

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.,  
Petitioner,

v.

FINJAN, INC.,  
Patent Owner.

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

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

Patent Owner, Finjan, Inc. (“Finjan”) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64 to the admissibility of the following documents submitted by Cisco Systems, Inc. in Petitioner’s Petition. Paper No. 1.

**I. Exhibit 1003: Declaration of Petitioner’s Expert Dr. Paul Clark**

Finjan objects to the admissibility of the Declaration of Dr. Paul Clark in Support of Petitioner’s Petition (“Clark Declaration”) for at least the following reasons:

1. Finjan objects to the Clark Declaration because Dr. Clark’s opinions are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. For example, Dr. Clark merely repeats verbatim language from a footnote in the Petition, without disclosing any analysis. Petition at 57; Ex. 1003, ¶ 118. There, Dr. Clark does not explain how “tagging” the data packets that Petitioner maps to the claimed “executable code” can occur without modifying that code. Therefore, Dr. Clark’s opinions are not relevant under **FRE 401** and are inadmissible under **FRE 402**. Moreover, Dr. Clark’s opinions are confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.
2. Further, Dr. Clark is unqualified as an expert to provide technical opinions of person of skill in the art, and did not provide his *curriculum*

*vitae*. See Ex. 1003, ¶¶10–18. Therefore, Dr. Clark's opinions are inadmissible under **FRE 702**.

3. Finjan also objects to the Clark Petition Declaration because it does not introduce evidence of Dr. Clark's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**.
4. To the extent that Dr. Clark relied on inadmissible evidence discussed herein as part of his analysis, those portions of Dr. Clark's declaration are also inadmissible under at least **FRE 401**, **FRE 402**, and/or **FRE 403**.

## **II. Patents, Patent Applications, and Patent File Histories**

Finjan objects to the admissibility of the following exhibits for at least the following reasons:

- 1004 PCT Published Application WO 98/31124 (“Hanson”)
- 1005 U.S. Patent No. 6,577,920 (“Hypponen”)
- 1007 PCT Published Application WO 98/21683 (“Touboul 98”)
- 1008 PCT Published Application WO 99/35583 (“Touboul 99”)
- 1011 UK Patent Application GB 2 322 035 A (“Nash”)
- 1012 U.S. Patent No. 6,772,346 (“Chess”)
- 1014 Select portions of the prosecution history of U.S. Reexamination application No. 90/013,652, (“the ’652 reexam”)

Patent Owner's Objections to Evidence  
IPR2018-00391 (U.S. Patent No. 7,647,633)

- 1015 U.S. Patent application ser. No. 08/964,388 (“the ’388 application”)
  - 1016 U.S. Patent application ser. No. 09/861,229 (“the ’229 application”)
  - 1017 U.S. Provisional application No. 60/205,591 (“the ’591 provisional”)
  - 1018 Select portions of the prosecution history of U.S. Reexamination application No. 90/013,016 (“the ’016 reexam”)
  - 1019 U.S. Provisional application No. 60/030,639 (“the ’639 Provisional”)
  - 1020 U.S. Patent No. 6,092,194 (“the ’194 Patent”)
  - 1022 U.S. Patent Application ser. No. 09/551,302 (“the ’302 application”)
  - 1023 U.S. Patent Application ser. No. 08/790,097 (“the ’097 application”)
1. Exhibits 1004, 1005, 1007, 1008, 1011, 1012, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1022, and 1023 are inadmissible under **FRE 401 – 403** because they are not relevant to any analysis that Petitioner provides that

supports its position that the '633 Patent is invalid. As such, these exhibits are irrelevant.

2. Further, for Exhibits 1008, 1011, 1012, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1022, and 1023, the Board did not institute IPR based on these exhibits. As such, these exhibits are inadmissible under **FRE 401–403** because they are not relevant.

### III. Exhibits 1006, 1009, 1010

Finjan objects to the following exhibits for at least the following reasons:

- 1006 *Rx PC The Anti-Virus Handbook*, Endrijonas. Windcrest/McGraw-Hill in 1993. (“Rx PC”)
- 1009 *Hardening COTS Software with Generic Software Wrappers.*, 1999 IEEE Symposium on Security and Privacy Proceedings, T. Fraser *et al.*, May 1999 (“Fraser”)
- 1010 *User's Guide: WebScanX for Windows 3.1x, Windows 95, and Windows NT*, McAfee Associates, Inc., Aug. 1997 (“WebScanX”)

1. Exhibits 1006, 1009, 1010 introduce portions of writings, the whole of which were not submitted as evidence. As such, these exhibits are not proper evidence under **FRE 106**.
2. Petitioner has failed to authenticate Exhibits 1006, 1009, 1010 under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish

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