



Media Advisory

March 2006

RE: AirDefense Patent Interference Action Against AirTight Networks

The following information is designed to provide further clarification about the process and actions being taken related to the patent interference action filed by AirDefense. It is designed to address the various questions we have received from media inquiries resulting from AirDefense and corresponding AirTight press releases. If you have further questions, please contact:

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1. How many patents does AirDefense have and when were they filed?

AirDefense has filed 18 patents with the U.S. Patent & Trademark Office (USPTO) in the area of wireless intrusion protection. The first 5 were filed in June-2002. Out of the 18 patents, the 3 earliest and broadest patents have been allowed by the USPTO.

2. Have any AirDefense patents been rejected?

No AirDefense patent has been rejected and abandoned. AirDefense has gone through typical USPTO office actions to guarantee that our IP has the broadest claims possible.

According to USPTO sources, approximately 87% to 95% of all patent applications are rejected upon their initial submission. The USPTO and inventor then enter into a period of negotiation. Eventually these negotiations lead to a patent allowance or abandonment. The first 3 and most fundamental of the initial 5 AirDefense patents have been allowed. The remaining 2 patents filed by AirDefense in June 2002 are in the negotiation period and are expected to be allowed within a few months.

3. How broad are the currently allowed AirDefense patents?

The following 3 earliest dated AirDefense patents have been allowed by the USPTO as of 28-Feb-2006.

	Pub. No.	Patent Title
1	20030236990	Systems and methods for network security
2	20030233567	Methods and systems for actively defending a wireless LAN against attacks
3	20030219008	Systems and methods for wireless LAN dynamic channel change with honeypot trap

These patents comprehensively cover wireless intrusion protection. The first patent describes the broad architecture of using wireless sensors and server to detect attacks and policy violations for wireless networks. Included in the patent are proactive protection techniques such as wireless termination; alarm generation; determination of physical location; classification of authorized, unauthorized and rogue devices; forensic data storage; etc.

The second patent explicitly defines all known and currently practiced methods of wireless termination – a fundamental requirement for intrusion protection.

The third patent explicitly defines real-time techniques to mitigate wireless attacks with honeypots.

Note: The official notice of allowance is still pending for patent No. 1.

4. How did AirTight get a patent so quickly?

AirTight invoked a rarely used and generally discouraged process to expedite the issuance of its patent. While this action accelerates the granting of a patent, which may serve marketing efforts, it diminishes the patent's intended affect, rendering it for all intents and purposes unenforceable.

Of the total 380,000+ patent applications filed in 2005 in the USPTO, only 343 applications (0.09%) were the subject of an attempt to accelerate using MPEP Section 708.02, paragraph VIII, the section that allows acceleration based on the search/prior art description process – the section that AirTight used. Statistically, this is an extremely rare procedure and results in a quick and dirty patent which is likely unenforceable.

5. Why is the AirTight patent virtually unenforceable?

AirTight characterized AirDefense as prior art and narrowed its claims to get a quick patent. The AirTight patent was filed in Oct-2004, more than 2 years after AirDefense's seminal patents. In fact, AirDefense filed 9 patents before the first provisional AirTight patent was ever filed and AirDefense began shipping its intrusion protection solutions before AirTight Networks was founded as a company.

The following excerpt, taken from Sughrue Mion (a well-regarded DC patent firm) states: "There are several important issues to consider in conducting, disclosing and discussing the prior art search for the Petition. For example, discussing the prior art search and the patentability of the claims over the prior art poses a potential problem if the patent becomes the subject of litigation. Since the petition and any further correspondences are part of the prosecution history, they may be used by the courts to interpret and potentially limit the scope of the claims. Applicants and practitioners should also be aware of the inequitable conduct issues posed by Petitions to Make Special, as discussed with respect to the search, which may result in the invalidation of a patent."

By its own admission, AirTight has said that obvious competitors such as AirMagnet and Aruba (whom AirTight chose to compare itself with in a recent Tolly report it commissioned) are not in infringement. If the companies it considers close competitors, with similar offerings, are not in infringement, that is a clear indication of how narrow and unenforceable the patent is.

6. Explain what is meant by narrow vs. broad patents.

The broader a patent's claims, the longer it takes to be processed, because its impact on the associated industry would be that much greater. When a patent's claims are more restrictive, it will have a much smaller impact on the industry and, therefore, is easier to push through the process.

For example, a broad automobile patent might describe four wheels and a steering column. Therefore, any vehicle with four wheels and a steering column would be impacted by this patent. Whereas, a more narrowly defined patent might describe four wheels, a steering column, leather seats, two cup holders, five mirrors and four doors. As a result, any vehicle that does not include all of these criteria, such as a two-door car or a car with cloth seats, would not infringe upon this patent.

As the pioneer in the Wireless LAN Security industry, AirDefense opted early on to patent the broadest scope of its IP innovation rather than rush to achieve the faster issuance of more narrow patents.

7. What is an interference proceeding at the USPTO?

Occasionally two or more applications are filed by different inventors claiming substantially the same patentable invention. The patent can only be granted to one of them, and a proceeding known as "interference" is instituted by the USPTO to determine the first inventor entitled to the patent. Approximately one percent of the applications filed with the USPTO become involved in an interference proceeding.

8. Why has AirDefense provoked an interference action at the USPTO?

Through the interference proceeding, AirDefense seeks to clearly demonstrate to the USPTO that AirDefense's earlier innovations entitle AirDefense to the patents on these technologies. Given that AirTight's applications were filed more than two years later, AirDefense will be the senior party in these proceedings. While AirTight's patent is narrow and likely unenforceable, AirDefense views its IP very seriously and, in order to enforce it, must demonstrate all efforts to protect it.

9. How long does the interference proceeding last and what happens at the end?

Interference proceedings usually take between 18-24 months at the USPTO. At the end of the interference proceeding, the original inventor is granted the patent and the other patent is rejected or revoked. In this case, it is AirDefense's opinion that based on its seniority; the AirTight patent will likely be revoked.