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

SABLE NETWORKS, INC. AND SABLE IP, LLC, **Plaintiffs,** **v.** **RIVERBED TECHNOLOGY, INC.,** **Defendant.**	**Civil Action No. 6:21-cv-00175-ADA** **JURY TRIAL DEMANDED**
Sable Networks, Inc. and Sable IP, LLC, **Plaintiffs,** **v.** **Cloudflare, Inc.,** **Defendant.**	**Civil Action No. 6:21-cv-00261-ADA** **JURY TRIAL DEMANDED**

CLOUDFLARE, INC'S OPENING CLAIM CONSTRUCTION BRIEF

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INTRODUCTION

Sable Networks asserts a series of patents that grow out of its predecessor Caspian Network's efforts to improve existing quality of service (QoS) and "flow-based" router technology. Complaint (Dkt. 1) ¶¶ 5-8. According to Sable, Caspian's founder, Larry Roberts, sought to "buil[d] flow-based routers that advanced quality of service and load balancing performance." *See id.* Caspian's patents state that its flow-based routers provide "a previously unavailable degree of quality of service." *See, e.g.*, '431 patent at Abstract. Nonetheless, Caspian's router, the Apeiro, was unsuccessful in the marketplace and by 2008, Caspian sold its assets to Sable Networks. Complaint ¶¶ 6-9.

Sable now asserts patents related to its approaches to QoS and flow-based router technology against companies like Cloudflare that do not manufacture routers and use very different techniques and products in their networks. To do so, Sable stretches the asserted claims well beyond the scope of the technology it purports to have invented including flip-flopping on the meaning of terms from one litigation or proceeding to the next. Accordingly, Cloudflare respectfully requests that the Court reject Sable's proposals and instead adopt Cloudflare's proposed constructions, which match the alleged inventions described in Sable's patents.

BACKGROUND

I. The Asserted Patents and Related Proceedings

A. U.S. Patent No. 6,954,431 (the "'431 patent") (Exhibit 1[1])

The '431 patent, entitled "Micro-Flow Management," describes one aspect of Caspian's flow-based routing technology. It is directed to providing the ability to give quality of service (QoS) guarantees for data transmissions through the use of "microflows" and "QoS associated

[1] All numbered exhibits hereto are attached to the Declaration of C. Luke Nelson.

with each microflow that is characterized by a set of descriptors." *See* '431 patent at Abstract. "These descriptors are communicated to each switch by the first packet of the micro-flow associated with the descriptors." *Id.* The claims of the '431 patent do not match its specification, and Cloudflare has moved to invalidate the '431 patent based on its lack of written description.

B. U.S. Patent 6,977,932 (the "'932 patent") (Exhibit 2)

The '932 patent is directed to solving QoS-related problems in conventional MPLS networks and describes "network tunneling . . . utilizing flow state information." *See* '932 patent at Abstract. The '932 patent further describes "an aggregate flow block that includes tunnel specific information for the selected network tunnel" and "the aggregate flow block further include[ing]statistics for the selected network tunnel." *Id.*

C. U.S. Patent No. 7,012,919 (the "'919 patent") (Exhibit 3)

The '919 patent, which is related to and builds on the concepts described in the '431 Patent,[2] describes another aspect of Caspian's flow-based routing technology—aggregating microflows using "intelligent load balancing" in MPLS networks. *See* '919 patent at Abstract. More specifically, the '919 Patent describes a method of routing micro-flows among "a set of label switched paths (LSPs) [that] is defined for a [MPLS] network domain." *See id.*

D. U.S. Patent 8,243,593 (the "'593 patent") (Exhibit 4)

The '593 Patent describes a Caspian solution to a problem of its time—the "advent of file sharing applications such as KaZaA, Gnutella, BearShare, and Winny" and peer-to-peer (P2P) traffic. *See* '593 patent at 1:7-10. Because P2P protocols were increasing in sophistication, the

[2] Both the '919 Patent and the '431 Patent claim priority to Application No. 09/552,278 (the "'278 application"), which issued as U.S. Pat. No. 6,574,195 (the "'195 Patent"). The '919 patent issued from a continuation-in-part of the '278 application, which added new subject matter and four additional named co-inventors.

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