UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WEBROOT, INC. and OPEN TEXT, INC., *Plaintiffs,* v. TREND MICRO INC., *Defendant*.	Civil Action No. 6:22-cv-00239-ADA-DTG JURY TRIAL DEMAND
TREND MICRO INC., *Counterclaim-Plaintiff,* v. WEBROOT, INC. and OPEN TEXT, INC., *Counterclaim-Defendants,* and OPEN TEXT CORP. *Counterclaim-Defendant.*	

PLAINTIFFS' DISCLOSURE OF ASSERTED CLAIMS AND PRELIMINARY INFRINGEMENT CONTENTIONS PURSUANT TO THE COURT'S STANDING ORDER GOVERNING PATENT PROCEEDINGS

Plaintiffs Open Text Inc. ("OpenText") and Webroot, Inc. ("Webroot") (collectively, "Plaintiffs"), by and through their attorneys, provide the following Disclosure of Asserted Claims and Preliminary Infringement Contentions ("Disclosure") as to U.S. Patent No. 8,418,250 (the "'250 Patent"), U.S. Patent No. 8,726,389 (the "'389 Patent"), U.S. Patent No. 9,578,045 (the

IPR2023-00657
Open Text Inc. EX-2012

"'045 Patent"), U.S. Patent No. 10,257,224 (the "'224 Patent"), U.S. Patent No. 10,284,591 (the "'591 Patent"); and U.S. Patent No. 10,599,844 (the "'844 Patent") (collectively, the "Asserted Patents" or "Patents-in-Suit") against Defendant Trend Micro, Inc. ("Defendant"). This Disclosure is made solely for the purpose of this action.

Plaintiffs' investigation regarding infringement and additional potential grounds of infringement is ongoing. This Disclosure is therefore based upon information that Plaintiffs have been able to obtain to date, together with their good-faith beliefs regarding the Accused Products and their operation, and is given without prejudice to Plaintiffs' right to supplement or amend their Disclosure as additional facts are ascertained, discovery is conducted, analysis is made, research is completed, and claim language is construed. Plaintiffs reserve the right to amend and/or supplement their infringement contentions as additional details are made available.

This Disclosure is based at least in part on Plaintiffs' present understanding of the meaning and scope of the claims of the Asserted Patents. Plaintiffs reserve the right to supplement or amend this Disclosure if their understanding of the claim scope changes, including any constructions of terms by the Court.

For each Asserted Patent, Plaintiffs identify the following Accused Products of which it is currently aware. The identification of Accused Products is based on Plaintiffs' research and analysis to date, without the benefit of discovery from the Defendant. Plaintiffs reserve the right to add, delete, substitute or otherwise amend this list of Accused Products based on discovery or other circumstances, in a manner consistent with the Federal Rules of Civil Procedures, local rules, and standing order.

Accused Products. The Accused Products include at least, without limitation, the following: Apex One and products that include or interface with Apex One including Network

One, Vision One, and Trend Micro's Smart Protection Network, as well as Trend's EDR/XDR and Cloud products ('250 Patent); Trend Micro's Cloud One Deep Security, Deep Security, Apex One, Apex Central, Vision One, Deep Discovery Director, Deep Discovery Analyzer, and/or Deep Discovery Inspector, as well as systems and components that integrate with such products or have similar functionality ('389 Patent); Trend Micro's XDR technology including as Trend Micro's Vision One and Network One and/or as a module in connection with Trend Micro's Deep Discovery, Deep Security, Apex One, and any other products that Trend Micro offers XDR as a module including offering XDR as a software as a service ('045 and '224 Patents); Apex One, Cloud One, and products that include or interface with Apex One including Network One, Vision One, and Trend Micro's Smart Protection Network ('591 Patent); Apex One including Apex One with Trend Micro's Predictive Machine Learning Engine and/or Trend Micro's TrendX Hybrid Machine Learning Model, either alone, and/or when installed and operated as designed and intended on a computer system ('844 Patent); as well as 1) any additional products identified in Exhibits 1-6 attached hereto, 2) any products that include the same functionality or features described in Exhibits 1-6, and 3) any prior or subsequent versions of the products identified in Exhibits 1-6 that include the same features or functionality.

Defendant's Infringement. Based upon currently available information, Plaintiffs identify the following asserted claims:

- The '250 Patent. The named Defendant has infringed and is infringing claims 1-30 literally and/or under the Doctrine of Equivalents. The named Defendants have infringed and are infringing these claims both directly and indirectly (by inducing infringement pursuant to 35 U.S. Code § 271(b) and/or by contributing to infringement pursuant to 35 U.S. Code § 271 (c)).

- The ’389 Patent. The named Defendant has infringed and is infringing claims 1-14, 30 literally and/or under the Doctrine of Equivalents. The named Defendants have infringed and are infringing these claims both directly and indirectly (by inducing infringement pursuant to 35 U.S. Code § 271(b) and/or by contributing to infringement pursuant to 35 U.S. Code § 271 (c)).
- The ’045 Patent. The named Defendant has infringed and is infringing claims 1-7 literally and/or under the Doctrine of Equivalents. The named Defendants have infringed and are infringing these claims both directly and indirectly (by inducing infringement pursuant to 35 U.S. Code § 271(b) and/or by contributing to infringement pursuant to 35 U.S. Code § 271 (c)).
- The ’224 Patent. The named Defendant has infringed and is infringing claims 1-20 literally and/or under the Doctrine of Equivalents. The named Defendants have infringed and are infringing these claims both directly and indirectly (by inducing infringement pursuant to 35 U.S. Code § 271(b) and/or by contributing to infringement pursuant to 35 U.S. Code § 271 (c)).
- The ’591 Patent. The named Defendant has infringed and is infringing claims 1-18 literally and/or under the Doctrine of Equivalents. The named Defendants have infringed and are infringing these claims both directly and indirectly (by inducing infringement pursuant to 35 U.S. Code § 271(b) and/or by contributing to infringement pursuant to 35 U.S. Code § 271 (c)).
- The ’844 Patent. The named Defendant has infringed and is infringing claims 1-20 literally and/or under the Doctrine of Equivalents. The named Defendants have infringed and are infringing these claims both directly and indirectly (by inducing infringement pursuant to

35 U.S. Code § 271(b) and/or by contributing to infringement pursuant to 35 U.S. Code § 271 (c)).

Based upon currently available information, Plaintiffs assert that Defendant has infringed and/or continues to infringe the patents and claims as identified and described in the infringement charts for the Accused Products attached as Exhibits 1-6. These exhibits contain illustrative examples of Defendant's presently known infringement of the Asserted Claims by evidencing the correspondence between (i) the elements of the Asserted Claims, and (ii) the corresponding items of the Accused Products. However, it should be understood that such examples are illustrative in nature and not exhaustive, additional materials may evidence infringement, or additional basis of infringement may be present and uncovered during discovery and after claim construction. Each asserted claim is asserted to have the priority date identified on the face of the corresponding patent-in-suit.

Each element of each asserted claim is presently alleged to be literally present. However, to the extent Defendant argues that a limitation is not present, then Defendant still infringes under the Doctrine of Equivalents. Any differences alleged to exist between any of the Asserted Claims and any of the Accused Products are insubstantial and therefore each Accused Product also meets each limitation under the Doctrine of Equivalents as the identified features of the Accused Product performs substantially the same function in substantially the same way to achieve substantially the same result as the corresponding claim limitation. Plaintiffs reserve the right to supplement this Disclosure as discovery is conducted, Defendant provides any alleged non-infringement positions, and claim construction is completed to further supplement their allegations under the Doctrine of Equivalents as appropriate.

Defendant directly infringes each of the asserted claims under 35 U.S.C. §271(a) at least

by using, operating, testing, advertising, making, installing, maintaining, distributing, supporting, providing instructions for, offering to sell, selling and/or otherwise providing services including the Accused Products—or systems incorporating the Accused Products—within the United States and/or importing the Accused Products into the United States. Defendant also directly infringes each of the claims at least by performing, or being responsible for the performance (*e.g.*, the acts are attributable to it), of each of the claimed steps as set forth in the accompanying charts. Defendant's acts of direct infringement are further set forth in accompanying Exhibits 1-6.

Defendant also indirectly infringes the Asserted Claims by inducing infringement pursuant to 35 U.S. Code § 271(b)). Defendant has had knowledge of each of the asserted patents and of the specific manner by which the Accused Products infringe each patent since at least March 2022 after Plaintiffs filed their complaint. Defendant knowingly induced one or more third part(ies) (*e.g.*, business partners, customers or others), to infringe the Asserted Claims by making the Accused Products available on its website, widely advertises the Accused Products, providing applications that allow partners and users to access the Accused Products, providing instructions for installing, and providing technical support to users and/or engaging in activities that aid and abet infringement of the Asserted Patents by end-users within the United States, with knowledge and intent that performance of such actions will infringe the Asserted Claims. Defendant committed these acts with knowledge or willful blindness that such induced acts would constitute infringement of the Asserted Claims at the very least as of the filing of the Complaint in this matter. Defendant also has had actual or constructive notice of each Asserted Patent since at least as early as the date Plaintiffs marked its products with the corresponding Asserted Patent and/or provided notice of the corresponding Asserted Patent on its website. Defendant knew that it infringed the Asserted Patents based on its knowledge of the same. Alternatively or additionally, Defendant

was willfully blind to the fact that it infringed the Asserted Patents despite its knowledge of the same, based on, for example, the similarity of the Accused Products to Plaintiffs' patented products. Defendants' inducement of infringement by others is further set forth in each of Exhibits 1-6.

Defendant also indirectly infringes the Asserted Claims by contributing to infringement pursuant to 35 U.S. Code § 271(c). Each of the Accused Products is a material part of the claims—and Defendant knew each of the Accused Products is especially made or especially adapted for use in an infringement of the Asserted Claims. Further, the Accused Products have no substantial non-infringing uses, as set forth in the example claim charts.

Defendant also contributes to infringement of its customers and end users of the Accused Products by offering to sell or selling within the United States or importing into the United States the Accused Products, which are for use in practicing, and under normal operation practice, methods claimed in the Asserted Patents, constituting a material part of the inventions claimed, and not a staple article or commodity of commerce suitable for substantial non-infringing uses. Indeed, the Accused Products and the example functionality have no substantial non-infringing uses but instead are specifically designed to practice the Asserted Patents. Defendant's contributory infringement is further set forth in each of Exhibits 1-6.

Priority Dates. Plaintiffs presently identify the following priority dates for the asserted patents.

- The '250 Patent is entitled at least to the earliest priority date listed on the face of the Patent, June 30, 2005, corresponding to Foreign Application No. 0513375.6 (GB).
- The '389 Patent is entitled at least to a priority date of June 30, 2005 as it claims

priority to the same Foreign Application as the ’250 Patent.

- The ’045 Patent is entitled at least to the earliest priority date listed on the face of the Patent, May 3, 2013, corresponding to provisional application 61/819,470.
- The ’224 Patent is entitled at least to a priority date of May 3, 2013 as it claims priority to the ’045 Patent and also to provisional application 61/819,470 filed on May 3, 2013.
- The ’591 Patent is entitled at least to the earliest priority date listed on the face of the patent, January 27, 2014, corresponding to provisional application 61/931,772.
- The ‘844 Patent is entitled at least to the earliest priority date listed on the face of the patent, May 12, 2015, corresponding to U.S. patent application 14/709,875.

Plaintiffs’ investigation and analysis is ongoing, and Plaintiffs reserve the right to assert and rely on an earlier invention date in the event Defendant identifies alleged prior art that is earlier than the identified priority date corresponding to a date of conception followed by diligence and reduction to practice of the claimed invention.

Production of Documents. Simultaneously with this Disclosure, Plaintiffs are producing documents pursuant to paragraph two of the Court’s standing order governing patent proceedings (“OGP”). Plaintiffs reserve the right to supplement this production as additional investigation and discovery is conducted in the ordinary course of these proceedings. Further, Plaintiffs reserve the right to supplement or revise its infringement contentions and/or chart, including identification of additional asserted claims, based on, for example, new versions or variations of one or more of the accused products that are later discovered.

DATED: July 12, 2022

By: *<u>/s/ Jeffrey D. Mills</u>*

Jeffrey D. Mills
Texas Bar No. 24034203
KING & SPALDING LLP
500 West Second Street, Suite 1800
Austin, Texas, 78701
Tel: (512) 457-2027
Fax: (512) 457-2100
jmills@kslaw.com

Christopher C. Campbell (D.C. Bar No. 444262)
Patrick Lafferty (*pro hac vice to be filed*)
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW, Suite 200
Washington, DC 20006
Tel: (202) 626-5578
Fax: (202) 626-3737
ccampbell@kslaw.com
plafferty@kslaw.com

Steven Sprinkle
Texas Bar No. 00794962
SPRINKLE IP LAW GROUP, P.C.
1301 W. 25th Street, Suite 408
Austin, TX 78705
Tel: 512-637-9220
SSprinkle@sprinklelaw.com

Britton F. Davis (*pro hac vice to be filed*)
Brian Eutermoser (*pro hac vice to be filed*)
KING & SPALDING LLP
1401 Lawrence Street, Suite 1900
Denver, CO 80202
Tel: (720) 535-2300
Fax: (720) 535-2400
bfdavis@kslaw.com
beutermoser@kslaw.com

Attorneys for Plaintiffs Open Text Inc. and Webroot. Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on July 12, 2022 to all counsel of record below who are deemed to have consented to electronic service via the Court's CM/ECF system.

Yar Chaikovsky - yarchaikovsky@paulhastings.com
Philip Ou - philipou@paulhastings.com
Radhesh Devendran - radheshdevendran@paulhastings.com

/s/ *Jeffrey D. Mills*