

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CITRIX SYSTEMS, INC.,)	
)	
Plaintiff,)	
)	C.A. No. 17-1843-LPS
v.)	
)	JURY TRIAL DEMANDED
AVI NETWORKS, INC.,)	
)	
Defendant.)	

**DEFENDANT’S INITIAL INVALIDITY CONTENTIONS
REGARDING U.S. PATENT NOS. 9,148,493 AND 8,631,120**

Pursuant to paragraph 8(d) of the Court’s Scheduling Order entered August 27, 2018, Defendant Avi Networks, Inc. (“Avi”) serves its Initial Invalidity Contentions (“Contentions”) concerning claims 1, 2, 3, 9, 10, and 11 of U.S. Patent No. 9,148,493 (“the ’493 patent”) and claims 1, 2, 4, 5, and 16 of U.S. Patent No. 8,631,120 (“the ’120 patent”) (collectively, “the Claims”).

In these Contentions, with respect to each Claim, Avi: (i) identifies each currently known item of prior art that either anticipates or renders obvious each Claim; (ii) submits charts for illustrative prior art references identifying where each limitation of each Claim is disclosed or rendered obvious by the prior art; (iii) identifies the grounds for invalidating Claims based on indefiniteness, and/or written description under 35 U.S.C. § 112; and (iv) identifies any ineligibility of the Claims under 35 U.S.C. § 101 for failure to claim patent eligible subject matter.¹

The prior art referenced in these Contentions is being produced herewith.

¹ Unless specified noted, all references to Title 35 of the United States Code refer to code pre-America Invents Act. *See, e.g.*, 35 U.S.C. § 102 (2011).

I. RESERVATION OF RIGHTS

Avi's discovery and investigation in connection with this lawsuit are ongoing, and these Contentions are based on Avi's current knowledge and understanding of the '493 and '120 patents, Plaintiff Citrix Systems, Inc.'s ("Citrix") Initial Infringement Contentions, the prior art, and other facts and information available at this date in the present actions. These Contentions are necessarily preliminary and are provided without prejudice to Avi's rights. Avi expressly reserves the right to amend, modify, or supplement these Contentions based on further investigation, developments during fact or expert discovery, evaluation of the scope and content of the prior art or additional prior art that may be discovered, admissions, amendment of Citrix's Initial Infringement Contentions, positions taken by Citrix during claim construction, the Court's claim construction, any other reasonable basis, and as permitted by the Court's Scheduling Order, the Local Rules of the District of Delaware, and the Federal Rules of Civil Procedure.

In particular, fact discovery has only just begun and expert discovery has not begun. Avi intends to seek discovery from Citrix, the inventors, the prosecuting attorneys, and other third parties regarding public use and/or the on-sale bar under 35 U.S.C. § 102(b), additional prior art under 35 U.S.C. §§ 102 and 103, improper inventorship and/or derivation under 35 U.S.C. § 102(f), earlier invention by other parties under 35 U.S.C. §102(g) and/or applicant's failure to comply with 35 U.S.C. §§101 and 112. Based on discovery, Avi may uncover additional prior art and invalidity arguments.

Moreover, the Court has not yet construed any disputed claim terms of the '493 and '120 patents, and additional bases for invalidity may become relevant based on the Court's construction of such claim terms. Accordingly, Avi reserves the right to revise and/or supplement these Contentions as discovery proceeds and after the Court construes the Claims. In addition, none of these Contentions constitutes an admission concerning the proper construction

of the claims. Avi expressly reserves all rights to propose alternative constructions and to rebut Citrix's actual claim construction positions once known. Moreover, Avi reserves the right to supplement and/or amend these Contentions based on any findings as to the priority date of the Claims, and/or positions that Citrix or its expert witnesses may take concerning claim interpretation, infringement, and/or invalidity issues.

Prior art not included in this disclosure, whether known or unknown to Avi, may become relevant. In particular, Avi is currently unaware of the extent, if any, to which Citrix will contend that limitations of the Claims are not disclosed in the prior art that Avi identifies, or will contend that any of the identified references do not qualify as prior art under 35 U.S.C. § 102. The identification of any patents as prior art shall be deemed to refer to the application that was submitted for the same and to include identification of any foreign counterpart patents. To the extent that such an issue arises, Avi reserves the right to identify additional teachings in the same references or in other references that anticipate or would have rendered the addition of the allegedly missing limitation to the device or method obvious.

Avi's claim charts submitted as part of these Contentions cite to particular, exemplary teachings and disclosures of the prior art as applied to features of the Claims. Persons having ordinary skill in the art may, however, view an item of prior art generally in the context of its entirety, including other relevant publications, literature, products, and understanding. Accordingly, the cited portions are only examples, and Avi reserves the right to rely on uncited portions of the prior art references and on other relevant publications and expert testimony as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that a claim limitation is known or disclosed. Where Avi cites to a particular figure in a reference, the citation should be understood to encompass the caption and description

of the figure and any text relating to the figure. Similarly, where Avi cites to particular text referring to a figure, the citation should be understood to include the figure and caption as well. Avi further reserves the right to rely on uncited portions of the prior art references, other publications, and testimony to establish bases for combinations of certain cited references that render the Claims obvious. Further, for any combination, Avi reserves the right to rely additionally on information generally known to those skilled in the art and/or common sense.

The references discussed in the claim charts may disclose the elements of the Claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame.

Furthermore, nothing stated herein shall be treated as an admission or suggestion that Avi's accused technologies meet any limitation of any Claim. Avi denies that they infringe any claim of the '493 and '120 patents.

II. INVALIDITY OF THE '493 AND '120 PATENTS

A. The '493 Patent

1. Priority Date of the '493 Patent

Citrix has not identified the alleged priority date to which the '493 patent is purportedly entitled. *See* Citrix's Answers and Objections to Avi's First Set of Interrogatories dated October 15, 2011, at 9-10. For the purposes of these invalidity contentions, Avi will use the earliest priority date on the face of the patent—October 18, 2000. Avi specifically reserves the right to amend these contentions to the extent Citrix identifies a different alleged priority date for the '493 patent.

2. Identification of Prior Art

As set forth in the claim charts attached as Exhibits A-1 to A-6, the following prior art references anticipate and/or render obvious alone or in combination the asserted claims of the '493 patent.

Reference	Exhibit No. of Claim Chart
Prior Art System Squid Cache version 2.0 ("Squid") ²	Exhibit A-1
WO 00/28433 to Susai et al. ("Susai 1")	Exhibit A-2
U.S. Patent No. 7,007,092 to Peiffer ("Peiffer")	Exhibit A-3
U.S. Patent No. 7,062,570 to Hong et al. ("Hong")	Exhibit A-4
U.S. Patent No. 6,820,133 to Grove et al. ("Grove")	Exhibit A-5
Source Code for Squid Cache version 2.0 ("Squid Source Code")	Exhibit A-6

In these exemplary charts, the identified sections of the references are provided both to demonstrate anticipation and to show how the identified disclosure would render the claim obvious alone or in combination, for example, with any of the other cited references. To the extent that Citrix argues, or the Court finds, that any reference identified in the accompanying claim charts does not explicitly disclose every aspect of an element, the reference still anticipates or renders obvious the Claim(s) because any such aspect of an element is inherently disclosed or

² To show the functionality of Squid as a prior art system, Avi will rely upon, *inter alia*, all applicable source code, documentation, user guides, user newsgroup posts describing functionality, declarations from developers and users, and other sources of evidence that Avi identifies through further discovery.



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.