

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

WEBROOT INC. and OPEN TEXT, INC.,

Plaintiffs,

v.

SOPHOS LTD.,

Defendant.

C.A. No. 6:22-cv-00240-ADA-DTG

JURY TRIAL DEMANDED

DEFENDANT SOPHOS LTD.'S FINAL INVALIDITY CONTENTIONS

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Pursuant to the Parties' Proposed Scheduling Order,¹ Defendant Sophos, Ltd. ("Sophos") hereby provides its Final Invalidity Contentions.

I. INTRODUCTION

On July 12, 2022, Plaintiffs Webroot, Inc. ("Webroot") and Open Text, Inc. ("Open Text") (collectively, "Plaintiffs") served their Preliminary Infringement Contentions with the following Asserted Claims:

- U.S. Patent No. 8,418,250 ("250 patent"): Claims 1-30
- U.S. Patent No. 8,726,389 ("389 patent"): Claims 1-14, 30
- U.S. Patent No. 9,578,045 ("045 patent"): Claims 1-7
- U.S. Patent No. 10,257,224 ("224 patent"): Claims 1-19
- U.S. Patent No. 10,284,591 ("591 patent"): Claims 1, 3-6, 9, 11-14, 17
- U.S. Patent No. 10,599,844 ("844 patent"): Claims 1-20
- U.S. Patent No. 9,413,721 ("721 patent"): Claims 1, 8, 9, 14

On October 25, 2022, Plaintiffs Webroot, Inc. ("Webroot") and Open Text, Inc. ("Open Text") (collectively, "Plaintiffs") served their Preliminary Infringement Contentions with the following Asserted Claims:

- U.S. Patent No. 11,409,869 ("869 patent"): Claims 18-20, 24, 26-34, 38, 40-48, 52, 54-59
- U.S. Patent No. 8,181,244 ("244 patent"): Claims 1-5, 7-15
- U.S. Patent No. 8,201,243 ("243 patent"): Claims 1-14
- U.S. Patent No. 8,856,505 ("505 patent"): Claims 1-20
- U.S. Patent No. 8,719,932 ("932 patent"): Claims 1-15

¹ See September 2, 2022 Email from M. Siegmund to Court re Webroot, Inc. et al v. Multiple Defendants – Case Nos. 6-22-cv-00239 to 00243 and -00342 (hereinafter, the "Parties' Proposed Scheduling Order").

competing products and combine relevant features and functionalities. It was common in this area to identify a computer object as malware based on data about that computer object. A person of ordinary skill would have been motivated to look at data about a computer object sent from a first and a second remote computer to determine if that computer object is malware, the data including information about events initiated or involving the computer object when the computer object is created, configured or runs, including at least an identity of an object initiating the event, the event type, and an identity of an object or other entity on which the event is being performed. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

- For the Asserted Claims of the '244 patent, to the extent the references charted in any of Exhibits 244-A-1 to 244-A-22 do not disclose “wherein the at least one log includes information that relates the time of interest to an event, and wherein the at least one log includes information that relates the event to a suspected pestware object, and wherein the at least one log includes information that relates the suspected pestware object to the at least one externally networked source of potential pestware activity” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 244-B, including, at least Li, Hartrell, Lunt, Brennan, Douglas, Polyakov, English, Gladstone. A person of skill in the art would be motivated to combine these references because they each disclose systems and/or methods of classifying a computer object as malware based on data about said computer object. It is the nature of software companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to identify a computer object as malware based on data about that computer object. A person of ordinary skill would have been motivated to look at data about a computer object sent from a first and a second remote computer to determine if that computer object is malware, the data including information about events initiated or involving the computer object when the computer object is created, configured or runs, including at least an identity of an object initiating the event, the event type, and an identity of an object or other entity on which the event is being performed. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

10. U.S. Patent No. 8,201,243

a) Background State of the Art

The background state of the art includes that which is set forth in the patent, the file history, and the prior art references disclosed herein. For example, the '243 patent refers to computers,

computer objects, software, malware, and malware detection and removal. *See* '243 patent, col. 1:43-2:31. Moreover, the '243 refers to systems and methods for researching the identity of a source of a suspected malicious program using a recorded history of computer activity. *Id.*, Abstract.

b) Exemplary Motivation to Combine

Sophos has identified several exemplary motivations and reasons to combine the various references cited herein. For any reference for which there is a claim element that does not have a corresponding citation in that reference, it would be obvious to combine with the knowledge or a person of skill and/or any other reference in the primary or secondary charts for which there is a citation for that element. These combinations would have been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field.

- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “monitoring, using a kernel-mode driver, the computer for activity that is indicative of pestware, wherein the monitoring includes monitoring API calls and storing a history of at least a portion of the API calls in an activity log” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “analyzing, heuristically, computer activity to determine whether one or more weighted factors associated with an activity exceeds a threshold so as to arrive at a determination that the activity is indicative of pestware” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.
- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “identifying, based upon the activity, an object residing on the computer that is a suspected pestware object” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.
- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “accessing, in response to the identifying an object, at least a portion of a recorded history of externally networked sources that the computer received files from so as to identify a reference to an identity of a particular externally networked source that the suspected pestware object originated from” it would have been obvious to combine any of these charted references with any of the other charted

references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “reporting the identity of the particular externally networked source to an externally networked pestware research entity so as to enable the externally networked pestware research entity to research whether the particular externally networked source is a source of pestware” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.
- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “an activity monitor configured to monitor API calls and to store a history of at least a portion of the API calls in an activity log, wherein the activity monitor includes a kernel-mode driver adapted to intercept the API calls” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the

computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “a research portion configured to access, in response to a prompt from the heuristics module, a first set of recorded information on the computer that relates the activity to at least one file residing on the computer, and wherein the research portion is configured to access a second set of recorded information on the computer that relates the at least one file to an externally networked source from which the file was received” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.
- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “a reporting portion configured to generate a report that identifies the externally networked source of the file and to report an identity of the externally networked source to an externally networked pestware research entity so as to enable the externally networked pestware research entity to research whether the externally networked source is a source of pestware” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It

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- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “wherein the particular externally networked source is identified by an identifier selected from the group consisting of an I.P. address and a URL” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.
- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “wherein the recorded history resides in at least one log selected from the group consisting of an activity log, a browser history, browser cache, browser settings, operating system settings, an event log, a debugging log, a firewall log, file information and monitoring software logs” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were

a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “wherein the first set of recorded information and the second set of recorded information reside in the same log file on a file storage device of the computer” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea, Mandujano. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.
- For the Asserted Claims of the '243 patent, to the extent the references charted in any of Exhibits 243-A-1 to 243-A-28 do not disclose “wherein the heuristics module is configured to receive information about the API calls from the activity monitor and determine whether the API calls are indicative of pestware” it would have been obvious to combine any of these charted references with any of the other charted references or those detailed in Exhibit 243-B, including, at least Li, Hartrell, Piccard, Polyakov '482, Thomas, Szor, Jordan, Kidron, Flores, Muttik, Rothwell, Costea. A person of skill in the art would be motivated to combine these references because they each disclose computer forensics systems. It is the nature of the computer forensic companies to monitor developments in competing products and combine relevant features and functionalities. It was common in this area to analyze the events, or actions taken by different computer objects to determine if the object was behaving maliciously or otherwise causing the computer to behave in a sub-optimal manner. A person of skill would have been motivated to look at how other products and systems collected information to detect malicious behavior. These combinations would have also been obvious to try given that there were a finite number of identified, predictable solutions in the prior art, and there would have been a reasonable expectation of success to simply implement one prior art solution with concepts from prior art in the same field. Moreover, these combinations would have been the result of applying known techniques to a known method—that was ready for improvement—to yield predictable results.

V. ACCOMPANYING DOCUMENT PRODUCTION

Pursuant to the Parties' Proposed Scheduling Order, Defendant has produced or will promptly produce all prior art referenced in its Final Invalidity Contentions. *See* documents with the prefix "SOPHOS-" produced herewith. Defendant will promptly produce any documents uncovered during discovery, including through third-party subpoenas.

Dated: November 1, 2023

Respectfully submitted,

/s/ Brian Rosenthal

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Certificate of Service

I hereby certify that on November 1, 2023, the foregoing document has been served by electronic mail on all counsel of record.

/s/ *Lauren Womack*

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