

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

U.S. Patent No. 7,647,633

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE

UNDER 37 C.F.R. § 42.64

Petitioner Cisco Systems, Inc. (“Petitioner”) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following exhibits submitted by Finjan, Inc. (“Patent Owner”) in support of its Patent Owner Response:

Ex. 2008, the Declaration of Dr. Nenad Medvidovic (“Medvidovic Declaration”)

EX. 2009, Java 2: The Complete Reference, Third Ed., 1999

Ex. 2010, Just Java, 1996

Ex. 2012, the Declaration of Phil Hartstein (“Hartstein Declaration”);

Ex. 2013-2019, Finjan SEC Filings

Ex. 2020-2022, Gartner Report Documents

Ex. 2023-2025, Proofpoint Documents

Ex. 2030, 2031, 2035, Websense Documents

Patent Owner served its Patent Owner’s Response on September 10, 2018.

Petitioner’s objections are timely under 37 C.F.R. § 42.64(b)(1). By serving these objections on Patent Owner, Petitioner reserves its right to file motions to exclude these exhibits under 37 C.F.R. § 42.64(c).

I. MEDVIDOVIC DECLARATION (EX. 2008)

Petitioner objects to the admissibility of the Medvidovic Declaration under FRE 702 because it contains opinions that are conclusory, do not disclose

supporting facts or data, or are based on unreliable facts, data, or methods. For example, Dr. Medvidovic opinions includes statements that do not identify proper underlying factual support, including ¶¶ 41, 45, 48, 52, 56, 62, 65, 66, 67, 68, 69, 71, 73, 74, 75, 76, 77, 78, 80. Accordingly, the opinions contained in the Medvidovic Declaration are not based on sufficient facts or data, and are not the product of reliable principles and methods and should be excluded under FRE 702. Dr. Medvidovic is also unqualified as an expert to provide opinions from the perspective of a person of ordinary skill in the art, rendering the Medvidovic Declaration inadmissible under FRE 702. The Medvidovic Declaration also contains opinions that are irrelevant, confusing, and of minimal probative value under FRE 401, 402, and 403. Finally, the Medvidovic Declaration relies on exhibits that are inadmissible and unreliable for the reasons set forth below.

II. JAVA 2: THE COMPLETE REFERENCE, THIRD ED., 1999 (EX. 2009)

Petitioner objects to the admissibility of the Java 2 exhibit under FRE 401, 402, and 403 as irrelevant, prejudicial, misleading, and of minimal probative value. For example, the exhibit does not identify the ‘633 Patent or otherwise explain how it is relevant to the ‘633 Patent. The Java 2 exhibit is also inadmissible hearsay under FRE 801 and 802, and lack authentication under FRE 901.

III. JUST JAVA, 1996 (EX. 2010)

Petitioner objects to the admissibility of the Just Java exhibit under FRE 401, 402, and 403 as irrelevant, prejudicial, misleading, and of minimal probative value. For example, the exhibit does not identify the '633 Patent or otherwise explain how it is relevant to the '633 Patent. The exhibit is also inadmissible hearsay under FRE 801 and 802, and lack authentication under FRE 901.

IV. HARTSTEIN DECLARATION (EX. 2012)

Petitioner objects to the Hartstein Declaration because it does not introduce evidence of Mr. Hartstein's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under FRE 602. For example, the Hartstein Declaration states that Mr. Hartstein is the "current" President of Finjan, but it does not indicate when he became president of Finjan, when he became employed by Finjan, his roles and responsibilities at Finjan or any other facts that demonstrate that he has personal knowledge regarding the matters discussed in his Declaration. In addition, the Hartstein Declaration contains testimony regarding the terms of several Patent Owner license agreements, but the Hartstein Declaration includes no facts that demonstrate that he has personal knowledge regarding the license agreements. The Hartstein Declaration is also inadmissible hearsay under FRE 801 and 802. The Hartstein Declaration is also inadmissible under FRE 401, 402, and 403 as irrelevant,

prejudicial, misleading, and of minimal probative value and relies on evidence that itself is inadmissible as set forth herein.

Petitioner also objects to the admissibility of the Hartstein Declaration under FRE 702. The Hartstein Declaration offers inadmissible expert testimony because the opinions contained in his Declaration are conclusory, do not disclose supporting facts or data, are biased and unreliable, and the Hartstein Declaration provides no basis to support Mr. Hartstein's qualifications as an expert. Accordingly, Hartstein's opinions are inadmissible under FRE 702.

V. FINJAN SEC FILINGS (EX. 2013-2019)

Petitioner objects to the admissibility of the Finjan SEC Filings under FRE 401, 402, and 403 as irrelevant, prejudicial, misleading, and of minimal probative value. For example, none of these exhibits identify the '633 Patent or otherwise explain how they are relevant to the '633 Patent. The Finjan SEC Filings are also inadmissible hearsay under FRE 801 and 802, and lack authentication under FRE 901

IV. GARTNER REPORT DOCUMENTS (EX. 2020-2022)

Petitioner objects to the admissibility of the Gartner Report Documents under FRE 401, 402, and 403 as irrelevant, prejudicial, misleading, and of minimal probative value. For example, none of these exhibits identify the '633 Patent or otherwise explain how they are relevant to the '633 Patent. The Gartner Report

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