Filed on behalf of Microsoft Corporation

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION
Petitioner

v.

PROXYCONN, INC.
Patent Owner

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Case IPR2012-00026 (TLG)
Case IPR2013-00109 (TLG)
Patent 6,757,717 B1

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**MICROSOFT CORPORATION'S REPLY TO
PATENT OWNER'S CORRECTED RESPONSE**

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I.   DR. KONCHITSKY IS NOT AN EXPERT IN THIS FIELD

Dr. Konchitsky's declaration (Ex. 2002) is inadmissible because he is not an expert in the pertinent art. His complete CV (Ex. 1022)—what he posts on his website (Ex. 1023 ("Conway Decl."))—shows this, partly by its listing of his areas of professed expertise. But, someone deleted that listing from the edited CV (Ex. 2003) Patent Owner submitted. His lack of expertise was exposed on cross examination. (Ex. 1024 ("Konchitsky TR")). Dr. Long, an undisputed expert, has reviewed that testimony and the multiple CVs. He explains that Dr. Konchitsky has not worked or published in this field and does not know what is common knowledge to any expert in this field. (Ex. 1025 ("3rd Long Decl.")). Cf. Ex parte Shaw, Appeal 2012-001553, 2012 WL 1562632, at *8 (BPAI Apr. 20, 2012).

Even if admissible, his declaration deserves no weight. It does not define the "person of ordinary skill in the art in 1998" whose perspective he supposedly considered (id., ¶ 12), or show that he understands that perspective. It is conclusory and full of errors. It inflates a certificate he received into "a post-graduate degree." (Compare Konchitsky Decl., ¶ 3 with Konchitsky TR 147:20-149:14). It mischaracterizes the edited CV as "a true and accurate copy of my CV." (Konchitsky Decl., ¶ 10). His explanations for the edited CV do not withstand scrutiny. (Compare Konchitsky TR 141:18-145:21 with Conway Decl.).

II. CLAIM CONSTRUCTION

Data access: BRI = *data acquisition. "Data access" does not require a receiver to request the data.* Claim 11 recites a method "for increasing data access" that is performed by a sender. This claim allegedly corresponds to Figs. 8-10, which show the sender initiating the transaction. The specification says that "this transaction may also begin with the receiver/computer sending a request to the sender/computer" (IPR2012-00026, Ex. 1002 ("'717"), 8:37-39) (emphasis added), the "may" designating such receiver initiation as optional. The specification excerpts (id., 1:18-26, 7:65-67) cited by Patent Owner (Corrected Patent Owner's Response ("POR")) do not even mention "data access" let alone define it narrowly as Patent Owner urges. Dr. Konchitsky conceded that a sender may "push" the accessed data to the receiver without request from the receiver. (Konchitsky TR 36:11-39:17, 69:21-24, 71:8-22).

Permanent storage memory: BRI = *non-volatile memory that allows reading of data and writing of data at least once*. The patent does not restrict this memory to only devices allowing multiple writes. Dr. Konchitsky agreed that WORM (write-once read-many) is non-volatile "storage." (Konchitsky TR 88:7-89:12).

Sender/computer; Receiver/computer: BRI = *a computer that sends or receives data, respectively. A sender/computer can include multiple devices and can be an intermediary*. The Board should maintain its construction. (IPR2012-00026,

Paper 17; IPR2013-00109, Paper 14). The specification does <u>not</u> say that "a send-er" is limited to a <u>single</u> machine, or that "a sender" must be the <u>source</u> of the data. It does not even describe an example of a sender as being a single machine or being the source of the data. Nor does it describe a sender creating any data (other than digests) or having a Web server program or other program that creates data. The same is true on the receiver side. The specification does <u>not</u> say that the receiver is limited to a <u>single</u> machine, or that the receiver must <u>use</u> the data. Again, the patent does not even describe an exemplary receiver as being a single machine or a user of the data. The patent does not disclose the receiver having a Web browser or other application program that could use the data. In this patent, a "sender" is whatever sends data and a "receiver" is whatever receives data. (<u>See</u> <u>also</u> Ex. 1026 ("Long TR")[1] 109:5-24, 204:14-205:4 (the sender of claims 1 and 3 could be a router); Konchitsky TR 75:7-76:18, 79:7-23).

Patent Owner's description of Yohe (IPR2012-00026, Ex. 1005 ("Yohe")) bolsters this construction that neither a sender nor receiver is limited to a single machine. Patent Owner concedes that "Yohe expressly disclosed a permanent storage device as part of other components, e.g., file server computer 18 and remote client computer 12." (POR, p. 23; <u>see</u> Konchitsky TR 116:17-19 (permanent

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[1] The parties have agreed to Microsoft filing this transcript without the witness's signature or errata sheet.

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