

Paper No. \_\_\_\_  
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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.

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IPR2016-00956  
Patent No. 8,225,408

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**MOTION FOR JOINDER**

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## I. Statement of the Precise Relief Requested

Blue Coat Systems, Inc. (“Blue Coat”) submits, concurrently with this motion, a petition for *inter partes* review (the “Petition”) of claims 1, 9, 22, 23, 29, and 35 of U.S. Patent No. 8,225,408 (“the ’408 patent”), which is assigned to Finjan, Inc. (“Patent Owner”). Blue Coat respectfully requests joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) of the concurrently filed petition for *inter partes* review with the consolidated *inter partes* review concerning the same patent initiated by Palo Alto Networks, Inc. (“PAN”): *Palo Alto Networks, Inc. v. Finjan, Inc.*, Nos. IPR2015-02001 and IPR2016-00157, instituted on March 29, 2016 (“Consolidated PAN IPRs”).

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 Consolidated PAN IPRs were instituted.

The Petition is also narrowly tailored to the grounds of unpatentability that are the subject of IPR2016-00157, with grounds of unpatentability that are substantially identical to the corresponding instituted grounds of the Consolidated PAN IPRs, 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 ’408 patent in a single proceeding, without prejudicing the parties to the Consolidated PAN IPRs.

Absent termination of PAN as a party to the proceeding, Blue Coat anticipates participating in the proceeding in a limited capacity. Moreover, joinder will have no impact on the trial schedule of the Consolidated PAN IPRs because those proceedings are still in their early stages.

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

## **II. Background**

Patent Owner has asserted the '408 patent against a number of defendants, including Blue Coat. On July 15, 2015, Patent Owner filed a complaint asserting the '408 patent against Blue Coat. *See* Case No. 5:15-cv-03295 (N.D. Cal. filed July 15, 2015).

On September 30, 2015, PAN filed a petition for *inter partes* review asserting two grounds of unpatentability, challenging claims 1, 9, 22, 23, 29, and 35 of the '408 patent, which was assigned Case No. IPR2015-02001. PAN later filed IPR2016-00157 on November 6, 2015, with four grounds challenging claims 3-7, 12-16, and 18-21. The Board granted institution of both IPRs on March 29, 2016 on each ground presented, and consolidated the two IPRs into a single proceeding. Oral argument in the Consolidated PAN IPRs is currently set for January 5, 2017. The Petition contains grounds of unpatentability that are substantially identical to the instituted grounds of IPR2016-00157, and in fact

duplicates the arguments made in the PAN petition, including the same prior art analysis and expert testimony. *See* Petition. Filed concurrently with the Petition is a second petition, IPR2016-00955, duplicating the grounds of IPR2015-02001 and also requesting joinder to the Consolidated PAN IPRs. In conjunction, the two Blue Coat petitions duplicate the instituted grounds of the Consolidated PAN IPRs.

### **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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