

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  
IN PETITIONER'S REPLY UNDER 37 C.F.R. § 42.64**

Patent Owner Finjan, Inc. ("Patent Owner") objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Cisco Systems, Inc. ("Petitioner) in its Reply to Patent Owner's Response ("Reply"). Paper No. 16.

**I. PETITIONER'S EVIDENCE**

**A. Exhibit 1027 – Transcript of Deposition of Dr. Paul Clark ("Clark Transcript")**

Patent Owner objects to the admissibility of the Clark Transcript for at least the following reasons:

Patent Owner objects because the cited portions of the Clark Transcript are not relevant under FRE 401 and are inadmissible under FRE 402. Moreover, Petitioner's use of the Clark Transcript is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under FRE 403. In addition, the citations are objectionable because the transcript citations in the Reply are incomplete and do not provide all of the necessary context.

Patent Owner objects to the portions of the Clark Transcript that Petitioner does not cite to or rely on in its Reply. Such evidence is not relevant under FRE 401 and is inadmissible under FRE 402. Any attempt by Petitioner to rely on these portions would be highly prejudicial to Patent Owner under FRE 403.

Also, Dr. Clark is unqualified as an expert to provide technical opinions as a person of skill in the art. Therefore, Dr. Clark's opinions are inadmissible under FRE 702. The Clark Transcript is also inadmissible under FRE 702 because Dr. Clark's opinions are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable.

**B. Exhibit 1028 – Transcript of Deposition of Dr. Nenad Medvidovic, (“Medvidovic Transcript”)**

Patent Owner objects to the admissibility of the Medvidovic Transcript for at least the following reasons:

Patent Owner objects because the cited portions of the Medvidovic Transcript are not relevant under FRE 401 and are inadmissible under FRE 402. Moreover, Petitioner's use of the Medvidovic Transcript is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under FRE 403. In addition, the citations are objectionable because the transcript citations in the Reply are incomplete and do not provide all of the necessary context.

Patent Owner objects to the portions of the Medvidovic Transcript that Petitioner does not cite to or rely on in its Reply. Such evidence is not relevant under FRE 401 and is inadmissible under FRE 402. Any attempt by Petitioner to rely on these portions would be highly prejudicial to Patent Owner under FRE 403.

**C. Exhibit 1029 – Web Security & Commerce, O'Reilly & Associates, Inc., Garfinkel and Spafford, June 1997 (“Spafford Reference”)**

Patent Owner objects to the admissibility of the Spafford Reference for at least the following reasons:

Patent Owner objects to the Spafford Reference as untimely because Petitioner should have introduced it in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner objects because the Spafford Reference is inadmissible under FRE 401-403 because Petitioner does not rely on this exhibit in its Reply and because the Board did not institute IPR based on the reference. As such, the Spafford Reference is inadmissible under FRE 401–403 because it is not relevant to any part of this proceeding and to allow Petitioner to rely on this irrelevant reference would be highly prejudicial, confusing, and/or a waste of time.

The Spafford Reference introduces portions of writings, the whole of which were not submitted as evidence. As such, the Spafford Reference is not proper evidence under FRE 106. Petitioner has also failed to establish that the Spafford Reference is what Petitioner claims it is, and has failed to authenticate Exhibit 1029 under FRE 901.

To the extent that Petitioner attempts to rely on any date that appears within the Spafford Reference to establish public accessibility of Exhibit 1029 as a printed

publication, the dates are hearsay under FRE 801 and does not fall within a hearsay exception under FRE 802 and FRE 803. Further, the dates have not been authenticated and are inadmissible under FRE 901. Accordingly, for the foregoing reasons, the Spafford Reference is not relevant under FRE 401 and is inadmissible under FRE 402.

**D. Deposition Objections**

Patent Owner reserves all objections that it made during depositions in this proceeding.

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