

**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").

- U.S. Patent No. 8,763,123 (“’123 patent”): Claims 1-16

(collectively, the “Asserted Patents” and the “Asserted Claims”). Sophos contends that the Asserted Claims cover subject matter not eligible for patenting under 35 U.S.C. § 101, and that each of the Asserted Claims is invalid under at least 35 U.S.C. §§ 102, 103, and/or 112.²

These Final Invalidity Contentions address the claims identified in Plaintiffs’ Preliminary Infringement Contentions. Sophos reserves the right to modify, amend, or supplement these Final Invalidity Contentions to the extent the Court permits Plaintiffs to amend, supplement, or otherwise modify their Preliminary Infringement Contentions, including by modifying the patents and/or claims asserted.

In addition, Plaintiffs’ Preliminary Infringement Contentions are entirely deficient, and fail to provide allegations as to how the Accused Products infringe each and every claim limitation; rather, they simply parrot the claim language and then cite various documents—and in many circumstances, point to no evidence at all. Similarly, they fail to disclose the priority date they allege each pre-AIA patent is entitled to; they simply state “[e]ach asserted claim is asserted to have the priority data identified on the face of the corresponding patent-in-suit.” Plaintiffs’ Preliminary Infringement Contentions, 4. Similarly, Plaintiffs’ response to an interrogatory requesting the priority date alleged for each Asserted Patent states that each patent “is entitled at least” a specified date, for both AIA and pre-AIA patents. Plaintiffs’ 5/18/2023 Responses & Objections to Sophos’s 1st Set of Interrogatories, 10–11. Plaintiffs therefore have prejudiced Sophos’s ability to understand, for purposes of preparing these Final Invalidity Contentions, what

² Sophos applies the versions of Sections 102, 103, and 112 in effect prior to the effective date of the America Invents Act (“AIA”) for the ’250, ’389, and ’721 patents, and the versions of Sections 102, 103, and 112 in effect after the effective date of the AIA for the ’045, ’224, ’591, and ’844 patents.

Plaintiffs allege to be the scope of the Asserted Claims and the scope of the prior art. Sophos reserves the right to amend these Final Invalidity Contentions if and when Plaintiffs provide proper infringement contentions as to each Asserted Claim.

A. Priority Date

These Final Invalidity Contentions are based on the earliest priority dates as identified by Plaintiffs in their Preliminary Infringement Contentions and Response to Sophos's Interrogatory No. 1 in their 5/18/2023 Responses & Objections to Sophos's 1st Set of Interrogatories. In their Preliminary Infringement Contentions, Plaintiffs did not produce any documents evidencing conception and reduction to practice, despite their requirement to do so under the Court's Standing Order Governing Proceedings (OGP) v. 4.1—Patent Cases, Appendix A. Similarly, despite alleging a conception and reduction to practice before the claimed priority date of the '721 Patent, Plaintiff's Response to Sophos's Interrogatory No. 1 provides no documents evidencing these alleged conception and reduction to practice dates. 5/18/2023 Responses & Objections to Sophos's 1st Set of Interrogatories, 11. Nothing in these Final Invalidity Contentions shall be understood as an agreement that any Asserted Patent is entitled to claim priority to the dates identified by Plaintiffs, or to any continuation-in-part, provisional, or foreign priority document. Sophos reserves the right to amend these Final Invalidity Contentions and identify additional prior art references if Plaintiffs are permitted by the Court to later assert an earlier priority date, or are permitted by the Court to later produce documents purporting to evidence conception and reduction to practice before the earliest priority date claimed on the face of each patent.

Any reference to an "asserted priority date" in these Final Invalidity Contentions refers to the priority dates identified in Plaintiffs' Preliminary Infringement Contentions and Response to Sophos's Interrogatory No. 1 in their 5/18/2023 Responses & Objections to Sophos's 1st Set of Interrogatories. Reference to a "priority date" or an "asserted priority date" should not be

construed to mean that Sophos agrees that any of the Asserted Patents are in fact entitled to such priority date, or that Plaintiffs have provided proper notice as to their contentions for a priority date.³ To the extent Plaintiffs allege that any prior art relied on in these Final Invalidity Contentions does not actually qualify as prior art to an Asserted Patent, Sophos reserves the right to rebut those allegations (e.g., by demonstrating an earlier critical date for the challenged prior art and/or a later priority date for a particular Asserted Patent and/or Asserted Claim).⁴ Likewise, to the extent Plaintiffs successfully establish an invention date before any of the prior art references relied on by Sophos, then those references serve as evidence of objective indicia of obviousness, particularly, contemporaneous invention by others.

B. Claim Construction

The Court entered Claim Construction Orders on March 16, 2023 and July 25, 2023. Dkt. 236, 391. Sophos's Final Invalidity Contentions are based on (1) the Court's Claim Construction Orders, (2) Defendant's present understanding of the Asserted Claims, and (3) the claim constructions Plaintiffs appear to be using based on their Preliminary Infringement Contentions, all without regard to whether Sophos agrees with Plaintiffs' apparent or expressed claim constructions. Sophos reserves the right to supplement or otherwise amend these Final Invalidity Contentions in response to any court-ordered clarifications on claim constructions, any report from any expert witness for Plaintiffs regarding the scope of the claims, any briefing filed by Plaintiffs

³ Sophos reserves the right to rely on additional documents, evidence, and expert testimony, including without limitation the documents cited in Plaintiffs' Preliminary Infringement Contentions, in the event that Plaintiffs fail to establish that any Asserted Claim of any Asserted Patent is entitled to its asserted priority date.

⁴ Sophos reserves the right to rely on additional documents and evidence to rebut any efforts by Plaintiffs to allege any reference was not publicly available or otherwise available as prior art.

to a method of calculating, using a mathematical formula, even if the solution is for a specific purpose, the claimed method is nonstatutory.”); *cf. SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 116 (Fed. Cir. 2018) (finding as abstract, claims covering a statistical analysis of investment data).

Step Two. There is no inventive concept recited in the claims that would transform the claims away from an abstract idea, e.g., monitoring and collecting information, analyzing information, and reporting that information. The claims simply recite “monitoring” and logging information (*i.e.*, computer activity), analyzing the logged information to make a determination about certain computer activity, gathering further information about certain activities from the logged information, and recording/reporting that information. There is no claim to particular hardware other than general purpose hardware and/or software. This is nothing more than an abstract idea. “[A] claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention significantly more than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); *see also Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (“The abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the advance.”).

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

Step One. The claims are directed towards an abstract idea, e.g., monitoring and collecting information, analyzing and identifying information, and reporting that information. This is a basic and abstract idea in both the technical context and non-technical context. This same basic idea has been held over and over to be an abstract idea. *See, e.g., Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (collecting cases); *see also Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (“[A] process that employs mathematical algorithms to manipulate existing information to generate additional information is

not patent eligible.”); *Parker v. Flook*, 437 U.S. 584, 595 (1978) (“If a claim is directed essentially to a method of calculating, using a mathematical formula, even if the solution is for a specific purpose, the claimed method is nonstatutory.”); cf. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 116 (Fed. Cir. 2018) (finding as abstract, claims covering a statistical analysis of investment data).

Step Two. There is no inventive concept recited in the claims that would transform the claims away from an abstract idea, e.g., monitoring and collecting information, analyzing information, and reporting that information. The claims simply recite “monitoring” and logging information (*i.e.*, computer activity), analyzing the logged information to make a determination about certain computer activity, gathering further information about certain activities from the logged information, and reporting that information. There is no claim to particular hardware other than general purpose hardware and/or software. This is nothing more than an abstract idea. “[A] claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention significantly more than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); see also *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (“The abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the advance.”).

11. U.S. Patent No. 8,856,505

Step One. The claims are directed towards an abstract idea, e.g., monitoring events to detect suspicious activity. This is a basic and abstract idea in both the technical context and non-technical context. The claims are analogous to the real world example of a teacher determining whether a student is good or bad based on his or her behavior. This same basic idea has been held over and over to be an abstract idea. See, e.g., *IPLearn-Focus, LLC v. Microsoft Corp.*, No. 14-CV-00151-JD, 2015 WL 41920924 (N.D. Cal. July 10, 2015), *aff’d*, 667 F. App’x 773 (Fed. Cir. 2016) (In essence, the claim follows several steps involved in the abstract idea of teaching, though

without actually mentioning that specific application: the sensor observes students and the processor analyzes their behavior and reacts accordingly. The steps are an abstraction, ‘addressed to fundamental human behavior related to instruction, which is apparent when the steps are summarized without their generic references to [hardware].’”).

Step Two. The claims simply recite generally a rule set of acceptable behavior (e.g., a set of behavior rules), monitoring the computer and/or boot sequence for behavior that extends beyond the rule set of acceptable behavior (e.g. monitoring the behavior), analyzing and identifying the events, and outputting a result based on the analyzed data. There is no claim to particular hardware other than general purpose hardware and/or software. This is nothing more than an abstract idea.

12. U.S. Patent No. 8,719,932

Step One. The claims are directed towards an abstract idea, e.g., monitoring and collecting information, analyzing and identifying information, and reporting that information. This is a basic and abstract idea in both the technical context and non-technical context. This same basic idea has been held over and over to be an abstract idea. *See, e.g., Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (collecting cases); *see also Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (“[A] process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible.”); *Parker v. Flook*, 437 U.S. 584, 595 (1978) (“If a claim is directed essentially to a method of calculating, using a mathematical formula, even if the solution is for a specific purpose, the claimed method is nonstatutory.”); *cf. SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 116 (Fed. Cir. 2018) (finding as abstract, claims covering a statistical analysis of investment data).

Step Two. There is no inventive concept recited in the claims that would transform the claims away from an abstract idea, e.g., monitoring and collecting information, analyzing information, and reporting that information. The claims simple recite “monitoring” and logging

information (*i.e.*, computer activity), analyzing the logged information to make a determination about certain computer activity, gathering further information about certain activities from the logged information, and reporting that information. There is no claim to particular hardware other than general purpose hardware and/or software. This is nothing more than an abstract idea. “[A] claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention significantly more than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); *see also Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (“The abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the advance.”).

13. U.S. Patent No. 8,763,123

Step One. The claims are directed towards an abstract idea, *e.g.*, receiving data, analyzing data, and outputting a result based on the analysis. This is a basic and abstract idea in both the technical context and non-technical context. The claims are analogous to the real world example of a human gathering and analyzing data to reach a result. This same basic idea has been held over and over to be an abstract idea. *See e.g., Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (collecting cases).

Step Two. There is no inventive concept in the claims that would transform them away from the abstract idea they embody, *e.g.* receiving data, analyzing data, and outputting a result based on said data, and into a patent-eligible invention. The claims simply recite receiving data (*e.g.*, data about a security product(s) and events on a remote computer), analyzing data (*e.g.* correlating the data), and outputting a result based on the analysis (*e.g.* determining and/or classification). There is no claim to particular hardware other than general purpose hardware and/or software. There is nothing inventive about this tautological abstract idea to save it from ineligibility.

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,

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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*

Lauren Womack