

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

SYMANTEC CORP.,  
Petitioner,

v.

FINJAN, INC.,  
Patent Owner.

---

Case IPR2015-01892  
Patent 8,677,494

---

**PATENT OWNER'S OBJECTIONS TO EVIDENCE  
UNDER 37 C.F.R. § 42.64**

Patent Owner Finjan, Inc. ("Finjan) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of:

- Swimmer (Ex. 1005) and all documents in support of Swimmer as prior art submitted by Symantec ("Petitioner"), including Exhibits 1006, 1010, 1010v2, 1010v3, and 1011;
- The Declaration of Jack Davidson (Ex. 1018);
- Petitioner's use of Dictionaries in Exhibits 1014, 1015, and 1016 to define "database."

Paper No. 1.

The Board instituted trial as to claims 1, 2, 5, 6, 10, 11, 14 on March 18, 2016. Paper No. 9. These objections are being timely served within 10 business days of the institution of trial, in accordance with 37 C.F.R. § 42.64(b)(1). Finjan serves Petitioner with these objections to provide notice that Finjan will move to exclude Swimmer and all documents in support of Swimmer, the Declaration of Jack Davidson, and Petitioner's use of Dictionaries in Exhibits 1014, 1015, and 1016 to define "database" as improper evidence.

**I. Declaration of Dr. Sylvia Hall-Ellis (Ex. 1006)**

Finjan objects to the admissibility of the declaration of Dr. Hall-Ellis for at least the following reasons: Under **FRE 702**, Dr. Hall-Ellis' opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of her opinions, and are unreliable. They are also irrelevant, confusing, and of minimal probative value under **FRE 401, 402, and 403**. Further, her

opinions that rely on the exhibits are also unreliable and inadmissible for the reasons set forth below.

## II. Swimmer (Ex. 1005)

Finjan objects to the admissibility of Swimmer for at least the following reasons: Petitioner has failed to authenticate Swimmer under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Swimmer is what Petitioner claims it is, and has failed to authenticate the date by which Swimmer was allegedly publicly accessible as a printed publication, either by an examination of Swimmer on its face or by Exhibits 1010, 1010v2, 1010v3, and 1011, discussed below. To the extent that Petitioner attempts to rely on the date that appears on the conference bulletin or on a library network (discussed below) to establish public accessibility as a printed publication, the publication and its date are hearsay under **FRE 801** and are inadmissible under **FRE 802**, and further, the date has not been authenticated and is inadmissible under **FRE 901**.

Because of these deficiencies, Swimmer is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **403** because Petitioner has failed to establish that Swimmer is a prior art printed publication under 35 U.S.C. § 102(b) (pre-AIA).

### **III. Copy of Virus Bulletin Proceedings (Ex. 1010, 1010v2, 1010v3)**

Finjan objects to the admissibility of the Copy of Virus Bulletin Proceedings for at least the following reasons: Petitioner has failed to authenticate the Copy of Virus Bulletin Proceedings under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Copy of Virus Bulletin Proceedings are what Petitioner claims they are, and has failed to authenticate the date by which this copy was allegedly publicly accessible as a printed publication.

To the extent that Petitioner attempts to rely on the dates that appear on the Virus Bulletin to establish public accessibility as a printed publication, those dates are hearsay under **FRE 801** and are inadmissible under **FRE 802**, and further, the date has not been authenticated and is inadmissible under **FRE 901**. To the extent that Petitioner relies on the Copy of Virus Bulletin Proceedings to show the publication date of Swimmer, Copy of Virus Bulletin Proceedings is inadmissible and irrelevant for such purposes under **FRE 401** and inadmissible under **FRE 402** and **FRE 403**.

### **IV. Copy of the MARC Record for Virus Bulletin Proceedings (Ex. 1011)**

Finjan objects to the admissibility of the Copy of the MARC Record for at least the following reasons: Petitioner has failed to authenticate the Copy of the MARC Record under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Copy of the MARC Record is what Petitioner claims it is, and has

failed to authenticate the document. To the extent that Petitioner attempts to rely on the date that appears on the Copy of the MARC Record to establish public accessibility as a printed publication, the date is hearsay under **FRE 801** and are inadmissible under **FRE 802**, and further, the date has not been authenticated and is inadmissible under **FRE 901**.

Moreover, to the extent that Petitioner relies on the Copy of the MARC Record to show the publication date of Swimmer, the Copy of the MARC Record shows that it was replaced on July 27, 2015. Moreover, the number of pages in Exhibit 1010 do not match the number of pages stated in the MARC Record. *Compare* Ex. 1010 *with* Ex. 1011. Accordingly, Petitioner has not established that this is a true and correct copy of Swimmer or the Virus Bulletin Proceedings as it allegedly existed in 1995. Because of these deficiencies, Petitioner has failed to establish that the copy of the MARC Record is relevant under **FRE 401** and is therefore inadmissible under **FRE 402** and **FRE 403**.

**V. Declaration of Jack W. Davidson (Ex. 1018)**

Finjan objects to the admissibility of the Declaration of Mr. Jack Davidson for at least the following reasons: Under **FRE 702**, Jack Davidson's opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Additionally, Mr. Jack Davidson is unqualified as an expert to provide technical opinions of a person of skill in the art.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.