

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01979
Patent 8,141,154

**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 Declaration of Dr. Aviel Rubin (the “Rubin Declaration”), Sirer, the Declaration of Mr. Emin Sirer (the “Sirer Declaration”), Detours Article, the use of U.S. Patent No. 6,324,685 (the “’685 Patent”) to establish Sirer as prior art, and the annotated figures included in Petitioner’s Petition from U.S. Patent Publication No. 2005/0108562 (“Khazan”) (the “Annotated Figures”), submitted by Palo Alto Networks (“Petitioner”) as Exhibits 1002, 1004, 1008, and 1012, 1024, and Paper No. 2, respectively. Paper No. 2.

The Institution Decision issued on March 24, 2016. Paper No. 8. The Board instituted trial as to claims 1-8, 10, and 11. *Id.* Specifically, the Board instituted trial for claims 1-5 based on Khazan and Sirer, and claims 6-8, 10, and 11 based on Khazan, Sirer, and Ben-Natan references. *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 the Rubin Declaration, Sirer, Sirer Declaration, Detours Article, the ’685 Patent, and the Annotated Figures as improper evidence.

I. Dr. Aviel Rubin Declaration (Ex. 1002)

Finjan objects to the admissibility of the Rubin Declaration for at least the following reasons: Under **FRE 702**, Dr. Aviel Rubin’s opinions are inadmissible

because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Additionally, Dr. Aviel Rubin is unqualified as an expert to provide technical opinions of a person skilled in the art. *See* Ex. 1007 (*Curriculum Vitae* of Dr. Aviel Rubin). As such, his opinions are inadmissible under **FRE 702**. They are also irrelevant, confusing, and of minimal probative value under **FRE 401**, **402**, and **403**. Further, his opinions that rely on the exhibits are also unreliable and inadmissible for the reasons set forth below.

II. Simer (Ex. 1004)

Finjan objects to the admissibility of Simer for at least the following reasons: Petitioner has failed to authenticate Simer under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Simer is what Petitioner claims it is, and has failed to authenticate the date by which Simer was allegedly publicly accessible as a printed publication, either by examination of Simer on its face, or by Exhibits 1008 or Exhibit 1024 at 2 (discussed below). To the extent that Petitioner attempts to rely on the date that appears on Simer 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, Simer is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403** because Petitioner has failed to establish that Simer is a prior art printed publication under 35 U.S.C. § 102(b).

III. Emin Gun Simer Declaration (Ex. 1008)

Finjan objects to the admissibility of the Simer Declaration for at least the following reasons: Under **FRE 702**, Mr. Emin Simer'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. Emin Simer is unqualified as an expert to provide technical opinions of a person of skill in the art. As such, his opinions are inadmissible under **FRE 702**. Moreover, Petitioner has failed to authenticate Simer through the Simer Declaration under **FRE 901**. Specifically, Petitioner has failed to establish that the Simer document referenced in the Simer Declaration is what Petitioner claims it is, and has failed to authenticate the date by which Simer was allegedly publicly accessible as a printed publication through the Simer Declaration. Finjan also objects because the Simer Declaration is hearsay under **FRE 801** and inadmissible under **FRE 802**. Accordingly, the Simer Declaration is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

IV. Detours Article (Ex. 1012)

Finjan objects to the admissibility of the Detours Article for at least the following reasons: Petitioner has failed to authenticate the Detours article under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Detours Article is what Petitioner claims it is. Finjan also objects on the grounds that the Detours Article is hearsay under **FRE 801** and is inadmissible under **FRE 802**. Accordingly, the Detours Article is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

V. The '685 Patent To Establish Simer As Prior Art (Ex. 1024)

Finjan objects to the admissibility of the '685 Patent for at least the following reasons: Petitioner is improperly introducing the '685 Patent for the purpose of establishing the date Simer was publicly available prior art. Paper No. 2 at 5 (“... citations to the article in prior-art patents confirm the publication date.”). Accordingly, Petitioner has failed to authenticate Simer through the '685 Patent under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Simer document cited in the '685 Patent is what Petitioner claims it is, and has failed to authenticate the date by which Simer was allegedly publicly accessible as a printed publication through the '685 Patent. To the extent that Petitioner attempts to rely on the date that appears on the '685 Patent to establish public accessibility of Simer as a printed publication, the date is hearsay under **FRE 801** and is

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