

**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

Patent No. 8,141,154

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*Inter Partes* Review No. IPR2016-00151

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**PETITIONER'S RESPONSE TO PATENT OWNER'S  
MOTION FOR OBSERVATIONS**

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Petitioner Palo Alto Networks, Inc. provides the following responses to Patent Owner's Motion for Observations filed December 28, 2016 (Paper No. 40).

**I. PATENT OWNER'S OBSERVATIONS ON CROSS-EXAMINATION SHOULD BE EXPUNGED FOR BEING IMPROPERLY ARGUMENTATIVE**

Patent Owner's observations on cross-examination are improperly argumentative and violate rules established by the Board's Trial Practice Guide. Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-01, 48767-768 (Aug. 14, 2012); 37 C.F.R. § 42.7(a). Thus, the Board should decline to enter and consider Patent Owner's argumentative observations. *See Medtronic, Inc. v. Nuvasive, Inc.*, No. IPR2013-00506, Paper No. 37 at 2 (P.T.A.B. Oct. 15, 2014).

**II. RESPONSES TO PATENT OWNER OBSERVATIONS**

**A. Dr. Rubin's testimony regarding FIG. 4 of Ross**

In exhibit 2043, on page 55, lines 6-14 Dr. Rubin testified (objection omitted):

Q: What do you mean could include a call to a first function?

A: If you take the pseudocode in figure 4 of Ross, it would have been obvious to one of ordinary skill in the art that that [sic] code could be written as my pseudocode which I include in there which calls the hook function in the code itself. So it [referring to hook scripts] includes a call to a first function.

This testimony is responsive to Patent Owner's observations on cross-examination (*see* Paper No. 40 at 1-3), and is relevant because it demonstrates that contrary to Patent Owner's argument, Dr. Rubin has analyzed Ross to show that the reference teaches or suggests the features of the claims in the '154 patent. It is also relevant to show, contrary to Patent Owner's argument, that Dr. Rubin's testimony has been consistent throughout these proceedings. (*See* Ex. 1002 ¶ 107; *see also* Ex. 1005 ¶ 3.)

**B. Dr. Rubin's testimony regarding when the pseudocode provided in his declaration was written**

In exhibit 2043, on page 89 line 22 to page 90 line 8, Dr. Rubin testified:

Q: The code labeled my pseudocode was not created in 2005, correct?

A: I mean, in my pseudocode it's literally two trivial changes that anyone who knows how to program, like my 14 year old son, would easily know how to make.

Q: So can you answer my question?

A: I wasn't involved in this case in 2005.

Q: So is it true that the code labeled my pseudocode that appears on paragraph 7 of your declaration was not created in 2005?

A: It was not, but if someone in 2005 wanted to do this, they would do it the same way.

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