

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, ) Trial Day 6  
INC., )  
)  
Plaintiff, )  
) C.A. No. 08-862-JJF-LPS  
v. )  
)  
FACEBOOK, INC., a )  
Delaware corporation, )  
)  
Defendant. )

Monday, July 26, 2010  
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK  
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP  
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPALDING  
BY: PAUL ANDRE, ESQ.  
BY: LISA KOBIALKA, ESQ.  
BY: JAMES HANNAH, ESQ.

Counsel for Plaintiff

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APPEARANCES CONTINUED:

BLANK ROME, LLP  
BY: STEVEN L. CAPONI, ESQ.

-and-

COOLEY, GODWARD, KRONISH, LLP  
BY: MICHAEL RHODES, ESQ.  
BY: HEIDI L. KEEFE, ESQ.  
BY: MARK WEINSTEIN, ESQ.  
BY: JEFFREY NORBERG, ESQ.

Counsel for Defendant

1 THE CLERK: All rise.

2 THE COURT: Good morning,  
3 everyone.

4 (Everyone said, Good morning.)

5 THE CLERK: Please be seated.

6 THE COURT: Welcome to week two.  
7 All right.

8 Let's begin with developments over  
9 the weekend. I have seen and reviewed and am  
10 prepared to rule on Facebook's motion for a  
11 mistrial, which asks in the alternative for a  
12 limiting instruction. All of which arises from  
13 Leader's questioning of Professor Greenberg last  
14 Friday afternoon as to whether the '761 examiner  
15 considered the Swartz patent.

16 Excuse me. I ran in too quickly.

17 Such questioning by Mr. Andre was  
18 inappropriate due to my in limine ruling. By  
19 contrast, on direct, Facebook stayed  
20 appropriately within the narrow scope of my  
21 ruling, elicited only disputed evidence that  
22 Swartz is not mentioned on the face of the '761  
23 patent.

24 It is also true that the '761 is

1 in re-exam in part as a result of the PTO's  
2 finding that Swartz was not considered during  
3 prosecution of the '761.

4 And further, I have ruled and I  
5 adhere to these rulings that the fact of the  
6 re-exam and whether there's similarities between  
7 the prior art relied on by Facebook in this  
8 case, and the prior art considered by the PTO  
9 during prosecution of the '761 patent are not  
10 relevant to this trial.

11 Therefore, this is not a matter on  
12 which the jury should be permitted to draw what  
13 might otherwise seems to be reasonable  
14 inferences that the examiner considered Swartz  
15 since she was also the examiner of Swartz.

16 But, however, I'm not going to  
17 permit the parties to get into the re-examine.  
18 We're not going to open up the door and get into  
19 how many patents Ms. Mizrahi may have examined  
20 or what else she was doing.

21 Instead there's going to be no  
22 more questioning that relates in any way to what  
23 the PTO considered or did not consider.

24 I'm denying the motion for a

1       mistrial because I think while there was  
2       prejudice to Facebook, I think it is curable in  
3       other ways short of the extraordinary remedy of  
4       a mistrial, and in particular through jury  
5       instructions and special interrogatories.

6                 Leader, of course, claims that  
7       it's prejudiced by Facebook's narrow questioning  
8       of Greenberg about whether Swartz is listed on  
9       the face of the '761 patent, but I absolutely  
10      reject Leader's position. Again, as I said,  
11      Facebook's questioning was entirely consistent  
12      with my prior rulings.

13                Leader did not object during the  
14      examination of -- well, even prior Leader, did  
15      not object to Facebook giving the jury binder to  
16      the jury which contained the Swartz patent.  
17      Leader did not object to Facebook displaying the  
18      Swartz patent for the jury.

19                Leader did not object to Facebook  
20      blowing up the portion of the -- I'm sorry, the  
21      Swartz patent that evidently shows the Swartz  
22      examiner's name.

23                Leader did not object to  
24      Facebook's questions, objections which I would

1 have overruled since the questions were  
2 consistent with my ruling, but nonetheless  
3 Leader did not object.

4 Leader did not seek permission to  
5 question Professor Greenberg in the way it did  
6 on cross. And Leader did not ask the Court to  
7 reconsider or modify its prior rulings.

8 So with all this, I will be  
9 granting the alternative relief sought by  
10 Facebook of a jury instruction. In fact, what I  
11 think might be fairly characterized as a  
12 somewhat hash jury instruction, but one that I  
13 think is fully warranted by what Leader did  
14 during the cross-examination of Professor  
15 Greenberg.

16 It will not, however, be in the  
17 specific language proposed by Facebook as that  
18 would I think improperly introduce ideas going  
19 to the re-exam and other matters going to the  
20 jury that simply don't have any place in the  
21 trial.

22 Here is what you will see as a  
23 portion of the final jury instructions. It will  
24 be added at 4.2 and you'll see it when we get

1 all the instructions to you later today.

2 And now I'm reading from the  
3 instruction. During Leader's cross-examination  
4 of Facebook's expert, Professor Greenberg,  
5 Leader's counsel made statements implying that  
6 the U.S. Patent Office examiner who worked on  
7 the '761 patent, Diane Mizrahi, was aware of and  
8 considered the Swartz patent. I instruct you  
9 not to draw such a connection.

10 Because of patent office  
11 procedures, it would not be reasonable for you  
12 to draw the inference that the examiner,  
13 Ms. Mizrahi, was aware of and considered the  
14 Swartz patent during prosecution of the '761  
15 patent.

16 With respect to Facebook's  
17 contentions that the '761 patent is invalid due  
18 to anticipation or obviousness due to prior art,  
19 the only relevant comparisons are between the  
20 claims of the '761 patent and the disclosures of  
21 the prior art references. What the PTO or the  
22 examiner of the '761 patent considered or did  
23 not consider is not relevant to your  
24 determination and should not be considered by

1 you.

2 You'll also see in the final  
3 instructions that at Section 1.3 I guess it is,  
4 there was an additional paragraph that was in  
5 dispute with respect to evidence defined, I'm  
6 going to include the extra paragraph that  
7 Facebook wanted that said essentially ignoring  
8 comments of counsel or things that I told you  
9 are stricken.

10 And there will also on the verdict  
11 form be special separate interrogatories with  
12 respect to each published prior art reference  
13 asking the jury whether each one anticipates the  
14 '761, so we'll know whether the Swartz patent  
15 had any impact on the jury's finding.

16 That's my ruling on the pending  
17 motion. A couple of procedural things. We're  
18 allowing the jury to order lunch in today. We  
19 thought that would be a nice thing to do for  
20 them. And what we'll do is whatever time we  
21 finish the evidence today, we'll call it a day  
22 and send the jury home and then we'll just start  
23 fresh in the morning with me reading  
24 instructions, and then with all the argument



1 that's left to do. And so that means we'll get  
2 the final jury instructions and the verdict form  
3 to you sometime later today depending on what  
4 time we finish today.

5 With that, let me ask Leader if  
6 there is anything we need to discuss before we  
7 bring the jury in.

8 MR. ANDRE: Thank you, Your Honor.

9 First of all, I would like to pose  
10 an objection to Your Honor's ruling, of course.

11 THE COURT: Okay.

12 MR. ANDRE: One easy matter. We  
13 had an exhibit earlier that's PTX 1058. We  
14 would like to move that into evidence. I  
15 believe it's without objection. It was noted in  
16 the examination of Mr. McKibben.

17 MR. RHOADES: No objection.

18 THE COURT: Okay. It's admitted.

19 MR. ANDRE: And there is other  
20 exhibits that were put in by the defendants in  
21 binders that we would like to have the Court  
22 staff remove after the jury goes home today.  
23 They were not admitted into evidence and were  
24 not referred to. Those are DTX 740, DTX 1051,

1 DTX 1095, DTX 1213, DTX 1317, and PTX 789.  
2 Those are in the jury binders. We would like to  
3 have those removed.

4 MR. RHOADES: I agree, Your Honor.

5 THE COURT: By agreement. Okay.  
6 That will be done when the jury is not watching.

7 MR. ANDRE: Those are the easy  
8 issues, Your Honor. A much more serious  
9 implication now that just this morning  
10 Facebook's counsel informed us that they wanted  
11 to switch out an exhibit that Dr. Greenberg has  
12 testified to. It's the iManage manual. We  
13 received this document under a confidentiality  
14 designation from a subpoena Autonomy.

15 We believe it's a confidential  
16 document. They said they have a copy of it  
17 without the confidentiality stamp and they want  
18 to substitute it out.

19 We have never been informed that  
20 this is a public document at all. In fact, up  
21 until probably a few minutes ago, we believe it  
22 was a confidential document. How this document  
23 came into the case was Facebook subpoenaed a  
24 Autonomy, Autonomy produced documents to them on

1 disks and when they were producing them to us,  
2 they had a letter saying they should be treated  
3 confidential under the protective order.

4 We saw the objections that  
5 Autonomy lodged saying it was confidential  
6 information, so we have been going under the  
7 impression this entire case it's a confidential  
8 document.

9 They produced a copy. According  
10 to counsel, we haven't seen it because we don't  
11 have the report here, in their expert's report  
12 they didn't have the confidential stamp on it.

13 THE COURT: Did not.

14 MR. ANDRE: Did not. But their  
15 expert report which only was done in prior art,  
16 did have a highly confidential label in the  
17 entire report. So it's our belief, as we sit  
18 here today and the testimony that was provided  
19 to the jury, that he's been testifying on a  
20 confidential document. And this is not a  
21 publicly available document. We cannot find it  
22 on the internet. We have not been able to get a  
23 copy of this document anywhere.

24 THE COURT: Just draw out the

1 logic for me. This goes to whether it's a basis  
2 for invalidating the patent whether it's  
3 publicly available or not.

4 MR. ANDRE: Prior art has to be  
5 publicly available. We don't think this is  
6 publicly available.

7 We have not been able to find it.  
8 We have never seen a publicly available copy.  
9 The only copy that was ever produced in this  
10 case was marked confidential pursuant to the  
11 Court's protective order.

12 They're going to substitute out --  
13 we'd like to examine the witness along these  
14 lines. We think it's appropriate because the  
15 witness -- the exhibit that's in his binder  
16 that's in front of the jury, his entire  
17 testimony does have the confidential stamp on  
18 every single page.

19 THE COURT: So you want to be able  
20 to -- put aside for a moment whether we're  
21 switching out the document or not, you want to  
22 explore with him and would have, but for events  
23 this morning, planned today to explore with him  
24 whether he knows if the document's publicly

1 available or not?

2 MR. ANDRE: Yeah. It was a  
3 document that was provided from counsel to  
4 him --

5 THE COURT: Right.

6 MR. ANDRE: -- marked confidential,  
7 at least the ones he's been testifying to. So  
8 we don't believe this is a proper piece of prior  
9 art, and I think this is a much more serious  
10 issue than the moving of the exhibits in.

11 I'm sorry to bring it to Your  
12 Honor first thing this morning. We didn't  
13 learn -- this entire case we have been under the  
14 impression that this is a confidential document.  
15 This is the first this morning that we have  
16 learned it was anything otherwise.

17 THE COURT: Let me hear what they  
18 have to say.

19 MS. KEEFE: I'm surprised to hear  
20 this, Your Honor. In fact, the iManage DeskSite  
21 Reference Manual was produced originally when  
22 Autonome first sent it under an abundance of  
23 caution. Go ahead and mark everything  
24 confidential.

1                   So we did. We then asked Autonomie  
2                   if this is a, you know, public document. They  
3                   said, Yes. And they sent us another copy that  
4                   was only Bates labeled AUT 0020001 through the  
5                   remainder. It's in the exhibit binder at 925E.

6                   It was attached to to Dr.  
7                   Greenberg's report with no confidentiality  
8                   designations whatsoever.

9                   It was produced to opposing  
10                  counsel with -- along with a copy of the  
11                  re-examination materials with no confidentiality  
12                  designation whatsoever.

13                  Publicly filed with the U.S. PTO.  
14                  It's been used in this case with no  
15                  confidentiality designations whatsoever.

16                  And I was surprised when the one  
17                  that went up on the screen was the old one that  
18                  had the confidentiality designation, because it  
19                  has never been used in this case. So I just  
20                  wanted to swap it out.

21                  THE COURT: And that's what  
22                  happened this morning was he --

23                  MS. KEEFE: I simply asked Mr.  
24                  Andre, given the fact that the actual copy that

1 was used in Mr. Greenberg's report and that went  
2 to the Patent Office did not have the  
3 designation, could I please replace it since  
4 this is clearly a public document. He then  
5 tells me that he wants to do something else with  
6 it.

7 That's where we are. And it's in  
8 the binders at 925E with no designation on it.

9 And this is the exhibit. And I  
10 was just going to change it. Ask Your Honor to  
11 change it.

12 THE COURT: So the jury right now  
13 has a binder that includes two versions of  
14 iManage?

15 MS. KEEFE: Right now it only  
16 includes the old version, the very first  
17 version.

18 THE COURT: The first one is the  
19 one that's confidential?

20 MS. KEEFE: 925E, the number that  
21 is in the binders right now is 1010. 1010 has a  
22 confidentiality designation. It's an artifact.  
23 It's old.

24 The one that was used in the case

1 in the expert report that was produced by  
2 Autonyme with no designation and it was given to  
3 the Patent Office is 925E.

4 THE COURT: And your proposal is  
5 to just switch them out without the jury ever  
6 hearing anything about it and also to preclude  
7 Mr. Andre from questioning the professor if he  
8 knows if the document is publicly available.

9 MS. KEEFE: That was my proposal,  
10 but you know because Mr. Greenberg -- obviously,  
11 he knows that the one that he has had no  
12 confidentiality designation on it. But I am not  
13 sure he has personal information, you know,  
14 beyond that.

15 But if they want to question him,  
16 I'll simply ask him if the one that is attached  
17 to his report was labeled confidential. He'll  
18 say no.

19 Then I'll offer to move this in  
20 and that will be the public document. It seems  
21 like much adeu about nothing.

22 THE COURT: Mr. Andre.

23 MR. ANDRE: Your Honor, it's not  
24 much adeu about nothing. When Facebook was



1 subpoenaed, Autonome lodged objections to the  
2 subpoena. On category two, request number two,  
3 he asked for a copy of each user manual or user  
4 guides.

5 Autonome rejected -- responded and  
6 objected to it stating that the request for the  
7 production of confidential commercial and  
8 information are trade secrets not within the  
9 permissible scope of discovery. So they put an  
10 objection in as being confidential information.

11 When we received the actual  
12 production from Facebook after they received it  
13 from Autonome, the correspondence to Mr. Hannah  
14 from Ms. Keefe stated also included documents  
15 containing Bates labels AUT 0001815 through AUT  
16 0053887, which was received from Autonome, Inc.  
17 In response to Facebook's subpoena, please be  
18 advised that per nonparty Autonome's request,  
19 the documents Bates numbered AUT 0001815 through  
20 AUT 0053887 are to be treated as confidential  
21 under the stipulated protective order.

22 Your Honor -- could you put up  
23 1010? DTX 1010. DTX, not PTX.

24 If you noted the confidential

1 stamp here is a little off line with the Bates  
2 number. I don't know if this designation was  
3 added by Facebook counsel or Autonome. I don't  
4 know.

5 Autonome may have produced them  
6 with just the Bates numbers and the confidential  
7 label that was added pursuant to their  
8 instructions under the protective order. I  
9 don't know.

10 I don't know how that confidential  
11 stamp got there, but we have always treated this  
12 document pursuant to the correspondence we  
13 received as confidential.

14 THE COURT: But confidential for  
15 purposes of litigation is different from -- I  
16 mean, so it may be overly designated under the  
17 Court's protective order, but the factual matter  
18 that is important to the jury is whether or not  
19 it was ever publicly available at the relevant  
20 time. Right?

21 MR. ANDRE: Right.

22 THE COURT: And you don't know  
23 whether it was or it wasn't, I take it.

24 MR. ANDRE: Only thing we know is

1 we can't find it. We can't get it.

2 When I assume that they gave it to  
3 the people who bought their software, but I  
4 don't know if there was a confidentiality  
5 provision provided for that. The fact of the  
6 matter is Facebook put this in evidence. They  
7 put it in the jury binders. They put this  
8 exhibit, in.

9 And that's a defense we have to  
10 this exhibit. This is not a confidential  
11 document.

12 THE COURT: Okay. Well, certainly  
13 trickier than the ones you started with.

14 I think in fairness, you know,  
15 weighing the circumstances on both sides, I  
16 think that the jury -- I'm not going to take  
17 away your ability to question Professor  
18 Greenberg. Elicit whatever you can from him on  
19 whether the document was confidential or not  
20 confidential in terms of was it publicly  
21 available or not.

22 But I'm also not going to do, what  
23 would amount, I think, to granting summary  
24 judgment to you on the weight, if any, of the

1 iManage by, you know, depriving Facebook of a  
2 chance to on redirect put before the jury a  
3 version of the document that apparently was  
4 publicly available.

5 And the jury will just have to  
6 weigh the competing arguments in evidence they  
7 get as to whether it was available or not. And  
8 we have a special interrogatory that will tell  
9 us whether -- specifically whether the jury  
10 thought the iManage software anticipated, not  
11 the software the manual anticipated '761. So  
12 that's my ruling.

13 MR. ANDRE: Your Honor, with  
14 respect to that, there is not one without a  
15 confidential stamp not on the exhibit list. The  
16 exhibit Ms. Keefe told you about is actually the  
17 reexamination documents, it's the reexamination  
18 request and all that that's attached to it. So  
19 there is not a copy of just this manual by  
20 itself on the current exhibit list.

21 THE COURT: Ms. Keefe.

22 MS. KEEFE: That's not true, Your  
23 Honor. Behind Tab 925E is a copy simply of the  
24 reference itself.

1 THE COURT: And there is no  
2 reference to re-examine or anything?

3 MS. KEEFE: None.

4 THE COURT: It's an identical  
5 document to the manual sent without the  
6 confidential stamp on it?

7 MS. KEEFE: Exactly.

8 THE COURT: I'm accepting  
9 counsel's representation to that fact.

10 MR. ANDRE: Your Honor, to the  
11 extent I questioned Dr. Greenberg, I would like  
12 to be able to use the Autonomy documents and the  
13 correspondence to get his understanding of this  
14 document whether it's confidential or not, if  
15 that's acceptable. I don't have to have a lot  
16 of objections.

17 THE COURT: Right. I don't want  
18 to have a lot of objections, either. Ms. Keefe,  
19 come forward.

20 MS. KEEFE: Your Honor, I would  
21 object. Those were litigation documents between  
22 attorneys talking about a protective order. It  
23 would be hearsay. And it's nothing that  
24 Mr. Greenberg has ever looked at or considered.

1 He was handed a copy of the  
2 document and asked to compare it. That's what  
3 is in his report. The implication that he  
4 understands what was happening with two lawyers  
5 talking about a protective order as Your Honor  
6 noted that may have been overly cautious based  
7 on litigation is prejudicial and hearsay.

8 THE COURT: All right. Again, I'm  
9 going to overrule the blanket objection. I'm  
10 going to allow Mr. Andre a little bit of leeway.

11 We don't know whether Professor  
12 Greenberg is going to have anything at all to  
13 say about whether this document was confidential  
14 or not confidential. And feel free to object  
15 question by question and we'll just have to see  
16 how it comes out.

17 MS. KEEFE: Thank you, Your Honor.

18 THE COURT: Anything else,  
19 Mr. Andre?

20 MR. ANDRE: No, Your Honor.

21 THE COURT: No.

22 And anything from Facebook?

23 MR. RHOADES: No, Your Honor.

24 THE COURT: Okay. All right.

1 Let's bring in the jury.

2 THE CLERK: All rise.

3 (Jury entering the courtroom at  
4 9:28 a.m.)

5 THE CLERK: Please be seated.

6 THE COURT: Good morning, ladies  
7 and gentlemen of the jury. Welcome back. I  
8 hope you had a nice weekend. I hope you were  
9 able to get into the building okay. I saw quite  
10 a crowd on the other side of the building. I  
11 was hoping you were able to all avoid that.

12 We're going to pick up with the  
13 testimony of Professor Greenberg.

14 Professor, please come back to the  
15 stand.

16 Good morning, Professor.

17 THE WITNESS: Good morning.

18 MR. ANDRE: May it please the  
19 Court, may I begin?

20 THE COURT: I'm sorry, you may  
21 begin, yes.

22 BY MR. ANDRE:

23 Q. Good morning, Professor Greenberg.

24 A. Good morning.

1 Q. Just so we can kind of catch up to  
2 where we left off on Friday, let's go over a few  
3 things and make sure we're all on the same page.  
4 Okay?

5 A. Sure.

6 Q. You were talking about prior art  
7 in this case; correct?

8 A. That's correct.

9 Q. And in something -- in order for  
10 something to be prior art, it has to be  
11 published before a certain critical date; is  
12 that correct?

13 A. That's correct.

14 Q. And the critical date you're  
15 referring to in this case is the December 10th,  
16 2003 date of when the patent was filed; is that  
17 correct?

18 A. I would have to check the dates,  
19 but it's -- my understanding is the year before  
20 the filing of the patent and a year before the  
21 filing of the provisional are two dates that are  
22 often considered.

23 Q. Okay. Now, you testified to three  
24 separate documents as a basis for your opinion



1 regarding anticipation; correct?

2 A. Three separate documents, yes, and  
3 plus obviousness.

4 Q. That was for obviousness?

5 A. That's correct.

6 Q. And one of those documents was the  
7 DTX 1010; correct?

8 A. Sorry, that's --

9 Q. I'm sorry, that's the iManage  
10 manual; correct?

11 A. Yes, that's correct.

12 Q. Now, could you put DTX 1010 on the  
13 screen. Thank you.

14 Now, you testified that you  
15 received these documents from Facebook's  
16 counsel; correct?

17 A. That's correct.

18 Q. And the numbers -- I lost my laser  
19 pointer, sorry.

20 The numbers are down here on the  
21 bottom of the document. Are you familiar with  
22 what those numbers are called?

23 A. Sorry.

24 Q. Do you know what these numbers are

1 called at the bottom?

2 A. That is the Bates number.

3 Q. Bates number, right. You have  
4 done this before, you have been an expert in a  
5 few cases before; right?

6 A. Just a few cases, yes.

7 Q. And when company's produce  
8 documents to other companies in litigation, they  
9 put Bates numbers on documents; right?

10 A. I'm actually not -- I don't know  
11 who actually puts them on, I just know that they  
12 are numbered.

13 Q. Okay. And are you aware that a  
14 company called Autonomy is the company that owns  
15 the iManage product at this point?

16 A. No, I'm not aware of that.

17 Q. Now, you notice that the iManage  
18 manual is marked confidential. Do you see that?

19 A. I see that on that page, yes.

20 Q. And you understand what it means  
21 when something is marked confidential in a  
22 litigation; correct?

23 A. I'm just looking at my copy here.

24 Q. I understand. I understand your

1 company is not marked confidential.

2 A. No, it's not marked confidential,  
3 so the copy that I have that was given to me was  
4 not marked confidential.

5 Q. I'm talking about the one you  
6 actually testified to on Friday.

7 A. Sorry. I'm not sure I understand.  
8 The copy I have is the one that I testified to.

9 Q. Well, Friday, this was the exhibit  
10 that was shown to the jury; correct? DTX 1010.  
11 This is the one that Ms. Keefe kept referring  
12 you to?

13 A. Well, if that -- I can't recall  
14 what was put on the display. If that particular  
15 version with that confidential designation on  
16 the bottom was put on there, that's one thing,  
17 but I'm of course talking -- all my comments in  
18 my expert report are on the exhibit that I  
19 actually have that I included with any report.

20 Q. And that was given to you by  
21 counsel; correct?

22 A. Yes.

23 Q. And they also produced this  
24 document for the jury as confidential; correct?

1 A. Yes.

2 MS. KEEFE: Objection, Your Honor.

3 402.

4 THE COURT: I will overrule the  
5 objection. I don't know, we'll see if the  
6 professor has an answer.

7 A. I just can't recall what was  
8 presented on Friday. If you're representing to  
9 me that this was the one presented to the jury  
10 on Friday, I'll accept that, but I really didn't  
11 look at the bottom of the page there. I was  
12 looking at the top.

13 Q. And if the iManage manual is  
14 confidential, if it is, in fact, a confidential  
15 document, would your opinion change about its  
16 relevance in this case?

17 A. Well, I don't really know what  
18 iManage itself means by confidential, so I can't  
19 really tell you.

20 Q. You signed the undertaking in this  
21 case for the protective order; correct?

22 A. Correct.

23 Q. And you understand that  
24 confidential documents in this case are not

1 public documents; correct?

2 A. Fair enough.

3 Q. You understand that you read the  
4 protective order, you signed it; right?

5 A. What I'm not certain if it was  
6 designated legal confidential by counsel. This  
7 kind of goes outside the scope of what I really  
8 know in terms of how --

9 Q. Fair enough. What I'm asking you,  
10 if this is a nonpublic document, if it was not  
11 available to the public, would it change your  
12 opinion with regard to the iManage manual?

13 A. It depends on how iManage itself  
14 had disclosed it, so -- and I have no knowledge  
15 of that, so I can only speak to what's in the  
16 actual document itself.

17 Q. Dr. Greenberg, I'm not trying to  
18 trick you here.

19 A. I know.

20 Q. It's a real simple question.

21 A. I know.

22 Q. If this is a nonpublic document,  
23 if this confidential document is marked right  
24 here, if this is not available to the public,

1 would it change your opinion regarding the  
2 iManage manual as it relates to the '761 patent?

3 A. If it's confidential as you say it  
4 is, which I don't know, I'm not trying to argue  
5 with you, I'm just saying I don't know, and if  
6 iManage hadn't actually disclosed it to anyone,  
7 the only -- the question in my mind is when  
8 iManage had made it public.

9 It wouldn't change my opinion, it  
10 would just change maybe when it was made public,  
11 so I would need more information to know about  
12 the date.

13 Q. I think we're cross talking here.

14 A. Okay.

15 Q. I'm asking a very specific  
16 question, not if it's public, I'm asking if it  
17 is confidential, if this is a confidential  
18 document not available to the public, ever?

19 A. Ever.

20 Q. Would it change your opinion with  
21 regard to how the iManage manual relates to the  
22 '761 patent?

23 A. Well, it wouldn't change my  
24 opinion on how it relates to the '761. It may

1 change my opinion about the date.

2 Q. What do you mean the date?

3 A. Well, because I don't know if and  
4 when it was made public.

5 Q. You keep changing my question,  
6 Doctor. I don't want to quarrel with you, I  
7 just want to make it real simple.

8 A. Just to clarify, do you mean would  
9 it change my opinion about how the iManage  
10 manual would relate to the '761 patent?

11 Q. You gave an opinion that the  
12 iManage manual anticipates the '761 patent  
13 because you believe it was a public document  
14 published before the patent; correct?

15 A. Uh-huh.

16 Q. If it's a confidential document,  
17 it was never published, never made available to  
18 the public, would you still have the same  
19 opinion that it anticipates the '761 patent?

20 A. Well, insofar as the iManage  
21 reference manual actually describes a system  
22 that is working, I relied on this particular  
23 document to form that opinion, but it's my  
24 understanding that a system also existed at the

1 time.

2 Q. Doctor, we're talking about the  
3 document. That's all you relied on in this  
4 Court, this document. You're not going to tell  
5 me, are you, whether you think this is prior art  
6 if it's confidential, are you?

7 A. If it is truly confidential, if it  
8 wasn't disclosed at all, then I suppose then it  
9 wouldn't anticipate. But again, it depends  
10 totally on the date and when -- there are just  
11 facts I just don't know about at this point.

12 Q. As you sit here right now, like  
13 you said, you don't know if Autonomy, the  
14 company who provided this in this litigation, if  
15 it designated this as confidential, you don't  
16 know if they made this public or not, you just  
17 don't know?

18 MS. KEEFE: Objection.

19 THE COURT: I'll overrule it.  
20 We'll get an answer to this and then we'll move.

21 THE WITNESS: I just don't know.  
22 This is not information that I have.

23 THE COURT: Let's move on,  
24 Mr. Andre.



1 MR. ANDRE: Thank you, Your Honor.  
2 Your Honor, it's not about the  
3 data, I just want to do ask one more question  
4 about the document itself.

5 BY MR. ANDRE:

6 Q. Now, you testified about this  
7 document that someone with ordinary skill who  
8 has a bachelor's degree --

9 A. And two years plus.

10 Q. -- and two years of experience,  
11 they could take this document and build the  
12 system described in the document; right?

13 A. They could take this document and  
14 use it as a specification to building certainly  
15 the parts of the system that relate to the '761  
16 patent.

17 Q. You could reverse engineer from  
18 the document?

19 A. I would say so.

20 Q. That would be a good reason to  
21 keep it confidential, wouldn't it, if you're  
22 disclosing that type of proprietary technology?

23 A. I don't think so. It's a  
24 reference manual. It's a user manual. You're

1 asking me things I don't know about. But it's a  
2 reference manual. I use this to publicize the  
3 document.

4 Q. Fair enough. Let's talk about the  
5 manual. Now, you just made reference to the  
6 fact that there is a piece of software that this  
7 manual refers to. When you formed your opinion,  
8 you had not used that software before; correct?

9 A. No, I had not.

10 Q. And if you look at the actual  
11 manual itself, there is nowhere in this manual  
12 does the word metadata appear, does it?

13 A. There are ideas in there. The  
14 word metadata does not appear, but there are  
15 ideas that relate to metadata.

16 Q. And the word context does not  
17 appear in manual?

18 A. The actual word does not appear.

19 Q. Okay. And if you turn to page 12  
20 of this document, and Doctor, would you please  
21 refer to page 12 of the document in the  
22 three-ring binder up there, DTX 1010, I want to  
23 make sure we're using the same document.

24 A. Yes, I have it.

1 Q. I believe you're looking at  
2 something else. I believe you're looking at a  
3 different version of this document.

4 A. Okay. I'll look up there.

5 Q. There is a three-ring binder up  
6 there that has the document in it. I would like  
7 you to actually use the exhibit we're using at  
8 trial here.

9 A. Sorry. The number was DT?

10 Q. DTX 1010.

11 A. Thank you.

12 And you're talking about the Bates  
13 number or the page number?

14 Q. Page number. Bottom right-hand  
15 corner.

16 A. Sorry, lots of paper. Okay. I  
17 see it.

18 Q. And in the middle of the page it  
19 ask the question what is a DMS. Do you see  
20 that?

21 A. Yes, I do.

22 Q. Do you have an understanding of  
23 what a DMS is?

24 A. Yes, I do.

1 Q. What is DMS?

2 A. It says here software and/or  
3 hardware that managed the repositories of  
4 millions of documents or hundreds or thousands  
5 of users.

6 Q. It's a document management system?

7 A. That's its main function, but it  
8 has a lot of other functions also packed in with  
9 it as well.

10 Q. If you go to the next page, page  
11 13, it actually talks about what is iManage  
12 DeskSite. Do you see that?

13 A. I see that.

14 Q. And so it searches millions of  
15 documents, it searches for documents based on  
16 document content, it shares documents, it  
17 searches for open documents, check in and check  
18 out documents, create new versions of documents  
19 and track document usage and history. Do you  
20 see that?

21 A. I do.

22 Q. This is what the iManage system is  
23 about?

24 A. It's describes the functions, yes.

1 Q. It's about tracking documents and  
2 managing documents; correct?

3 A. Well, it's tracking document  
4 usage, right, by people.

5 Q. It doesn't track people, it tracks  
6 documents, that's what the document says;  
7 correct?

8 A. It says it's tracking document  
9 usage and it's showing in the history system,  
10 it's certainly tracking people. This is just a  
11 high level description of what it does. I have  
12 shown previous in the history system that it  
13 does track people. It is tracking people using  
14 those documents.

15 Q. That's with the document history  
16 system; is that correct?

17 A. That's correct.

18 Q. That's on page 83 of the document;  
19 correct?

20 A. I'll have to check.

21 Yes, it is.

22 Q. So this is a document history tab  
23 and you have document versions, document  
24 history, related documents, document profile,

1 this is the manage travel policy. This is the  
2 type of document management system that you see  
3 in most offices today, right, this type of a  
4 document management system, if you go to the  
5 office you have this type of system?

6 A. I'm only speaking towards this  
7 one, but this is a feature of this particular  
8 system. I don't know if every document  
9 management system has a management history in  
10 it. This is one thing that sets iManage apart.

11 Q. And you can take that down. With  
12 the iManage system, do you need to be connected  
13 to the Internet to make this system work?

14 A. It has a --

15 Q. I'm just asking a real simple  
16 question.

17 A. I'm sorry.

18 Q. Okay. Do you need to be connected  
19 to the internet to make this system work?

20 A. When you say the "system", what  
21 part of the system are you referring to?

22 Q. The document management system.

23 A. Well, it's a big system. It has a  
24 portable mode that I mentioned previously.

1 Q. I'm saying is it possible to  
2 operate the iManage system without being  
3 connected to the internet?

4 A. There is -- that's not a yes or no  
5 question, because there's a part of the system  
6 that lets you operate it in disconnect mode.  
7 And then as soon as you connect it, it  
8 synchronizes with it.

9 Q. So it's possible. The internet is  
10 something you could be on a closed system,  
11 closed network now, not on the internet and this  
12 system works perfectly fine; correct?

13 A. Well, that kind of  
14 mischaracterizes it, because what it is, it's a  
15 document of repository, which is what iManage  
16 holds. And when you go off on the road, you --  
17 and I think I showed a quote of that earlier, it  
18 will -- you can kind of take certain versions  
19 and you can work on it. And then you can --when  
20 you reconnect, it will come back.

21 So it's not meant to just operate  
22 entirely by itself. It's meant to kind of delay  
23 what happens.

24 So like you work off line a bit,

1 so then you can reconnect.

2 Q. It's not an internet website, is  
3 it?

4 A. Beg your pardon?

5 Q. It's not an internet website?

6 A. It has internet capability. I'm  
7 not sure what you mean.

8 Q. You don't know what website is?

9 A. I do. When you say it, what do  
10 you mean?

11 Q. iManage Desktop system.

12 A. Okay.

13 Q. It's not an internet website?

14 A. It has workings that allows you to  
15 access the internet within it. Like you're kind  
16 of saying a blanket. I can't say it's yes or no  
17 because part of it does let you operate with the  
18 internet.

19 Q. I'm not asking you that. I'm  
20 asking you a very simple question.

21 Is that an internet website?

22 A. So are you -- just to clarify,  
23 you're asking me does one normally access  
24 iManage via the internet?



1 Q. That's not what I'm asking,  
2 Doctor.

3 A. Okay. I just needed to clarify.

4 Q. Do you know what an internet  
5 website is?

6 A. Of course.

7 Q. Is the iManage system an internet  
8 website?

9 A. I believe that the main way you  
10 interact with iManage system is throughout --  
11 no, is not via the web.

12 Q. There you go.

13 A. Yes.

14 Q. Let's go to Figure 2.2 on Page 24.

15 A. Page 24?

16 Q. Yeah.

17 A. Okay.

18 Q. You see how the tree frame is set  
19 up here?

20 A. I do.

21 Q. Is this how iManage manages its  
22 documents in this type of file folder structure?

23 A. Well, certainly. iManage does  
24 have a file folder structure that it can use.

1 Yes.

2 Q. Okay. Can you take that down.

3 Now, you testified on Friday that  
4 the IManage DeskSite is a web-based system;  
5 right?

6 A. It has a feature of a web-based  
7 system.

8 Q. And it says -- I believe you  
9 testified it could send URL to a document. And,  
10 therefore, iManage must be web-based; correct?

11 A. I have to go back and just check  
12 my reference because I think I had several up  
13 there.

14 Q. Do you recall testifying to that?

15 A. Yes.

16 Q. Okay. Now, in order to send a  
17 document URL link, your system must also include  
18 the iManage DeskSite web component server?

19 A. I believe that's what the  
20 quotation said. Yes.

21 Q. And the web component server is  
22 not part of the desk site; is that right? It's  
23 a separate product?

24 A. Well, this is all I'm talking here

1 about what IManage Reference Manual discloses.  
2 And it discloses that. So it's part -- all part  
3 of the same iManage system.

4 Q. So if you go to Page 75 of the  
5 document --

6 A. Okay.

7 Q. So actually on the previous page  
8 before this is the site you're referencing where  
9 you can send an URL link. And that was your  
10 basis for a web-based system; correct?

11 A. For web-based capabilities, yes.

12 Q. And if you go to the next page,  
13 the top of the page it says, In order to send a  
14 document URL link, your system must include an  
15 iManage work site web component server; correct?

16 A. That's correct.

17 Q. And that web component server is  
18 not part of the desk set itself; right?

19 A. Well, it's part of iManage.

20 Q. Well the entire -- there's 50  
21 products in iManage, but you are relying on the  
22 DeskSite?

23 A. I'm referring to the disclosure in  
24 the manual. And this is part of all -- the

1 software in the iManage disclosure is one of the  
2 aspects of the software.

3 So I am --

4 Q. So that's a different product,  
5 though; right?

6 A. But it's part of iManage.

7 Q. So, basically your opinion is if  
8 the manual is made by iManage, you get the  
9 entire iManage portfolio of products?

10 A. Well, what my opinion is is that  
11 there's certain disclosures in this manual and  
12 it discloses lots of things. And these do map  
13 onto the '761 disclosures.

14 Q. Now, you just testified also that  
15 you believe this manual would enable someone to  
16 go out and build the product that's described in  
17 the manual; correct?

18 A. I believe so, yes.

19 Q. And is it your understanding that  
20 user manuals normally allow people to go out and  
21 reverse engineer and just build the product  
22 that's in the user manual?

23 A. Well, in fact, as a computer  
24 scientist often we do specifications to

1 engineers and one of the ways we specify things  
2 is by giving a detailed user interface, because  
3 the interface itself is often one of the most  
4 fundamentally important part of the system.

5 It's how do people use it? How do  
6 they see it?

7 How do they present themselves?

8 In fact, I train my students with that. The  
9 function should be the user interface.

10 Q. Doctor, when you gave your opinion  
11 in this case, when you gave your written  
12 opinion, you didn't have an opinion whether or  
13 not this was an enabling disclosure, did you?

14 A. I can't recall at that point. I'd  
15 have to go back and check.

16 Q. You didn't provide it in the  
17 written opinion, though, did you?

18 A. I just can't recall. My expert  
19 report is several hundred pages long, so I just  
20 can't recall. I can go back and check if you'd  
21 like.

22 Q. That's okay. If you don't recall,  
23 that's fair enough.

24 A. Okay.

1 Q. Now, the next reference that you  
2 referred to was the Swartz reference; correct?

3 A. That's correct.

4 Q. Actually before we go to Swartz, I  
5 believe we had a conversation Friday about PTX  
6 1105. I just want to clarify a point.

7 We talked about how you had broke  
8 the claim out into these different subsections;  
9 correct?

10 A. That's correct.

11 Q. And you stated that you broke up  
12 this clause here, the wherein clause because of  
13 the comma; correct?

14 A. Well, you know what -- yes, I did.

15 Q. Okay. Now, there's a comma there  
16 in the first paragraph on the context component;  
17 correct?

18 A. That's correct.

19 Q. And there's like another comma  
20 right here, second comma in the context  
21 component as well?

22 A. That's correct.

23 Q. You didn't break those out, did  
24 you?

1 A. Well, actually if you could look  
2 at my claim chart, I did break --

3 Q. Doctor, the claim charts are not  
4 into evidence. I don't want to talk to this.

5 You didn't break those into  
6 separate elements, did you?

7 A. Well, I -- this was presented to  
8 me during the deposition because you're talking  
9 about my claim charts. And my claim charts do  
10 break up all the elements in much the same way  
11 that they're talking about right now.

12 Q. You can take down that.

13 All right. Dr. Schwartz -- I  
14 mean, Dr. Greenberg, let's go back to Swartz.

15 A. Okay.

16 Q. Now, Swartz is a middleware  
17 product; correct?

18 A. Swartz is a product that's  
19 primarily middleware, but also interacts with --  
20 through the applications with an API.

21 Q. And the middleware sits between  
22 two applications; correct?

23 A. Middleware generally is described  
24 as a software that interacts with other

1 software. It does sit between things. Yes.

2 Q. And I believe you showed Figure 2A  
3 in your demonstrative slide. Do you have his  
4 demonstrative?

5 This figure here.

6 A. That's correct.

7 Q. Now, this is -- the DataDocket is  
8 actually Swartz; correct?

9 A. It -- well, Swartz is interacting  
10 with the other -- with the applications.

11 Q. And these are third-party  
12 applications; right?

13 A. In -- yes, but there is an API  
14 that DataDocket uses to communicate with those.

15 Q. I understand. But these are --  
16 this could be, for example, Microsoft Word?

17 A. Well, they're much -- Swartz looks  
18 at much broader things, but it's a system.

19 Q. Yeah.

20 A. It's a system.

21 Q. It's third parties?

22 A. Yes.

23 Q. Now, you stated the tracking  
24 component would reside within Swartz; is that



1 correct?

2 A. The tracking component resides in  
3 the DataDocket Software, which has an API that  
4 communicates through all these systems. That's  
5 actually also indicated in Swartz.

6 Q. And where is the context component  
7 in Swartz, did you say?

8 A. The context component is some of  
9 the software that resides on the DataDocket  
10 software.

11 Q. So --

12 A. Again, that interacts with an API.  
13 Swartz specifically discloses an API that talks  
14 with the systems.

15 Q. So, in your opinion, these  
16 third-party systems somehow interact and perform  
17 the functions of the '761?

18 A. Yes, it's not somehow. It does.  
19 It's -- Swartz, it actually describes how it has  
20 an API that talks to these third-party systems.

21 This is a standard on the client  
22 server type of architecture, so...

23 Q. And this document, this system,  
24 the Swartz system, this doesn't rely on the

1 internet, either, does it?

2 A. Let me try to recall. Can I just  
3 do a quick check to my report?

4 Q. If you need to.

5 A. Okay. Thank you.

6 Swartz actually has web-based  
7 capabilities and I believe I showed that on --

8 Q. I understand it's web based, but I  
9 think we're cross talking again.

10 A. Okay.

11 Q. You don't need to be on the  
12 internet to have Swartz working; correct?

13 A. Certain parts of Swartz, you don't  
14 have to be on the internet. I think that's fair  
15 to say.

16 But other parts do allow you to be  
17 on the internet. It discloses what is  
18 interacting.

19 Q. I understand. I understand.

20 Now, if you go to Figure 11 of the  
21 document, once again, Swartz organizes the data  
22 in these tree structures and files them in  
23 folders; correct?

24 A. On this figure, it does.

1 Q. Okay. And if you go to -- you  
2 mentioned the indexing of Claim 21 and Claim 11.  
3 I believe it was in Swartz; correct?

4 And you used Column 3, and you  
5 cited Line 6 to 69.

6 Let's go right up here.

7 A. I see that. Yes.

8 Q. This was the part you cited  
9 towards -- for the indexing portion of Swartz  
10 for the claims; right?

11 A. That's correct.

12 Q. Okay. And the indexing in this  
13 particular instance, is not really talking about  
14 Swartz at all, is it?

15 A. Well, it's part of the background  
16 to Swartz. It talks about all the capabilities  
17 that a system like this should have.

18 Q. And actually if you go back to the  
19 previous column in Column 2, it's actually  
20 talking about another product right down here;  
21 correct? It's a continuation?

22 A. Well, in this case.

23 Q. It's FileNet's Foundation. This  
24 was a different system that we're talking about

1 index; right, FileNet's Foundation?

2 A. Yes.

3 Q. Not the Swartz system itself;  
4 right?

5 A. Correct. The defining is defining  
6 the context of this. But indexing is a standard  
7 term known to those in the art.

8 Q. But what I am saying, what you  
9 relied upon in your opinion is talking about the  
10 FileNet's paper, not the Swartz reference, not  
11 the Swartz disclosure or --

12 THE COURT: Ms. Keefe.

13 MS. KEEFE: I just want to insert  
14 an objection. Please let him answer the  
15 question instead of talking over him so many  
16 times.

17 THE COURT: Sustained. But let's  
18 let him answer this question if he knows what  
19 the question is.

20 THE WITNESS: Okay. So, yes, it  
21 was introducing the context of this, but it's  
22 talking about indexing in a way that's well  
23 known to those of ordinary skill in the art.

24 It's talking about database. This

1 is really standard stuff that any second year  
2 student would know. It was nothing surprising  
3 here.

4 Q. And that's kind of your take on  
5 the entire patent. There's nothing surprising  
6 about this patent at all, the '761 patent;  
7 right?

8 A. Oh, I didn't say that. You know,  
9 there is things in the '761 that would be  
10 surprising if it was in fact new.

11 Q. All right. Let's go to Hubert  
12 real quick.

13 Go to DTX 604.

14 A. Okay.

15 Q. Dr. Greenberg, you're testifying  
16 that something called a meta-document is the  
17 same thing as the '761 patented technology;  
18 correct?

19 A. What I'm saying -- what I said was  
20 that the ideas disclosed in this patent  
21 discloses the ideas in the '761 patent.

22 Q. And if you go to the figure in  
23 this -- I'm sorry. Go back to the previous.  
24 It's Figure 2.

1 Page 9 of the document. So this  
2 is the meta-document right here; correct?

3 A. It's that inter-component of a  
4 source or environment.

5 Q. And so this document travels from  
6 source to source to source; correct?

7 A. The meta-document travels from  
8 source to source, which contains a document plus  
9 metadata plus processing information, which is  
10 another type of metadata.

11 Q. And in your opinion, as you sit  
12 here today, you believe that that's somehow  
13 tracking users on a system? That's your  
14 opinion; correct?

15 A. Yes, it is.

16 Q. And the storage component of this  
17 system is where?

18 A. Well, there's -- there's a few  
19 storage components. There's the storage  
20 component on the meta-document itself and  
21 there's -- because meta-document is stored and  
22 there was a section in Hubert that talks about  
23 that.

24 And as well as part of this

1 pollination that I mentioned.

2 Q. I understand. I don't mean to  
3 interrupt you. If you just give me where it is  
4 in simple terms.

5 THE COURT: You did interrupt him.  
6 Let's let him answer the question.

7 THE WITNESS: So what -- a  
8 meta-document stores the information. So it's  
9 stored on the particular source that it happens  
10 to reside on.

11 There's also another storage  
12 that's part of this pollination that happens.  
13 So as the meta-document travels around, it  
14 actually deposits some of the knowledge in  
15 those.

16 So the storage can be all  
17 throughout the system only if the meta-document,  
18 it arrives there.

19 Q. And it's your opinion that in a  
20 meta-document is the same type of system in the  
21 '761 patent?

22 A. Well, as I mentioned, my opinion  
23 is that there's concepts disclosed by Hubert  
24 that disclose the same concepts in the '761

1 patent. You know, there's parts of Hubert that  
2 are different. But the ideas there are  
3 disclosed.

4 Q. The ideas there are disclosed.

5 You also mentioned -- you can take  
6 that down -- that you believe the patent is  
7 obvious; correct?

8 A. That is correct.

9 Q. And you said basically in these  
10 references to be combined in any way to cover  
11 whatever elements to make it obvious; correct?

12 A. That's correct.

13 Q. You didn't go through and actually  
14 say this part of this reference and that part of  
15 that reference would make it obvious; correct?

16 A. No, I did not. Although here we  
17 are only talking about those three references.  
18 We're not talking about Ausems.

19 With Ausems, I did say where it  
20 would be combined.

21 Q. You also gave an opinion, Dr.  
22 Greenberg, that the provisional patent did not  
23 disclose the '761; is that correct?

24 A. That's correct.



1 Q. So --

2 A. Sorry. That it did not disclose  
3 certain elements of the '761.

4 Q. So your opinion is that a document  
5 management system, a middleware product or  
6 meta-document does disclose everything the  
7 actual source code that the inventors used to  
8 make their product and they put into the  
9 provisional did not disclose all the elements;  
10 correct?

11 A. Well, there's several questions  
12 there. Should I take them -- I'll try.

13 Q. Well, let me just give you a  
14 conclusion. It's your opinion that the codes in  
15 the back of the provisional application did not  
16 disclose the invention of the '761 patent;  
17 correct?

18 A. No. My opinion was that it did  
19 not disclose the elements of the asserted  
20 claims. There are parts of that disclosure that  
21 talk about other parts of the patent, the '761  
22 patent.

23 In fact, in other claims that  
24 aren't to my understanding being asserted in

1 this case, that are there, but not in the  
2 asserted claims. That's what I'm saying. It's  
3 quite a different thing.

4 Q. Right. And you stated that in  
5 your presentation that there was no mention of  
6 context data in the provisional application;  
7 correct?

8 A. There's no mention of context  
9 information. There is no mention of a context  
10 data itself in terms of that phrase.

11 Q. You're drawing a distinction  
12 between context information and context data?

13 A. No, the main thing I'm saying is  
14 that there's no context component and there's no  
15 tracking component. I think when I was showing  
16 those words, I actually said, Here's the words  
17 that don't actually appear, but the main  
18 argument throughout was that there's no context  
19 component. There's no tracking component in the  
20 way that's used in the asserted elements.

21 Q. You also mentioned the word  
22 metadata doesn't appear?

23 A. I said it appears once in the  
24 background.

1 Q. And that meant something to you  
2 regarding the provisional; correct?

3 A. That's correct.

4 Q. But when -- the words metadata  
5 didn't appear in iManage and it wasn't a  
6 problem, was it?

7 A. Well, iManage has distinctly  
8 talked about history record.

9 Q. Mm-hmm.

10 A. It talks about profiles. It talks  
11 about all these things, which is really data  
12 about data.

13 So in there they use different  
14 language because -- as user language. They are  
15 not using jargon, technical jargon.

16 So they use every day language,  
17 but or more something more akin to every day  
18 language as you can get in computer system.

19 But so certainly they're talking  
20 about data about data. So it's metadata.  
21 That's the definition of it.

22 Q. And if we go to the summary of the  
23 invention of the provisional application.

24 On page -- this is PTX 3 -- Page

1 5. When it talks about in the first, in  
2 paragraph 13, it is an objection of the  
3 invention to provide a communication tool that  
4 seamlessly facilitates comments, compiles, and  
5 distributes communication data?

6 A. Yes, I see that.

7 Q. You wouldn't consider that  
8 metadata?

9 A. It just says communication data,  
10 that's the data, I don't see where the metadata  
11 is in that.

12 Q. Really, it's your opinion that  
13 wouldn't be talking about data about data?

14 A. Where is data about data? It says  
15 communication data, so if I'm sending, for  
16 example, a document, that's the data. It  
17 doesn't say anything about metadata in there to  
18 me.

19 Q. Go down to paragraph 16, where it  
20 says it is still a further object of the  
21 invention to provide a communication tool that  
22 automatically stores contextual information  
23 relating to an item of communication and  
24 utilizes that contextual in performance of

1 communication tasks?

2 A. I see that.

3 Q. It's your understanding that the  
4 contextual information is not context data?

5 A. Well, I didn't say that. What I  
6 said, in fact, was that a board actually  
7 contains -- I can't actually recall how I  
8 defined it on my slide, but the board would  
9 contain that kind of data, but it's not done in  
10 the way that's described in the asserted claims,  
11 elements of the asserted claims.

12 Q. In your slide you said there is no  
13 mention of context data. You don't think that's  
14 a mention of context data?

15 A. What I said in my slide, and  
16 remember that slide said at a face value here is  
17 what we see, that these words are not there, and  
18 then I went to talk about the particular ideas,  
19 particular context component and tracking  
20 component, just to clarify. I just want to  
21 clarify.

22 Q. Sure. I want your clearest  
23 testimony.

24 And then go to the next page,

1 paragraph 22. The last sentence of that  
2 paragraph, as users create and change their  
3 contexts, going from one context to another;  
4 right?

5 A. So --

6 Q. I want to make sure, we seem to be  
7 talking past each other. I just want to get  
8 your understanding. As users create and change  
9 their contexts, they're going from one context  
10 to another, right? They're changing the  
11 context. Do you agree with that?

12 A. Uh-huh.

13 Q. They're going from one to the  
14 other, they're moving the files and applications  
15 automatically follow, you got that?

16 A. Uh-huh.

17 Q. They're being tracked, they're  
18 being followed, dynamically capturing those in  
19 context, do you see that?

20 A. I see that, but I don't agree with  
21 that.

22 Q. You don't agree that the words say  
23 that?

24 A. No. You said tracking. Remember,

1 I showed --

2 Q. I understand you don't agree?

3 THE COURT: Mr. Andre, let him  
4 answer the question.

5 THE WITNESS: I actually showed  
6 this, this phrase to the jury when I was talking  
7 about how the system presents boards and then  
8 relationships between boards and the workflow.  
9 That's -- and then I showed in the code where  
10 this is specified manually.

11 So this is kind of what happened,  
12 what people do with that afterwards. So you  
13 have a workflow, essentially here is a procedure  
14 that you can follow. And that's what I think  
15 this thing is saying is that as you follow that  
16 procedure, this will happen.

17 But these relationships were not  
18 done by tracking people. As I said, there is  
19 nothing about tracking people in this or  
20 capturing the context as they're doing it, this  
21 is an after-the-fact thing.

22 MR. ANDRE: I have no further  
23 questions, Your Honor.

24 THE WITNESS: Thank you.

1 MR. ANDRE: Your Honor, may I have  
2 a side-bar?

3 THE COURT: Yes.

4 (Side-bar discussion.)

5 MR. ANDRE: Your Honor, I just  
6 would like to make an offer of proof regarding  
7 the Swartz reference that the substance, purpose  
8 and relevance of the following testimony will  
9 make clear on the record we expected if  
10 permitted to cross-examine Dr. Greenberg would  
11 have established the testimony of Facebook's  
12 expert that this same examiner who appeared on  
13 the face of the '761 also appeared on the Swartz  
14 reference. We believe this is relevant because  
15 they are going to put into evidence and put it  
16 in front of the jury and show the jury the face  
17 of the patent on multiple occasions. We did in  
18 our request on Friday say that patent office  
19 considered that reference. We state that the  
20 examiner would likely be aware of the reference.

21 We think that the testimony would  
22 provide the jury with valuable information  
23 regarding what was actually the process in the  
24 patent office and the fact of the matter is that



1 information is factually based, put into  
2 evidence by Facebook in this case.

3 THE COURT: Okay.

4 MS. KEEFE: Do you want me to  
5 respond?

6 THE COURT: Only if you feel you  
7 have to. I have ready already made my ruling.

8 MS. KEEFE: I agree.

9 THE COURT: Fine. Thank you.

10 (End of side-bar.)

11 THE COURT: Redirect.

12 MS. KEEFE: Just two small things,  
13 Your Honor.

14 BY MS. KEEFE:

15 Q. Dr. Greenberg, do you have a copy  
16 of your report there in front of you?

17 A. Yes, I do.

18 Q. I believe Mr. Andre was asking you  
19 whether or not you had actually opined about  
20 whether the iManage reference manual was  
21 enabling; is that correct?

22 A. Yes, he did.

23 Q. Could I turn your attention to  
24 paragraph 48.

1 A. Sorry. Are we looking at my  
2 report.

3 Q. I'm sorry. Paragraph 48 of your  
4 report.

5 A. Okay.

6 Q. And did you, in fact, express an  
7 opinion regarding the enablement of the iManage  
8 reference?

9 A. Yes, I did. And thanks for  
10 reminding me. It's been a while since I wrote  
11 this.

12 MR. ANDRE: Objection, Your Honor.  
13 Hearsay.

14 MS. KEEFE: He opened the door,  
15 Your Honor.

16 THE COURT: Overruled.

17 A. Paragraph 48, I say it is my  
18 opinion that iManage user manual and the system  
19 that it describes invalidates every asserted  
20 claim of the '761 patent.

21 Q. And regarding --

22 MR. ANDRE: Objection, Your Honor.  
23 Move to strike. That's not what was asked.

24 MS. KEEFE: I agree.

1 THE COURT: I'm not going to  
2 strike it, but let's move on. I'm overruling  
3 the motion, or denying the motion to strike.

4 MS. KEEFE: Thank you.

5 BY MS. KEEFE:

6 Q. Also with respect to the iManage  
7 DeskSite user reference manual, Dr. Greenberg,  
8 when you were writing your report, did the copy  
9 of the manual that you were using contain a  
10 confidentiality designation?

11 A. No. I have it right in front of  
12 me, this is an exact copy used, and it did not  
13 have that confidentiality designation.

14 MS. KEEFE: Your Honor, at this  
15 time we would move into evidence Exhibit 925E.

16 MR. ANDRE: Objection, Your Honor.  
17 This is not the document that he has testified  
18 to.

19 THE COURT: I'm overruling the  
20 objection. It's admitted.

21 MS. KEEFE: Thank you, Your Honor.

22 Nothing further, Dr. Greenberg.

23 Thank you.

24 THE WITNESS: Thank you very much.

1 THE COURT: Thank you, Professor.

2 THE WITNESS: Thank you.

3 MS. KEEFE: We're about to finish  
4 up. At this time Facebook rest its case on  
5 invalidity.

6 THE COURT: Okay. Thank you.

7 MR. ANDRE: Your Honor, we would  
8 like to do some housekeeping matters at this  
9 point. I don't know if it's appropriate to have  
10 the jury step out.

11 THE COURT: We can go to the  
12 side-bar.

13 MR. ANDRE: It will be a pretty  
14 long one. If we can do it at side-bar --

15 THE COURT: And without telling me  
16 in front of the jury what the housekeeping is,  
17 it's something that needs to be done now I take  
18 it?

19 MR. ANDRE: It is. It's  
20 essential.

21 THE COURT: Okay. Well, let's  
22 start at side-bar and if it's going to take too  
23 long, we'll excuse the jury. Let's see if we  
24 can get it done.

1 (Discussion at side-bar:)

2 THE COURT: You're here to make a  
3 motion.

4 MR. ANDRE: I'm here to make a  
5 motion. It's on behalf of Leader Technologies.  
6 On behalf of Leader Technologies, we move for  
7 judgment as a matter of law with respect to a  
8 number of issues presented in the case.

9 THE COURT: As I did with  
10 Mr. Rhodes, I'm not going -- I'm going to be  
11 reserving judgement on this. Other than just  
12 identifying what the issues are, do you feel to  
13 you need to make a record at this time?

14 MR. ANDRE: We do, Your Honor. We  
15 believe that with the uncertain flux of the  
16 appellant courts, I just don't feel comfortable  
17 not making a complete record on it. We do have  
18 a script to read through each of the claims.  
19 It's go to take some time to go through what we  
20 believe is the proper procedure.

21 THE COURT: And then you'll recall  
22 Dr. Herbsleb?

23 MR. ANDRE: And Dr. Herbsleb will  
24 be our last witness.

1 THE COURT: He's going to be  
2 approximately how long?

3 MR. ANDRE: Hour, hour-and-a-half.

4 MR. RHODES: May I speak, Your  
5 Honor?

6 THE COURT: Yes.

7 MR. RHODES: I don't fundamentally  
8 agree with Mr. Andre. There is some confusion  
9 at least in my mind, I'm a trial lawyer, not an  
10 appellant lawyer. There are some issues in the  
11 record. What I would propose for the record, we  
12 would want to do the same thing at the same  
13 time, but we have more records. Perhaps you  
14 could let the jury out and we could each read it  
15 in and then we're done.

16 THE COURT: I'll give them their  
17 break early.

18 MR. ANDRE: I just know that we  
19 want to put it on the record before we begin our  
20 rebuttal case.

21 THE COURT: I understand.

22 (End of side-bar discussion.)

23 THE COURT: Ladies and gentlemen,  
24 there are some matters that I need to discuss

1 with the lawyers and they are going to take more  
2 than just a couple of minutes, so we're going to  
3 give you your break early this morning and we'll  
4 hope to have you back in about fifteen minutes.  
5 But rest assured we'll have you back just as  
6 soon as we can.

7 THE CLERK: All rise.

8 (Jury leaving the courtroom at  
9 10:14 a.m.)

10 THE COURT: You can be seated.

11 Mr. Andre, come forward and make  
12 your motion.

13 MR. ANDRE: Thank you, Your Honor.  
14 On behalf of Leader Technologies, we move for  
15 judgment as a matter of law with respect to a  
16 number of issues presented.

17 On Facebook's claims. Number one,  
18 judgment as a matter of law that the asserted  
19 claims of U.S. Patent Number 7,139,761 were not  
20 anticipated by prior art and are therefore not  
21 invalid for that reason.

22 Number two, judgment as a matter  
23 of law that the asserted claims of U.S. Patent  
24 Number 7,139,761 are not obvious in light of the

1 prior art and are therefore not invalid for that  
2 reason.

3 Number three, judgment as a matter  
4 of law that the invention covered by any of the  
5 asserted claims of U.S. Patent Number 7,139,761  
6 was not in public use or on sale by Leader  
7 Technologies more than one year prior to the  
8 effective filing date and the asserted claims of  
9 U.S. Patent Number 7,139,761 are therefore not  
10 invalid for that reason.

11 Number four, judgment as a matter  
12 of law that Facebook has no defense to  
13 infringing the asserted claims of U.S. Patent  
14 Number 7,139,761 under the Doctrine of  
15 Equivalents, including but not limited to, that  
16 Facebook has not demonstrated that infringement  
17 under the Doctrine of Equivalents results in the  
18 asserted claims ensnaring the prior art, as  
19 Facebook has failed to provide a hypothetical  
20 claim as required to prove ensnarement.

21 Number five, judgement as a matter  
22 of law that the U.S. Provisional Patent  
23 Application 60/432,255 supports the asserted  
24 claims of the U.S. Patent Number 7,139,761 and



1 U.S. Patent Number 7,139,761 Patent properly  
2 relies on the December 11th, 2002 priority date  
3 of that provisional application.

4 On Leader's claims. Number one,  
5 judgment as a matter of law that Facebook  
6 literally infringes Claim 1 of United States  
7 Patent Number 7,139,761 in violation of 35  
8 U.S.C. Sections 271(a), (b), and/or (c).

9 Number two, judgment as a matter  
10 of law that Facebook infringes under the  
11 Doctrine of Equivalents Claim 1 of U.S. Patent  
12 Number 7,139,761 in violation of 35 U.S.C.  
13 Sections 271 at (a), (b) and/or (c).

14 Number three, judgment as a matter  
15 of law that Facebook literally infringes Claim 4  
16 of U.S. Patent Number 7,139,761 in violation of  
17 35 U.S.C. Sections 271(a), (b) and/or (c).

18 Number four, judgment as a matter  
19 of law that Facebook infringes under the  
20 Doctrine of Equivalents Claim 4 of U.S. Patent  
21 Number 7,139,761 in violation of 35 U.S.C.  
22 Sections 271(a), (b) and/or (c).

23 Number five, judgment as a matter  
24 of law that Facebook literally infringes Claim 7

1 of U.S. Patent Number 7,139,761 in violation of  
2 35 U.S.C. Sections 271(a), (b) and/or (c).

3 Number six, judgment as a matter  
4 of law that Facebook infringes under the  
5 Doctrine of Equivalents Claim 7 of U.S. Patent  
6 Number 7,139,761 in violation of 35 U.S.C.  
7 Sections 271(a), (b) and/or (c).

8 Number seven, judgment as a matter  
9 of law that Facebook literally infringes Claim 9  
10 of U.S. Patent Number 7,139,761 in violation of  
11 35 U.S.C. Sections 271(a), (b) and/or (c).

12 Number eight, judgment as a matter  
13 of law that Facebook infringes under the  
14 Doctrine of Equivalents Claim 9 of U.S. Patent  
15 Number 7,139,761 in violation of 35 U.S.C.  
16 Sections 271 (a), (b) and/or (c).

17 Number nine, Facebook as a matter  
18 of law -- strike that.

19 Number nine, judgment as a matter  
20 of law that Facebook literally infringes Claim  
21 11 of U.S. Patent Number 7,139,761 in violation  
22 of 35 U.S.C. Sections 271(a), (b) and/or (c).

23 Number ten, judgment as a matter  
24 of law that Facebook infringes under the

1 Doctrine of Equivalents Claim 11 of U.S. Patent  
2 Number 7,139,761 in violation of 35 U.S.C.  
3 Sections 271(a), (b) and/or (c).

4 Number eleven, judgment as a  
5 matter of law that Facebook clearly infringes  
6 Claim 16 of U.S. Patent Number 7,139,761 in  
7 violation of 35 U.S.C. Sections 271(a), (b)  
8 and/or (c).

9 Number twelve, judgment as a  
10 matter of law that Facebook infringes under the  
11 Doctrine of Equivalents Claim 16 of U.S. Patent  
12 Number 7,139,761 in violation of 35 U.S.C.  
13 Sections 271(a), (b) and/or (c).

14 Number thirteen, judgment as a  
15 matter of law that Facebook literally infringes  
16 Claim 21 of U.S. Patent Number 7,139,761 in  
17 violation of 35 U.S.C. Sections 271(a), (b)  
18 and/or (c).

19 Number fourteen, judgment as a  
20 matter of law that Facebook infringes under the  
21 Doctrine of Equivalents Claim 21 of U.S. Patent  
22 Number 7,139,761 in violation of 35 U.S.C.  
23 Sections 271(a), (b) and/or (c).

24 Number fifteen, judgment as a

1 matter of law that Facebook literally infringes  
2 Claim 23 of U.S. Patent Number 7,139,761 in  
3 violation of 35 U.S.C. Sections 271(a), (b)  
4 and/or (c).

5 Number sixteen, judgment as a  
6 matter of law that Facebook infringes under the  
7 Doctrine of Equivalents Claim 23 of U.S. Patent  
8 Number 7,139,761 in violation of 35 U.S.C.  
9 Sections 271(a), (b) and/or (c).

10 Number seventeen, judgment as a  
11 matter of law that Facebook literally infringes  
12 Claim 25 of U.S. Patent Number 7,139,761 in  
13 violation of 35 U.S.C. Sections 271(a), (b)  
14 and/or (c).

15 Number eighteen, judgment as a  
16 matter of law that Facebook infringes under the  
17 Doctrine of Equivalents Claim 25 of U.S. Patent  
18 Number 7,139,761 in violation of 35 U.S.C.  
19 Sections 271(a), (b) and/or (c).

20 Number nineteen, judgment as a  
21 matter of law that Facebook literally infringes  
22 Claim 31 of U.S. Patent Number 7,139,761 in  
23 violation of 35 U.S.C. Sections 271(a), (b)  
24 and/or (c).

1                   Number twenty, judgment as a  
2                   matter of law that Facebook infringes under the  
3                   Doctrine of Equivalents Claim 31 of U.S. Patent  
4                   Number 7,139,761 in violation of 35 U.S.C.  
5                   Sections 271(a), (b) and/or (c).

6                   Number twenty-one, judgment as a  
7                   matter of law that Facebook literally infringes  
8                   Claim 32 of U.S. Patent Number 7,139,761 in  
9                   violation of 35 U.S.C. Sections 271(a), (b)  
10                  and/or (c).

11                  Number twenty-two, judgment as a  
12                  matter of law that Facebook infringes under the  
13                  Doctrine of Equivalents Claim 32 of U.S. Patent  
14                  Number 7,139,761 in violation of U.S.C. Sections  
15                  271(a), (b) and/or (c).

16                  I have completed my motion, Your  
17                  Honor.

18                  THE COURT: Okay. I'm going to be  
19                  reserving judgment on those motions.

20                  Is there anything that Facebook  
21                  would like to say at this time?

22                  MR. RHODES: Yes, Your Honor.

23                  MR. WEINSTEIN: We also have quite  
24                  a few more motions, but we were going to go into

1 quite a bit more detail than they were and I  
2 realize that -- I don't want to be Jimmy Stewart  
3 and Mr. Weinstein goes to Wilmington here, but  
4 it will take about thirty-five to forty minutes  
5 to read this into the record.

6 THE COURT: Thirty-five to forty  
7 minutes?

8 MR. WEINSTEIN: Yes, Your Honor.  
9 If Your Honor would like I could outline them  
10 and file a written submission that would be  
11 deemed submitted at the close of all evidence.

12 THE COURT: That's certainly  
13 preferable to making the jury wait for forty  
14 more minutes.

15 MR. WEINSTEIN: That's what I  
16 thought, Your Honor.

17 THE COURT: So give me the five-  
18 to ten-minute version and then we'll deem your  
19 written filings submitted as of this point in  
20 the presentation.

21 MR. WEINSTEIN: Thank you, Your  
22 Honor.

23 Pursuant to Rule 50(a) for the  
24 Federal Rules of Civil Procedure, Facebook moves

1 for a judgment as a matter of law as to Leader's  
2 first cause of action for infringement of United  
3 States Patent Number 7,139,761 and with respect  
4 to all asserted claims which include Claims 1,  
5 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32. Any  
6 reference to these claims shall be referred to  
7 as the asserted claims, the claims asserted, or  
8 any other variant intended to refer only to  
9 those claims that I just mentioned.

10 Initially Facebook seeks judgment  
11 as a matter of law with respect to all the other  
12 claims on which no evidence was presented at  
13 trial which includes Claims 2, 3, 5, 6, 8, 10,  
14 12, 13, 14, 15, 17, 18, 19, 20, 22, 24, 26  
15 through 30 and 33 through 35 which includes  
16 several claims that were previously asserted in  
17 this case, but abandoned during discovery and  
18 expert discovery.

19 No reasonable jury could find  
20 infringement under any of these claims literally  
21 or under the Doctrine of Equivalents through any  
22 theory based on direct, induced and/or  
23 contributory infringement.

24 Facebook seeks judgment as a

1 matter of law of noninfringement on the grounds  
2 that Leader has presented no legally sufficient  
3 evidentiary basis from which a reasonable jury  
4 can find that Facebook exercises direction or  
5 control over any user with respect to claim  
6 elements that user must satisfy, or claim step  
7 that user must perform, as required by the  
8 Muniauction and BMC decisions. Each of these  
9 independent claims contain at least one claim  
10 step or claim element that requires user  
11 involvement to satisfy all elements of such  
12 claim. I'll detail this more in our written  
13 submissions, the specific basis and more of the  
14 evidence on which this particular motion is  
15 based, Your Honor.

16 Facebook also seeks judgement as a  
17 matter of law with respect to Leader's claim for  
18 direct patent infringement on the ground that  
19 Leader has presented no legally sufficient  
20 evidentiary basis from which a reasonable jury  
21 could find that Facebook performs each and every  
22 element of any asserted claim, literally or  
23 under the Doctrine of Equivalents, under the  
24 claims as properly construed.



1           There are additional elements that  
2           apply to Leader's claims for induced and  
3           contributory infringement which I will address  
4           separately.

5           With respect to the direct  
6           infringement claims, each claim includes either  
7           a tracking component of the number, for tracking  
8           a change of the user from the first context to a  
9           second context and dynamically updating the  
10          stored metadata based on the change, wherein the  
11          user accesses data from the second context in  
12          all four independent claims and I will deal with  
13          those claims as set forth in the written  
14          submissions.

15          Judge Farnan finds dynamically as  
16          automatically in response to preceding event.  
17          Judge Farnan's claim construction order, docket  
18          entry number 200 further clarified in the  
19          preceding event for purposes of clarification of  
20          these claims is the user movement from the first  
21          context workspace or environment to a second  
22          context workspace or environment. With respect  
23          to this element, no evidentiary basis was  
24          presented at trial whatsoever to establish this,

1 so infringement can not be established either  
2 literally under the Doctrine of Equivalents.

3 Leader has presented no -- Leader  
4 has not presented any legally sufficient  
5 evidentiary basis from which a reasonable jury  
6 could find that the elements of dynamically  
7 updating, dynamically associating, or  
8 dynamically storing information in the metadata  
9 in the second context, environment or workspace  
10 are satisfied. And I'll go into more detail in  
11 the written submissions with respect to the  
12 basis in evidence on which that motion is based,  
13 Your Honor.

14 With respect to each of the  
15 asserted claims, independent claims, Your Honor,  
16 they include additional limitations as well.  
17 Facebook, Leader has failed to show legally  
18 sufficient evidentiary basis from which a  
19 reasonable jury could find that the stored  
20 metadata or that metadata is updated, modified,  
21 changed, or affected in any way whatsoever let  
22 alone based on a change or movement of the user  
23 from a first context to a second context,  
24 workspace or environment.

1 I will detail the basis of that in  
2 the written submission, Your Honor.

3 With respect to the other  
4 elements, computer-implemented context component  
5 of the network-based system for capturing  
6 context information associated with user-defined  
7 data created by user interaction of a user in a  
8 first context of the network-based system, the  
9 context component dynamically storing the  
10 context information in metadata associated with  
11 the user-defined data, the user-defined data and  
12 metadata stored on a storage component of the  
13 network-based system.

14 In other claims which I will  
15 detail in the written submission, Leader has  
16 failed to present a legally sufficient  
17 evidentiary basis from which a reasonable jury  
18 could find that each aspect of these claims have  
19 been satisfied. There has been no evidence  
20 submitted as to the creation of user-defined or  
21 user-created data in the first context,  
22 environment or workspace.

23 Leader has failed to show  
24 infringement of any sort of claim of the patent,

1 no reasonable evidentiary basis has been put  
2 forth as to any claim of literal infringement as  
3 it requires that each and every element of the  
4 claim be met by the accused system. Therefore,  
5 it cannot be established.

6 With respect to Doctrine of  
7 Equivalents, Your Honor, Leader has presented no  
8 legally sufficient evidentiary basis for a  
9 reasonable jury to find that Facebook infringes  
10 any claim under the Doctrine of Equivalents,  
11 which requires Leader to show that the  
12 differences between that accused product and the  
13 allegedly equivalent claim limitations are  
14 insubstantial to one of ordinary skill in the  
15 art, or that the accused product performs  
16 substantially the same function, in  
17 substantially the same way to achieve  
18 substantially the same result as the claim  
19 element. That's DeMartini Sports at 239 Fed  
20 3rd, 1314.

21 The evidence presented at trial  
22 established no case of Doctrine of Equivalents,  
23 no -- I apologize, Your Honor -- evidence in  
24 argument of Doctrine of Equivalents was merely

1 subsumed in the literal infringement analysis  
2 contrary to PC Connector Solutions LLC at 406  
3 Federal 3rd 1359. No differences or a single  
4 cause of limitations were identified in a  
5 Doctrine of Equivalents analysis at trial.

6 No particularized testimony or  
7 linking argument was also provided by Dr. Vigna  
8 as to either the insubstantiality of differences  
9 or with respect to the function, way and result  
10 test as required by Motionless Keyboard versus  
11 Microsoft 486 Federal 3rd 1376.

12 With respect to the testimony of  
13 Doctrine of Equivalents, to the extent any was  
14 given it was tied only to the independent claims  
15 and not the dependent claims. There is no  
16 legally sufficient evidence presented with  
17 respect to the asserted dependent claims  
18 whatsoever. No reasonable jury could find for  
19 Leader on those claims with respect to the  
20 Doctrine of Equivalents.

21 With respect to the Doctrine of  
22 Equivalents, Federal Circuit law is clear that  
23 may not be employed in a manner the wholly  
24 violates a claim limitation. Under Scimed Life

1 Systems, 242 Federal 3rd 1337. The elements  
2 missing from the Facebook site cannot be found  
3 by equivalent because they are entirely absent.

4 Additionally with respect to the  
5 Doctrine of Equivalents, the claim is barred by  
6 the doctrine of prosecution history estoppel  
7 under Festo at 535 U.S. 722, precludes Doctrine  
8 of Equivalents to any claim.

9 The doctrine likewise cannot be  
10 applied in a manner suggested by Leader because  
11 to do so would ensnare the prior art as  
12 explained in the testimony of Professor Kearns.

13 With respect to the inducement  
14 claim, which was covered by 35 U.S.C. 271(b),  
15 required for a claim of inducement have not been  
16 established. These include Facebook knowing of  
17 the '761 patent, Facebook's evidence of specific  
18 intent, specific intent to induce infringement  
19 of any claim. There was failure to present  
20 evidence of third parties having directly  
21 infringed any claim of the '761 patent, a  
22 necessary prerequisite for a claim of inducement  
23 under 271(b), under DSU Medical at 471 Federal  
24 3rd at 1293.

1 With respect to contributory  
2 infringement as governed by 35 U.S.C. 271(c),  
3 multiple elements have not been established by  
4 the trial evidence. As with the indirect  
5 infringement claim, no legally sufficient  
6 evidence was presented as to any direct  
7 infringement by any third party, a necessary  
8 prerequisite to a claim of indirect infringement  
9 including contributory infringement under  
10 271(c), no third party allegedly infringing has  
11 been identified, let alone the manner in which  
12 such third party alleged infringement takes  
13 place. And no element-by-element analysis has  
14 been provided with respect to any third party's  
15 performance.

16 THE COURT: Mr. Weinstein, how  
17 much more do you think you have?

18 MR. WEINSTEIN: About -- I'm about  
19 two-thirds through it. If you would like me to,  
20 I can just do this all in a written submission,  
21 Your Honor, that would make it easier for you.

22 THE COURT: I'm fine with you just  
23 listing for us if there are additional motions.

24 MR. WEINSTEIN: I can do that,

1 Your Honor. I just want to make sure in case I  
2 misread one of them. As I understand the rule,  
3 as long as I get this in before the submission  
4 of the case to the jury, I'm okay.

5 THE COURT: I'm not sure. But  
6 we're going to deem -- we've already agreed to  
7 deem submitted your written submission at this  
8 point in the trial and I do want to bring the  
9 jury in in just a couple of minutes.

10 MR. WEINSTEIN: I'll conclude very  
11 quickly.

12 With respect to the on sale bar,  
13 and the effective filing date, there is no  
14 legally sufficient evidentiary basis for a  
15 reasonable jury to find or a reasonable jury to  
16 refuse to find that the '761 patent is entitled  
17 to the filing date of the provisional  
18 application.

19 A reasonable jury also could not  
20 fail to find that the '761 patent is not  
21 entitled to the patent date, regardless which  
22 way the burden is, judgment as a matter of law  
23 is warranted with respect to the on sale bar,  
24 the invention must be the subject of the



1 commercial sale or offered for sale, no jury  
2 could fail to find that both these elements were  
3 satisfied based on the trial evidence.

4 No reasonable jury could fail to  
5 find that the Leader2Leader product embodied the  
6 asserted claims of the '761 patent for the  
7 reasons discussed in the trial evidence.

8 No reasonable jury could fail to  
9 find that Leader2Leader was subject to at least  
10 three commercial offers for sale, including to  
11 The Limited, Boston Scientific and Wright  
12 Patterson Air Force Base, to whom Leader made  
13 offers for sale as detailed in the testimony of  
14 Mr. McKibben.

15 With respect to anticipation, no  
16 reasonable jury could fail to find that U.S.  
17 Patent Number 6,236,994 to Swartz, the published  
18 European application to Hubert, the issued '349  
19 patent to Hubert which contains a disclosure to  
20 the European patent and the iManage, each  
21 anticipate Claims 1, 4, 7, 9, 11, 21, 23, 25, 31  
22 and 32.

23 With respect to Claim 16, it is  
24 anticipated by iManage as described by Professor

1 Greenberg. No reasonable jury could fail to  
2 find that each of these references qualifies as  
3 a printed publication prior art reference that  
4 discloses, either expressly or inherently, each  
5 element of these asserted claims as explained in  
6 the testimony of Dr. Greenberg. No reasonable  
7 jury could fail to find that each of these  
8 references provides an enabling disclosure  
9 because each is either entitled to a presumption  
10 of enablement as an issued U.S. patent that has  
11 not been rebutted, or because no reasonable jury  
12 could fail to find enablement in light of the  
13 evidence presented by Dr. Greenberg and other  
14 evidence at trial.

15 Facebook's defense of obviousness  
16 under the '761 is governed by 35 U.S.C. 103(a)  
17 and the Supreme Court's decision in KSR, 550  
18 U.S. 398. Factors to consider include the scope  
19 and content of the prior art, the differences  
20 between the prior art and the claims of the  
21 patent, and the level or ordinary skill in the  
22 art.

23 I have three paragraphs left, Your  
24 Honor.

1 THE COURT: Three paragraphs, one  
2 sentence. One more sentence.

3 MR. WEINSTEIN: Can I use  
4 semicolons? I'm sorry, Your Honor.

5 Each and every claim of the '761  
6 patent is invalid as obvious as detailed in the  
7 testimony of Professor Greenberg and no  
8 reasonable jury could fail to find as much.

9 And we just want to reserve our  
10 right under the IPXL Holdings. I understand  
11 Your Honor has reviewed the IPXL ruling.

12 THE COURT: I'm willing to reserve  
13 judgment on all of Facebook's motions as I have  
14 on Leader's.

15 I do want to give counsel a  
16 five-minute break. Is there anything else that  
17 needs to be discussed first? Hopefully not.  
18 No.

19 We'll see you in five minutes.

20 (A brief recess was taken.)

21 THE CLERK: All rise.

22 THE COURT: Okay. We'll bring the  
23 jury in.

24 MR. ANDRE: Your Honor, before the

1 jury comes in, we also -- I think Your Honor  
2 also already made this clear. We're going to  
3 reserve our right to the file written submission  
4 on the Rule 50 motion.

5 THE COURT: That's fine. That  
6 right is now reserved --

7 MR. ANDRE: Thank you.

8 THE COURT: -- to the extent, it  
9 wasn't earlier.

10 MR. ANDRE: I thought it was, but  
11 after that long --

12 THE COURT: That's fine.

13 MR. RHODES: And, Your Honor, at  
14 the end of the case, I'm literally just going to  
15 say and I reiterate what Mr. Weinstein said and  
16 then say no more. I can do it at a side-bar.

17 I don't want to interrupt your  
18 flow at the end. So I'll look at you, and all I  
19 am going to say is remake the motion again for  
20 the reasons stated. That is all I am going to  
21 do.

22 THE COURT: I think you will  
23 probably be able to do that in front of the  
24 jury.

1 MR. ANDRE: We'll do the same  
2 thing.

3 THE COURT: Okay.

4 THE CLERK: All rise.

5 (Jury entering the courtroom at  
6 10:43 a.m.)

7 THE CLERK: Please be seated.

8 THE COURT: All right. Welcome  
9 back.

10 We are finally prepared to proceed  
11 again. Again, I've done the work I need to do  
12 with the lawyers. Turn it over to Ms. Kobialka.

13 MS. KOBIALKA: Thank you, Your  
14 Honor. Thank you.

15 We'd like to call Dr. Herbsleb to  
16 the stand.

17 THE COURT: That's fine.

18 MS. KOBIALKA: And at this time,  
19 we have some jury binders that we'd like to  
20 provide, which include the exhibits that were  
21 moved into evidence on Friday, as well as one  
22 that we'll be using today.

23 THE COURT: Have you shown the  
24 defense that?

1 MS. KEEFE: We have no objection,  
2 Your Honor.

3 THE COURT: Fine. You may  
4 distribute.

5 THE CLERK: Please state and raise  
6 your right hand. State and spell your full name  
7 for the record.

8 THE WITNESS: James Herbsleb.  
9 J-A-M-E-S H-E-R-B-S-L-E-B.

10 THE CLERK: Do you, James  
11 Herbsleb, swear the testimony you're about to  
12 give to the Court and the jury will be the  
13 truth, the whole truth and nothing but the  
14 truth?

15 THE WITNESS: Yes, I do.

16 THE CLERK: Thank you. You may be  
17 seated.

18 THE COURT: Good morning.

19 THE WITNESS: Hi.

20 MS. KOBIALKA: I'll note there's  
21 actually one really long exhibit that's not  
22 included in these jury binders from Friday, but  
23 that will be provides one set since it's 13  
24 binders long.

1 THE COURT: Oh, okay.

2 MS. KOBIALKA: Thank you very  
3 much.

4 BY MS. KOBIALKA:

5 Q. Welcome back, Dr. Herbsleb. It's  
6 been about a week.

7 Could you just remind the jurors  
8 where you currently are working?

9 A. I'm a professor at Carnegie Mellon  
10 University, the School of Computer Science.

11 Q. And just briefly, what were your  
12 degrees that you have in research areas?

13 A. So my degrees, I had a bachelor's  
14 in psychology in economics. I have a Ph.D. in  
15 collaborative social psychology.

16 I have a Master's degree in  
17 computer science. And my research area is in  
18 collaborative technologies, you know, designing  
19 collaborative technologies, understanding how  
20 people use them, what problems are solved and  
21 not solved by collaborative technologies.

22 Q. And are you here today to provide  
23 your opinion with respect to the validity of the  
24 asserted claims of the '761 patent?

1 A. Yes. Yes, I am.

2 Q. And are you also here today to  
3 provide your opinion with respect to what  
4 information is disclosed in the provisional  
5 application?

6 A. Yes, that's right.

7 Q. What were you asked to do?

8 A. Basically I was asked to respond  
9 to Dr. Greenberg's report.

10 Q. Okay. And if we could maybe take  
11 a look at the front of the '761 patent.

12 And if we can blow up the prior  
13 art references recited. Is there anything that  
14 looks familiar here?

15 A. Yes. I see my old colleague,  
16 Randy Hackbarth's name, third from the bottom.  
17 Randy Hackbarth and myself and Graham Wills are  
18 the inventors on this patent.

19 This was a patent that came out of  
20 the days when I was leading the Bell Labs  
21 collaboratory project. This was one of the  
22 patents that came from that.

23 Q. Okay. So you're one of the  
24 inventors of the patent?



1           A.    That's right.  I'm one of the  
2   inventors of that patent.

3           MS. KOBIALKA:  Okay.  At this  
4   time, Your Honor, I'd like to tender Dr.  
5   Herbsleb as an expert in computer science for  
6   his opinions.

7           MS. KEEFE:  No objection.

8           THE COURT Ms. Keefe.  Okay.

9   BY MS. KOBIALKA:

10           Q.  What is your opinion with respect  
11   to whether or not the provisional application  
12   discloses all the elements of the asserted  
13   claims of the '761 patent?

14           A.  That -- my opinion is that the  
15   provisional application does disclose all of the  
16   elements of the asserted claims of the '761  
17   patent.

18           Q.  We'll go through that in more  
19   detail.  What is your opinion with respect to  
20   whether the asserted claims of the '761 patent  
21   is valid in light of the prior art that Dr.  
22   Greenberg relied upon?

23           A.  All right.  My opinion is all  
24   those claims are valid in light of the prior art

1 that is in Dr. Greenberg's report.

2 Q. What information did you review in  
3 order to come to your opinion?

4 A. Well, I reviewed Dr. Greenberg's  
5 report and all of the citations or all of the  
6 references cited in his report.

7 I reviewed the '761 patent. I  
8 reviewed the claim construction order. I  
9 reviewed the prosecution history of the patent.

10 And I think that completes the  
11 list.

12 Q. And you reviewed the provisional  
13 application?

14 A. Of course, I did review the  
15 provisional application.

16 Q. For all of your analysis, did you  
17 understand that you needed to identify who  
18 constitutes one of ordinary skill in the art as  
19 it relates to the '761 patent?

20 A. Yes, I did.

21 Q. Who would that person be?

22 A. Well, it might be one of ordinary  
23 skill in the art would be someone with a  
24 bachelor's degree in computer science or related

1 field, and/or perhaps several years of  
2 experience.

3 Q. And would someone with let's say  
4 Master's degree in computer science fit within  
5 the scope of one of ordinary skill in the art?

6 A. Sure. I think so.

7 I mean, it's increasingly common  
8 for developers in industrial settings to have  
9 bachelor's degree. So I don't think that would  
10 be unusual.

11 Q. And as you get more advanced in  
12 degrees, is it typical to specialize in a  
13 certain area?

14 A. Yeah. I think by the time someone  
15 is studying for Ph.D., the things that the  
16 person is studying for are extremely narrow and  
17 aren't typically all that helpful in real world  
18 in building things like web applications.

19 So I think a Bachelor's degree or  
20 higher would be -- people in that category would  
21 be fairly equivalent when it comes to building  
22 applications like this.

23 Q. Did you do all your analysis for  
24 the opinions that you're going to provide today

1 from the perspective of one of ordinary skill in  
2 the art at the time of the '761 patent  
3 invention?

4 A. Yes, I did.

5 Q. So let's turn to the provisional  
6 application.

7 A. Okay.

8 Q. You can maybe show that up on the  
9 screen here. Do you -- this is PTX 3. Do you  
10 recognize that document?

11 A. I do.

12 Q. And on the face of it, do you see  
13 where the inventors are listed?

14 A. Yes, I do. Michael McKibben and  
15 Jeff Lamb.

16 Q. And are those the same inventors  
17 listed on the '761 patent?

18 A. Yes, they are.

19 Q. Now, if we turn to the face of the  
20 '761 patent, maybe we can enlarge for the jury  
21 where the inventors are listed as well as --  
22 yes, all of that information.

23 Thank you.

24 And do you see where the inventors

1 are listed on the '761 patent?

2 A. I do. Yes.

3 Q. Does the '761 patent identify the  
4 provisional application on the cover?

5 A. Yeah. I believe that's down on  
6 Line 60 provisional application, which is the  
7 line that you're referring to.

8 Q. And based on your review of the  
9 provisional application, does it disclose all of  
10 the asserted elements or all of the elements of  
11 the asserted claims of the '761 patent?

12 A. Yes. In my opinion, it discloses  
13 all of the elements of all the claims.

14 Q. Is it based on anything other than  
15 it's just a review of the provisional  
16 application?

17 A. Yes. Actually, I have two things  
18 that I did to sort of answer that question. One  
19 was to review the provisional application.

20 And based upon that, I reached the  
21 opinion that it discloses everything that the  
22 '761 patent does. So in a way that allows  
23 someone to make and use the invention. But to  
24 test that, I took another step and I identified

1 someone who is sort of ordinary skill in the art  
2 that was a fellow named Marcello Caltaldo, who's  
3 a post-doc in my research lab.

4 And I gave him the provisional  
5 application and asked him to, you know, build a  
6 web application that, you know, that embodies  
7 this technology.

8 Q. And was he able to do that?

9 A. Yes, he was. And he provided --  
10 there's another document here that has been  
11 added into evidence.

12 Q. Sure. I believe that is PTX 1125.  
13 That's provided in the binders.

14 A. Okay.

15 Q. If we can show that on the screen.  
16 Is this what you're referring to Dr. Caltaldo  
17 had provided?

18 A. Yes, that's it. That's what he  
19 provided to me as a result of my request.

20 Q. And we're just looking at the  
21 front page. Are there more pages behind that?

22 A. Yes, there's actually seven or  
23 eight, six or seven more pages of source code.  
24 That's -- the document here consists of source

1 code like this.

2 Q. And if we could turn back to the  
3 front page. Okay. Can you explain what this  
4 is, especially in connection with the reference  
5 to a generic application skeleton?

6 A. Yes, that does sound rather odd,  
7 doesn't it? The idea is that is to create sort  
8 of just kind of a simple application that  
9 embodies this technology.

10 So something that would allow you  
11 to -- that would provide context that would  
12 associate applications and data with those  
13 contexts would allow a user, you know, to move  
14 from one context or work space to another, to  
15 track those movements. So to basically, you  
16 know, do the things that the provisional  
17 application described.

18 Q. Is your understanding that all  
19 Marcella Caltaldo had used was the provisional  
20 application in building this particular  
21 application?

22 A. Yes. That's all I provided to  
23 him.

24 And I asked him later and he said

1 that was the only thing that he had used in  
2 producing this document.

3 Q. If we turn to the second page of  
4 Exhibits 1125 and we see this code.

5 A. Mm-hmm.

6 Q. Just generally, what is this kind  
7 of code? Can you just walk us through it and  
8 explain what's included in 1125?

9 A. So what we're looking at here is  
10 the first -- it's two main parts.

11 The first part, as you can see up  
12 at the top, is called WebApp. So what this code  
13 is doing is kind of setting up a collection of  
14 workspaces and showing a relationship among  
15 them.

16 It has a functionality that would  
17 allow a user to select from menus to select, you  
18 know, a particular web or collection of  
19 workspaces to select a webslice, which is  
20 another way of creating a collection of  
21 workspaces in sort of a workflow arrangement.

22 And so select a particular  
23 workspace within that. So that's kind of what  
24 the first part does here. It allows the user to



1 construct something like that.

2 Then if we move ahead, there's a  
3 second part where there's the word board at the  
4 top Class: Board. And I think it's on Page 6 a  
5 little farther.

6 No. It's back. There we go.

7 And what this is doing is, you  
8 know, setting up a workspace. And so we see  
9 here that it has associated with it data items.  
10 So that would be -- you know, could be any sort  
11 of data, photos, documents, whatever.

12 Applications are associated with  
13 it and users are associated with the workspace.  
14 And also, if we scroll further down, we can see  
15 that you could access the boards of the  
16 workspaces that are part of the workflow.

17 And as we go on, we'll see that it  
18 also -- I think it's on the next page. Makes  
19 available to -- yeah, at the top here.

20 Q. And just for the record, you're  
21 referring to Page 7 of this document?

22 A. Oh, I'm sorry. Actually I think  
23 it begins on the previous page, but rather than  
24 worrying about it, let me just describe how you

1 do it.

2 This is showing you how --  
3 different workspace functionalities in the  
4 WebApp are provided.

5 But it also shows that as a user  
6 moves from one workspace to another, it  
7 continues to make all of the items from the  
8 previous workspace available to that user. And  
9 if the user moves to another workspace and  
10 accesses some of that the data or applications,  
11 then it updates metadata reflecting that move  
12 from one workspace to another.

13 Q. When you are using the word  
14 workspace, can you just explain what you mean by  
15 that?

16 A. So workspace on my tutorial, if  
17 you recall, I described the workspace kind of  
18 like an analogy of somebody working on the desk.  
19 They have a calender, stapler, whatever the  
20 things that are that you need, the tools, you  
21 know, to do work collected on one place. A  
22 workspace is like that, you know, but on the  
23 screen.

24 So you have the things that you

1 need to do something. You have applications.  
2 You have all kinds of data documents you could  
3 -- pictures you can upload.

4 You have all that kind of in one  
5 place. And so that's what's associated with  
6 that are, you know, those types of data, things  
7 that you've uploaded and the applications that  
8 you use and your identity.

9 So that's basically what a  
10 workspace is.

11 Q. I noticed that in the provisional,  
12 you have text and code and then the issued  
13 patent has diagrams.

14 A. Right.

15 Q. What provides more detail for  
16 someone like yourself to make and build the  
17 invention of the '761 patent?

18 A. Well, the diagrams are helpful,  
19 but the code is actually much more helpful for  
20 one skilled in the art. If I could use an  
21 analogy, it's as if you have a cookbook where  
22 you have some recipes and a bunch of pictures of  
23 sauteing and whipping up egg whites and so on.  
24 And those pictures are helpful, but for someone

1 skilled in the art, you could just say, for  
2 example, this is classic French cuisine and that  
3 communicates a great deal of information to  
4 someone about how to go about making this  
5 recipe.

6 Q. In your opinion, does it matter  
7 whether the provisional is shorter in length  
8 than the actual issued patent which is the '761  
9 patent?

10 A. No. Source code is a very sort of  
11 dense way of conveying information. The  
12 diagrams take up, you know, much more space,  
13 unfortunately, and so I think there's 20 some  
14 diagrams.

15 So you just kind of expect that  
16 the '761 patent with many diagrams would be much  
17 longer.

18 Q. Okay. So let's dive into the  
19 patent now, so let's take a look at Claims 1, 4  
20 and 7 --

21 A. All right.

22 Q. -- once we have it up here on the  
23 screen. Let's see if we can shorthand some of  
24 the claim language, so when we take a look at

1 Claim 1 and after the computer-implemented  
2 network-based system that facilitates management  
3 of data, we have the next paragraph that starts  
4 a computer-implemented context component of the  
5 network-based system.

6 And it continues all the way down  
7 past a couple commas and ends with the user  
8 defined data and metadata stored on a storage  
9 component of the network-based system. And do  
10 you see that?

11 A. Yes, I do.

12 Q. Can I call that the context  
13 component of Claim 1? Are we talking about the  
14 same thing?

15 A. Yes. Okay.

16 Q. And then if we turn to the next  
17 element, which starts a computer-implemented  
18 tracking component and it continues all the way  
19 through the end of the claim or the -- yes, the  
20 end of the claim where it says wherein the user  
21 accesses the data from the second context.

22 You'll understand when I say  
23 tracking component of Claim 1, I'm referring to  
24 all of that.

1 A. Okay. Good.

2 Q. Could you just generally and  
3 briefly describe what your understanding of what  
4 Claim 1 covers?

5 A. All right. So what you called the  
6 context component, we have to go back to the  
7 claim construction order to understand what's  
8 meant by context here.

9 And the claim construction order  
10 says that a context is environment. So an  
11 environment is, you know, what I've been calling  
12 a workspace. It is a place that has -- you  
13 know, lets a user do some work, contains the  
14 things that the user needs to do something.

15 So what the first element is  
16 saying is that the '761 invention has a context  
17 component, so it has that kind of a workspace.  
18 And one of the things that it does is to use  
19 that context data to sort of update metadata  
20 every time you use or upload something to your  
21 workspace.

22 So by uploading something, the  
23 context component will attach some -- will use  
24 that context information to update your

1 metadata.

2 So the second element is a  
3 tracking component. Again, this sort of keeps  
4 track of a user moving from one workspace to  
5 another, if you will.

6 And what this element says that  
7 when a user works -- moves from one workspace to  
8 another, and then accesses from the second  
9 workspace, accesses data that was uploaded into  
10 the first workspace, it updates the metadata  
11 with that tracking information about that  
12 action.

13 Q. Why don't we turn to the  
14 provisional application PTX 3.

15 A. Okay.

16 Q. And see where these elements are  
17 described. Now, does the entire provisional  
18 application inform your opinion that each of the  
19 elements of the asserted claims are disclosed in  
20 the provisional?

21 A. Yes. Reading this as a whole, it  
22 -- well, it's responsible for my opinion that it  
23 does disclose all the elements.

24 Q. So right now we'll just go through

1 a few examples of that. Does that sound right?

2 A. Yes.

3 Q. Okay. So if we take a look at the  
4 summary of the invention here, I believe it's  
5 Paragraph 16.

6 Would you please explain what this  
7 tells you and how it relates to the claims of  
8 the '761 patent?

9 A. Okay. As you can see, it says  
10 that the tool automatically stores contextual  
11 information relating to an item of communication  
12 and utilizes that contextual -- I believe the  
13 words information is missing from performance of  
14 communication tasks.

15 So that tells me that it's storing  
16 this contextual information and using it later.  
17 So it's stored in some permanent kind of form.

18 Q. And is there anything in the code  
19 that's also helpful with respect to the context  
20 component element of Claim 1?

21 A. I think there are a couple of  
22 things that are helpful.

23 Q. If you turn to the first page of  
24 the code, I think it will --



1           A.    Right.  All right.

2                    So if you look at these import  
3 statements, these import statements represent  
4 taking code that's, you know, common code class  
5 libraries, code that exists sort of outside and  
6 imports them into this application.

7                    So this is very common in most  
8 programming languages.  You have certain --  
9 certain kind of sort of boiler plate codes.  
10 Things are used all the time over and over and  
11 over again.

12                   And usually you just take those  
13 common things and import them for use in your  
14 own application.  Now, what's interesting is  
15 that by looking at the kinds of things that get  
16 imported here, you know, you can get a pretty  
17 good idea of some of the things that the  
18 application is doing.

19                   So if we look at the fourth and  
20 fifth lines where it says import com, you know,  
21 persist and persist.vbsf.  So that tells us that  
22 there's some form of persistent storage here.

23                   And vbsf, in particular, is a  
24 middleware package that makes it easier to store

1 things in a relational database when you're  
2 using object-oriented language. So to sort of  
3 hopefully not confuse you with the technology,  
4 this is all written in object-oriented style, a  
5 particular style of programming.

6 And yet, apparently they're going  
7 to use a relational database to store their  
8 permanent data. And the only reason you would  
9 have vbsf around is because you want to do that.  
10 You want to use -- store things in a relational  
11 data.

12 So that's saying that there's some  
13 permanent kind of storage and it's in a  
14 relational database. If you look down at the  
15 very last import statement, it talks about  
16 session state.

17 Session state, again is a common  
18 term. And session state sort of captures --  
19 remember we talked about session, that you might  
20 log into your, you know, website, for example,  
21 and start a session, authenticate it, then do a  
22 bunch of things. And then you end the session.

23 Well, somewhere you have to store  
24 this information that, Gee, this person is

1 logged in, and they're now on this page. And  
2 they're now going to another page.

3 It's kind of temporary storage  
4 kind of tracking what a user is doing in that  
5 session and when the session is over. So this  
6 tells you that that kind of information is going  
7 to be stored and it's going to be stored in this  
8 type of analogy.

9 Q. Maybe we can turn to another place  
10 in the code. I believe it has the Bates Number  
11 LTI 7576.

12 A. Mm-hmm.

13 Q. There's a line, add new  
14 relationships. If you could blow that section  
15 up.

16 Thank you.

17 A. Right. This is showing us that  
18 information like -- it talks about -- see where  
19 it has group key field, for example. There's  
20 lots of places in here where he's talking about  
21 keys. That sort of tells you that something is  
22 being stored in a relational database.

23 So this is storing basically  
24 relations between workspaces and information

1 about what's in a workspace in the database in  
2 permanent form.

3 So this is where it is using the  
4 context information to update the metadata.

5 Q. Okay. Do you need a pointer?  
6 Would that be helpful?

7 A. Oh, you know what, I have one  
8 right here.

9 Q. Okay.

10 A. I just forgot about it. Yeah.

11 So as I was saying, the various  
12 places it talks about key, and key fields. That  
13 is indicative of saving something in a  
14 relational database.

15 And so what this is saying, to  
16 reiterate, is that it's saying that things like  
17 the users that are associated with the workspace  
18 and relations of between workspaces are all  
19 being stored in this permanent kind of storage  
20 in a relational database. So that represents to  
21 me using context information to update the  
22 metadata.

23 Q. Can you give me some examples?

24 Well, so what we've just talked about, does that

1 really relate to the context component of Claim  
2 1.

3 A. Yes, that relates to the context  
4 component.

5 Q. Can we turn to some examples that  
6 relate to the tracking component of Claim 1?

7 A. Sure. Let me get another.

8 Q. So we start with the description  
9 of embodiments here in the patent. And I  
10 believe Paragraph 22.

11 A. Right.

12 Q. Could you please explain here what  
13 this provides to one of ordinary skill in the  
14 art?

15 A. Right. So it says here towards  
16 the end, as users create and change their  
17 contexts, the files and applications  
18 automatically follow, dynamically capturing  
19 those shifts in context.

20 So this signals to me that the --  
21 when the user changes context access data from  
22 other contexts, that that information is  
23 recorded.

24 Q. Okay. And I believe there's one

1 other place in the text, if we go to the example  
2 which starts on -- well, it's on LTI 747, the  
3 last paragraph.

4 If you can enlarge it. Dr.  
5 Herbsleb, could you please explain what this  
6 tells you?

7 A. Sure. So this is talking about  
8 how the system decides what content belongs  
9 where in the system. And so it says location  
10 may be determined by detecting changes in  
11 structure, detecting temporary location and  
12 using a routing algorithm before and after the  
13 change to adjust the affect of the location of  
14 the affected content.

15 So what this is saying, the  
16 content that is associated with the board is  
17 stored in metadata. And that when using a  
18 routing algorithm, which they call a webslice,  
19 there's sort of dynamically associating the  
20 content with each of the workspaces. And,  
21 again, that the location of a content relative  
22 to the workspaces is what's captured in  
23 metadata. That's done by tracking information  
24 that follows users from workspace to workspace.

1 Q. And are there places in the code  
2 that we can look to that help you understand  
3 that there's a tracking component of Claim 1  
4 found in this provisional application?

5 A. Yes.

6 Q. Maybe we can turn to the first  
7 page of the code there in PTX 3.

8 A. Well, again, this is just  
9 reminding you that we have session state, which  
10 is kind of a temporary storage about the  
11 session, and we have up here vbsf, which is  
12 storing things in a relational database. That  
13 would be where metadata would be stored. It's  
14 relatively permanent.

15 And then we have another location  
16 in the code.

17 Q. Right. I believe it's on LTI 757.  
18 I think the section that started  
19 add new relationships, if you could -- sub-form  
20 -- if you could blow that up.

21 Thank you.

22 A. Mm-hmm. So here it's showing  
23 adding relationships between a workspace and  
24 content, again, showing that that's done with,

1 you know, using the relational database. So  
2 this is, again, illustrating how, you know, the  
3 tracking component updates a workspace.

4 Q. So, in your opinion, are all the  
5 elements of Claim 1 disclosed in the provisional  
6 application?

7 A. I think all the elements of Claim  
8 1 are disclosed here.

9 Q. And that's based on the entire  
10 disclosure, not just limited to these examples;  
11 is that right?

12 A. Right. So to sort of describe how  
13 to look at this, the text sort of describes  
14 what, you know, describes the disclosure. When  
15 we look at source code what we're seeing is  
16 hints about how someone would actually make and  
17 use this.

18 Right. So the source code that's  
19 disclosed here is not a complete implementation  
20 of everything described in the text. That would  
21 be much larger.

22 So what the source code is doing  
23 is just disclosing enough information about how  
24 this is intended to work, that one of ordinary



1 skill could then use this to actually make  
2 something.

3 So it's not the case that the  
4 source code is a complete implementation. It's  
5 not intended as that.

6 It's just more information for  
7 someone trying to make and use this invention.

8 Q. Okay. Let's turn to Claim 4 and  
9 7.

10 A. Okay.

11 Q. And if we could take a look at  
12 Claims 4 and 7, is it your understanding that  
13 these are dependent claims on Claim 1?

14 A. Right.

15 Q. And so is it your opinion that the  
16 additional element found in Claim 4 is disclosed  
17 in the provisional application?

18 A. Yes, it is. The additional  
19 element here is saying a little bit about what  
20 the context information has to include. Right.

21 It has to include a relationship  
22 between a user and at least one of the  
23 application, application data and user  
24 environment. So that's an addition.

1 Q. Why don't you briefly describe  
2 Claim 7 and then we will go to the provisional?

3 A. Okay. So a claim -- what Claim 7  
4 is saying that the data created in one context  
5 is associated with data created in the second  
6 context. That's what's new about that.

7 Q. Okay. All right.

8 If we could turn to PTX 3 and go  
9 to LTI 743, the first paragraph.

10 A. Mm-hmm.

11 Q. What does this tell you in terms  
12 of as it relates to Claim 4?

13 A. Yeah. This -- so this is  
14 basically almost the same language at Claim 4  
15 here. It relates to new structures and methods  
16 for creating relationships between users  
17 applications and files and folders, which is  
18 essentially what it said in Claim 4.

19 Q. And if we could take a look at  
20 where in this application we refer to Claim 7.  
21 I believe we can turn to LTI 749.

22 A. Mm-hmm.

23 Q. And if you could just blow up that  
24 page there. There you go.

1           A.    Great.  So remember this claim has  
2           to do with creating associations between  
3           workspaces.  So the location of content may be  
4           determined by detecting changes in structure,  
5           detecting the temporary location to the content  
6           of the boards in the routing of algorithms  
7           before and after the change and adjusting the  
8           location of the affected content as part of the  
9           change in structure.

10                   All of that is a lot of language.  
11           That's a little bit difficult to decipher.  But  
12           it's basically saying that there is this routing  
13           algorithm that associates different workspaces  
14           by virtue of saying that they are the locations  
15           for some particular content.

16                   All right.  So the routing  
17           algorithm creates a link between the workspace  
18           and says, Here are the workspaces where this  
19           content belongs.

20                   Q.    Is it your opinion then that  
21           Claims 4 and 7 are fully disclosed in the  
22           provisional application?

23                   A.    Yes.  It's my opinion that they're  
24           fully disclosed.

1 Q. Let's turn now to Claim 9, 11 and  
2 16. And actually there we go.

3 So I'm going to break these claims  
4 up, so we don't have to read the entire claim  
5 element every time.

6 A. Okay.

7 Q. When we refer to -- well, so  
8 looking at Claim 9, we have a  
9 computer-implemented method of managing data and  
10 then the first element has creating data within  
11 a user environment. Continues on after the  
12 colon, the data in the form of at least files  
13 and documents.

14 Do you see that after the comma?

15 A. Yes, I do.

16 Q. And then that will be Element 1 of  
17 Claim 9.

18 The next element will start  
19 dynamically associating metadata with the data.  
20 And it continues on to include information  
21 related to the user, the data, the application  
22 and the user environment.

23 Can I refer to that as Element 2  
24 of Claim --

1 A. Sure.

2 Q. -- 9?

3 Okay. And if I put element one  
4 and two together, would it be easier to just  
5 refer to that as the context component --

6 A. Yeah. That's very much like the  
7 description of the context component in Claim 1.

8 Q. -- or how would you do that?

9 So we could refer to it either way  
10 and we'll be talking about the same thing when  
11 we refer to Claim 9; right?

12 A. Right.

13 Q. And then the remainder of the  
14 claim has this element three that starts  
15 tracking movement of the user and continues on.

16 And then the next element, which  
17 is four, starts dynamically updating the stored  
18 metadata all the way through the end of the  
19 claim. Do you see that?

20 A. Mm-hmm. Yes.

21 Q. And those can be elements three  
22 and four of Claim 9. Is that okay?

23 A. Yes. Yes.

24 Q. And can we refer to that also as

1 the tracking component of Claim 9?

2 A. Yes. I believe that those  
3 together describe the tracking component.

4 Q. How is Claim 9 different than  
5 Claim 1?

6 A. Well, Claim 9 adds a few new  
7 things. So it introduces language of user  
8 environment instead of context means the same  
9 thing.

10 It talks about web-based computing  
11 platform. That's one of the major differences  
12 is that this requires something that's web based  
13 and is a platform for user interaction.

14 So that's the main difference in  
15 the context component. And I think that's the  
16 same down here, just a web-based kind of big  
17 difference between this and Claim 1.

18 Q. And it continues throughout Claim  
19 9, this web based --

20 A. Down to Claim 9. So web based  
21 here in part of the description is the tracking  
22 component as well.

23 Q. Is it your opinion that all the  
24 elements of Claim 9 are disclosed in the

1 provisional application?

2 A. Yes, that's my opinion. They're  
3 all disclosed.

4 Q. Okay. Let's take a look at the  
5 provisional application. It's PTX 3.

6 And well, for all the reasons  
7 you've already testified about, does that  
8 support your opinion that all the elements of  
9 Claim 9 are fully disclosed in the provisional?

10 A. Right. So the discussion we had  
11 before about the context component and the  
12 tracking component that all, you know, applies  
13 here.

14 The thing that is the additional  
15 element for Claim 19, that it's web based.

16 Q. Okay.

17 A. So we need to look for something  
18 new to support that.

19 Q. Can we turn to the code at LTI  
20 756?

21 A. 756?

22 Q. Six. Yes.

23 A. That's 46. Fifty-six.

24 There we go.

1 Q. And then it goes on to 57?

2 A. Right. If we look at where it  
3 starts, let's see, at the bottom public form,  
4 get form on 746. So you see discussion here of  
5 forms.

6 You see discussion of, on the next  
7 page, of sub-forms and pages, concrete pages and  
8 so on.

9 This is all language that  
10 describes creating web pages. So by form, they  
11 mean this form. Form is an area within a web  
12 page. So the codes here reveal that this is, in  
13 fact, a web-based system.

14 Q. Why don't we turn to then Claims  
15 11 and 16. Is it your understanding that Claims  
16 11 and 16 are dependent on Claim 9?

17 A. Yes. That's my understanding.

18 Q. What is the addition that's added  
19 to Claim 11 and then 16?

20 A. So Claim 9 adds indexing the  
21 content to user environment. So with that one,  
22 more than one user to user access environment.

23 Q. And how about Claim 16?

24 A. So Claim 16 talks mainly -- the



1 addition is this, that you can access this from  
2 a portable wireless device.

3 Q. And do you have an opinion as to  
4 whether or not Claims 11 and 16 are fully  
5 disclosed in the provisional application?

6 A. Yes. I think they are fully  
7 disclosed.

8 Q. Okay. Let's take a look at the  
9 provisional PTX 3. If we can take a look at LTI  
10 747. I believe, Paragraph 22.

11 A. So --

12 Q. And can you explain how this  
13 relates to your opinion with respect to Claim  
14 11?

15 A. Okay. So this sort of shows that  
16 multiple users are intended to be able to access  
17 files. So they create changes in context files  
18 and applications, automatically following  
19 dynamically capturing those shifts in context.

20 So, you know, users are supposed  
21 to be able to access their files from multiple  
22 context or environments, which is part of Claim  
23 11. So I think we can continue on to the next  
24 reference relevant to Claim 11, which -- is so I

1 was thinking again of the code where it talks  
2 about the codes that we looked at before that it  
3 talks about keys. I'll find it here in a  
4 second.

5 So, for example, on LTI 758, the  
6 top half of the page. So, again, this just kind  
7 of shows this discussion of these key and key  
8 fields and so on that the data are intended to  
9 be stored. See the keys and it's in a  
10 relational database.

11 And if you had any sort of a  
12 sizeable relational database, you would prefer  
13 index for that. Index is -- I think of a little  
14 -- by the index of the back of the book that's  
15 sort of for each major entry, it tells you where  
16 that word can be found.

17 So this is just referring to an  
18 index that the computer can use to locate  
19 content. So it creates basically an index.

20 And if you're using a relational  
21 database and storing lots and lots of  
22 information, you would naturally need an index  
23 to find it. Going through, going through every  
24 item and order would be way too slow.

1 Q. Okay. So let's turn to Claim 16  
2 which has the other element of a portable  
3 wireless device.

4 A. Okay.

5 Q. In the provisional application,  
6 can you give us an example of where a  
7 provisional application, one of ordinary skill  
8 in the art would understand that that is  
9 disclosed in the provisional application?

10 A. Sure. I think we go to.

11 Q. PTX 3, please.

12 A. I think we go to LTI 747.

13 Q. You said 747?

14 A. I believe so. Yes.

15 Q. Okay.

16 A. That's one of the places we want  
17 to look. So here's how I was thinking about  
18 this, that this describes the kinds of data that  
19 would be associated with user workspace.

20 And among things listed we have  
21 phone calls, for example. So phone calls are,  
22 according to this invention, intended to be  
23 accessed or intended to be, you know, part of  
24 the user workspace.

1                   And if we go to LTI 746, the  
2 preceding page, Paragraph 17, we see once again  
3 that integrates two or more different  
4 communication applications such as telephony.  
5 So clearly they had telephony in mind as one of  
6 the things, you know, associated with this  
7 workspace.

8                   Well, in 2002, it was, you know,  
9 universally possible to access your stored phone  
10 call or your voice mail, you know, through a  
11 cell phone. I mean, it just wouldn't make sense  
12 in this time period to have workspace, and that  
13 included your phone calls and your voice mail  
14 and would not let you access it from a cell  
15 phone.

16                   Of course you would build it so  
17 you can access it from a cell phone. So that  
18 is, in my view, accessing information or it's  
19 accessing the user workspace from a verbal  
20 wireless device, which is your cell phone.

21                   Q. Is it your opinion that the  
22 provisional application fully disclosed each and  
23 every element of Claims 9, 11 and 16?

24                   A. Yes. It's my opinion it discloses

1 every element of those claims.

2 Q. Okay. We're going to keep moving  
3 along. Let's go to Claim 21 here.

4 A. All right.

5 Q. So if we take a look at Claim 21,  
6 this is broken up into five different elements.  
7 You see the first element will be creating data?

8 A. Mm-hmm.

9 Q. It continues on of a web-based  
10 computing platform using an application. So you  
11 will understand when I refer to that as element  
12 one?

13 A. Correct.

14 Q. Okay. The next element will start  
15 dynamically associating metadata and continues  
16 on to the end where it says into the user  
17 workspace.

18 Do you see that?

19 A. Yes.

20 Q. That will be element two.

21 The next element is tracking user  
22 of -- the movement of the user. It ends with  
23 the web-based computing platform. You'll  
24 understand that as element 3?

1 A. Right.

2 Q. And the next element is  
3 dynamically associating the data and continues  
4 on through and says and data from the second  
5 user workspace. And do you see that?

6 A. Mm-hmm.

7 Q. That will be Claim 4 or element  
8 four of Claim 21.

9 And finally, the last element  
10 which is indexing the data, and it ends with  
11 from a corresponding plurality of different user  
12 workspaces; right?

13 So I'll refer to that as element  
14 five.

15 A. Okay.

16 Q. Can you explain how Claim 21 is  
17 different than the claims we've already talked  
18 about?

19 A. Well, Claim 21 is again very  
20 similar, although it talks about a  
21 computer-readable medium for storing  
22 instructions. But the elements of the claim are  
23 very similar to what we've seen before. It does  
24 again mention indexing down at the end.

1                   It describes a context component.

2                   It describes a tracking component.

3                   So, you know, for the reasons that  
4                   I've described before, these are disclosed in  
5                   the provisional application for exactly the same  
6                   citations and uses.

7                   Q.    With respect to indexing the  
8                   data, --

9                   A.    Mm-hmm.

10                  Q.    -- that particular element, is  
11                  there a place that we can look to in the  
12                  provisional application in the code that might  
13                  be helpful that informs your opinion that all  
14                  the elements of Claim 21 are, in fact, disclosed  
15                  in the provisional?

16                  A.    Yeah. I think I would point us  
17                  back to the same place we looked at before in  
18                  terms of when we looked at indexing, when we see  
19                  that relational database is being used to store  
20                  the data and to store the metadata. And it just  
21                  would not be sensible to do that any way except,  
22                  you know, by indexing.

23                  That's just almost essential,  
24                  otherwise it would take forever to sort of go

1 through everything to see if it's there. You  
2 would just naturally do this.

3 Q. And for the record, are you  
4 referring to what has LTI 758 at the bottom  
5 there?

6 A. Yes. Yes, that's what I'm  
7 referring to.

8 Q. Okay. We're in the last set of  
9 claims. Let's look at Claim 23, 25, 31 and 32.

10 A. Okay.

11 Q. And as soon as we have that up.  
12 Can you generally describe what Claim 23  
13 discloses and how it's different than what we've  
14 already talked about?

15 A. Well, so what claim -- so we're  
16 looking at 23. Okay.

17 So this is now  
18 computer-implemented system. This is again, you  
19 know, basically describing a context component,  
20 but it says now it's on a web-based server,  
21 okay, which is a little bit different  
22 terminology than has been used so far.

23 And it also talked about assigning  
24 one or more applications to the first user



1 workspace and capturing context associated with  
2 the user interaction while in that workspace.  
3 So that's a little bit different than what we  
4 see.

5 The second element describes  
6 tracking change information, right, which is a  
7 little bit different associated with a change in  
8 access of the user from the first workspace to  
9 the second user workspace and dynamically  
10 storing the change on the storage component as  
11 part of the metadata, wherein the user accesses  
12 the data from the second user workspace.

13 So this describes slightly  
14 differently, but this is very similar to the  
15 tracking component that we've looked at already.

16 Q. Okay. So we can refer to Claim  
17 23, the two elements. The first element being  
18 the context component that would be the entirety  
19 of the element and the second element being the  
20 tracking component, meaning the remainder of the  
21 claim; is that fair?

22 A. Yes, that makes sense.

23 Q. Okay. Could you provide an  
24 example in the provisional application where it

1 informs your opinion that all the elements of  
2 Claim 23 are disclosed in the provisional  
3 application?

4 If you can turn to PTX 3, I think  
5 it starts LTI 747. Paragraph 23, if we could  
6 enlarge that.

7 A. Mm-hmm. So here they're using the  
8 board to mean workspace in this claim. It's the  
9 same example workspace, same exact thing as a  
10 workspace, collection of data and functionality  
11 related to a user defined topic.

12 So this is sort of showing that  
13 the application functionality is related to a  
14 board. So data functionality is related to the  
15 boards.

16 If you look down at the bottom,  
17 the data application may be grouped in a board  
18 based on the identity of the tag (data and  
19 application. So if application can be grouped  
20 inside of a board there, it obviously referred  
21 to inside of a board, which is what the claim  
22 requires.

23 Q. Is it your opinion that all the  
24 elements of Claim 23 are disclosed in the

1 provisional application?

2 A. Yes, it's my opinion.

3 Q. If we can take a look now at the  
4 dependent claims, which are 25, 31 and 32.  
5 Could you briefly explain what the differences  
6 are or what the additions are to Claim 25, 31  
7 and 32?

8 A. All right. So Claim 23, the  
9 context component, which is the thing that we  
10 have been talking about before captures  
11 relationship data associated with the  
12 relationship between the first user workspace  
13 and at least one user workspace. So they are  
14 saying that has to be a component by what's  
15 captured by the context component.

16 So it's being a little more  
17 specific about that.

18 So Claim 31 introduces the idea  
19 that the metadata is stored in at least one of a  
20 relational or object storage methodology.  
21 That's something new there.

22 And so Claim 32 is saying once  
23 again that storing the metadata in the storage  
24 component in association with the data

1 facilitates many-to-many functionality, which  
2 means more than one user being able to access  
3 more than one data file via the metadata.

4 So that's the, you know, new parts  
5 that have been introduced?

6 Q. Is it your opinion that in reading  
7 the entire provisional application, that all the  
8 elements of Claim 25, 31 and 32 are fully  
9 disclosed?

10 A. Yes. It's my opinion that all of  
11 them have been fully disclosed.

12 Q. Can we take a look at the  
13 provisional application, which is PTX 3 and can  
14 you provide a few examples where these  
15 additional examples from Claim 25, 31 and 32 are  
16 covered?

17 A. Sure. 747, Paragraph 22, if you  
18 can blow that up, please. Thank you.

19 Yeah. So the Claim 25 says there  
20 has to be -- a context component has to capture  
21 relationship data associated with a relationship  
22 between the first user workspace and at least  
23 one other user workspace. So as users create  
24 and change their context files and applications

1 automatically follow dynamically capturing those  
2 shifts in context.

3 So a shift in context is the  
4 movement from one workspace to another capturing  
5 the relationship between those workspaces. So  
6 that I think pretty well discloses Claim 25.

7 Q. Are there other places as well in  
8 this provisional application that would disclose  
9 that element?

10 A. Sure.

11 Q. Maybe we could turn to the next  
12 page and if we can look at the last paragraph.

13 What does this tell you?

14 A. Mm-hmm. So this is saying that if  
15 you have a collection of workspaces, which has  
16 -- they mean hereby webs, the content is  
17 associated with a routing algorithm referred to  
18 here as a webslice.

19 So, in other words, using this,  
20 this is a relationship between workspaces and  
21 content. So the webslice directs where the  
22 content goes. It knows which workspaces the  
23 content is associated with that creates a  
24 connection, a relationship between those

1 workspaces because they share the same content.

2 Q. Okay. Why don't we turn to Claim  
3 31.

4 And let's look at it actually in  
5 the actual provisional itself for the additional  
6 element of Claim 31.

7 Can we go to PTX 3, please? LTI 7  
8 -- yeah, the first page of the code there.  
9 Thank you.

10 Could you please explain what we  
11 have here and how that relates to Claim 31?

12 A. Sure. So I think I mentioned  
13 earlier if you see this import statement for  
14 vbsf, that does indicate an intention to store  
15 data in a relational database. So it makes it  
16 pretty clear that that's the technology that's  
17 used for storing the storage.

18 Q. In the code of the provisional  
19 application, there are other references to vbsf;  
20 isn't that right?

21 A. Right. There are a number of  
22 places where in the comments it refers to vbsf  
23 as, you know, where something's being stored,  
24 which is, you know, a further indication that

1 that's what is supposed to be happening there.

2 Q. Okay. If we could maybe turn to  
3 LTI 757. I think there might be another example  
4 of that that we can look at towards the bottom.

5 A. Yeah. These are a couple of  
6 examples that these particular collections get  
7 relationship collection. These are stored and  
8 retrieved from a relational database.

9 Q. Okay. Very good.

10 We're going to add on 32. Let's  
11 take a look to see where that last element of  
12 Claim 32 is disclosed in the provisional, an  
13 example of that. So maybe we can turn to  
14 Paragraph 1 under the Field of Invention of the  
15 provisional application PTX Number 3.

16 Thank you. Can you please explain  
17 whether or not this is an example of how that  
18 last element of Claim 32 is disclosed?

19 A. So management storage  
20 electronically creating a relationship between  
21 user applications files and folders. So users  
22 name more than one file, means more than one. I  
23 mean, that's what the many to many means.

24 So here we're seeing that the

1 intention is to create relationships between  
2 more than one user and more than one file which  
3 is what the claim says.

4 Q. Based on your understanding, is it  
5 your understanding that the provisional  
6 application meets all the requirements such that  
7 one can claim priority to the provisional  
8 application for the asserted claims of the '761  
9 patent?

10 A. Yes, that is my opinion.

11 Q. Is it your opinion that one of  
12 ordinary skill in the art would be able to take  
13 the provisional application and make and use the  
14 invention of the asserted claims of the '761  
15 patent?

16 A. Yes, it is. It is my opinion that  
17 using both the text and the code, one could --  
18 one of ordinary skill in the art could do that.

19 Q. An is that opinion based on your  
20 review of the provisional application and the  
21 '761 patent as well as the work that was done by  
22 Mr. Marcello Caltaldo?

23 A. Yes. Those are the two bases.

24 One is my own review. The other



1 is actually handing it to a person of ordinary  
2 skill in the art and saying, Please make one of  
3 these, and he made one. So I assumed that one  
4 could do that.

5 Q. And just to make sure I didn't  
6 miss any claim, I want to make sure that we got  
7 that. It is your opinion that each and every  
8 element of the asserted claims we've talked  
9 about for all the reasons we've discussed today  
10 is, in fact, disclosed in the provisional  
11 application?

12 A. It is my opinion each and every  
13 element of every claim is disclosed.

14 Q. Okay. Let's turn to now the prior  
15 arts references.

16 Did you have a chance to review  
17 Dr. Greenberg's report?

18 A. I did. I reviewed his report.

19 Q. And do you understand that he's  
20 asserting certain references as prior art to the  
21 asserted claims of the '761 patent?

22 A. Right. I do understand that.

23 Q. Okay. What is your understanding  
24 of what constitutes prior art?

1           A. Well, in order to constitute prior  
2 art, it must be something that is publicly  
3 available. It must be something that was  
4 publicly available before the December 11th date  
5 of the filing of the provisional patent  
6 application.

7           And it must be something that is  
8 enabling, that would allow a person of ordinary  
9 skill in the art to actually make and use the  
10 invention without too much problem.

11           Q. What is your opinion regarding the  
12 references that Dr. Greenberg has cited against  
13 the asserted claims of the '761 patent?

14           A. So the -- none of those references  
15 disclose the elements of the claims of the '761  
16 patent.

17           Q. Okay. Do you understand there are  
18 two different theories out there? One is called  
19 anticipation and the other is obviousness?

20           A. Mm-hmm.

21           Q. Could you just briefly explain  
22 what is your understanding of anticipation?

23           A. Well, my understanding of  
24 anticipation is that means that one reference

1 has to disclose each and every element of the  
2 patent of the invention in order to invalidate  
3 it.

4 And obviousness means that -- that  
5 several different things can be combined if  
6 there's some reason to think that they would be  
7 used together. They could be combined to render  
8 the invention just something that would be  
9 obvious.

10 Q. Well, why don't we turn to the  
11 tutorial slide that you had earlier in the case.

12 A. Okay.

13 Q. And looking at that, can you  
14 explain what problems the '761 patent sought to  
15 solve?

16 A. Right. Well, I think you recall  
17 maybe from the tutorial that we were talking  
18 about this kind of hierarchial arrangement where  
19 the user has to, you know, name a folder, you  
20 know, create a folder, decide how to name it and  
21 then to store data. The user has to then sort  
22 of figure out, you know, why each individual  
23 item should go in this hierarchy.

24 So that is one of the problems

1 that the '761 technology was assigned to solve  
2 and to make it much easier and more natural to  
3 share documents and keep track of users by, you  
4 know, using a technique to automatically update  
5 metadata.

6 Q. Do the references that Dr.  
7 Greenberg, that he cited, do they have anything  
8 in common?

9 A. They have something in common.  
10 That is that they are all basically document  
11 management systems.

12 They have nothing to do really  
13 with the users. They're all about documents and  
14 they all use this sort of hierarchial storage  
15 system.

16 So they disclose basically the  
17 same problem that the '761 technology was  
18 designed to solve. All these document  
19 management systems are centered around  
20 documents. They keep track of documents. They  
21 keep the histories for documents.

22 The '761 technology is all about  
23 users. It's all centered around users. It  
24 creates workspaces for users.

1                   And it tracks users and what users  
2 do. So it's just a some completely different  
3 basis on which to build a system.

4                   Q. Why don't we take a look at the  
5 abstract of the patent.

6                   A. Yes.

7                   Q. Is there something in the abstract  
8 information one of ordinary skill in the art,  
9 that that's what the invention of the '761  
10 patent is?

11                  A. Right. Absolutely.

12                   If we start certain notes here,  
13 the highest contextual assumption is that there  
14 exists an entity that consists of one or more  
15 users. What that basically means is that there  
16 are -- everything is centered around users.  
17 Right.

18                   There are -- there always has to  
19 be a user, an entity that represents one or more  
20 users as part of the system. Everything else is  
21 built around that.

22                   And that's what makes this really  
23 very different from the document management,  
24 basically document management systems that are

1 cited as prior art.

2 Q. Let's turn to the prior art.

3 Let's go to the iManage User Reference Manual,  
4 which is DTX 1010. Now, what is your  
5 understanding of what this user reference manual  
6 is?

7 A. Well, it's a manual intended for  
8 end users to -- you know, people who want to use  
9 the iManage DeskSite system would refer to this  
10 to figure out, you know, how to use it.

11 Q. And does it actually tell you how  
12 to build the iManage software?

13 A. Well, no, not at all. Actually  
14 it's as if, you know, we all have owners manuals  
15 for our cars that tell you, Here's how you  
16 operate the automatic transmission. For  
17 example, that tells me absolutely nothing about  
18 how to build an automatic transmission.

19 It's just -- it just doesn't  
20 disclose anything about that. So in the same  
21 way a user manual might tell me how to engage  
22 the functionality of the software, but it  
23 doesn't tell me anything about how to build it.

24 Q. All right. And within the four

1 corners of this document we've marked as DTX  
2 1010, does it give you any information for one  
3 of ordinary skill in the art to be able to build  
4 the software in all the components that it might  
5 reference?

6 A. No, it doesn't. It doesn't say  
7 anything about how it's designed, what the  
8 structure looks like. It simply tells us how to  
9 use it once it's there.

10 Q. Do you know whether this iManage  
11 manual, which is marked as DTX 1010 whether that  
12 was publicly available in 2001 or 2002?

13 A. I have no idea.

14 Q. Now, do you have an opinion as to  
15 whether the iManage User Reference Manual is  
16 prior art to the '761 patent?

17 A. Yeah. Because it doesn't  
18 disclose, you know, how to make and use this  
19 invention, I would say it's not prior art. It  
20 doesn't qualify as prior art.

21 Q. What is the difference between the  
22 iManage User Manual and the information  
23 disclosed within the four corners of that  
24 document and the invention of the '761 patent?

1           A.    Well, so the -- you mean the  
2           difference in nature of the technology that's  
3           described?

4           Q.    Correct.

5           A.    So the iManage DeskSite describes  
6           basically a document management system as we've  
7           been discussing. So it provides a way for an  
8           organization using a local network to kind of  
9           store documents in a central place and access  
10          those documents, have secure access. Probably  
11          has -- you know, has passwords and so on.

12                         But it's basically just a way of  
13          creating, as you see on the left here, one big  
14          document repository system that people can put  
15          their documents into. And other people, if they  
16          have the right provisions, can pull them out.  
17          So that's the basic technology that's disclosed  
18          there.

19          Q.    When you refer to one big document  
20          system and you're pointing with your pointer,  
21          just for the record, are you referring to the  
22          traditional hierarchial system?

23          A.    Yes, I am. I'm referring to the  
24          traditional hierarchial system from the slide,



1 from the tutorial.

2 Q. Why don't we take a look at  
3 iManage Manual and go to Page 4. So could you  
4 explain to us, Dr. Herbsleb, what are we looking  
5 at here?

6 A. This is an example. Exactly an  
7 example of what I was talking about is that this  
8 is how iManage, you know, according to its own  
9 documentation, stores documents.

10 We see them put into hierarchy.  
11 Someone had to decide that this folder called  
12 corporate folder, called personal pages, public  
13 pages and then people name their pages and put  
14 them into folders. So this is very much the  
15 hierarchial storage system that is, you know,  
16 part of the problem that the '761 was trying to  
17 overcome.

18 Q. Is this just one example of the  
19 IManage Manual that provides you with this  
20 example?

21 A. Yes. If you look through it, you  
22 find many examples that are similar showing the  
23 hierarchial storage system.

24 Q. Why don't we take a look at

1 another portion on Page 83.

2 I believe it's Figure 3.26.

3 A. Mm-hmm.

4 Q. Can you explain: What are we  
5 looking at here?

6 A. Well, I mean, the caption makes  
7 pretty clear what we're looking at is a document  
8 history. So this is showing that for some  
9 particular document, these are the things that  
10 happen to that document.

11 All right. So this system is very  
12 document central. So you can see here somebody  
13 checks in the documents. They modified the  
14 documents.

15 Someone checked it out. Somebody  
16 created a different version of the document.

17 It just keeps track of everything  
18 that happens to that document.

19 Q. Well, does this figure show that  
20 the iManage manage system or the iManage --  
21 strike that. Does this figure show that in the  
22 iManage User Manual, there is tracking of  
23 documents?

24 A. Yes. This sort of tracks

1 documents and it tracks what happens to  
2 documents. Sure.

3 Q. Does this figure show in the  
4 iManage User Manual that there's tracking of  
5 users?

6 A. No, absolutely not. There's no  
7 view that you can go to.

8 There's no view shots anywhere in  
9 the manual where you can sort of pull up some  
10 user and see what a user has done. That's not  
11 part of this technology.

12 It's all completely document  
13 central. And as you can see here, these are all  
14 entries of here of documents.

15 So it doesn't track users at all.

16 Q. Is there anything in the entirety  
17 of the iManage User Reference Manual that  
18 discloses tracking of users?

19 A. No, not that I could identify. I  
20 see nothing in there that tracks users.

21 Q. Is there anything in the iManage  
22 User Reference Manual that talks about  
23 workspace?

24 A. No, it does not have workspaces as

1 part of the technology. It doesn't provide, you  
2 know, environments places for people to do work  
3 with their tools and allow people to move from  
4 one workspace to another. There is none of that  
5 in the technology.

6 Q. Okay. Well, let's turn to Claim 1  
7 of the '761 patent.

8 A. Okay.

9 Q. And take a look at that.

10 Unfortunately, since we  
11 shorthanded, actually could we turn to the other  
12 slide that we were referring to?

13 Since we shorthanded the elements  
14 here, I think I can refer to them as the context  
15 component of Claim 1. We know what we're  
16 talking about.

17 So in your opinion, does the  
18 iManage User Reference Manual disclose the  
19 context component element of Claim 1?

20 A. No, not at all. We -- again, we  
21 have to be very careful what we mean by context  
22 here because that's a word that gets used in  
23 many different ways. And what we have to use  
24 here is we have to use the construction that's

1 in the claim construction order, which says that  
2 context means environment.

3 Okay. So the software to provide  
4 a context and have a context component has to  
5 provide an environment for a workspace for the  
6 user.

7 And the technology described,  
8 iManage Manual just does not do that. So it  
9 does not have a context component, period.

10 Q. It doesn't have the entirety of  
11 the first element?

12 A. No. It just -- that's not there.  
13 There is no context component.

14 Q. Let's turn to the tracking  
15 component. Does the iManage User Reference  
16 Manual use -- disclose that tracking component  
17 of Claim 1?

18 A. No. Again, so if you see -- if  
19 you look at the tracking component, this is  
20 tracking a user changing a user from one context  
21 or environment or workspace to another context,  
22 which has to mean an environment or workspace.

23 All right. And then updating the  
24 stored metadata based on that tracking

1 information. Well, this doesn't have any part  
2 of this.

3 This doesn't have workspaces. It  
4 doesn't track users. It doesn't update metadata  
5 based on a change from one workspace to another.  
6 It just doesn't have any of that.

7 Q. Okay. Well, let's take a look at  
8 the dependent claims, which are 4 and 7. Does  
9 the iManage User Reference Manual disclose the  
10 other elements of Claim 4 and 7?

11 A. Right. So this is a dependent  
12 claim. So if Claim 1 is valid, I understand  
13 that these are also valid.

14 But it does not disclose anything  
15 about relationship of a user to context  
16 information of a relationship between a user and  
17 at least one of an application, application  
18 data, and user environment. It does not  
19 disclose data created in the first context  
20 associated with data created in the second  
21 context.

22 Well, as I mentioned, it doesn't  
23 have, you know, context in the software. So  
24 this can't satisfy Claim 7.

1 Q. Is it your opinion that the  
2 iManage User Reference Manual does not  
3 anticipate Claims 1, 4 and 7 of the '761 patent?

4 A. It's my opinion it does not  
5 anticipate any of those claims.

6 Q. Okay. Let's take a look now at  
7 Claim 9.

8 I believe we had already discussed  
9 the difference with Claim 1 and Claim 9 as it  
10 related to the web-based computing platform;  
11 right.

12 A. Right.

13 Q. Okay. Is there anything -- I'm  
14 sorry.

15 Were you going to --

16 A. Elements one and two are basically  
17 the context component. Three and four are  
18 basically the tracking component. And what's  
19 new here is web-based computing platform.

20 And it's a method of managing,  
21 right, method of managing data using a web-based  
22 computing platform.

23 Well, there's no indication in  
24 this manual that product is web based. There

1 is, you know, the predominant mode of operation  
2 appears to be over a local network.

3 There is one small reference. I  
4 think we may have it here to something web  
5 based.

6 Q. Right. If we could turn to the  
7 iManage User Manual and I believe it was AUTO  
8 275.

9 A. Yes, if we focus in on the top  
10 here. This is about the only reference that I  
11 can recall in this manual to anything that's web  
12 like.

13 So it's saying up here that you  
14 can -- if you're set up correctly, send a  
15 document by email or you can send a link by  
16 email, and then someone can access your document  
17 through a URL, which would be a web-based access  
18 but. What this is saying is your system must  
19 include an iManage worksite web component  
20 server.

21 Well, that's not described  
22 anywhere in this manual. This is some other  
23 product apparently that has some kind of web  
24 functionality. We don't really know, you know,



1 what.

2 We just have this kind of very  
3 oblique sort of reference. So there's some  
4 mention of web, but it's for a different  
5 product. It's not even disclosed in this  
6 manual.

7 Q. Does the iManage User Reference  
8 teach a user environment?

9 A. No. There is just nothing like  
10 the user environment in this system. It's just  
11 all about documents.

12 Q. And does it disclose anything  
13 about metadata about the user environment?

14 A. Well, no. No.

15 Having no user environment, it  
16 also has no metadata about user environments.

17 Q. Okay. Why don't we take a look at  
18 Claims 11 and 16, which are the dependent claims  
19 to Claim 9.

20 A. Right. So Claim 11, as you see  
21 it, it talks about plurality of users accessing  
22 a content from an associated plurality of user  
23 environments. And again, having no user  
24 environments, you don't -- you can't have a

1 plurality of user environments.

2 So I don't think it discloses  
3 Claim 11.

4 Q. And how about Claim 16?

5 A. Well, no. There's really nothing  
6 at all in there about portable wireless devices  
7 or even about having kinds of data like  
8 voicemail that one typically accesses over a  
9 portable wireless device. There's no mention of  
10 it there.

11 Q. What is your opinion as to whether  
12 or not the iManage User Reference Manual  
13 anticipates Claim 9, 11 and 16?

14 A. It's my opinion it does not  
15 anticipate Claims 9, 11 and 16.

16 Q. Okay. Claim 21.

17 Is Claim 21 valid or what is your  
18 opinion with respect to whether or not Claim 21  
19 is anticipated by the iManage User Reference  
20 Manual?

21 A. It's my opinion it's not  
22 anticipated by the iManage -- I'm forgetting the  
23 name of this thing -- iManage Reference User  
24 Manual. Sorry.

1 I think it's not anticipated by  
2 that.

3 Again, so I think each one of  
4 these elements mentions user workspace. They're  
5 first element user workspace in the second  
6 element. User workspace in the third element.

7 User workspace in the fourth  
8 element. User workspace in the fifth element.  
9 There's no user workspace here.

10 Also, it talks about, you know,  
11 web-based computing platform. There's nothing  
12 in there to indicate this particular product  
13 whose manual we have in front of us is web  
14 based. So it doesn't disclose any of these  
15 elements.

16 Q. And for the reasons that you've  
17 already testified previously with respect to the  
18 other claims and that also apply with respect to  
19 Claim 2 --

20 A. Correct.

21 Q. -- those apply here?

22 A. Right.

23 Q. So what is your opinion with  
24 respect to Claim 23 as it relates to the iManage

1 User Reference Manual, just in case I didn't ask  
2 earlier?

3 A. Claim 21 you mean?

4 Q. Did I say -- sorry, 21. Yes.

5 A. So that the iManage manual does  
6 not disclose any of the elements, I believe, of  
7 Claim 21.

8 Q. Let's turn to Claim 23.

9 Does the iManage User Reference  
10 Manual disclose any of the elements in Claim 23?

11 A. No, it does not. Again, we have a  
12 context component and we have a tracking  
13 component. And for all of the reasons I've  
14 mentioned before, it has neither of those.

15 And so it does not disclose any of  
16 the elements of Claim 23.

17 Q. And if we look at the dependent  
18 claims on Claim 23, which are Claim 25, 31 and  
19 32, are those claims -- strike that.

20 Are Claims 25, 31 and 32  
21 anticipated by the iManage User Reference  
22 Manual?

23 A. No, they're not, because these are  
24 claims dependent on Claim 23. And so Claim 23

1 is not anticipated.

2 None of these can be anticipated.

3 They're simply making that claim more specific.

4 So, no, none of these is disclosed by the

5 iManage User Reference Manual.

6 Q. We're almost done talking about  
7 this one, so we'll -- if you look at Claim 25,  
8 there's a reference to the first user workspace.  
9 Do you see that?

10 A. Mm-hmm.

11 Q. Is that disclosed anywhere in the  
12 iManage User Manual?

13 A. No. There are no user workspaces  
14 in that technology.

15 Q. Okay. So is it your opinion that  
16 the asserted claims is valid over the iManage  
17 User Reference Manual?

18 A. My opinion is that all these  
19 references are valid as against the iManage User  
20 Reference Manual.

21 Q. Let's turn now to the Hubert  
22 reference --

23 A. Okay.

24 Q. -- which is DTX 922. Can you

1 explain to us what does Hubert disclose?

2 A. Hubert discloses something that  
3 they call a meta-document. Okay. So now a  
4 meta-document is like kind of like a regular  
5 document with some extra stuff.

6 And the extra stuff that goes  
7 along with it is kind of history of everything  
8 that's happened to that document. So if the  
9 document is a report, if that report gets  
10 translated from English to Spanish.

11 That would be recorded in the  
12 meta-document. If it gets sent from one person  
13 to another, that would be reported in the  
14 meta-document of the document.

15 All right. So it's basically you  
16 can think of what you would usually think about,  
17 a document plus some more information about, you  
18 know, what's happened to that document as it's  
19 moved from one place to another, been edited,  
20 been shipped around, so on. That's what it is.

21 Q. If you look at the title, which I  
22 believe is Line 54, enlarge that. It says  
23 meta-documents and method of managing them.

24 A. Mm-hmm.

1 Q. Is that a good description of  
2 what's in the Hubert reference here?

3 A. It is. It's -- again, it's very  
4 document central meaning that's what it's about.  
5 It's documents. It actually adds to the notion,  
6 it's sort of a fancy document. A document plus  
7 a little bit more information.

8 Q. How's that different from the  
9 invention of the '761 patent?

10 A. Well, the '761 patent is based  
11 around users and users' workspaces, you know,  
12 having environments for users and tracking users  
13 when I go from one environment to another  
14 environment and so on.

15 This is just about these  
16 meta-documents. It doesn't have any sense of  
17 users doing anything except it's recorded in  
18 history of a document. So again it's just sort  
19 of keeping a document history.

20 Q. Okay. Maybe we can take a look at  
21 Paragraph 11 of this reference.

22 A. Mm-hmm.

23 Q. Can you just explain what this  
24 describes here in Paragraph 11 of the Hubert

1 application, if you can see it?

2 A. Right. So it's talking about what  
3 is included in the meta-document. So we have  
4 what it calls the object-conveying document  
5 information. So that's just like a regular  
6 document.

7 All right. That's sort of a  
8 document part of the meta-document. It includes  
9 processing information pertaining to processing  
10 of the meta-document and metadata for indexing  
11 and retrieving the processing information.

12 It includes the fact that  
13 meta-document was processed by whom and any  
14 relevant tool used in the result of the  
15 processing. So, in other words, if the document  
16 gets sent from one person to another, that gets  
17 recorded in the processing information.

18 If you do something to it like I  
19 suppose even spell check it, or translate it or  
20 do anything like that, that gets recorded in the  
21 processing information, and so on. So that's  
22 the processing part.

23 Each time processing information  
24 is recorded on the document, appropriate



1 metadata index and retrieving the processing  
2 information is also stored on the meta-document.  
3 So it keeps its own history in the metadata.  
4 That's basically what this is saying.

5 Q. Is there anything about the users  
6 here?

7 A. There's absolutely nothing about a  
8 context, or environment or moving from one  
9 context to another, tracking users. I mean,  
10 it's just not centered around users. It's  
11 centered around these meta-documents.

12 Q. So, in your opinion, is it totally  
13 different than the '761 patent?

14 A. It's completely different.

15 Q. Okay. Are there figures in this  
16 application, this Hubert reference that explain  
17 what the Hubert reference is about?

18 A. Yeah. I think there are two  
19 figures as I recall.

20 Yeah. This is the first one.

21 This is just sort of showing what  
22 we just explained a second ago that, you know,  
23 there's data information. This is basically the  
24 document, a regular document.

1                   And down here, this sort of tells  
2                   you what processing has happened to the  
3                   document. And that's stored index to the  
4                   metadata, so that you can, you know, find that  
5                   if you want to.

6                   So that's just, you know, storing  
7                   the history. The tool part is actually it's an  
8                   optional part. It's a little bit of code that  
9                   you can include if you want so the document  
10                  updates its own history.

11                  Basically that's what that tool  
12                  is. It's just something that -- oh, I just --  
13                  it just notices that there was a translation  
14                  that happened, so it updates the metadata to  
15                  record that.

16                  Q. Why don't we take a look at Figure  
17                  2, and if we can explain what that shows?

18                  A. Yeah. Well, this is how a  
19                  meta-document would go from one person to  
20                  another.

21                  So source one, that's a person  
22                  whose -- here's a person that has this  
23                  meta-document.

24                  And it shows this link which says

1 internet. The description in the patent itself  
2 says the usual way of transmitting these would  
3 be as an email attachment. Okay.

4 So you would take this  
5 meta-document. You would attach it to an email  
6 and you would send it via an email to some other  
7 person who might then do something. And if they  
8 do something, that would be recorded as part of  
9 this document history as well.

10 Q. And that source two that you just  
11 pointed to?

12 A. Mm-hmm. So source two -- sorry.  
13 And they might do something to it and then  
14 extend along to source three.

15 That person might also do  
16 something to it. And as it goes through this  
17 chain being sent along through email, it just  
18 keeps track of what's happened to it.

19 Q. Is there anything in this figure  
20 that shows a user moving from one environment to  
21 another?

22 A. No. No. not at all.

23 I mean, it's just a document being  
24 sent from one user to the next.

1 Q. Is there anything in the Hubert  
2 reference at all that talks about a user moving  
3 from one environment to another?

4 A. No. No, there's nothing at all  
5 about that.

6 Q. Is it all about meta-documents?

7 A. It's completely about  
8 meta-documents. It is where the documents  
9 entered.

10 Q. In your opinion, is emailing a  
11 document from, let's say, source one to source  
12 two, the same thing as the on-line collaboration  
13 tool of the '761 patent?

14 A. No. This is not sort of an  
15 on-line system.

16 It's just a document that could be  
17 sent over the internet. But just as a textual  
18 document is not an on-line document, it's just a  
19 document that you can send through email.

20 Again, this is just sort of a  
21 fancier document that you could send through  
22 email. It's not an on-line collaboration tool.

23 Q. Let's take a look now at the  
24 claims and walk through these elements. So in

1 Claim 1, does the Hubert reference disclose the  
2 context component element of Claim 1?

3 A. No, not at all, for all the  
4 reasons I've already mentioned. There just is  
5 no context.

6 In the sense of an environment or  
7 user environment, there's nothing like that in  
8 the system. It's also not a network-based  
9 system.

10 It's just a document. There's no  
11 sense of being in a network.

12 As far as the tracking component,  
13 element two is concerned, again, it doesn't  
14 track users doing anything. It can't track  
15 users from first context to the second context  
16 because the technology doesn't provide user  
17 environments, or contexts or people.

18 So it doesn't disclose any of  
19 those things.

20 Q. For all the reasons we have  
21 already talked about, is it your opinion that  
22 the Hubert reference does not anticipate Claim 1  
23 of the '761 patent?

24 A. The Hubert reference does not

1 anticipate Claim 1 of the '761 patent.

2 Q. Let's take a look at Claims 4 and  
3 7. How about these claims, what is your opinion  
4 with respect to these claims?

5 A. Well, these claims are, you know,  
6 dependent on Claim 1. So since I believe Claim  
7 one is valid, those claims are also valid.

8 But, again, there's no user  
9 environment. Again, there's no context, you  
10 know.

11 So you can't have data created in  
12 one context associated with data in the second  
13 context. So because there is no context in the  
14 second context.

15 Q. When you say because Claim 1 is  
16 valid, it's also your opinion that these  
17 dependent claims are valid, is that because they  
18 don't have the elements of the system of Claim 1  
19 that starts out on these dependent claims here?

20 A. Yes. They don't have the elements  
21 of the system under Claim 1.

22 Q. Let's turn to Claim 9.

23 Do you have an opinion as to  
24 whether or not the Hubert reference anticipates

1 Claim 9?

2 A. Right. Well, yes, I do. I am  
3 starting to feel like a broken record up here,  
4 but for the same reasons that you've been  
5 describing, there really is no context  
6 component. There really is no tracking  
7 component for exactly the reasons mentioned  
8 before.

9 It does not anticipate Claim 9 or  
10 even any of the elements of Claim 1.

11 Q. What about the web-based computing  
12 platform, which I believe is one of the  
13 differences we've identified?

14 A. Yeah. There's nothing like a  
15 web-based computing platform. A meta-document,  
16 as I said, is just a document. It's independent  
17 of a network.

18 It certainly doesn't necessarily  
19 live on the web. It's not a platform. It  
20 doesn't fit that at all.

21 Q. So let's turn to the dependent  
22 Claims 11 and 16.

23 A. Mm-hmm.

24 Q. And do you have an opinion as to

1 whether or not the Hubert reference anticipates  
2 Claim 11 and 16?

3 A. Right. So once again, it talks  
4 about associated plurality of user environments.  
5 Well, there are no user environments in a  
6 meta-document.

7 And this talks about -- Claim 16  
8 talks about further comprising accessing the  
9 user environment via a portable wireless device.  
10 There's no mention of anything like that.

11 Q. So is it your opinion that Claims  
12 9, 11 and 16 are valid over the Hubert  
13 reference?

14 A. Yes. It's my opinion that 9, 11  
15 and 16 are valid as against the Hubert  
16 reference.

17 Q. Let's take a look at Claim 21.

18 A. Mm-hmm.

19 Q. Is Claim 21 valid over the Hubert  
20 reference?

21 A. Yes, in my opinion, Claim 21 is  
22 valid over the Hubert reference. Once again,  
23 this is the one that it pointed out, let's say,  
24 user workspace is mentioned in each element of



1 this claim. And the meta-document does not have  
2 any user workspaces in it.

3 It does not disclose any user  
4 workspaces; therefore, it doesn't really  
5 anticipate any of the elements of Claim 21.

6 Q. Let's turn to Claim 23?

7 A. Okay.

8 Q. Do you have an opinion with  
9 respect to Claim 23 as to whether or not it's  
10 anticipated by the Hubert reference?

11 A. Well, again, you know, this is  
12 basically -- the first element is the context  
13 component. The second element is the tracking  
14 component.

15 And for all the same reasons that  
16 I mentioned repeatedly, there is no context  
17 component. There is no tracking component.

18 There is no web-based server  
19 involved in this technology. For all of these  
20 reasons, it does not anticipate either of the  
21 elements of Claim 23.

22 Q. Are any of the elements of Claim  
23 present in the Hubert reference?

24 A. No. None of the elements of Claim

1 23 are present in the Hubert reference?

2 Q. Would that be true of the other  
3 independent claims of the '761 patent?

4 A. That is true of all of the  
5 independent claims of the '761 patent.

6 Q. Can we take a look at the  
7 dependent claims, which are 25, 31, 32. Do you  
8 have an opinion with respect to whether the  
9 Hubert reference anticipates these claims?

10 A. Well, since it does not anticipate  
11 Claim 23, these claims are all dependent on  
12 Claim 23. To simply make it more specific, the  
13 Hubert reference does not anticipate any of  
14 these claims.

15 Q. Now, in the Hubert reference,  
16 there's the word -- the use of the word context.  
17 Is it used in the same way as the '761 patent?

18 A. No. It's not used in the same way  
19 at all. If we follow the claim construction  
20 order, then context means environment.

21 And in the Judge's description or  
22 discussion of how that terminology was settled,  
23 there's some mention of the user environment is  
24 part of an environment.

1           User environment is very much what  
2 we would call a workspace. It's where the user  
3 lives, does things, has tools for the user,  
4 keeps the user's stuff.

5           And the term context is not used  
6 at all in that way in the Hubert reference.

7           Q. I think we covered this. Is it  
8 your opinion that Hubert doesn't anticipate any  
9 of the asserted claims of the '761 patent?

10          A. Yes. It's my opinion that Hubert  
11 does not anticipate any of the claims in the  
12 '761 patent.

13          Q. Let's move to Swartz, which is PTX  
14 919. What does the Swartz reference cover?

15          A. The Swartz reference, it discloses  
16 a system that creates audit trail or regulatory  
17 compliance purposes. So to give a little bit  
18 more description, the idea is that if you want  
19 to show that your work complies with regulatory  
20 requirements, let's say, for example, you're  
21 doing pharmaceutical tests. You're testing a  
22 drug or something.

23                       There are very detailed  
24 regulations that dictate how you have to, you

1 know, do those tests. So what this Swartz  
2 invention does, the idea is that you first start  
3 out by creating a very detailed kind of work  
4 flow of all the steps that you need to  
5 undertake, so that you will be sure that you  
6 comply with regulations. Okay.

7 And then it sort of keeps track of  
8 everything that gets done. So if I do a  
9 statistical analysis, it sort of grabs the data  
10 and the analysis and plugs it into this audit  
11 trail. Right.

12 If someone writes a document, or  
13 does a sign off, or does a review or whatever it  
14 is that the regulations require, this second  
15 technology sort of takes the results of all  
16 those things, integrates them into an audit  
17 trail.

18 So when it gets to the end, you  
19 not only had to report, but you can establish  
20 exactly where everything came from. And so you  
21 can prove through that audit trail that you've  
22 complied with the regulations.

23 Q. Are there some figures that show  
24 what's disclosed here in this source reference?

1           A.    Yeah.  I think we can move forward  
2   and --

3           Q.    Can we take a look at Figure 7?

4           A.    Yeah.  This is one of the figures.

5                    So, again, here we're dealing with  
6   documents and we're also dealing with data.  And  
7   what this system is doing is kind of integrating  
8   them and weaving them together into an audit  
9   trail.

10                   As you can see, the way the data's  
11   stored here is just, you know, just like the  
12   other diagrams that we've seen.  Again, folders  
13   have to be named.  Individual items have to be  
14   placed into folders and that's how the data is  
15   organized.

16                   All right.  So you have clinical  
17   reports.  Then you have to decide, okay, here  
18   are the reports that I want to put into that  
19   folder.  And, you know, again, we have sort of  
20   storage in the way that creates all the problems  
21   that we talked about for people trying to share  
22   documents.

23                   All right.  And this is a problem  
24   that the '761 is trying to overcome.

1 Q. So when you referred to the other  
2 diagrams just earlier in your testimony, were  
3 you referring to the hierarchial structure?

4 A. Yes. Sorry.

5 I was. I was referring to the  
6 hierarchial structure of files and folders.

7 Q. Okay. Why don't we turn to Figure  
8 11 of the Swartz patent, which that's DTX 109.

9 A. Yes.

10 Q. So now what does this show us?

11 A. This is, again, very much the same  
12 kind of thing showing how data gets stored in  
13 the system, showing files and folders that have  
14 to be named. And then you sort of choose where  
15 the different -- different files go in this  
16 hierarchial system.

17 Q. Does what's disclosed in Swartz  
18 care about the users?

19 A. No, not at all. It doesn't care  
20 about users. It's centered about all the  
21 operations necessary to get, you know, improved  
22 regulatory compliance. So that's what keeps  
23 track of -- it keeps track of all those steps  
24 that go into the creation of this report

1 documenting exactly how they were taken, so that  
2 you can prove at the end that you track them the  
3 right way.

4 It doesn't care about users.  
5 There's no workspace.

6 There's no moving of a user from  
7 one workspace to another workspace. It doesn't  
8 care about users.

9 Q. Why don't we take a look at Figure  
10 2A?

11 A. Mm-hmm.

12 Q. What does this show us?

13 A. Well, this is again showing that  
14 the DataDocket Software, this is the Swartz  
15 technology, is sitting in the middle and it's  
16 interacting with some number of applications you  
17 might have. You know, some of these --  
18 according to the wording in the patent, some of  
19 these regulatory compliance cases have thousands  
20 of documents and thousands of statistical  
21 analyses. And you might have any number of  
22 applications that you have to use to sort of  
23 create that document.

24 So DataDocket Software kind of

1 sits in the middle as middleware and collects  
2 all these different operations that happen as  
3 this process moves forward to create the audit  
4 trail. So here this is just showing sitting in  
5 the middle. It's a piece of middleware that  
6 kind of gathers up all the stuff that is  
7 stepping in the application and creates the  
8 audit trail.

9 Q. Why don't we take a look -- I  
10 think there's a description in the patent in  
11 Figure 2A. Take a look at Column 9, Lines 5  
12 through 8.

13 Yes?

14 A. Mm-hmm.

15 Q. So can you explain what we are  
16 looking at here in Lines 5 through 8?

17 A. Right. So the way this works  
18 actually is this middleware sits above the  
19 operating system. Right.

20 And the application is run sort  
21 of, if you will, on top of the middleware, so  
22 the DataDocket kind of can intercept the data  
23 that's exchanged and facilitate the exchange of  
24 data between the applications so that you can



1 capture them and integrate them.

2 It has an integration component.  
3 It kind of weaves them together to create this  
4 trail of what happened.

5 Q. Is the primary idea behind the  
6 Swartz reference to manage the flow of raw  
7 source data to a final report?

8 A. Exactly. It's not at all about  
9 collaboration or sharing.

10 It's all about sort of pulling  
11 things together into an audit trail of documents  
12 and final report.

13 Q. I think there's some places that  
14 it's described here in the patent. If we could  
15 turn to Column 8, --

16 A. Mm-hmm.

17 Q. -- lines 49 through 56. So could  
18 you explain, you know, what is being described  
19 here?

20 A. I think we're starting at the line  
21 at a first or basic level, it automates the  
22 process of transferring data analysis reports to  
23 a document management system for document  
24 production.

1                   So the idea is that it takes data  
2                   from the application where the work is being  
3                   done and kind of funnels into a document  
4                   management system creating this history that --  
5                   so that this whole package can then be used for  
6                   regulatory approval submission.

7                   So, you know, it synchronizes  
8                   information flow between data and a document  
9                   repository. So it's weaving together these data  
10                  and the documents into a single stream.

11                  Q. Does this have anything to do with  
12                  users?

13                  A. No.

14                  Q. Okay. Can we turn to one other  
15                  place here in the patent?

16                  I believe it's Column 6, Lines 22  
17                  through 26.

18                  And Dr. Herbsleb, I was hoping you  
19                  could explain what's being described here about  
20                  what the Swartz reference is about.

21                  A. Sure. Okay.

22                  More specifically, the middleware  
23                  is preferably employed to identify, including  
24                  tracking, monitoring, analyzing the context in

1 which information is employed so as to enable  
2 the use of such context in the management of  
3 knowledge.

4 Okay. Here's one of those  
5 examples that it uses some of the terminology of  
6 '761, meaning tracking and context. It's using  
7 those words in a completely different way.

8 So context here is the context in  
9 this regulatory compliance scheme. Right.

10 So you want to show that as you're  
11 creating this document, that, you know, it's  
12 based on these data, analyzed in this way. And  
13 that's the kind of context it's referring to is  
14 weaving together the statistical data the  
15 document just talked about tracking.

16 It's talking about tracking what's  
17 going on in this regulatory compliance scheme,  
18 what's being done to the documents, what's being  
19 done to the data. There's no sense at all of it  
20 tracking people, or tracking users or having  
21 even workspaces for users.

22 So this is a completely different  
23 type of thing.

24 Q. Is there anything in the claims of

1 this Swartz reference that also demonstrates  
2 this point that you're making?

3 A. Sure.

4 Q. Can you turn to Claim 1 and 2?

5 A. Right. So a knowledge integration  
6 system for providing application  
7 interoperability for data analysis between  
8 heterogeneous documents and data sources. So  
9 basically what this describes is it has database  
10 memory.

11 It has a data source suitable for  
12 interoperatively performing data analysis. That  
13 basically means there's some application that's  
14 doing statistical analysis out there. That's  
15 the first data source.

16 And as a source of documents, all  
17 right, including document database memory. And  
18 then this has a knowledge integration  
19 application, which then kind of weaves together  
20 the documents and the data that support those  
21 documents to create this audit trail, this  
22 history. And that's basically what's what it's  
23 about.

24 Q. And if you look at Claim 2, --

1 A. Mm-hmm.

2 Q. -- does that confirm your  
3 understanding of what's been disclosed in the  
4 Swartz reference?

5 A. The knowledge system wherein the  
6 knowledge integration application generates an  
7 audit trail to represent the flow of data.

8 Q. Okay.

9 A. So, again, how does the data flow  
10 to create this report? That's' what it's trying  
11 to capture.

12 Q. Can we take a look at Claim 5 of  
13 the Swartz reference? And can you explain, what  
14 does this mean to one of ordinary skill in the  
15 art?

16 A. So this is storing -- the  
17 integration component is storing information  
18 about the integration transaction. So what it  
19 means here by integration transaction is when it  
20 takes some data in a document and pulls them  
21 together to sort of show that, you know, it's  
22 been done correctly. So those are the  
23 transactions it's talking about.

24 So it's -- so it stores those

1 transactions, everything, data and documents  
2 into a trail. It stores that history of  
3 transactions.

4 Q. It uses the words dynamically  
5 stores. Is that the same concept of dynamically  
6 stores or dynamic storing as disclosed in the  
7 '761 patent?

8 A. It doesn't really specify what  
9 dynamically is here. Just means that if, you  
10 know, something happens and then it stores the  
11 information. It's not really very specific  
12 about what that means.

13 Q. How is that different than what's  
14 disclosed in the '761 patent?

15 A. Well, so the '761 patent, what  
16 gets stored is, you know, the user takes some  
17 action and that updates, you know, the metadata  
18 either based on context information or the  
19 tracking information.

20 This doesn't really say that it's  
21 triggered necessarily by something the user  
22 does. It doesn't -- it's not clear what  
23 triggers it. It just says that it's, you know,  
24 stored over time.

1 Q. So by using the same words, does  
2 it mean the same thing from the Swartz reference  
3 to the '761?

4 A. No. No.

5 These words often get used in very  
6 different ways and we have a claim construction  
7 order that covers some of the words that are  
8 used here. We have to understand them in that  
9 sense.

10 Q. Okay. Let's look at the claims  
11 now. So we'll turn to Claim 1.

12 A. Mm-hmm.

13 Q. Do you have an opinion as to  
14 whether or not the Swartz reference discloses  
15 the context component element of Claim 1?

16 A. I have an opinion. It does not  
17 disclose the context element of Claim 1 for many  
18 of the same reasons we discussed. It doesn't  
19 have a context component.

20 There's nothing like an  
21 environment. There's nothing like a user  
22 workspace.

23 And so it can't do any of the  
24 things, you know, described in here because it

1 doesn't have user workspace.

2 Q. And how about the tracking  
3 component element of Claim 1?

4 A. The tracking component element of  
5 Claim 1 is essentially in the same story, it  
6 does not track users as they move from any  
7 context to any other context. It's not centered  
8 around users. It doesn't track users at all.

9 Q. Do you have an opinion as to  
10 whether or not the Swartz reference anticipates  
11 Claim 1 of the '761 patent?

12 A. I do. It does not anticipate in  
13 my opinion Claim 1 of the '761 patent.

14 Q. Let's look at Claims 4 and 7.  
15 What is your opinion with respect to whether or  
16 not the Swartz reference anticipates Claims 4  
17 and 7 of the '761 patent?

18 A. Right. My opinion it does not  
19 anticipate Claim 4. Context information, this  
20 is information from a user environment in which  
21 the invention doesn't have, so it doesn't  
22 anticipate Claim 4.

23 Claim 7 talks about a first  
24 context associated with data created in the



1 second context. It doesn't have context in the  
2 software.

3 Q. So is it your opinion that four  
4 and seven --

5 A. It does not anticipate either  
6 Claim 4 or Claim 7.

7 Q. Let's turn to Claim 9. Do you  
8 have an opinion with respect to Claim 9 as to  
9 whether or not the Swartz reference anticipates  
10 Claim 9?

11 A. Well, as we discussed the first  
12 two elements comprise the context component, the  
13 section two elements comprise the tracking  
14 component and for all the same reasons that I  
15 have discussed, it does not anticipate any of  
16 the elements of Claim 9.

17 Q. Let's turn to Claims 11 and 16.  
18 What is your opinion with Claims 11 and 16 as to  
19 whether or not the Swartz reference anticipates  
20 those claims?

21 A. Well, again, we have indexing the  
22 content of the user environment. It has no user  
23 environment so it does not anticipate Claim 11.  
24 Accessing the user environment via a portable

1 wireless device, it has neither so it does not  
2 anticipate Claim 16.

3 Q. Is it your opinion also that since  
4 Claims 11 and 16 depend on Claim 9 that the same  
5 reasons you articulated for Claim 9 also apply  
6 to those two claims?

7 A. Right. Those same reasons apply  
8 here as well as additional reasons.

9 Q. Let's turn to Claim 21.

10 A. All right.

11 Q. Do you have an opinion as to  
12 whether or not Claim 21 is anticipated by the  
13 Swartz reference?

14 A. I do. My opinion is that Claim 21  
15 is not anticipated by the Swartz reference.  
16 Again, we see here user workspace mentioned in  
17 every element of this claim. And there is, you  
18 know, no user workspace in the technology of  
19 Swartz disclosure, so I don't think that any of  
20 these elements are anticipated by Swartz.

21 Q. Let's turn to Claim 23. Do you  
22 have an opinion as to whether or not Claim 23 is  
23 anticipated by the Swartz reference?

24 A. Well, once again, I find myself

1 saying the same thing over and over again. I  
2 apologize if it's getting repetitive. But the  
3 first element is the context component. The  
4 second element is the tracking component. And  
5 once again, for all the reasons I have  
6 mentioned, it doesn't have a context component  
7 as described here. It does not have a tracking  
8 component as described here, so it does not  
9 anticipate either of the elements of Claim 23.

10 Q. How about the dependent claims,  
11 Claims 25, 31 and 32, which depend on Claim 23?

12 A. Well, they depend on Claim 23 in  
13 the sense that they just make it more specific.  
14 It does not anticipate any of these claims,  
15 either, for the same reasons.

16 Q. And when you say any of these  
17 claims, you're referring to 25, 31 and 32; is  
18 that correct?

19 A. That's correct.

20 Q. So is it your opinion that the  
21 Swartz reference doesn't anticipate any of the  
22 asserted claims for all the reasons you have  
23 testified to today?

24 A. It is my opinion that the Swartz

1 reference does not anticipate of these claims.

2 Q. Do you have an opinion as to  
3 whether or not the Swartz reference affects the  
4 validity of any of the asserted claims of the  
5 '761 patent?

6 A. I think the Swartz patent does not  
7 affect the validity of any of the claims in the  
8 '761 patent.

9 Q. Do you have an opinion as to  
10 whether or not the Hubert reference affects the  
11 validity of any of the asserted claims of the  
12 '761 patent?

13 A. I do have an opinion. I think  
14 that the Hubert reference does not affect the  
15 validity of any of the claims in the '761  
16 patent.

17 Q. Do you have an opinion whether or  
18 not the iManage reference affects the validity  
19 of any of the asserted claims of the '761  
20 patent?

21 A. I do. I believe the iManage user  
22 reference manual does not affect any of the  
23 claims of the '761 patent.

24 Q. Would there be any combination of

1 these references that we have just talked about  
2 that would render the asserted claims of the  
3 '761 patent obvious in your opinion?

4 A. No. In the first place, I haven't  
5 seen any reference that anyone has offered as to  
6 why someone would think to combine them anyway.  
7 There has really been no reason offered as to  
8 why we should do that. But even if we did, all  
9 suffer from the same problems as we've seen. I  
10 was saying the same thing over and over again,  
11 if you can combine them all, none of them has a  
12 context. None of them has a tracking component.  
13 None of them invalidates any single element of  
14 any of the claims. If you put them all  
15 together, they still don't invalidate any of the  
16 elements of any of the claims.

17 Q. Do those references actually  
18 practice the problems that the '761 patent  
19 sought to solve?

20 A. Yes. As we saw I think for all of  
21 them, there is the same hierarchal arrangement  
22 of data storage, folders, you name the folders,  
23 you put stuff in the folders, so it does not  
24 facilitate sharing in collaboration. In fact,

1 it creates -- it's the same kind of system that  
2 creates the problem that the '761 is trying to  
3 solve.

4 Q. In Dr. Greenberg's report based on  
5 your review of the it, did he provide the  
6 motivation to combine any of these references  
7 together that we have talked about?

8 A. No, I don't believe he provided  
9 any reason why someone would try to combine  
10 these references together.

11 Q. Would the fact that on the face of  
12 two of these references refer to an assignment  
13 to Xerox suggest a motivation to combine?

14 A. No, I believe those are Swartz and  
15 Hubert. No, I don't think so. You know, Xerox  
16 must have thousands or tens of thousands of  
17 patents. Just the fact that it's the same  
18 company doesn't suggest that you would  
19 automatically think they would be combined in  
20 some way.

21 Besides, I believe the Hubert  
22 patent was a European patent, so I believe  
23 Hubert is in Europe somewhere. And the Swartz  
24 patent was patented in the U.S., so it's not

1 even clear -- you know, they're in different  
2 continents presumably, that doesn't provide any  
3 reason to think that someone would combine  
4 those.

5 Q. Do you have an understanding for  
6 the concept of obviousness that we had talked  
7 about earlier whether an element-by-element  
8 analysis combining the references is required?

9 A. Yeah, my understanding is that it  
10 is required.

11 MS. KEEFE: Objection, Your Honor.  
12 601, legal opinion.

13 MS. KOBIALKA: I'm asking for his  
14 understanding of --

15 THE COURT: Overruled. If he has  
16 an understanding, he can testify to it.

17 THE WITNESS: My understanding was  
18 that one must sort of look at each element in  
19 turn and find some reason to combine the  
20 references rather than saying all these things  
21 should be put together and somehow they add up  
22 to the invention.

23 Q. So in 2002, the time of the filing  
24 of the provisional, would it have been difficult

1 to convert a standalone software product into a  
2 web-based product?

3 A. Yeah, there are a number of  
4 problems, depending on the product it could be  
5 quite difficult. If you're creating a  
6 standalone product, you can use whatever you  
7 want to use on the computer, you're just totally  
8 unrestricted. If you're trying to create a  
9 web-based version of it, you have to create  
10 something that runs inside of a browser, that's  
11 a very, very restrictive environment, so it can  
12 be quite challenging to do that, let alone  
13 dealing with the fact that, you know, network  
14 conductivity might be there, it might not be  
15 there, it might die in the middle of a session,  
16 there are a number of things to deal with. It  
17 does not make it a trivial undertaking at all.

18 Q. I just asked that question in  
19 connection with 2002. Today would that answer  
20 be any different?

21 A. It would be easier now, still not  
22 trivial, but probably easier.

23 Q. How about in 2002, would it have  
24 been difficult to convert an existing product



1 into one that's accessible by a portable  
2 wireless device?

3 A. Yes, the portable wireless devices  
4 of 2002 have very small screens, for example, so  
5 to create some way to interact with an  
6 application on a little tiny screen is a very  
7 big problem.

8 And in 2002, that was before we  
9 heard much about 3G connectivity, so it was  
10 very, very small bandwidth, so it's hard to get  
11 something useful to run with a tiny bit of  
12 bandwidth and you have problems of being  
13 connected and disconnected and what to do when  
14 that happens. It's not a trivial exercise.

15 MS. KOBIALKA: Your Honor, this  
16 may be a good stopping point. I do have a  
17 little more and it would extend into the lunch  
18 break.

19 THE COURT: That's fine. I think  
20 it's an appropriate time for our lunch break and  
21 we'll allow our jurors to go out to get their  
22 lunch.

23 THE CLERK: All rise.

24 (Jury leaving the courtroom at

1 12:28 p.m.)

2 THE COURT: You can step down,  
3 Professor.

4 Ms. Kobialka, your estimate about  
5 how much longer on direct?

6 MS. KOBIALKA: Probably fifteen  
7 minutes.

8 THE COURT: We'll be in recess  
9 until 1:30.

10 (A brief recess was taken.)

11 THE COURT: Good afternoon.  
12 Anything we need to discuss before we bring the  
13 jury in?

14 MR. ANDRE: Just one quick matter,  
15 Your Honor, before the jury comes in. We'll be  
16 resting our case after Dr. Herbsleb. Before we  
17 do so, there was a stipulation early in the case  
18 about the commercial success of Facebook and I  
19 realize they have recently challenged that  
20 stipulation once again and we don't know if we  
21 should offer proof before we close our case or  
22 how the Judge wants us to handle that.

23 THE COURT: Right. Mr. Rhodes, do  
24 you want say something?

1 MR. RHODES: Not very much. I  
2 wanted to avoid evidence coming in on the  
3 matter. They over my objection got evidence in  
4 on the matter, so I told them there is no need  
5 for a stipulation, you can argue evidence.

6 THE COURT: Well, my plan right  
7 now is to have one sentence in the jury  
8 instructions at the obviousness portion that --  
9 which I think is language that Leader proposed,  
10 Facebook's website is commercially successful,  
11 so that plus the evidence that came in is as  
12 much on commercial success as we're going to  
13 have.

14 Anything else before we bring the  
15 jury in?

16 MR. ANDRE: That's all, Your  
17 Honor. Thank you.

18 THE COURT: Mr. Rhodes?

19 MR. RHODES: No.

20 THE COURT: No. Let's bring the  
21 jury in.

22 THE CLERK: All rise.

23 (Jury entering the courtroom at  
24 1:41 p.m.)

1 THE CLERK: Please be seated.

2 THE COURT: Good afternoon.

3 Welcome back.

4 Ms. Kobialka, I believe you're  
5 still on.

6 MS. KOBIALKA: Yes. Thank you,  
7 Your Honor. I would like to finish up with  
8 Dr. Herbsleb. While he's on his way up to the  
9 stand, we would like to move PTX 1125 into  
10 evidence.

11 MS. KEEFE: No objection, Your  
12 Honor.

13 THE COURT: It's admitted.

14 BY MS. KOBIALKA:

15 Q. Dr. Herbsleb, in your opinion,  
16 would any of the references that we have  
17 discussed today used in combination in any way  
18 render any of the asserted claims of the '761  
19 patent obvious?

20 A. No, they would not. As I  
21 mentioned they all suffer from very similar kind  
22 of issues, so putting them together doesn't  
23 help.

24 Q. And that's all based on the

1 reasons that you have already provided today; is  
2 that right?

3 A. Exactly.

4 Q. In your opinion, does the  
5 invention of the '761 patent address a long-felt  
6 but unresolved need in the industry?

7 A. I think it does. I mean, this  
8 2002 time frame was right at the end of the  
9 period where I was doing research in  
10 collaboration technology at Bell Labs. We were  
11 trying to introduce and develop some  
12 technologies to help distribute teams and share  
13 documents and it was a huge problem. And I  
14 think others were suffering from very similar  
15 kinds of problems trying to figure out how to  
16 get global distributed teams to share, for  
17 example.

18 And, again, in terms of  
19 obviousness, I think if, you know, a solution to  
20 that had been obvious, someone would have come  
21 up with it some time ago.

22 Q. In your opinion, based on the  
23 techniques that were known around 2002, did  
24 those techniques teach a way from the invention

1 of the '761 patent as it related to users?

2 A. Yeah. I think what we saw in some  
3 of the other references are the kinds of things  
4 that were, you know, typical of the day, you  
5 know, hierarchy arranged filing systems, systems  
6 built around documents, managing documents,  
7 tracing history of documents, that is what was  
8 around.

9 So that would not lead someone to  
10 suddenly go in the other direction and build  
11 everything around users. I think that's a  
12 significant shift and I don't think that was at  
13 all obvious from the technologies that were  
14 prevalent at the time.

15 Q. In your opinion, did these factors  
16 provide evidence that the invention of the '761  
17 patent is not obvious?

18 A. I think they do. I think they  
19 give another good indication that it was not  
20 obvious in that time frame.

21 MS. KOBIALKA: Thank you. No  
22 further questions at this time.

23 THE COURT: Thank you.

24 Cross-examination.

1 MS. KEEFE: Thank you.

2 CROSS-EXAMINATION

3 BY MS. KEEFE:

4 Q. Good afternoon, Dr. Herbsleb.

5 A. Good afternoon.

6 Q. Dr. Herbsleb, are you being paid  
7 to be an expert in this case?

8 A. Yes, I am.

9 Q. How much are you being compensated  
10 at?

11 A. They compensated my usual  
12 consultant fee which is \$300 an hour.

13 Q. Dr. Herbsleb, you respect  
14 Dr. Greenberg, don't you?

15 A. I do.

16 Q. And, in fact, you would consider  
17 him to be an expert in collaboration  
18 technologies; correct?

19 A. I would, that's correct.

20 Q. And we've just heard you had  
21 expressed an opinion that the patent was  
22 nonobvious; right?

23 A. That's correct.

24 Q. And the only two considerations of

1 nonobviousness that you used were your belief  
2 that there was some long-felt but unresolved  
3 need and teaching away by others of the  
4 invention; is that right?

5 A. No. No. Those are not my only  
6 reasons for thinking that it was not obvious.  
7 I'm also thinking about the particular things  
8 that were disclosed in the references in the  
9 Greenberg report, and the other kinds of  
10 technology that were available and prevalent at  
11 the time. And all of those things together,  
12 along with the fact that there was a long-felt  
13 unmet need as well as teaching away, all those  
14 together caused me to think that it was  
15 definitely not obvious.

16 Q. But in your report, the only  
17 secondary considerations of nonobviousness that  
18 you listed were long-felt but unresolved need  
19 and teaching away by others from the invention;  
20 is that correct?

21 A. I don't believe so. I think that  
22 those are the only secondary considerations that  
23 I mentioned at the time. I believe that an  
24 examination of the references also indicates



1 that it was not obvious. I believe I commented  
2 in the report on the fact, for example, that  
3 Dr. Greenberg did not attempt to provide any  
4 justification for combining references to  
5 indicate obviousness, so that indicates that his  
6 report did not adequately support a finding of  
7 obviousness.

8 MS. KEEFE: Your Honor, I would  
9 like to play for the record at his deposition  
10 page 188, lines 10 through 14, please.

11 THE COURT: Hold on a second.

12 MS. KOBIALKA: No objection.

13 THE COURT: No objection. You can  
14 play it.

15 MS. KEEFE: Thank you.

16 (Videotape.)

17 Q. As I read your report, sir, your  
18 secondary considerations of nonobviousness are  
19 in the category of long-felt but unresolved need  
20 and teaching away by others from the invention.  
21 Is that accurate?

22 A. Yes. That's right.

23 BY MS. KEEFE:

24 Q. But Dr. Herbsleb, you couldn't

1 identify any products in the industry that  
2 implement the claims of the '761 patent that are  
3 asserted in this case, could you?

4 A. I couldn't seem to identify any  
5 products in the industry. Could you repeat it  
6 again.

7 Q. Absolutely. You could not  
8 identify any products out there in the industry  
9 that implement the claims of the '761 patent  
10 that are asserted in this case?

11 A. So as you recall during the  
12 deposition, I was just responding to  
13 Dr. Greenberg's report and I was sticking mostly  
14 to commenting on that report. So since I was  
15 not asked to prepare for that report any survey  
16 of products out there in the world, I didn't do  
17 that.

18 Q. And as a result, you did not  
19 identify any products out there in the industry  
20 that implement the claims of the '761 patent  
21 that are asserted in this case; correct?

22 A. I don't actually remember that,  
23 but that could well be true, yes.

24 Q. And you had no opinion one way or

1 the other as to whether anyone in the industry  
2 is following the teachings of the '761 patent;  
3 isn't that correct?

4 A. So, I don't recall. I may have  
5 said that.

6 Q. And you did not perform any tests  
7 to test how effective the '761 patent is?

8 MS. KOBIALKA: Objection. Outside  
9 the scope of his direct.

10 MS. KEEFE: It goes directly to  
11 the secondary considerations he's been  
12 discussing.

13 THE COURT: Overruled.

14 THE WITNESS: So, no, I didn't  
15 perform any tests, but I have on the other hand  
16 been involved in collaboration technology in  
17 sort of introducing collaboration technologies  
18 to industry and I think it's pretty clear that  
19 this technology is an effective approach to  
20 that.

21 Q. But you did not perform any tests  
22 to test the efficacy of the systems and methods  
23 claimed in the '761 patent, did you?

24 A. No, I didn't perform any

1 experiments or anything, no, that's correct.

2 Q. And you did not perform any  
3 surveys regarding the effectiveness of the  
4 systems and methods claimed in the '761 patent,  
5 did you?

6 A. No. As I pointed out, I was just  
7 responding to Dr. Greenberg's report, and it  
8 didn't seem to require conducting any  
9 experiments in surveys, I did not.

10 Q. Now, you talked about the code  
11 that was attached to the back of the provisional  
12 application.

13 A. That's right.

14 Q. And I think your testimony earlier  
15 this morning was that you talked about it for  
16 you being something like a recipe, we talked  
17 about sauteing something. Do you recall that?

18 A. I think what I said actually was  
19 that it is a concise way to convey information.  
20 That it's not the complete implementation of the  
21 invention disclosed, by any means, but it's  
22 something which would give someone skilled in  
23 the art, you know, information about how one  
24 would actually make and use this invention.

1 Q. But you also have testified before  
2 that the code attached to the provisional  
3 application is just pseudo code; correct?

4 A. Yes. Well, that goes along with  
5 the idea that it's mainly a communication device  
6 for other people who might want to make and use  
7 this invention. It's not really a full  
8 implementation as I said, but it is designed to  
9 be helpful, you know, to give information and  
10 hints to someone who might want to actually make  
11 this invention.

12 Q. To make hints, that is what you  
13 just said?

14 A. For someone practicing the art, it  
15 would give strong indications of how to  
16 implement, make and use this invention.

17 Q. And pseudo code would not actually  
18 function if you were to compile it into an  
19 executable program; right?

20 A. Pseudo code would not, right.

21 Q. And that's because it's not a real  
22 programing language; right?

23 A. So pseudo code is not a real  
24 programing language, but there is really kind of

1 a fine line here that I would like to clarify.

2 So the language that appears here  
3 looks very much like Java, although I didn't  
4 really try to compile it and test it and see if  
5 it actually runs. But the purpose of that code  
6 that looks a lot like Java is to provide  
7 information to someone skilled in the art so you  
8 know what kind of glasses had been imported, you  
9 would know how data was being stored, you would  
10 know where to go to access information about  
11 users, and so on.

12 Q. You mentioned a lot of things in  
13 that last answer that I would like to go  
14 through.

15 A. Okay.

16 Q. Can we actually see the import  
17 statement section of the provisional, please.  
18 So you mentioned these import statements quite a  
19 few times; is that correct?

20 A. That's right.

21 Q. And, in fact, the ones that we  
22 pointed to most frequently were the import.com.  
23 Leader.persist.vbsf, and the very last import,  
24 com.leader.osapplication.sessionstate; is that

1 correct?

2 A. That's correct.

3 Q. You just mentioned that an import  
4 statement imports classes that are defined  
5 elsewhere; is that right?

6 A. That's right.

7 Q. What is a class?

8 A. It is a unit of code.

9 Q. So an import statement is used to  
10 bring in code that lives somewhere else into the  
11 code without having to repeat that code right  
12 here; is that correct?

13 A. Yeah, it's used for, you know,  
14 very common sort of utilities and boiler plate  
15 sort of code that's used very frequently. And  
16 every Java program and most programming language  
17 these days import things like that.

18 Q. But with respect to the import  
19 statements that we have highlighted here, you  
20 can't really know what is in those classes  
21 unless you actually have access to the  
22 underlying source code that's being imported;  
23 isn't that correct?

24 A. I would say that's not correct. I

1 would say that anyone skilled in the art knows,  
2 you know, you don't know every single detail of  
3 exactly what is within those classes, but you  
4 know that VBSF is middleware that allows you to  
5 store information in a database, you know, that  
6 session statement is there to sort of capture  
7 and hold information about a session because web  
8 protocols are stateless and they can't catch a  
9 state, so you know that kind of stuff from just  
10 looking at the names of these things because  
11 those are very common names in the industry.

12 MS. KEEFE: Your Honor, I would  
13 like to play from the deposition at page 132,  
14 lines 19 through 22.

15 MS. KOBIALKA: I'll object.  
16 That's an incomplete clip. We need to continue  
17 on to --

18 THE COURT: Which lines do you  
19 propose in addition?

20 MS. KOBIALKA: At least page 133  
21 through line one.

22 THE COURT: 133, one.

23 MS. KEEFE: That's fine, Your  
24 Honor.



1 THE COURT: Okay.

2 (Videotape:)

3 Q. You can't really know what's in  
4 these classes unless you actually have access to  
5 the underlying code. Correct?

6 A. So, that's correct -- except  
7 someone with skill in the art would be able to  
8 make reasonable guesses based on the names, I  
9 would maintain.

10 BY MS. KEEFFE:

11 Q. And, in fact, the best you could  
12 do is guess as to what's in the code referred to  
13 in an import statement; isn't that correct?

14 A. Not in the sense of a wild guess,  
15 no. So as I said before, you don't know the  
16 details of how each one of those is implemented  
17 because you don't see the code. But VBSF are  
18 very common well understood terms so that anyone  
19 knowledgeable in the art would know basically  
20 what they're doing and they would tell you that  
21 if you are trying to make and use this  
22 invention, certain kinds of information are  
23 going to be stored in a relational database and  
24 certain kinds of information are going to be

1 stored in a session state. That would be clear.

2 MS. KEEFE: Your Honor, I would  
3 like to play page 133 lines, two through six.

4 MS. KOBIALKA: I'll object as  
5 incomplete. If it goes through line 13 on page.

6 THE COURT: No objection through  
7 line 13?

8 MS. KOBIALKA: Yes.

9 THE COURT: Ms. Keefe.

10 MS. KEEFE: I actually disagree, I  
11 literally asked the question directly and then  
12 the answer, but if that helps then we can go  
13 ahead and play it.

14 THE COURT: It helps. Let's go  
15 ahead and play it then, the whole portion.

16 (Videotape:)

17 Q. But that's the most they could  
18 make, is reasonable guesses?

19 A. Yes. But someone, you know,  
20 skilled in the art could make reasonable  
21 guesses, I think.

22 Yes. But someone, you know,  
23 skilled in the art could make reasonable  
24 guesses, I think.

1 Q. So let's talk about VBSF for a  
2 minute. What is VBSF?

3 A. Sort of a middleware that matches  
4 up object-oriented programs with relational  
5 databases so that it does the translation from  
6 the object model to a relational model, makes it  
7 much easier to use in a relational database.

8 BY MS. KEEFE:

9 Q. And, in fact, with respect to the  
10 sessions state classes, you were, in fact,  
11 speculating as to what was contained within  
12 them; isn't that correct?

13 A. So, are you talking about this  
14 clip? This clip is talking about VBSF.

15 Q. No, I'm talking about session  
16 state classes.

17 A. Session state classes.

18 Q. That were imported.

19 A. So, as I mentioned, you can't see  
20 the details of what is session state because the  
21 source code is not here. But it is sort of  
22 boiler plate type code. Session state is  
23 something that if you're writing a web and you  
24 have to maintain session state, it's usually the

1 same for almost every application, a set of  
2 things that you're doing in web protocols, they  
3 don't know that you have logged in, they don't  
4 know that you have seen this page but not that  
5 page. But session state captures that sort of  
6 information and holds it.

7 It is well-known that this is the  
8 purpose of session state libraries.

9 Q. But you agree that with respect to  
10 the session state, you were speculating as to  
11 what it contained?

12 A. I think that when something is  
13 well understood by people versed in the art it's  
14 not really quite speculation. It is a very  
15 informed inference.

16 MS. KEEFE: Your Honor, I would  
17 like to play from page 132, line five through  
18 line 18.

19 MS. KOBIALKA: Object, Your Honor.  
20 This isn't impeachment.

21 THE COURT: Pass up a copy, please  
22 of the transcript. 132, line five through 18?

23 MS. KEEFE: Yes, sir, Your Honor.

24 THE COURT: The objection is

1 overruled. You can play it.

2 MS. KEEFE: Thank you, Your Honor.

3 (Videotape:)

4 Q. So you would not know how to  
5 locate those classes. Correct?

6 A. So there are session state classes  
7 in Java, for example, that may be very similar  
8 to this, so the functionality of these kinds of  
9 classes -- the reason -- well, I'm speculating.  
10 But the reason they're not fully reproduced here  
11 is simply because they're fairly common kinds of  
12 things that you wouldn't need to look at.

13 Q. But you are speculating. I mean,  
14 you can't --

15 A. I am.

16 (End of videotape.)

17 A. So if I may clarify what I was  
18 speculating about is the reason they don't  
19 appear here, if you go back and carefully read  
20 that, I'm not speculating about what the classes  
21 mean, I'm saying I'm speculating the reason they  
22 don't appear here is because they're very common  
23 and they don't need to appear here.

24 Q. When you hired doctor -- you hired

1 Dr. Caltaldo to actually attempt an experiment,  
2 is that correct, using the provisional  
3 application?

4 A. I'm not sure if hire is the  
5 correct word. I'm the one that gave him the  
6 task, I did not pay him, someone else paid him,  
7 but yes, I gave him that task.

8 Q. And you agree that a person of  
9 ordinary skill in the art in this case can have  
10 as little as a bachelor of science in computer  
11 science according to your testimony; is that  
12 right?

13 A. Yes, that's right.

14 Q. But Dr. Caltaldo actually has a  
15 Ph.D.?

16 A. He does.

17 Q. And Dr. Caltaldo has more than ten  
18 years of experience in the field of computer  
19 science?

20 A. That's correct.

21 Q. And you consider him to be very  
22 talented; right?

23 A. He's talented, yes, but then on  
24 the other hand, as I said before, having a Ph.D.

1 does not necessarily enhance somebody's ability  
2 to create a web application. Having a Ph.D.  
3 you're doing research that takes you into an  
4 extremely specialized area and since I was his  
5 thesis supervisor, I can tell you it had  
6 absolutely nothing to do with web applications  
7 or even applications.

8 I think ten years of experience  
9 is, you know, probably fairly average for  
10 someone in industry, so I think if you put all  
11 that together, he was someone, you know, that  
12 would be a representative of someone who was  
13 well versed in the art.

14 Q. And other than assigning him this  
15 task, you didn't actually oversee Dr. Caltaldo  
16 in any way during the project; is that right?

17 A. Not in any way having to do with  
18 this, no.

19 Q. And you don't know if Dr. Caltaldo  
20 referenced any outside materials in coming up  
21 with the pseudo code that he developed; isn't  
22 that correct?

23 A. All I know is what he told me, and  
24 he told me he did not, when I asked him.

1 Q. But when you had your deposition  
2 taken in this case, you were asked the question,  
3 and you, in fact, answered that you did not know  
4 if Dr. Caltaldo had referenced any outside  
5 materials; isn't that correct?

6 A. That's correct. And it was the  
7 deposition that convinced me that that was a  
8 pretty important question and I ran off and  
9 asked Dr. Caltaldo at which point he told me he  
10 had not referenced any other materials in  
11 preparation.

12 Q. You didn't know during the time of  
13 your deposition whether or not Dr. Caltaldo had  
14 worked with anyone else in connection with his  
15 work; isn't that correct?

16 A. At the time of the deposition, I  
17 probably didn't know that.

18 Q. And similarly at the time of your  
19 deposition, you did not know whether anyone else  
20 had contributed to the content of the pseudo  
21 code that Dr. Caltaldo handed you; isn't that  
22 correct?

23 A. So there is a little wrinkle here  
24 that I should try to explain to make this clear



1 is that at some point in the deposition, I think  
2 it was at lunchtime or perhaps a break, I called  
3 Dr. Caltaldo and asked him some of these  
4 questions. So I didn't know during the first  
5 half, I knew some of the answers during the  
6 second half. There were some things I didn't  
7 think to ask him which I asked him yet later, so  
8 there are several different points in time here.

9 Q. Could we pull up the pseudo code,  
10 please. I think it's the new exhibit, 1125.  
11 1125, please. Can you highlight just the title.

12 Dr. Herbsleb, is this the title of  
13 the report that Dr. Caltaldo gave you?

14 A. Yes, it is.

15 Q. And the terms at the end here,  
16 context and tracking components. Those are  
17 phrases used in the patent; isn't that correct?

18 A. That's correct, they are used in  
19 the patent.

20 Q. In fact, it's -- you testified  
21 earlier that it was possible that Dr. Caltaldo  
22 actually had a copy of the final patent when he  
23 was performing his analysis, didn't you?

24 A. I believe what I said is that it's

1 public information, that anybody can access  
2 that, so of course he had access to it as does  
3 everyone.

4 Q. Dr. Herbsleb, what Dr. Caltaldo  
5 built was actually pseudo code, wasn't it?

6 A. Well, again, it appears to be  
7 Java. It is very, very close to Java, but since  
8 I didn't compile it, I don't know if it really  
9 runs, so we could call it pseudo code. It looks  
10 just like Java.

11 Q. You testified before that  
12 Dr. Caltaldo did not build any actual working  
13 system in connection with his work with the  
14 provisional; isn't that correct?

15 A. That's correct, because it does  
16 make calls into the code, you know, provided in  
17 the provisional patent application which we  
18 didn't have in code form, so it couldn't run  
19 because it makes those calls to the code that's  
20 in the system.

21 Q. And the fact that it is pseudo  
22 code indicates to you that the code Dr. Caltaldo  
23 developed could not be used to create a working  
24 application; is that correct, by itself?

1           A.    Not, it's not complete by itself,  
2           right, it does rely on the code in the  
3           provisional application.

4           Q.    Dr. Herbsleb, with respect to the  
5           iManage reference materials, you testified that  
6           the iManage reference materials did not teach a  
7           web-based system; is that correct?

8           A.    Yes, that's right.

9           Q.    Can you please pull up page 41 of  
10           the iManage reference manual. This is in  
11           chapter two.

12                    Dr. Herbsleb, could you please  
13           read for me the first sentence under the header  
14           web browsers out loud?

15           A.    "iManage DeskSite has a web  
16           browser utility to allow you to quickly access  
17           the web directly from iManage Desktop."

18           Q.    Thank you. Can you also please --

19           A.    So could I comment on that. That  
20           does not mean that it's web-base system, that  
21           means it has a browser built into it. Browser  
22           simply goes out and makes the http requests and  
23           gets web pages, but iManage is not a web-based  
24           system. That is not to say the documents within

1 iManage is accessible in any way, it means you  
2 have a browser and you can go look at the web,  
3 that's all it says.

4 Q. Go you pull that back up again,  
5 please. But, in fact, can you read for me the  
6 tool bar here under the address and what is the  
7 name of that website?

8 A. Tool bar under the address. It's  
9 http.www.iManage.com.

10 Q. Thank you.

11 Can you now please turn to page 83  
12 in Figure 3.26. I believe you also testified  
13 that it's your belief that iManage does not  
14 involve users, or taking care of tracking users  
15 or where users are; is that correct?

16 A. It does not track users from one  
17 context to another, that's correct.

18 Q. Can you read for me what the title  
19 is on the left-hand column of this figure in the  
20 iManage reference?

21 A. So that is the user, which in this  
22 case happens to be the same user four times in  
23 the row, it could be four different users. As  
24 the figure caption says this is a document

1 history in which whatever user happens to  
2 interact with the document. Those user names  
3 would show up there. In this case it happens to  
4 be the same user four times in a row, but if  
5 Bowen went to do anything else this would not  
6 track them.

7 Q. With the Hubert system, you also  
8 believe that the Hubert system has nothing to do  
9 with the web; is that correct?

10 A. The Hubert system has nothing to  
11 do with the web, that's right.

12 Q. Could you please pull up page 25  
13 of the Hubert reference. Paragraph 25, I'm  
14 sorry. Can you please read for me the first  
15 sentence of paragraph 25 of Hubert?

16 A. "Meta-document 20 is then  
17 forwarded via the internet to source  
18 (environment) 34."

19 So the internet is not the same as  
20 the web. The Internet is the basic plumbing,  
21 the basic functionality. It's a big network  
22 that hooks computers together. The web is a set  
23 of servers built on protocols on top of the  
24 internet. So something going by Internet

1 doesn't necessarily mean something going by web.  
2 And the illustrations in the description here  
3 are sending something as an email attachment.

4 Q. Isn't it possible that one of  
5 ordinary skill in the art could see the word via  
6 the internet and also assume that it could be  
7 done via the worldwide web?

8 A. Well, it could be done, you know,  
9 with paper airplanes or something. It's not  
10 here.

11 Q. So you also said that Hubert had  
12 nothing to do with users, I believe; is that  
13 correct?

14 A. I said Hubert has nothing to do  
15 with tracking users from one context to another.  
16 It's not centered around users.

17 Q. Could we pull up paragraph four,  
18 please. Paragraph four was talking about what  
19 Hubert was trying to solve; is that correct?  
20 Sort of the background of what was wrong in the  
21 past?

22 A. Excuse me, let me take just a  
23 second to read this.

24 Q. Sure.

1 A. (Witness reviewing.) Yes.

2 Q. Okay.

3 A. So, in fact, at the end it  
4 actually says one of the problems was, in fact,  
5 most of the information about what happened to  
6 the document during its whole life, e.g., who  
7 read it, reviewed it, a user, where it was sent  
8 as an email attachment, who liked it, et cetera,  
9 is lost. So that is what it says.

10 And this as I believe I  
11 characterized it before is a document history,  
12 it's sort of here are all the things that  
13 happened to the meta-document, somebody read it,  
14 somebody else reviewed it, it got sent around,  
15 it's just accumulated history of what happened  
16 to it.

17 Q. Can we turn to paragraph nine,  
18 please. Here in paragraph nine, can you please  
19 read for me the highlighted sentence?

20 A. There is also a need for a system  
21 and method of managing documents which tracks  
22 all of the information about what happened to a  
23 document during its whole life (e.g., who  
24 reviewed it, where it was sent as an email

1 attachment, who liked it, et cetera).

2 So once again, that you know says  
3 that it is keeping a history of the document,  
4 everything that happens to a document.

5 Q. Keeping track of what user touches  
6 that document?

7 A. Exactly. So it's centered around  
8 the documents, it's not saying here is a user,  
9 here is what the user did, and here the user  
10 moving around from one context to another, it's  
11 not following users, it's following a document.

12 Q. Can we look at paragraph 14,  
13 please. Can you please read for me the sentence  
14 that's highlighted?

15 A. Sure.

16 "All of the processing information  
17 in the meta-document is explicit, accessible,  
18 and reusable so that other tools or other people  
19 in different contexts can benefit from it."

20 So this -- sorry.

21 Q. Thank you. That's all.

22 So with respect to the Swartz  
23 document, you also indicated that Swartz was not  
24 web based; is that correct?



1           A.    So Swartz does have a brief  
2           mention of the web.  I don't believe I testified  
3           to whether it was web based or not, but it does  
4           have a brief sort of hand wave that in the  
5           future embodiment it would be good if we could  
6           do this on the web.  I don't think it contains  
7           much more than that.

8           Q.    Can we pull up column nine, lines  
9           ten through fifteen, please.  Is this what you  
10          were referred to?

11          A.    No, actually it's not.  The client  
12          will run on a client server system as depicted  
13          in Figure 3 to provide web-based operability,  
14          use and users will operate PC client systems.  
15          This is the kind of thing that I was talking  
16          about, yes.

17          Q.    And I believe you also testified  
18          that Swartz didn't deal centrally with users; is  
19          that correct?

20          A.    That's right.

21          Q.    Can you please pull up column  
22          four, starting at line 55.  Can you read me the  
23          first sentence starting line 55?

24          A.    Okay.  "Alternative or improved

1       embodiments of the invention will enable users  
2       to define and execute multiple tasks to be  
3       performed by one or more applications from  
4       anywhere within a document."

5               Q.    And can you also turn, please, to  
6       column eight at line 55.  Can you read that for  
7       me, please?

8               A.    "Such a system also preferably  
9       captures metadata associated with the  
10       information shared, stored, and accessed by the  
11       users of the data so as to characterize the  
12       context in which the information is being used."

13               But again, this is all tracking  
14       information being integrated into an audit  
15       trail, so the word context shouldn't be confused  
16       with context component as here in the '761  
17       patent.

18               MS. KEEFE:  I have no further  
19       questions.  Thank you, Dr. Herbsleb.

20               THE COURT:  Thank you.  
21       Redirect.

22               MS. KOBIALKA:  Quickly.

23               REDIRECT EXAMINATION

24       BY MS. KOBIALKA:

1 Q. Dr. Herbsleb, when you were asked  
2 about whether or not the entirety of your  
3 opinion related to the long-felt need and  
4 teaching away for secondary considerations, was  
5 that just in reference to a specific paragraph  
6 in your report?

7 A. It was. That was just a specific  
8 paragraph. The report said considerably more  
9 about obviousness.

10 Q. And so the report provided much  
11 more background and information with respect to  
12 what your opinion was about why the invention of  
13 the '761 patent is valid?

14 A. I had much more information than  
15 that. That was merely one --that was merely the  
16 secondary considerations about obviousness.  
17 There was all the other talk about obviousness,  
18 and so there was a couple of hundred pages of  
19 stuff in addition to that.

20 Q. Did any of that snippets that were  
21 provided to you of the three references disclose  
22 -- indicate to you that the invention of the  
23 '761 patent was disclosed in any of those  
24 references?

1           A.    Not at all.  I still maintain that  
2           there was not a single element of a single claim  
3           disclosed in any of those references.

4           Q.    And as an inventor of one of the  
5           prior art references actually cited during the  
6           prosecution of the '761 patent, is it still your  
7           opinion that the invention of the '761 patent is  
8           valid?

9           A.    It is still my opinion that the  
10          '761 patent is valid.

11          MS. KOBIALKA:  Thank you very  
12          much.

13          THE COURT:  Thank you.  You can  
14          step down.

15          THE WITNESS:  Thank you.

16          MR. ANDRE:  Your Honor, at this  
17          point Leader Technologies rests its case.

18          THE COURT:  Okay.  Thank you.

19          Mr. Rhodes.

20          MR. RHODES:  Your Honor, I  
21          incorporate by reference the statements and  
22          motions made by Mr. Weinstein during our break  
23          this morning at this point in the proceedings.

24          THE COURT:  I will take those

1 under advisement.

2 MR. RHODES: Thank you, Your  
3 Honor.

4 MR. ANDRE: In light we renew our  
5 motions as well, Your Honor.

6 THE COURT: I will take that under  
7 advisement as well.

8 Mr. Rhodes is there anything in  
9 the way of rebuttal on the validity case?

10 MR. RHODES: I'm happy to say that  
11 we have nothing further, Your Honor.

12 THE COURT: Okay. I believe that  
13 means we're at the close of evidence and we're  
14 going to be able to let our jurors go a little  
15 bit early today. Am I right about that,  
16 counsel?

17 MR. ANDRE: That's correct, Your  
18 Honor.

19 MR. RHODES: Yes, Your Honor.

20 THE COURT: We got them to agree  
21 on something.

22 Ladies and gentlemen of the jury,  
23 we have now completed the evidentiary portion of  
24 the case. What still remains is for me to

1 charge you, that is give you the legal  
2 instructions that you will apply to the facts as  
3 you find them, and for you to hear from both  
4 sides their argument as to why they think you  
5 should rule for them.

6 As you might imagine, it will take  
7 me and it will take counsel a little bit of time  
8 to gather our thoughts so that they can make  
9 sure that we get everything correct and make the  
10 best possible presentations to you. And as a  
11 result, I'm going to give all of you the  
12 afternoon off and we'll reconvene tomorrow  
13 morning at nine o'clock.

14 You'll hear first from me with the  
15 legal instructions, then you will hear from  
16 counsel. And once all that of that is done, the  
17 case will be submitted to you to begin your  
18 deliberations.

19 But so as to not to get ahead of  
20 ourselves, you're not to start deliberating yet.  
21 You're not to start discussing the case yet.  
22 You're not to discuss the case with anybody  
23 outside of the courtroom, either. Don't look at  
24 any media coverage if there is any. Don't do

1 any investigation. Don't use Facebook. And be  
2 back here tomorrow morning in time to get  
3 started at 9:00 a.m.

4 THE CLERK: All rise.

5 (Jury leaving the courtroom at  
6 2:19 p.m.)

7 THE COURT: Counsel, we are going  
8 to take a break for about ten to fifteen minutes  
9 and then I'm came back in, I'll tell you a  
10 little bit about the jury instructions and then  
11 we'll let you all go.

12 MR. RHODES: I have some really  
13 ministerial housekeeping matters about exhibits  
14 and things that I would like to put on the  
15 record at some point.

16 THE COURT: Let's talk about that  
17 when I come back. Thanks.

18 (A brief recess was taken.)

19 THE COURT: All right. Before we  
20 get into whatever issues you all may have, let  
21 me just talk to you just a little bit about the  
22 jury instructions.

23 They are nearly complete, so  
24 they'll be filed later this afternoon and you'll

1 see them when you get back to your offices.

2 And I'm not going to go through  
3 instruction by instruction and tell you  
4 everything I was thinking about each one. But I  
5 do want to hit a few of the points for you.

6 First on 1.10 on deposition  
7 testimony, there won't be any explicit reference  
8 to Mr. Lamb or to the errata sheet. I'm content  
9 that I've allowed the parties to create a  
10 sufficient record that each side can argue the  
11 impact, if any, of the errata sheet and the  
12 corrected testimony. And I didn't think there  
13 was any reason to pull out and identify for the  
14 jury one particular type of credibility  
15 challenge to one particular witness.

16 On 3.3, which is just telling the  
17 jury which are the independent and which are the  
18 dependent claims and what are their  
19 relationships, I did not include Facebook's  
20 proposed charge. The more I thought about it  
21 and sat through the trial, I thought I think the  
22 record is pretty clear as to the relationship  
23 between the independent and dependent claims. I  
24 think the language proposed by Leader makes that



1 clear. I'm confident the jury understands how  
2 dependent and independent claims are related to  
3 one another.

4 On 3.4, on the claim construction  
5 for the case, I have added a construction for  
6 wherein to mean in which. There is -- this was  
7 proposed by Facebook rather late in the case.  
8 That portion of the instruction is not objected  
9 to by Leader, and I -- so I am going to include  
10 that construction.

11 I am not adding a negative  
12 construction of quote not when. Generally, of  
13 course, courts construe terms affirmatively and  
14 not negatively. Here if I were to go down the  
15 path of saying what things are not, there is a  
16 lot of things I would have to say in which is  
17 not, and arguably I would have to start saying  
18 what all the other claim terms that were in  
19 dispute are not. That would be confusing and  
20 unnecessary.

21 The experts, and by that I do mean  
22 experts, plural, experts more than one have  
23 testified as to how they understand the wherein  
24 language. Both sides have been permitted to

1 question the experts in ways that implicate the  
2 experts' understanding of the wherein term and  
3 both sides can argue consistent with the  
4 evidence that came in when they're discussing  
5 what wherein means.

6 In 3.4 I have also added some  
7 language along the lines proposed by Facebook  
8 with respect to the idea that the jurors are not  
9 to consider prosecution history or specification  
10 as a basis for altering the Court's claim  
11 construction.

12 A general point that affects a  
13 number of the instructions is that I'm not going  
14 to be instructing the jury on theories of  
15 indirect infringement. I'm only instructing on  
16 direct infringement, so I'm not including any  
17 instruction on induced infringement or  
18 contributory infringement.

19 I don't believe there has been  
20 evidence from which the jury could find that any  
21 third party other than Facebook is the direct  
22 infringer, nor do I think there is any evidence  
23 of Facebook's knowledge of the '761 patent at  
24 this trial.

1           So the instructions, the verdict  
2           form, and argument will be limited to theories  
3           of direct infringement, literal as well as  
4           Doctrine of Equivalents.

5           3.7, direct literal infringement,  
6           this is where I have addressed the issue of  
7           control or direction with respect to method  
8           claims, 9, 11 and 16. I'm telling the jury that  
9           this is a factual issue for them. I'm also  
10          identifying some of the factors that they can  
11          consider in making that factual determination.

12          My instruction accommodates my  
13          view that this is a factual dispute, and also  
14          what I have put in here is in my view consistent  
15          with the law.

16          4.10, obviousness, the only thing  
17          I wanted to point out there is as came up  
18          earlier today, I have added in a sentence that  
19          the Facebook website is commercially successful.  
20          I have also pointed out that it is for the jury  
21          to decide if Facebook embodies all of the  
22          asserted -- all of the claims of the '761  
23          patent.

24          So what we will do tomorrow is I

1 will read to the jury all of the instructions  
2 through 5.2, so I'll stop after I read the  
3 unanimous verdict instruction, and I'll save for  
4 myself the duty to deliberate which tells them  
5 go ahead and start deliberating and that the  
6 Court has no opinion.

7 So after I read through all the  
8 way through 5.2, turn to Leader for argument,  
9 then Facebook, and then I'm going to let Leader  
10 have the last word if they have any time left.  
11 I'm not going to have a second Facebook argument  
12 solely on validity. So Facebook will stand up  
13 once, Leader twice, if they have got the time to  
14 do it.

15 That is it for me. I know I have  
16 a question about exhibits, but it was suggested  
17 there were issues that the parties wanted to  
18 raise, so let's go through those first.

19 Mr. Andre.

20 MR. ANDRE: The only issue we have  
21 is about exhibits. We have particularly  
22 cumbersome exhibits that are I believe DTX 725.

23 THE COURT: Is that thirteen  
24 volumes?

1 MR. ANDRE: The thirteen  
2 three-inch binders that are an exhibit. And I  
3 believe our paralegals have that ready to go,  
4 but we just want to know the logistics of how to  
5 -- people giving me death stares in the front  
6 row here.

7 THE COURT: I have a question  
8 about the logistics, too.

9 MR. ANDRE: How do you want us to  
10 get that to you?

11 THE COURT: First off, is there  
12 any objection to its admissibility?

13 MR. RHODES: I don't think we  
14 object to the admissibility. I question the  
15 wisdom of 3,000 documents in the room.

16 THE COURT: We don't need to argue  
17 about it. It is admitted. And let me confer  
18 with my deputy for a second.

19 All right. It's just going to be  
20 with all of the other exhibits in the custody of  
21 my deputy, so you'll just need to give it to us  
22 as you have given us any other exhibit, but it  
23 is admitted.

24 Anything further, Mr. Andre?

1 MR. ANDRE: I'm not sure how you  
2 want to handle the jury binders, if they  
3 actually take the jury binders away from them at  
4 this point and let them go with the official  
5 exhibits. If they are not, if they're going to  
6 keep their own individual jury binders, there  
7 probably needs to be some of those exhibits  
8 removed.

9 THE COURT: If they do keep their  
10 jury binders?

11 MR. ANDRE: If they do keep the  
12 jury binders, they need to have some of those  
13 exhibits removed because they have not been  
14 entered into evidence. And I believe counsel  
15 talked to me earlier about putting some exhibits  
16 in. I don't have a strong preference. I think  
17 it's probably easiest to just have them have the  
18 official set. Sometimes they write notes on  
19 their own exhibits. I don't know what they're  
20 doing. So I'm open to the Court's suggestion or  
21 the counsel's suggestion.

22 THE COURT: Let me hear what  
23 Facebook's position is.

24 MR. RHODES: First, Your Honor, I

1 just had one question about the Court's  
2 construction of the term wherein. On Friday,  
3 Mr. Andre I believe stated in open court that he  
4 would not argue when. If he starts to argue  
5 when in the closing, I wouldn't want to object.  
6 I can't stand making objections during someone's  
7 closing. I just wanted to address that with the  
8 Court. I heard him say to Your Honor I will not  
9 argue when.

10 THE COURT: I heard him say that,  
11 but what I have ruled today is that you're all  
12 free to make arguments on -- in which, or on  
13 wherein that are consistent with the evidence.  
14 So that may open the door to him arguing when.  
15 You can note an objection to any such argument  
16 now or right after the argument.

17 I certainly have a preference that  
18 you don't all get up in the middle of closing  
19 arguments and object left and right to one  
20 another. I don't think it helps you with the  
21 jury, anyway.

22 MR. RHODES: I agree. May I just  
23 lodge the objection at this moment that if he  
24 makes the argument that in which is the same as

1 when, we do object and we think that has gone  
2 beyond the Court's guidance in the case. I just  
3 want to note that for the record.

4 THE COURT: It has been noted.  
5 Now on exhibits.

6 MR. RHODES: On exhibits just a  
7 couple of housekeeping matters. I don't have a  
8 particular view on the binders, Your Honor.  
9 Frankly, you know, that doesn't bother me what  
10 they want to do. We went through this morning  
11 the ones that we thought I had in a binder that  
12 I never used. They should obviously be taken  
13 out. I wanted to add the one that Ms. Keefe  
14 moved into evidence which was the  
15 nonconfidential iManage reference manual.

16 I don't know whether you want to  
17 take that one out and add this one or put them  
18 both in, that's your preference.

19 THE COURT: Let's talk about  
20 iManage first because I think I left the record  
21 kind of unclear there. To the extent we have  
22 jury binders, I'm keeping in that jury binder  
23 the quote confidential version of iManage.

24 MR. RHODES: That was DTX 1010.



1 THE COURT: 1010. So to the  
2 extent that I in any way indicated I was going  
3 to have that removed from the binder, I did not  
4 mean that. They have been removed from the  
5 binder. They will not be removed from the  
6 binder.

7 MR. RHODES: May I ask that we add  
8 to the binder DTX 925E.

9 THE COURT: You can request it and  
10 we'll add it to the binder if we're going to let  
11 them hang on to the jury binders. I need to  
12 think about that for a second and confer.

13 Hold on.

14 (Discussion off the record.)

15 THE COURT: All right. What I  
16 think is neatest and cleanness is if my staff  
17 retrieves all the jury binders which we're told  
18 are all in the jury room right now. Of course  
19 we don't let the jurors take them with them.  
20 We'll hold on to them. I can't imagine that  
21 anybody is going to need them, but we'll hold on  
22 to them. But the jury won't have them, so I  
23 think it's academic at this point what we put in  
24 or take out of the jury binders.

1 MR. RHODES: That makes it easier,  
2 then, Your Honor.

3 Then I just had a housekeeping  
4 question. Mr. Andre and I spoke last week about  
5 our closing demonstratives and we're both a  
6 little bit old school, it's closing, you get to  
7 do what you want.

8 We kind of had an understanding we  
9 wouldn't share them, but then I realized that  
10 you actually had a procedure in your order. I  
11 went back and looked at it. So I wanted to ask  
12 you what you wanted us to do and when you wanted  
13 us to do it.

14 I suspect he like me needs a  
15 little bit of time to be able to work the  
16 instructions, how they'll come in. My  
17 suggestion was going to be if you thought this  
18 made any sense was early tomorrow morning we  
19 just send each one a set, we agree those sets  
20 are frozen, it at least gives us an hour to look  
21 at it, make sure there is nothing completely off  
22 the wall.

23 THE COURT: Mr. Andre, any  
24 thoughts?

1 MR. ANDRE: As I told Mr. Rhodes,  
2 short of having naked pictures of me in his  
3 presentation, I wouldn't care what he put in it.  
4 But that being said, I don't really care. I  
5 think it's closing argument, and if you can get  
6 up and try to present something that's not been  
7 proven factually it hurts your case. So if he  
8 wants to have some type of objection procedure  
9 in the morning which can really disrupt  
10 obviously the close, I mean...

11 MR. RHODES: Actually, Mr. Andre  
12 and I actually agree on this, but I actually do  
13 have those photographs in my iPad.

14 THE COURT: No. That's all right.  
15 Please.

16 MR. RHODES: Your Honor, I would  
17 never besmirch the Court's integrity by showing  
18 those, because trust me, you wouldn't want to  
19 see them. We agree on this, actually, but don't  
20 want to --

21 THE COURT: I understand. You're  
22 both old school. It remains to be seen what I  
23 am. But I know I don't want the pictures.

24 I'm going to hopefully not regret

1 this, but I'm going to trust the two of you on  
2 modifying my procedure to the extent it's in the  
3 pretrial order, if you want to share, share. If  
4 you don't want to share, don't share.

5 MR. RHODES: Don't share. It's a  
6 deal.

7 THE COURT: Okay. Anything  
8 further, Mr. Rhodes?

9 MR. RHODES: No. We got the  
10 official file, so I think we're good there. And  
11 I think with that, unless there is anything  
12 else, no, I think we're good, Your Honor.

13 THE COURT: Okay. Mr. Andre?

14 MR. ANDRE: The special verdict  
15 form, will that come out with the jury  
16 instructions?

17 THE COURT: It will. You should  
18 have both of those within an hour.

19 MR. ANDRE: Thank you, Your Honor.

20 THE COURT: Have a good evening  
21 and we'll see you at nine o'clock tomorrow.

22 (Court recessed at 2:57 p.m.)

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1 State of Delaware )  
 )  
2 New Castle County )

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CERTIFICATE OF REPORTER

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I, Heather M. Triozzi, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public, do hereby certify that the foregoing record, Pages 1,643 to 1,895 inclusive, is a true and accurate transcript of my stenographic notes taken on July 26, 2010, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of July, 2010, at Wilmington.

\_\_\_\_\_  
Heather M. Triozzi, RPR, CSR  
Cert. No. 184-PS