

**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

VII. INVALIDITY CONTENTIONS FOR THE '928 PATENT

A. General State of the Art at the Time of the Alleged Inventions

The prior art references identified in these Invalidity Contentions, and the “References Cited” on the face of the '928 Patent, may provide background and context pertinent to the teachings in, and interpretation of, the prior art referenced by the attached claim charts. Defendant may rely upon that prior art, including the “References Cited” on the face of the '928 Patent, to demonstrate the general state of the art at the time of the alleged inventions and what one of ordinary skill in the art would have understood at a time prior to the date of the alleged invention of the Asserted Claims. This prior art is exemplary only and is not in any way intended to limit the scope of what one of ordinary skill in the art would have understood at the times of the alleged inventions. Defendant reserves the right to rely upon additional prior art, information, and/or knowledge to demonstrate what one of ordinary skill would have understood at any time prior to the date of alleged invention of the Asserted Claims.

B. Claim Charts

Pursuant to Section II, Paragraph 4 of the Order, the claim charts attached in Appendix A as Exhibits E-1 through E-5 identify where each limitation of the Asserted Claims of the '928 Patent is found in the prior art.

C. Identification of the Prior Art

Based on Plaintiffs' July 12, 2022 Preliminary Infringement Contentions, Defendant identifies prior art below and in Appendix A as Exhibits E-1 through E-5, which contains charts disclosing the identity of each item of prior art that anticipates each claim and/or renders it obvious. As shown in Appendix A as Exhibits E-1 through E-5 and below, Defendant has identified each prior art reference by its number, country of origin, author, and date of issue (where applicable). Defendant notes that it has applied the prior art in accordance with Plaintiffs' improper assertions

of infringement and improper applications of the claims. Defendant does not agree with Plaintiffs' application of the claims and denies infringement.

Defendant further contends that all claims that are anticipated by a particular reference are also rendered obvious by that same reference alone, in combination with the other references, 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 VII.E, *infra*.

'928 Patent Prior Art Patents/Patent Applications				
Ex. No.	Patent / Publication No.	Country of Origin	Filing Date	Date of Issue / Publication
Ex. E-1	U.S. Patent No. 8,370,938 ("Daswani")	U.S.	Apr. 15, 2010	Feb. 5, 2013
Ex. E-2	U.S. Patent No. 7,621,613 ("McClintock")	U.S.	May 26, 2009	Dec. 31, 2013
Ex. E-3	U.S. Patent Application Publication No. US 2009/0070873 ("McAfee")	U.S.	Sep. 11, 2007	Mar. 12, 2009
Ex. E-4	U.S. Patent Application Publication No. US 2012/0047581 ("Banerjee")	U.S.	Aug. 12, 2011	Feb. 23, 2012
Ex. E-5	U.S. Patent Application Publication No. US 2013/0007870 ("Devarajan")	U.S.	Sep. 29, 2011	Jan 3, 2013

'928 Patent Additional Prior Art/Background Art
<i>Abstracting Application-Level Web Security</i> , Scott (2002) ("Scott")
<i>AD Sandbox: Sandboxing JavaScript to fight Malicious Websites</i> , Dewald, University of Mannheim & Technical University of Vienna (2010) ("Dewald")
<i>Identification of Potential Malicious Web Pages</i> , Le, Ninth Australian Information Security Conference (2011) ("Le")

'928 Patent Additional Prior Art/Background Art
<i>Prophiler: A Fast for the Large-Scale Detection of Malicious Web Pages</i> , Canali, WWW Session: Web Security (2011) ("Canali")
<i>WebPatrol: Automated Collection and Replay of Web-based Malware Scenarios</i> , Chen, ASIACCS (2011) ("Chen 2011")
<i>Toward automatic discovery of malware signature for anti-virus cloud computing</i> . Yan et. al. International Conference on Complex Sciences. Springer, Berlin, Heidelberg (2009) ("Yan")
<i>Malware detection based on cloud computing integrating intrusion ontology representation</i> . Martínez et. al. IEEE Latin-American Conference on Communications, IEEE (2010) ("Martinez")
<i>A Three-Phases Scheduling in a Hierarchical Cloud Computing Network</i> , Wang et. al., 2011 Third International Conference on Communications and Mobile Computing pp. 114-117, (2011) ("Wang")

Furthermore, with respect to the '928 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 October 3, 2011. *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.

D. Anticipation

At least under Plaintiffs' apparent infringement theory, the Asserted Claims of the '928 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 1-6 and 8-20 of the '928 Patent are anticipated, either expressly or inherently as understood by a person having ordinary skill in the art, by Daswani and Devarajan as set forth in the attached claim chart. At least under Plaintiffs' apparent infringement theory, Asserted Claims 1-4, 6, and 8-20 of the '928 Patent are anticipated, either

expressly or inherently as understood by a person having ordinary skill in the art, by McAfee as set forth in the attached claim chart.

E. Obviousness

At least under Plaintiffs' apparent infringement theory, the Asserted Claims of the '928 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 '928 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.

Primary Reference	In Combination With
McClintock	McAfee
McClintock	Daswani
McClintock	Banerjee
McClintock	Devarajan
McAfee	McClintock
McAfee	Daswani
McAfee	Banerjee
McAfee	Devarajan
Daswani	McClintock
Daswani	McAfee

Primary Reference	In Combination With
Daswani	Banerjee
Daswani	Devarajan
Banerjee	McClintock
Banerjee	McAfee
Banerjee	Daswani
Banerjee	Devarajan
Devarajan	McClintock
Devarajan	McAfee
Devarajan	Daswani
Devarajan	Banerjee
McAfee	Daswani + Devarajan
Daswani	McAfee + Devarajan
Devarajan	McAfee + Daswani
McAfee	McClintock + Daswani
McAfee	McClintock + Devarajan
Daswani	McClintock + McAfee
Daswani	McClintock + Devarajan
Devarajan	McClintock + McAfee
Devarajan	McClintock + Daswani
McAfee	Banerjee + Daswani
McAfee	Banerjee + Devarajan
Daswani	Banerjee + McAfee
Daswani	Banerjee + Devarajan

Primary Reference	In Combination With
Devarajan	Banerjee + McAfee
Devarajan	Banerjee + Daswani

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 malware detection and neutralization systems. The following list of references are also evidence of the knowledge of POSITA at the time of the alleged invention: Scott, Dewald, Le, Canali, Yan, Martinez, Wang, and Chen 2011.

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 malware detection and neutralization computer security. *See, e.g.*, Daswani at 3:22-30; McClintock at Abstract; McAfee at Abstract; Banerjee at [0004], and Devarajan at [0001].

One of ordinary skill in the art would have recognized that these references are directed to addressing the same problem, in particular, improving malware detection and neutralization. *See, e.g.*, Daswani at 3:22-30; McClintock at Abstract; McAfee at Abstract; Banerjee at [0004], and Devarajan at [0001].

Further, the Asserted Claims of the '928 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 “[a] content analysis and malware prevention method comprising.” *See, e.g.*, Daswani at 3:22-30; McClintock at Abstract;

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Respectfully submitted,

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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