

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CLOUDFLARE, INC. AND SONICWALL INC.,
Petitioner,

v.

SABLE NETWORKS, INC.,
Patent Owner.

Case IPR2021-00909
Patent 8,243,593

DECLARATION OF ERIN McCracken

I, Erin McCracken, declare the following:

1. I am an attorney at the law firm of Berger & Hipkind LLP, and am a member in good standing of the State Bar of California. I have been admitted *pro hac vice* in this proceeding.

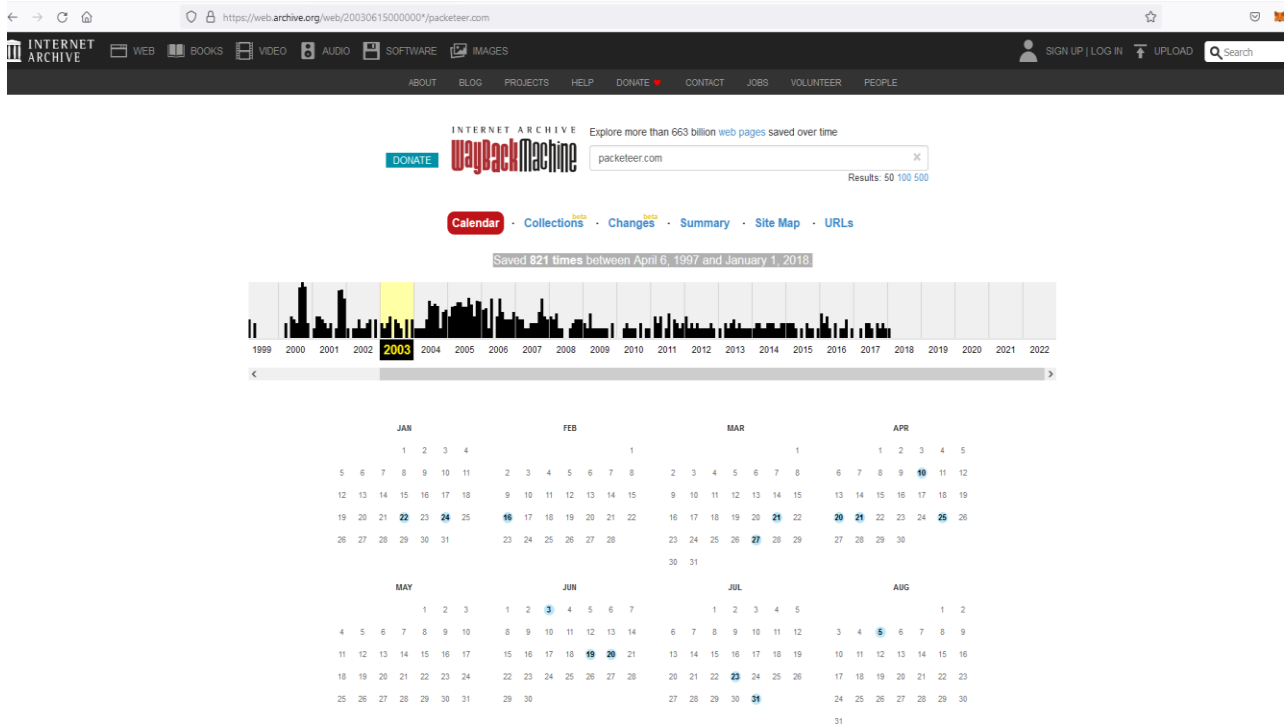
2. I provide this Declaration in connection with IPR2021-00909, in which I am back-up counsel of record for Patent Owner Sable Networks, Inc.

3. Unless otherwise stated, the facts contained in this Declaration are based on my personal knowledge.

4. The Federal Circuit has explained that the “Wayback Machine is an online digital archive of web pages. It is run by the Internet Archive, a nonprofit library in San Francisco, California. [E]xaminers use ‘The Wayback [M]achine’ as a source of information to determine when a Web reference was first made available to the public.” *Valve Corp. v. Ironburg Inventions Ltd.*, 2021 U.S. App. LEXIS 24483, at *16 (Fed. Cir. Aug. 17, 2021) (internal citations and quotation marks omitted). Recognizing that district courts routinely take “judicial notice of the contents of webpages available through the Wayback Machine,” the Federal Circuit has followed suit and done the same. *Id.* at *17 (finding that a webpage retrieved from the Internet Archive did not have to be authenticated by the Internet Archive).

5. On March 9, 2022, I navigated to the Internet Archive: Wayback

Machine website found at the following URL: <https://archive.org/web/>. After navigating to the website, I used the “Browse History” function to search for the Packeteer website, <http://packeteer.com>. I then clicked on the Wayback Machine’s calendar for the year 2003 which shows (in blue) the dates in 2003 on which the Wayback Machine saved the packeteer.com website. As shown in the below screenshot, the only dates in March 2003 on which the Wayback Machine saved the Packeteer website, <http://packeteer.com>, are March 21 and 27, 2003.



6. On March 9, 2022, I again navigated to the Internet Archive:

Wayback Machine website found at the following URL: <https://archive.org/web/>.

After navigating to the website, I used the “Browse History” function to search for the URL identified in the Declaration of Christopher Butler for the record of the

archived version of the Four-Steps Whitepaper on which Petitioner relies in ground 3 of the Petition— http://packeteer.com/PDF_files/4steps.pdf. According to the Internet Archive, that URL was saved only 10 times between March 17, 2003, and June 11, 2009. As shown in the below screenshot, the only dates in 2003 on which the Wayback Machine saved the URL http://packeteer.com/PDF_files/4steps.pdf are March 17, April 29, and October 25, 2003. However, when I clicked on the April 29 and October 25, 2003 calendar dates, I received the following error message: “The page cannot be found.” This is shown in the screenshots below.

web.archive.org/web/20030801000000*/http://packeteer.com/PDF_files/4steps.pdf

INTERNET ARCHIVE

ABOUT BLOG PROJECTS HELP DONATE CONTACT JOBS VOLUNTEER PEOPLE

INTERNET ARCHIVE Explore more than 663 billion web pages saved over time

WayBackMachine

http://packeteer.com/PDF_files/4steps.pdf Results: 50 100 500

Calendar · Collections · Changes · Summary · Site Map · URLs

Saved 10 times between March 17, 2003 and June 11, 2009.

Year	Number of Saves
2000	0
2001	0
2002	0
2003	10
2004	1
2005	1
2006	1
2007	0
2008	1
2009	1
2010	0
2011	0
2012	0
2013	0
2014	0
2015	0
2016	0
2017	0
2018	0
2019	0
2020	0
2021	0
2022	0

Month	Day	Number of Saves									
JAN	1	0									
	2	0									
	3	0									
	FEB	1	0								
		2	0								
		3	0								
		MAR	1	0							
			2	0							
			3	0							
			APR	1	0						
				2	0						
				3	0						
				MAY	1	0					
					2	0					
					3	0					
					JUN	1	0				
						2	0				
						3	0				
						JUL	1	0			
							2	0			
							3	0			
							AUG	1	0		
								2	0		
								3	0		
								SEP	1	0	
									2	0	
									3	0	
									OCT	1	0
										2	0
										3	0
										NOV	1
2											0
3											0
DEC											1
	2										0
	3										0

Note
This calendar view maps the number of times http://packeteer.com/PDF_files/4steps.pdf was crawled by the Wayback Machine, *not* how many times the site was actually updated. More info in the [FAQ](#).
Orange indicates that the URL was not found (4xx).

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