

IFW



May 15, 2009

Commissioner of Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Commissioner:

I am Chief Product Officer for Netflix, Inc. A declaration signed by me on March 16, 2007 (the "Declaration", Attachment 1 to this letter) was submitted during prosecution of a patent application, U.S. No. 10/771,049, "Notification System and Method for Media Queue," which has since issued as United States Patent No. 7,389,243. This letter is to inform the Patent and Trademark Office that I have recently determined that certain information in the Declaration is incorrect.

The Declaration attaches three graphical compositions as Exhibits 1, 2, and 3. These compositions were specifications used by the engineers to generate templates. The Netflix computer system then used the templates to generate email messages after filling in information relevant to a particular user before an email was sent. Such emails were to be sent by Netflix when Netflix had shipped or received a DVD from the subscriber, and when the subscriber's queue was either empty or very low.

The Declaration states that, "[a]t least as early as December 16, 2002, Netflix created, implemented, tested, and placed in public use, a computer system that generated electronic messages to subscribers containing the composition . . ." (Paragraphs 4, 5, and 6.) The declaration also states that "[a]t least as early as December 16, 2002, computer systems of Netflix generated and distributed electronic mail messages containing the compositions of Exhibits 1, 2 and 3." (Paragraph 8.) These statements are only partially correct.

The Declaration accurately states that the compositions attached as Exhibits 1, 2 and 3 to the Declaration were created by December 16, 2002. This is confirmed by copies of the compositions that are stored on Netflix's servers and marked with a time stamp indicating they were created by or on December 16, 2002.

The Declaration erred, however, in stating that as early as December 16, 2002, a computer system that generated electronic messages to subscribers based on the compositions was placed in public use. The owner of the '243 patent has sued Netflix, alleging that Netflix infringes the '243 patent. As part of Netflix's preparation to defend the lawsuit, I have learned that the Declaration was inaccurate. While Netflix utilized a computer system to send many different kinds of emails to subscribers for some time prior to December 16, 2002, my declaration should have reflected that the emails based on the compositions attached as Exhibits 1, 2 and 3 were sent to subscribers no later than March 2003.

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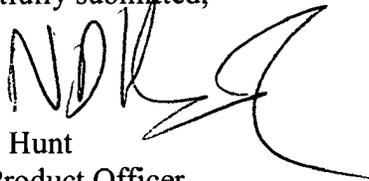
The mistake in my Declaration is particularly unfortunate, because I have also determined that a different type of email was sent to Netflix subscribers as early as July 2002 that also indicated the subscriber's queue was empty. These types of emails were sent to new Netflix subscribers following the opening of a new account.

On the third day following the opening of a new account, the Netflix system would detect whether the subscriber had added items to his or her movie rental queue. If not, the system would choose an appropriate e-mail template, populate the variable fields of the template with information, and send the populated e-mail (the "Day-3 e-mail") to alert the subscriber that items had not yet been added to the subscriber's rental queue. The populated e-mail would also include links to recommended new movie releases.

Attached hereto as Attachment 2 is a Day-3 e-mail sent by Netflix to a Netflix subscriber on July 6, 2002, with the subscriber email address redacted to preserve the subscriber's privacy. The address indicated on the e-mail, "hammeraudit@netflix.com," refers to an audit account which periodically received forwarded copies of e-mails sent to Netflix subscribers. The audit account e-mail was printed on July 8, 2002, by Marc Matsumoto, a Netflix employee, and stored in a binder with several other e-mails from that time frame.

I apologize for the inaccuracies in my Declaration and submit this letter to correct the record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "NDH", with a large, sweeping flourish extending to the right.

Neil D. Hunt  
Chief Product Officer