

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 06-11109-RWZ

AKAMAI TECHNOLOGIES, INC. and  
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

v.

LIMELIGHT NETWORKS, INC.

**QUESTIONS TO THE JURY ON SPECIAL VERDICT**

February 28, 2008

ZOBEL, D.J.

**I. PATENT INFRINGEMENT**

**Akamai's Burden of Proof - Preponderance of the Evidence**

1. Does Limelight infringe one or more of the following claims of the '703 patent using the prepend method?

- |    |           |              |          |
|----|-----------|--------------|----------|
| a. | Claim 19: | YES <u>X</u> | NO _____ |
| b. | Claim 20: | YES <u>X</u> | NO _____ |
| c. | Claim 21: | YES <u>X</u> | NO _____ |
| d. | Claim 34: | YES <u>X</u> | NO _____ |

Please answer next Question 2.

2. Does Limelight infringe one or more of the following claims of the '703 patent using the CNAME method?

- a. Claim 19: YES   X   NO \_\_\_\_\_
- b. Claim 20: YES   X   NO \_\_\_\_\_
- c. Claim 21: YES   X   NO \_\_\_\_\_
- d. Claim 34: YES   X   NO \_\_\_\_\_

If the answer is YES to one or more claims in either Question 1 or Question 2, please answer next the corresponding parts of Questions 3 through 7.

If the answer is NO as to all claims in both Question 1 and Question 2, please return your verdict to the court.

**II. PATENT VALIDITY**

**Limelight's Burden of Proof - Clear and Convincing Evidence**

**Anticipation** - each element only in ONE filing

3. Are one or more of the infringed claims of the '703 patent invalid because the claimed service or method was anticipated by a single prior art reference?

- a. Claim 19: YES \_\_\_\_\_ NO   X
- b. Claim 20: YES \_\_\_\_\_ NO   X
- c. Claim 21: YES \_\_\_\_\_ NO   X
- d. Claim 34: YES \_\_\_\_\_ NO   X

**Obviousness** - Piece from all knowledge

4. Are one or more of the infringed claims of the '703 patent invalid because the claimed service or method was obvious to an ordinary person skilled in the art at the time the invention was made based on one or more prior art references?

- a. Claim 19: YES \_\_\_\_\_ NO X
- b. Claim 20: YES \_\_\_\_\_ NO X
- c. Claim 21: YES \_\_\_\_\_ NO X
- d. Claim 34: YES \_\_\_\_\_ NO X

**Written Description**

5. Are one or more of the infringed claims of the '703 patent invalid for failing to satisfy the written description requirement?

- a. Claim 19: YES \_\_\_\_\_ NO X
- b. Claim 20: YES \_\_\_\_\_ NO X
- c. Claim 21: YES \_\_\_\_\_ NO X
- d. Claim 34: YES \_\_\_\_\_ NO X

**Enablement**

6. Are one or more of the infringed claims of the '703 patent invalid for failing to satisfy the enablement requirement?

- a. Claim 19: YES \_\_\_\_\_ NO X

- b. Claim 20: YES \_\_\_\_\_ NO X
- c. Claim 21: YES \_\_\_\_\_ NO X
- d. Claim 34: YES \_\_\_\_\_ NO X

**Definiteness**

7. Are one or more of the infringed claims of the '703 patent invalid for failing to satisfy the definiteness requirement?

- a. Claim 19: YES \_\_\_\_\_ NO X
- b. Claim 20: YES \_\_\_\_\_ NO X
- c. Claim 21: YES \_\_\_\_\_ NO X
- d. Claim 34: YES \_\_\_\_\_ NO X

If you found infringement of one or more claims and also that those claims are valid, please answer next Question 8 concerning damages. That is, if you answered YES to one or more parts of Question 1 or Question 2, and NO to each corresponding part of Questions 3 through 7, please answer next the following question concerning damages.

If you found that all infringed claims are invalid, that is if you answered YES to at least one of Questions 3 through 7 for each infringed claim, please return your verdict to the court.

### III. DAMAGES

#### Akamai's Burden of Proof - Preponderance of the Evidence

##### Dates for Determination of Damages

8. Did Akamai provide, offer for sale or sell to the public a tangible article to mark by which notice of the asserted claims could have been given?

YES \_\_\_\_\_ NO X \_\_\_\_\_

If the answer is YES, please answer the damages questions below based on an infringement period from July 1, 2006 through December 31, 2007.

If the answer is NO, please answer the damages questions below based on an infringement period from April 2005 through December 31, 2007.

If you found at least one claim of the '703 patent valid and infringed using the prepend method and at least one claim of the '703 patent valid and infringed using the CNAME method, please answer next Question 9. That is, if the prepend method and the CNAME method both infringe at least one valid claim of the '703 patent, please answer next Question 9.

If you found that either the prepend method does not infringe any valid claim of the '703 patent or that the CNAME method does not infringe any valid claim of the '703 patent, please answer next Question 12. That is, if either the prepend method or the CNAME method is a non-infringing alternative, please answer next Question 12.

**Alternate Damages Calculation 1**  
**Lost Profits Plus Reasonable Royalty on the Remainder**

9. Has Akamai proven lost profit damages as a result of Limelight's infringement?

YES X NO \_\_\_\_\_

If the answer is YES, please answer next Question 10.

If the answer is NO, please answer next Question 12.

10. What is the amount of Akamai's lost profits?

\$ 39,315,687 + 786,313 = 40,102,000

Please answer next Question 11.

11. What is the amount of the reasonable royalty to which Akamai is entitled in addition to its lost profits damages? *collateral sales 69*

\$ 1,424,946

Please answer next Question 13.

**Alternate Damages Calculation 2**  
**Reasonable Royalty Damages on All Infringing Sales**

12. If Akamai is not entitled to recover lost profit damages, what is the amount of the reasonable royalty which Akamai is entitled to recover on Limelight's infringing sales?

~~\$ \_\_\_\_\_~~

Please answer next Question 13.

**Pre-Judgment Interest**

13. Should Akamai receive pre-judgment interest on the amounts determined in Questions 10, 11 and/or 12?

YES X NO \_\_\_\_\_

Please answer next Question 14.

**Price Erosion**

14. Did Akamai prove that it suffered price erosion as a result of Limelight's infringement?

YES X NO \_\_\_\_\_

If the answer is YES, please answer next Question 15.

If the answer is NO, please return your verdict to the court

15. What is the amount of Akamai's price erosion damages?

\$ 4,000,000

2/29/2008  
DATE

James Raniesi  
FOREPERSON  
(James Raniesi)  
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MEANING OF CLAIM TERMS

<b>Term</b>	<b>Court's Construction</b>
a given content server	a particular one of the content servers distinct from the content provider server described previously in the claim
tagging	providing a 'pointer' or 'hook' so that the object resolves to a domain other than the content provider domain
to resolve to a domain other than the content provider domain	to specify a particular group of computers that does not include the content provider from which an optimal server is to be selected
the IP address	the Internet Protocol address
an optimal server	one or more content servers that are better than other possible choices considering some or all of the following criteria: (1) being close to end users; (2) not overloaded; (3) tailored to viewers in a particular location; (4) most likely to already have a current version of the required file; and (5) dependant on network conditions



**LIST OF PRIOR ART REFERENCES**

Exhibit Number	Title/Description
DX19	Peterson Presentation -- Dynamic Selection of Geographically Distributed Servers
DX21	Cisco DistributedDirector white paper
DX209	Kenner Patent (U.S. Patent No. 6,112,239)
DX588	Claim 1 of U.S. Patent 6,108,703 <i>- is prior art</i>
DX16	Farber Patent (U.S. Patent No. 6,185,598)
DX745	"Seamlessly Selecting the Best Copy from Internet-Wide Replicated Web Servers," (Amir, Peterson & Shaw)
DX29	RFC 1546 -- "Host Anycasting Service"
DX30	RFC 1034 -- "Domain Names - Concepts and Facilities"
DX159	RFC 1794 -- "DNS Support for Load Balancing"
DX167	RFC 1771 -- "A Border Gateway Protocol 4 (BGP-4)"