

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
BLUE COAT SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2016-00159¹
U.S. Patent No. 8,677,494

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

¹ Case IPR2016-01174 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 Blue Coat Systems, Inc. ("Petitioner") in its Reply to Patent Owner's Response ("Reply"). Paper No. 26.

Petitioner's Reply was filed on November 16, 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 EVIDENCE

A. Supplemental Declaration of John Hawes of Virus Bulletin ("Hawes Supplemental Declaration") (Exhibit 1089)

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

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

Patent Owner objects to the Hawes Supplemental Declaration as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Hawes

Supplemental 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**, Mr. John 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 and lacks personal knowledge to provide opinions of public accessibility. As such, his opinions are inadmissible under **FRE 702** and **FRE 602**.

Petitioner has failed to authenticate the exhibits to the Hawes Supplemental Declaration under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the exhibits are what Petitioner claims they are. To the extent that Petitioner attempts to rely on any date that appears in the exhibits to the Hawes Supplemental Declaration to establish public accessibility 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**.

Patent Owner objects to the Hawes Supplemental Declaration because it does not introduce evidence of Mr. Hawes'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 Hawes Supplemental Declaration because it is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** and **FRE 803**.

Mr. Hawes' opinions are not relevant under **FRE 401** and **FRE 402**. Moreover, the Hawes Supplemental 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. Supplemental Declaration of Dr. Aviel D. Rubin (“Rubin Supplemental Declaration”) (Exhibit 1090)

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

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

Patent Owner objects to the Rubin Supplemental Declaration as not relevant under **FRE 401** and **FRE 402** because it exceeds the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to the Rubin Supplemental 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. As such, his opinions are inadmissible under **FRE 702**.

Petitioner has failed to authenticate the Rubin Supplemental Declaration under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Rubin Supplemental Declaration is what Petitioner claims it is. To the extent that Petitioner attempts to rely on any date that appears in the Rubin Supplemental Declaration to establish public accessibility 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**.

Patent Owner objects to the Rubin Supplemental Declaration because it does not introduce evidence of Mr. Rubin's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**.

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