UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACTIV FINANCIAL SYSTEMS, INC.,

Petitioner,

v.

EXEGY, INC.

Patent Owner.

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Case No. IPR2020-01010
U.S. Patent No. 10,062,115

SECOND DECLARATION OF DAVID E. TAYLOR

I, David E. Taylor, declare as follows:

I. Overview

1. I am over 18 years of age and otherwise competent to make this declaration.

2. I submit this declaration in support of a motion to submit supplemental information in the *inter partes* review (IPR) of U.S. Patent No. 10,062,115 ("the '115 Patent"). I am not being compensated for my time in connection with this matter outside of my normal compensation from Exegy, Inc.

3. I previously submitted a declaration, dated March 1, 2021 and bearing exhibit no. 2003. This declaration supplements that prior declaration.

4. I understand (a) the Petition alleged U.S. Publication No. 2008/0243675 ("Parsons") is prior art to claims 43 and 44 of the '115 Patent, (b) Parsons was published on October 2, 2008, and (c) the '115 Patent claimed priority to U.S. Provisional Application No. 61/122,673 ("the Provisional Application") filed December 15, 2008.

5. I am a named inventor on the '115 Patent and Parsons.

II. My Background

6. I am currently Co-President and Chief Technology Officer of Exegy in St. Louis, Missouri. I have worked at Exegy since March 2005.

III. Evidence of Earlier Conception and Common Ownership

7. Pursuant to discussions with counsel, Exegy began collecting evidence in early December 2020 to prove all features of challenged claims 43 and 44 ("the '115 Invention") were conceived before the publication date of Parsons, and that common ownership existed between Parsons and the '115 Invention when the '115 Invention was conceived.

8. To this end, I retrieved and sent a number of relevant documents to counsel on December 15, 2020 and December 28, 2020, including signed employee agreements related to invention ownership, information relating to an invention disclosure for the filed Provisional Application, and documents regarding the claimed order and price engines. Exs. 2006-2008.

9. Attached as Exhibits 2006-2008 are true and correct copies of emails I sent to counsel. Ex. 2006 is an email providing signed employee agreements, Ex. 2007 is an email providing an invention disclosure, and Ex. 2008 is an email providing documents about the claimed order and price engines.

IV. The Search for the Original Thunderdome Document

10. On January 14, 2021, Exegy was searching for additional documents to prove conception of the '115 Invention before Parsons' publication date. Ex. 2009.

11. Attached as Exhibit 2009 is a true and correct copy of an email I sent to counsel indicating that Exegy was searching through old documents to prove conception.

12. During this time, Exegy found one LaTex document, with the filename "Thunderdome.pdf," showing conception of the subject matter recited by Claims 43 and 44 of the '115 Patent. However, after opening the document, I noticed it was dated January 2021, which reflected when the document was last compiled, and not when revisions were made.

13. I proceeded to email the Thunderdome document dated 2021, and nine (9) other potentially relevant documents, to counsel on January 18, 2021, and noted that Exegy "was still working to restore old backups." Ex. 2010.

14. Attached as Exhibit 2010 is a true and correct copy of an email I sent to counsel providing the Thunderdome document dated 2021 and other potentially relevant documents, and indicating that Exegy was still working to restore backups.

15. I also commissioned Exegy's IT department to find the original Thunderdome document from 2008, and emphasized the importance of this document to this IPR proceeding.

16. Exegy's IT department made numerous attempts to find and recover the original Thunderdome document. For example, Exegy's IT department

attempted to locate the original Thunderdome document by searching an active file system for file directories associated with a former employee who played a role in the Thunderdome project, and a retired workstation of a current Exegy employee for file directories believed to have a copy of the Thunderdome document. Exegy's IT department later discovered that the former employee's file directories and files on the retired workstation had been deleted. The IT department was able to recover file directories from the retired workstation but the filenames were lost. Accordingly, no relevant documents were found on the retired workstation.

17. Exegy's IT department also attempted to locate the original Thunderdome document by locating and analyzing various archived monthly tape sets. However, the IT department experienced multiple issues with locating and analyzing the tape sets. For example, during its search for tape sets, the IT department discovered tape sets from 2008 were mistakenly overwritten. Additionally, during its attempts to retrieve documents from the tape sets, the IT department encountered numerous errors. For example, the IT department encountered various read errors while Exegy's retired backup server was attempting to recover data stored on the tape sets (e.g., due to corrupted tapes), and processing errors with Exegy's retired backup server causing the server to become unresponsive.

18. Regardless of these issues, Exegy continued searching for the Thunderdome document. Exs. 2011-2013. During this continued search, Exegy found other potentially relevant documents for proving conception of the '115 Invention before Parsons' publication date. I proceeded to email these documents to counsel on February 16, 2021. Ex. 2011.

19. Attached as Exhibits 2011-2013 are true and correct copies of emails I sent to counsel. Ex. 2011 is an email providing potentially relevant documents, Ex. 2012 is an email providing updates regarding potentially relevant documents, and Ex. 2013 is an email indicating that Exegy's IT department was still searching for the Thunderdome document.

20. As Exegy's search continued, the IT department discovered one tape set was mislabeled with the wrong date. The mislabeled tape set was not identified until March 1, 2021. Due to the mislabeled tape set, the IT department initially deemed this tape set as a lower priority than other tape sets.

21. On March 1, 2021, I was advised by Bill Hildebrandt (Exegy's Director of IT) that, despite all of their efforts, the IT department still had not found the original Thunderdome document. I updated counsel accordingly, and understood we could not submit arguments and other evidence previously prepared (at considerable expense) to eliminate Parsons as prior art to the '115

Patent. Despite this, I instructed Bill to continue looking for the original Thunderdome document.

22. During the morning of March 3, 2021, only two days after the Patent Owner Response (POR) deadline for this IPR proceeding, I was informed that our IT department found the original Thunderdome document. Ex. 2014. I immediately forwarded this document to counsel. Ex. 2015.

23. Attached as Exhibit 2014 is a true and correct copy of an email I received from Matt Pulliam (an IT staff member). The Thunderdome document was forwarded to me in this email. Additionally, attached as Exhibit 2015 is a true and correct copy of an email I sent to counsel regarding the Thunderdome document.

24. At the request of counsel on March 3, Exegy's IT staff members and I investigated the reasons why the original Thunderdome document was not found at least two days sooner. I communicated this information to counsel on March 5, 2021.

25. Exegy's attempts to locate the original Thunderdome document by searching for file directories associated with former and current employees described above, which was not fruitful, required more than two days' effort. Accordingly, if this searching could have been avoided, Exegy would have found the original Thunderdome document at least two (2) days earlier.

26. Additionally, the read and processing errors encountered while Exegy was attempting to retrieve the original Thunderdome document described above prolonged the document searching by at least two days. Accordingly, if these errors could have been avoided, Exegy would have found the original Thunderdome document at least two days earlier.

27. Further, Exegy expected to locate complete tape sets dating back to 2008 in storage while searching for the tape sets. If these tape sets had not been overwritten as described above, Exegy would have found the original Thunderdome document at least two (2) days earlier.

28. Moreover, Exegy would have started its document retrieval efforts with the tape set mislabeled as 2015 that was actually from December, 2012, because it would have been the oldest tape set and therefore most likely to include the original Thunderdome document. Once the mislabeled tape set was identified on March 1, Exegy's IT department found the original Thunderdome document only two (2) days later. Accordingly, if this tape set had been labeled correctly, it would have been analyzed first and Exegy would have found the original Thunderdome document in January.

29. When searching for the original Thunderdome document in January and February, Exegy's staff members worked nights, weekends, and a holiday.

30. In addition, other extenuating circumstances in January and February 2021 prevented Exegy from devoting even more resources to its extensive search for the original Thunderdome document, including:

a. the global pandemic that required nearly all Exegy employees to work remotely;

b. a total of four POR deadlines, including three on March 1;

c. a new product launch and related provisional patent filing; and

d. issues associated with a business-critical virtual server going down.

31. If not for any one of these extenuating circumstances, Exegy could have dedicated more resources to the extensive search effort and likely would have found the Thunderdome document at least two days earlier. Certainly, if none of these extenuating circumstances had occurred, Exegy would have found the Thunderdome document at least two days earlier.

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The matters stated in this declaration are true and accurate to the best of my personal knowledge. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: March 15, 2021

David E. Taylor