

APPENDIX C-3

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DEFENDANT BLUE COAT SYSTEMS LLC'S EXHIBIT LIST

United States District Court
For the Northern District of California (San Jose Division)

Finjan, Inc. v. Blue Coat Systems LLC

Case No. 15-cv-03295-BLF

Trial Date: October 27, 2017

Defendant Blue Coat Systems LLC (“Blue Coat”) respectfully submits its Trial Exhibit List. Blue Coat reserves the right to supplement, amend, or modify its list as the parties meet and confer and the case proceeds toward the pretrial conference and trial; to introduce such other or additional evidence as may be permitted in the discretion of the Court; and to introduce additional evidence for impeachment or rebuttal purposes. Blue Coat reserves the right to object to the admission of any document included on its exhibit list. Blue Coat reserves the right to offer at trial any exhibit listed on Finjan’s exhibit list.

Blue Coat reserves the right to print in paper format any document that is listed as a native exhibit on the exhibit list. Blue Coat further reserves the right to use metadata from documents on the exhibit list.

APPENDIX C-3

Finjan's General Objections

Finjan objects to all of Blue Coat's Trial Exhibits, deposition transcript designations, and discovery response designations to the extent they are precluded by a pending motion, i.e. motions in limine, Daubert motion, motion to strike, or issue identified in the Pretrial Statement or at the forthcoming Pretrial Conference. Finjan objects to all of Joint exhibits are noted as "JOINT." Descriptions for these exhibits are found in the Joint Exhibit List at Appendix C-1. Finjan reserves its right to further object to these exhibits based on any changes made to the Joint Exhibit List. To the extent any exhibits are introduced for issues outside the scope of the October 30, 2017 trial, Finjan reserves the right to assert additional objections at trial. Finjan further reserves the right to assert additional objections at the time that Blue Coat introduces the proposed exhibits or testimony at trial depending on Blue Coat's ability to properly authenticate, lay the proper foundation and demonstrate the intended use for the admission of the proposed exhibits, discovery responses and/or testimony into evidence.

Finjan's counter-designations apply to each of Blue Coat's designations. Finjan incorporates by reference all objections stated by counsel in the deposition transcript in its objections to Blue Coat's designations. Finjan reserves all objections to designated testimony that is incomplete or contains errors in the designation. Finjan reserves the right to rely upon Blue Coat's designations to the extent that Blue Coat withdraws any of its designations. Finjan specifically objects to Blue Coat's designation of trial testimony from *Finjan v. Blue Coat*, Case No. 13-3999, as hearsay that does not fall under the exceptions of Fed. R. Evid. 803 and 804. Finjan objects to Blue Coat's statement that it "reserves all rights, including its right to amend, modify, or supplement the following designations as trial preparation and trial progresses, to call witnesses live, by deposition, or both, and to use additional segments of depositions for

APPENDIX C-3

impeachment, rebuttal, foundation, or other purposes” as such a broad statement does not provide sufficient notice of Blue Coat’s pretrial disclosures and violates the Court’s Standing Order, Local Rules of the Court, the Federal Rules of Civil Procedure and/or Federal Rules of Evidence.

Plaintiff Finjan, Inc.’s Key of Objections

Objection List	Abbreviation
Hearsay (FRE 801, 802)—The exhibits/testimony are hearsay and do not fall within any hearsay exception.	H
Irrelevant (FRE 401, 402)—The exhibits/testimony are inadmissible without any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without them. Finjan notes this objection is used for the purpose for which Blue Coat offers the exhibit without waiving the right to use the exhibit or evidence for another purpose.	401, 402
Unfair Prejudice, Confusing, Waste of Time (403) —To the extent that these exhibits/testimony contain any relevant information, they should be excluded because their probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or is a mischaracterization of the testimony, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.	403
Violates FRE 401, 402 and 403	401-403
Lack of Personal Knowledge/Foundation (FRE 602)—Defendant has not identified a witness with personal knowledge to testify regarding these exhibits. The witness does not have personal knowledge to testify about a matter, the proposed testimony is speculation and/or outside the scope of the 30(b)(6) designation.	602
Improper Lay Opinion (FRE 701)—The exhibits/testimony necessarily rely upon the opinion testimony of a lay witness beyond the scope of what is permitted.	701
Improper Expert Opinion / Testimony (FRE 702)	702
Authenticity—These exhibits have not been authenticated within the meaning of FRE 901. The testimony fails to authenticate the deposition exhibit.	901
Best Evidence (FRE 1001-1003)—The exhibits/testimony fail to satisfy the best evidence rule under FRE 1001-1003.	1001-1003
FRE 1006—These exhibits are an improper summary, chart, or calculation.	1006
Privilege (501)	501
Improper Character Evidence (404, 608, 609)	CE
Leading/Waste of Time (611)—The presentation of these exhibits/testimony will result in needless consumption of time and cause witnesses harassment or undue embarrassment. Leading questions should not be used on direct examination of a witness except as may be necessary to develop a witness’ testimony.	611

APPENDIX C-3

Objection List	Abbreviation
Compound, Vague, Argumentative, Duplicative, Asked and Answered—The presentation of these exhibits/testimony violate FRE 403 and 611.	403, 611
Improper Legal Conclusion (401, 611)	LC
Subject to motion in <i>limine</i> and/or evidentiary dispute raised in the Pretrial Statement	EXC
Not Related—Counter Designation is Not Related to Initial Designations	NR
Documents Not Produced During Discovery	NP
Multiple documents are listed as a single exhibit	MD
Incomplete/unintelligible document or testimony	IC
Not Testimony	NT

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