Filed on behalf of: Blue Coat Systems, Inc.
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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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BLUE COAT SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

_____

Patent No. 8,677,494
_____

MOTION FOR JOINDER

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I.   Introduction

Blue Coat Systems, Inc. ("Blue Coat") submits, concurrently with this motion, a petition for *inter partes* review (the "Petition") of claims 1, 2, 5, 6, 10, 11, 14, and 15 of U.S. Patent No. 8,677,494 ("the '494 patent"), which is assigned to Finjan, Inc. ("Patent Owner"). Blue Coat respectfully requests institution of an *inter partes* review and joinder with the *inter partes* review concerning the same patent initiated by Symantec Corp. ("Symantec"), *Symantec Corp. v. Finjan, Inc.*, IPR2015-01892 ("Symantec IPR"), which was instituted on March 18, 2016.

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), as it is submitted within one month of the date on which the Symantec IPR was instituted.

The Petition is also narrowly tailored to the ground of unpatentability that is the subject of the Symantec IPR, with a single ground of unpatentability that is substantially identical to the instituted ground of the Symantec IPR, including the same analysis of the prior art and expert testimony. In addition, joinder is appropriate because it will efficiently resolve the patentability of the challenged claims of the '494 patent in a single proceeding, without prejudicing the parties to the Symantec IPR.

Absent termination of Symantec as a party to the proceeding, Blue Coat anticipates participating in the proceeding in a limited capacity. To the extent that

Blue Coat does participate, Blue Coat will coordinate with Symantec to consolidate any filings, manage questioning at depositions, manage presentations at the hearing, ensure that briefing and discovery occur within the time normally allotted, and avoid redundancies.

Blue Coat has conferred with counsel for Symantec regarding the subject of this motion. Symantec has indicated that it does not oppose joinder.

II.   Background

Patent Owner has asserted the '494 patent against a number of defendants, including Blue Coat. On July 15, 2015, Patent Owner filed a complaint asserting the '494 patent against Blue Coat. *See* Case No. 5:15-cv-03295 (N.D. Cal. filed July 15, 2015).

On September 10, 2015, Symantec filed a petition for *inter partes* review asserting five grounds of unpatentability, challenging claims 1, 2, 5, 6, 10, 11, 14, and 15 of the '494 patent, which was assigned Case No. IPR2015-01892. The Board granted institution in the Symantec IPR on March 18, 2016 for each challenged claim based on a single ground: that the '494 was obvious over *Dynamic Detection and Classification of Computer Viruses Using General Behaviour Patterns*, by Morton Swimmer. Oral argument in the Symantec IPR is currently set for December 16, 2016. The Petition contains a single ground of unpatentability that is substantially identical to the instituted ground of the

Symantec IPR, and in fact duplicates the arguments made in the Symantec petition with respect to Swimmer, including the same prior art analysis and expert testimony. *See* Petition.

III. Argument

A. Legal Standard

The Board has authority to join as a party any person who properly files a petition for *inter partes* review to an instituted *inter partes* review. 35 U.S.C.§ 315(c). A motion for joinder must be filed within one month of institution of any *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b). In deciding whether to grant a motion for joinder, the Board considers several factors including: (1) the reasons why joinder is appropriate; (2) whether the party to be joined has presented any new grounds of unpatentability; (3) what impact, if any, joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *See, e.g.*, *Hyundai Motor Co. v. Am. Vehicular Sciences LLC*, IPR2014-01543, Paper No. 11 at 3 (Oct. 24, 2014); *Macronix Int'l Co. v. Spansion*, IPR2014-00898, Paper 15 at 4 (Aug. 13, 2014) (quoting *Kyocera Corporation v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (April 24, 2013)).

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