IN THE SUPREME COURT OF THE UNITED STATES

No. 19-A- ____

STRIKEFORCE TECHNOLOGIES, INC.,

Applicant,

v.

SECUREAUTH CORPORATION,

Respondent.

APPLICATION TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE, FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Salvatore P. Tamburo
Charles W. Saber
Counsel of Record
Blank Rome LLP
1825 Eye St. N.W.
Washington, D.C. 20006
(202)420-2200
stamburo@blankrome.com
csaber@blankrome.com

S. Gregory Herrman
Blank Rome LLP
1825 Eye St. N.W.
Washington, D.C. 20006
(202)420-2200
gherrman@blankrome.com

Counsel for Applicant

RULE 29.6 STATEMENT

StrikeForce Technologies, Inc. has no parent corporation and that there is no publicly held corporation holding 10% or more of its stock

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT:

StrikeForce Technologies, Inc. ("StrikeForce") respectfully requests a 60-day extension of time, to and including July 19, 2019, within which to file a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit in *StrikeForce Technologies, Inc. v. SecureAuth Corporation,* No. 18-1470 (Fed. Cir.). The court of appeals entered judgment on February 19, 2019. Unless extended, the time for filing a petition for a writ of certiorari will expire on May 20, 2019. Pursuant to this Court's Rule 13.5, this application is being filed at least 10 days before that date. This Court has jurisdiction under 28 U.S.C. § 1254(1). A copy of the court of appeals' Rule 36 judgment is attached as Exhibit 1.

As explained below, the extension is necessary to permit counsel of record—who was not retained for this matter until after the Federal Circuit affirmed the district court's judgment—to familiarize themselves with the record, to determine whether to file a petition for a writ of certiorari, and, if one is to be filed, to see to its preparation and submission. Counsel of record also has been heavily engaged with the press of other matters.

1. The patents at issue in this case—U.S. Patent Nos. 7,870,599 8,484,698 and 8,713,701 ("the StrikeForce Patents") -- disclose StrikeForce's unique system and method for performing completely "out of band" authentication designed to secure online systems. In 1999, the inventor, Mr. Pemmaraju, recognized that contemporary security solutions were inadequate to prevent hackers from penetrating secured

online systems—a significant problem for the developing commercial potential of the Internet. In particular, Mr. Pemmaraju realized that hackers could easily compromise then-popular security systems, such as simple password systems, random password systems, and biometric systems, because there the password and biometric information was often transmitted on the same channel as the information the user wanted to access (*i.e.,* on the in-band channel).

As the StrikeForce Patents explain, the use of a single channel for both access and authentication created a technical problem whereby "the hacker is in a self-authenticating environment." In other words, by breaching the sole, in-band channel, the hacker could intercept user authentication information (*e.g.,* a user name and password) passed along that channel and could then use this information at a later time to fool the system into believing that he is a legitimate user. Moreover, once a hacker had penetrated the sole channel and stolen credentials, he could remain undetected for extended periods, collecting additional sensitive data.

Mr. Pemmaraju invented a novel computer security architecture that instead used two separate communication channels—an "in-band" channel for access and a second "out-of-band" channel for authentication—to allow legitimate users to access secured data. His invention overcame the fundamental flaw in prior art systems described above—namely, the hacker's ability to "trick" the system by using stolen user names and passwords—by intercepting user name and password information and diverting it to a second channel for authentication. Without access to this second channel, known as the "out-of-band" or "authentication" channel, the hacker could

not provide the secondary authentication information necessary to authenticate a legitimate user.

Respondent (SecureAuth) promotes and sells three authentication products, of its more than 25 total authentication products, that use the completely out of band authentication described in the StrikeForce Patents. On March 16, 2017, StrikeForce sued SecureAuth in the Eastern District of Virginia for willfully infringing the StrikeForce Patents. On April 28, 2017, SecureAuth moved to dismiss, arguing only that the Complaint contained insufficient detail regarding StrikeForce's infringement contentions and willful infringement claims, and also moved to transfer to the Central District of California. SecureAuth's motion to transfer was granted on June 9, 2017.

On July 17, 2017, by stipulation of the parties, StrikeForce filed an Amended Complaint, reflecting the detailed infringement contentions that StrikeForce, under the local rules of the Eastern District of Virginia, had already served. On July 21, 2017, SecureAuth filed a new motion to dismiss, arguing, for the first time, that the StrikeForce Patents did not cover patent-eligible subject matter under 35 U.S.C. § 101. On December 1, 2017, without allowing any discovery to occur, the district court granted SecureAuth's motion to dismiss with prejudice, finding all asserted claims of the StrikeForce Patents invalid under 35 U.S.C. § 101. The district court entered final judgment on December 28, 2017.

2. StrikeForce appealed to the Federal Circuit, arguing in part that the district court should not have granted the early motion to dismiss where there were

fact issues to be decided under the second prong of *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and without allowing any discovery to occur.

StrikeForce argued that under *Berkheimer v. HP, Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), *petition for cert. filed* (U.S. Sept. 28, 2018) (No. 18-415), *Solicitor General invited to file brief* (U.S. Jan. 7, 2019) (No. 18-415), that is not sufficient to grant a motion to dismiss, and, at the very least, the case must be remanded for a determination of the disputed issues of fact. The court of appeals did not issue a written opinion and instead affirmed the district court's judgment under Rule 36.

3. StrikeForce respectfully requests that an extension of time be granted. The additional time is needed to determine whether to file a petition for a writ of certiorari and, if one is to be filed, to see to its preparation and submission. Counsel of record was not retained for this matter until after the Federal Circuit's decision affirming the district court. Counsel requires additional time to review the record and the issues involved. Counsel of record also has been heavily engaged with the press of other matters.[1] Accordingly, StrikeForce respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari.

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[1] These include the preparation for oral argument in the U.S. Court of Appeals for the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.,* No. 18-1584 scheduled for June 7, 2019; the preparation of a reply brief in support of a motion for sanctions and fees under 35 U.S.C. § 285 and 28 U.S.C. § 1927 in the U.S. District Court for the Central District of California in *Saint-Gobain Ceramics & Plastics, Inc. v. II-VI Incorporated and II-VI Optical Systems, Inc.,* No. 5-18-cv-01798-CAS-SHK, currently due May 20, 2019, and oral argument in support of the same motion, currently scheduled for June 3, 2019; preparation of Defendant's Preliminary Notice of Prior Art in the U.S. Court of Federal Claims in *Ideal Innovations, Inc., The Right Problem, LLC, and Robert Kocher v. The United States, et al.,* No. 17-889C, currently due July 12, 2019;

Dated: May 8, 2019

Respectfully submitted,

/s/ Salvatore P. Tamburo

Salvatore P. Tamburo
Charles W. Saber
Counsel of Record
Blank Rome LLP
1825 Eye St. N.W.
Washington, D.C. 20006
(202)420-2200
stamburo@blankrome.com
csaber@blankrome.com

S. Gregory Herrman
Blank Rome LLP
1825 Eye St. N.W.
Washington, D.C. 20006
(202)420-2200
gherrman@blankrome.com

Counsel for Applicant

and preparation for oral argument in the U.S. Court of Appeals for the Federal Circuit in *Daikin Industries, Ltd., Daikin America, Inc., Appellants v. The Chemours Company FC, LLC,* No. 18-1389.