

DOCKET NO: 0100157-00244

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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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PETITIONER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64

Pursuant to 37 C.F.R. § 42.64, EMC Corporation and VMware, Inc. (collectively, "Petitioner") serve the following objections to evidence served with the Response of PersonalWeb Technologies, LLC ("Patent Owner").

Petitioner objects to Exhibits 2009, 2010, 2011, and 2012 because these exhibits are not only irrelevant (FRE 402), but also ambiguous, confusing, or misleading, and would lead to an unnecessary waste of time to address (FRE 403).

Mr. Bermeister's testimony (Exhibit 2009) and the Brilliant Digital Entertainment, Inc. ("BDE") licenses (Exhibits 2010, 2011, 2012) do not establish a sufficient nexus between the subject matter of any of these licenses and any of the challenged claims. *See, e.g., In re Antor Media Corp.*, 689 F.3d 1282, 1293-94 (Fed. Cir. 2012); *Honeywell Intl'l, Inc. v. Nikon Corp.*, No. 04-01337, 2009 WL 577274, at * 1 (D. Del. Mar. 4, 2009) (excluding patentee's 21 license agreements as evidence of nonobviousness because "licenses lacked a sufficient nexus to the asserted patent claim").

Moreover, the corporate relationship and certain common ownership interests between the parties to the license agreements render the latter's existence of little or no probative value to nonobviousness. *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1353 (Fed. Cir. 2012) (arm's length licensing agreements with customers and competitors supported

nonobviousness). For example, the licensees in Exhibit 2011 (BDE and Altnet) were substantially owned or controlled by Kevin Bermeister, who is now the Non-Executive Chairman of PersonalWeb Technologies, LLC – the Patent Owner in this proceeding. Similarly, the licensee in Exhibit 2010 (Skype) was a company in which Mr. Bermeister was a founding investor. Finally, based on publicly available documents, the licensee in Exhibit 2012 (Sharman Networks – former operator of the Kazaa file sharing service) also appears to have been substantially owned or controlled by Mr. Bermeister through intermediary companies. Such purported evidence of licensing is irrelevant where the licenses are entered into “because of prior business relationships, or for other economic reasons.” *In re Antor Media Corp.*, 689 F.3d at 1294.

Petitioner further objects to Exhibit 2011 as an incomplete copy (FRE 1002, 1003), Exhibit 2012 as an incomplete, partially illegible copy (FRE 1002, 1003), and ¶¶ 6, 7, and 9 of Exhibit 2009 as lacking foundation and personal knowledge (FRE 602).

Respectfully Submitted,

/David L. Cavanaugh/

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Dated: July 31, 2013

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2013, I caused a true and correct copy of the following materials:

- Petitioner's Objections to Evidence Pursuant to 37 C.F.R. § 42.64

to be served via email, as previously agreed between the parties, on the following attorney of record:

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