

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Palo Alto Networks, Inc.
Petitioner

v.

Finjan, Inc.
Patent Owner

Case IPR2015-02001
Case IPR2016-00157¹
Patent No. 8,225,408 B2

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

¹ Case IPR2016-00157 has been consolidated with IPR2015-02001.

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. 2006, Cisco web page; Ex. 2007, the Declaration of Dr. Nenad Medvidovic ("Medvidovic Declaration"); Ex. 2012, the Declaration of S.H. Michael Kim ("Kim Declaration"); Ex. 2013, the Declaration of Dr. Harry Bims ("Bims Declaration"); Ex. 2014, Appendix C to Finjan's Disclosure of Asserted Claims and Infringement Contentions in *Finjan, Inc. v. Websense, Inc.*, Case No. 13-cv-04398 (N.D. Cal.) ("Websense claim chart"); and Ex. 2017, Appendix E to Finjan's Disclosure of Asserted Claims and Infringement Contentions in *Finjan, Inc. v. Proofpoint Technologies, Inc., et al.*, Case No. 13-cv-05808 (N.D. Cal.) ("Proofpoint claim chart").

Patent Owner served its Patent Owner's Response on August 9, 2016. Paper No. 19. 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. CISCO WEB PAGE (EX. 2006)

Petitioner objects to the admissibility of a Cisco web page that purportedly displays an article titled "What is the Difference: Viruses, Worms, Trojans, and Bots?" under FRE 401, 402, 403, and 703. Patent Owner improperly relies on the

Cisco web page to support the understanding of a person of ordinary skill in the 2004 time frame, but the web page itself indicates that it was retrieved on August 9, 2016. *See* Ex. 2006. Accordingly, it is irrelevant, of no probative value, and not the type of evidence reasonably relied upon by a person of ordinary skill during the relevant time period. The Cisco web page is also inadmissible hearsay under FRE 801 and 802 and lacks authentication under FRE 901.

II. MEDVIDOVIC DECLARATION (EX. 2007)

Petitioner objects to the admissibility of the Medvidovic Declaration under FRE 702 and 703 because it contains opinions that are conclusory, does not disclose supporting facts or data, and/or is based on unreliable facts, data, or methods. For example, Dr. Medvidovic relies on the Cisco web page discussed in the preceding section (Ex. 2006) for his opinions concerning the understanding of a person of ordinary skill in the 2004 time frame, despite the fact that the web page indicates that it was retrieved on August 9, 2016. *See, e.g.,* Ex. 2007 at ¶¶ 49, 86; Ex. 2006. 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.

III. KIM DECLARATION (EX. 2012)

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 before 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, and are biased and unreliable, and because 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.

IV. BIMS DECLARATION (EX. 2013)

Petitioner objects to the admissibility of the Bims Declaration under FRE 702 and 703 because it contains opinions that are conclusory, does not disclose supporting facts or data, and/or is based on unreliable facts, data, or methods. For example, Dr. Bims opines on the alleged obviousness of the '408 patent without considering a number of relevant factors, including but not limited to the scope and content of the prior art and any alleged differences between the claimed invention and the prior art. As another example, Dr. Bims opines that certain Websense and Proofpoint products are covered by claims of the '408 patent based on his review of Patent Owner's made-for-litigation infringement contentions. *See, e.g.,* Ex. 2013, ¶¶ 16-17. Moreover, the infringement charts relied on by Dr. Bims cover only a subset of the claims at issue in this IPR. *See* Exs. 2014, 2017. Accordingly, the opinions contained in the Bims Declaration are not based on sufficient facts or data, are not the product of reliable principles and methods, and should therefore be excluded under FRE 702 and 703. 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 Bims Declaration inadmissible under FRE 702. The Bims Declaration also contains opinions that are irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403. Finally, the Bims Declaration relies on exhibits that are inadmissible and unreliable for the reasons set forth below.

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