

BEFORE THE PATENT TRIAL AND APPEAL BOARD IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Trial No.: IPR 2013-00083
In re: U.S. Patent No. 6,415,280
Patent Owners: PersonalWeb Technologies, LLC & Level 3 Communications
Petitioner: EMC Corporation & VMware, Inc.
Inventors: David A. Farber and Ronald D. Lachman

For: IDENTIFYING AND REQUESTING DATA IN NETWORK USING IDENTIFIERS WHICH ARE BASED ON CONTENTS OF DATA

* * * * *

May 30, 2013

PATENT OWNER'S OBJECTIONS TO DOCUMENTS SUBMITTED DURING A PRELIMINARY PROCEEDING PURSUANT TO 37 C.F.R. § 42.64(b)(1)

Pursuant to 37 C.F.R. § 42.64(b)(1), patent owner PersonalWeb Technologies, LLC objects to the admissibility of the documents identified below that were submitted by petitioner(s) during the preliminary proceedings, for the following reasons:

1. Petitioner's Exhibits 1002 (Browne), 1003 (Langer), 1004 (Kantor), 1006 (Browne II), 1007 (Moore), 1010 (Banisar), 1012 (Rivest), 1015 (Rabin), 1016 (Manber), 1018 (Berners-Lee), 1026 (ESM), 1027

(Williams), and 1028 (Williams) are all objected to because they have not been authenticated as required by Federal Rule of Evidence (FRE) 901. And these documents are not self-authenticating. See also the reasons regarding non-authentication discussed in *Novak v. Tucows, Inc.*, No. 06-CV-1909 (JFB) (ARL), 2007 U.S. Dist. LEXIS 21269, *17-18 (E.D.N.Y. Mar. 26, 2007).

2. The entire documents of Exhibits 1002 (Browne), 1003 (Langer), 1004 (Kantor), 1006 (Browne II), 1007 (Moore), 1010 (Banisar), 1012 (Rivest), 1015 (Rabin), 1016 (Manber), 1018 (Berners-Lee), 1026 (ESM), 1027 (Williams), 1028 (Williams), and all claim charts, including but not limited to the information relating to dates and alleged posting information if any, are hearsay under FRE 801 and inadmissible under FRE 802-807. See also the reasons discussed in *St. Clair v. Johnny's Oyster & Shrimp, Inc.*, 76 F.Supp.2d 773 (S.D. Tex. 1999); and *Novak v. Tucows, Inc.*, No. 06-CV-1909 (JFB) (ARL), 2007 U.S. Dist. LEXIS 21269, *15-16 (E.D.N.Y. Mar. 26, 2007).

3. There is no admissible evidence establishing that any of Exhibits 1002 (Browne), 1003 (Langer), 1004 (Kantor), 1006 (Browne II), 1007 (Moore), 1010 (Banisar), 1012 (Rivest), 1015 (Rabin), 1016 (Manber)

1018 (Berners-Lee), 1026 (ESM), 1027 (Williams), and 1028 (Williams) was/were sufficiently publicly accessible prior to April 11, 1995 to qualify as printed publications, and therefore these documents do not constitute prior art. Petitioner(s) has/have failed to establish that the printouts at Exhibits 1002 (Browne), 1003 (Langer), 1004 (Kantor), 1006 (Browne II), 1007 (Moore), 1010 (Banisar), 1012 (Rivest), 1015 (Rabin), 1016 (Manber), 1018 (Berners-Lee), 1026 (ESM), 1027 (Williams), and 1028 (Williams) accurately depict any alleged publications/posts allegedly made at any time prior to April 11, 1995.

4. Exhibit 1009 (Clark Declaration) is objected to as lacking foundation, assuming facts not in evidence, containing testimony on matters as to which the witness lacks personal knowledge, conclusory, and containing testimony concerning documents for which authentication required by FRE 901 is lacking. For example and without limitation, Dr. Clark has no personal knowledge regarding whether any of Exhibits 1002 (Browne), 1003 (Langer), 1004 (Kantor), 1006 (Browne II), 1007 (Moore), and 1026 (ESM) are authentic and whether any of these documents qualify as printed publications, and these documents have not been established as printed publications and have not been authenticated as required by FRE 901, and thus all statements and testimony by Dr.

Clark concerning these documents lacks foundation, assumes facts not in evidence, and represents improper testimony under FRE 702. Moreover, all statements by Dr. Clark, and all statements in the claim charts submitted by petitioner, regarding alleged dates and alleged postings (if any) of Exhibits 1002 (Browne), 1003 (Langer), 1004 (Kantor), 1006 (Browne II), 1007 (Moore), and 1026 (ESM), and whether these documents are printed publications and/or qualify as prior art, are objected to as hearsay under FRE 801 and are inadmissible under FRE 802-807, lack foundation, and represent improper testimony under FRE 702 (e.g., see Ex. 1009 at pages 4-6, 8-9, 19). Moreover, paragraphs 17-18, 23-24, 30-31, and 39-40 (and the headings following these paragraphs) in Ex. 1009 (Clark Declaration) are objected to as lacking foundation, conclusory, and not supported by any stated underlying facts.

These objections have been made within 10 business days from the May 17, 2013 institution of trial.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Joseph A. Rhoa/
 Joseph A. Rhoa
 Reg. No. 37,515
 Updeep (Mickey) S. Gill
 Reg. No. 37,334
 Counsel for Patent Owner PersonalWeb

JAR:caj
Nixon & Vanderhye, PC
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.