

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2016-00159
U.S. Patent No. 8,677,494

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

Patent Owner Finjan, Inc. (“Finjan”) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64 to the admissibility of certain exhibits, identified below, included in Petitioner’s Petition.

The Institution Decision issued on May 13, 2016. Paper No. 8. The Board instituted trial for claims 1-6 and 10-15. *Id.* Finjan’s objections are timely under 37 C.F.R. § 42.64(b)(1). Finjan serves Petitioner these objections to provide notice that Finjan will move to exclude the evidence as improper evidence.

I. Dr. Aviel Rubin Declaration (Ex. 1002)

Finjan objects to the admissibility of Dr. Aviel Rubin’s Declaration (“Rubin Declaration”) for at least the following reasons: 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. 1037 (Curriculum Vitae of Dr. Aviel Rubin). As such, his opinions are inadmissible under **FRE 702** and he lacks personal knowledge under **FRE 602**. His opinions are also irrelevant, confusing, and of minimal probative value under **FRE 401, 402, and 403**.

Moreover, Petitioner has failed to authenticate Martin through the Rubin Declaration under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Martin document referenced in the Rubin Declaration is what

Petitioner claims it is, and has failed to authenticate the date by which Martin was allegedly publicly accessible as a printed publication through the Rubin Declaration. Finjan also objects because the Rubin Declaration is hearsay under **FRE 801** and inadmissible under **FRE 802** and **FRE 803**. Accordingly, the Rubin Declaration is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

II. Martin (Ex. 1047)

Finjan objects to the admissibility of Martin for at least the following reasons: Petitioner has failed to authenticate Martin under **FRE 901** and **FRE 602**. Martin is not self-authenticating under **FRE 901**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**. Specifically, Petitioner has failed to establish that Martin is what Petitioner claims it is, and has failed to authenticate the date by which Martin was allegedly publicly accessible as a printed publication, either by examination of Martin on its face, or by Exhibit 1002.

To the extent that Petitioner attempts to rely on any date that appears on Martin to establish public accessibility of Martin as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802** and **FRE 803**, and further, the date has not been authenticated and is inadmissible under **FRE 901** and **FRE 902**. Additionally, under **FRE 106**, the complete version of Martin, in

fairness, ought to be considered. Further, Martin is improper prior art because it is not an enabling disclosure.

Because of these deficiencies, Martin is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403** since Petitioner has failed to establish that Martin is a prior art printed publication.

III. John Hawes Declaration (Ex. 1088)

Finjan objects to the John Hawes Declaration (“Hawes Declaration”) for at least the following reasons: Under **FRE 702**, Mr. Hawes’ opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Additionally, Mr. Hawes is unqualified as an expert to provide technical opinions of a person of skill in the art. As such, his opinions are inadmissible under **FRE 702** and he lacks personal knowledge under **FRE 602**. Moreover, Petitioner has failed to authenticate Swimmer through the Hawes Declaration under **FRE 901**. Specifically, Petitioner has failed to establish that the Swimmer document referenced in the Hawes Declaration is what Petitioner claims it is, and has failed to authenticate the date by which Swimmer was allegedly publicly accessible as a printed publication through the Hawes Declaration. Finjan also objects because the Hawes Declaration is hearsay under **FRE 801** and inadmissible under **FRE 802** and **FRE 803**.

Accordingly, the Hawes Declaration is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

IV. Swimmer (Ex. 1006)

Finjan objects to Swimmer for at least the following reasons: Petitioner has failed to authenticate Swimmer under **FRE 901** and **FRE 602**. Swimmer is not self-authenticating under **FRE 901**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**. Specifically, Petitioner has failed to establish that Swimmer is what Petitioner claims it is. Finjan also objects on the grounds that Swimmer is hearsay under **FRE 801** and is inadmissible under **FRE 802**.

To the extent that Petitioner attempts to rely on any date that appears on Swimmer to establish public accessibility of Swimmer as a printed publication, the date is hearsay under **FRE 801** and is inadmissible under **FRE 802** and **FRE 803**, and further, the date has not been authenticated and is inadmissible under **FRE 901** and **FRE 902**. Additionally, under **FRE 106**, the complete version of Swimmer, in fairness, ought to be considered. Further, Swimmer is improper prior art because it is not an enabling disclosure.

Because of these deficiencies, Petitioner has failed to establish that Swimmer is a prior art printed publication through the Hawes Declaration and

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