

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

**WEBROOT, INC. and
OPEN TEXT, INC.,**

Plaintiffs,

v.

**CROWDSTRIKE, INC., and
CROWDSTRIKE HOLDINGS, INC.,**

Defendants.

Case No. 6:22-cv-00241-ADA-DTG

JURY TRIAL DEMANDED

CROWDSTRIKE, INC.,

Counterclaim-Plaintiff,

v.

**WEBROOT, INC. and
OPEN TEXT, INC.,**

Counterclaim-Defendants.

**CROWDSTRIKE’S PRELIMINARY INVALIDITY CONTENTIONS
(PATENTS ASSERTED BY AMENDMENT)**

I. INTRODUCTION

Defendants CrowdStrike, Inc. and CrowdStrike Holdings, Inc. (collectively, “CrowdStrike”) provide these Preliminary Invalidity Contentions to Plaintiffs Webroot, Inc. and Open Text, Inc. (collectively “Plaintiffs”) for the following patents (collectively, “Asserted Patents” or “Patents-in-Suit”) and claims (collectively, “Asserted Claims”) identified as asserted in Plaintiff’s Disclosure of Preliminary Infringement Contentions served on October 25, 2022 (“Infringement Contentions”):

4. '869 Patent

System or Publication	Date of Filing or Publication	Effective Filing Date
Abou-Assaleh, N-gram-based Detection of New Malicious Code	2004	
Arnold, Automatically Generated Win32 Heuristic Virus Detection	Sept. 2000	
Aswini, Towards the Detection of Android Malware using Ensemble Features	Jan. 2014	
Baldangombo, A Static Malware Detection System Using Data Mining Methods	2013	
CN102142068(A) - Translation	8/3/2011	
CN103106365(A) - Translation	5/15/2013	
CN103473506(A) - Translation	12/25/2013	
Cortes, Support-Vector Networks	1995	
CrowdStrike system	2011-2014	
Demertzis, Evolving Computation Intelligence for Malware Detection	2014	
EP2182458A1 (Moskovitch, Deutsche Telekom AG)	1/10/2009	3/11/2008
Firdausi, Analysis of Machine learning Techniques Used in Behavior-Based Malware Detection	2010	
Hsu, Practical Guide to Support Vector Classification	4/15/2010	
Idres, Classification of malware based on integrated static and dynamic features	2012	
Islam, Classification of Malware Based on String and Function Feature Selection	2010	

System or Publication	Date of Filing or Publication	Effective Filing Date
JP2012027710A (Mori)	2/9/12	
Krasser, Identifying Image Spam Based on Header and File Properties Using C4.5 Decision Trees and Support Vector Machine Learning	6/22/2007	
Lai, A Feature Selection for Malicious Detection	2008	
Leder, Classification and Detection of Metamorphic Malware Using Value Set Analysis	2009	
Liangboonprakong, Classification of malware families	June 19-21, 2013	
Markel, Building a Machine Learning Classifier for Malware Detection	10/23/2014	
Masud, Data Mining Tools for Malware Detection	2011	
Menahem, Improving Malware Detection by Applying Multi-Inducer Ensemble	10/19/2008	
Nataraj, Detecting Packed Executables	2010	
Nath, Static Malware Analysis	2014	
Raman, Selecting Features to Classify Malware	2012	
Ravula, Classification of Malware Using Reverse Engineering and Data Mining Techniques	Aug. 2011	
Shafiq, PE Probe: Leveraging Packer Detection and Structural Information to Detect Malicious Portable Executables	June 2009	
Sun, Pattern Recognition Techniques	July 2010	
Tahan, Mal-ID Automatic Malware Detection Using Common Segment Analysis and Meta-Features	Apr. 2012	
Tang, Support Vector Machines and Random Forests Modeling for Spam Senders Behavior Analysis	2008	

System or Publication	Date of Filing or Publication	Effective Filing Date
US7711673 (Diao, Trend Micro)	9/28/2005	
US7756535 (Diao, Trend Micro)	7/7/2006	
US7949771 (Chen, Trend Micro)	9/5/2007	
US8023974B1 (Diao, Trend Micro)	2/15/2007	N/A
US8161548 (Wan, Trend)	8/15/2005	
US8161548B1 (Wan, Trend Micro)	8/15/2005	N/A
US8375450 (Oliver, Trend Micro)	10/5/2009	
US8495144 (Cheng, Trend Micro)	10/6/2004	
US8505094 (Xuewen, Trend Micro)	1/13/2010	
US8533831 (Satish, Symantec)	7/2/2010	
US8554907 (Chen, Trend Micro)	2/15/2011	
US8560466 (Diao, Trend Micro)	2/26/2010	
US8578497 (Antonakakis)	1/5/2011	1/14/2010
US8584241 (Jenks)	8/11/2010	N/A
US8719939 (Krasser)	1/26/2010	12/31/2009
US8799190 (Stokes)	6/17/2011	

Patent	Asserted Claim(s)	Claim Term/Phrase	Invalidity Based on 35 U.S.C. § 112
		“to determine whether the executable file fits into one of the categories of files”	
'869	22, 36, 50	“machine learning decision tree”	Lack of Written Description; Lack of Enablement
'869	26, 40, 54	“a detected condition”	Lack of Written Description; Lack of Enablement

CrowdStrike reserves the right to modify, amend, or supplement its contentions relating to 35 U.S.C. § 112 as the case progresses including, in particular, in view of any additional claims asserted by Plaintiffs or in view of any claim construction rulings issued by the Court in this matter.

VI. INVALIDITY UNDER 35 U.S.C. § 101

To be patentable subject matter under § 101, a claim must be directed to one of four eligible subject matter categories: “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. “Claims that fall within one of the four subject matter categories may nevertheless be ineligible if they encompass laws of nature, physical phenomena, or abstract ideas.” *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980). The Supreme Court established a two-step test for deciding the subject matter eligibility of claims under § 101. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). First, the claims must be analyzed to determine whether they are drawn to one of the statutory exceptions. *Id.* Claims that invoke generic computer components instead of reciting specific improvements in computer capabilities are abstract under this first step. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). Second, the elements of the claims must be viewed both individually and as an ordered

combination to see if there is an “inventive concept.” *Id.* The mere fact that a claim recites or implies that an abstract idea is implemented using a general-purpose computer does not supply an inventive concept necessary to satisfy § 101. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016); *Alice*, 134 S. Ct. at 2357–59.

As explained below, all of the Asserted Claims are directed to ineligible subject matter under 35 U.S.C. § 101 and applicable case law authority.

A. '244 Patent / '243 Patent / '932 Patent / '505 Patent

Plaintiffs allege in their Preliminary Invalidity Contentions that CrowdStrike's Counterclaims Patents—U.S. Patent Nos., 9,043,903 and 9,904,784—are unpatentable under 35 U.S.C. § 101. Plaintiffs' November 23, 2022 Preliminary Invalidity Contentions at 33-35. CrowdStrike disagrees. To the extent Plaintiffs maintain these arguments against CrowdStrike's counterclaim patents, those arguments are more appropriately applied to the '244, '243, '943, and '505 patents for the reasons below. *See* Plaintiffs' October 25, 2022 Preliminary Infringement Contentions at, *e.g.*, Exhibit 9 ('505 patent); Exhibit 10 ('243 patent); Exhibit 11 ('932 patent); Exhibit 12 ('244 patent).

For example, according to Plaintiffs' Preliminary Infringement Contentions, the '244 patent is directed toward an abstract idea under *Alice* Step One, *e.g.*, monitoring, collecting and analyzing data to identify a source of pestware. The asserted claims of the '244 patent do not embody an inventive concept that would transform the claims away from an abstract idea under *Alice* Step Two. According to Plaintiffs' Preliminary Infringement Contentions, the asserted claims simply recite monitoring information (*e.g.*, “CrowdStrike's Falcon for Mobile is deployed on mobile operating systems and monitors internal API calls”), collecting information (*e.g.*, “The Accused Products' 'Endpoint Protection Software' features include 'Activity Log”;

Dated: February 21, 2023

Respectfully submitted,

s/Steven Callahan
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via electronic mail on February 21, 2023.

s/Steven Callahan
STEVEN CALLAHAN