

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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CLOUDFLARE, INC. and  
SPLUNK INC.,  
Petitioners,

v.

SABLE NETWORKS, INC.  
Patent Owner.

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IPR2021-00909<sup>1</sup>  
Patent 8,243,593 B2

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**DECLARATION OF MARGI SPITZER**

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<sup>1</sup> Splunk, Inc., which filed a petition in IPR2022-00228, has been joined as a petitioner in this proceeding.

I, Margi Spitzer, declare as follows:

1. I make this declaration based on my personal knowledge and if called to do so could and would testify to the facts stated in this declaration. I am not being paid to prepare or sign this declaration.

2. My resume (from 2004) is attached to this declaration. I hold a Bachelor of Science degree, *summa cum laude*, in Computer Science from San Diego State University. I worked as a software engineer at Amdahl Corporation from 1984 until 1991, and as a technical trainer at Amdahl Corporation from 1991-1992. I worked at Netlabs from 1992 until 1997 as a technical trainer and curriculum developer, and during that time I began writing technical marketing documents.

3. From 1998 through 2004, I worked at Packeteer, Inc., reaching the title of Technical Communications Lead. My role with Packeteer included technical writing, competitive analysis, preparing marketing collateral (such as datasheets, brochures, and customer success stories), writing product white papers, and writing material for Packeteer's website. My work spanned the various Packeteer product lines, including the PacketShaper product line. PacketShaper was the major product for Packeteer.

4. When I was working for Packeteer, I wrote the paper entitled "Four Steps to Application Performance Across the Network" dated September 2002 (the

“Four-Steps Whitepaper”) that is attached to this declaration. I understand that it has been identified as Exhibit 1006. When I wrote the Four-Steps Whitepaper, I worked with engineers at Packeteer to obtain updated lists of both a) the applications PacketShaper automatically identified and classified and b) the metrics that PacketShaper collected to use in its own analysis graphs and to export to third-party applications. Those lists are reflected on pages 5-6 and 18 of the Four-Steps Whitepaper. I waited for the PacketShaper software to be sufficiently complete so that we could include screenshots from the software in the Four-Steps Whitepaper. Examples of such screenshots are shown throughout the Four-Steps Whitepaper including on pages 4, 10, 11, 12, 15, 16, 21, and 25. After writing this and other whitepapers, a team of at least two engineers, one marketing person, and one director reviewed my documents to ensure accuracy.

5. I also drafted an earlier version of the Four-Steps Whitepaper in 2001. I revised that earlier version to generate the September 2002 version. One purpose of updating the paper’s contents was to ensure that the whitepaper on Packeteer’s website reflected the latest release and features of the PacketShaper software. Another purpose of updating the whitepaper was to make it ready for distribution at upcoming trade shows and industry events. The September 2002 version of the Four-Steps Whitepaper (the one that is attached to this declaration) was made available to the public in September 2002 as indicated on the cover of the paper.

6. The Four-Steps Whitepaper was a big part of Packeteer's marketing of the PacketShaper product. I understood when I wrote it that the purpose was to inform prospective customers' IT decisionmakers about the functions and capabilities of the PacketShaper. I also understood that the different versions of the whitepaper, including the September 2002 Four-Steps Whitepaper, were intended to be handed out at the seminars and trade shows where we presented the PacketShaper. Our salespeople and sales engineers would typically send whitepapers, including the September 2002 Four-Steps Whitepaper, to prospective customer accounts as part of their outreach.

7. I also know from my time at Packeteer that sales and marketing employees as well as channel partners would e-mail the Four-Steps Whitepaper, including the September 2002 version, to potential sales contacts at other companies or institutions. On many occasions, I myself emailed the Four-Steps Whitepaper (the September 2002 version) to people at other companies and institutions. For example, I recall several instances when a Packeteer engineer, marketing director, or VP came to my desk and asked me to email the Four-Steps Whitepaper to a potential customer, which I did.

8. I specifically recall that on one occasion, I sent the Four-Steps Whitepaper (the September 2002 version) via email to an Information Technology staff person at the University of Southern California. I had learned from a contact

at USC that the school was experiencing network delays and application slowdowns due to students' use of their campus network for music and entertainment downloads, and I thought sending the Four-Steps Whitepaper might generate some interest in the PacketShaper as a solution to the problem.

9. Different versions of Four-Steps Whitepaper were posted on Packeteer's website at different times on the PacketShaper product page. A customer, or anyone with interest in Packeteer products, could access the website and navigate to the PacketShaper product page. The PacketShaper product page had a link to the paper. Beginning in September 2002, the PacketShaper product page linked to the version of the Four-Steps Whitepaper that is attached to this declaration. The whitepaper could be accessed and downloaded by anyone without using any access credentials like a password and without getting advanced permission from Packeteer. We wanted people to download and read Packeteer's product literature, including the Four-Steps Whitepaper.

10. On the cover of the September 2002 version of the Four-Steps Whitepaper there is a copyright notice. I included that notice to signify only that Packeteer owned the whitepaper and to dissuade other companies from coopting any part of it to promote competing products. The copyright notice was not intended to prevent people from reading the Four-Steps Whitepaper or from sharing the URL where the Four-Steps Whitepaper could be viewed. Again, this

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