

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**JUNIPER NETWORKS, INC.**

Petitioner

v.

**IMPLICIT, LLC**

Patent Owner

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Case: IPR2020-00587

Patent No. 9,591,104

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner objects to the following

Exhibits submitted with the Petition:

<b>Exhibit Number</b>	<b>Description</b>
<b>1011</b>	Nielson Declaration
<b>1012</b>	Smith - The AltaVista firewall 1997
<b>1013</b>	Hall-Ellis Declaration
<b>1014</b>	Decasper - Router plugins 1998-10
<b>1015</b>	Declaration - Decasper
<b>1016</b>	CheckPoint & Affidavit
<b>1030</b>	Stevens - TCP-IP Illustrated vol 1
<b>1031</b>	rfc2068
<b>1032</b>	Hunt
<b>1033</b>	Company Overview _ Check Point Software
<b>1034</b>	Awards and Recognition _ Check Point Software
<b>1035</b>	CPnwsltr1
<b>1036</b>	Checkpoint95
<b>1037</b>	rfc1825
<b>1038</b>	rfc1826
<b>1039</b>	rfc1827
<b>1040</b>	SSL 3.0 1996
<b>1043</b>	Audio Streaming
<b>1044</b>	Computer Networks
<b>1045</b>	Emerging Technologies
<b>1046</b>	Network Firewalls
<b>1047</b>	rfc791

Exhibit Number	Description
1048	rfc793
1049	rfc879
1050	rfc1919
1051	rfc1945
1052	The SSL 0.2 Protocol
1053	World-Wide Web proxies
1055	rfc959
1056	rfc788
1057	rfc2616

## I. OBJECTIONS TO EXHIBITS 1011 AND 1013

Patent Owner objects to Exhibits 1011 and 1013 because they contain unreliable testimony under FRE 401, 402, 403, 602, 801, 802, 901, 902 and 702, and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and the incorporation by reference rules under 37 C.F.R. § 42.6(a)(3).

For Exhibit 1011, for example, Dr. Nielson was not a person of ordinary skill in the art at the time of the date of invention of the Implicit Patents. Dr. Nielson's declaration also contains inadmissible hearsay under FRE 801 and 802 (and no exception applies), relies on documents that have not been shown to be authentic under FRE 901 and 902, and testifies to factual matters to which Dr. Nielsen lacks personal knowledge (*e.g.*, the state of the art in the 1990s and earlier), which is inadmissible under FRE 602. As such, this testimony is inadmissible as irrelevant

and misleading and not the result of scientific, technical, or other specialized knowledge that will help the trier of fact to understand the evidence or to determine a fact in issue.

For Exhibit 1013, for example, Dr. Hall-Ellis provides a declaration on whether certain documents were publicly available, provides opinions based through the lens of a person of ordinary skill in the art, contains inadmissible hearsay under FRE 801 and 802 (and no exception applies), relies on documents that have not been shown to be authentic under FRE 901 and 902, and testifies to factual matters to which Dr. Hall-Ellis lacks personal knowledge (*e.g.*, library index, procedures, and publication relating to the Smith reference), which is inadmissible under FRE 602. As such, this testimony is inadmissible as irrelevant and misleading and not the result of scientific, technical, or other specialized knowledge that will help the trier of fact to understand the evidence or to determine a fact in issue.

These expert declarations were also improperly incorporated by reference under 37 C.F.R. § 42.6(a)(3), and the word limits imposed by 37 C.F.R. § 42.24(b)(2). Exhibit 1001, for example, is a 228-page declaration with large amount of testimony and arguments incorporated throughout the Petition. Exhibit 1013 was incorporated by reference into a single citation. *See, e.g.*, Pet. at 16. These were improper incorporations by reference.

## II. OBJECTIONS TO EXHIBITS 1015 AND 1016

Patent Owner objects to Exhibits 1015 and 1016 because they contain unreliable testimony under FRE 401, 402, 403, 602, and 702, and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and 37 C.F.R. § 42.23(b). FRE 401, 402, 403, 602, and 702, and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

Both of these declarations were proffered as fact witness declarations. They contain, however, expert testimony that does not meet the expert requirements of FRE 702 and *Daubert* in the disclosure of the declarations.

For Exhibit 1015, it contains factual matters on which Mr. Knott has not been shown to have personal knowledge under FRE 601 and 602, including opinion testimony regarding what the images on the references show, when a reference was cataloged and available to the public, when a reference could be publicly searched for, and the normal processes and procedures, including procedures that pre-date Mr. Knott's employment at the University of Michigan. The declaration contains inadmissible opinion testimony.

For Exhibit 1016, the declaration of Mr. Butler contains factual matters on which Mr. Butler has not been shown to have personal knowledge under FRE 601 and 602, including opinion testimony regarding how the Wayback Machine operates (and operated prior to the filing date of the Implicit Patents), how it collects and preserves webpages, how it presents webpages to users, how it determines the date

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