UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC., QUANTUM CORP.,
AND ORACLE CORP.,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.
Patent Owner.

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Case IPR2014-01544[1]
Patent No. 7,051,147

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**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE CITED BY PETITIONERS**

[1] Case IPR2015-00852 has been joined with this proceeding.

## I. INTRODUCTION

Patent Owner respectfully requests that certain evidence relied on by Petitioners be excluded pursuant to 37 C.F.R. § 42.64(c). Specifically, Patent Owner moves to exclude certain portions of Exhibit 1025, the deposition transcript of Patent Owner's expert witness Dr. John Levy, Ph.D. Patent Owner's objections to questions at the deposition were made on the record during the deposition. Petitioners' mischaracterizations of Dr. Levy's testimony fully reveal why the questions were objectionable. In addition, or in the alternative, because Petitioners repeatedly mischaracterize Dr. Levy's deposition testimony, Patent Owner requests that the Board consider additional portions of Dr. Levy's testimony pursuant to the Rule of Completeness (FRE 106), because this testimony contradicts Petitioners' mischaracterizations.

## II. PETITIONERS MISCHARACTERIZE THE TESTIMONY OF PATENT OWNER'S WITNESS DR. LEVY

Petitioners rely on certain testimony of Patent Owner's expert witness, Dr. John Levy, Ph.D., which should be excluded because it was obtained pursuant to objectionable questioning and, further, mischaracterizes his testimony.

### A. Objection #1

Petitioners cite Ex. 1025 at 129:16-17 for the proposition that "[t]he channel number serves as a representation of a host in the map because it is 'sufficient to identify a host for the purposes of the mapping.'" Paper 33 ("Reply") at 13.

Petitioners also cite this testimony on pages 14-15 of the Reply for the proposition that, "Like the SCSI ID and AL_PA identifiers in the map of the '147 Patent, the channel number is 'sufficient to identify a host for the purposes of the mapping.'" Petitioners have cherry picked the phrase "sufficient to identify a host for the purposes of the mapping" completely out of context, and are using the quoted phrase to support their assertions which are **directly contradicted** by Dr. Levy's actual testimony. As such, Patent Owner moves that this testimony be excluded pursuant to FRE 403, as the relevance of this phrase devoid of the actual context—or even the full sentence—is substantially outweighed by a danger of unfair prejudice or misleading the trier of fact.

Petitioners grossly mischaracterize the cited testimony, which made no reference to channels or "channel numbers" and defined "purposes of the mapping" in a manner completely inconsistent with Petitioners' usage in their reply. When read in context, the meaning of the phrase is clear:

> Q. (BY MR. GAUDET) And is that because of the correlation between the SCSI ID and the host?
>
> A. What I said -- and I will be happy to repeat it -- in the -- where there's multiple hosts on the SCSI bus attached to a storage router, the storage router may use SCSI ID as a representation of a host. That would prevent one host access from being confused with another host's access.

Q. So it represents the host, but it doesn't exactly identify the host, correct?

MR. HALL: Objection; form.

A. I think we're playing semantic games with that question.

Q. (BY MR. GAUDET) Okay. So is there a difference between a representation and an exact identification?

A. We haven't come to agreement about what an exact identification would be, and so I don't know how to answer that.

Q. Okay. If you look at paragraph 36 of the 1226 Declaration, in the second-to-last sentence in your reviewing the Board's construction of, "mapping," you say, "I understand the construction of this term to mean allocation to a specific device."

And then it goes on to say, "The map must identify precisely." What does it mean -- is there a difference between identifying precisely and representing?

A. Well, I am not quite sure about the question. **But in the example I gave with our two hosts on the SCSI bus and the storage router**, the SCSI ID is representing a host in each case, and that's precisely which host -- it's sufficient to identify a host for the purpose of the mapping.

Q. Okay. Is -- I mean, is there a difference between sufficient to identify a host for purposes of the mapping and identify precisely to which host the specified storage has been allocated?

A. **Identify precisely to which host are allocated merely means distinguish one host from another on the bus**. **So they mean the same thing in this context.**

Ex. 1025 at 128:8-129:24 (emphasis added). Of the above passage, Petitioners limit their citation to the underlined sentence. Petitioners' isolated citation completely mischaracterizes Dr. Levy's testimony. Specifically, Dr. Levy's testimony was limited to the role of a SCSI ID in his example "with [] two hosts on the SCSI bus and the storage router." *Id.* at 129:13-16. Moreover, Dr. Levy explained that "sufficient to identify a host for purposes of the mapping" means "distinguish one host from another on the bus." *Id*. at 129:18-24. It is only by pulling the quoted phrase completely out of context that Petitioners can possibly use it to support their position—a position that is completely contrary to Dr. Levy's testimony, both in that very answer as well as consistently throughout his deposition. For example, earlier in his deposition, Dr. Levy testified as follows:

Q. Okay. Now, why is it relevant that the swapping of cables caused the storage accessible by a host to change? What bearing does that have on the mapping limitation?

A. Well, because **Dr. Hospodor seems to be claiming -- asserting that channel identification is the same as a host identification. And, yet, that's not true because the -- the only mapping performed by a CRD-5500 is [channel to] storage, not [host to] storage. In fact, any host and every host connected to a single channel has access to exactly the same storage.**

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