

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2016-00151¹
U.S. Patent No. 8,141,154

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

¹ Case IPR2016-01071 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. 32.

Patent Owner also incorporates by reference its Objections to Evidence to Petitioner's Petition for IPR, filed on May 4, 2016. Paper No. 12.

Petitioner's Reply was filed on December 6, 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. 1005)

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

Patent Owner objects to the Rubin Declaration as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); *see also* 37 C.F.R. § 42.23(b). Patent Owner objects to the Rubin Declaration because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Patent Owner objects to the Rubin Declaration as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply and does not properly respond to Patent Owner's Response. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Rubin Declaration under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

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. 1002 Ex. A (*Curriculum Vitae* of Dr. Aviel Rubin). As such, his opinions are inadmissible under **FRE 702**.

Petitioner has failed to authenticate the Rubin Declaration under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that a screenshot in the Rubin Declaration is what Petitioner claims it is. For example, Dr. Rubin creates the screenshot of what he claims to be "pseudocode" side by side with what he claims to be "Ross' FIG. 4 pseudocode," which Dr. Rubin also generated. Ruben Decl., ¶¶ 7, 10. However, FIG. 4 in Ross is a black and white figure, while Rubin's screenshot is a color figure.

FIG 4. Pseudocode	My Pseudocode
<pre>HookedActiveXObject() // Generated Hook Script (Highly simplified example) <SCRIPT language="JavaScript"> realAXO = ActiveXObject; function myXMLObject(realconstructor) { // Generated code (create Microsoft.XMLHTTP wrapper obj) } function HookedActiveXObject(objname) { // Security checks go here if(objname == "Microsoft.XMLHTTP") { return new myXMLObject(realAXO); } else { return realAXO(objname); // If no more security che } } ActiveXObject = HookedActiveXObject </SCRIPT> // Original Script <SCRIPT language="JavaScript"> var Req; Req = new ActiveXObject("Microsoft.XMLHTTP"); // Open the request object with MKCOL and specify that it w Req.Open("MKCOL", folderURL, false); </SCRIPT></pre>	<pre>substitute_ActiveXObject() // Generated Hook Script (Highly simplified example) <SCRIPT language="JavaScript"> realAXO = ActiveXObject; function myXMLObject(realconstructor) { // Generated code (create Microsoft.XMLHTTP wrapper object and return it) } function substitute_ActiveXObject(objname) { // Security checks go here if(objname == "Microsoft.XMLHTTP") { return new myXMLObject(realAXO); } else { return realAXO(objname); // If no more security checks are needed } } function HookedActiveXObject(objname) { substitute_ActiveXObject(objname); // Hook original function, call substitute fun. } ActiveXObject = HookedActiveXObject </SCRIPT> // Original Script <SCRIPT language="JavaScript"> var Req; Req = new ActiveXObject("Microsoft.XMLHTTP"); // Open the request object with MKCOL and specify that it will be sent asynchronously. Req.Open("MKCOL", folderURL, false); </SCRIPT></pre>

Rubin Decl., ¶ 7.

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**.

Patent Owner also objects to the Rubin Supplemental Declaration because it is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** and **FRE 803**.

Dr. Rubin's opinions are not relevant under **FRE 401** and **FRE 402**. For example, Dr. Rubin creates "pseudocode" in the Rubin Declaration to claim that "[a] person of skill in the art would have readily generated similar pseudocode provided above to effect the functionality described in Ross" in 2005, however, the pseudocode was created on December 6, 2016. Rubin Decl., ¶ 9. Moreover, the Rubin Declaration is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

Further, his opinions that rely on the exhibits cited therein are also unreliable and inadmissible for the reasons discussed above.

B. Excerpt of Finjan Responses to Symantec First Interrogatories (“Finjan Response 1”) (Exhibit 1006)

Patent Owner objects to the admissibility of Finjan Response 1 for at least the following reasons:

Patent Owner objects to the Finjan Response 1 as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); *see also* 37 C.F.R. § 42.23(b). Patent Owner objects to the Finjan Response 1 because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Patent Owner objects to the Finjan Response 1 as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply and does not properly respond to Patent Owner's Response. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Finjan Response 1 under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

Patent Owner further objects to Petitioner's selective inclusion of material from Finjan Response 1. Under **FRE 106**, the complete version of Finjan Response 1, in fairness, ought to be considered.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.