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.

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Case IPR2016-00151[1]
U.S. Patent No. 8,141,154

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

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[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. Rubin 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

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.

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