

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

U.S. Patent No. 8,141,154  
Filing Date: June 14, 2010  
Issue Date: March 20, 2012

Title: System and Method for Inspecting  
Dynamically Generated Executable Code

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*Inter Partes* Review No. 2015-01979

**Petitioner's Objections to Evidence Under 37 C.F.R. § 42.64**

Petitioner Palo Alto Networks, Inc. ("Petitioner") objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following exhibits submitted by Finjan, Inc. ("Patent Owner") in support of its Patent Owner Response: Ex. 2002, the Declaration of Dr. Nenad Medvidovic ("Medvidovic Declaration"); Ex. 2004, the Declaration of S.H. Michael Kim ("Kim Declaration"); Ex. 2009, Definition of kernel32.dll; Ex. 2011, Wikipedia definition of type signature; Ex. 2012, Microsoft webpage regarding Detours; and Ex. 2013, the Stackoverflow webpage.

Patent Owner served its Patent Owner's Response on July 12, 2016. Paper No. 22. Petitioner's objections are timely under 37 C.F.R. § 42.64(b)(1). By serving these objections on Patent Owner, Petitioner reserves its right to file motions to exclude these exhibits under 37 C.F.R. § 42.64(c).

#### **I. MEDVIDOVIC DECLARATION (EX. 2002)**

Petitioner objects to the admissibility of the Medvidovic Declaration under FRE 702 because it contains opinions that are conclusory, do not disclose supporting facts or data, or are based on unreliable facts, data, or methods. For example, Dr. Medvidovic opines that certain Websense products are covered by claims of the '154 patent based on his review of Patent Owner's made for litigation infringement contentions. Ex. 2002, ¶129. Furthermore, several of the infringement charts relied on by Dr. Medvidovic cover only a subset of the claims at issue in this

IPR. Exs. 2015-17. Accordingly, the opinions contained in the Medvidovic Declaration are not based on sufficient facts or data, and are not the product of reliable principles and methods and should be excluded under FRE 702. Exs. 2002-03. Dr. Medvidovic is also unqualified as an expert to provide opinions from the perspective of a person of ordinary skill in the art, rendering the Medvidovic Declaration inadmissible under FRE 702. The Medvidovic Declaration also contains opinions that are irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403. Finally, the Medvidovic Declaration relies on exhibits that are inadmissible and unreliable for the reasons set forth below.

## **II. KIM DECLARATION (EX. 2004)**

Petitioner objects to the Kim Declaration because it does not introduce evidence of Mr. Kim's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under FRE 602. For example, the Kim Declaration states that Mr. Kim has been IP counsel at Patent Owner since March 2015, yet Mr. Kim testifies regarding events that occurred prior to that date without showing how Mr. Kim gained personal knowledge of those events. In addition, the Kim Declaration contains testimony regarding the terms of several Patent Owner license agreements, but Mr. Kim was not part of the negotiation or execution of the licenses. The Kim Declaration produces no evidence of Mr. Kim's personal knowledge of these licenses.

The Kim Declaration is also inadmissible hearsay under FRE 801 and 802.

The Kim Declaration is also inadmissible under FRE 401, 402, and 403 as irrelevant, prejudicial, misleading, and of minimal probative value.

Petitioner also objects to the admissibility of the Kim Declaration under FRE 702. The Kim Declaration offers inadmissible expert testimony because the opinions contained in his Declaration are conclusory, do not disclose supporting facts or data, are biased and unreliable, and the Kim Declaration provides no basis to support Mr. Kim's qualifications as an expert. Accordingly, Mr. Kim's opinions are inadmissible under FRE 702.

### **III. KERNEL32.DLL (EX. 2009)**

Petitioner objects to the admissibility of the "kernel32.dll" article under FRE 401, 402, and 703. Patent Owner improperly relies on the kernel32.dll article to support the understanding of a person of ordinary skill in the 2005 timeframe, but the kernel32.dll article is a webopedia.com definition retrieved on July 12, 2016. Ex. 2009. Accordingly, it is irrelevant and not the type of evidence reasonably relied upon by a person of ordinary skill during the relevant time period. The kernel32.dll article is also inadmissible hearsay under FRE 801 and 802, and lacks authentication under FRE 901.

**IV. WIKIPEDIA DEFINITION OF TYPE SIGNATURE (EX. 2011)**

Petitioner objects to the admissibility of the Wikipedia “definition of type signature” under FRE 401, 402, and 703. Patent Owner improperly relies on the Wikipedia definition of type signature to support the understanding of a person of ordinary skill in the 2005 timeframe, but the Wikipedia definition of type signature was retrieved on July 12, 2016 and last modified on June 17, 2016. Ex. 2011. Accordingly, it is irrelevant and not the type of evidence reasonably relied upon by a person of ordinary skill during the relevant time period. The Wikipedia definition of type signature is also inadmissible hearsay under FRE 801 and 802, and lacks authentication under FRE 901.

**V. MICROSOFT WEBPAGE REGARDING DETOURS (EX. 2012)**

Petitioner objects to the admissibility of the “Microsoft webpage regarding Detours” under FRE 401, 402, and 703. Patent Owner improperly relies on Ex. 2012 to support the understanding of a person of ordinary skill in the 2005 timeframe, but the Microsoft webpage was retrieved on July 12, 2016. Ex. 2012. The webpage also states, “Established: January 16, 2002.” Ex. 2012. However, the webpage appears to have been updated since that time and the webpage provides no indication when the information cited by Patent Owner was published on the website. Accordingly, Ex. 2012 is irrelevant and not the type of evidence reasonably relied upon by a person of ordinary skill during the relevant time

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