

## Publications

### *Cloudflare, Inc. v. Sable Networks, Inc. Sends Message to “Patent Trolls”*

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Graham D. Christian

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Sable Networks and Cloudflare have battled for more than three years in federal courts over a series of patents owned by Sable, which the entity has accused Cloudflare of infringing. Cloudflare recently emerged the victor by first proving it does not infringe any of the claims of the asserted patents. Cloudflare then turned to its crowdsourced prior art contest, “Project Jengo,” seeking prior art to invalidate Sable’s patent claims. Cloudflare succeeded in invalidating the key claim after proving to a jury, by clear and convincing evidence, that claim 25 was obvious in view of two earlier patents related to router technology.

The heart of the trial focused on claim 25 of U.S. Patent No. 7,012,919, directed to a “method for transmitting a data flow over a network.” The claimed method organizes a stream of aggregated data packets into separate “micro-flows” at a first “line card” and then recombining the micro-flows at a second line card into an aggregated, but organized, data stream. Sable alleged that Cloudflare’s DDoS protection service, Magic Transit, and its network optimization service, Argo for Packets, utilized the method of claim 25. In its defense, Cloudflare explained that these services handle each packet individually rather than separating the packets into flows. Further, Cloudflare explained that its services do not use line cards and thus do not infringe.

As explained by Cloudflare’s technical expert, line cards are hardware components commonly used in older routers, such as in the routers produced by now-defunct Caspian Networks. Sable acquired patents from Caspian in 2006 and has since asserted them against numerous companies, although Sable has never produced any of its own products employing the “flow-based” technology. This familiar paradigm has produced the appropriate alias “patent troll”—a term describing a company with a practice of acquiring patents and initiating often meritless lawsuits against businesses practicing similar technologies to those claimed. Patent trolls use the high cost of litigating patent lawsuits as leverage in reaching settlement agreements with favorable payouts.

The trial elicited rather self-aware testimony from Sable's founder, Brooks Borchers, who admitted that Sable is "in the business of filing lawsuits" and, further, that Sable "sues first and talks later." Cloudflare's total victory seems to have been a sort of reckoning for Sable's impropriety. Sable agreed to pay Cloudflare \$225,000—a smaller sum than the cost of litigating—and, in a twist, dedicated the remaining terms of *all* its patents to the public. Cloudflare's bittersweet victory thus sends with it a message to patent trolls: There are companies willing to fight you, even if it costs money.