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

_____

Inter Partes Review No. 2015-01979[1]
U.S. Patent No. 8,141,154

**PETITIONER'S REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64(c)**

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[1] Case IPR2016-00919 has been joined with this proceeding.

Patent Owner's ("PO") Opposition to Petitioner's Motion to Exclude (Paper 51) and the Goodrich Declaration (Exhibit 2036) do not establish the relevance or authenticity[2] of the challenged exhibits, and PO concedes that the challenged exhibits are inadmissible hearsay. Exhibits 2009 and 2011-2013 should be excluded because they are irrelevant, lack authentication, and are hearsay.

I.   EXHIBIT 2009 (KERNEL32.DLL WEBOPEDIA DEFINITION) IS INADMISSIBLE

PO does not establish that Exhibit 2009 is relevant or authentic, and does not contest that Exhibit 2009 is hearsay. Exhibit 2009 should be excluded.

PO relies on the Goodrich Declaration to argue that Exhibit 2009 is relevant to show that the kernel32.dll discussed in Khazan does not meet certain claim limitations of the '154 patent. However, Dr. Goodrich's testimony is unreliable, lacks evidentiary support, and therefore does not establish the relevance of Exhibit 2009. Specifically, PO relies on Dr. Goodrich to argue that Exhibit 2009 demonstrates that "a library would not be considered an application program comprising content over a network," and "anything in kernel32.dll could not be deemed a 'call to the first function' or 'first function,' in the context of the '154 Patent." (Paper 51 at 1-2.) But Dr. Goodrich blindly applied Dr. Medvidovic's improperly narrow construction of "content" to argue that a library is not "content"

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[2] Petitioner did not waive its authentication objections. (Paper 23 at 1-5.)

received over a network. (Ex. 1047 at 4 (11:5-14), 5 (15:25-16:7), 5-6 (17:23-18:4); Paper 35 at 5-8.) And Dr. Goodrich testified before another Board panel that the library in Khazan *can* include a call to a function:

> **Q:** And isn't it accurate, sir, that Khazan teaches that a library can include a call to a function? As you summarize in Paragraph 65, "At a later point in time during execution of the application, as part of dynamic analysis, calls made to target functions by the application and/or its libraries are monitored."? **A:** I see that. **Q:** Those are your words; correct? **A:** Yes.

(Ex. 1047 at 11 (40:6-14) (citing Ex. 1048 at ¶ 65 (emphasis added).) Dr. Goodrich's testimony also fails to provide evidentiary support for the conclusion that Exhibit 2009, undated and retrieved in 2016, shows the understanding of a person of ordinary skill in the art ("POSA") in 2005. (Ex. 2036 at ¶¶ 29-30.) Dr. Goodrich's testimony lacks credibility and does not establish relevance.

As to authentication and hearsay, Dr. Goodrich's knowledge of what was *generally* known regarding kernel32.dll during the 2005 timeframe is not sufficient authentication for Exhibit 2009 (F.R.E. 901), and PO does not contest that Exhibit 2009 is hearsay. In order for F.R.E. 703 to apply, PO must show that experts in the field would reasonably rely on Exhibit 2009 and PO does not meet its burden.

II. EXHIBIT 2011 ("TYPE SIGNATURE" WIKIPEDIA PAGE) IS INADMISSIBLE

PO does not establish that Exhibit 2011 is relevant or authentic, and does not contest that Exhibit 2011 is hearsay. Exhibit 2011 should be excluded.

As to relevance, Dr. Goodrich does not provide any support for his testimony that the Wikipedia definition of "type signature" in Exhibit 2011 demonstrates how a POSA would have understood that term in 2005. (Ex. 2036 at ¶¶ 31-32.) The Wikipedia article bears no date and was retrieved in **2016**. Dr. Goodrich's unsupported testimony is insufficient to establish relevance.

As to authentication and hearsay, Dr. Goodrich's knowledge of what was generally known regarding "type signature" during the 2005 timeframe is not sufficient authentication evidence for the particular definition contained in Exhibit 2011 (F.R.E. 901), and PO does not contest that Exhibit 2011 is hearsay. In order for F.R.E. 703 to apply, PO must show that experts in the field would reasonably rely on Exhibit 2011 and PO does not meet its burden.

III. EXHIBIT 2012 (DETOURS WEBPAGE) IS INADMISSIBLE

PO does not establish that Exhibit 2012 is relevant or authentic, and does not contest that Exhibit 2012 is hearsay. Exhibit 2012 should be excluded.

As to relevance, Dr. Goodrich does not provide any support for his testimony that the Detours web page of Exhibit 2012 demonstrates how a POSA

would have understood the Detours package in 2005. (Ex. 2036 at ¶¶ 33-35.) The "established" date on Exhibit 2012 is not evidence of when the information cited by PO was first made available. (Paper 46 at 5-6.) Dr. Goodrich's testimony is insufficient to establish relevance.

As to authentication and hearsay, Dr. Goodrich's knowledge of what was generally known regarding Detours during the 2005 timeframe is not sufficient authentication evidence (F.R.E. 901), and PO does not contest that Exhibit 2012 is hearsay. In order for F.R.E. 703 to apply, PO must show that experts in the field would reasonably rely on Exhibit 2012 and PO does not meet its burden.

IV. EXHIBIT 2013 (STACKOVERFLOW WEBPAGE) IS INADMISSIBLE

PO does not establish that Exhibit 2013 is relevant or authentic and does not contest that Exhibit 2013 is hearsay. Exhibit 2013 should be excluded.

PO relies on Dr. Goodrich to argue that Exhibit 2013 is relevant to show that Khazan does not teach instrumenting applications and therefore does not meet certain claim limitations of the '154 patent. (Paper 51 at 9.) However, Dr. Goodrich's testimony is unreliable, lacks evidentiary support, and therefore does not establish the relevance of Exhibit 2013. Indeed, Dr. Goodrich testified before another Board panel that Khazan teaches instrumenting an application:

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