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.

_____

Case IPR2015-02001
Case IPR2016-00157
Patent 8,225,408

_____

**PATENT OWNER'S PARTIAL REQUEST FOR
REHEARING PURSUANT TO 37 C.F.R. §§ 42.71(c) and 42.71(d)[1]**

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[1] The word-for-word identical paper is filed in each proceeding identified in the caption.

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Patent Owner, Finjan, Inc. ("Finjan" or "Patent Owner"), respectfully

requests rehearing of the Board's Decision on Institution (IPR2015-02001, Paper

No. 7; IPR2016-00157, Paper No. 10) (the "Consolidated Institution Decision")

under 37 C.F.R. § 42.71(d). In particular, Finjan respectfully requests

reconsideration of the decision to institute trial on the four grounds identified in the

Consolidated Institution Decision.

I.   INTRODUCTION

The Board applies an abuse of discretion standard when rehearing a decision

on institution. "An abuse of discretion occurs where the decision is based on an

erroneous interpretation of the law, on factual findings that are not supported by

substantial evidence, or represents an unreasonable judgment in weighing relevant

factors." *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005) (citation

omitted). Here, the Board should grant Patent Owner's Request for Rehearing of

the Institution Decision because the Board's decision to institute trial with respect

to Chandnani and Kolawa (and Chandnani and Kolawa further in view of Walls

and/or Huang) rely on factual findings that are not supported by substantial

evidence.

II. THE BOARD OVERLOOKED PATENT OWNER'S SUBSTANTIVE ARGUMENTS REGARDING CHANDNANI'S FAILURE TO DISCLOSE "DYNAMICALLY DETECTING…"

The Institution Decision should be modified because it relies "on factual findings that are not supported by substantial evidence." *Star Fruits*, 393 F.3d at 1281. In particular, the Board overlooked Patent Owner's argument that Chandnani does not disclose the "dynamically detecting…" feature of the challenged claims at least because Chandnani "discloses a sequential, disjointed process for tokenizing a data stream and processing the tokens." *See* IPR2016-00157, Paper No. 9 ("'157 POPR") at 29; *see also* IPR2015-02001, Paper No. 6 ("'2001 POPR") at 19–20 and 30 n.6. In its Consolidated Institution Decision, the Board indicated that it adopted Petitioner's fatally flawed argument because "Patent Owner's counterargument relies on its position that Chandnani fails to disclose receipt of an incoming stream that is scanned." *See* Institution Decision at 18. However, this analysis does not address Patent Owner's substantive arguments regarding the clear deficiencies of Chandnani presented in the '157 and '2001 POPRs:

> In fact, Chandnani's lexical analyzer (notably, tokenizer is not mentioned anywhere in the reference) does not operate 'continuously and simultaneously,' but rather discloses a sequential, disjointed process for tokenizing a data stream and processing the tokens. Once the data stream is generated on the computer, **Chandnani discloses**

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