In re Patent of:   Racz et al
U.S. Patent No.:   8,336,772
Issue Date:        December 25, 2012          USPTO Control No.:   TO BE DETERMINED
Appl. Serial No.:  13/212,047
Filing Date:       August 17, 2011
Title:             DATA STORAGE AND ACCESS SYSTEMS

### <u>DECLARATION OF STEVEN BLUMENFELD</u>

1.   My name is Steven Blumenfeld.  I understand that I am submitting a declaration in connection

with the above-referenced Covered Business Method ("CBM") review proceeding pending in

the United States Patent and Trademark Office for U.S. Patent No. 8,336,772 ("the '772

Patent").

2.   I have been retained on behalf of Samsung Electronics America, Inc. to offer my knowledge

with respect to radio broadcasting.  My compensation is not based on the kind or quality of

statements that I have made in this declaration, which are based on my observations and

experiences in digital rights management, mobile communications, and production.

3.   I have been heavily involved with digital rights management, mobile communications, and

production technologies for over 30 years.  I have been an engineer and a senior executive

with major roles in a variety of entrepreneur ventures.  These roles include Chief Technology

Officer ("CTO") of Sportvision, Tada Innovations, Inc., Participant Media, Sparkplay Media,

Current TV, and Razz.com, Executive Director of Platform Services for AOL Broadband,

Vice President of Technology in the CTO's office at Time Warner, Vice President of

Advanced Services for Time Warner, Vice President and Chief Operating Officer of AOL

Time Warner's consumer service – AOL by Phone, and CTO of AOL Music's Spinner and

Nullsoft (Winamp/SHOUTcast) division and General Manager of the Nullsoft group, various technical and business roles at GTE – now Verizon, Director of Private Networks for GTE GNI (Global Network Infrastructure) – now Level 3, Director of Strategic Alliances between GTE and Cisco, and Vice President of Technology and Studio Operations at GTE Interactive Media.

4.      Further, I am an inventor with patents in digital rights management, mobile communications and production technology.  I have also been a feature column writer for Broadcast Engineering magazine.  My columns have included articles about Content Security, Internet Streaming, Internet Appliances, Fiber Optic Transmission, Network Security, Set Top Boxes, and MPEG and Interactive Television.

5.      During the late 1970's and 1980's, I worked as a post-production and broadcast radio engineer in California.   During this time at various radio stations, I also worked as an on-air radio Disc Jockey ("DJ").  Pursuant to my responsibilities working at a radio station, I gained first hand knowledge of (and experience with) the process of selecting and playing specific music based on rules set up by the Station's Management.  These rules involved a "rotation clock," accompanied by a requirement to report, by way of a paper log, everything that I selected for broadcast and the time it was played.

6.      While working as a radio engineer and DJ for over 10 years, I supported radio station program directors in administering radio station policy and programming.  I supported program directors in developing playlists, which were lists of songs selected to be played on air by myself and other DJs.  These playlists were compiled based on review of vinyl records,

whether directly or indirectly (i.e., based on music reproduced from them).[1]  The selection of a particular song for addition to the playlist was usually based, at least in part, on applicable rights as well as information pertaining to the song as it related to objectives in supporting various promotions, advertising campaigns, and "feel" for a station.  Typically, information descriptive of the content and the station's intent/views of a particular piece of content was provided on the sleeves, jackets, and/or labels of the records. We used this information to identify and select content.  A label affixed to a particular record would, for example, identify the songs stored on the record and would also provide information related to the artist and the artist's label.  The sleeve and jacket of a record also typically provided additional information, identifying, for example, the record's publishing company.

7.     As noted above, one of our goals in developing playlists was to establish and maintain a certain "feel" for the station, in keeping with the station's format, with a typical commercial broadcast including public service announcements, advertisements, and music.  As part of the process of programming, we categorized songs to provide radio station personnel with additional information used during the broadcast.  For example, we categorized song titles appearing on the station's playlist through color coding.  The titles of a high tempo song were, for example, coded "red", with the title of a slower song being coded "blue."  We labeled records containing coded songs as such for easy identification during playback.  Methods for coding included

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[1] Although my affidavit makes reference to records and albums, we used a variety of formats including tape, compact discs, and other media.  For the purposes of this affidavit, when referring to records or albums, please consider it to any instance of recorded media irrespective of whether the recorded media is accessed at a radio station or a retail establishment.

"coding" a song by color by using an album color, maintaining a directory of songs by color, and storing different albums on different color coded shelves or portions of a shelf. Other complementary methods of organization used at my station included separating shelving for the station's catalog of older music from shelving provided for new music and for music that we were required to play.

8.      At my stations, songs were categorized to create a highly visible radio show "clock" or program guide, which was a circular diagram illustrating particular content and/or types of content to be played at specific times. A clock would indicate, for example, that a DJ such as myself should start a particular hour of broadcast with a red song, followed by a blue song and then a commercial.

9.      Beyond the need to select songs consistent with the feel of a station, it was necessary to select songs in compliance with applicable licensing requirements. To facilitate compliance, and also to ensure that the station's policies and rules were being followed (for example that certain songs were being played as often as they should be), a running log was maintained at our station of songs actually played by the station. Maintaining an accurate log was one of the key responsibilities of the DJ and engineer.

10.     As a DJ, engineer, and interactive television manager in the time frame prior to the priority date, I populated logs of songs that I played. During this time frame, auditors, including auditing listeners, were employed to verify the accuracy and completeness of logs that I created and maintained. The job of an auditing listener was to listen to the station over a period of time and to record what was heard, for purposes of checking the results against the station's logs.

11. At my station, a clock was posted on a physical board administered by program directors nearby an official log used to record which content was played over the air. I checked the clock for information on what to play during broadcasts, and I also maintained a pencil and paper diary, that is, a log of songs that were actually played on air. The diary would then serve as the basis for updating the official log.

12. Within the parameters set by the program directors, I had discretion to select content for radio play. I reviewed, prior to a broadcast, a radio show clock prepared by a program director and then visited the station's record library to select particular songs meeting the criteria indicated by the clock. As discussed above, the records contained in the library bore labels identifying the recorded content and providing other information. Prior to selecting songs for my broadcasts, I sometimes also reviewed prior playlists to inform my decisions, determining what had recently been played, and how many times it had been played. I then pulled the records off the shelves, inspecting each record and its label as I did so. By looking at the label, I confirmed that the record included a particular song that I intended to play. Looking up the label, for me as a DJ, resembled the steps that I took when acting in the capacity of a consumer looking up a record label at a retail store. To illustrate, as a consumer in 1994, I would routinely enter retail stores to select a record albums for purchase. In one instance, I picked up a record album and read, from the record label and the record sleeve, information including a song names. I also read, from the record label and sleeve, pricing information and more detailed information describing the recording (including duration). In another instance, I asked the store clerk to direct me to available rock singles, and to make a recommendation. I would often shop for used records and speak with a knowledgeable salesperson if I was interested in exploring a less-familiar album. If the album seemed like a

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