

I, Edward Balassanian, hereby testify as follows:

1. I have personal knowledge of the facts stated herein.
2. I am the founder, member, and manager Implicit, LLC (“Implicit”), the Patent Owner in these proceedings, IPR2018-00766 and IPR2018-00767 (“the Proceedings”).
3. Implicit owns the two patents at issue in these proceedings, U.S. Patent Nos. 7,391,791 (“the ’791 Patent”) and 8,942,252 (“the ’252 Patent”) (collectively, “the Patents”). I am the lead inventor on both of the Patents.
4. I am also the founder and owner of the predecessors-in-interest to Implicit, specifically BeComm Corp. (“BeComm”), Implicit Networks, Inc. (“Implicit Networks”), and Digbee Media Corporation (“Digbee”). I served as the President and Chief Executive Officer of BeComm, Implicit Networks, and Digbee. I am the duly authorized custodian of Implicit and its predecessor entities BeComm and Implicit Networks.
5. I first recall becoming aware of the October 4, 2001 email between Dr. Peterson and Mr. Fuiczynski (“the Peterson Email”) after Dr. Peterson produced the email to Implicit’s counsel on February 27, 2019 in connection with a litigation involving NetScout and Sandvine. Dr. Peterson and Mr. Fuiczynski were not involved in the projects that would later form the genesis of the audio-video synchronization technology at BeComm (for example, the Juno project).

6. Implicit did not have possession, custody, or control of the Peterson Email until after it was produced to Implicit's counsel on February 27, 2019.

7. In 2018, and prior to December 18, 2018, I searched for potentially relevant records in connection with the Proceedings and did not locate the Peterson Email. If Implicit had possession of the Email, my searches would have produced the Email. I also provided Implicit's records to counsel between 2017 and prior to December 18, 2018. My understanding is that counsel was unable to locate the Peterson Email when they searched Implicit's records in connection with these Proceedings.

8. After I became aware of the Peterson Email, I searched Implicit's records again. I specifically searched for the Email. My searches did not locate the Email. My understanding is that counsel also searched Implicit's records again after Dr. Peterson produced the Email and that their searches also did not locate the Email.

9. I am listed as a "CC" on the Peterson Email. I do not recall receiving the Email. I believe the Email was likely deleted from Implicit's records many years ago. BeComm frequently switched email servers in the early years of the company, and, sometime after 2001, BeComm again switched email servers. When BeComm made this switch, an account's emails did not automatically import into the new server. The account holder needed to archive or save an email prior to the migration or the emails would be lost. I do not recall saving my emails, archiving

my emails, or otherwise transitioning my emails to the new server at this time. I believe the emails that were located in connection with these Proceedings during the 2001 time period were emails that had been saved, archived, or otherwise transitioned to the new email server.

I declare under penalty of perjury that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

In signing this declaration, I understand that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I acknowledge that I may be subject to cross-examination in this case and that cross-examination will take place within the United States. If cross-examination is required of me, I will appear for cross-examination within the United States during the time allotted for cross-examination.

Executed this 4th day of April 2019, in San Francisco, California.

By 
Edward Balassanian