

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC
Petitioner

v.

ICHARTS LLC
Patent Owner

DECLARATION OF SYLVIA D. HALL-ELLIS, PH.D.

Mail Stop “PATENT BOARD”
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Tableau EX1030
IPR2024-01388
U.S. Patent No. 9,712,595

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I, Sylvia D. Hall-Ellis, hereby declare as follows.

I. INTRODUCTION

1. My name is Sylvia D. Hall-Ellis. I have been retained as an expert on behalf of Tableau Software, LLC (“Tableau”).

2. I have written this declaration on behalf of Tableau to provide my expert opinion regarding the authenticity and public availability of two publications. My declaration sets forth my opinions in detail and provides the basis for my opinions regarding the public availability of these publications.

3. I reserve the right to supplement or amend my opinions, and bases for them, in response to any additional evidence, testimony, discovery, argument, and/or other additional information that may be provided to me after the date of this declaration.

4. I am being compensated for my time spent working on this matter at my normal consulting rate of \$400 per hour, plus reimbursement for any additional reasonable expenses. My compensation is not in any way tied to the content of this report, the substance of my opinions, or the outcome of this litigation. I have no other interests in this proceeding or with any of the parties.

5. All of the materials that I considered are discussed explicitly in this declaration.

II. QUALIFICATIONS

6. I am currently an Adjunct Professor in the School of Information at San José State University. I obtained a Master of Library Science from the University of North Texas in 1972 and a Ph.D. in Library and Information Science from the University of Pittsburgh in 1985. Over the last 50-plus years, I have held various positions in the field of library and information resources. I was first employed as a librarian in 1966 and have been involved in the field of library sciences since, holding numerous positions.

7. I am a member of the American Library Association (ALA) and its Association for Library Collections & Technical Services (ALCTS) Division, and I served on the Committee on Cataloging: Resource and Description (which wrote the new cataloging rules) and as the chair of the Committee for Education and Training of Catalogers and the Competencies and Education for a Career in Cataloging Interest Group. I also served as the Chair of the ALCTS Division's Task Force on Competencies and Education for a Career in Cataloging. Additionally, I have served as the Chair for the ALA Office of Diversity's Committee on Diversity, as a member of the REFORMA National Board of Directors, as a member of the Editorial Board for the ALCTS premier cataloging journal, *Library Resources and Technical Services*, as a Co-Chair of the Library Research Round Table (LRRT) for the American Library Association, and as a

member of the LRRT Nominating Committee. Currently I serve as a member of the Margaret Mann Citation Committee.

8. I have also given over one hundred presentations in the field, including several on library cataloging systems and Machine-Readable Cataloging (“MARC”) standards. My current research interests include library cataloging systems, metadata, and organization of electronic resources.

9. My full *curriculum vitae* is attached as Exhibit 1031.

III. PRELIMINARIES

10. *Scope of this declaration.* I am not an attorney and will not offer opinions on the law. I am, however, rendering my expert opinion on the authenticity of the documents referenced herein and on when and how each of these documents was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, could have located the documents before on or around the listed dates of their respective publications below.

11. I am informed by counsel that a printed publication qualifies as publicly accessible as of the date it was disseminated or otherwise made available such that a person interested in and ordinarily skilled in the relevant subject matter could locate it through the exercise of reasonable diligence.

12. While I understand that the determination of public accessibility under

the foregoing standard rests on a case-by-case analysis of the facts particular to an individual publication, I also understand that a printed publication is rendered “publicly accessible” if it is cataloged and indexed by a library such that a person interested in the relevant subject matter could locate it (i.e. I understand that cataloging and indexing by a library is sufficient, though there are other ways that a printed publication may qualify as publicly accessible). One manner of sufficient indexing is indexing according to subject matter category. I understand that the cataloging and indexing by a single library of a single instance of a particular printed publication is sufficient, even if the single library is in a foreign country. I understand that, even if access to a library is restricted, a printed publication that has been cataloged and indexed therein is publicly accessible so long as a presumption is raised that the portion of the public concerned with the relevant subject matter would know of the printed publication. I also understand that the cataloging and indexing of information that would guide a person interested in the relevant subject matter to the printed publication, such as the cataloging and indexing of an abstract for the printed publication, is sufficient to render the printed publication publicly accessible.

13. I understand that routine business practices, such as general library cataloging and indexing practices, can be used to establish an approximate date on which a printed publication became publicly accessible.

14. Although indexing in a library can establish public accessibility, I understand that indexing and searchability are unnecessary for a reference to be publicly accessible. Rather, I understand that public accessibility goes to the issue of whether interested members of the relevant public could obtain the information if they wanted to. For example, a document can be publicly accessible if members of the public showing an interest in buying or licensing a software product could have obtained a copy of the product's manual through reasonable diligence.

15. *Persons of ordinary skill in the art.* I am told by counsel that the subject matter of this proceeding generally relates to interactive charts and, in particular, to the creation, sharing and embedding of interactive charts.

16. I have been informed by counsel that a “person of ordinary skill in the art at the time of the invention” is a hypothetical person who is presumed to be familiar with the relevant field and its literature at the time of the invention. This hypothetical person is also a person of ordinary creativity, capable of understanding the scientific principles applicable to the pertinent field.

17. I understand that a person of ordinary skill in the art would have had a B.S. degree in Computer Science, Computer Engineering, or equivalent experience relating to computing, as well as two to three additional years of academic or industry experience related to web application development and data visualization services. I also understand that a POSA would have further worked as part of a

multidisciplinary team and drawn upon not only her own skills, but of others on the team, e.g., to solve a given problem.

18. It is my opinion that such a person would have been engaged in research, learning thorough study and practice in the field and possibly through formal instruction about products relevant to his or her research. In the 2008 timeframe, such a person would have had access to and would have known that software products included documentation (e.g. user manuals).

IV. LIST OF DOCUMENTS CONSIDERED

Exhibit No.	Description
1008	QlikView Reference Manual V8.50 (June 2008)
1009	QlikView Server Reference Manual V8.50 (June 2008)
1014	QlikView Downloads (Aug. 2, 2008), <i>available at</i> https://web.archive.org/web/20080802064135/http://ftp.qliktech.com:80/qvwebdownloads/
1015	QlikView Product Suite Download Page (July 8, 2008), <i>available at</i> https://web.archive.org/web/20080708191653/http://ftp.qliktech.com/qvwebdownloads/Release8.asp
1016	QlikView 8.50 Downloadable Files (Aug. 17, 2008), <i>available at</i> https://web.archive.org/web/20080817042640/http://ftp.qliktech.com/qvwebdownloads/Release850.asp
1017	QlikView 8.50 Documentation (Aug. 17, 2008), <i>available at</i> https://web.archive.org/web/20080817042629/http://ftp.qliktech.com:80/qvwebdownloads/Docs.asp
1018	QlikView 8.50 Documentation (Oct. 23, 2008), <i>available at</i> https://web.archive.org/web/20081023184538/http://ftp.qliktech.com:80/qvwebdownloads/Docs.asp

Exhibit No.	Description
1019	QlikView 8.50 Documentation (Feb. 9, 2009), <i>available at</i> https://web.archive.org/web/20090209142916/http://ftp.qliktech.com:80/qvwebdownloads/Docs.asp
1020	QlikView Community Support (July 2, 2008), <i>available at</i> https://web.archive.org/web/20080702053130/http://www.qlikcommunity.com/support/
1021	QlikNews: Issue 5, Summer 2008 (Mar. 4, 2009), <i>available at</i> https://web.archive.org/web/20090304004927/http://www.qlikcommunity.com/1203/
1022	QlikNews: ProductView (June 26, 2008), <i>available at</i> https://web.archive.org/web/20080626190929/http://www.qlikcommunity.com/1218/
1023	QlikNews: Americas View (June 26, 2008), <i>available at</i> https://web.archive.org/web/20080626195546/http://www.qlikcommunity.com/1213/
1024	QlikView Wine Guide Intro Tab (Jan. 7, 2007), <i>available at</i> http://web.archive.org/web/20070107033756/http://thewinepress2.qliktech.com/en/Default.asp
1025	QlikView Wine Guide How To Tab (Jan. 8, 2007), <i>available at</i> http://web.archive.org/web/20070108145241/http://thewinepress2.qliktech.com/en/HowTo.asp
1026	QlikView Wine Guide Wine Selector Tab (Jan. 7, 2007), <i>available at</i> http://web.archive.org/web/20070107034057/http://thewinepress2.qliktech.com/en/Wine_Selector.asp
1027	QlikView Wine Guide Analysis Tab (Jan. 8, 2007), <i>available at</i> http://web.archive.org/web/20070108140845/http://thewinepress2.qliktech.com/en/Analysis.asp
1028	James Richardson, <i>et al.</i> , <i>Magic Quadrant for Business Intelligence Platforms, 2008</i> , Gartner ID No. G00154227 (Feb. 1, 2008)
1031	<i>Curriculum Vitae</i> of Sylvia D. Hall-Ellis, Ph.D.
1059	QlikView 8.50 Copyright Registration
1060	QlikView 8.50 Copyright Application

Exhibit No.	Description
1061	Qlik Community Page, Qlikview 8.5 Manual, <i>available at</i> https://community.qlik.com/t5/QlikView-Administration/Qlikview-8-5-Manual/m-p/1742630
1068	Declaration of Deborah C. Lofton, Chief Legal Officer and Corporate Secretary of QlikTech Inc.

V. INTERNET ARCHIVE AND THE WAYBACK MACHINE

19. The Internet Archive, a 501(c)(3) non-profit organization, is building a digital library of Internet sites and other cultural artifacts in digital form.¹ Like a paper library, the Internet Archive provides free access to researchers, historians, scholars, the print disabled, and members of the general public. The organization's mission is to provide Universal Access to All Knowledge.²

20. Established in 1996 by archiving the Internet itself, the Internet Archive features 25+ years of web history accessible through the Wayback Machine and more than 1,200 library and other partners through the Archive-It program to identify important web pages. As the Internet Archive grew, so did its commitment to provide digital versions of other published works. Currently, the Internet Archive includes 330 billion web pages, 44 million books and texts, 15 million audio recordings (including 250,000 live concerts), 10.6 million videos (including 2.6 million Television News programs), 4.8

¹ <https://archive.org/>

² <https://archive.org/about/>

million images, and 1 million software programs.

21. The *WayBack Machine* is an application using a crawler created by the Internet Archive to search its archive of Web page URLs and to represent, graphically, the date of each crawler capture. The Internet Archive collects web pages from the Internet using software called a crawler. Crawlers automatically create a snapshot of webpages as they existed at a certain point in time. The Internet Archive captures data that is publicly available. Some sites are not archived because they were password protected, blocked by robots.txt, or otherwise inaccessible to our automated systems. Site owners might have also requested that their sites be excluded from the WayBack Machine.

22. Many Internet Archive captures made by the *WayBack Machine* have a banner at the top with the capture date prominently displayed. Other dates when captures of the same URL have been made are indicated to the right and left of the date provided in the banner. Some captures may lack this banner. In any case, the URL for the capture begins with the identification of the Internet Archive page (e.g., <http://web.archive.org/web/>) followed by information that dates and time stamps the capture as follows: year in yyyy, month in mm, day in dd, time code in hh:mm:ss (e.g., 20071120082013, or November 20, 2007 at 8:20:13 a.m.). These elements are then followed by the URL of the original capture site. When links are active, the *WayBack Machine* is programmed to produce the archived file with the

closest available date (not the closest available prior date) to the page upon which the link appeared and was clicked. I and other librarian professionals are familiar with the Internet Archive and the *Wayback Machine*.³

VI. QLIKVIEW REFERENCE MANUALS

23. I was asked to consider the authenticity and public accessibility of two exhibits (EX1008 and EX1009). Both exhibits are reference manuals for a product called QlikView, which was sold by QlikTech International AB (“QlikTech”).⁴

24. Founded in the 1990s in Lund, Sweden, QlikTech provided QlikView as a business analytics platform used for business intelligence and data integration. In early 2008, QlikTech and its QlikView product was well known in the industry. For example, QlikView was deployed globally and “there [were] more than 40,000 QlikView users in over 1,000 organizations in the Americas region” alone.

EX1023. Additionally, Gartner (a management consulting company) surveyed the industry and determined that QlikTech was perceived as the “coolest” vendor for business intelligence platforms and growing faster than others in the industry:

The perception of **QlikTech as the “coolest” vendor in BI** right now belies its efficiency as a business. It executed extremely well in 2007,

³ For more information about the Internet Archive see the WayBack Machine FAQ, https://archive.org/about/faqs.php#The_Wayback_Machine.

⁴ <https://www.qlik.com/us>

growing faster than any other BI vendor and significantly expanding its customer base to over 7,000 organizations in more than 80 countries.

...

Unusually for a relatively small firm, the evidence shows that **QlikView is being considered a BI standard by midsize firms**, which is a testament to its breadth of its capabilities.

...

The **QlikView 8** release improved ability to extend deployments to higher user populations and work within standards-driven corporate IT environments (including a Web services interface, support for third-party authentication, and login tools and performance gains).

EX1028, pp. 17-18 (emphasis added).

25. It is therefore my opinion that QlikView was a well-known product.

A. Exhibit 1008 (“QlikView Manual”)

26. Exhibit 1008 is a copy of a product manual titled *QlikView: Reference Manual*, version 8.50, 1st edition (hereafter “QlikView Manual”), authored by QlikTech and dated June 2008. EX1008, p. 1.⁵ The QlikView Manual has three parts: (1) *Book I: Installation and Script*; (2) *Book II: Layout, Number Formats and Macros*; and (3) *Book III: Charts*. EX1008, pp. 1, 537, 866.

27. Exhibit 1008 is a true and correct copy of the title page, copyright

⁵ Citations to the QlikView Manual are to PDF pagination, not internal pagination.

page, [table of] contents, and chapters for Books I, II, and III that can be downloaded from the Internet.⁶ I downloaded the QlikView Manual from the Internet and made Exhibit 1008, which is a copy of the entire QlikView Manual (Books I, II, and III). The text in Exhibit 1008 is complete; no pages are missing, and the text on each page appears to flow seamlessly from one page to the next; further, there are no visible alterations to the document. Exhibit 1008 is a true and correct copy in a condition that creates no suspicion about its authenticity.

28. The QlikView Manual was prepared to accompany version 8.50 of QlikTech's software product called QlikView. EX1068, ¶7. The product release date for version 8.50 of QlikView was scheduled for June 30, 2008. EX1068, ¶7; EX1021. I understand that "[n]o later than July 9, 2008, Qlik was selling and shipping to customers copies of QlikView Version 8.50." EX1068, ¶7.

29. After the scheduled product release date, QlikTech registered version 8.50 of QlikView with the U.S. Copyright Office as item TX0007218091 on September 24, 2010, and indicated a publication date of July 8, 2008. *See* EX1059; EX1060. The Copyright Office defines "publication" as:

⁶ <https://web.archive.org/web/20081203040141/http://ftp.qliktech.com/QvWebDownloads/Documentation/QlikView%208.50%20Reference%20Manual%20ENG.pdf>; EX1061.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display also constitutes publication. A public performance or display of a work does not of itself constitute publication.

<https://www.copyright.gov/eco/help-publication.html>

30. The July 8, 2008 publication date recorded at the U.S. Copyright Office is consistent with the Wayback Machine captures of QlikTech’s website. In 2008, QlikTech’s website included a “Downloads” page with a hyperlink to “the same installation package distributed on the CDs.” EX1014. When a user selected this hyperlink, QlikTech’s website would direct the user to QlikTech’s “Product Suite download pages,” which provided “the latest downloads of the QlikView 8 product suite.” EX1015. As shown by a WayBack Machine capture dated July 8, 2008, at 7:16:53 p.m., QlikTech’s Product Suite download page provided a hyperlink to “the latest released version of QlikView 8.50.” EX1015. July 8, 2008, is the same date identified as the publication date at the U.S. Copyright office. EX1059; EX1060.

31. When clicking the “QlikView 8.50” hyperlink, QlikTech’s website would direct the user to downloadable files for QlikView version 8.50 and a hyperlink to “[t]he latest available QlikView Reference Manuals.” EX1016. Selecting the hyperlink to QlikView Reference Manuals provided hyperlinks to the

QlikView Manual in several languages, including German, Dutch, English, French, Italian, Portuguese, Spanish, and Swedish. EX1017. Selecting the hyperlink titled “QlikView 8.50 Reference Manual ENG.pdf” opened the QlikView Manual (Exhibit 1008).⁷ QlikTech’s website indicates that the QlikView Manual was last modified on June 16, 2008. EX1017. The WayBack Machine captured this website on August 17, 2008, at 4:26:29 a.m. EX1017.

32. The QlikView Manual is also currently posted to the Qlik Community website and available for download. EX1061.

33. Based on the information available from QlikTech’s website, the U.S. Copyright Office, the WayBack Machine, and a declaration from QlikTech (EX1068), it is my opinion that the manual titled *QlikView: Reference Manual*, version 8.50, 1st edition (EX1008), was publicly available at least by July 8, 2008. For these reasons, it is my opinion that Exhibit 1008 was published and accessible to the public at least by July 8, 2008.

B. Exhibit 1009 (“QlikView Server Manual”)

34. Exhibit 1009 is a copy of a product manual titled *QlikView Server: Reference Manual*, version 8.50, 1st edition (hereafter “Qlik Server Manual”),

⁷ <https://web.archive.org/web/20081203040141/http://ftp.qliktech.com/QvWebDownloads/Documentation/QlikView%208.50%20Reference%20Manual%20ENG.pdf>

authored by QlikTech and dated June 2008. The QlikView Server Manual has three parts: (1) *Part I: QlikView Server*; (2) *Part II: Clients*; and (3) *Part III: Java client APIs*. EX1009, pp. 7, 121, 175.⁸

35. Exhibit 1009 is a true and correct copy of the title page, copyright page, [table of] contents, 23 chapters, and 5 appendices that can be downloaded from the Internet. EX1061. I downloaded the QlikView Server Manual from the Internet and made Exhibit 1009, which is a copy of the entire QlikView Server Manual. The text in Exhibit 1009 is complete; no pages are missing, and the text on each page appears to flow seamlessly from one page to the next; further, there are no visible alterations to the document. Exhibit 1009 is a true and correct copy in a condition that creates no suspicion about its authenticity.

36. The QlikView Server Manual was prepared to accompany version 8.50 of QlikTech's software product called QlikView. EX1068, ¶7. The product release date for version 8.50 of QlikView was scheduled for June 30, 2008. EX1068, ¶7; EX1021. I understand that "[n]o later than July 9, 2008, Qlik was selling and shipping to customers copies of QlikView Version 8.50." EX1068, ¶7.

37. After the scheduled product release date, QlikTech registered QlikView with the U.S. Copyright Office as item TX0007218091 on September

⁸ Citations are to PDF pagination, not internal pagination.

24, 2010, and indicated a publication date of July 8, 2008. *See* EX1059; EX1060.

The Copyright Office defines “publication” as:

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display also constitutes publication. A public performance or display of a work does not of itself constitute publication.

<https://www.copyright.gov/eco/help-publication.html>

38. The July 8, 2008, publication date recorded at the U.S. Copyright Office is consistent with the Wayback Machine captures of QlikTech’s website. As I explained for the QlikView Manual (EX1008), QlikTech’s website enabled interested members of the public to find documentation and files for “the latest released version of QlikView 8.50” by July 8, 2008—the same date of publication identified in the U.S. Copyright registration. EX1015; EX1059; EX1060. By navigating the same hyperlinks discussed for Exhibit 1008, QlikTech’s website would direct the user to the QlikView Reference Manuals. EX1017. Selecting the hyperlink titled “QlikView Server Reference Manual.pdf” would have opened the QlikView Server Manual (Exhibit 1009).

39. The QlikView Server Manual is also currently posted to the Qlik Community website and available for download. EX1061.

40. Based on the information available from QlikTech’s website, the U.S.

Copyright Office, the WayBack Machine, and a declaration from QlikTech (EX1068), it is my opinion that the manual titled *QlikView Server: Reference Manual*, version 8.50, 1st edition (EX1009), was publicly available at least by July 8, 2008. For these reasons, it is my opinion that Exhibit 1009 was published and accessible to the public at least by July 8, 2008.

VII. CONCLUSIONS

41. In view of the foregoing, it is my opinion that the publications described above were publicly accessible at least by the corresponding dates listed in the table below:

Exhibit	Publication	Publicly Accessible (At Least By)
1008	<i>QlikView: Reference Manual</i> , version 8.50, 1st ed.	July 8, 2008
1009	<i>QlikView Server: Reference Manual</i> , version 8.50, 1st ed.	July 8, 2008

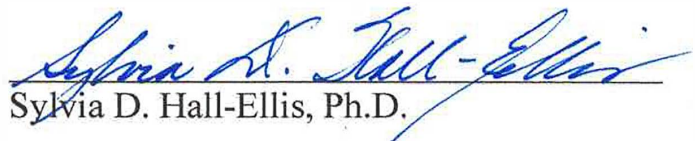
42. This Declaration contains my current opinions. I have not foreclosed the possibility of Exhibits 1008 and 1009 being publicly accessible before July 8, 2008. For example, if new evidence shows Exhibits 1008 and 1009 being publicly accessible on or before the scheduled product release date for version 8.50 of QlikView (June 30, 2008), I may adjust my conclusions.

VIII. CONCLUSION

43. In signing this declaration, I recognize that the declaration will be filed as evidence in an *inter partes* review before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case and that cross-examination will take place within the United States. If cross-examination is required, I will appear for cross-examination within the United States during the time allotted.

44. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on this 26th day of September 2024, in Arapahoe County,
Colorado.


Sylvia D. Hall-Ellis, Ph.D.