

**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 PRELIMINARY INVALIDITY CONTENTIONS FOR
PATENTS PLAINTIFFS ADDED BY AMENDMENT**

and those references listed in Section B and charted in Exhibits 869-A⁶, 869-B, 244-A, 244-B, 243-A, 243-B, 505-A, 505-B, 932-A, 932-B, 123-A, and 123-B, Sophos may rely on at least the references listed below and any admitted prior art discussed in the Asserted Patents and file histories:

1. U.S. Patent No. 11,409,869⁷

- U.S. Patent Pub. No. 2006/0026675 to Cai et al. (“Cai et al.”)
- U.S. Patent Pub. No. 2015/0213376 to Ideses et al. (“Ideses et al.”)
- U.S. Patent Pub. No. 2017/0098074 to Okano et al. (“Okano et al. ’074”)
- U.S. Patent No. 8,799,190 to Stokes et al. (“Stokes et al.”)
- U.S. Patent No. 9,245,120 to Friedrichs et al. (“Friedrichs et al.”)
- U.S. Patent No. 9,398,034 to Ronen et al. (“Ronen et al.”)
- U.S. Patent No. 8,955,133 to Kumar et al. (“Kumar et al.”)
- U.S. Patent No. 9,672,355 to Titonis et al. (“Titonis et al.”)
- U.S. Patent No. 10,268,820 to Okano et al. (“Okano et al. ’820”)
- U.S. Patent No. 10,395,032 to Keller et al. (“Keller et al.”)
- U.S. Patent Pub. No. 2006/0037080 to Maloof (“Maloof”)
- U.S. Patent Pub. No. 2007/0240220 to Tuvell et al. (“Tuvell et al.”)
- U.S. Patent Pub. No. 2009/0254992 to Schultz et al. (“Schultz et al.”)
- U.S. Patent Pub. No. 2011/0047618 to Evans et al. (“Evans et al.”)

⁶ Sophos hereby incorporates by reference the Preliminary invalidity contentions for the ‘844 patent into all mentions and sections pertaining to the ‘869 patent herein. All primary, secondary, and/or obviousness charts for the ‘869 patent are also incorporated herein.

⁷ Sophos hereby incorporates by reference all references for the ‘844 patent listed in the Preliminary Invalidity Contentions’ ‘844 Patent “State of the Art” section.

- U.S. Patent No. 9,129,110 to Mason et al. ("Mason et al.")
- Shafiq, A Framework for Efficient Mining of Structural Information to Detect Zero-Day Malicious Portable Executables ("Shafiq et al.")
- Wang, Detecting Unknown Malicious Executables Using Portable Executable Headers ("Wang I")
- Japanese Patent Appl. Pub. No. 2012027710A to Mori ("Mori")
- U.S. Patent Pub. No. 2010/0150448 to Lecerf et al. ("Lecerf")
- Vinod, Relevant hex Patterns for malcode detection ("Vinod")
- Walenstein, "Exploiting similarity between variants to defeat malware: Vilo method for comparing and searching binary programs" ("Walenstein")
- U.S. Patent No. 10,649,970 to Saxe et al. ("Saxe 970")
- U.S. Patent No. 9,189,750 to Narsky ("Narsky")
- U.S. Patent Pub. No. 2014/0090064 to Pistoia et al. ("Pistoia")
- Tan, An Internet Traffic Identification Approach Based on GA and PSO-SVM ("Tan")
- U.S. Patent No. 9,286,182 to Fries et al. ("Fries et al.")
- U.S. Patent Pub. No. 2010/0191734 to Rajaram et al. ("Rajaram et al.")
- Wang, Detection of Packed Executables using Support Vector Machines ("Wang II")
- Lai, A Feature Selection for Malicious Detection ("Lai")

2. **U.S. Patent No. 8,181,244**

a) **Prior Art Patents / Patent Publications**

- U.S. Patent Pub. No. 2006/0070130 to Costea et al. ("Costea et al.")
- U.S. Patent No. 7,231,667 to Jordan ("Jordan")
- U.S. Patent No. 7,571,482 to Polyakov et al. ("Polyakov et al.")
- U.S. Patent No. 7,647,636 to Polyakov et al. ("Polyakov et al. II")
- U.S. Patent No. 8,321,910 to English et al. ("English et al.")
- U.S. Patent No. 8,516,583 to Thomas et al. ("Thomas et al.")

III. INVALIDITY UNDER 35 U.S.C. § 112

Sophos alleges that the Asserted Claims are invalid under 35 U.S.C. § 112 as indefinite (pre-AIA § 112, ¶ 2 or AIA § 112(b), as applicable) and for failing to satisfy the written description and enablement requirements (pre-AIA § 112, ¶ 1 or AIA § 112(a), as applicable). Sophos reserves all rights to amend its Preliminary Invalidity Contentions for Patents Plaintiffs Added By Amendment under 35 U.S.C. § 112, including after the Asserted Claims are ultimately construed by the Court, in response to any interpretation of the Asserted Claims embodied in Plaintiffs’ infringement positions, and/or to account for any changes in the law concerning invalidity under 35 U.S.C. § 112. Sophos also reserves the right to provide additional explanation and/or argument for its Preliminary Invalidity Contentions for Patents Plaintiffs Added By Amendment under § 112, including, for example, based on expert testimony. Sophos’s contentions that the Asserted Claims are invalid under § 112 are not admissions regarding the construction or scope of the claims of the Asserted Patents, or that any of the claims of the Asserted Patents are not anticipated or rendered obvious by any prior art. All of the below statements are by way of example only. Any item disclosed below with respect to any patent or claim may, as appropriate, be asserted as a defense against any other patent or claim that has a similar claim limitation and patent disclosure.

A. INVALIDITY UNDER PRE-AIA 35 U.S.C. § 112, ¶ 1 OR AIA 35 U.S.C. § 112(a)

35 U.S.C. § 112(a) (pre-AIA § 112, ¶ 1) requires that the specification contain a written description of the invention. “[T]he hallmark of written description is disclosure.” *Boston Scientific Corp. v. Johnson & Johnson*, 647 F.3d 1353, 1361–62 (Fed. Cir. 2011) (citation omitted). The test for whether a specification adequately describes an invention is “whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date. . . . [T]he test requires

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 all prior art referenced in its Preliminary Invalidity Contentions for Patents Plaintiffs Added By Amendment. See documents with the prefix "SOPHOS-PA-" produced herewith, as well as the technical and prior art previously produced and referenced in Sophos's Preliminary Invalidity Contentions. See SOPHOS_PA_0000001 to SOPHOS_PA_0008988, and SOPHOS_0000001 to SOPHOS_0004168. Defendant will promptly produce any documents uncovered during discovery, including through third-party subpoenas.

Dated: February 21, 2023

Respectfully submitted,

/s/ Brian Rosenthal

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Certificate of Service

I hereby certify that on February 21, 2023, the foregoing document has been served by electronic mail on all counsel of record.

/s/ Bevannie N. Ramlakhan

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