

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

Wombat Security Technologies, Inc.,  
Petitioner,

v.

PhishMe, Inc.,  
Patent Owner.

---

U.S. PATENT NO. 9,674,221  
PGR2017-00050

---

**PETITION FOR POST-GRANT REVIEW OF U.S. PATENT 9,674,221**

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

## TABLE OF CONTENTS

|      |   |    |
|------|---|----|
| I.   | INTRODUCTION .....  | 1  |
| II.  | REQUIREMENTS AND MANDATORY NOTICES.....                           | 3  |
|      | A. Standing .....   | 3  |
|      | B. Real Party-in-Interest.....                                    | 3  |
|      | C. Related Matters .....  | 3  |
|      | 1. Lawsuits .....   | 3  |
|      | 2. Post-grant Petitions .....                                     | 4  |
|      | 3. Related Applications.....                                      | 5  |
|      | D. Lead and Backup Counsel and Service Information .....          | 6  |
|      | E. Payment of Fees.....   | 6  |
| III. | OVERVIEW OF THE '221 PATENT .....                                 | 6  |
|      | A. Simulated Phishing Methods Described in the Specification..... | 6  |
|      | B. Person Having Ordinary Skill in the Art .....                  | 9  |
|      | C. Eligibility for PGR.....                                       | 9  |
|      | 1. First Post-AIA Limitation .....                                | 10 |
|      | 2. Second Post-AIA Limitation.....                                | 13 |
|      | 3. Related Applications .....                                     | 16 |
|      | 4. Conclusion and AIA Applicability .....                         | 17 |
|      | D. Priority Date.....   | 17 |
| IV.  | OVERVIEW OF THE CHALLENGE AND THE RELIEF<br>REQUESTED .....       | 18 |
| V.   | CLAIM CONSTRUCTION .....  | 20 |
| VI.  | DETAILED EXPLANATION FOR THE GROUNDS FOR<br>UNPATENTABILITY ..... | 23 |

|      |  |    |
|------|--|----|
| A.   | Obviousness Grounds 1, 2 and 3 .....   | 23 |
| 1.   | Summary of Relied Upon Prior Art .....   | 24 |
| 2.   | Independent Claims.....  | 35 |
| 3.   | Dependent Claims .....   | 68 |
| B.   | Grounds 4, 5 and 6: Failure to Satisfy the Written Description<br>Requirement of § 112(a).....   | 74 |
| 1.   | Ground 4: Claims 11-16 and 18 Should Be Canceled Because<br>Specification Does Not Disclose a Remote Computing Device<br>That Provides Graphically Displayed Confirmatory Feedback.....  | 75 |
| 2.   | Ground 5: Claims 11-16 and 18 Should be Canceled Because<br>the Specification Does Not Disclose a Remote Computing<br>Device For Sending the Identified Email for Analysis or<br>Detection After it is Determined Not to be a Known Simulated<br>Phishing Attack ..... | 77 |
| 3.   | Ground 6: Claims 1-6 and 8 Should be Canceled Because the<br>Specification Does Not Disclose Each of the Multiple Methods<br>Recited in the Claims .....   | 79 |
| C.   | Ground 7: Claims 11-16, 18 are Indefinite.....   | 81 |
| D.   | Ground 8: The Challenged Claims are Ineligible under § 101.....  | 85 |
| VII. | CONCLUSION.....  | 91 |
|      | Claims Appendix of Challenged Claims .....   | 93 |

## TABLE OF AUTHORITIES

### Cases

|  |           |
|--|-----------|
| <i>Alice Corp. v. CLS Bank Int’l</i> , 134 S. Ct. 2347 (2014) .....  | 85, 86    |
| <i>Allergan, Inc. v. Sandoz Inc.</i> , 796 F.3d 1293 (Fed. Cir. 2015).....   | 74        |
| <i>Ariad Pharm., Inc. v. Eli Lilly and Co.</i> , 598 F.3d 1336 (Fed.<br>Cir. 2010) .....                                   | 9, 11, 74 |
| <i>Aristocrat Techs. Austral. Pty Ltd. v. Int’l Game Tech.</i> , 521 F.3d 1328 (Fed.<br>Cir. 2008) .....                   | 82        |
| <i>Atmel Corp. v. Info. Storage Devices, Inc.</i> , 198 F.3d 1374 (Fed. Cir. 1999) .....                                   | 85        |
| <i>Creston Elec., Inc. v. Intuitive Building Controls, Inc.</i> , IPR2015-01460,<br>Paper 14 (PTAB January 14, 2016) ..... | 31        |
| <i>Cuozzo Speed Techs. LLC v. Lee</i> , 136 S. Ct. 2131 (2016) .....   | 20        |
| <i>Digitech Image Techs., LLC v. Elecs. For Imaging, Inc.</i> , 758 F.3d 1344<br>(Fed. Cir. 2014).....                     | 87        |
| <i>EON Corp. v. AT&amp;T Mobility LLC</i> , 785 F.3d 616 (Fed. Cir. 2015).....   | 82, 83    |
| <i>Ex Parte Lakkala</i> , Appeal 2011-001526, 2013 WL 1341108 (PTAB July 7,<br>2015) .....                                 | 23        |
| <i>FairWarning IP, LLC v. Iatric Sys., Inc.</i> , 839 F.3d 1089 (Fed. Cir. 2016).....                                      | 89        |
| <i>Helsinn Healthcare S.A. v. Teva Pharm. USA, Inc.</i> , 855 F.3d 1356 (Fed.<br>Cir. 2017) .....                          | 25        |
| <i>I/P Engine, Inc. v. AOL Inc.</i> , 576 Fed. Appx. 982 (Fed. Cir. 2014).....   | 86        |
| <i>In re Distefano</i> , 808 F.3d 845 (Fed. Cir. 2015) .....   | 50        |
| <i>In re Gosteli</i> , 872 F.2d 1008 (Fed. Cir. 1989) .....  | 9         |
| <i>In re Gulack</i> , 703 F.2d 1381 (Fed. Cir. 1983) .....   | 50        |
| <i>In re Hall</i> , 781 F.2d 897 (Fed. Cir. 1986).....   | 34        |
| <i>In re TLI Commc’ns LLC Patent Litig.</i> , 823 F.3d 607 (Fed. Cir. 2016).....   | 87, 91    |
| <i>In re Translogic Tech. Inc.</i> , 504 F.3d 1249 (Fed. Cir. 2007) .....  | 20        |

|   |               |
|---|---------------|
| <i>Intellectual Ventures I LLC v. Symantec Corp.</i> , 838 F.3d 1307 (Fed. Cir. 2016) .....   | 86, 87, 91    |
| <i>Internet Patents Corp. v. Active Network, Inc.</i> , 790 F.3d 1343 (Fed. Cir. 2015) .....  | 91            |
| <i>IpLearn, LLC v. K12 Inc.</i> , 76 F.Supp.3d 525 (D. Del. 2014) .....   | 88            |
| <i>KSR Int’l Co. v. Teleflex Inc.</i> , 127 S. Ct. 1727 (2007) .....  | 52, 64        |
| <i>Lockwood v. American Airlines</i> , 107 F.3d 1565 (Fed. Cir. 1997).....  | 74            |
| <i>Minton v. National Ass’n of Securities Dealers, Inc.</i> , 336 F.3d 1373 (Fed. Cir. 2003) .....  | 25            |
| <i>Multimedia Plus, Inc. v. Playerlync, LLC</i> , 198 F.Supp.3d 264 (S.D.N.Y. 2016), <i>aff’d</i> . 2017 WL 3498637 (Fed. Cir. Aug. 16, 2017) ..... | 88            |
| <i>Mylan Pharm Inc. v. Yeda Res. &amp; Dev. Co.</i> , PGR2016-00010, Paper 9 at 10 (PTAB Aug. 15, 2016).....  | 9             |
| <i>Nike, Inc. v. Adidas AG</i> , 812 F.3d 1326 (Fed. Cir. 2016).....  | 64            |
| <i>Noah Sys., Inc. v. Intuit Inc.</i> , 675 F.3d 1302 (Fed. Cir. 2012).....   | 82            |
| <i>Ormco Corp. v. Align Tech., Inc.</i> , 498 F.3d 1307 (Fed. Cir. 2007).....   | 35, 61        |
| <i>PhishMe, Inc. v. Wombat Security Technologies, Inc.</i> , No. 1:17-cv-00769-LPS-CJB.....   | 4             |
| <i>PowerOasis, Inc. v. T-Mobile USA, Inc.</i> , 522 F.3d 1299 (Fed. Cir. 2008) .....  | 10            |
| <i>Robert Bosch, LLC v. Snap-On Inc.</i> , 769 F.3d 1094 (Fed. Cir. 2014) .....   | 22, 81        |
| <i>Sogue Holdings (Bermuda) Ltd. v. Keyscan, Inc.</i> , 2010 WL 2292316 (N.D. Cal. June 7, 2010) .....  | 22            |
| <i>Synopsis, Inc. v. Mentor Graphics Corp.</i> , 839 F.3d 1138 (Fed. Cir. 2016) .....   | 88            |
| <i>Turbocare Div. of Demag Delaval Turbomachinery Corp. v. General Electric Co.</i> , 264 F.3d 1111 (Fed. Cir. 2001).....                           | 74            |
| <i>Williamson v. Citrix Online, LLC</i> , 792 F.3d 1339 (Fed. Cir. 2015).....   | <i>passim</i> |

## Regulations

|                             |    |
|-----------------------------|----|
| 37 C.F.R. § 42.200(b) ..... | 20 |
|-----------------------------|----|

# 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.