

**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 Corp. & VMware, Inc.  
**Inventors:** David A. Farber and Ronald D. Lachman

\* \* \* \* \*

October 31, 2013

**PATENT OWNER'S MOTION FOR OBSERVATIONS ON CROSS-EXAMINATION OF PETITIONER'S REPLY DECLARANT DOUGLAS W. CLARK**

## **EXAMPLE EXHIBITS REFERENCED DURING CROSS-EXAMINATION**

At least the following exhibits were referred to and/or are related to the cross-examination of Dr. Clark regarding his Reply Declaration that was submitted in support of petitioner's reply (Exs. 2016-2017 filed herewith):

*Exhibit EMC 1005:* Woodhill.

*Exhibit EMC 1074:* Deposition Transcript of Robert Dewar

*Exhibit EMC 1078:* Reply Declaration of Douglas W. Clark in IPR 2013-00083.

*Exhibit 2016:* Deposition Transcript of Douglas W. Clark regarding his Reply Declaration (Transcript dated October 24, 2013).

*Exhibit 2017:* The American Heritage Dictionary, excerpt re "collection" (Clark Reply Dep. Ex. 3)

## **OBSERVATIONS ON CROSS-EXAMINATION**

Pursuant to the Board's October 17, 2013 Order, Patent Owner (PO) submits the following observations on the October 24, 2013 cross-examination of petitioner's reply declarant Douglas W. Clark:

*Observation #1.* In Exhibit 2016, at page 112, lines 14-19, Dr. Clark testified that Woodhill's granularization procedure is used for large database files with multiple binary objects. This testimony is relevant to at least PO's arguments on page 10, lines 10-20, and page 2, first full paragraph, of its Response, and to paragraphs 7-9 and 15-16 of Exhibit EMC 1078. The testimony is relevant because it demonstrates that Woodhill's granularization procedure does not meet the challenged claims because: (i) Woodhill does not disclose "a hash of the

contents of the data file” because Woodhill never applies a hash to multiple binary objects, (ii) a single binary object of such a large database file having multiple binary objects is not a “named data item” as explained on page 7 of PO’s Response, and (iii) the reasons on page 10, lines 10-20 of PO’s Response.

Observation #2. In Exhibit 2016, from page 115, line 15, to page 116, line 7, Dr. Clark testified that Woodhill does not apply a hash to either multiple binary objects or to multiple granules. This testimony is relevant to at least PO’s arguments on page 10, lines 10-20, of its Response, and to paragraphs 7-9 and 15-16 of Exhibit EMC 1078. The testimony is relevant because it demonstrates at least that Woodhill’s granularization procedure does not meet the challenged claims for the reasons explained above in Observation #1 above.

Observation #3. In Exhibit 2016, at page 113, lines 6-12, Dr. Clark testified that Woodhill’s granules are not named files and do not have filenames. This testimony is relevant to at least PO’s arguments on pages 6-7 and 10 of its Response, and to paragraphs 7-9 and 15-16 of Exhibit EMC 1078. The testimony is relevant because it demonstrates that Woodhill’s granules are not “data files” (construed as named data items), and also evidences that binary objects are not “data files.”

Observation #4. In Exhibit 2016, at page 106, lines 12-20, Dr. Clark testified that in Woodhill program 24 controls the backup procedures, and from page 106, line 21 to page 111, line 3, Dr. Clark testified that Woodhill’s statement

at col. 4:14-15, “program 24 views a file as a *collection of data streams*”, describes a file with *only one* data stream despite the word “collection” combined with the plural “streams.” This testimony is relevant to at least arguments in paragraphs 4-6 of Exhibit 1078 regarding whether Woodhill discloses backing up a file having only one data stream. The testimony is relevant because it demonstrates that Dr. Clark’s opinion regarding the number of data streams in each file backed up in Woodhill by program 24 contradicts this language in Woodhill.

Observation #5. In Exhibit 2016, at page 85, lines 1-5, and from page 86, line 17 to page 87, line 4, Dr. Clark testified that one of ordinary skill in the art would understand remote backup server 12 in Fig. 1 of Woodhill to have a storage device, and at page 88, lines 9-20 he testified that it was possible that database 25 was also stored at the remote backup server 12. This testimony is relevant to at least the arguments in paragraph 11 of Exhibit 1078. The testimony is relevant because it demonstrates that, in view of Woodhill’s description at col. 2:59-62 and Figs. 1-2, database 25 may also be stored at remote backup server 12.

Observation #6. In Exhibit 2016, at page 99, lines 2-17, when asked if Woodhill describes saving a binary object identifier as the “name” of the associated binary object anywhere other than in Woodhill’s issued claims, Dr. Clark testified “I am not positive. I think not.” This testimony is relevant to at least (i) the arguments in PO’s Response from page 2 (three lines from the bottom) to page 3, line 5, and at page 7, (ii) pages 145-55 and 158 of Exhibit EMC 1074, and (iii)



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