sentence you go on to write, "Thus,</p> <p>22 combining a natively mounted cloud file store with</p> <p>23 Burdett's file scanning service would have made it easier</p> <p>24 for the scanning service to quickly react to changes in</p> <p>25 the cloud file store, including new file uploads or</p> <p style="text-align: right;">Page 50</p> | <p>1 service or the cloud data store,'" and you cite to</p> <p>2 Burdett.</p> <p>3 Do you see that?</p> <p>4 A I see that.</p> <p>5 Q So am I to understand that Burdett's scanning</p> <p>6 service receives notification of new untrusted files via</p> <p>7 API calls?</p> <p>8 A Well, it says, "could be received." Yes.</p> <p>9 Q And if we now could now go back to paragraph 89,</p> <p>10 please. Let me know when you're back there.</p> <p>11 A Yes.</p> <p>12 Q Does adding native mounting to Burdett's scanning</p> <p>13 service -- let me start over.</p> <p>14 Does combining native mounting with Burdett's</p> <p>15 scanning service result in faster receipt of API</p> <p>16 notifications?</p> <p>17 MS. SCHUNTER: Objection to form.</p> <p>18 THE WITNESS: So I believe it might actually, you</p> <p>19 know, require fewer API notifications; right? So if I'm</p> <p>20 watching a directory and I get a single notification,</p> <p>21 because I've mounted the directory, that the directory has</p> <p>22 changed, then I can natively enumerate the directory and</p> <p>23 just process all the files that I see have changed. And</p> <p>24 that is far superior than having to receive an individual</p> <p>25 notification for every single file, and you know, I don't</p> <p style="text-align: right;">Page 52</p> |
| <p>1 changes to files in the store."</p> <p>2 Do you see that?</p> <p>3 A Which paragraph are you talking about now?</p> <p>4 Q I'm still at paragraph 89. I'm now at the first</p> <p>5 complete sentence on page 49.</p> <p>6 A Okay. Yes, I see that.</p> <p>7 Q Now, Burdett's -- I'm going to jump to a</p> <p>8 different paragraph, and then I'm going to come back here</p> <p>9 just to orient you.</p> <p>10 If you could go to paragraph 99. And let me know</p> <p>11 when you're there.</p> <p>12 A I'm there.</p> <p>13 Q So in paragraph 99, you're addressing the claim</p> <p>14 limitation, "receiving, by a network security device that</p> <p>15 is protecting an enterprise network, a notification via an</p> <p>16 Application Programming Interface (API) call from a</p> <p>17 notification service monitoring a first repository of a</p> <p>18 public cloud file store, regarding existence of an</p> <p>19 untrusted file stored within the first repository."</p> <p>20 Do you see that?</p> <p>21 A I see that.</p> <p>22 Q And for this claim limitation, about two-thirds</p> <p>23 down at paragraph 99, you write, "The notification could</p> <p>24 be received by the scanning service 'using an applications</p> <p>25 programming interface (API) of the cloud infrastructure</p> <p style="text-align: right;">Page 51</p>          | <p>1 actually know what's in the directory.</p> <p>2 So that's -- it's a different -- it might be a</p> <p>3 different granularity. When you write these applications,</p> <p>4 that's why you want the directory change notification;</p> <p>5 right? When you have a window open on your desktop to a</p> <p>6 shared directory, it's actually a single push, the</p> <p>7 directory has changed, and then a pull, typically, to</p> <p>8 update the window, and you enumerate the directory in a</p> <p>9 pull fashion, not in a push fashion.</p> <p>10 BY MR. ZIVOJNOVIC:</p> <p>11 Q Am I correct that in your obvious combination you</p> <p>12 still rely on Burdett's API notifications to learn that</p> <p>13 there were changes in the cloud file store?</p> <p>14 MS. SCHUNTER: Objection to form.</p> <p>15 THE WITNESS: Can you ask that question again,</p> <p>16 please?</p> <p>17 BY MR. ZIVOJNOVIC:</p> <p>18 Q Let me rephrase it slightly.</p> <p>19 A Okay.</p> <p>20 Q In your obviousness combination -- let me start</p> <p>21 over.</p> <p>22 Does your obviousness combination rely on</p> <p>23 Burdett's notifications via the API to learn of changes in</p> <p>24 the cloud file store?</p> <p>25 MS. SCHUNTER: Objection to form.</p> <p style="text-align: right;">Page 53</p>                                            |

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| <p>1 THE WITNESS: So -- so the combination would have</p> <p>2 made it easier for the scanning service to quickly react</p> <p>3 to changes and would have enabled the network security</p> <p>4 device to scan files within the cloud file store in bulk,</p> <p>5 which would have improved scan throughput, is what I'm</p> <p>6 writing in 89.</p> <p>7 BY MR. ZIVOJNOVIC:</p> <p>8 Q I don't believe that answers my question. Does</p> <p>9 your obviousness combination still use Burdett's</p> <p>10 notifications via the API?</p> <p>11 MS. SCHUNTER: Objection to form.</p> <p>12 THE WITNESS: So both Burdett and FortiSandbox</p> <p>13 teach API calls.</p> <p>14 BY MR. ZIVOJNOVIC:</p> <p>15 Q I -- I don't believe you answered my question.</p> <p>16 It's specific to Burdett's notifications via API. Does</p> <p>17 your obviousness combination still use Burdett's</p> <p>18 notifications via the API?</p> <p>19 A So what specific claim are you talking about?</p> <p>20 Are you talking about --</p> <p>21 Q Sir, you have your combination in mind; right?</p> <p>22 A A person of skill has a service that uses an API</p> <p>23 and has a FortiSandbox device that using an API. Both of</p> <p>24 them use an API. So I am putting in the FortiSandbox</p> <p>25 device in a context that does the services provided by</p> <p style="text-align: right;">Page 54</p> | <p>1 functionality. Here, there is an API call that has that</p> <p>2 functionality here, and the specifics of putting them</p> <p>3 together might be slightly different, but a person of</p> <p>4 ordinary skill would well be able to, you know, put -- you</p> <p>5 know, to create an API call that does these things in the</p> <p>6 combination.</p> <p>7 Q Let me ask a slightly different question. Does</p> <p>8 your obviousness combination of Burdett and FortiSandbox</p> <p>9 rely on notifications received via an API that there are</p> <p>10 changes to files in cloud storage?</p> <p>11 MS. SCHUNTER: Objection to form.</p> <p>12 THE WITNESS: So I think I already -- I already</p> <p>13 discussed this; right? So a person of ordinary skill in</p> <p>14 the art who is a good engineer is going to try to make</p> <p>15 things better and more efficient.</p> <p>16 So the whole point of doing a native mount is</p> <p>17 that you can use the more efficient interface to, as I</p> <p>18 wrote, get a higher throughput; right?</p> <p>19 So it would be obvious that, you know, you</p> <p>20 actually do want to do this efficiently, and a person of</p> <p>21 ordinary skill in the art would understand that, yes, if</p> <p>22 you have native mounting, then you may be able to do this,</p> <p>23 a whole directory at a time, rather than having to rely on</p> <p>24 a file-by-file notification.</p> <p>25 For example, so -- but that would be entirely</p> <p style="text-align: right;">Page 56</p> |
| <p>1 Burdett.</p> <p>2 Q All right. So you have in mind the obviousness</p> <p>3 combination that you're relying on for Ground 1; right?</p> <p>4 A For what?</p> <p>5 Q For Ground 1; right?</p> <p>6 A Yes.</p> <p>7 Q All right. And you're relying on the same</p> <p>8 combination of Burdett and FortiSandbox for all claims</p> <p>9 challenged in Ground 1, are you not?</p> <p>10 A The two together render these claims obvious,</p> <p>11 yes.</p> <p>12 Q All right. Your obviousness combination of</p> <p>13 Burdett and FortiSandbox in Ground 1, does that</p> <p>14 combination include Burdett's notifications via Burdett's</p> <p>15 API?</p> <p>16 A You're talking about Burdett's API. A person of</p> <p>17 ordinary skill would understand that, you know, the API is</p> <p>18 very specific to -- the API is whatever, you know, is</p> <p>19 offered by the different layers of the system at any time.</p> <p>20 So -- so, you know, there is an API. It's not</p> <p>21 the exact same API. Even, you know, between different</p> <p>22 versions of -- of -- you know, you get an update of your</p> <p>23 Windows, and there might be a slightly different API, and</p> <p>24 yet all the programs still continue to run.</p> <p>25 So, you know, there is an API call that has this</p> <p style="text-align: right;">Page 55</p>                                    | <p>1 obvious to a person of ordinary skill, that this is a</p> <p>2 little -- you know, this is a straightforward improvement</p> <p>3 that I would be able -- would expect my students to be</p> <p>4 able to do, to suggest in a class.</p> <p>5 BY MR. ZIVOJNOVIC:</p> <p>6 Q Am I correct, then -- let me start over.</p> <p>7 So am I correct, then, that native mounting --</p> <p>8 let me start over.</p> <p>9 Am I correct, then, that with native mounting, it</p> <p>10 would be more efficient to scan the whole directory rather</p> <p>11 than relying on notifications?</p> <p>12 A No, sir. The whole point is that I'm still</p> <p>13 relying on notifications; right? I don't want to keep</p> <p>14 scanning the directory over and over and over again.</p> <p>15 The idea is that if I have a natively mounted</p> <p>16 directory, I might be able to get a notification just once</p> <p>17 for the whole directory, and then I may be able to go</p> <p>18 through the things in the directory, you know, of the</p> <p>19 mounted directory and myself decide if things have</p> <p>20 changed; right?</p> <p>21 So it's still a notification-based thing, but the</p> <p>22 granularity may be different, and as a result, the</p> <p>23 efficiency may be higher. And so I'm talking about -- I'm</p> <p>24 using the word "throughput."</p> <p>25 Q Sorry. I thought you were going to talk about</p> <p style="text-align: right;">Page 57</p>                                                                      |

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| <p>1 throughput next.</p> <p>2 A No. I'm just referring to it.</p> <p>3 Q All right. Is there a difference in scan</p> <p>4 throughput, depending on whether the scan is performed by</p> <p>5 a scanning service with a natively mounted cloud file</p> <p>6 storage, or by the cloud file store itself?</p> <p>7 MS. SCHUNTER: Objection to form.</p> <p>8 THE WITNESS: I believe I -- cannot answer that</p> <p>9 generally. This requires -- this depends very much on the</p> <p>10 specifics on how many files on each directory, et cetera,</p> <p>11 et cetera; right? I don't think there's a -- no. There's</p> <p>12 no -- I cannot give you a general response.</p> <p>13 I can tell you that, from an engineering</p> <p>14 perspective, you know, it's -- I want to have as few of</p> <p>15 these notifications as -- as possible if I can achieve my</p> <p>16 objective in a different manner.</p> <p>17 BY MR. ZIVOJNOVIC:</p> <p>18 Q All right. I want to now move on to Ground 2, if</p> <p>19 I may.</p> <p>20 MS. SCHUNTER: Ogi, do you want to take a break</p> <p>21 before moving on, or do you want --</p> <p>22 MR. ZIVOJNOVIC: Yeah. Let's take a break right</p> <p>23 now. Why not.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. ZIVOJNOVIC: Let's go off the record.</p> <p style="text-align: right;">Page 58</p> | <p>1 And then: "Additionally, the malware scan taught</p> <p>2 by Sharpe would have been used to scan files in a first</p> <p>3 repository and copy clean files to a second repository, as</p> <p>4 taught by Kamalapuram."</p> <p>5 And then I say, "A POSITA would have been</p> <p>6 motivated to combine Sharpe, Seese, and Kamalapuram with a</p> <p>7 reasonable expectation of success."</p> <p>8 BY MR. ZIVOJNOVIC:</p> <p>9 Q And then if you could please go to</p> <p>10 paragraph 162 -- let me start over by if you just could go</p> <p>11 to paragraph 159 first. Let me know when you're there.</p> <p>12 A 159?</p> <p>13 Q Yes. 159. Let me know when you're there.</p> <p>14 A Oh, okay. Yes.</p> <p>15 Q And here, you're addressing the claim limitation</p> <p>16 that the public cloud file store is natively mounted on a</p> <p>17 network security device; is that right?</p> <p>18 A That's what it says, yes.</p> <p>19 Q And if you go to paragraph 162, you write that</p> <p>20 "Sharpe did not describe mounting the distributed file</p> <p>21 system to a network security device and did not discuss</p> <p>22 mounting the file system in the context of scanning the</p> <p>23 files."</p> <p>24 Do you see that?</p> <p>25 A I see that I've written that, yes.</p> <p style="text-align: right;">Page 60</p> |
| <p>1 (A brief recess was taken.)</p> <p>2 BY MR. ZIVOJNOVIC:</p> <p>3 Q So if you could please go to paragraph 167 in</p> <p>4 your report.</p> <p>5 A Okay.</p> <p>6 Q And so here we're now talking about your Ground 2</p> <p>7 combination which I believe consists of Sharpe, Seese, and</p> <p>8 let me make sure I've got the third one right,</p> <p>9 Kamalapuram. Is that right?</p> <p>10 A Yes. I have no idea how you pronounce it, but</p> <p>11 yeah.</p> <p>12 Q And so, again, I want to start by just</p> <p>13 understanding your obviousness combination here. In your</p> <p>14 combination, what is the claimed network security device?</p> <p>15 A So as I write in paragraph 138, you know, "A</p> <p>16 person of skill in the art would have used Seese's</p> <p>17 disclosed network security device to perform the malware</p> <p>18 scan described in Sharpe."</p> <p>19 THE REPORTER: I'm sorry. Mr. Franz, I lost you</p> <p>20 there. Could you repeat that just a little slower for me?</p> <p>21 THE WITNESS: Yes.</p> <p>22 So I'm writing in 138, "In the combination, a</p> <p>23 person of ordinary skill in the art would have used</p> <p>24 Seese's disclosed network security device to perform the</p> <p>25 malware scan described in Sharpe."</p> <p style="text-align: right;">Page 59</p>        | <p>1 Q And just to be clear, so Sharpe is the reference</p> <p>2 that discloses the alleged public cloud store; right?</p> <p>3 MS. SCHUNTER: Objection to form.</p> <p>4 BY MR. ZIVOJNOVIC:</p> <p>5 Q Let me know if you need me to repeat the</p> <p>6 question.</p> <p>7 A Okay. I lost you. I went -- 150 --</p> <p>8 Q So --</p> <p>9 A I was going back. Yeah.</p> <p>10 Q I'll just repeat the question, and we can take it</p> <p>11 from there.</p> <p>12 And just to be clear, Sharpe is the reference</p> <p>13 that you point to for the claimed public cloud store; is</p> <p>14 that right?</p> <p>15 A It's actually a combination. So let's see.</p> <p>16 Q Well, if you go to paragraph 157, you referenced</p> <p>17 the cloud storage system taught by Sharpe. Do you see</p> <p>18 that?</p> <p>19 A Well, that -- they're complementary; right? So</p> <p>20 Seese describes a physical device that can be deployed</p> <p>21 within an enterprise's network infrastructure, and Sharpe</p> <p>22 and Kamalapuram both talk to malware detection within</p> <p>23 shared file repositories.</p> <p>24 So Sharpe discloses a secure data transfer system</p> <p>25 into a distributed file system, and -- so that's a cloud</p> <p style="text-align: right;">Page 61</p>                                                     |

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| <p>1 storage environment. And Sharpe discloses an enterprise<br/>2 network.</p> <p>3 <b>Q</b> I'm not specifically, I guess, talking about<br/>4 claimed public cloud file store. Am I correct that you're<br/>5 pointing to Sharpe for that limitation?</p> <p>6 <b>A</b> So I'm quoting Sharpe in my report, and, in<br/>7 particular, the fact that Sharpe disclosures may include<br/>8 support for NFS, network file system.</p> <p>9 <b>Q</b> Let's start by going to paragraph 152. I want to<br/>10 break this down a bit further. Let me know when you're<br/>11 there.</p> <p>12 <b>A</b> 152?</p> <p>13 <b>Q</b> Yes.</p> <p>14 <b>A</b> You're jumping a bit today. Okay. Okay.</p> <p>15 <b>Q</b> In paragraph 152, you wrote, "A POSITA would have<br/>16 understood Sharpe's description of cloud data stores as<br/>17 reading on the claimed 'public cloud file store.'"</p> <p>18 <b>Do you see that?</b></p> <p>19 <b>A</b> I see that.</p> <p>20 <b>Q</b> So you're pointing to Sharpe's cloud data stores<br/>21 for the claimed public cloud file store; is that right?</p> <p>22 <b>A</b> That's what it says here. I'm quoting from<br/>23 Sharpe, in the sentence that follows.</p> <p>24 <b>Q</b> Okay. And so if we now go back to paragraph 162,<br/>25 to continue with my jumping pattern. And let me know when<br/>Page 62</p>                                                                                                                                            | <p>1 share."</p> <p>2 <b>Do you see that?</b></p> <p>3 <b>A</b> I see that.</p> <p>4 <b>Q</b> Now, use of NFS or CIFS, that does not dictate<br/>5 the speed with which data can be transferred; right?</p> <p>6 <b>A</b> I don't believe we're talking about the data<br/>7 transfer speed necessarily; right? So we're talking about<br/>8 access to the share itself. So it's the directory<br/>9 information. It is, you know, being able to enumerate the<br/>10 files in the directory directly, observing the metadata of<br/>11 the directory directly.</p> <p>12 <b>Q</b> So you do not contend that natively mounting the<br/>13 user share would lead to faster read or write speeds to<br/>14 and from that user share, are you?</p> <p>15 <b>A</b> That is not what I'm saying here either way. I'm<br/>16 saying access to the user share, and the objective of what<br/>17 we're doing here is we want to be able to scan files that<br/>18 are previously unknown to see if they contain malware;<br/>19 right? New files, particularly, or files that have<br/>20 changed.</p> <p>21 And mounting the directory enables us to directly<br/>22 be informed of these changes and being able to react to<br/>23 them rather than having to rely on a much more complicated<br/>24 file-by-file system.</p> <p>25 <b>Q</b> And do you see in paragraph 164 where you write,<br/>Page 64</p>                                                             |
| <p>1 you're there.</p> <p>2 <b>So paragraph 62, you write that "Sharpe did not<br/>3 discuss mounting the file system in the context of<br/>4 scanning the files." Correct?</b></p> <p>5 <b>A</b> Well, it discusses -- it doesn't -- it doesn't<br/>6 explicitly discuss mounting the file system. But I go on<br/>7 by saying, "It nevertheless provides a motivation or<br/>8 suggestion to a POSITA for performing this operation, and<br/>9 it made obvious to combine Sharpe with Seese, which not<br/>10 only described mounting a public cloud file system in the<br/>11 context of scanning the files, but also describes mounting<br/>12 the public files on a network security device."</p> <p>13 <b>Q</b> And if we keep reading, I'm not going -- it's<br/>14 still going to be paragraph 162, but I'm now going to<br/>15 point you to the second to last sentence on page 85.</p> <p>16 <b>Do you see where you wrote, "A POSITA would have<br/>17 found it obvious to use network file system protocols,<br/>18 such as NFS, as taught by Sharpe or other well-known<br/>19 protocols, such as CIFS, to mount the user share to the<br/>20 DLP server described by Seese, since these protocols were<br/>21 widely used before the '856 priority date"?</b></p> <p>22 <b>Do you see that?</b></p> <p>23 <b>A</b> I see I wrote that, yes.</p> <p>24 <b>Q</b> "Mounting the user share to the network security<br/>25 device would have enabled faster access to the user<br/>Page 63</p> | <p>1 "It would have been obvious to a POSITA to natively mount<br/>2 the public cloud file store, as taught by Sharpe, on a<br/>3 network security device, as taught by Seese, as a means to<br/>4 enable a network security device to access files in the<br/>5 cloud file store and to natively communicate with the<br/>6 cloud file store to perform actions such as controlling<br/>7 access to the files"?</p> <p>8 <b>Do you see that?</b></p> <p>9 <b>A</b> I see that.</p> <p>10 <b>Q</b> Do you agree that Sharpe was able to access files<br/>11 in the cloud file store even without any native mounting?</p> <p>12 <b>MS. SCHUNTER:</b> Objection to form.</p> <p>13 <b>THE WITNESS:</b> So -- so Sharpe was a, you know --<br/>14 was a distributed file system; right? And so Sharpe is<br/>15 actually a very large, very long patent, with a lot of<br/>16 different embodiments in it. So Sharpe has some very<br/>17 interesting things that are even, at the block level, that<br/>18 go way beyond what we are using here.</p> <p>19 So the main thing is that we want to be able to,<br/>20 you know, control access to the, you know -- by -- by<br/>21 natively mounting the public cloud store, it just becomes<br/>22 much easier to perform these actions as controlled in the<br/>23 access; right?</p> <p>24 So the -- those are, you know -- natively<br/>25 mounting is -- a person of ordinary skill understands the<br/>Page 65</p> |

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| <p>1 operations that you have available on a file system once<br/>2 you have mounted it.<br/>3 BY MR. ZIVOJNOVIC:<br/>4 <b>Q So let me -- let's notice that. So in Sharpe,</b><br/>5 <b>the embodiment that you're relying on relates to scanning</b><br/>6 <b>files in a cloud store; correct?</b><br/>7 A So in Sharpe, the files are scanned in the cloud<br/>8 store.<br/>9 <b>Q And Sharpe's scanning process was able to access</b><br/>10 <b>files even without the benefit of Seese's teachings;</b><br/>11 <b>correct?</b><br/>12 A Sharpe had a way of accessing files but didn't<br/>13 have all the benefits of the combination.<br/>14 <b>Q And you would also agree that Sharpe's scanning</b><br/>15 <b>mechanism was able to control access to those files even</b><br/>16 <b>without the benefits of Seese's teachings?</b><br/>17 A So the Sharpe system was able to, for example,<br/>18 prevent users from using files that had changed and not<br/>19 yet been scanned.<br/>20 <b>Q Let's please go to paragraph 172.</b><br/>21 A Okay.<br/>22 <b>Q In 172 you write, "Sharpe did not explicitly</b><br/>23 <b>describe that the 'clean' file would be copied to a second</b><br/>24 <b>repository. However, Kamalapuram disclosed this feature</b><br/>25 <b>by describing, for example, that a 'file may be stored in</b><br/>Page 66</p>                             | <p>1 know, exactly the -- the desired effect when you're<br/>2 dealing with files that may be contaminated and would<br/>3 understand this to mean, you know, it was there before,<br/>4 isolated area of the network storage system, and we want<br/>5 it to be in the general storage area. And I believe that<br/>6 that -- it's perfectly clear what that means; right?<br/>7 Especially when it uses the word "move" in that sentence.<br/>8 So "moving" might mean updating a directory<br/>9 entrance -- entry. It might mean copying it to another<br/>10 disk and updating a directory entry, all those low-level<br/>11 things that might be associated with the high-level<br/>12 concept of doing a directory operation on a file to move<br/>13 it from an isolated area of the network storage system to<br/>14 a general storage area of that same storage system.<br/>15 MR. ZIVOJNOVIC: All right. No further<br/>16 questions.<br/>17 MS. SCHUNTER: So you're fully done with your<br/>18 cross?<br/>19 MR. ZIVOJNOVIC: Yep. Pass the witness.<br/>20 MS. SCHUNTER: Okay. Maybe we should take a<br/>21 15-minute break, and we'll evaluate redirect on our side,<br/>22 and we can come back and let you know?<br/>23 THE WITNESS: Sure. 15 minutes?<br/>24 MR. ZIVOJNOVIC: All right.<br/>25 THE WITNESS: So on the hour?<br/>Page 68</p> |
| <p>1 an isolated area of the network storage system while<br/>2 waiting to be scanned, and may be moved to a general<br/>3 storage area only after the file has been scanned by a<br/>4 security analysis system of the network storage system."<br/>5 Do you see that?<br/>6 A I see that.<br/>7 <b>Q And then you go on to write, "Thus, in</b><br/>8 <b>Kamalapuram's disclosure, the 'clean' file was moved from</b><br/>9 <b>the first repository (an isolated area of the network</b><br/>10 <b>storage system) to a second repository (a general area of</b><br/>11 <b>the network storage system)."</b><br/>12 Do you see that?<br/>13 A I wrote that.<br/>14 <b>Q Now, you don't identify any disclosure from</b><br/>15 <b>Kamalapuram specifying how its moving of files is</b><br/>16 <b>implemented, do you?</b><br/>17 A Well, Kamalapuram uses the term "moved" in the --<br/>18 in the paragraph I'm citing; right? "May be moved to a<br/>19 general storage area."<br/>20 <b>Q But Kamalapuram does not really specify how that</b><br/>21 <b>"moving" is implemented at the bit level, does it?</b><br/>22 A I believe a person of ordinary skill in the art<br/>23 would have understood that the end result, namely, that<br/>24 the file was not accessible to the end user beforehand and<br/>25 is now accessible to the end user afterwards, is, you<br/>Page 67</p> | <p>1 MS. SCHUNTER: Yes, let's just round it to the<br/>2 hour. That makes sense.<br/>3 MR. ZIVOJNOVIC: Sounds good.<br/>4 (A brief recess was taken.)<br/>5 MS. SCHUNTER: All that we were going to say is<br/>6 that we have no redirect. So we are all set.<br/>7 THE REPORTER: Okay. May we go off the record?<br/>8 MR. ZIVOJNOVIC: Let's do it.<br/>9 THE REPORTER: Kristen, did you need a certified<br/>10 transcript?<br/>11 MS. SCHUNTER: Yes, please.<br/>12 THE REPORTER: You got it.<br/>13 MR. ZIVOJNOVIC: Please send us a rough.<br/>14 THE REPORTER: You got it.<br/>15<br/>16 (Whereupon, the deposition concluded at 11:58 A.M.)<br/>17<br/>18 (DECLARATION UNDER PENALTY OF PERJURY ON THE FOLLOWING<br/>19 PAGE HEREOF.)<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25<br/>Page 69</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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| <p>1</p> <p>2</p> <p>3</p> <p>4 I, MICHAEL FRANZ, do solemnly declare under</p> <p>5 penalty of perjury that the foregoing is my deposition</p> <p>6 under oath; that these are the questions asked of me and</p> <p>7 my answers thereto; that I have read same and have made</p> <p>8 the necessary corrections, additions, or changes to my</p> <p>9 answers that I deem necessary.</p> <p>10 In witness thereof, I hereby subscribe my name</p> <p>11 this day of _____, 2023.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 WITNESS SIGNATURE</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 70</p>                                                                                                                                                                                                                                                                                                                                                                                                                | <p>1 CORRECTION CERTIFICATE</p> <p>2 To add testimony, indicate "Add" and print the exact</p> <p>3 words you wish to add. To delete testimony, indicate</p> <p>4 "Delete" and print the exact words you wish to delete.</p> <p>5 Deposition of: Michael Franz</p> <p>6 Proceedings Date: November 29, 2023</p> <p>7 I, Michael Franz,</p> <p>8 have the following changes to my proceedings transcript:</p> <p>9 PAGE LINE CHANGE TESTIMONY TO READ AS FOLLOWS:</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____ Date _____</p> <p>25 Michael Franz</p> <p style="text-align: right;">Page 72</p> |
| <p>1 CERTIFICATION</p> <p>2 OF</p> <p>3 CERTIFIED SHORTHAND REPORTER</p> <p>4</p> <p>5 I, the undersigned, a Certified Shorthand</p> <p>6 Reporter of the State of California do hereby certify:</p> <p>7 That the foregoing proceedings were taken before</p> <p>8 me at the time and place herein set forth; that any</p> <p>9 witnesses in the foregoing proceedings, prior to</p> <p>10 testifying, were placed under oath; that a verbatim record</p> <p>11 of the proceedings was made by me using machine shorthand</p> <p>12 which was thereafter transcribed under my direction;</p> <p>13 further, that the foregoing is an accurate transcription</p> <p>14 thereof.</p> <p>15 I further certify that I am neither financially</p> <p>16 interested in the action nor a relative or employee of any</p> <p>17 attorney of any of the parties.</p> <p>18 IN WITNESS WHEREOF, I have this date</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 subscribed my name _____</p> <p>23 Matthew Sculatti, CSR No. 13558</p> <p>24</p> <p>25 Dated: November 29, 2023</p> <p style="text-align: right;">Page 71</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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