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INVENTOR: DAVID A. FARBER
AND RONALD D. LACHMAN

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TITLE: IDENTIFYING AND
REQUESTING DATA IN A
NETWORK USING IDENTIFIERS
WHICH ARE BASED ON THE
CONTENT OF THE DATA

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DECLARATION OF JASON S. SADOFSKY

I, Jason S. Sadofsky, declare as follows:

1. I have been asked by Petitioner to provide this Declaration regarding certain factual issues that are common to six Inter Partes Review proceedings, Case Nos. IPR2013-00082, -00083, -00084, -00085, -00086 and -00087.

2. The testimony I provide in this Declaration is based on my personal knowledge of the relevant facts. Upon investigation, I came across several documents that confirm my recollection of these facts. A list of these documents is attached hereto as Appendix A.

I. Background

3. I am a technology archivist and software historian. I am currently an archivist for the Internet Archive, a non-profit digital library offering free universal access to books, movies, and music, as well as 342 billion archived webpages available through the Wayback Machine service.

4. In addition to my archival work at Internet Archive, for the last 15 years, I have been independently collecting, archiving, and making, once again publicly available, historical software, shareware, and freeware programs that were first published and released to the public in the 1980s and 1990s. Many in my industry refer to this time period as the Bulletin Board System (“BBS”) era. Related to this work, I directed the film, *The BBS Documentary*, an eight-episode

documentary about the subculture born from the creation of the BBS. This film was initially released in May 2005.

II. BBS, Walnut Creek CDRom, and the Proliferation of Shareware

5. A BBS is a computer system that allows users to connect directly to the system using a modem. Once connected, users can perform functions such as uploading and downloading computer files, reading news and bulletins, and exchanging messages with other users.

6. The term “Bulletin Board System” was coined as a reference to the traditional cork-and-pin bulletin boards often found in entrances of supermarkets, schools, libraries, and other public areas where people can post messages, advertisements, or community news. In many ways, BBSs were a precursor to the World Wide Web, social network services, and other aspects of the Internet.

7. In the 1980s and 1990s, much of the shareware and freeware movement was driven by user distribution of software through BBSs. In the 1990s, many companies started collecting as much of this shareware and freeware that they could find directly from BBS sites, as well as from Simtel, a highly respected electronic archive of shareware and freeware collected from various BBSs as well as from other sources. The Simtel archive was initially maintained on network servers maintained by the U.S. Army in New Mexico and mirrored

around the world.¹ After collecting all of this software, these companies would publish as many of those programs as they could onto CD-ROMs, which they would then offer for sale.

8. One of the first and largest worldwide commercial distributors of free software on CD-ROMs was Walnut Creek CDROM (“Walnut Creek”). Walnut Creek was founded in or around 1991 and ran the busiest FTP site on the Internet, ftp.cdrom.com, for many years. Walnut Creek would collect and publish onto CD-ROMs as much shareware on a regular basis as they could, and would sell these CD-ROMs for as little as \$15 per disc.

III. cd.textfiles.com

9. In 1998, I launched the website textfiles.com. This website was and still is dedicated to collecting files and related materials from the BBS era. Originally built from files I collected as a BBS user in my early teens, as well as

¹ B. Graves, “CD-velopment: Discovering a Wealth of Dev Tools on CD-ROM,” *Computer Shopper* (Apr. 1, 1994) (“[T]he Simtel disc (also published by Walnut Creek) . . . holds the entire contents of the Simtel-20 archives, . . . You’ll also see [shareware programs involving] time and date manipulation, hashing functions, data compression”) (EMCVMW 1039).

system operator (“sysop”) of The Works BBS, this website has expanded to many gigabytes of data and receives thousands of visitors a day.

10. In 2003, I launched a subdomain of textfiles.com called cd.textfiles.com. This website was and still is dedicated to preserving, archiving, and providing free universal access to unaltered historical shareware and freeware programs and data that were initially made publically available in the BBS era of the 1980s and 1990s. The primary sources of this archive are a combination of CD-ROMs—several of which are Walnut Creek CD-ROMs—from my own collection, those donated from various individuals, and those purchased at auctions such as eBay.

11. In order to publish online the historical software and data (including software user manuals) stored on these CD-ROMs while preserving all of the original metadata (including the creation dates of files made by the file system, the date on which I uploaded the files, and file names), I first transfer a perfect copy (an “ISO” image) of the original CD-ROM to a computer, then use a software program to extract the individual files from that copy, and then publish these files onto cd.textfiles.com. The result is a collection of files that—instead of sitting in the CD-ROM—sit in an online file directory making it easier for people to browse and download. It was also my practice to scan images of the CD-ROM label and package inserts, such as the images shown in EMCVMW 1041.

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