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PATENT: 6,415,280

INVENTOR: DAVID A. FARBER
AND RONALD D. LACHMAN

FILED: APR. 1, 1999   ISSUED: JUL. 2, 2002

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 MICHAEL A. SUSSELL

EMC/VMware v. PersonalWeb

I, Michael A. Sussell, 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 and have been a self-employed computer technician since around 1996. From 1983 to 1996, I was the co-owner and system operator ("sysop") of The Invention Factory Bulletin Board System (the "Invention Factory"), which I ran with my wife, Kathy Sussell.

II.   Bulletin Board Systems

4.   Bulletin Board Systems ("BBSs") are computer systems that allow users to share files, messages, and articles. Once connected to a BBS, users can search for as well as upload and download content such as computer files, read news articles, and exchange messages with each other.

5.   By the mid-1990s, users could generally find software and other files by either browsing through file directories or performing keyword searches.

III.   The Invention Factory

6.   My wife and I launched the Invention Factory in 1983. Starting with one phone line in 1983, the Invention Factory quickly grew to become one of the world's largest BBSs. As one newspaper reported, by mid-1993, we had over 3,000 subscribers, with nearly 500 from other countries. D. Welcher, "A family's line of business," *Business Times (Singapore)*, at 1 (June 21, 1993) ("Welcher", EMCVMW 1043). In the 1993-1994 timeframe, we routinely received around 4,000 to 5,000 calls on average per day.

7.   The Invention Factory offered both paid and unpaid access to files uploaded to and saved on its servers. Unpaid users had access to freeware uploaded to our BBS, whereas paid subscribers had access to freeware and shareware.

8.   By 1993, the Invention Factory ran PCBoard BBS software.[1] This software enabled the Invention Factory's keyword search functionality that was

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[1] *See generally* F. Clark, "PCBoard v 14.5 User Manual" (1990) (EMCVMW 1047) for a description of PCBoard's various functions.

provided to all of our users—both paid and non-paid. To utilize this function, users would first select the particular "Welcome" screen that contained the search bar. They would then enter in a word or phrase and select one of the various search commands. A search command would instruct our BBS servers to search both the titles and descriptions of the files that were previously uploaded to our BBS and still stored by our servers.

9. The other main way that users would search for content of interest during this time period would be to browse through the Invention Factory's simple directory structure of categories (which we called, "directories"), ranging from various descriptive and meaningful directories such as "games" or "file utilities." Any given file could show up in more than one directory depending on the number of directories assigned to it. After selecting one of these file directories, users could browse the list of file titles and descriptions.

10. It was common for any given file that we hosted—i.e., a file that was uploaded to our BBS and stored on our servers—to be publicly accessible and available for an extended period of time such as several months or even years.

IV.   The Kantor Reference

11.   I have been asked to provide my understanding of certain facts relating to the Frederick W. Kantor FWKCS™ Contents-Signature System Version 1.22 (August 10, 1993) user manual (the "Kantor Reference," EMCVMW 1004).

12.   It is my belief that the Kantor Reference (EMCVMW 1004) was publicly accessible prior to April 11, 1994.

13.   Many years prior to 1993, Dr. Kantor reached out to our BBS and together we discussed a common BBS sysop problem of managing storage space. After various discussions, Dr. Kantor developed and then released the first version of Frederick W. Kantor FWKCS™ Contents-Signature System software, and chose the Invention Factory as one of the software's initial release sites. In addition to hosting this software on our site, we also installed and utilized the program on our BBS servers.

14.   I have reviewed a July 2, 1994 post to the "comp.sys.novell" newsgroup entitled, "Pirated software on server. Who's liable?", and it is consistent with my recollection that "FWKCS has been [as of July 2, 1994] used for years on the largest BBS's such as Channel 1 and The Invention Factory." N. Hirsch, "Pirated software on server. Who's liable?" post to the "comp.sys.novell" newsgroup on July 2, 1994, at 1 (EMCVMW 1046). I recall Channel 1 (also

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