



## Court Excludes Evidence of PTO Proceedings Where Potential Prejudice Outweighs Relevance

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Finjan sued Sophos in March 2014, alleging direct and indirect infringement of patents related to network security. Trial is scheduled to begin on September 6, 2016. Several of the patents-in-suit had been the subject of petitions for post-grant review at the PTO. To support its validity arguments in the infringement litigation, Finjan sought to introduce evidence and argument at trial that the PTO had decided not to institute *inter partes* review (IPR) of the patents-in-suit.

Sophos moved to exclude the evidence. It argued that the PTO institutes review only if it finds that there is a reasonable likelihood that the petitioner will prove the patent invalid, and such a decision is not a final decision based on a full record. Furthermore, Sophos argued that, in this case, the evidence should be excluded because (1) many of the petitions were not brought by Sophos; (2) two petitions were denied on procedural grounds; (3) none of the petitions involved the same prior art at issue in the trial; and (4) reexamination of one patent related to only two claims, neither of which was at issue.

The court recognized that evidence of PTO proceedings may be relevant to validity and that courts often allow evidence of this kind. When an IPR denial was of marginal relevance, however, and the probative value was greatly outweighed by the expenditure of time necessary to explain the process to the jury, exclusion of the evidence was appropriate. Accordingly, the court granted Sophos's motion to exclude the evidence.

*Finjan, Inc. v. Sophos, Inc.*, No. 14-cv-1197 (N. D. Cal. Aug. 22, 2016).

## Categories

District Court

Patent Litigation

Northern District of California

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