

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<sup>1</sup>  
U.S. Patent No. 8,141,154

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

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<sup>1</sup> Case IPR2016-00919 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 Symantec Corp. ("Petitioner") in its Reply to Patent Owner's Response ("Reply"). Paper No. 35. Patent Owner also incorporates its Objections to Evidence to Petitioner's Petition for IPR, filed on April 4, 2016, below. Paper No. 10.

Petitioner's Reply was filed on October 28, 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 REPLY EVIDENCE**

### **A. Dr. Aviel Rubin Declaration ("Rubin Declaration") (Ex. 1002)**

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

1. 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**.

2. Petitioner has failed to authenticate the Rubin Declaration under **FRE 901** and **FRE 602**. To the extent that Petitioner attempts to rely on any date that appears on the Rubin Declaration, 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**.

3. Patent Owner objects to the Rubin Declaration because it does not introduce evidence of Dr. Rubin's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**.

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

5. His opinions are also irrelevant, confusing, and of minimal probative value under **FRE 401**, **402**, and **403**. Further, his opinions that rely on the cited exhibits are also unreliable and inadmissible.

**B. Sirer (Exhibit 1004)**

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

1. Petitioner has failed to authenticate Sirer under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Sirer is what Petitioner claims it is, and has failed to authenticate the date by which Sirer was allegedly

publicly accessible as a printed publication, either by examination of Simer on its face, or by Exhibit 1008. 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 **FRE 803**, and further, the date has not been authenticated and is inadmissible under **FRE 901**.

2. Because of these deficiencies, Simer is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

**C. Declaration of Mr. Emin Simer (“Simer Declaration”) (Exhibit 1008)**

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

1. Petitioner previously withdrew the Simer Declaration and replaced it with the Declaration of Mel DeSart. Accordingly, the Simer Declaration is not relevant under **FRE 401** and **FRE 402**, and any such reliance on the Simer Declaration would be highly prejudicial to Patent Owner under **FRE 403**.

2. 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. 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.

3. To the extent that Petitioner attempts to rely on the date that appears on the Simer Declaration to establish public accessibility 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**.

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

5. Patent Owner objects to the Simer Declaration because it does not introduce evidence of Mr. Simer's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**.

6. Accordingly, the Simer Declaration is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, the Simer Declaration is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

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