

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3

4 - - - - - x

5 JUNIPER NETWORKS, INC., :

6 Plaintiff, :

7 :

8 v. : No. 1:07cv1771-PLF

9 :

10 ABDULLAH ALI BAHATTAB, :

11 Defendant. :

12 - - - - - x

13 Washington, D.C.

14 Friday, May 8, 2009

15 Videotaped Deposition of

16 KEVIN JEFFAY, Ph.D., called for

17 examination by counsel for Plaintiff, pursuant to

18 notice, at the Law Offices of Dewey & LeBoeuf, 1101

19 New York Avenue, NW, Washington, D.C., commencing

20 at 8:34 a.m., before Barbara A. Huber, Notary

21 Public in and for the District of Columbia, when

22 were present on behalf of the respective parties:

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1 APPEARANCES:
 2 On behalf of Plaintiff:
 3 JASON HOFFMAN, ESQUIRE
 4 Kaye Scholer, LLP
 5 The McPherson Building
 6 901 15th Street, NW
 7 Washington, D.C. 20005-2327
 8 (202) 682-3531
 9 jason.hoffman@kayescholer.com
 10 On behalf of Defendant:
 11 ROBERT A. AUCHTER, ESQUIRE
 12 HENRY W. ASBILL, ESQUIRE
 13 Dewey & LeBoeuf, LLP
 14 1101 New York Avenue, NW
 15 Washington, D.C. 20005-4213
 16 (202) 346-7887
 17 rauchter@dl.com
 18 hasbill@dl.com
 19
 20 Also Present:
 21 Scott J. Coonan, Juniper Networks
 22 Jonathan Clay, Videographer

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1 PROCEEDINGS
 2 VIDEOGRAPHER: We are now on the record
 3 in the matter of Juniper Networks, Incorporated,
 4 versus with Abdullah Ali Bahattab.
 5 Today's date May 8, 2009. The time is
 6 8:34 a.m. This is the video recorded deposition
 7 of Kevin Jeffay being taken at Dewey & LeBoeuf,
 8 1101 New York Avenue, Northwest, Washington, D.C.
 9 20005.
 10 I am the camera operator. My name is
 11 Jonathan Clay, in association with Alderson
 12 Reporting, located at 1155 Connecticut Avenue,
 13 Northwest, Washington, D.C. The court reporter is
 14 Barbara Huber, also in association with Alderson
 15 Reporting.
 16 Will all and attorneys please identify
 17 themselves and the parties they represent,
 18 beginning with the party noticing this providing.
 19 MR. HOFFMAN: Jason Hoffman from Kaye
 20 Scholer, LLP, on behalf of the Plaintiff, Juniper
 21 Networks, Inc.
 22 MR. COONAN: Scott Coonan, director of

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1 IP litigation and licensing for Juniper Networks.
 2 MR. AUCHTER: Robert Auchter, Dewey &
 3 LeBoeuf, on behalf of Defendant, Abdullah Ali
 4 Bahattab.
 5 MR. ASBILL: Henry Asbill, on behalf of
 6 Dr. Bahattab.
 7 VIDEOGRAPHER: Will the court reporter
 8 please administer the oath.
 9 Whereupon,
 10 KEVIN JEFFAY, Ph.D.,
 11 was called as a witness by counsel for Plaintiff,
 12 and having been duly sworn by the Notary Public,
 13 was examined and testified as follows:
 14 EXAMINATION BY COUNSEL FOR PLAINTIFF
 15 BY MR. HOFFMAN:
 16 Q Could you please state your name for the
 17 record?
 18 A Kevin Jeffay.
 19 Q Mister -- sorry.
 20 Dr. Jeffay, do you hold a Ph.D.?
 21 A I do.
 22 Q And what do you hold a Ph.D., in?

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1 A Computer science.
 2 Q And what year did you get your Ph.D.?
 3 A I'm sorry, what year?
 4 Q What year?
 5 A I believe it was conferred in 1989.
 6 Q And from what university?
 7 A That would be the University of
 8 Washington.
 9 Q Have you ever been deposed before?
 10 A I have.
 11 Q How many times?
 12 A Probably about a dozen.
 13 Q And for each of your depositions, was it
 14 because you were testifying as an expert in a
 15 case?
 16 A Ostensibly. I mean, sometimes I think I
 17 was there just as a consultant.
 18 Q The let me make the question a little
 19 clearer.
 20 How many times have you testified at a
 21 deposition?
 22 A About a dozen.

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1 Q And for each time you've testified at
 2 a -- at a deposition, have you testified as an
 3 expert?
 4 A No.
 5 Q How many times have you testified as an
 6 expert?
 7 A Six, seven, maybe. Excuse me. I -- I
 8 assume you meant testified in court?
 9 Q No. We're talking about a deposition.
 10 A Okay. I'm sorry then. I misunderstood.
 11 Q Well, but -- okay. Let -- let's try the
 12 question again.
 13 A Okay.
 14 Q How many times have you testified at a
 15 deposition?
 16 A So perhaps I don't know what you mean
 17 by -- well, when I answered your question
 18 previously, I just meant I'd been deposed about a
 19 dozen times. I don't necessarily appreciate any
 20 distinction you're making between being deposed
 21 and testifying at --
 22 Q Well, let me --

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1 A -- a deposition.
 2 Q -- make the question a little clearer.
 3 How many times have you been deposed?
 4 A About a dozen.
 5 Q And for the dozen times that you've been
 6 deposed, how many times were you test -- being
 7 deposed as an expert?
 8 A I -- I don't know that I can give you
 9 a -- a good answer. Probably at least half.
 10 Q And do you understand the rules of a
 11 deposition?
 12 A Generally, yes.
 13 Q And you understand that you're under
 14 oath?
 15 A I do.
 16 Q When you were you retained by
 17 Dr. Bahattab?
 18 MR. AUCHTER: Objection. Form.
 19 THE WITNESS: I believe it was in
 20 December of '08.
 21 BY MR. HOFFMAN:
 22 Q Prior to December '08, have you ever --

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1 had you had -- prior to December '08, had -- had
 2 you ever had -- ever -- start again.
 3 Prior to December '08, have you had any
 4 contact with Dr. Abdullah Ali Bahattab?
 5 A No.
 6 Q Had you ever heard of him?
 7 A I don't believe I had.
 8 Q Who contacted you in December of '08?
 9 A Actually, I believe I was contacted in
 10 November of '08, but I wasn't retained until
 11 December.
 12 Q Okay. Who contacted you in November of
 13 '08?
 14 A I believe it was Mr. Brandon Jordan.
 15 Q And who is Mr. Brandon Jordan?
 16 A I understand him to be an associate in
 17 the law firm of Dewey & LeBoeuf.
 18 Q And what did Mr. Jordan request of you
 19 in November of '08?
 20 A I don't recall the specifics of what he
 21 requested.
 22 Q Do you recall anything about your

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1 of Juniper source code, correct?
 2 A I -- I think that was the root -- the
 3 root purpose. As I say, initially, the -- you
 4 know. The task was to help them understand how
 5 the routers operated.
 6 Q And you reviewed Juniper documents also
 7 to figure out how the routers operated, correct?
 8 A Correct.
 9 Q And you read doctor -- sorry,
 10 Mr. Mallya's testimony about how Juniper's routers
 11 operated, correct?
 12 A Correct.
 13 Q And you didn't find any infringement,
 14 did you?
 15 A Well, given the time that I'd spent on
 16 it, I guess what I would say is that I was not
 17 comfortable alleging infringement.
 18 Q Why were you not comfortable alleging
 19 infringement?
 20 A Because I hadn't -- given the time that
 21 I had spent, I hadn't seen any evidence that there
 22 was infringement.

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1 Q And is that because Juniper doesn't
 2 practice any form of auto aggressive moving
 3 average in its routers?
 4 MR. AUCHTER: Objection to form.
 5 THE WITNESS: No. I looked at the --
 6 the bulk of my focus was on one -- one release,
 7 one source code release of -- of one product, and,
 8 in addition, you know, as I mentioned, the
 9 documents and Mr. Mallya's testimony. But -- but
 10 the bulk of my study was -- was for the -- for
 11 the -- for the latest release of -- of the J
 12 series. And given that review, I -- I didn't see
 13 any evidence that they -- that that -- what I saw
 14 practiced the invention of the '457 patent.
 15 BY MR. HOFFMAN:
 16 Q And when did you reach that conclusion?
 17 A I don't know that it was a -- you know,
 18 it's -- it's -- it's -- it's -- it's an instant.
 19 I mean, you know, if -- if you're -- you know,
 20 if -- if you're looking for something and you --
 21 and you can't find it and you keep looking and you
 22 can't find it, I mean you -- you know, I never saw

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1 evidence ever. So I think the -- you know, at --
 2 at -- at some point, I was -- wasn't asked to look
 3 anymore.
 4 Q So did you find any evidence that
 5 Juniper infringed Dr. Bahattab's patent after
 6 reviewing Mr. Mallya's deposition transcript?
 7 A Well, I mean, I -- I wouldn't be
 8 looking, honestly, to Mr. Mallya's transcript
 9 for -- for -- for evidence. You know, I -- I
 10 don't think the -- the questions and the answers
 11 were sufficient for one to, you know, to precisely
 12 get an understanding of that.
 13 Q So how -- what would be the best way to
 14 figure out whether or not, in doing an
 15 infringement analysis, whether or not Juniper
 16 infringed the '457 patent?
 17 MR. AUCHTER: Objection. Form,
 18 incomplete hypothesis.
 19 THE WITNESS: Well, as -- as -- as I
 20 recall, the '457 patent claim one is a -- I
 21 believe it's claim one -- is -- is -- is a method
 22 claim. In -- in general, let me just say that I

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1 think for something like this, you know, to get an
 2 independent assessment as to whether or not
 3 something does or doesn't do it, I practice a set
 4 of steps. I think you should look at the source
 5 code.
 6 BY MR. HOFFMAN:
 7 Q You think the source code's the single
 8 most important piece of evidence to review in
 9 determining whether or not Juniper's routers
 10 infringed Dr. Bahattab's patent?
 11 MR. AUCHTER: Objection. Form, vague
 12 and confused.
 13 THE WITNESS: I mean, I'm -- I'm not
 14 going to characterize the relative merits. What I
 15 would say is for me, personally, if I was going to
 16 accuse a product of infringing something, I would
 17 want to see the source code.
 18 BY MR. HOFFMAN:
 19 Q So on March 17th, 2009, when Mr. Jordan
 20 and Mr. Auchter came to meet you at the source
 21 code review room, did you communicate with
 22 Mr. Auchter and Mr. Jordan at that time that you

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1 had not found any evidence that Juniper infringes
 2 the patent?
 3 A I think at that time, I showed them -- I
 4 described for them the analysis that I had done.
 5 I showed them what I had found. And I think I
 6 communicated that, you know, in -- in -- in my
 7 opinion, this wasn't evidence of infringement.
 8 Q And did you go back on March 1st to
 9 review the source code just to double-check that
 10 Dr. Bhattacharjee had gotten it right?
 11 A April.
 12 Q Oh, April 1st. Excuse me.
 13 A I was asked to, yeah, just double-check
 14 Dr. Bhattacharjee's analysis.
 15 Q And his conclusion, Dr. Bhattacharjee's
 16 conclusion that your conclusion were the same as
 17 with respect to the fact that Juniper doesn't
 18 infringe Dr. Bahattab's patent, correct?
 19 MR. AUCHTER: Objection to form.
 20 THE WITNESS: Well, I think we -- we had
 21 different tasks. I mean, I wasn't asked to opine
 22 on in -- infringement. I was asked to determine

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1 whether or not how the products operated, and
 2 whether or not there was any evidence of this.
 3 And that's -- that's what I did. And that's what
 4 I communicated to attorneys at Dewey & LeBoeuf.
 5 BY MR. HOFFMAN:
 6 Q And you communicated the fact that there
 7 was no evidence that Juniper infringed the patent,
 8 correct?
 9 A Well, I think the way I phrased it was
 10 that given the work I had done, I haven't seen --
 11 I had not -- hadn't -- I had not seen any
 12 evidence.
 13 MR. AUCHTER: We've been going about an
 14 hour. Can we take a break?
 15 MR. HOFFMAN: Sure. Good time to take a
 16 break.
 17 THE WITNESS: Okay.
 18 VIDEOGRAPHER: Off the record at 9:36
 19 a.m.
 20 (Recess)
 21 VIDEOGRAPHER: Back on the record at
 22 9:54 a.m.

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1 BY MR. HOFFMAN:
 2 Q Dr. Jeffay, you were investigating
 3 whether or not the J series router of Juniper
 4 infringes Dr. Bahattab's patent; is that correct?
 5 MR. AUCHTER: Objection. Form,
 6 mischaracterizes prior testimony.
 7 THE WITNESS: I -- I think the way I
 8 stated it was I was trying to understand how it
 9 worked.
 10 BY MR. HOFFMAN:
 11 Q Why did you pick to understand how the J
 12 series worked?
 13 A Because my recollection was that it was
 14 having -- from the documents and from Mr. Mallya's
 15 testimony, it was a software only router, didn't
 16 have ASICs or custom silicon in it. And so,
 17 therefore, all of the functions of the router were
 18 performed in software; and, therefore, all of the
 19 function would -- I assumed would be manifest in
 20 the source code.
 21 Q Did anybody from -- or did any of
 22 Dr. Bahattab's counsel ask you specifically to

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1 investigate the J series?
 2 A No.
 3 Q So from the source code log, you
 4 reviewed source code on six days; is that correct?
 5 A Let's see.
 6 (Witness examined document). Yeah, as I
 7 mentioned, the -- the first day was not very --
 8 the first entry on the 12th was not a very
 9 substantive session, if you will. So from my
 10 perspective, I would say we have the -- the two
 11 periods on the 13th, the -- of -- of February, the
 12 period on the 17th of February, a period on the
 13 9th of March, and the 17th of March, and then
 14 April 1st. So that's five sessions.
 15 Q And those five sessions occurred over a
 16 six-week period; is that correct?
 17 A Yeah, that's -- that's a reasonable
 18 characterization.
 19 Q And sitting here today, do you recall
 20 investigating any other series of Juniper's
 21 routers as to whether or not they infringed the
 22 '457 patent?

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1 so there's still a chance that his deposition
 2 could go forward Wednesday?
 3 MR. AUCHTER: As far as I know, the visa
 4 has been granted. And they informed him that they
 5 would be sending him his passport with the visa in
 6 it. I don't actually know that the visa's been
 7 granted, because it's the United States embassy.
 8 And until such time as he actually has his
 9 passport in hand with the visa stamp in it, I
 10 would not say that it's been granted.
 11 But he has gone to the interview. He
 12 was told that it was approved, and that they would
 13 send him his passport with the visa in it. And we
 14 have a Fed-Ex had tracking number I can send you.
 15 MR. HOFFMAN: I would appreciate it.
 16 MR. AUCHTER: If you can do better than
 17 we can at getting information from the embassy,
 18 good luck.
 19 MR. ASBILL: We also have a backup date
 20 from you that I assume is still --
 21 MR. HOFFMAN: Yes. May, I believe --
 22 March -- May --

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1 MR. ASBILL: May 28.
 2 MR. HOFFMAN: -- 28 would be the backup
 3 date.
 4 MR. ASBILL: Is it your understanding
 5 the -- the visa will be like a 30-day visa, or do
 6 you have any idea?
 7 MR. AUCHTER: Absolutely no idea.
 8 MR. HOFFMAN: Well, we would -- this
 9 being Friday and obviously Wednesday is coming up
 10 very quickly, we would appreciate immediate
 11 contact as soon as you are aware of either
 12 delivery, or that he has a ticket, or that he's
 13 coming, and not to wait till --
 14 MR. AUCHTER: Yeah.
 15 MR. HOFFMAN: -- early next week.
 16 MR. AUCHTER: The -- the issue right now
 17 is the passport and the visa. And you simply
 18 cannot travel those.
 19 MR. HOFFMAN: Okay.
 20 MR. AUCHTER: Internationally.
 21 MR. HOFFMAN: Thank you.
 22 We're off.

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1 VIDEOGRAPHER: This concludes the
 2 videotaped deposition of Dr. Kevin Jeffay,
 3 consisting of five tapes. Going off the record at
 4 3:57 p.m.
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 8 (Whereupon at 3:57 p.m., the
 9 deposition of KEVIN JEFFAY,
 10 Ph.D. was adjourned.)
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1 A C K N O W L E D G E M E N T O F D E P O N E N T
 2
 3
 4 I, KEVIN JEFFAY, Ph.D., do hereby acknowledge
 5 I have read and examined the foregoing pages of
 6 testimony, and the same is a true, correct and
 7 complete transcription of the testimony given by
 8 me, and any changes or corrections, if any, appear
 9 in the attached errata sheet signed by me.
 10
 11
 12
 13
 14
 15 _____
 16 Date KEVIN JEFFAY, Ph.D.
 17
 18
 19
 20 _____
 21 NOTARY PUBLIC
 22 My Commission Expires:

1 CERTIFICATE OF NOTARY PUBLIC
2 I, BARBARA A. HUBER, CSR, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly sworn
6 by me; that the testimony of said witness was
7 taken by me in stenotypy and thereafter reduced to
8 print under my direction; that said deposition is
9 a true record of the testimony given by said
10 witness; that I am neither counsel for, related
11 to, nor employed by any of the parties to the
12 action in which this deposition was taken; and,
13 furthermore, that I am not a relative or employee
14 of any attorney or counsel employed by the parties
15 hereto, nor financially or otherwise interested in
16 the outcome of this action.

17
18 _____
19 BARBARA A. HUBER, CSR
20 Notary Public, in and for the
21 District of Columbia
22 My Commission Expires: March 14, 2012