

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2018-00391
Patent No. 7,647,633

**PATENT OWNER'S REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE PETITIONER'S EVIDENCE**

I. INTRODUCTION

Patent Owner's Motion to Exclude (Paper No. 19, "Motion") should be granted for the reasons set forth in the Motion and below.

II. ARGUMENT

A. **The Board Should Exclude the Web Security & Commerce, O'Reilly & Associates, Inc. Garfinkel and Spafford, June 1997 ("Exhibit 1029")**

The Reply improperly introduced Exhibit 1029, which is inadmissible under 37 C.F.R. § 42.61 and is properly subject to exclusion. Motion at 1–2. Petitioner does not dispute that such evidence could have been included in its Petition.

Petitioner's Opposition to Patent Owner's Motion to Exclude Petitioner's Evidence Under 37 § 42.64 (Paper No. 27, "Opp.") at 2. Therefore, Exhibit 1029 should be excluded.

B. **The Board Should Exclude the Declaration of Dr. Paul Clark (Exhibit 1003, "Clark Declaration")**

The Clark Declaration should be excluded because his opinions are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Motion at 2. Petitioner merely hand waves past this requirement by claiming that "Clark [sic] and includes a citation of the references relied on, as well as pinpoint cites to the references in the body of his declaration." Opp. at 2.

Petitioner points to no evidence or citations to Dr. Clark's declaration. Nor does Petitioner dispute Patent Owner's arguments with regard to Dr. Clark's failure to

provide the basis for his conclusory statement that “Hanson describes and POSA would have understood that the security program is attached (tagged) to the data packets (executable code) as a separate object that does not modify the data packets (executable code).” Motion at 3; Clark Declaration at 64 n.5. Dr. Clark fails to explain the basis for his conclusion, including what “attach” or “tag” mean in relation to a security program to data packets. This failure highlights the fact that the Clark Declaration is not based on a proper analysis, and should be excluded. Fed. R. Evid. 401–402, 702.

III. CONCLUSION

For the foregoing reasons, Patent Owner Motion to Exclude should be granted.

Respectfully submitted,

Dated: February 20, 2019

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Attorneys for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that a true and correct copy of the foregoing Patent Owner's Reply in Support of its Motion to Exclude was served on February 20, 2019, by filing this document through the PTAB E2E system as well as delivering via electronic mail upon the following counsel of record for Petitioner:

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