

EXHIBIT E

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Date: January 10, 2011

Signature: /Lance A. Smith/
Printed Name: Lance A. Smith

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor: Nemes

Original Application No.: 08/775,864

Patent No.: 5,893,120

Filed: January 2, 1997

Title: Methods and Apparatus for Information
Storage and Retrieval Using a Hashing
Technique with External Chaining and On-
the-Fly Removal of Expired Data

Request for Reexamination Under
35 U.S.C. §§ 302-307 and
37 C.F.R. § 1.510

Mail Stop *Ex Parte* Reexamination
ATTN: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
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REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT NO. 5,893,120

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TABLE OF EXHIBITS

The exhibits to the present request are arranged in four groups: prior art (“PA”), relevant patent prosecution file history, patents, and claim dependency relationships (“PAT”), claim charts (“CC”), and other (“OTH”).

A. PRIOR ART (PA)

PA-A	U.S. Patent No. 5,121,495 to Nemes (“Nemes ‘495”)
PA-B	U.S. Patent No. 5,287,499 to Nemes (“Nemes ‘499”)
PA-C	U.S. Patent No. 4,695,949 to Thatte <i>et al.</i> (“Thatte”)
PA-D	U.S. Patent No. 6,119,214 to Dirks (“Dirks”)
PA-E	U.S. Patent No. 5,724,538 to Morris <i>et al.</i> (“Morris”)
PA-F	<i>The Complexity of Hashing with Lazy Deletion</i> , Christopher J. Van Wyk and Jeffrey Scott Vitter, Algorithms (1986) 1: 17-29 (“Van Wyk”)

B. RELEVANT PATENT MATERIALS (PAT)

PAT-A	U.S. Patent No. 5,893,120 (“the ‘120 patent”)
PAT-B	File History of the ‘120 patent

C. CLAIM CHARTS (CC)

CC-A	Claim Chart comparing Van Wyk to the claims of the ‘120 patent
CC-B	Claim Chart comparing Nemes ‘499 in view of Nemes ‘495 to the claims of the ‘120 patent
CC-C	Claim Chart comparing Thatte to the claims of the ‘120 patent
CC-D	Claim Chart comparing Thatte in view of Dirks to the claims of the ‘120 patent
CC-E	Claim Chart comparing Dirks in view of Morris to the claims of the ‘120 patent

D. OTHER DOCUMENTS (OTH)

- OTH-A Complaint; *Bedrock Computer Technologies LLC v. Softlayer Technologies, Inc. et al.*, Case No. 6:09-cv-269, filed June 16, 2009 (E.D. TX)
- OTH-B Local Patent Rule 3-1 Disclosure of Asserted Claims and Infringement Contentions and Local Patent Rule 3-2 Document Disclosures; *Bedrock Computer Technologies LLC v. Softlayer Technologies, Inc. et al.*, Case No. 6:09-cv-269, filed October 9, 2009 (E.D. TX)
- OTH-C Declaration A of Dr. Michael Kogan (“Decl. A”)
- OTH-D Declaration B of Dr. Michael Kogan (“Decl. B”)
- OTH-E Declaration C of Dr. Michael Kogan (“Decl. C”)
- OTH-F Declaration D of Dr. Michael Kogan (“Decl. D”)

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Patent No.: 5,893,120
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REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT NO. 5,893,120

Dear Sir or Madam:

The undersigned hereby respectfully requests *ex parte* reexamination pursuant to 35 U.S.C. §§ 302-307, 37 C.F.R. § 1.510, and MPEP §§ 2240(II) and 2295, of claims 1-8 of U.S. Patent No. 5,893,120 (“the ‘120 patent”) filed January 2, 1997 and issued April 6, 1999 to Richard Michael Nemes (Exhibit PAT-A).

Reexamination is requested in view of the substantial new questions of patentability (“SNQs”) presented below. Requester reserves all rights and defenses available including, without limitation, defenses as to invalidity and unenforceability. By simply filing this Request in compliance with the Patent Rules, Requester does not represent, agree or concur that the ‘120 patent is enforceable, and by asserting rejections based on the SNQs herein, Requester specifically asserts that claims 1-8 of the ‘120 patent are in fact not patentable. As such, the U.S. Patent and Trademark Office (the “Office”) should reexamine and find claims 1-8 unpatentable and issue a reexamination certificate canceling claims 1-8 of the ‘120 patent, thereby rendering Claims 1-8 of the ‘120 patent null, void, and otherwise unenforceable.

Reexamination is requested in view of the teachings of Van Wyk, Thatte, Dirks, Nemes '499, Nemes '495, and Patent Owner Admissions. The SNQs presented by these references provide a basis for rejections of claims 1-8 of the '120 patent and, importantly, teach the apparent reasons for the allowance of the claims. Based on the Applicant's arguments in prosecution, it appears that the '120 patent was allowed most directly because it recites on-the-fly deletion of records in linked lists based on automatic expiration of data.

The rejections based on the SNQs presented below evidence that claims 1-8, i.e., all of the claims of the '120 patent, do not meet the novelty and non-obvious requirements of the United States Code and, as such, should not have been found patentable. Specifically, the claims of the '120 patent recite a method for on-the-fly deletion of records in linked lists based on automatic expiration of data as claimed and a system, i.e. apparatus, that performs that method. As described below and throughout this Request, such claims do not recite new and/or non-obvious subject matter. In fact, many of the claims relate to the use of external chaining, linked lists, and hashing techniques, which the Applicant disclosed were well known in the art at the time of the allegedly patentable invention. *See* PAT-A at p. 1-3.

The Requester submits that reexamination should be granted and claims 1-8 found unpatentable by issuance of a Certificate of Reexamination canceling all claims in view of the fact that: 1) the art discussed herein, especially the two patent earlier patents to Nemes relied on, render claims 1-8 obvious with consideration of additional prior art; and 2) the arguments that were made by the applicant for the '120 patent to support the patentability of many of the claims do not result in claims that are both novel and non-obvious, as required by the Patent Statute.

VI. REQUIREMENTS FOR *EX PARTE* REEXAMINATION UNDER 37 C.F.R. § 1.510

Requester satisfies each requirement for *ex parte* reexamination of the '120 patent.

A. 37 C.F.R. § 1.510(b)(1) AND (b)(2): STATEMENT POINTING OUT EACH SUBSTANTIAL NEW QUESTION OF PATENTABILITY

A statement pointing out each substantial new question of patentability (“SNQ”) based on the cited patents, and a detailed explanation of the pertinence and manner of applying the patents to Claims 1-8 of the '120 patent, is presented below in accordance with 37 C.F.R. § 1.510 (b)(1) and (b)(2).

The SNQs raised herein are based on prior art that was either considered and discussed during the prosecution of the '120 patent, but which is considered herein in a new light, as permitted under the rules, reexamination examining procedures, and case law, or was not cited altogether. The references, alone or in combination, are not cumulative to the prior art discussed during the original prosecution. Thus, they are appropriate for use in supporting the SNQs of patentability raised herein.

B. 37 C.F.R. § 1.510(b)(3): COPY OF EVERY PATENT OR PRINTED PUBLICATION RELIED UPON TO PRESENT AN SNQ

A copy of every patent or printed publication relied upon to present an SNQ is submitted herein, pursuant to 37 C.F.R. §1.510(b)(3), as Exhibits PA-A through Exhibits PA-E, citation of which may be found on the accompanying Form PTO-SB/08 at Exhibit PTO-SB/08. Each of these cited documents constitutes effective prior art as to the claims of the '120 patent under 35 U.S.C. § 102 and 35 U.S.C. § 103.

C. 37 C.F.R. § 1.510(b)(4): COPY OF THE ENTIRE PATENT FOR WHICH REEXAMINATION IS REQUESTED

A full copy of the '120 patent is submitted herein as Exhibit PAT-A and its corresponding file history is submitted as EXHIBIT PAT-B in accordance with 37 C.F.R. § 1.510(b)(4).

D. 37 C.F.R. § 1.510(b)(5): CERTIFICATION THAT A COPY OF THE REQUEST HAS BEEN SERVED IN ITS ENTIRETY ON THE PATENT OWNER

A copy of this request has been served in its entirety on the Patent Owner in accordance with 37 C.F.R. § 1.510(b)(5) at the following address:

RICHARD MICHAEL NEMES
1432 EAST 35TH STREET
BROOKLYN, NY 11234-2604

E. 37 C.F.R. § 1.510(a): FEE FOR REQUESTING REEXAMINATION

In accordance with 37 C.F.R. § 1.510(a), a credit card authorization to cover the fee for reexamination of \$2,520.00 is attached. If this authorization is missing or defective please charge the Fee to the Novak Druce and Quigg Deposit Account No. 14-1437.

F. RELATED CO-PENDING LITIGATION REQUIRES TREATMENT WITH SPECIAL DISPATCH AND PRIORITY OVER ALL OTHER CASES.

The '120 patent is presently the subject of *Bedrock Computer Technologies, LLC v. Softlayer Technologies, Inc. et al.*, No. 609-CV-269 (E.D. TX filed June 16, 2009). See OTH-A, Complaint filed by Bedrock in *Bedrock Computer Technologies, LLC v. Softlayer Technologies, Inc. et al.*

Pursuant to 35 U.S.C. § 305, Requester respectfully urges that this Request be granted and reexamination conducted not only with "special dispatch," but also with "priority over all other cases" in accordance with 37 C.F.R. 1.550(a), due to the ongoing nature of the underlying litigation.

Further, pursuant to the recently announced policy of the Office concerning revised reexamination procedures to provide for a scheduling-type order of expected substantive action dates in Requests ordered after the Office's 2005 fiscal year, Requester respectfully seeks such a scheduling order upon the granting of this request.

VII. OVERVIEW OF THE '120 PATENT AND PROSECUTION HISTORY

A. SUMMARY OF CLAIMED EMBODIMENTS OF THE '120 PATENT

The '120 patent relates to a method for on-the-fly deletion of records in linked lists based on automatic expiration of data and a system that performs that method. Specifically, the '120 patent claims a system for managing a records storage and retrieval system by allocating space in

memory through the use of a hash function, which applicant has admitted was well-known in the art at the time of the alleged invention. *See* PAT-A at p. 1-3. In the event that more than one record is allocated to the same bucket in the data structure created by the hash function, the records allocated to that bucket will have the same hash address and will be stored in a linked list. Manipulations of the linked list, including insertion, deletion, and searching operations, will be performed using the external chaining technique.

Applicant has admitted that at the time of the alleged invention, external chaining was well known in the prior art as a method for resolving collisions in storage. '120 patent at col. 1, lines 47-64. External chaining is used where "each hash table location is a pointer to the head of a linked list of records, all of whose keys translate under the hashing function to that very hash table address. The linked list is itself searched sequentially when retrieving, inserting, or deleting a record. Insertion and deletion are done by adjusting pointers in the linked list." ' 120 patent at col. 1, lines 58-64.

The claims of the '120 patent are therefore directed towards efficient allocation of memory space when using hash functions, and the prevention of performance degradation as a result of the accumulation of many expired records. In order to resolve the performance degradation issue, the claims of the '120 patent call for dynamically determining the maximum number of automatically expiring records to delete from the data structure. This can be accomplished by a dynamic runtime decision to remove all expired records, some but not all of the expired records, or none of the expired records. '120 patent at col. 7, lines 1-10. In fact, the '120 patent contains an admission that "[A person skilled in the art will appreciate that the technique of removing all expired records while searching the linked list can be expanded to include techniques whereby not necessarily all expired records are removed, and that the decision regarding if and how many records to delete can be a dynamic one." '120 patent at col. 7, lines 10-15.

B. SUMMARY OF THE '120 PATENT'S PROSECUTION HISTORY

1. PAPER NUMBER 1: U.S. PATENT APPLICATION NO. 08/775,864- JANUARY 2, 1997

The '120 patent was filed on January 2, 1997, as U.S. Patent Application No. 08/775,864 (“the '864 application”), naming Richard M. Nemes (“the Applicant”) as inventor. The '864 application contained four independent and four dependent claims.¹

In the background section of the application, the Applicant admitted that the many of the claimed limitations were known in the prior art.² For example, the Applicant disclosed that it was well known to use external chaining and linked lists with hashing techniques to resolve collisions in hash tables.³

2. PAPER NUMBER 3: OFFICE ACTION- APRIL 20, 1998

On March 20, 1998, the USPTO rejected Claims 1-8 of the '864 application.⁴

The Examiner rejected Claims 1-4 of the '864 application for double patenting based on the '495⁵ patent also issued to Nemes.⁶ The Examiner noted that “the subject matter claimed in the instant application is fully disclosed in the ['495] patent and is covered by the ['495] patent since the ['495] patent and the application are claiming common subject matter.”⁷ However, as discussed in detail, with respect to the SNQs presented in this request, *infra*, the examiner discussed claim 1 and col. 12, lines 7-8 of the '495 and specifically stated that “[T]he '495 patent does not recite the term, “linked list” and instead recites “chain of records.”⁸

¹ *Id.*

² *Id.* at PAT-1, pg. 1 – 3.

³ *Id.*

⁴ *Id.* at Paper No. 3.

⁵ A copy of the '495 patent is attached as Ex. PAT-3.

⁶ Ex. PAT-2 at Paper No. 3, pg. 2-4.

⁷ *Id.* at Paper No. 3, pg. 3.

⁸ *Id.*

The Examiner also rejected claims 5-8 of the '864 application for double patenting based on the '499⁹ patent also issued to Nemes.¹⁰ The examiner stated that “[T]he '499 patent does not recite the term, “linked list” and instead recites “storing” (see claim 2, col. 1), and opined that “[I]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a linked list of records because a chain of records chained by an external chaining generates a linked list.”¹¹

The Examiner further rejected Claims 1-8 of the '864 application under 35 U.S.C. §103 as being unpatentable over the '499 patent and “Schackelford”.¹² The Examiner noted:

10. With respect to claims 1 – 8, Nemes ['499 patent] teaches everything that is claims (col. 2, line 60-64, col.6, line 49-51; '499 reference) except that it does not explicitly indicate the determination of threshold as being the maximum number of records.

Schackelford teaches the maximum number of pointers to records wherein the records are linked in a bidirectional linked list (col. 3, line 61 through col. 4, line 2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to determine the maximum number of records to make the best use of the memory space available to a user and thus to reduce the system overhead (col. 4, lines 1-2, Schackelford).

11. The above reasoning does not discuss the linked list and the step of removing the records, it rather addresses the issue of determining the maximum number of records. For the limitations directed to the linked lists and the step of removing, the Applicant is requested to refer to the Obvious Double Patenting rejection set forth hereinabove where they have been discussed in details.¹³

⁹ A copy of the '495 patent is attached as Ex. PAT-4.

¹⁰ Ex. PAT-2 at Paper No. 3, pg. 4-5.

¹¹ *Id.* at pg. 5.

¹² *Id.* at Paper No. 3, pg. 9; A copy of Schackelford is attached as Ex. PAT-5.

¹³ *Id.* at Paper No. 3, pg. 6-7.

3. PAPER NUMBER 5: APPLICANT’S RESPONSE TO THE OFFICE ACTION- APRIL 10, 1998

In the Applicant’s response the Applicant argued that the ’495 patent was only applicable to the linear probing technique of hashing.¹⁴ Thus, according to the Applicant, “since the [’864 application] claims linked lists, not suggested by linear probing of the cited art, the subject matter claimed is not disclosed in [the ’495 patent].”¹⁵

The Applicant next attempted to distinguish the ’499 patent by arguing that “[the ’499 patent] does not teach or suggest on-the-fly deletion of a least some records based on automatic expiration of data. . . .”¹⁶ The Applicant wrote, “the ’499 patent . . . does not teach means or methods for identifying and removing ‘at least some expired ones of the records’ from the linked list ‘when the linked list is accessed’ . . . which is taught by the instant application and is integral to claims 5 and 7. . . .”¹⁷ Additionally, the Applicant clarified that the claim term “maximum number of records” in the ’864 application “is a single quantity that serves as an upper limit on the number of records removed from the linked list whenever the linked list is accessed. . . .”¹⁸

Finally, in regarding the Examiners §103 rejections, the Applicant stated that “Claims 1 – 8 of the [’864] application address on-the-fly deletion of at least some record from a linked list based on automatic expiration of data. . . .”¹⁹ The Applicant again argued that the ’499 patent does not “teach deletion from the system, nor does it teach regarding automatically expiring data.” Next the Applicant wrote that “Shackelford does not address an application with automatically expiring data, nor does he address how many items to delete.”²⁰

¹⁴ *Id.* at Paper No. 5, pg. 1-3.

¹⁵ *Id.* at Paper No. 5, pg. 2.

¹⁶ *Id.* at Paper No. 5, pg. 3.

¹⁷ *Id.* at Paper No. 5, pg. 4.

¹⁸ *Id.*

¹⁹ *Id.* at Paper No. 5, pg. 5.

²⁰ *Id.* at Paper No. 5, pg. 6.

4. PAPER NUMBER 6: NOTICE OF ALLOWABILITY- SEPTEMBER 29, 1998

On September 28, 1998, the Examiner issued a Notice of Allowability for Claims 1 – 8 of the '864 Application.²¹ The Applicant successfully achieved allowance without filing any terminal disclaimer to overcome the double patenting rejections. The Examiner's reasoning is as follows:

“The prior art does not teach or fairly suggest a method and apparatus for on-the-fly deletion of records in linked lists based on automatic expiration of data as claimed. In other words, the prior art of record does not teach or fairly suggest the means (or an equivalent step in the method claim) of ‘means for [. . .] accessing a linked list at the same time, removing [. . .] some of the expired ones of the records in the linked list,’ as recited in lines 7 – 8 of claim 1. Although the prior art of record (Nemes, '495 reference) teaches the use of chains of records and the deletion of records, the Applicant, in the Response dated August 11, 1998, Paper No. 5, provided arguments as to why the chain of records as taught in the '495 reference is not the same as the linked list as claimed. The Applicant also distinguishes the claimed invention over the teachings of the '499 references. . . .”²²

C. SUMMARY OF PROSECUTION HISTORY OF *EX PARTE* REEXAMINATION CONTROL NO. 90/010,856

On February 9, 2010, a third party requester filed a request for *ex parte* reexamination of claims 1-8 of the '120 patent. Reexamination was requested based on SNQs established by Morrison (“A Queuing Analysis of Hashing With Lazy Deletion”), Thatte (U.S. Pat 4,659,949), Dirks (U.S. Pat 5,119,214) and Morris (U.S. Pat 5,724,538).

Reexamination was ordered based on each of the prior patents and printed publication relied on in the request. The Examiner ordered reexamination because each of the prior patents and printed publications taught the claim limitation “means, utilizing the record search means, for accessing the linked list and, at the same time, removing at least some of the expired ones of

²¹ *Id.* at Paper No. 6

²² *Id.* at Paper No. 6, ¶ 1.

the records in the linked list,” claim limitations which the Examiner in the ‘120 patent prosecution held to be the basis for the allowance of the claims.²³

In the July 23, 2010 first Office Action on claim patentability, the Examiner rejected claims 1, 3, 5 and 7 as anticipated under 35 U.S.C. § 102(b) by the Morrison publication. The Examiner also rejected claims 1-8 as anticipated under 35 U.S.C. § 102(b) by the Thatte patent. The Examiner rejected claims 2, 4, 6 and 8 as obvious under 35 U.S.C. § 103(a) over the teachings of Morrison and the Dirks patent, and also as being obvious under 35 U.S.C §103(a) in view of the teachings of Morrison and the Thatte patent. The Examiner further rejected claims 1-8 as being obvious under 35 U.S.C. § 103(a), over the teachings of Morrison and Thatte as set forth in the request for reexamination.²⁴

A response to the initial Office Action on claim patentability was filed by Patent Owner on November 23, 2010, after Patent Owner conducted a personal interview with the Examiner on November 19, 2010. In that response, only claims 3 and 7 were amended.²⁵ Patent Owner also added new dependent claims 9-12.²⁶ Patent Owner argued that the newly added claims were patentable by reason of the patentability of their parent claims, and the absence of the claimed limitations in the new claims themselves.²⁷

²³ Image File Wrapper (“IFW”) of *Ex Parte* Reexamination Control No. 90/010,856, *Order Granting Request for Ex Parte Reexamination*, March 25, 2010, pages 3-6.

²⁴ *Id.* *Office Action in Ex Parte Reexamination*, July 23, 2010, pages 2-4.

²⁵ Claims 3 and 7 were each amended by adding the phrase “to search for a target record and the phrase “while searching for the target record.” The phrase “target record” does not appear in the written description of the ‘120 patent.

²⁶ Claims 9 and 11 each add the limitation “deallocating memory of the at least some of the automatically expired records,” with claim 9 depending from claim 3 and claim 11 depending from claim 7. Claims 10 and 12 add the limitation of “inserting the target record into the linked list if the target record was not found during the searching, with claim 10 depending from new claim 9 and claim 12 depending from new claim 11. The phrase “deallocating memory” is not found in the written description of the ‘120 patent.

²⁷ Image File Wrapper of Reexamination Control No. 90/010,856, Remarks dated November 23, 2010, at page 21, last paragraph.

Patent Owner's response argues that the rejections adopted by the examiner "fail to identify equivalent structures that perform identical functions recited in claims 1-2 and 5-6 and that references relied upon by the Examiner in the adopted rejections do not teach various claim limitations."²⁸ These arguments are supported by Exhibits A, B and C, which are each a declaration by Dr. Lawrence Pileggi as part of the Patent Owner's.²⁹

Exhibit A purports to describe the structures that are recited in three separate means-plus-function clauses in claims 1 and 5.

Exhibit B purports to demonstrate that the Thatte patent does not teach structure and functions equivalent to those recited in claim 1 of the '120 patent because Thatte allegedly suspends the function of inserting a record into reference count filter taught by Thatte, and then performs the reconciliation (i.e., "garbage collection") function.

Exhibit C purports to demonstrate that there is no relation to, or association between, the 24-bit virtual segment identifier ("VSID") allocated before the sweep function. Exhibit C also purports to demonstrate that the swept entries are also unrelated to any pages mapped to physical memory and entered into the hash table prior to the sweep, and that the sweeps are by events that do not involve accesses to the page table. Exhibit C also purports to address the combination of Dirks with Morris as being untenable because Dirks uses a linear array hash table, while Morris teaches a chained hash table.

In the presently filed request for reexamination of claims 1-8 of the '120 patent, Requester has attached Declarations A, B and C, each executed by Dr. Michael Kogan. Requester has also submitted prior art documents that were relied upon by the Requester in the earlier 90/010,856 reexamination request. These prior art documents are submitted "in a new light," in view of the declarations of Dr. Kogan.³⁰

²⁸ *Id.*, at pages 7-21.

²⁹ *Id.*, at page 8.

³⁰ MPEP § 2217(II), entitled Statement in the Request Applying Prior Art (Affidavits/Declarations/Other Written Evidence), provides that "Affidavits or declarations or other written evidence which explain the contents or pertinent dates of prior art patents or printed publications in more detail may be considered in reexamination. See

As discussed in more detail, *infra*, Dr. Kogan's Declaration A points out that the declaration of Dr. Pileggi filed on November 23, 2010 as Exhibit A does not adequately address the correct test for comparing a claimed mean-plus-function limitation to the disclosure of a prior art patent or printed publication, because the prior art document may disclose an equivalent structure to perform the function that is the subject of a means-plus-function claim limitation. Dr. Kogan notes the disclosure of a specific pseudo-code does not mean that a prior art document discloses any particular structure necessary to perform a function, because the pseudo-code can lead to an infinite number of algorithms. Dr. Kogan declares that Morris, Thatte and Dirks all disclose the functionality found in claims 1 and 5 of the '120 patent and structure equivalent to that the structure that Dr. Pileggi finds to perform the claimed functionality. Therefore, these references are cast "in a new light" by Declaration A.

Dr. Kogan's Declaration B, Dr. Kogan finds that Thatte specifically discloses accessing a linked list and removing expired records at the same time. Therefore, Dr. Kogan's Declaration B both contradicts the findings set forth in the November 23, 2010 Declaration of Dr. Pileggi labeled Exhibit B and provides a detailed explanation of the disclosure of the Thatte patent that casts that patent "in a new light." For example, Dr. Kogan's Declaration B explains that in the Thatte disclosure, "when the reference count of a block goes up from zero to one . . . the block with the non-zero reference count . . . is searched for in the reference count filter, and then it is deleted" (Thatte 7:27-36). By searching the reference count filter for the block to delete, Thatte

MPEP § 2258." MPEP § 2216 provides, in pertinent part, that "[T]he substantial new question of patentability may be based on art previously considered by the Office if the reference is presented in a new light or a different way that escaped review during earlier examination." MPEP §2258.01 provides, in pertinent part, that "[F]or example, a SNQ may be based solely on old art where the old art is being presented/viewed in a new light, or in a different way, as compared with its use in the earlier concluded examination(s), in view of a material new argument or interpretation presented in the request." MPEP § 2258 provides, in pertinent part, that "[A]ffidavits or declarations or other written evidence which explain the contents or pertinent dates of prior art patents or printed publications in more detail may be considered in reexamination, but any rejection must be based upon the prior art patents or printed publications as explained by the affidavits or declarations or other written evidence."

discloses that the reference count filter must inherently be *accessed*. At the *same time* the reference count filter is *accessed*, the block with the non-zero reference count is *deleted*.”³¹ As will be set forth in greater detail, *infra*, Dr. Kogan’s Declaration B also address the manner in which the reference count filter of the Thatte reference is inherently accessed during an insertion operation. Declaration B casts Thatte “in a new light.”

Dr. Kogan’s Declaration C further addresses the disclosures of the Dirks patent and the Morris patent. In Declaration C, Dr. Kogan explains that Dirks inherently discloses “linked lists” because (1) Dirks uses a type of “lazy deletion” which can be applied to any type of data structure, including a “linked list,” and (2) could be combined with “chained data structures.”³² Dr. Kogan’s Declaration C also explains, at paragraph 17, why the teachings of Dirks and Morris can be combined, contrary to the opinion of Dr. Pileggi. Thus, Dr. Kogan’s Declaration C also casts the Morris patent and the Dirks patent “in a new light.”

The Patent Owner response filed on November 23, 2010 in the 90/010,856 *ex parte* reexamination proceeding has not yet been considered by the Examiner.

D. ASSIGNMENT HISTORY

Bedrock purports to own the ’120 patent by assignment.³³ At the time of the filing of this Request, the purported assignment has not been recorded with the USPTO. Additionally, the Requestor is not aware of any assignment of the ’120 patent. The Requestor expects that the ownership of the ’120 patent may be challenged in the related litigation.

E. CLAIM CONSTRUCTION

Requester notes that for purposes of this Request, the claim terms are presented by the Requester in accordance with 37 C.F.R § 1.555(b) and MPEP § 2111. Specifically, in reexamination proceedings, each term of the claims is to be given its “broadest reasonable construction” consistent with the specification. MPEP § 2111; *In re Trans Texas Holding Corp.*,

³¹ Declaration B of Dr. Michael Kogan, ¶ 14.

³² Declaration C of Dr. Michael Kogan, ¶¶ 14-16.

³³ See OTH-1 at ¶ 15.