

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01974
Patent 7,647,633

**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 the following documents submitted by Palo Alto Networks, Inc. ("Petitioner") in Paper No. 1:

- "Java Bytecode Modification and Applet Security" ("Shin") as Ex. 1009
- Webpage: Workshop and Miscellaneous Publications ("Author's Webpage") as Ex. 1006
- Webpage: Filewatcher ("Filewatcher") as Ex. 1007
- "Kava – A Reflective Java Based on Bytecode Rewriting" ("Kava") as Ex. 1008
- Affidavit of Chris Butler of Internet Archive (the "Butler I Affidavit") as Ex. 1095
- "Poison Java" IEEE Spectrum ("Poison Java") as Ex. 1004
- 2015-09-10 Declaration of Gerard P. Grenier in support of the 'Poison Java' Reference (the "Grenier Declaration") as Ex. 1005
- "Using Netscape 3" ("Brown") as Ex. 1041
- 2015-09-13 Declaration of Peter Kent (the "Kent Declaration") as Ex. 1082
- Affidavit of Chris Butler of Internet Archive (the "Butler II Affidavit") as Ex. 1092
- Affidavit of David Sherfese of Alexa Internet (the "Sherfese Affidavit") as Ex. 1093

- Declaration of Dr. Aviel Rubin (the “Rubin Declaration”) (Exhibit 1002);
and
- Exhibits 1010, 1011, 1012, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1034, 1035, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1083, 1084, 1085, 1086, 1087, and 1090.

The Institution Decision issued on March 29, 2016. Paper No. 7. The Board instituted trial as to claims 14 and 19 based on Shin, Poison Java, and Brown. *Id.* Finjan’s objections are timely under 37 C.F.R. section 42.64(b)(1). Finjan serves Petitioner with these objections to provide notice that Finjan will move to exclude these exhibits as improper evidence.

I. Shin (Ex. 1009)

Finjan objects to the admissibility of Shin for at least the following reasons: Petitioner has failed to authenticate Shin under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Shin is what Petitioner claims it is, and has failed to authenticate the date by which Shin was publicly accessible as a printed publication, either by examination of Shin on its face, or by Exhibits 1006, 1007, 1008, 1093, and 1095. To the extent that Petitioner attempts to rely on the date that appears on Shin to establish public accessibility as a printed

publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802**, and further, the date has not been authenticated and is inadmissible under **FRE 901**.

Because of these deficiencies, Petitioner has failed to establish that Shin is a prior art printed publication. Additionally, Shin as improper prior art because it is not an enabling disclosure. Accordingly, Shin is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403** because Petitioner has failed to establish that Shin is a prior art printed publication.

II. Author's Webpage (Ex. 1006)

Finjan objects to the admissibility of the Author's Webpage for at least the following reasons: Petitioner has failed to authenticate the Author's Webpage under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Author's Webpage is what Petitioner claims it is, and has failed to authenticate the Author's Webpage. Petitioner has also failed to establish that the Shin reference cited in Author's Webpage is the same Shin reference relied on by Petitioner. To the extent that Petitioner attempts to rely on the date that appears on the Author's Webpage to establish public accessibility of Shin as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802**, and further, the date has not been authenticated and is inadmissible under

FRE 901. Accordingly, for the foregoing reasons, the Author's Webpage is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

III. Filewatcher (Ex. 1007)

Finjan objects to the admissibility of the Filewatcher for at least the following reasons: Petitioner has failed to authenticate Shin through the Filewatcher under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Filewatcher is what Petitioner claims it is, and has failed to authenticate Filewatcher or that Shin was publicly available on the Filewatcher. Petitioner has also failed to establish that the Shin reference cited in Filewatcher is the same Shin reference relied on by Petitioner. To the extent that Petitioner attempts to rely on the date that appears on the Filewatcher to establish public accessibility of Shin as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802**, and further, the date has not been authenticated and is inadmissible under **FRE 901**. Accordingly, for the foregoing reasons, the Filewatcher is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

IV. Kava (Ex. 1008)

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

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