

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETSKOPE, INC.,

Petitioner,

v.

FORTINET, INC.,

Patent Owner.

PTAB Case No. IPR2023-00459

Patent No. 10,084,825

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
UNDER 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Netskope, Inc. (“Netskope” or “Petitioner”) objects to evidence submitted by Patent Owner Fortinet, Inc. (“Fortinet” or “Patent Owner”) with its Patent Owner’s Response (Paper 18) filed January 11, 2024. The objections are based on 37 C.F.R. Part 42, and the relevant portions of Federal Rules of Evidence (“FRE”) that are applicable to *inter partes* review proceedings under 37 C.F.R. § 42.62. These objections have been timely filed and served within five business days of service of evidence.

I. Exhibit 2006

Fortinet purports that Exhibit 2006 contains excerpts from NIIT, “Special Edition Using Storage Area Networks,” published by Que, 2002. Netskope objects to Exhibit 2006 for several reasons.

First, Netskope objects to Exhibit 2006 under FRE 901 because Fortinet has failed to authenticate it. Specifically, Fortinet has failed to produce evidence sufficient to support a finding that Exhibit 2006 is what Fortinet claims it is.

Second, Netskope objects to Exhibit 2006 because Fortinet has failed to show it was publicly available on or before the priority date of the ’825 patent. Specifically, Fortinet has failed to show Exhibit 2006 was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the ’825 patent. Accordingly, Exhibit 2006 is irrelevant and inadmissible. FRE 401-402.

Lastly, Netskope objects to Exhibit 2006 to the extent Fortinet is offering any statement in Exhibit 2006 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2006 (FRE 805).

II. Exhibit 2007

Fortinet purports that Exhibit 2007 is “IBM and Cisco: Together for a World Class Data Center,” IBM Redbooks, July 2013. Netskope objects to Exhibit 2007 for several reasons.

First, Netskope objects to Exhibit 2007 under FRE 901 because Fortinet has failed to authenticate it. Specifically, Fortinet has failed to produce evidence sufficient to support a finding that Exhibit 2007 is what Fortinet claims it is.

Second, Netskope objects to Exhibit 2007 because Fortinet has failed to show it was publicly available on or before the priority date of the '825 patent. Specifically, Fortinet has failed to show Exhibit 2007 was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the '825 patent. Accordingly, Exhibit 2007 is irrelevant and inadmissible. FRE 401-402.

Lastly, Netskope objects to Exhibit 2007 to the extent Fortinet is offering any statement in Exhibit 2007 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2007 (FRE 805).

III. Exhibit 2009

Fortinet purports that Exhibit 2009 is a transcript of the testimony of Wenke Lee (July 26, 2023) in IPR2023-00030. Netskope objects to Exhibit 2009 for several reasons.

First, Netskope objects to Exhibit 2009 under FRE 401 and 402 because Fortinet has failed to show that such evidence tends to make any fact more or less probable.

Second, Netskope objects to Exhibit 2009 under FRE 403 because its probative value is outweighed at least by its tendency to confuse the issues.

Lastly, Netskope objects to Exhibit 2009 to the extent Fortinet is offering any statement in Exhibit 2009 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2009 (FRE 805).

IV. Exhibit 2010

Fortinet purports that Exhibit 2010 is Declaration of Wenke Lee, Ph.D. in support of Petition for *Inter Partes* Review of U.S. Patent No. 9,197,601 (Exhibit 1002 from IPR2023-00175). Netskope objects to Exhibit 2010 for several reasons.

First, Netskope objects to Exhibit 2010 under FRE 401 and 402 because Fortinet has failed to show that such evidence tends to make any fact more or less probable.

Second, Netskope objects to Exhibit 2010 under FRE 403 because its probative value is outweighed at least by its tendency to confuse the issues.

Lastly, Netskope objects to Exhibit 2010 to the extent Fortinet is offering any statement in Exhibit 2010 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2010 (FRE 805).

V. Exhibit 2011

Fortinet purports that Exhibit 2011 is U.S. Patent No. 8,000,329 ("Fendick"). Netskope objects to Exhibit 2011 for several reasons.

First, Netskope objects to Exhibit 2011 under FRE 401 and 402 because Fortinet has failed to show that such evidence tends to make any fact more or less probable.

Second, Netskope objects to Exhibit 2011 under FRE 403 because its probative value is outweighed at least by its tendency to confuse the issues.

Lastly, Netskope objects to Exhibit 2011 to the extent Fortinet is offering any statement in Exhibit 2011 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2011 (FRE 805).

VI. Exhibit 2012

Fortinet purports that Exhibit 2012 is webpage "Cooperative Security Fabric," June 8, 2016, archived by Wayback Machine on July 28, 2016. Netskope objects to Exhibit 2012 for several reasons.

First, Netskope objects to Exhibit 2012 under FRE 901 because Fortinet has failed to authenticate it. Specifically, Fortinet has failed to produce evidence sufficient to support a finding that Exhibit 2012 is what Fortinet claims it is.

Second, Netskope objects to Exhibit 2012 because Fortinet has failed to show it was publicly available on or before the priority date of the '825 patent. Specifically, Fortinet has failed to show Exhibit 2012 was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the '825 patent. Accordingly, Exhibit 2012 is irrelevant and inadmissible. FRE 401-402.

Lastly, Netskope objects to Exhibit 2012 to the extent Fortinet is offering any statement in Exhibit 2012 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2012 (FRE 805).

VII. Exhibit 2013

Fortinet purports that Exhibit 2013 is webpage "Installing internal FortiGates and enabling a security fabric," June 8, 2016, archived by Wayback Machine on August 28, 2016. Netskope objects to Exhibit 2013 for several reasons.

First, Netskope objects to Exhibit 2013 under FRE 901 because Fortinet has failed to authenticate it. Specifically, Fortinet has failed to produce evidence sufficient to support a finding that Exhibit 2013 is what Fortinet claims it is.

Second, Netskope objects to Exhibit 2013 because Fortinet has failed to show it was publicly available on or before the priority date of the '825 patent. Specifically, Fortinet has failed to show Exhibit 2013 was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the '825 patent. Accordingly, Exhibit 2013 is irrelevant and inadmissible. FRE 401-402.

Lastly, Netskope objects to Exhibit 2013 to the extent Fortinet is offering any statement in Exhibit 2013 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2013 (FRE 805).

VIII. Exhibit 2014

Fortinet purports that Exhibit 2014 is webpage "Fortinet Security Fabric Named 2016 CRN Network Security Product of the Year," December 5, 2016. Netskope objects to Exhibit 2014 for several reasons.

First, Netskope objects to Exhibit 2014 under FRE 901 because Fortinet has failed to authenticate it. Specifically, Fortinet has failed to produce evidence sufficient to support a finding that Exhibit 2014 is what Fortinet claims it is.

Second, Netskope objects to Exhibit 2014 because Fortinet has failed to show it was publicly available on or before the priority date of the '825 patent. Specifically, Fortinet has failed to show Exhibit 2014 was disseminated or available such that persons of ordinary skill in the art would have been able to locate and

access it before the priority date of the '825 patent. Accordingly, Exhibit 2014 is irrelevant and inadmissible. FRE 401-402.

Lastly, Netskope objects to Exhibit 2014 to the extent Fortinet is offering any statement in Exhibit 2014 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2014 (FRE 805).

IX. Exhibit 2015

Fortinet purports that Exhibit 2015 is webpage “Fortinet Security Fabric Earns 100% Detection Scores Across Several Attack Vectors in NSS Labs’ Latest Breach Detection Group Test,” August 2, 2016. Netskope objects to Exhibit 2015 for several reasons.

First, Netskope objects to Exhibit 2015 under FRE 901 because Fortinet has failed to authenticate it. Specifically, Fortinet has failed to produce evidence sufficient to support a finding that Exhibit 2015 is what Fortinet claims it is.

Second, Netskope objects to Exhibit 2015 because Fortinet has failed to show it was publicly available on or before the priority date of the '825 patent. Specifically, Fortinet has failed to show Exhibit 2015 was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the '825 patent. Accordingly, Exhibit 2015 is irrelevant and inadmissible. FRE 401-402.

Lastly, Netskope objects to Exhibit 2015 to the extent Fortinet is offering any statement in Exhibit 2015 for the truth of the matter asserted therein (FRE 801-802) or the truth of any hearsay statement quoted in Exhibit 2015 (FRE 805).

Dated: January 19, 2024

Respectfully submitted,

/Thomas N. Millikan/

Lead Counsel

Thomas N. Millikan (Reg. No. 72,316)

PERKINS COIE LLP
11452 El Camino Real, Suite 300
San Diego, California 92130-2080
(858) 720-5700

Back-up Counsel

Babak Tehrani (Reg. No. 55,937)

Andrew N. Klein (*pro hac vice*)

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE UNDER 37 C.F.R. § 42.64(b)(1) was served in its entirety this 19th day of January, 2024 by electronic mail on the Patent Owner via its attorneys of record:

James M. Glass - jimglass@quinnemanuel.com
John T. McKee - johnmckee@quinnemanuel.com
Quincy Lu - quincylu@quinnemanuel.com
Andrew M. Holmes - drewholmes@quinnemanuel.com
Ognjen Zivojnovic - ogizivojnovic@quinnemanuel.com
Razmig H. Messerian - razmesserian@quinnemanuel.com
Sean Gloth - seangloth@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN LLP
51 Madison Ave, 22nd Floor
New York, New York 10010

Dated: January 19, 2024

Respectfully submitted,

/Thomas N. Millikan/

Lead Counsel

Thomas N. Millikan (Reg. No. 72,316)

Back-up Counsel

Babak Tehrani (Reg. No. 55,937)

Andrew N. Klein (*pro hac vice*)

Attorneys for Petitioner

PERKINS COIE LLP
11452 El Camino Real, Suite 300
San Diego, California 92130-2080
(858) 720-5700