UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

X CORPORATION

Petitioner,

v.

STERLING COMPUTERS CORPORATION

Patent Owner.

Case IPR2025-00299

U.S. Patent No. 7,716,217

DECLARATION OF JUSTIN MARSTON

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Justin Marston hereby Declares as follows:

1. I am one of the inventors of U.S. Patent No. 7,716,217, along with my co-inventor Paul Marston.

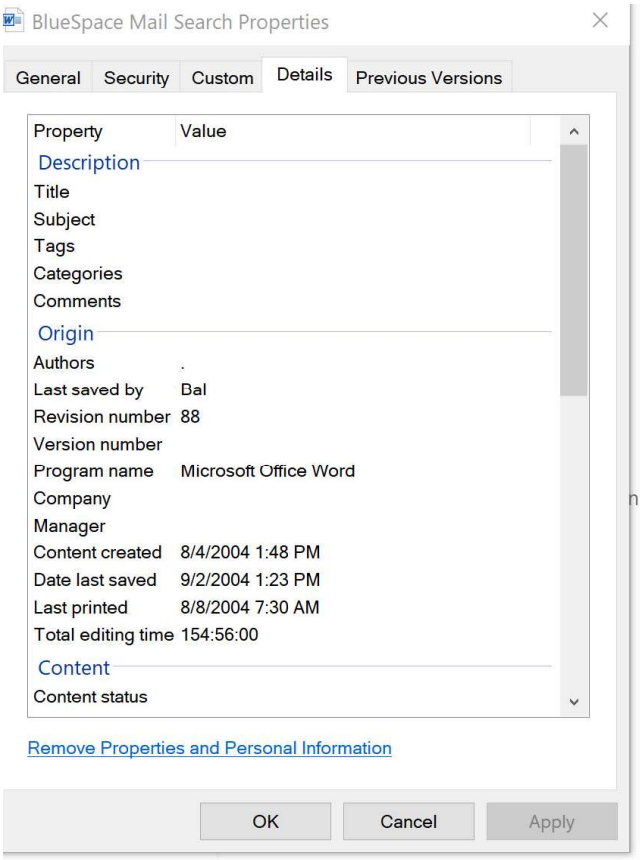
2. The provisional patent application no. 60/758,828, which led to the issuance of the '217 Patent, was filed on January 13, 2006, on our behalf by Fenwick & West LLP. EX1003.

3. Paul Marston and I first conceived of the inventions in the '217 Patent at least as early as June 7, 2005.

4. An early document that describes the basic concepts involved in creating the relevance model for use in a system is entitled "BlueSpace Mail Search," dated September 2, 2004 (hereinafter referred to as the "Initial Document"). EX2004. This document establishes conception of many of the features in the claims.

5. Metadata for the Initial Document indicates a "Content created" date of August 4, 2004, which is consistent with my recollection as to when I first began preparing the Conception Document.

6. Metadata for the Initial Document indicates a "Date last saved" date of September 2, 2004, which is consistent with my recollection as to when I would have last saved this version of the Conception Document.



7. To the best of my recollection, U.S. Provisional Patent Application No. 60/758,828 (EX1003) was a later, lengthier, version of the Initial Document.

8. To the best of my recollection, I did not send the Initial Document, or any of the other documents attached to this Declaration, to our patent prosecution attorneys or any other lawyers. I did send later versions of the document, including

the document that was filed as the provisional patent application, to our patent prosecution attorneys.

9. Between the time that we prepared the Initial Document in August and September 2004 and the time that we filed the provisional patent application on January 13, 2004, Paul Marston and I worked diligently to develop a relevancy model for use in an inter-person communication system.

10. My co-inventor, Paul Marston, was a Senior Lecturer at the University of Central Lancashire in the United Kingdom. One of his areas of focus is mathematics and statistics. Paul Marston worked closely with me on the mathematical model behind the relevance algorithm. This work that Paul and I did on the relevance model from the time of the Initial Document to the Provisional Application reflects refinement to the formulas to implement the relevance model. This extensive work is corroborated in documents cited in this declaration which spans from the from the Initial Document to the Provisional Application having Serial No. 60,758,828, filed on January 13, 2006 ("Provisional Application").

11. The Initial Document has section entitled "Algorithms," that includes a subsection entitled "Initial Maths" that describes some of the mathematics involved in developing the relevance model. The following documents show the continued work on mathematics for the relevance model:

a. In a document dated May 12, 2005, Paul provided a draft of a section entitled "The Development of the Mathematical Algorithms." There are subsections addressing the algorithms entitled "Aim of Relevance Formula," "Factors in Relevance Formula," "Relevance Feedback Loop," "Importance," "Factors affecting global importance over time," "Factors affecting local Importance over time," "Content Analysis," Policing the System," and "The Possibility of Serious Error." EX2005.

b. In a document dated June 7, 2005, a document entitled, "Blue Space Mail Relevance" shows additional work done on the relevance model and notes its application to other types of sent electronic content, not just mail systems. EX2006, at 51.

c. In Aug. 2005 (EX2007), in a document entitled "Blue Space Mail Relevance," Section 9 is entitled "Mathematical Algorithm Framework." The introduction identifies the math involved as being highly complex, which is why it took significant effort to develop the relevance model that is contained in the Provisional Application:

> The delivery of the TransMail system of allocating relevance and importance requires the continuous development of a highly complex mathematically based system. Algorithms are required that continually update a set of inter-related values, based on user action, so that everyone's actions affect everyone else. This has some complex implications:

d. A revision to the above-referenced "Blue Space Mail Relevance" document was made later in Aug. 2005. (EX2008). This document shows revisions to the "Mathematical Algorithm Framework" section – Section 9.

e. In a document dated September 18, 2005, the mathematics relating to importance, and in particular, global importance, is discussed. EX2009.

f. In October, further revisions are made to the Blue Space Mail Relevance document. Both Paul and I made the revisions. EX2010, EX2011, and EX2012.

g. In a document dated November 9, 2004, calculating cognate relevance values is discussed. EX2013.

12. At least by January 11, 2006, I provided a version of our Blue Space Mail Relevance document to our patent counsel to prepare and file the Provisional Application.

13. The Provisional Application was filed in January 2006.

14. By June 7, 2005, Paul and I had conceived a system with relevance model that includes all features of the claims.

15. The disclosure in the provisional application allows a programmer to be able to build the relevance using standard programming techniques.

16. In the 2004-2005 timeframe, a person of ordinary skill in the art (e.g., who would have knowledge of implementing the model in software in addition to having a background in the technology of the patent)would understand that the claim terms "monitoring module," "first relevance measurement module," "second relevance measurement module," and "relevance analysis module" are directed to structure. In each instance the claim calls out sufficient structure to allow each of these components to do its job. The claims recites a computer program stored on a computer readable storage medium. The structure is in the form of software instructions such as programs or code.

17. The monitoring module is "configured to track actions by a plurality of users associated with an application for managing electronic content." The use of software instructions (such as programs or code) to track use actions in systems for managing electronic content was known in the art in by at least 2004.

18. Monitoring user actions was a conventional and necessary feature of systems that allow users to send electronic content. Without monitoring user actions, the systems would not know when a user wanted to send or review content. Existing or off the shelf systems at the time of the invention could provide this monitoring.

19. One of ordinary skill in the art in 2004 would be familiar with systems and techniques for tracking user actions. One of skill would recognize that the "monitoring module" is directed to an implementation of such structures. The claim calls out sufficient structure to perform the monitoring action, and one of skill would be able to implement the claimed invention using known and available techniques.

20. Similarly, the claims also contain sufficient structure for the first and second relevance measurement modules and relevance analysis modules to do their intended jobs.

21. The first relevance measurement module is coupled to the monitoring module and determines a first measure of relevance based at least in part on one or more actions of the user on the piece of electronic content.

22. The second relevance measurement module is also coupled to the monitoring module and determines a second measure of relevance based at least in

part on at least one of: a) a local importance of the sender to the user, b) a global importance of the sender within an organization, c) a content relevance determined responsive to content of the piece of electronic content, and d) one or more actions on the piece of electronic content by at least one recipient that is cognate to the user.

23. The connection to the monitoring module allows the relevance analysis modules access to user actions. The claim specifies how each module is configured (i.e., engineered, built, or implemented) to determine each relevance measurement. One of ordinary skill in the art would recognize that software instructions such as programs or code are structure used to perform the necessary relevance determinations.

24. For each relevance measurement module, the claim calls out sufficient structure to perform the required relevance measurement.

25. One of skill would be able to implement that module using known and available techniques. One of skill would recognize that the claims are directed to structure, not some "black box."

26. The relevance analysis module determines the relevance score of the piece of electronic content based at least in part on the first and second measures of relevance. The first and second measures of relevance are used, at least in part, to

calculate an overall relevance score. One of ordinary skill in the art would recognize that software instructions such as programs or code are structure used to determine the relevance score.

27. The claim calls out sufficient structure for the relevance analysis module to calculate a relevance score based at least in part on the first and second measures of relevance.

28. One of skill would be able to implement the relevance analysis module using known and available techniques. One of skill would recognize that the claims are directed to structure, not some "black box."

29. A great deal of effort went into the conception and development of the inventions of the '217 patent. The invention was new and nonobvious.

30. The provisional patent application contains an enabling disclosure of the invention. With that disclosure in hand, a person of ordinary skill in the art would be able to practice the claimed invention using tools and techniques that were known or conventional in the art by 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12 day of March 2025, in Travis County.

Justin Marston (Mar 12, 2025 12:49 CDT)

Justin Marston