

**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

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October 8, 2013

**PATENT OWNER'S OBJECTIONS TO DOCUMENTS/EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Board's Order dated September 3, 2013, patent owner PersonalWeb Technologies, LLC objects to the documents/evidence identified below that were submitted by petitioner(s) on reply and/or that were prior-filed supplemental evidence relied upon by petitioner on reply, for the following reasons:

1. The statements in the Reply Declaration of Douglas W. Clark (labeled Ex. 1078), at paragraphs 7 and 13, that rely upon and/or cite to the claims (columns 22-24) of Woodhill (Ex. 1005) are objected to as irrelevant, prejudicial, confusing, lacking foundation, and beyond the

scope of this IPR. The relied-upon subject matter in the claims of Woodhill is not “prior art” to the ‘791 patent and has not been shown to be “prior art” to the ‘791 patent. *See e.g.*, Federal Rules of Evidence (FRE) 401, 402, 403, 702, 703. Woodhill was “filed” before April 11, 1995 (the effective filing date of the ‘791 patent), but was not published until after April 11, 1995. Any material added to Woodhill after April 11, 1995 (e.g., including the information in the claims of Woodhill which Dr. Clark cites to and now relies upon, such as the “name” recitations in the claims of Woodhill in connection with binary object identifier) cannot be relied upon herein and is not prior art. A copy of Woodhill’s file history was previously provided to evidence the content in Woodhill that can be relied on in this IPR under Section 102(e). (Ex. 2007.)

2. The statements in the Reply Declaration of Douglas W. Clark at paragraph 10 that rely upon and/or cite to Langer or Ex. 1079 are objected to as irrelevant, prejudicial, confusing, lacking foundation, and beyond the scope of this IPR. *See e.g.*, Federal Rules of Evidence (FRE) 401, 402, 403. This IPR was instituted based on Woodhill. This IPR was not instituted in any respect on Langer or Ex. 1079, and reliance on these exhibits is outside the scope of this IPR and impermissible for the reasons explained above. Moreover, Petitioner’s Reply may only

respond to arguments raised in Patent Owner's Response, and new evidence relating to Langer is improper. *See e.g.*, Office Patent Trial Practice Guide, Vol. 77, No. 157, pg. 48767 at I (Aug. 14, 2012); and 37 CFR § 42.23(b).

3. The following statements in the Reply Declaration of Douglas W. Clark (labeled Ex. 1078) are objected to as contradicting his prior testimony: paragraph 7, last sentence; page 8, line 7 to page 9, line 6; page 11, lines 4-7; and page 12, line 6 to page 13, line 3. Petitioner cannot rely on a new declaration that contradicts prior deposition and/or declaration testimony. See for example the reasons discussed in the following cases. *Bickerstaff v. Vassar College*, 196 F.3d 435, 455 (2d Cir. N.Y. 1999); *Kavowras v. N.Y. Times Co.*, 132 Fed. Appx. 381, 383 (2d Cir. 2005); *Golden v. Merrill Lynch & Co.*, 2007 U.S. Dist. LEXIS 90106, at \*23-24 (S.D.N.Y. Dec. 6, 2007); *Ramos v. Baldor Specialty Foods, Inc.*, 2011 U.S. Dist. LEXIS 66631 (S.D.N.Y. June 16, 2011); *Brown v. Henderson*, 257 F.3d 246, 252 (2d Cir. 2001); *Durant v. A.C.S. State & Local Solutions, Inc.*, 460 F. Supp. 2d 492, 494-95, 498 (S.D.N.Y. 2006); *Mitchell v. Washingtonville Cent. Sch. Dist.*, 992 F. Supp. 395, 409-10 (S.D.N.Y. 1998), *aff'd*, 190 F.3d 1 (2d Cir. 1999); and *Bunting v. Nagy*, 452 F. Supp. 2d 447, 460 (S.D.N.Y. 2006). For example and



