

Filed on behalf of: FireEye, Inc.  
By: James M. Heintz  
DLA PIPER LLP (US)  
11911 Freedom Drive, Suite 300  
Reston, VA 20190  
Tel.: 703-773-4000  
Fax: 703-773-5000  
Email: jim.heintz@dlapiper.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FIREEYE, INC.,  
Petitioner,

v.

FINJAN, INC.,  
Patent Owner.

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Patent No. 8,225,408

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**MOTION FOR JOINDER**

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## I. Introduction

FireEye, Inc. (“FireEye”) submits, concurrently with this motion, a petition for *inter partes* review (the “Petition”) of claims 1-2, 8-9, 11, 23-28, and 29-34 of U.S. Patent No. 8,225,408 (“the ’408 patent”), which is assigned to Finjan, Inc. (“Patent Owner”). FireEye respectfully requests that this proceeding be joined with a pending *inter partes* review initiated by Blue Coat Systems, Inc. (“Blue Coat”), *Blue Coat Systems, Inc. v. Finjan, Inc.*, IPR2016-01441 (“Blue Coat IPR”).

FireEye’s request for joinder is timely because the Board has not yet issued an institution decision in the Blue Coat IPR. The Petition is also narrowly tailored to the same disclosures and arguments of unpatentability that are subject of the Blue Coat IPR, and in fact substantively identical to Blue Coat’s petition with respect to the analysis of the prior art and expert testimony.

Although the Blue Coat IPR petition challenges only dependent claims 2, 8, 11, 24-28, and 30-33 in its four grounds (Sections VII.B.-E. of the Blue Coat IPR petition), it also establishes in Section VII.A that independent claims 1, 9, 23, and 29 (from which those challenged dependent claims depend) are obvious under 35 U.S.C. § 103 over Chandnani and Kolawa to support the challenge to the dependent claims. It appears that Blue Coat did not include these independent claims in the grounds in its petition because, as explained in Section V of that

petition, Blue Coat had filed earlier petitions for IPR that challenged these independent claims.

The Petition reproduces Section VII.A of the Blue Coat petition, but also asserts it as Ground 1. In other words, Grounds 2-5 in the Petition are identical to grounds 1-4 in the Blue Coat IPR petition, and Ground 1 in the Petition is identical to the analysis in Section VII.A of the Blue Coat IPR petition which Blue Coat relies on to support grounds 1-4. Thus, the Petition does not present any new disclosure or theory of invalidity.

Patent Owner will not be prejudiced if the Board institutes on Petitioner's Ground 1 challenging independent claims 1, 9, 23, and 29. A finding that any dependent claim in Petitioner's Grounds 2-5 (Blue Coat's grounds 1-4) is unpatentable **necessarily** requires a finding that the independent claim from which it depends is also unpatentable based on the disclosures and arguments in Petitioner's Ground 1 (Blue Coat's Section VII.A). Patent Owner has every opportunity to address the independent claims in its arguments relating to the patentability of the dependent claims. As a practical matter, the Board will address the independent claims in the first instance in the earlier Blue Coat IPRs unless those earlier IPRs are terminated, and in that case any possible prejudice the patent owner may face as a result of a final written decision in an IPR granted on FireEye's Petition that formally declares unpatentable the independent claims

along with the dependent claims from which they depend is outweighed by the public's interest in the cancellation of unpatentable claims. In any event, even if the Board denies instituting on Petitioner's Ground 1, that is not a reason to deny instituting Petitioner's Grounds 2-5.

In addition, joinder is appropriate because it will efficiently resolve the validity of the challenged claims of the '408 patent in a single proceeding, without prejudicing the parties to the Blue Coat IPR.

Absent termination of Blue Coat as a party to the proceeding, FireEye anticipates participating in the proceeding in a very limited capacity as an understudy to Blue Coat. To the extent that FireEye does participate, FireEye will coordinate with Blue Coat to consolidate any filings, to manage questioning at depositions, to manage presentations at the hearing, to avoid redundancies, and to ensure that briefing and discovery occur within the time and page limits normally allotted for one party.

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

## **II. Background**

Patent Owner has asserted the '408 patent against a number of defendants, including FireEye. In 2013, Patent Owner filed a complaint asserting the '408 patent against FireEye. *See* Case No. 4:13-cv-03133 (N.D. Cal. filed Jul. 8, 2013).

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