

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

WEBROOT, INC. and  
OPEN TEXT, INC.,

Plaintiffs

v.

FORCEPOINT LLC,

Defendant.

FORCEPOINT LLC,

Counterclaim Plaintiff,

v.

WEBROOT, INC., OPEN TEXT, INC., and  
OPEN TEXT CORPORATION

Counterclaim-  
Defendants.

CIVIL ACTION NO. 6:22-CV-00342

**JURY TRIAL DEMANDED**

**DEFENDANT FORCEPOINT LLC'S  
PRELIMINARY INVALIDITY CONTENTIONS**

**I. INTRODUCTION**

Pursuant to the Court's Standing Order Governing Proceedings (OGP 4.1) – Patent Cases, Dkt. No. 13 (the "Order") and the Scheduling Order in this case, Defendant Forcepoint LLC ("Meta" or "Defendant") hereby provides the following Preliminary Invalidity Contentions ("Contentions") to Plaintiffs and Counterclaim Defendants Webroot Inc. ("Webroot"), Open Text, Inc. ("OTI"), and Open Text Corp. ("OTC") (collectively, "Plaintiffs") for asserted U.S. Patent Nos. 10,025,928 (the "'928 Patent"), 8,438,386 (the "'386 Patent"), 10,599,844 (the "'844

and/or in combination with the knowledge of a person of ordinary skill in the art. Defendant reserves the right to rely upon any combination of the charted prior art under 35 U.S.C. § 103, yet Defendant has also identified exemplary obviousness combination in Section VI.E, *infra*.

| <b>'386 Patent Prior Art Patents/Patent Applications</b> |                                                           |                          |                    |                                    |
|----------------------------------------------------------|-----------------------------------------------------------|--------------------------|--------------------|------------------------------------|
| <b>Ex. No.</b>                                           | <b>Patent / Publication No.</b>                           | <b>Country of Origin</b> | <b>Filing Date</b> | <b>Date of Issue / Publication</b> |
| <b>Ex. D-1</b>                                           | U.S. Patent No. 9,654,495 ("Hubbard 495")                 | U.S.                     | Feb. 28, 2007      | May 16, 2017                       |
| <b>Ex. D-2</b>                                           | U.S. Patent Publication No. 2008/0175266 ("Alperovitch")  | U.S.                     | Jan. 24, 2007      | July 24, 2008                      |
| <b>Ex. D-3</b>                                           | U.S. Patent No. 8,561,182 ("Lee")                         | U.S.                     | Jan. 29, 2009      | Oct. 15, 2013                      |
| <b>Ex. D-4</b>                                           | U.S. Patent Publication No. 2008/0028100 ("Adelman 2008") | U.S.                     | Oct. 3, 2007       | Jan. 31, 2008                      |
| <b>Ex. D-5</b>                                           | U.S. Patent No. 7,809,796 ("Bloch 2007")                  | U.S.                     | Apr. 5, 2007       | Oct. 5, 2010                       |

| <b>'386 Patent Additional Prior Art/Background Art</b>                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| U.S. Patent No. 8,069,213 ("Bloch 2010")                                                                                                                                                                           |
| U.S. Patent Publication No. 2009/0248623 ("Adelman 2009")                                                                                                                                                          |
| U.S. Patent Publication No. 2010/0256977 ("Yu 977")                                                                                                                                                                |
| <i>Building Reputations for Internet Clients</i> , Wei et al., Electronic Notes in Theoretical Computer Science 179 (2007) 17–30 ("Wei")                                                                           |
| <i>Generative Prior Knowledge for Discriminative Classification</i> , Epshteyn et al., Journal of Artificial Intelligence Research 27 (2006) 25-53 ("Epshteyn")                                                    |
| <i>A Small World Overlay P2P Transfer System with Role-Based and Reputation-Based Access Control Policies</i> , Xia et al., 2008 International Conference on Internet Computing in Science and Engineering ("Xia") |
| <i>A Multilevel Reputation System for Peer-to-Peer Networks</i> , Xu et al., Sixth International Conference on Grid and Cooperative Computing (GCC 2007) ("Xu")                                                    |

Furthermore, with respect to the '386 Patent, under pre-AIA 35 U.S.C. § 102(f), Defendant identifies the activities of entities involved in computer security as referenced in Provisional

Application Nos. 61/171,264 and 61/241,389, to which Plaintiffs claim priority. *See, e.g.*, Provisional Application No. 61/171,264 at [0002]-[0035]; Provisional Application No. 61/241,389 at [0002]-[0035].

Furthermore, with respect to the '386 Patent, under pre-AIA 35 U.S.C. §§ 102(a), (b), and (g)(2), Defendant reserves the right to identify prior art systems developed prior to April 21, 2009. *See, e.g., Intell. Ventures II LLC v. FedEx Corp.*, No. 2:16-CV-00980-JRG, 2019 WL 1434656, at \*8-11 (E.D. Tex. Mar. 29, 2019). Discovery is ongoing, and Defendant reserves the right to amend the Invalidity Contentions herein based on third-party discovery obtained.

#### **D. Anticipation**

At least under Plaintiffs' apparent infringement theory, the Asserted Claims of the '386 Patent are anticipated, either expressly or inherently as understood by a person having ordinary skill in the art, by the references as set forth in the attached claim charts. At least under Plaintiffs' apparent infringement theory, Asserted Claims 1-13, 15, 16, and 18 of the '386 Patent are anticipated, either expressly or inherently as understood by a person having ordinary skill in the art, by Hubbard 495 and Alperovitch as set forth in the attached claim chart.

#### **E. Obviousness**

At least under Plaintiffs' apparent infringement theory, the Asserted Claims of the '386 Patent are rendered obvious by the references identified in the attached claim charts, either alone or in the combinations with other prior art references as identified below. Defendant contends that one of ordinary skill in the art, at the time of the alleged invention of the Asserted '386 Patent Claims, would have been motivated to combine the references disclosed herein in such a way to reach the alleged inventions. In certain instances, the suggested obviousness combinations are provided in the alternative to Defendant's anticipation contentions, which shall not be construed to suggest that any reference included in the combinations is not by itself anticipatory. The

combinations evidencing teachings, suggestions, and/or motivations to combine the prior-art references in a way that renders the Asserted Claims obvious are merely exemplary.

| <b>Primary Reference</b> | <b>In Combination With</b> |
|--------------------------|----------------------------|
| Hubbard 495              | Alperovitch                |
| Hubbard 495              | Lee                        |
| Hubbard 495              | Adelman 2008               |
| Hubbard 495              | Bloch 2007                 |
| Alperovitch              | Lee                        |
| Alperovitch              | Adelman 2008               |
| Alperovitch              | Bloch 2007                 |
| Lee                      | Adelman 2008               |
| Lee                      | Bloch 2007                 |
| Adelman 2008             | Bloch 2007                 |
| Hubbard 495              | Alperovitch + Lee          |
| Hubbard 495              | Alperovitch + Adelman 2008 |
| Hubbard 495              | Alperovitch + Bloch 2007   |
| Hubbard 495              | Lee + Adelman 2008         |
| Hubbard 495              | Lee + Bloch 2007           |
| Hubbard 495              | Adelman 2008 + Bloch 2007  |
| Alperovitch              | Lee + Adelman 2008         |
| Alperovitch              | Lee + Bloch 2007           |
| Alperovitch              | Adelman 2008 + Bloch 2007  |

Defendant reserves the right to amend these Contentions and prior art combinations in light of new information that may arise from third parties related to additional computer security

systems. The following list of references are also evidence of the knowledge of POSITA at the time of the alleged invention: U.S. Patent No. 8,069,213 (“Bloch 2010”); U.S. Patent Publication No. 2009/0248623 (“Adelman 2009”); U.S. Patent Publication No. 2010/0256977 (“Yu 977”); Building Reputations for Internet Clients (“Wei”); Generative Prior Knowledge for Discriminative Classification (“Epshteyn”); A Small World Overlay P2P Transfer System with Role-Based and Reputation-Based Access Control Policies (“Xia”); A Multilevel Reputation System for Peer-to-Peer Networks (“Xu”). *See also* Section VI.C., ’386 Patent Additional Prior Art/Background Art Table, *supra*.

One of ordinary skill in the art would be motivated to combine these references in the above combinations for at least the following reasons. One of ordinary skill in the art would have understood that each of these references are in the same field of endeavor, namely methods and devices relating to computer security. *See, e.g.*, Hubbard 495 at 5:35-57, 6:53-7:7, 20:65-21:10; Alperovitch at [0034], [0071], [0072]; Lee at Abstract, 2:6-24, 2:60-3:17; Adelman 2008 at [0082], [0085], [0086]; Bloch 2007 at 3:52-4:3, 4:39-49, 10:40-61.

One of ordinary skill in the art would have recognized that these references are directed to addressing the same problem, in particular, improving computer security. *See, e.g.*, Hubbard 495 at 6:60-63 (“For example, the gateway server module 120 may be configured to disallow URL requests that are categorized as being ‘Malicious’ or ‘Spyware.’”); Alperovitch at [0034] (“Examples include the process of filtering malicious communications in an email, instant messaging, VoIP, SMS or other communication protocol system using analysis of the reputation of sender and content.”); Lee at 2:64-67 (“For example, if the resource is a website, then the system may send the URL to a trusted URL reputation service and receive a response that indicates a reputation score for the resource.”); Adelman 2008 at [0085] (“Based on the domain name related

reputation data the Requester decides (determines) whether the Requester should visit the URL (Step 430).”); Bloch 2007 at 10:56-61 (“Alternatively, if a URL is not found in sender database 530 at step 607, then HTTP proxy 120 can consult other information sources, such as a URL whitelist, URL blacklist, or other information about the trustworthiness or “reputation” of the Web site associated with the URL.”).

Further, the Asserted Claims of the ’386 Patent contain merely a duplication of concepts known in the prior art and have no patentable significance given that no unexpected results occur—*i.e.* the patentee merely combines known prior art elements according to known methods to yield predictable results. For example, the prior art references describe “determining if a reputation index for the Internet resource is at or above a threshold value established for the local area network.” *See, e.g.*, Hubbard 495 at 10:64-11:2, 11:26-40, 18:53-19:22; Alperovitch at [0045], [0058]; Lee at 2:48-59, 2:60-3:17, 3:66-4:7; Adelman 2008 at [0057], [0058], [0086]; Bloch 2007 at 1:41-48, 3:52-4:3, 6:35-51.

The prior art references further describe “the reputation vector comprising a plurality of factors for the Internet resource.” *See, e.g.*, Hubbard 495 at 10:19-26, 18:53-19:22, 20:4-41; Alperovitch at [0038], [0048], [0094]; Lee at 3:66-4:23, 4:49-64; Adelman 2008 at Abstract, [0051], [0058], [0059]; Bloch 2007 at 9:3-21, 9:44-61, 10:28-38. The prior art references further describe “a security appliance, the security appliance controlling access to the Internet.” *See, e.g.*, Hubbard 495 at 6:53-7:7, 9:25-33; Alperovitch at [0030], [0050], [0073]; Lee at 2:60-3:17, 7:1-13; Adelman 2008 at [0082], [0085], [0086]; Bloch 2007 at 10:9-18, 11:39-58. The prior art references further describe “storing the reputation index for the Internet resource at the data collection site.” *See, e.g.*, Hubbard 495 at 9:43-65, 11:41-12:3, 13:59-14:17; Alperovitch at

[0009], [0060]; Lee at 5:28-38, 7:1-13, 7:27-38; Adelman 2008 at [0057], [0090]; Bloch 2007 at 6:52-63, 10:62-67, 11:39-51.

Other examples of these concepts are cited in the attached charts for the above references. *See* Exs. D-1–D-5. It would have been known and simple to take a prior art for improving computer security by controlling access to requested web content based on its “reputation” and arrive at the alleged invention, and it would have been obvious to a POSITA to try this. *Id.* It would have also yielded predictable results in the context of improving computer security. *Id.*

Defendant is not aware of any secondary considerations supporting non-obviousness of the ’386 Patent claims. To the extent Plaintiffs seek to introduce any alleged secondary considerations in the future, Defendant reserves the right to respond at that time.

#### **F. Invalidity Under Section 112**

Pursuant to Section II, Paragraph 4 of the Order, Defendant provides an identification of the limitations of the ’386 Patent that are invalid based on indefiniteness under pre-AIA 35 U.S.C. § 112 ¶ 2, or enablement or written description under pre-AIA 35 U.S.C. § 112 ¶ 1. These Contentions are preliminary, as they are being proffered without the benefit of expert disclosure or discovery.

Asserted Claims 1, 3, 6-7, 9, 11, 13, 15, and 16 of the ’386 Patent (and all claims which depend from these claims) are indefinite, and thus invalid. “[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). Furthermore, as applied in Plaintiffs’ Infringement Contentions, “threshold value”; “behavior” / “behaviors”; “associations”; “popularity rank”; “decision transmission”; “remote reputation generating site”; “service engine”; “collecting a plurality of factors” / “obtaining the plurality of factors”; “populate a reputation

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Respectfully submitted,

/s/ Kat Li

Kat Li (SBN 24070142)

kat.li@kirkland.com

Nadia E. Haghighatian (SBN 24087652)

nadia.haghighatian@kirkland.com

Austin Teng (SBN 24093247)

austin.teng@kirkland.com

KIRKLAND & ELLIS LLP

401 Congress Avenue

Austin, TX 78701

Telephone: (512) 678-9100

Facsimile: (512) 678-9101

Adam R. Alper (admitted *pro hac vice*)

aalper@kirkland.com

Akshay S. Deoras (admitted *pro hac vice*)

adeoras@kirkland.com

Laura Ashley Harris (admitted *pro hac vice*)

lauraashley.harris@kirkland.com

KIRKLAND & ELLIS LLP

555 California Street

San Francisco, CA 94104

Telephone: (415) 439-1400

Facsimile: (415) 439-1500

Michael W. De Vries (admitted *pro hac vice*)

michael.devries@kirkland.com

KIRKLAND & ELLIS LLP

555 South Flower Street

Los Angeles, CA 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

Leslie M. Schmidt (admitted *pro hac vice*)

leslie.schmidt@kirkland.com

KIRKLAND & ELLIS LLP

601 Lexington Ave.

New York, NY 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

*Attorneys for Forcepoint LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that counsel of record are being served on September 13, 2022, with a copy of this document via email.

/s/ Kat Li

Kat Li