UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EMC Corporation,
Petitioner,

v.

Actividentity, Inc.,
Patent Owner.

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Case IPR2017-00338
Patent 9,098,685 B2

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Record of Oral Hearing
Held: April 9, 2018

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Before JAMES B. ARPIN (via Videolink), LYNNE E. PETTIGREW, and
KEVIN C. TROCK (via Videolink), *Administrative Patent Judges.*

APPEARANCES:

ON BEHALF OF THE PETITIONER:

    THOMAS A. BROWN, ESQUIRE
    EMC Corporation
    176 South Street
    Hopkinton, MA 01748

ON BEHALF OF THE PATENT OWNER:

    BYRON I. PICKARD, ESQUIRE
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    The above-entitled matter came on for hearing on Monday, April 9, 2018, commencing at 12:59 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

1   - - - - -

2   JUDGE PETTIGREW: Good afternoon. This is a hearing for

3   IPR 2017-00338. The Petitioner is EMC Corporation and Intellectual

4   Ventures is the exclusive licensee arguing on behalf of the patent owner.

5   Judge Arpin is joining us by video from our Denver office, and

6   Judge Trock is joining us by video from our Silicon Valley office. Please

7   make sure you speak into the microphone to ensure that they can hear you.

8   Also, they won't have the benefit of the visual cues in the room. So as you

9   move through your demonstratives, please identify specific slide numbers.

10   We also remind you that the demonstratives are not evidence,

11   but instead are aids to facilitate the panel's understanding of the arguments

12   presented at the hearing.

13   Each side will have 30 minutes to argue. Petitioner has the

14   ultimate burden of establishing unpatentability and will argue first. The

15   exclusive licensee then will present its opposing arguments. And finally

16   petitioner may use any time it has reserved for rebuttal to respond to the

17   exclusive licensee's argument.

18   Before we begin the arguments, we have a brief housekeeping

19   item. Last week, Intellectual Ventures filed a motion to withdraw and

20   substitute lead counsel. This morning a decision granting that motion was

21   entered into PTAB end-to-end after the wrong paper, last week,

22   inadvertently was entered. So now Mr. Pickard is recognized as lead

23   counsel.

24   Counsel, when you begin your argument please identify

1   yourself and the party you represent for the record. And counsel for

2   petitioner, please indicate how much time you'd like to reserve for rebuttal.

3   Now petitioner, when you are ready?

4   MR. BROWN: Thank you, Your Honor. My name is Thomas

5   Brown. I represent Petitioner EMC Corporation. I'd like to reserve ten

6   minutes for rebuttal.

7   Good afternoon and may it please the Board, my name is

8   Thomas Brown. I represent Petitioner EMC Corporation. Turning to slide

9   two of our presentation, the 685 patent is entitled Flexible Method of User

10 Authentication purportedly in contrast with prior art systems disclosing

11 static methods of user identification. The inventor of the 685 patent believed

12 he came up with a novel way of flexibly determining a security policy based

13 on environment conditions that include time, location, and connection type.

14 As you'll see, the inventor was mistaken. Determining a security policy

15 based on these criteria was well known in the prior art.

16   Turning to slide three, the 685 patent discloses a system that

17 includes a user work station, shown in red; a security server, shown in blue;

18 and a server with information resources, shown in green. In the 685 patent,

19 the security server ensures that only authorized users are able to access

20 secure resources from the data server.

21   Turning to slide four, in the 685 patent, the way the security

22 server works is through the use of security policies that determine an

23 appropriate authorization method. You can think of a security policy

24 broadly for the purpose of this proceeding as a set of rules governing access

25 to resources. And shown on this slide, slide four, is an example of the

1   security policy in the 685 patent. The security policy here is deny access.

2   And it's selected based on time on day, between midnight and 6:00 a.m.

3   And we note that the exclusive licensee at page nine of its preliminary

4   response relied on this example in its construction, its proposed construction

5   of security policy.

6   Turning to slide five, the 685 patent also provides examples of

7   security policies that are determined based on location. For example, a

8   security policy may apply if a general is trying to access data from a non-

9   allied country. In this example, you see that heightened authorization

10   methods are required in which the general is required to provide a

11   fingerprint every three minutes.

12   Now turning to slide six, on this slide, we have a hypothetical

13   example provided by the exclusive licensee's expert Dr. Goldschlag of

14   another security policy within the meaning of the 685 patent. Again, here

15   the security policy is allowing access by employees, and it would be selected

16   based on location, from work.

17   On slide seven we show that the 685 patent discloses that

18   different security levels, high or normal, might apply in different

19   environmental conditions.

20   And on slide eight we have an excerpt from the 685 patent that

21   shows that these thresholds are referred to in the 685 patent as security

22   levels. Now the security levels in the 685 patent describe the policy, and

23   we'll get into it a little more, the security policy itself. But they describe

24   that, for example, if you have an access coming in from North Korea, you'll

25   want to apply a security policy that's more stringent.

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