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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

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**JAMES S. GORDON, Jr., a married
individual; OMNI INNOVATIONS,
LLC., a Washington limited liability
company,**

NO. CV06-0204JCC

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Plaintiffs,

v.

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**VIRTUMUNDO, INC, a Delaware
corporation, d/b/a
ADNOWLEDGEMAIL.COM;
ADKNOWLEDGE, INC., a Delaware
corporation, d/b/a
ADKNOWLEDGEMAIL.COM;
SCOTT LYNN, an individual; and
JOHN DOES, I-X,**

**DECLARATION OF PETE
RESINICK RESPONSIVE TO
DEFENDANTS' EXPERT AND
MOTION FOR SUMMARY
JUDGMENT**

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Defendants.

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I, Pete Resnick, swear under penalty of perjury under the laws of the United States to the

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following:

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DECLARATION OF PETE RESINICK RESPONSIVE
TO DEFENDANTS' EXPERT AND MOTION FOR
SUMMARY JUDGMENT
GORDON v. VIRTUMUNDO GROUP, INC., ET AL.
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1)   I am over age 18, and competent to be a witness. I am making this Declaration based on facts within my own personal knowledge.

2)   I have been retained as an expert witness by Plaintiff Omni Innovations, LLC to rebut the expert testimony of Neal Krawetz on behalf of Defendants Virtumundo, Inc. ("Virtumundo") and Adknowledge, Inc. ("Adknowledge").

3)   Of particular interest is Mr. Krawetz testimony related to internet protocols. In his expert report, Mr. Krawetz has described these protocols as "a series of de facto standard documents called the Request For Comments (RFCs)."

4)   Also of interest is Mr. Krawetz testimony related to the task force charged with maintaining the RFCs. In his expert report, Mr. Krawetz has described the relationship between the task force and the RFCs thusly: "The RFCs are currently maintained by the Internet Engineering Task Force (IETF)."

5)   I have participated in the IETF since 1992, and have attended all meetings but one since 1995.

6)   In the course of my participation in the IETF, I have written the following documents:

RFC 1339, S. Dorner, P. Resnick, "Remote Mail Checking Protocol", 29 June 1992. Status: Experimental.

RFC 1896. P. Resnick, A. Walker, "The text/enriched MIME Content-type", 19 February 1996. Status: Informational.

RFC 2822. P. Resnick, Editor, "Internet Message Format", 24 April 2001. Status: Proposed Standard.

RFC 4417. P. Resnick, P. Saint-Andre, Ed. "Report of the 2004 IAB Messaging Workshop", February 2006. Status: Informational.

RFC 4469. P. Resnick, "Internet Message Access Protocol (IMAP) CATENATE Extension", April 2006. Status: Proposed Standard.

World Wide Web Consortium Note. E. Berman, P. Resnick, N. Shelness, "HTML Threading: Conventions for use of HTML in email", 5 January 1998. Status: NOTE.

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7)   In the course of my participation in the IETF, I have also held the following chair appointments:

IMAPEXT - The Internet Message Access Protocol Extension Working Group. 1999 - present.

APEX - The Application Exchange Working Group. 2000 - 2003.

BEEP - The Blocks Extensible Exchange Protocol Working Group. 2001 (Temporary assignment).

XMPP - Extensible Messaging and Presence Protocol Working Group. 2002 - 2004.

USEFOR - Usenet Article Standard Update. 2003 (Temporary assignment).

IEA BOF - Internationalizing Email Address "Birds of a Feather" session. 2004.

WAE BOF - Web Authentication Enhancement "Birds of a Feather" session. 2006.

8)   I was also a member of the Internet Architecture Board (IAB) from 2004 to 2006.

9)   From 1994 to the present I have been employed by QUALCOMM Incorporated, San Diego, California. My title (as of 2004) is Senior Staff Engineer.

10)   From 2002 to the present I have worked as a Staff Engineer and Senior Staff Engineer. I am a research and development engineer for the Office of the Chief Scientist. I currently coordinate a research project between QUALCOMM and the Beckman Institute of the University of Illinois on mobile phone usability and interaction and participate in the Corporate Product Software Security Initiative. Previously, I acted as a research programmer on a project in the field of authentication technology.

11)   In 2001 I was a Staff Engineer. I was a research programmer on BREW (Binary Runtime Environment for Wireless), and I wrote example applications for cell phones.

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12) From 1994 – 2000 I was an Engineering Intern, Engineer, Senior Engineer, and Staff Engineer. I worked as a programmer on the "Eudora" e-mail client. I wrote all the text-handling routines for the "Eudora" e-mail client, including internationalization and Hypertext Markup Language (HTML).

13) From 1989 to 1996 I was enrolled in the Doctorate program in the Department of Philosophy, University of Illinois Urbana-Champaign. I left the program to work for QUALCOMM Incorporated before completing my dissertation. During my graduate studies, I performed research in philosophy of mind, philosophy of language, and psycholinguistics (child language acquisition).

14) Between 1987-1989 I earned a Master of Arts in "Philosophy and Computer and Systems Sciences" program at State University of New York at Binghamton. My research was in philosophy of science, philosophy of mind, and artificial intelligence. Thesis title: "Intentionality is Phlogiston", subsequently published in (E. Dietrich, ed.) "Thinking Computers and Virtual Persons", 1994, Academic Press.

15) Between 1983-1987 I earned Bachelor of Arts in Biological Sciences and Bachelor of Arts in Philosophy at State University of New York at Binghamton.

16) Before directly answering the defense expert, it should be noted that Internet Engineering Task Force (IETF) standards-track documents (part of the "Request For Comments" or "RFC" series) are unlike the standards from other organizations. IETF standards-track RFCs are not /de jure/ standards, but are more or less /de facto/ standards. The IETF develops standards for interoperability only. Its members come to consensus about what will work best and standardize only those things that in fact get deployed. The IETF does not do conformance checking and has no powers of enforcement of standards. What gets documented in standards-track RFCs is what the IETF believes actually exists and works in practice. For example, the IETF Mission Statement (RFC 3935) defines a "Standard" as:

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> As used here, the term describes a specification of a protocol, system behaviour or procedure that has a unique identifier, and where the IETF has agreed that "if you want to do this thing, this is the description of how to do it". It does not imply any attempt by the IETF to mandate its use, or any attempt to police its usage - only that "if you say that you are doing this according to this standard, do it this way". The benefit of a standard to the Internet is in interoperability - that multiple products implementing a standard are able to work together in order to deliver valuable functions to the Internet's users.

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17)   With respect to RFC 2822, which is the most recent update to the Internet Mail Format specification, RFC 2822 was written under the strictest of guidelines mandating that the working group only document that which was already current practice, and not to introduce new functionality. As the charter of the Detailed Revision/Update of Message Standards (DRUMS) working group said:

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> Items appropriate for inclusion in documents produced by the working group include corrections, clarifications, and amplifications to reflect existing practice or to address problems which have been identified through experience with Internet mail protocols. New functionality is expressly inappropriate.

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18)   Accordingly, it should therefore be kept in mind that RFC 822 and RFC 2822 were written to explain to engineers how to write an electronic mail application that will interoperate with other e-mail applications on the Internet. They were not written to mandate particular uses, but rather to document the consensus of the IETF about how things were, in fact, done.

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19)   With that as background, the expert testimony of Neal Krawetz states in part:

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> "Neither RFC822 nor RFC2822 [...] specify the purpose of the string associated with an email address."

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20)   This statement is simply false. RFC 822 is quite explicit in section 4.4.1 that the "From:" field "contains the identity of the person(s) who wished this message to be sent." RFC 2822 also says in section 3.6.2:

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The "From:" field specifies the author(s) of the message, that is, the mailbox(es) of the person(s) or system(s) responsible for the writing of the message.

21) More specifically, the "From:" field contains the /mailbox/ at which the person sending the message receives mail. As both RFC 822 and RFC 2822 explain, the syntactic specification of a /mailbox/ has an optional /phrase/ (the "name reference" in RFC 2822 which RFC 2822 refers to as a /display-name/) followed by an Internet e-mail address specification, or /addr-spec/.

22) RFC 822 in section 6.2, clearly says:

A mailbox specification comprises a person, system or process name reference, a domain-dependent string, and a name-domain reference. The name reference is optional and is usually used to indicate the human name of a recipient.

23) RFC 2822 goes even further in section 3.4 to say that mailbox contains:

...an optional display name that indicates the name of the recipient (which could be a person or a system) that could be displayed to the user of a mail application,...

24) Since the "From:" field contains the mailbox where the sender of the message *receives* mail, in the context of a "From:" field, "recipient" refers to the sending person or system. There is no question that the intention of both RFC 822 and RFC 2822 was that the textual string before the e-mail address be the name of the author of the e-mail. Furthermore, it is widely understood in the Internet standards community that the purpose of this string in the "From:" field is to indicate the name of the author, and all widely (and not so widely) available e-mail clients use that string to display the name of the author (and label it as such).

25) Interestingly, the expert testimony of Neal Krawetz also states in part:

On Unix systems, the "From:" line's text string is usually taken from the GECOS field in the password file. The General Electric Comprehensive Operating Supervisor field contains the name associated with an account, office location, phone number, and other metainformation. All parts of the GECOS are optional.
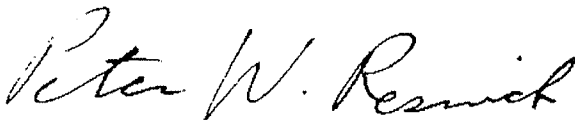
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26)   This implies that the GECOS field (and therefore the contents of the /display-name/ in the "From:" field) might have lots of information associated with a Unix account. However, aside from the fact that the term "GECOS" is no longer used in Internet standards parlance, all Unix e-mail programs which use the GECOS information to fill in the /display-name/ in the "From:" field actually parse the GECOS field in order to use only that part of the GECOS field which contains the author's name. Indeed, there was a well-known bug in "sendmail"-- one of the most widely used e-mail server package for Unix machines--in which it incorrectly parsed the GECOS field, but the fact of the matter is that even sendmail has always tried to parse the GECOS information to find only the person's name.

27)   Accordingly, there is no doubt whatsoever that the expert testimony of Neal Krawetz is incorrect, and that the intention of both RFC 822 and RFC 2822 was that the textual string before the e-mail address be the name of the author of the e-mail.

28)   References for the forgoing documents referenced in this statement may be found at:

RFC 822: http://www.rfc-editor.org/rfc/rfc822.txt
RFC 2822: http://www.rfc-editor.org/rfc/rfc2822.txt
RFC 3935: http://www.rfc-editor.org/rfc/rfc3935.txt
DRUMS working group charter:
http://www.ietf.org/html.charters/OLD/drums-charter.html

Dated this 7th day of February, 2007

Peter W. Resnick

_____

Peter W. Resnick

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CERTIFICATE OF SERVICE

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I hereby certify that on this 12th day of February, 2007, I electronically filed the DECLARATION OF PETER W. RESNICK RESPONSIVE TO DEFENDANTS' EXPERT AND MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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Attorneys for Defendants: Derek A. Newman, Newman & Newman .

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Robert J. Siegel, WSBA
WSBA #17312

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