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PATENT: 8,001,096

INVENTOR: DAVID A. FARBER
AND RONALD D. LACHMAN

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TITLE: COMPUTER FILE SYSTEM
USING CONTENT-DEPENDENT
FILE IDENTIFIERS

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF JASON S. SADOFSKY

I, Jason S. Sadofsky, declare as follows:

1. I have been asked by Petitioner to provide this Declaration regarding certain factual issues that are common to six Inter Partes Review proceedings, Case Nos. IPR2013-00082, -00083, -00084, -00085, -00086 and -00087.

2. The testimony I provide in this Declaration is based on my personal knowledge of the relevant facts. Upon investigation, I came across several documents that confirm my recollection of these facts. A list of these documents is attached hereto as Appendix A.

I. Background

3. I am a technology archivist and software historian. I am currently an archivist for the Internet Archive, a non-profit digital library offering free universal access to books, movies, and music, as well as 342 billion archived webpages available through the Wayback Machine service.

4. In addition to my archival work at Internet Archive, for the last 15 years, I have been independently collecting, archiving, and making, once again publicly available, historical software, shareware, and freeware programs that were first published and released to the public in the 1980s and 1990s. Many in my industry refer to this time period as the Bulletin Board System (“BBS”) era. Related to this work, I directed the film, *The BBS Documentary*, an eight-episode

documentary about the subculture born from the creation of the BBS. This film was initially released in May 2005.

II. BBS, Walnut Creek CDRom, and the Proliferation of Shareware

5. A BBS is a computer system that allows users to connect directly to the system using a modem. Once connected, users can perform functions such as uploading and downloading computer files, reading news and bulletins, and exchanging messages with other users.

6. The term “Bulletin Board System” was coined as a reference to the traditional cork-and-pin bulletin boards often found in entrances of supermarkets, schools, libraries, and other public areas where people can post messages, advertisements, or community news. In many ways, BBSs were a precursor to the World Wide Web, social network services, and other aspects of the Internet.

7. In the 1980s and 1990s, much of the shareware and freeware movement was driven by user distribution of software through BBSs. In the 1990s, many companies started collecting as much of this shareware and freeware that they could find directly from BBS sites, as well as from Simtel, a highly respected electronic archive of shareware and freeware collected from various BBSs as well as from other sources. The Simtel archive was initially maintained on network servers maintained by the U.S. Army in New Mexico and mirrored

around the world.¹ After collecting all of this software, these companies would publish as many of those programs as they could onto CD-ROMs, which they would then offer for sale.

8. One of the first and largest worldwide commercial distributors of free software on CD-ROMs was Walnut Creek CDROM (“Walnut Creek”). Walnut Creek was founded in or around 1991 and ran the busiest FTP site on the Internet, ftp.cdrom.com, for many years. Walnut Creek would collect and publish onto CD-ROMs as much shareware on a regular basis as they could, and would sell these CD-ROMs for as little as \$15 per disc.

III. cd.textfiles.com

9. In 1998, I launched the website textfiles.com. This website was and still is dedicated to collecting files and related materials from the BBS era. Originally built from files I collected as a BBS user in my early teens, as well as

¹ B. Graves, “CD-velopment: Discovering a Wealth of Dev Tools on CD-ROM,” *Computer Shopper* (Apr. 1, 1994) (“[T]he Simtel disc (also published by Walnut Creek) . . . holds the entire contents of the Simtel-20 archives, . . . You’ll also see [shareware programs involving] time and date manipulation, hashing functions, data compression”) (EMC 1047).

system operator (“sysop”) of The Works BBS, this website has expanded to many gigabytes of data and receives thousands of visitors a day.

10. In 2003, I launched a subdomain of textfiles.com called cd.textfiles.com. This website was and still is dedicated to preserving, archiving, and providing free universal access to unaltered historical shareware and freeware programs and data that were initially made publically available in the BBS era of the 1980s and 1990s. The primary sources of this archive are a combination of CD-ROMs—several of which are Walnut Creek CD-ROMs—from my own collection, those donated from various individuals, and those purchased at auctions such as eBay.

11. In order to publish online the historical software and data (including software user manuals) stored on these CD-ROMs while preserving all of the original metadata (including the creation dates of files made by the file system, the date on which I uploaded the files, and file names), I first transfer a perfect copy (an “ISO” image) of the original CD-ROM to a computer, then use a software program to extract the individual files from that copy, and then publish these files onto cd.textfiles.com. The result is a collection of files that—instead of sitting in the CD-ROM—sit in an online file directory making it easier for people to browse and download. It was also my practice to scan images of the CD-ROM label and package inserts, such as the images shown in EMC 1049.

IV. The Kantor Reference

12. I have been asked to provide my understanding of certain facts relating to the Frederick W. Kantor FWKCS™ Contents-Signature System Version 1.22 (August 10, 1993) user manual (the “Kantor Reference,” EMC 1004), an electronic file distributed with the software package of the same name.

13. It is my belief that the Kantor Reference is a true and correct copy of the document that Petitioner claims it is. It is also my belief that the Kantor Reference was publicly accessible prior to April 11, 1994.

14. I verified the authenticity of the Kantor Reference by comparing it with a version I obtained from cd.textfiles.com.² I had previously archived the ZIP file of Kantor’s software and documentation, FWKCS122.ZIP, to cd.textfiles.com from my copy of the *Simtel MSDOS Archive*, October 1993 Edition, Walnut Creek CD-ROM (the “October 1993 Walnut Creek CD-ROM”). A picture of the label and package inserts for this CD-ROM is attached as EMC 1049. I also archived a

² J. Sadofsky, “Index of /simtel/simtel9310/MSDOS/BBS,” cd.textfiles.com, archived on March 2, 2009, <http://cd.textfiles.com/simtel/simtel9310/MSDOS/BBS/> (follow link for “FWKCS122.ZIP”).

copy of the ISO file from the original CD-ROM at my employer's web service, the Software Archive.³

15. To perform the verification, I downloaded the FWKCS122.ZIP file to my personal computer, and unzipped the file. The file included an installer program and instructions for installation. I installed the program. After installing the program, I determined that the included text file manual "FWKCS122.REF" is identical to the Kantor Reference filed as EMC 1004.

16. It is also my belief that the Kantor Reference was publicly accessible prior to April 11, 1994. The Kantor Reference is dated August 10, 1993. The timestamp associated with the source file FWKCS122.REF has a timestamp of August 10, 1993 at 1:22 AM. The Kantor Reference is part of the FWKCS122.ZIP file from my copy of the October 1993 Walnut Creek CD-ROM. This particular edition was advertised and reviewed in various publications such as *Computer*

³ "Simtel-20 MS-DOS Collection CD-ROM (Walnut Creek) (October 1993)," The Shareware CD Archive, archived on Sept. 16, 2011, <http://archive.org/details/cdrom-simteloctober1993>.

*Shopper*⁴ and would have been widely distributed to the public prior to April 11, 1994.

17. Similarly, the Simtel archive also contained a copy of the FWKCS122.ZIP file, which contained the Kantor Reference. In fact, it was this copy of the FWKCS122.ZIP file from Simtel that Walnut Creek CDROM collected and published in its October 1993 edition of *Simtel MSDOS Archive*. Accordingly, the Kantor Reference was also publicly accessible through the online Simtel archive prior to April 11, 1994.

18. Additionally, the Kantor Reference identifies several BBSs that ran and hosted the file FWKCS122.ZIP, including The Invention Factory BBS, Channel One BBS, and Executive Network (“ExecNet”) BBS. Kantor Reference, at 16 (EMC 1004). The Kantor Reference also includes information about freely

⁴ See A. Nallawalla, “Easier CIS Access with QModem Patch,” *The Age Company* (Feb. 8, 1994) (“WALNUT Creek CDROM is well-known for its compilations of popular Internet archives. It recently released the October edition of the Simtel MSDOS Collection. Simtel is a highly respected repository of shareware and public domain software in the United States, although its contents are mirrored by other machines around the world...” (EMC 1048).

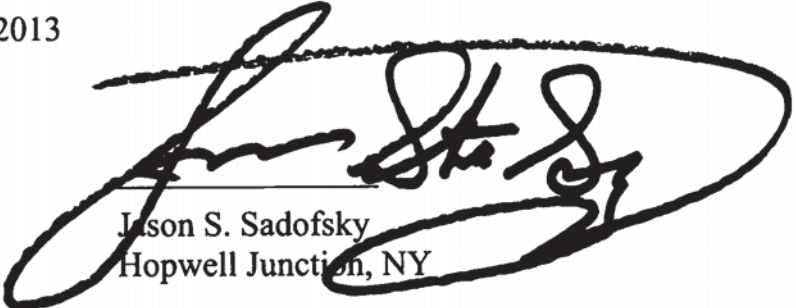
distributing the FWKCS Version 1.22 shareware and registering after trying it for a demo period. Kantor Reference, at 30, 166 (EMC 1004).

19. Nothing in the Kantor Reference indicates that it was modified in any way from its original form.

20. In signing this declaration, I recognize 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 also recognize that I may be subject to cross examination in the 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.

21. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further 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.

Executed on June 12, 2013



Jason S. Sadofsky
Hopwell Junction, NY

APPENDIX A: EXHIBIT LIST

Exhibit	Description
1004.	F. Kantor, "The Frederick W. Kantor Contents-Signature System Version 1.22," FWKCS122.REF (August 10, 1993)
1047.	B. Graves, "CD-evelopment: Discovering a Wealth of Dev Tools on CD-ROM," <i>Computer Shopper</i> (Apr. 1, 1994)
1048.	A. Nallawalla, "Easier CIS Access with QModem Patch," <i>The Age Company</i> (Feb. 8, 1994)
1049.	<i>Simtel MSDOS Archive</i> , October 1993 Edition, Walnut Creek CD-ROM label, as well as front, back, and inside cover