

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PALO ALTO NETWORKS, INC.,  
Petitioner,

v.

FINJAN, INC.,  
Patent Owner.

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Case IPR2015-01979  
Patent 8,141,154

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

Palo Alto Networks, Inc. ("Petitioner") served supplemental evidence on April 15, 2016. Patent Owner Finjan, Inc. ("Finjan") objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64 to the admissibility of the supplemental evidence. Specifically, Finjan objects to:

- Declaration of Mel DeSart (the "DeSart Declaration"), submitted by Palo Alto Networks ("Petitioner") as Exhibit 1036

Finjan timely serves Petitioner this second set of objections under 37 C.F.R. § 42.64 to provide notice that Finjan will move to exclude the supplemental evidence as improper evidence.

#### **I. The DeSart Declaration (Ex. 1036)**

Finjan objects to the admissibility of the DeSart Declaration for at least the following reasons: Petitioner's service of the DeSart Declaration is untimely and procedurally improper to the extent it is supplemental information under **37 C.F.R. § 42.123**, not supplemental evidence. Under **FRE 702**, Mr. Mel DeSart'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. Mel DeSart is unqualified as an expert to provide technical opinions of a person skilled in the art and lacks knowledge regarding the public accessibility of Sirer. As such, his opinions are inadmissible under **FRE 702** and he lacks personal knowledge under **FRE 602**. Moreover, Petitioner has failed to establish that the Operating Systems

Review Article (“Exhibit A”) referenced in the DeSart Declaration is what Petitioner claims it is, and has failed to authenticate the date by which Exhibit A was allegedly publicly accessible as a printed publication. Finjan also objects because the DeSart Declaration is hearsay under **FRE 801** and inadmissible under **FRE 802** and **FRE 803**. His opinions 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.

**A. Operating Systems Review Article (Exhibit A)**

Finjan objects to the admissibility of Exhibit A for at least the following reasons: Petitioner is improperly introducing Exhibit A for the purpose of establishing the date Simer (Ex. 1036, pp. 6-20) was publicly available prior art. Accordingly, Petitioner has failed to authenticate Simer through the DeSart Declaration under **FRE 901** and **FRE 602**. Exhibit A is not self-authenticating under **FRE 901**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**. Specifically, Petitioner has failed to establish that Exhibit A is what Petitioner claims it to be. For example, it cannot be determined whether the Simer article was actually in the Operating Systems Review. Moreover, the original Simer article (Ex. 1004) that Petitioner introduced is different than the article produced in Exhibit A. Finjan further objects to

Petitioner's selective inclusion of material from the document in Exhibit A. Under **FRE 106**, the complete version of Exhibit 2001, in fairness, ought to be considered.

To the extent that Petitioner attempts to rely on any date that appears on Exhibit A to establish public accessibility of Simer as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802** and **FRE 803**, and further, the date has not been authenticated and is inadmissible under **FRE 901** and **FRE 902**.

Because of these deficiencies, Petitioner has failed to establish that Simer is a prior art printed publication through the DeSart Declaration and Exhibit A. Accordingly, Exhibit A is irrelevant, confusing, and of minimal probative value under **FRE 401**, **FRE 402**, and **FRE 403**.

## **II. Conclusion**

Therefore, Finjan will file motions to exclude these exhibits under 37 C.F.R. § 42.64(c).

Patent Owner's Objections to Supplemental Evidence  
IPR2015-01979 (U.S. Patent No. 8,141,154)

Respectfully submitted,

Dated: April 22, 2016

/James Hannah/

James Hannah (Reg. No. 56,369)  
Kramer Levin Naftalis & Frankel LLP  
990 Marsh Road  
Menlo Park, CA 94025  
Tel: 650.752.1700 Fax: 212.715.8000

Jeffrey H. Price (Reg. No. 69,141)  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, NY 10036  
Tel: 212.715.7502 Fax: 212.715.8302

Michael Kim (Reg. No. 40,450)  
Finjan, Inc.  
2000 University Ave., Ste. 600  
E. Palo Alto, CA 94303  
Tel: 650.397.9567  
mkim@finjan.com

(Case No. IPR2015-01979)

*Attorneys for Patent Owner*

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