

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01974¹
U.S. Patent No. 7,647,633

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

¹ Case IPR2016-00480 has been joined with this proceeding.

Patent Owner Finjan, Inc. ("Patent Owner") 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. and Blue Coat Systems, Inc. ("Petitioner") in its Reply to Patent Owner's Response ("Reply"). Paper No. 31.

Petitioner's Reply was filed on November 3, 2016. Patent Owner's objections are timely under 37 C.F.R. § 42.64(b)(1). Patent Owner serves Petitioner with these objections to provide notice that Patent Owner will move to exclude these exhibits as improper evidence.

I. PETITIONER'S EVIDENCE

A. Declaration of Nenad Medvidovic in Support of Plaintiff Finjan, Inc.'s Opening Claim Construction Brief, in *Finjan, Inc. v. Blue Coat Sys., Inc.*, Case No. 5:13-cv-03999-BLF (June 16, 2014), ECF 65-1 ("Medvidovic Declaration") (Exhibit 1099)

Patent Owner objects to the admissibility of the Medvidovic Declaration for at least the following reasons:

Patent Owner objects to the Medvidovic Declaration as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Medvidovic Declaration under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Patent Owner objects to the Medvidovic Declaration as untimely because it should have been introduced in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. §

42.23(b). Patent Owner objects to the Medvidovic Declaration because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Patent Owner also objects because the Medvidovic Declaration is not relevant. For example, the claim construction discussed in the Medvidovic Declaration was not adopted by the court.

Petitioner has failed to authenticate the Medvidovic Declaration under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Medvidovic Declaration is what Petitioner claims it to be.

Patent Owner objects to the portions of the Medvidovic Declaration that Petitioner does not cite to or rely on in its Reply. Accordingly, such evidence is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Any attempt by Petitioner to rely on these portions would be highly prejudicial to Patent Owner under **FRE 403**.

Patent Owner also objects because the Medvidovic Declaration is hearsay under **FRE 801** and inadmissible under **FRE 802** and **FRE 803**.

Accordingly, for at least the foregoing reasons, the Medvidovic Declaration is not relevant under **FRE 401** and inadmissible under **FRE 402**. Moreover, the Medvidovic Declaration is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

**B. Redacted Deposition Transcript of Nenad Medvidovic, Ph.D.,
Finjan, Inc. v. Blue Coat Sys., Inc., Case No. 13-cv-03999-BLF
(May 23, 2014) (“Blue Coat Transcript”) (Exhibit 1100)**

In addition to the objections noted above, Patent Owner objects to the admissibility of the Blue Coat Transcript for at least the following reasons:

Patent Owner objects to the Blue Coat Transcript as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Blue Coat Transcript under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Patent Owner objects to the Blue Coat Transcript as untimely because it should have been introduced in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to the Blue Coat Transcript because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate the Blue Coat Transcript under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Blue Coat Transcript is what Petitioner claims it is, and has failed to authenticate the Blue Coat Transcript.

Patent Owner objects to the Blue Coat Transcript as not relevant under **FRE 401** and **FRE 402** because the Blue Coat Transcript is outside the scope of this

proceeding. Specifically, the Blue Coat Transcript is from a different proceeding and discusses terms in a different context.

Because of these deficiencies, the Blue Coat Transcript is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

C. Webpage: Finjan Software Press Release, Wayback Machine (“Press Release”) (Exhibit 1101)

Patent Owner objects to the admissibility of the Press Release for at least the following reasons:

Patent Owner objects to the Press Release as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Press Release under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Patent Owner objects to the Press Release as untimely because it should have been introduced in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to the Press Release because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Petitioner has failed to authenticate the Press Release under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Press Release is what Petitioner claims it is, and has failed to authenticate the Press Release.

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