

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UPSTREAM DATA INC.,

Petitioner

v.

CRUSOE ENERGY SYSTEMS, LLC,

Patent Owner

Patent No. 11,574,372

PGR2023-00039

DECLARATION OF SYLVIA HALL-ELLIS, PH.D.

I. INTRODUCTION

1. My name is Sylvia D. Hall-Ellis. I have been retained as an expert on behalf of Upstream Data Inc. (hereafter “Upstream” or “Patent Owner”).

2. I have written this report on behalf of Patent Owner to provide my expert opinion regarding the authenticity and public availability of two publications. My report sets forth my opinions in detail and provides the basis for my opinions regarding the public availability of these publications.

3. I reserve the right to supplement or amend my opinions, and bases for them, in response any additional evidence, testimony, discovery, argument, and/or other additional information that may be provided to me after the date of this report.

4. I am being compensated for my time spent working on this matter at my normal consulting rate of \$350 per hour, plus reimbursement for any additional reasonable expenses. My compensation is not in any way tied to the content of this report, the substance of my opinions, or the outcome of this litigation. I have no other interests in this proceeding or with any of the parties.

5. All of the materials that I considered are discussed explicitly in this declaration.

II. QUALIFICATIONS

6. I am currently an Adjunct Professor in the School of Information at San José State University. I obtained a Master of Library Science from the University of North Texas in 1972 and a Ph.D. in Library Science from the University of Pittsburgh in 1985. Over the last 50-plus years, I have held various positions in the field of library and information resources. I was first employed as a librarian in 1966 and have been involved in the field of library sciences since, holding numerous positions.

7. I am a member of the American Library Association (ALA) and its Association for Library Collections & Technical Services (ALCTS) Division, and I served on the Committee on Cataloging: Resource and Description (which wrote the new cataloging rules) and as the chair of the Committee for Education and Training of Catalogers and the Competencies and Education for a Career in Cataloging Interest Group. I also served as the Chair of the ALCTS Division's Task Force on Competencies and Education for a Career in Cataloging. Additionally, I have served as the Chair for the ALA Office of Diversity's Committee on Diversity, as a member of the REFORMA National Board of Directors, as a member of the Editorial Board for the ALCTS premier cataloging journal, *Library Resources and Technical Services*, as a Co-Chair of the Library Research Round Table (LRRT) for the American Library Association, and as a member of the LRRT Nominating Committee.

8. I have also given over one hundred presentations in the field, including several on library cataloging systems and Machine-Readable Cataloging (“MARC”) standards. My current research interests include library cataloging systems, metadata, and organization of electronic resources.

9. My full curriculum vitae is attached hereto as Exhibit A.

III. PRELIMINARIES

10. *Scope of this declaration.* I am not an attorney and will not offer opinions on the law. I am, however, rendering my expert opinion on the authenticity of the documents referenced herein and on when and how each of these documents was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, could have located the documents before on or around the listed dates of their respective publications below.

11. I am informed by counsel that a printed publication qualifies as publicly accessible as of the date it was disseminated or otherwise made available such that a person interested in and ordinarily skilled in the relevant subject matter could locate it through the exercise of ordinary diligence.

12. While I understand that the determination of public accessibility under the foregoing standard rests on a case-by-case analysis of the facts particular to an individual publication, I also understand that a printed publication is rendered

“publicly accessible” if it is cataloged and indexed by a library such that a person interested in the relevant subject matter could locate it (*i.e.*, I understand that cataloging and indexing by a library is sufficient, though there are other ways that a printed publication may qualify as publicly accessible). One manner of sufficient indexing is indexing according to subject matter category. I understand that the cataloging and indexing by a single library of a single instance of a particular printed publication is sufficient, even if the single library is in a foreign country. I understand that, even if access to a library is restricted, a printed publication that has been cataloged and indexed therein is publicly accessible so long as a presumption is raised that the portion of the public concerned with the relevant subject matter would know of the printed publication. I also understand that the cataloging and indexing of information that would guide a person interested in the relevant subject matter to the printed publication, such as the cataloging and indexing of an abstract for the printed publication, is sufficient to render the printed publication publicly accessible.

13. I understand that routine business practices, such as general library cataloging and indexing practices, can be used to establish an approximate date on which a printed publication became publicly accessible.

14. *Persons of ordinary skill in the art.* I am told by counsel that the subject matter of this proceeding generally relates to United States Patent No.

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