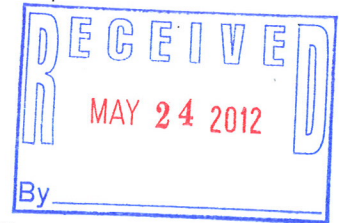


UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia



Summit Data Systems, LLC

Plaintiff

v.

EMC Corporation et al.

Defendant

Civil Action No. 10-749-GMS

(If the action is pending in another district, state where:

District of Delaware

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Internet Engineering Task Force, c/o The Internet Society, ATTN: Ray Pelletier, 1775 Wiehle Ave, Suite 201, Reston, VA, 20130.

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Attachment A.

Place: 1775 Wiehle Ave, Suite 201, Reston, VA 20130

Date and Time:

06/19/2012 9:00 am

The deposition will be recorded by this method: Audio, Video, Stenography

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Attachment B.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 05/23/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's Signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Qnap, Inc.

, who issues or requests this subpoena, are:

Kevin Pasquinelli, Mount, Spelman & Fingerman, P.C., 333 W. San Carlos St, Suite 1650, San Jose, CA 95110, (408) 279-7000.

Civil Action No. 10-749-GMS

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Attachment A: Topics of Testimony

For purposes of the following Attachment, the following words and phrases have the following meanings:

1. “YOU,” “YOUR,” “YOURS”, “IETF” means and refers to Internet Engineering Task Force, including without limitation all of its members, affiliates, related entities, predecessors, successors, and any present or former trustees, directors, employees, agents, or representatives..
2. “DOCUMENT” (or “Document” or “document”) has its broadest permissible meaning under Rule 34 of the Federal Rules of Civil Procedure (“FRCP”). As such, “document” includes but is not limited to, “any designated documents or electronically stored information – including writing, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or any designated tangible things.” As allowed by Rule 34, where electronically stored information is responsive to a request, it should be produced in PDF (Portable Document Format) and in its native file format, with all metadata intact.
3. “COMMUNICATION” (or “Communication” or “communication”) means any transmission or sharing of information by any means.
4. “AND” (or “And” or “and”) and “OR” (or “Or” or “or”) are used both conjunctively and disjunctively and each shall include the other, wherever such construction brings within the scope of a discovery request any matter that might otherwise be outside its scope.

5. As used herein, the singular form shall include the plural and vice versa, and the masculine, feminine, and neutral forms shall include one another wherever such construction brings within the scope of a discovery request any matter that might otherwise be outside its scope.

6. "PERSON" (or "Person" or "person") as well as pronouns referring thereto, includes not only natural persons, but also corporations, companies, limited liability companies, firms, partnerships, associations, joint ventures, and any other entity or units thereof. A reference to any Person will be deemed also to refer to that Person's officers, directors, agents, employees, attorneys, predecessors, successors, subsidiaries, affiliates or parent companies, and all Persons acting or purporting to act on that Person's behalf.

7. "RELATING TO" (or "Relating To" or "relating to") includes, in addition to its ordinary English meaning, comprising, constituting, reflecting, relating to, referring to, stating, describing, recording, evidencing, noting, embodying, containing, mentioning, studying, analyzing, discussing, and evaluating.

8. "PUBLISH" (or "Publish" or "publish") means disseminated or otherwise made available to the public or any subset thereof.

9. If you claim that any information, document or thing (or part thereof) requested is privileged or immune from discovery, produce that part falling within the scope of the request that is not privileged or immune from discovery and separately identify in a privilege log each document, thing, or part thereof withheld from production sufficient information to evaluate the claim of privilege, at least the following:

- (a) The date the document or thing was created;
- (b) The sender(s) and recipient(s);

- (c) If the sender of recipient is an attorney or foreign patent agent, he or she should be so identified, and in case of the latter, indicate whether the laws of the agent's country of origin grant privileged status to communications of a patent agent;
 - (d) The general subject matter of the document;
 - (e) The portion(s) of the document as to which you claim privilege (e.g., entire document, one paragraph, one sentence, etc.); and
 - (f) The type of privilege being claimed, along with a certification that all elements of the claimed privilege have been met and not waived.
10. If any information, document, or thing requested herein was, but no longer is, in your possession, custody or control, state whether it has been lost, destroyed, or transferred, is missing, or otherwise has been disposed of, and for each instance, indicate the date and circumstances of the disposal.

Topics of Testimony

1. The iSCSI protocol.
2. Presentations, meetings, conferences, and communications relating to iSCSI on or before December 31, 2001.
3. Documents produced in response to the subpoena *duces tecum*.
4. Your document retention policies.
5. Your document publishing policies.

Attachment B: Requests for Production

For purposes of the following Attachment, the following words and phrases have the following meanings:

1. "YOU," "YOUR," "YOURS", "IETF" means and refers to Internet Engineering Task Force, including without limitation all of its members, affiliates, related entities, predecessors, successors, and any present or former trustees, directors, employees, agents, or representatives..
2. "DOCUMENT" (or "Document" or "document") has its broadest permissible meaning under Rule 34 of the Federal Rules of Civil Procedure ("FRCP"). As such, "document" includes but is not limited to, "any designated documents or electronically stored information – including writing, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or any designated tangible things." As allowed by Rule 34, where electronically stored information is responsive to a request, it should be produced in PDF (Portable Document Format) and in its native file format, with all metadata intact.
3. "COMMUNICATION" (or "Communication" or "communication") means any transmission or sharing of information by any means.
4. "AND" (or "And" or "and") and "OR" (or "Or" or "or") are used both conjunctively and disjunctively and each shall include the other, wherever such construction brings within the scope of a discovery request any matter that might otherwise be outside its scope.

5. As used herein, the singular form shall include the plural and vice versa, and the masculine, feminine, and neutral forms shall include one another wherever such construction brings within the scope of a discovery request any matter that might otherwise be outside its scope.

6. "PERSON" (or "Person" or "person") as well as pronouns referring thereto, includes not only natural persons, but also corporations, companies, limited liability companies, firms, partnerships, associations, joint ventures, and any other entity or units thereof. A reference to any Person will be deemed also to refer to that Person's officers, directors, agents, employees, attorneys, predecessors, successors, subsidiaries, affiliates or parent companies, and all Persons acting or purporting to act on that Person's behalf.

7. "RELATING TO" (or "Relating To" or "relating to") includes, in addition to its ordinary English meaning, comprising, constituting, reflecting, relating to, referring to, stating, describing, recording, evidencing, noting, embodying, containing, mentioning, studying, analyzing, discussing, and evaluating.

8. "PUBLISH" (or "Publish" or "publish") means disseminated or otherwise made available to the public or any subset thereof.

9. If you claim that any information, document or thing (or part thereof) requested is privileged or immune from discovery, produce that part falling within the scope of the request that is not privileged or immune from discovery and separately identify in a privilege log each document, thing, or part thereof withheld from production sufficient information to evaluate the claim of privilege, at least the following:

- (a) The date the document or thing was created;
- (b) The sender(s) and recipient(s);

- (c) If the sender of recipient is an attorney or foreign patent agent, he or she should be so identified, and in case of the latter, indicate whether the laws of the agent's country of origin grant privileged status to communications of a patent agent;
 - (d) The general subject matter of the document;
 - (e) The portion(s) of the document as to which you claim privilege (e.g., entire document, one paragraph, one sentence, etc.); and
 - (f) The type of privilege being claimed, along with a certification that all elements of the claimed privilege have been met and not waived.
10. If any information, document, or thing requested herein was, but no longer is, in your possession, custody or control, state whether it has been lost, destroyed, or transferred, is missing, or otherwise has been disposed of, and for each instance, indicate the date and circumstances of the disposal.

Requests for Production

1. All documents relating to iSCSI created on or before December 31, 2001.
2. All documents relating to iSCSI published on or before December 31, 2001.