

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LEADER TECHNOLOGIES, INC.,	)	
a Delaware corporation,	)	
	)	
Plaintiff-Counterdefendant,	)	Civil Action No. 08-862-LPS
	)	
v.	)	
	)	
FACEBOOK, INC.,	)	
a Delaware corporation,	)	
	)	
Defendant-Counterclaimant.	)	

**PLAINTIFF LEADER TECHNOLOGIES, INC.'S RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF LAW OR A NEW TRIAL PURSUANT TO RULES  
50(b) AND 59 OF THE FED. R. CIV. P.**

**OF COUNSEL:**

Paul J. André  
Lisa Kobialka  
KING & SPALDING, LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065-6109  
(650) 590-7100

Dated: August 25, 2010

Philip A. Rovner (#3215)  
Jonathan A. Choa (#5319)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)  
[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)

*Attorneys for Plaintiff and Counterdefendant  
Leader Technologies, Inc.*

## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY OF ARGUMENT .....	1
II.	STATEMENT OF THE CASE AND OF THE FACTS .....	2
III.	ARGUMENT.....	2
A.	STANDARDS OF REVIEW.....	2
B.	LEADER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE FACEBOOK DID NOT PROVE AN INVALIDATING PUBLIC USE OR OFFER FOR SALE BY CLEAR AND CONVINCING EVIDENCE .....	4
1.	Leader Did Not Offer For Sale Or Publicly Use <i>The Patented Invention</i> More Than One Year Before Filing The Patent Application. ....	4
a)	Facebook did not offer any evidence that the purported public demonstrations or offers for sale met the claim limitations. ....	6
b)	Facebook’s attacks on Mr. McKibben’s credibility do not fill the evidentiary gap in its case. ....	10
2.	The Patented Technology Was Not Ready For Patenting More Than One Year Before The Filing Of The Patent Application.....	11
3.	The Experimental Use Doctrine Negates Any Public Use Or Offer For Sale.....	12
4.	Leader’s Purported Public Demonstrations Were Covered By Nondisclosure Agreements.....	14
5.	Leader Did Not Make Any Commercial Offers For Sale Of The Patented Invention. ....	15
6.	The ‘76 Patent Is Entitled To The Provisional Application’s Priority Date.....	17
C.	LEADER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW THAT FACEBOOK DIRECTS OR CONTROLS ITS EMPLOYEES AND USERS. ....	18
D.	IN THE ALTERNATIVE, LEADER IS ENTITLED TO A NEW TRIAL .....	20
IV.	CONCLUSION .....	20

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Allen Eng'g Corp. v. Bartell Indus., Inc.</i> , 299 F.3d 1336 (Fed. Cir. 2002) .....	4
<i>Allied Chem. Corp. v. Daiflon, Inc.</i> , 449 U.S. 33 (1980) .....	3
<i>American Bearing Co. v. Litton Indus., Inc.</i> , 729 F.3d 943 (3d Cir. 1984) .....	20
<i>BMC Res., Inc. v. Paymentech, L.P.</i> , 498 F.3d 1373 (Fed. Cir. 2007) .....	18
<i>Bose Corp. v. Consumers Union of U.S., Inc.</i> , 466 U.S. 485 (1984) .....	10
<i>Bullen v. Chaffinch</i> , 336 F. Supp. 2d 342 (D. Del. 2004) .....	3
<i>CIF Licensing, LLC v. Agere Sys. Inc.</i> , C.A. No. 07-170-JJF, 2010 WL 3001775 (D. Del. July 30, 2010).....	5, 10
<i>Clock Spring, L.P. v. Wrapmaster, Inc.</i> , 560 F.3d 1317 (Fed. Cir. 2009) .....	15
<i>Colorado v. New Mexico</i> , 467 U.S. 310 (1984) .....	3
<i>Combined Sys., Inc. v. Defense Tech. Corp. of Am.</i> , 230 F. Supp. 2d 544 (S.D.N.Y. 2002) .....	9
<i>Cordance Corp. v. Amazon.com, Inc.</i> , 687 F. Supp. 2d 449 (D. Del. 2010) .....	9
<i>Dyer v. MacDougall</i> , 201 F.2d 265 (2d Cir. 1952) (Hand, J.) .....	11
<i>Egbert v. Lippmann</i> , 104 U.S. 333 (1881) .....	14
<i>Elan Corp. v. Andrx Pharms., Inc.</i> , 366 F.3d 1336 (Fed. Cir. 2004) .....	15, 16

<i>Fineman v. Armstrong World Indus., Inc.</i> , 980 F.2d 171 (3d Cir. 1992) .....	20
<i>Gemmy Indus. Corp. v. Chrisha Creations Ltd.</i> , 452 F.3d 1353 (Fed. Cir. 2006) .....	5
<i>Goldhirsh Group, Inc. v. Alpert</i> , 107 F.3d 105 (2d Cir. 1997) .....	11
<i>Greenleaf v. Garlock, Inc.</i> , 174 F.3d 352 (3d Cir. 1999) .....	3, 20
<i>Group One, Ltd. v. Hallmark Cards, Inc.</i> , 254 F.3d 1041 (Fed. Cir. 2001) .....	15, 16
<i>Helifix Ltd. v. Block-Lok, Ltd.</i> , 208 F.3d 1339 (Fed. Cir. 2000) .....	5
<i>Helvering v. Leonard</i> , 310 U.S. 80 (1940) .....	3
<i>Honeywell Int'l Inc. v. Hamilton Sundstrand Corp.</i> , 370 F.3d 1131 (Fed. Cir. 2004) .....	3
<i>Honeywell Int'l, Inc. v. Nikon Corp.</i> , 672 F. Supp. 2d 638 (D. Del. 2009) .....	15
<i>Honeywell Int'l Inc. v. Universal Avionics Sys. Corp.</i> , 488 F.3d 982 (Fed. Cir. 2007) .....	11
<i>In re Bose Corp.</i> , 580 F.3d 1240 (Fed. Cir. 2009) .....	3
<i>Innovation Techs., Inc. v. Splash! Med. Devices, LLC</i> , 528 F.3d 1348 (Fed. Cir. 2008) .....	3
<i>Invitrogen Corp. v. Biocrest Mfg., L.P.</i> , 424 F.3d 1374 (Fed. Cir. 2005) .....	passim
<i>Izumi Prods. Co. v. Koninklijke Philips Elecs. N.V.</i> , 315 F. Supp. 2d 589 (D. Del. 2004) .....	11
<i>Juicy Whip, Inc. v. Orange Bang, Inc.</i> , 292 F.3d 728 (Fed. Cir. 2002) .....	9
<i>Lightning Lube, Inc. v. Witco Corp.</i> , 4 F.3d 1153 (3d Cir. 1993) .....	3



<i>Linear Tech. Corp. v. Micrel, Inc.</i> , 275 F.3d 1040 (Fed. Cir. 2001) .....	17
<i>Lucent Techs., Inc. v. Newbridge Networks Corp.</i> , 168 F. Supp. 2d 181 (D. Del. 2001) .....	3
<i>MLMC, Ltd. v. Airtouch Commcns., Inc.</i> , 215 F. Supp. 2d 464 (D. Del. 2002) .....	17
<i>Moore v. Chesapeake &amp; Ohio Ry. Co.</i> , 340 U.S. 573 (1951) .....	10
<i>Motionless Keyboard Co. v. Microsoft Corp.</i> , 486 F.3d 1376 (Fed. Cir. 2007) .....	15
<i>Muniauction, Inc. v. Thomson Corp.</i> , 532 F.3d 1318 (Fed. Cir. 2008) .....	19
<i>Pfaff v. Wells Elecs., Inc.</i> , 525 U.S. 55 (1998) .....	11, 15
<i>Pfizer, Inc. v. Apotex, Inc.</i> , 480 F.3d 1348 (Fed. Cir. 2007) .....	9, 18
<i>Polypro, Inc. v. Addison</i> , 222 Fed. Appx. 960, 2007 WL 788345 (Fed. Cir. Mar. 13, 2007).....	11
<i>Purdue Pharma Prods. L.P. v. Par Pharm., Inc.</i> , 642 F. Supp. 2d 329 (D. Del. 2009) .....	18
<i>RCA Corp. v. Data Gen. Corp.</i> , 887 F.2d 1056 (Fed. Cir. 1989) .....	6
<i>Rhenalu v. Alcoa Inc.</i> , 224 F. Supp. 2d 773 (D. Del. 2002) .....	17
<i>Roebuck v. Drexel Univ.</i> , 852 F.2d 715 (3d Cir. 1988) .....	3, 4, 20
<i>Scaltech Inc. v. Retec/Tetra, L.L.C.</i> , 178 F.3d 1378 (Fed. Cir. 1999) .....	4
<i>Sonoscan, Inc. v. Sonotek, Inc.</i> , 936 F.2d 1261 (Fed. Cir. 1991) .....	6, 8
<i>Tec Air, Inc. v. Denso Mfg. Mich., Inc.</i> , 192 F.3d 1353 (Fed. Cir. 1999) .....	9

**STATUTES AND RULES**

35 U.S.C. § 102(b).....	2, 4
35 U.S.C. § 282 .....	3
Fed. R. Civ. P. 50(b).....	2
Fed. R. Civ. P. 59.....	2, 4

**OTHER AUTHORITIES**

<i>Restatement (Second) of Contracts</i> §26 (1981).....	17
<i>Restatement (Second) of Contracts</i> §33(3)(1981) .....	15, 16
<i>Restatement (Third) of Agency</i> § 7.07(1)(2006).....	19
9A Charles A. Wright & Arthur A. Miller, <i>Federal Practice &amp; Procedure</i> § 2257 (2d ed.).....	11

## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The jury found that Facebook infringed Leader's patent and the patent was neither anticipated nor obvious in light of the prior art. But the jury nonetheless found the patent invalid on the theory that Leader had publicly used the patented invention and offered it for sale more than one year before filing the patent application. That conclusion is unsupported by the evidence. Indeed, Facebook did not present *any* evidence, let alone clear and convincing evidence, on crucial elements of its public use and on-sale defenses. Leader is therefore entitled to judgment as a matter of law or, at the very least, a new trial.

First and foremost, Facebook was required to prove, on a limitation-by-limitation basis, that the alleged public use and offers for sale of Leader2Leader involved the patented invention, yet it did not even attempt such an analysis. Instead, Facebook asserted that because the current version of Leader2Leader practices the patented invention, the 2002 version of that suite of products must have as well. That supposition is not only unsupported by the evidence, it is directly contrary to all of the evidence on point. Facebook attempted to mask its total lack of evidentiary support by arguing that the jury should not believe Leader's evidence that the 2002 version of Leader2Leader did not contain the patented technology. But even if the jury disbelieved and therefore disregarded Leader's evidence, that would only mean that there is *no* evidence on point. Because Facebook failed to carry its own, affirmative burden of proof by clear and convincing evidence, and instead relied only on unsupported conjecture, this is a paradigmatic case for judgment as a matter of law.

Facebook also failed to satisfy its burden of proof on other elements of the on-sale and public use defenses. For example, Facebook offered no proof that the invention was ready for patenting more than one year before the patent application. Nor did Facebook refute the undisputed evidence that Leader had nondisclosure agreements in place before it demonstrated any of its experimental technology, and never made a definite, commercial offer for sale of the patented technology during the relevant time period. For the reasons stated herein, the interest of justice requires judgment as a matter of law or a new trial on these issues.

## II. STATEMENT OF THE CASE AND OF THE FACTS

Founded in 1997, Plaintiff Leader Technologies, Inc. (“Leader”) aimed “to use the internet as a platform for doing large-scale communications and collaboration.” Tr. 372:23-373:3.<sup>1</sup> The technology of U.S. Patent No. 7,139,761 (the “’761 Patent”) represented one part of that goal. PTX 1. First conceived in 1999 (Tr. 387:6-8), the patented invention relates to a data management tool for online collaboration. PTX 1, Abstract. Online collaboration tools allow a large number of users to share a variety of information—files, pictures, documents, messages, videos, data, or any other digital content—with each other. Leader invested 145,000 man-hours and over \$10 million to develop the initial concept and build a working embodiment of the technology. Tr. 392:22-393:6. Within a day or two of implementing the technology in software code, Leader filed a provisional patent application on December 11, 2002. *See* PTX 3; Tr. 452:12-24; Tr. 1361:8-12. On December 10, 2003, Leader filed an application that eventually resulted in the issuance of the ‘761 Patent on November 21, 2006. *See* PTX 1.

Leader filed its complaint on November 19, 2008, alleging that Defendant Facebook, Inc.’s (“Facebook”) website, available at [www.facebook.com](http://www.facebook.com), infringes claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32 of the ‘761 Patent. D.I. 1. On July 28, 2010, a jury found that Facebook literally infringed each and every asserted claim of the ‘761 Patent, though it concluded that Facebook did not control or direct either its employees or its end users. D.I. 610, at 1-2. The jury also rejected Facebook’s prior art anticipation and obviousness defenses, but found the ‘761 Patent invalid under the on-sale and public use bars of 35 U.S.C. § 102(b). *Id.* at 3-5.

## III. ARGUMENT

### A. STANDARDS OF REVIEW

Judgment as a matter of law is required when a party has been fully heard on an issue and, viewing the evidence in the light most favorable to the nonmovant, “there is no legally

---

<sup>1</sup> All documents cited herein, including citations to PTX trial exhibits, DTX trial exhibits, and trial transcripts, are attached to the Declaration of Paul Andre in Support of Plaintiff Leader Technologies, Inc.’s Renewed Motion for Judgment as a Matter of Law or a New Trial Pursuant to Rules 50(b) and 59 of the Fed. R. Civ. P.

sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” *Bullen v. Chaffinch*, 336 F. Supp. 2d 342, 346 (D. Del. 2004)(citations omitted). “The question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the jury could properly find a verdict for that party.” *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1166 (3d Cir. 1993)(citation omitted).

Because patents issued by the Patent and Trademark Office are presumed to be valid, 35 U.S.C. § 282, the jury could properly find the patent invalid only if Facebook carried the “heavy burden” of proving invalidity by “clear and convincing evidence.” *Honeywell Int’l Inc. v. Hamilton Sundstrand Corp.*, 370 F.3d 1131, 1145 (Fed. Cir. 2004); *see also Invitrogen Corp. v. Biocrest Mfg., L.P.*, 424 F.3d 1374, 1378 (Fed. Cir. 2005)(citation omitted). To be clear and convincing, evidence must produce “a firm belief and conviction that it is highly probable that the matter sought to be established is true.” D.I. 601 at 15. Such evidence must be based on “hard facts.” *See Colorado v. New Mexico*, 467 U.S. 310, 320-21 (1984). As the Supreme Court and Federal Circuit have repeatedly cautioned, “[t]here is no room for speculation, inference or surmise” where, as here, the clear and convincing evidence standard applies. *In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed. Cir. 2009)(quotation omitted); *accord Helvering v. Leonard*, 310 U.S. 80, 86 (1940); *Innovation Techs., Inc. v. Splash! Med. Devices, LLC*, 528 F.3d 1348, 1350-51 (Fed. Cir. 2008). Under those standards, Leader is entitled to judgment as a matter of law because Facebook did not present sufficient hard facts, above the level of inference, to permit the jury to find the ‘761 Patent invalid by clear and convincing evidence.

Even if judgment as a matter of law were inappropriate, this Court would still have considerable discretion to grant a new trial. *See Roebuck v. Drexel Univ.*, 852 F.2d 715, 735 (3d Cir. 1988). A district court may order a new trial if, in the court’s view, “there is insufficient evidence to support the verdict or . . . the verdict was against the weight of the evidence.” *Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 364-65 (3d Cir. 1999)(citations omitted). For this purpose, the Court need *not* view the evidence in the light most favorable to the verdict. *See Allied Chem. Corp. v. Daiiflon, Inc.*, 449 U.S. 33, 36 (1980); *Lucent Techs., Inc. v. Newbridge*

*Networks Corp.*, 168 F. Supp. 2d 181, 251 (D. Del. 2001); *see also* Fed. R. Civ. P. 59(a)(1)(A). Because this Court is expected to rely in part on its own observation of the witnesses and other evidence, “[t]he authority to grant a new trial . . . is confided almost entirely to the exercise of discretion on the part of the trial court.” *Roebuck*, 852 F.2d at 735 (quotation omitted).

**B. LEADER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE FACEBOOK DID NOT PROVE AN INVALIDATING PUBLIC USE OR OFFER FOR SALE BY CLEAR AND CONVINCING EVIDENCE**

Under the Patent Act, “[a] person shall be entitled to a patent unless . . . the invention was . . . in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.” 35 U.S.C. § 102(b). “Whether a patent is invalid due to public use under § 102(b) is a question of law based on underlying questions of fact.” *Invitrogen*, 424 F.3d at 1378 (citation omitted).

The jury determined that Leader’s December 11, 2002, provisional application did not disclose all of the elements of the patented invention. D.I. 610, at 3. Under that finding, the ‘761 Patent claims priority from the subsequent filing of the non-provisional patent application on December 10, 2003, making December 10, 2002, the critical date for this purpose. *See* PTX 1; D.I. 601, at 33. As discussed below, Facebook had to establish several different elements in order to carry its burden of proving a relevant public use or offer for sale more than one year before the priority date. It did not do so.

**1. Leader Did Not Offer For Sale Or Publicly Use *The Patented Invention* More Than One Year Before Filing The Patent Application.**

At the outset, the public use and on-sale bars apply only to embodiments of the claimed invention; using or selling a different product or invention does not affect the patentability of the claimed one. “Hence, the *first* determination in the § 102(b) analysis must be whether the subject of the barring activity met each of the limitations of the claim, and thus was an embodiment of the claimed invention.” *Scaltech Inc. v. Retec/Tetra, L.L.C.*, 178 F.3d 1378, 1383 (Fed. Cir. 1999) (emphasis added); *see also Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1355 (Fed. Cir. 2002) (requiring district courts to “make specific findings linking

elements of the” asserted claims to the prior activity); *Gemmy Indus. Corp. v. Chrisha Creations Ltd.*, 452 F.3d 1353, 1359-60 (Fed. Cir. 2006); *Helifix Ltd. v. Block-Lok, Ltd.*, 208 F.3d 1339, 1350 (Fed. Cir. 2000). Thus, as this Court instructed the jury, Facebook had to prove “by clear and convincing evidence” that Leader publicly used or offered for sale “a product that met *all the limitations* of the asserted claims.” D.I. 601, at 41 (emphasis added); *see also id.* at 39 (likewise requiring proof of “a product that meets all the elements of [the asserted] claim”). In that respect, public uses and offers for sale are no different from other prior art. *See id.* at 32. Just as a prior art reference can only anticipate a patented invention if it includes each and every claim limitation (*see id.* at 37), a public demonstration or offer for sale likewise must include each and every claim limitation, and be evaluated the same way as a prior art reference -- namely on an element-by-element basis. *Id.* at 39, 41.

While Facebook failed to prove anticipation with any prior art reference, it at least attempted to prove such alleged anticipation on an element-by-element basis of each asserted claim through expert testimony. *See, e.g.*, Tr. 1463:12-1491:15, 1505:17-1516:1, 1518:22-1535:4, 1544:14-1561:23. Facebook was required to perform a similar analysis for public use and offers for sale. However, Facebook presented *no* evidence, let alone clear and convincing evidence, that the alleged public uses and offers for sale satisfied all of the claim limitations. Facebook asserted that Leader publicly used and offered for sale its Leader2Leader platform, which is a suite that includes a series of products including LeaderPhone, Smart Camera, and other technologies. *See* Tr. 1316:15-1320:12. But Facebook produced no evidence that the 2002 version of Leader2Leader included the patented invention, and thus met each and every limitation of the asserted claims. In fact, all of the evidence shows that the 2002 version of Leader2Leader did not include the patented invention. In *CIF Licensing, LLC v. Agere Sys. Inc.*, C.A. No. 07-170-JJF, 2010 WL 3001775, at \*20 (D. Del. July 30, 2010), this Court granted plaintiff’s motion for judgment as a matter of law that a patent was not invalid due to anticipation, despite the jury’s finding otherwise, because the defendant’s expert witness failed to

provide an explanation “of how or why each of the claim elements were disclosed” in the alleged prior art. Leader’s motion should be granted for the same reason.

**a) Facebook did not offer any evidence that the purported public demonstrations or offers for sale met the claim limitations.**

A defendant must prove that a prior product met each of the limitations of the claimed invention through evidence “such as memoranda, drawings, correspondence, and testimony of witnesses.” *Sonoscan, Inc. v. Sonotek, Inc.*, 936 F.2d 1261, 1263 (Fed. Cir. 1991)(quoting *RCA Corp. v. Data Gen. Corp.*, 887 F.2d 1056, 1060 (Fed. Cir. 1989)). At trial, Facebook offered no such evidence -- no technical documents; no memoranda or correspondence from the time period in question; no Leader source code (which Facebook had because the Court compelled Leader to produce it); and no testimony, expert or otherwise,<sup>2</sup> that supported its position that the 2002 version of Leader2Leader satisfied all of the limitations for all of the asserted claims.

Facebook was required to prove by clear and convincing evidence that the 2002 version of the Leader2Leader product suite contained each and every limitation of the independent and dependent claims in order to successfully invalidate the '761 Patent. This burden is impossible to achieve without reference to the Leader2Leader source code and/or other technical documents, because the claims are directed to the back-end components of the system. For example, for Claim 1, Facebook would have to prove that the Leader2Leader product captured context information using a context component and tracking information using a tracking component and stored that data in metadata. Without seeing the technical documents and/or source code, one cannot determine how the data is handled, which back-end components are utilized, and where the data is stored. Similarly, Claim 9 requires the dynamic update of metadata with an association of data, the application and the user environment. Facebook was required to prove Leader2Leader actually stored this specific data in this manner. Without analyzing the source

---

<sup>2</sup> The only witnesses that provided any testimony at trial regarding Leader2Leader were Michael McKibben and Jeff Lamb. Both of these witnesses consistently testified that the '761 Patented technology was not incorporated in the Leader2Leader product suite in 2002. Tr. 445:9-19; 468:8-21;1324:23-1325:17.



code, it is merely a guess as to which types of data are stored and how the functions are accomplished. The other independent claims contain additional backend components, such as code for indexing (Claim 21) and components that dynamically store context data as metadata on a web-based server (Claim 23). The best and possibly only source to ascertain these technical details is the source code, and Facebook's failure to even mention the Leader2Leader source code is dispositive of their claims of public use and offer for sale.

Facebook's failure to offer Leader2Leader's source code is particularly fatal to proving whether the product met the limitations of the dependent claims. The dependent claims call out specific types of data which must be stored in metadata and how that data is related to each other. It is simply impossible to ascertain how the system collects and associates this data without highly specific technical documents, such as the source code. For example, Claim 4 requires the context information to contain relationship information between the user and at least the application, application data and user environment. To ascertain whether a product meets this limitation, one must analyze the data structure that is used to capture and store data, and further analyze whether and how the data is associated in the back-end. Another example is Claim 32 which requires the storage of metadata in a storage component that facilitates many-to-many functionality. Without looking at the particular source code modules and examining how they handle the data, it cannot be determined if this claim element is met because it is not clear if the metadata, or something else, is responsible for the ability to share data among users. These are only a few examples of the types of information that Facebook was required to show, but wholly failed to do so at trial.

Indeed, Facebook's only purported evidence on this point consisted of two of Leader's interrogatory responses *from 2009* concerning products offered for sale *in 2009*. See DTX 963, DTX 969. But Leader's undisputed offers for sale of the patented invention in 2009 as part of the 2009 version of Leader2Leader is hardly clear and convincing evidence that Leader made commercial offers for sale of the patented invention in 2002. Facebook's interrogatory stated: "For each claim of the '761 Patent that [Leader] contends *is* practiced by any product(s) and/or

service(s) of [Leader], identify all such product(s) and/or service(s) and provide a chart identifying specifically where each limitation of each claim *is* found within such product(s) and/or service(s).” DTX 969, at 45 (emphasis added). Because that interrogatory is phrased in the present tense and does not specify any other timeframe, Leader responded by naming the products that embody the ‘761 Patent claims *as of the date of the interrogatory*. In relevant part, Leader answered, in the present tense, that “Leader2Leader® powered by Digital Leaderboard® engine *is* the only product or service provided by Leader which *embodies*, either literally or under the doctrine of equivalents, any of the asserted claims of the ‘761 Patent.” DTX 969, at 46 (emphasis added). Nothing in Leader’s response can be construed to refer to the Leader products available in 2002.

Moreover, Michael McKibben -- who verified the responses -- confirmed that he understood the interrogatory to refer only to products and services that “practice the ‘761 Patent today.” Tr. 1329:17-1331:18. Mr. McKibben further testified that the Leader2Leader platform presently embodies the ‘761 Patent’s technology (Tr. 1332:6-14), but did not embody that technology before December 2002 and, indeed, *could not* have because the technology “did not exist at that time.” Tr. 1332:15-19; *accord* Tr. 1374:17-22; Tr. 1343:8-15. The ‘761 Patent’s other inventor, Jeffrey Lamb, confirmed that he and Mr. McKibben waited until December 10, 2002, to file the provisional application because they did not complete “the code that was the embodiment of that invention/concept” until then. Tr. 452:12-453:8.

Especially considering that the only testimony on point makes clear that Leader2Leader did not embody the ‘761 Patented technology before December 10, 2002, and that the technology did not even exist before then, the interrogatory responses about the 2009 product cannot rise to the level of clear and convincing evidence about the 2002 product. The Federal Circuit has held that even “conflicting testimony as to what [a] quotation actually included” prevents a finding by clear and convincing evidence. *Sonoscan*, 936 F.2d at 1263. Here, there is no conflict; the interrogatory response itself and all of the testimony about it consistently refute Facebook’s position.

Furthermore, a company's continued use of a brand name has never been sufficient to establish by clear and convincing evidence that an earlier version embodied the patented invention. *See Combined Sys., Inc. v. Defense Tech. Corp. of Am.*, 230 F. Supp. 2d 544, 550 (S.D.N.Y. 2002)(holding that product sold before and after critical date with the same model number "does not by itself prove that the product sold included every limitation of the claim") (citing *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1359 (Fed. Cir. 1999)). Simply pointing to the same brand name does not prove anything, and is certainly no substitute for the required element-by-element comparison of the underlying technology with the claims. *See, e.g., Cordance Corp. v. Amazon.com, Inc.*, 687 F. Supp. 2d 449, 477-78 (D. Del. 2010) (granting judgment as a matter of law of no invalidity even where, unlike here, the accused infringer had provided expert testimony on a limitation-by-limitation basis). Especially in the ever-changing computer age, there is no basis for assuming that a product like Leader2Leader, which combines a number of technologies into a suite, contained the same features seven years earlier.

In the absence of any affirmative evidence, Facebook's counsel suggested during closing argument that it was *Mr. McKibben's* burden to prove that the claimed invention was absent from Leader2Leader before December 10, 2002. Tr. 2046:18-21 ("Mr. McKibben was on the stand twice, and twice he did not put before you the versions of the product. He never showed you the product, did he?"). That improper attempt to shift the burden of proof to Leader only confirms Facebook's fundamental failure to carry its own burden. *See Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1359 (Fed. Cir. 2007)("Since we must presume a patent valid, the patent challenger bears the burden of proving the factual elements of invalidity by clear and convincing evidence. That burden of proof never shifts to the patentee to prove validity.")(citation omitted); *see also Juicy Whip, Inc. v. Orange Bang, Inc.*, 292 F.3d 728, 737 (Fed. Cir. 2002)(accused has burden of proving prior public use and must show that "the subject of the barring activity met each of the limitations of the claim, and thus was an embodiment of the claimed invention.")(quotation omitted).

**b) Facebook's attacks on Mr. McKibben's credibility do not fill the evidentiary gap in its case.**

In addition to attempting to shift the burden of proof, Facebook repeatedly questioned Mr. McKibben's credibility. Facebook's counsel told the jury that the public use and on-sale bars were "really a classical jury issue because you have to believe somebody on this one." Tr. 2038:9-12; *see also* Tr. 2012:12-18. Throughout closing argument, Facebook's counsel did not point to documentary evidence or any evidence that analyzed the alleged uses and offers on an element-by-element basis, but rather relied solely upon unadorned innuendo. *See, e.g.*, Tr. 2049:23-2050:1. Counsel even specifically highlighted the jury instruction regarding credibility. Tr. 2062:11-18.

But even if the jury found Mr. McKibben's testimony not credible, that would not remedy Facebook's failure to present clear and convincing evidence of its own. This Court instructed the jury that it could "disregard any testimony that, in your judgment, is not believable." D.I. 601, at 10. If the jury disregarded Mr. McKibben's testimony, or his co-inventor's testimony,<sup>3</sup> that would leave *no* evidence on point. And the absence of *any* evidence would hardly support the jury verdict. *See CIF Licensing*, 2010 WL 3001775, at \*17 (holding that if expert testimony does not provide a legally sufficient basis for finding a patent invalid, then the jury's verdict cannot be upheld even though that testimony was unrebutted).

As the Supreme Court has held, and this Court instructed the jury, "[w]hen the testimony of a witness is not believed, the trier of fact may simply disregard it." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 512 (1984). But "[n]ormally the discredited testimony is not considered a sufficient basis for drawing a contrary conclusion." *Id.* (citing *Moore v. Chesapeake & Ohio Ry. Co.*, 340 U.S. 573, 575 (1951)). Although "in strict theory a party having the affirmative [burden] might succeed in convincing a jury of the truth of his allegations in spite of the fact that all of the witnesses denied them, . . . a verdict would nevertheless have to

---

<sup>3</sup> Mr. Lamb confirmed the testimony of Mr. McKibben. Tr. 468:8-21. Accordingly, if both inventors' testimony was disregarded by the jury, then there would be no testimony whatsoever regarding the 2002 version of Leader2Leader, because Facebook did not provide any expert or fact testimony on this point.

be directed against him.” *Dyer v. MacDougall*, 201 F.2d 265, 269 (2d Cir. 1952) (Hand, J.). Thus, “even if the jury thoroughly disbelieved [Mr. McKibben], that disbelief is insufficient to support a verdict for [Facebook] in the absence of affirmative evidence” that the purported offers and public demonstrations embodied the ‘761 Patented technology. *Goldhirsh Group, Inc. v. Alpert*, 107 F.3d 105, 109 (2d Cir. 1997)(citing 9A Charles A. Wright & Arthur A. Miller, *Federal Practice & Procedure* § 2257, at 288 (2d ed.)). That would be true in the normal case, and it is especially true here, where Facebook must prove invalidity by clear and convincing evidence, not by inference or supposition. *See supra* p. 3. Because without Mr. McKibben’s testimony, “the record completely fails to show whether” Leader2Leader met “all the limitations recited in the claims,” judgment as a matter of law is required. *Izumi Prods. Co. v. Koninklijke Philips Elecs. N.V.*, 315 F. Supp. 2d 589, 606 (D. Del. 2004).

**2. The Patented Technology Was Not Ready For Patenting More Than One Year Before The Filing Of The Patent Application.**

Facebook also had to prove that the invention was “ready for patenting” before the critical date. *See Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 67 (1998); *see also Invitrogen*, 424 F.3d at 1379; D.I. 601 at 39-42. There is no basis for simply assuming that anything that was offered for sale or demonstrated before December 10, 2002, was ready for patenting, in part because it was not necessarily a working, functional, fully operational embodiment of the patented technology. *See, e.g., Honeywell Int’l Inc. v. Universal Avionics Sys. Corp.*, 488 F.3d 982, 996-97 (Fed. Cir. 2007); *see also Polypro, Inc. v. Addison*, 222 Fed. Appx. 960, 961-62, 2007 WL 788345, at \*1-2 (Fed. Cir. Mar. 13, 2007)(unpublished). Instead, a defendant can prove that an invention was ready for patenting “in at least two ways: by proof of reduction to practice before the critical date; or by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention.” *Pfaff*, 525 U.S. at 67-68. Facebook made no effort to address this requirement, and thus failed to carry its burden by clear and convincing evidence.

Indeed, Facebook effectively conceded that the invention was not ready for patenting by December 10, 2002 when it argued that the provisional application, which contained the actual source code, filed on December 11, 2002, did not provide support for each claim of the '761 Patent. PTX 3; D.I. 610, at 3; *see also* Tr. 392:18-394:10; 452:12-24; 1320:20-23, 1324:23-1326:1. Facebook cannot have its cake and eat it, too. If the provisional application does not support the claims of the '761 Patent, then the invention was not ready for patenting on December 10, 2002. At the very least, Facebook did not establish by clear and convincing evidence that an invention that was not disclosed in the provisional application was nonetheless ready for patenting before then.

### **3. The Experimental Use Doctrine Negates Any Public Use Or Offer For Sale.**

If any "public use or offer for sale was an experimental use performed in order to bring the invention to perfection or to determine if the invention was capable of performing its intended purpose, then such a use does not invalidate the claim." D.I. 601, at 43; *see also Invitrogen*, 424 F.3d at 1379-80. That was the case here. Leader's grant proposal in early 2002 for funding to implement a Leader2Leader system at Wright Patterson Air Force Base explained that the base would "become a classical beta customer for the full Leader2Leader® platform." DTX 179 at LTI 048199. Beta testing is an essential stage of software development that involves real-world, experimental testing outside of laboratory conditions. *See* Tr. 1327:16-1328:19. The White Paper that Leader submitted in support of its grant application explained, for example, that Leader2Leader had "not yet been tested for large numbers of concurrent users" and needed a "stress testing phase." DTX 179 at LTI 048203. Leader planned to implement a beta installation (*id.* at LTI 048204), and the whole point of the project was to jointly *develop* solutions to allow intelligence agencies to share data more easily. Tr. 1345:9-19. Combined with the fact that the funding would not have created a buyer-seller relationship under the rules governing the grant application (*see* PTX 1234 at 17), Leader's proposal was clearly intended primarily for experimentation.

Indeed, the proposal fit within Leader's overall plan, as Leader explained to shareholders in 2001, to "engage major beta users in testing." DTX 178 at LTI 014125. The company carried through on that effort by seeking support from The Limited and Boston Scientific for beta testing commitments. *See, e.g.*, Tr. 1359:7-1361:7, 1365:13-1367:24. Leader and The Limited were still negotiating a beta testing agreement in early 2003. PTX 773; Tr. 1363:6-19. Facebook's own trial exhibits regarding Leader's activities also consistently refer to beta testing. *See, e.g.*, DTX 181, at LTI 145931; DTX 184, at LTI 105611; DTX 776, at LTI 111342; DTX 1348; *see also* Tr. 1359:7-22.

Moreover, as discussed above, the relevant activities in 2002 preceded the development of the '761 Patented technology. *See supra* p. 8; Tr. 1327:2-1328:19. Leader executed its first beta testing agreement for the '761 Patented technology with Boston Scientific in 2003 for a mere ten user licenses. *See* DTX 679 at LTI 006441, LTI 006447; *see also* Tr. 1365:13-1367:24. That agreement for a small beta test, *after* the patent application, confirms that Leader's earlier discussions with Boston Scientific and other companies related, at most, to an unfinished, experimental product that Leader still needed to beta test. And because of its very small size, the beta-testing agreement was necessarily experimental, with any commercial aspect being at best incidental.

Finally, although Facebook had to prove public use or offer for sale by clear and convincing evidence, Leader needed only to prove by a preponderance of the evidence that any purported demonstrations or offers were experimental uses. D.I. 601, at 44. If Facebook's exhibits provide clear and convincing evidence that Leader demonstrated or offered for sale the claimed invention, then surely the same exhibits, with frequent references to beta testing, prove experimental use by a preponderance of the evidence. Any other result would be a perversion of the parties' respective burdens of proof.

**4. Leader's Purported Public Demonstrations Were Covered By Nondisclosure Agreements.**

Facebook also failed to carry its burden of proving that any uses of the patented technology were *public* uses, as required for the public-use bar to apply. “[T]o qualify as ‘public,’ a use must occur without any ‘limitation or restriction, or injunction of secrecy.’” *Invitrogen*, 424 F.3d at 1381 (quoting *Egbert v. Lippman*, 104 U.S. 333, 336 (1881))(citation omitted). Thus, this Court instructed the jury that Facebook had to prove, by clear and convincing evidence, that Leader disclosed the patented invention to a person “who [was] under no limitation, restriction or obligation of secrecy to the inventor.” D.I. 601, at 39. Facebook proved no such thing. Instead, all of the evidence showed that the purported public demonstrations of Leader2Leader were covered by non-disclosure agreements (“NDAs”).

Leader provided a “very limited” demonstration of some features<sup>4</sup> of Leader2Leader to Vincent Russo, a representative of Wright-Patterson Air Force Base, on April 2, 2001. DTX 1348; *see also* Tr. 1340:23-1342:3, 1343:16-18. Documentary evidence shows that Mr. Russo signed a NDA with Leader on the same day. DTX 725 at LTI 153001-03; *see also* Tr. 1261:21-1262:1. Facebook never rebutted that evidence. Rather, Facebook presented evidence that an additional person, Douglas Fleiser, signed an additional NDA after April 2, 2001. PTX 1058; *see also* Tr. 1260:7-1262:1. But Mr. Fleiser was not present at the April 2 meeting, and thus had no need to sign a NDA on that date. Tr. 1260:10-15, 1261:16-1262:1, 1341:16-18. In any event, additional and overlapping NDAs hardly evidence a *lack* of confidentiality.

Facebook also claimed that a November 25, 2002, demonstration to Boston Scientific constituted a public use. But Leader had a NDA in place for that demonstration, too. Tr. 1363:20-1364:7. Again, Facebook’s only evidence was that Leader and Boston Scientific later entered into an additional, mutual NDA. *See* DTX 182; Tr. 1301:22-1303:20. As with the presentation to Mr. Russo, therefore, the demonstration for Boston Scientific was not a public

---

<sup>4</sup> Leader demonstrated its security camera system, Smart Camera, to Mr. Russo. Tr. 1257:18-1258:8. The ‘761 Patented technology had not been developed at this time, and thus could not have been demonstrated. Nonetheless, an NDA was entered between the parties because the Smart Camera technology was proprietary information. DTX 725 at LTI 153001-03.



use. *See, e.g., Clock Spring, L.P. v. Wrapmaster, Inc.*, 560 F.3d 1317, 1325 (Fed. Cir. 2009); *Motionless Keyboard Co. v. Microsoft Corp.*, 486 F.3d 1376, 1385 (Fed. Cir. 2007). Moreover, Facebook did not introduce *any* evidence that the demonstrations to Wright-Patterson Air Force Base or Boston Scientific involved the '761 Patent technology.

Other evidence at trial confirmed that Leader consistently sought confidentiality agreements before demonstrating any technology. Tr. 1337:3-8. Leader had executed approximately 2,400 NDAs with various companies and individuals, including Mr. McKibben's own children. Tr. 1334:6-14. Mr. McKibben testified that it was Leader's frequent practice to enter into a NDA before demonstrating Leader products and also to execute additional NDAs after such meetings to ensure the protection of trade secrets. Tr. 1300:5-11. In many cases, Leader separately executed NDAs with company representatives in addition to confidentiality agreements with the companies themselves. Tr. 1356:18-1357:3; *see also* Tr. 1300:20-1301:12. There is no evidence, much less clear and convincing evidence, that the demonstrations to Wright-Patterson Air Force Base, Mr. Russo or Boston Scientific were out of line with Leader's settled practice.

**5. Leader Did Not Make Any Commercial Offers For Sale Of The Patented Invention.**

The on-sale bar requires proof of a "commercial offer for sale." *Pfaff*, 525 U.S. at 67. In other words, Facebook had to show that each alleged offer for sale was "one which the other party could make into a binding contract by simple acceptance." *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041, 1048 (Fed. Cir. 2001). Whether an "offer" satisfies that standard turns on traditional principles of contract law. *Honeywell Int'l, Inc. v. Nikon Corp.*, 672 F. Supp. 2d 638, 642-45 (D. Del. 2009). Significantly, "a communication that fails to constitute a definite offer to sell the product and to include material terms is not an 'offer' in the contract sense." *Elan Corp. v. Andrx Pharms., Inc.*, 366 F.3d 1336, 1341 (Fed. Cir. 2004) (citing *Restatement (Second) of Contracts* § 33(3) (1981)). Facebook did not show that any of the three purported

offers for sale included the material terms of a definite contract, and thus constituted a contractual “offer.”

A single email from October 2002 stated that Leader had “verbally committed to selling a system” to Boston Scientific. DTX 184 at LTI 105611. That email says nothing about any terms for a sale or even what “system” was to be sold. Indeed, nearly two months later, following another meeting with Boston Scientific, Leader was suppose “to put together a plan (proposal) over the next two weeks that lays out how/when they would bring L2L into BSC.” DTX 776 at LTI 111341. Far from having an actual offer on the table, the parties were merely engaged in preliminary discussions and negotiations. “The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer.” *Elan*, 366 F.3d at 1341 (quoting *Restatement (Second) of Contracts* § 33(3) (1981)).

Facebook also makes much of Leader’s grant application to the federal government for funding to implement and test aspects of the Leader2Leader platform at Wright Patterson Air Force Base. See DTX 179, DTX 852. Leader’s Broad Agency Announcement (“BAA”) proposal, however, did not constitute a commercial offer for sale. The BAA industry guide gives clear guidelines showing that the funding proposal does not result in a buyer-seller relationship. See PTX 1234, at 17. And Leader’s use of the word “offeror” in the White Paper it submitted as part of its application was a function of the terminology used in those guidelines -- not an indication of a commercial offer for sale. PTX 1234 at 2, 8 (The offeror “defines the Statement of Work....”); see also *Group One*, 254 F.3d at 1048 (use of word “offer” is not controlling, and requires looking closely at the language of the proposal).

Finally, Facebook relied on a November 21, 2002, email from Mr. McKibben to Len Schlesinger of The Limited. DTX 185. On November 21, 2002, in an effort to secure The Limited’s support for additional venture capital funding, Mr. McKibben approached Mr. Schlesinger about LeaderPhone and Leader2Leader. *Id.* Although the email uses the word “offer” and proposes some terms, such as quantity and price, it also states that Leader would be

“flexible” on crucial terms, including “adding Limited-requested features to the system.” *Id.* That makes clear that even the functions to be included in the products were still an open term.<sup>5</sup> In *MLMC, Ltd. v. Airtouch Commcns., Inc.*, 215 F. Supp. 2d 464 (D. Del. 2002), this Court granted judgment as a matter of law that there had been no commercial offer because, although the alleged offer “included prices, quantities, and very brief equipment descriptions,” it was “missing other terms typically included in a commercial contract” and “the record contain[ed] no testimony or documents from the recipients” of the purported offer. *Id.* at 480. So too here, because the email does not specify essential terms such as product functionality and time and place of delivery, it is not sufficiently definite to constitute a contractual “offer.” *Id.*; *see also Rhenalu v. Alcoa Inc.*, 224 F. Supp. 2d 773, 804 (D. Del. 2002).

**6. The ‘761 Patent Is Entitled To The Provisional Application’s Priority Date.**

The priority date for the ‘761 Patent is beside the point because Facebook has not carried its burden of proof on the public use and on-sale bars even under its preferred critical date of December 10, 2002. Nevertheless, the correct critical date is December 11, 2001, one year before the filing date of the provisional application, because that application fully supports the claims of the ‘761 Patent. That priority date provides an additional ground for judgment as a matter of law, because none of the alleged public uses or offers occurred more than one year before December 11, 2002.

Facebook elicited testimony from its expert that essentially consisted of hunting for specific words in the provisional application and attached code. *See, e.g.*, Tr. 1411:5-7, 1416:9-19, 1424:3-6, 1429:2-5, 1431:3-6. In addition, Facebook focused on superficial differences

---

<sup>5</sup> In addition, The Limited’s executed NDA contained a “non-reliance” clause that made it clear that any Leader information exchanged between the parties prior to a formal written agreement shall have no “legal effect.” DTX 725 at LTI 151130, ¶ 5; *see also Linear Tech. Corp. v. Micrel, Inc.*, 275 F.3d 1040, 1050 (Fed. Cir. 2001) (“such communications cannot be considered offers, because they do not indicate LTC’s intent to be bound, as required for a valid offer”) (citing *Restatement (Second) of Contracts* § 26 (1981) (“A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent.”)).

between the patent and the provisional application, such as the absence of figures in the provisional application. Tr. 1413:18-1415:13. That kind of analysis does not rise to the level of clear and convincing evidence, especially considering that Leader offered detailed evidence from its expert, Dr. James Herbsleb, that every element of each of the asserted claims was supported by the provisional application. Tr. 1739:10-1787:13; *Purdue Pharma Prods. L.P. v. Par Pharm., Inc.*, 642 F. Supp. 2d 329, 367 (D. Del. 2009) (“the trial court has the responsibility to determine whether the challenger has met its burden of proof by clear and convincing evidence by considering the totality of the evidence, ‘including any rebuttal evidence presented by the patentee’”) (quoting *Pfizer*, 480 F.3d at 1360). Moreover, Leader provided evidence that one of Dr. Herbsleb’s students built an implementation of an actual embodiment of the ‘761 Patented technology based only on the provisional application. Tr. 1743:23-1746:2. The resulting embodiment demonstrates that the provisional application supports the claims of the ‘761 Patent and enables one of skill in the art to practice the invention. See PTX 1125. Accordingly, Leader is entitled to judgment as a matter of law that the ‘761 Patent is entitled to claim priority based on the provisional application.

**C. LEADER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW THAT FACEBOOK DIRECTS OR CONTROLS ITS EMPLOYEES AND USERS.**

Though the jury found that Facebook *directly* infringed all of the asserted claims, including method claims 9, 11, and 16,<sup>6</sup> it found that Facebook did not control or direct the actions of either its employees or its end users. See D.I. 610, at 2. Under the joint infringement doctrine, a party is liable if it performed some of the steps of a patented method and controlled or directed another’s performance of the remainder of the steps. See, e.g., *BMC Res., Inc. v. Paymentech, L.P.*, 498 F.3d 1373, 1379 (Fed. Cir. 2007).

---

<sup>6</sup> Leader put forth substantial evidence that the asserted methods claims of the ‘761 Patent are directed to the execution of the components on the back end. Therefore, Facebook directly infringes these claims because their systems perform the steps of the method. The steps are not executed by the user, but rather by the PHP code (which is a scripting language that generates HTML code that is sent to the user). Alternatively, Leader put forward a joint infringement theory based on Facebook’s defense to infringement that the claims require actions by the users and the system -- a defense rejected by the jury.

At a bare minimum, Leader proved that Facebook controls or directs the actions of its own employees using the Facebook website. *See* PTX 145; *see also* Tr. 677:7-678:4. The jury instruction stated that the jury “may consider” evidence such as “whether there is a contractual relationship between Facebook and the third parties; whether users of Facebook are agents of Facebook; and whether Facebook supplies the instrumentalities, tools, and the website for the person using the website.” D.I. 601, at 28. Leader proved all of those points. Facebook’s employees inherently have a contractual relationship and indeed are agents of the company, and there is no question that Facebook provides the “instrumentalities, tools, and the website” for its own employees to use the infringing website. *See* PTX 145; *see also* Tr. 677:7-678:4.

Moreover, the “control or direction” test is satisfied as a matter of law where, as here, “the law would traditionally hold the accused direct infringer vicariously liable for the acts committed by another party that are required to complete performance of a claimed method.” *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1330 (Fed. Cir. 2008)(citations omitted). An employer’s responsibility for its employees acting within the scope of their employment is the paradigmatic example of vicarious liability. *Restatement (Third) of Agency* § 7.07(1)(2006). As a matter of law, Facebook controls or directs its employees, and no reasonable jury could find otherwise. For that reason alone, this Court should grant judgment as a matter of law that Facebook controls or directs its employees.

In addition, no reasonable jury could find that Facebook does not direct its users on how to use its website. *See, e.g.*, PTX 628, PTX 886, PTX 920, PTX 1000. For example, the Statement of Rights and Responsibilities for Facebook “tells the user what they can and cannot do.” Tr. 678:21-679:14 (discussing PTX 1000). According to the Statement of Rights and Responsibilities, if a user violates the terms, the user’s account will be terminated by Facebook. PTX 1000. If a user fails “to keep [his] contact information accurate and up-to-date,” the user will not be allowed to use Facebook. *Id.* Simply put, Facebook’s users must follow Facebook’s rules, or they cannot use the website -- the very definition of direction or control.

**D. IN THE ALTERNATIVE, LEADER IS ENTITLED TO A NEW TRIAL.**

If the Court were to deny judgment as a matter of law, it should grant a new trial. While this Court must view the evidence in the light most favorable to the verdict when deciding whether to grant judgment as a matter of law, it need not do so when determining whether to grant a new trial. *See supra* pp. 3-4. Instead, based on its own observation of the trial, this Court may grant a new trial “where there is insufficient evidence to support the verdict or where the verdict was against the weight of the evidence.” *Greenleaf*, 174 F.3d at 365 (citations omitted).

In this case, the jury’s verdict on some of Facebook’s defenses is not only against the great weight, if not all, of the evidence, it rests entirely on speculative inferences—as opposed to testimonial or documentary evidence -- about what was supposedly demonstrated or offered for sale before December 10, 2002. Even if such inferences could overcome the actual evidence in this case (and they cannot, as explained above), Facebook’s heavy reliance on inferences in the face of consistently contrary evidence would make this a classic case for a new trial. *See, e.g., Roebuck*, 852 F.2d at 735-36 (reversing grant of judgment as a matter of law but affirming alternative grant of new trial because of “extraordinary number of inferences that the jury must have drawn in order to reach the verdict that it did”); *see also Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171, 211-12 (3d Cir. 1992) (“highly inferential case” warranted new trial); *American Bearing Co., v. Litton Indus., Inc.*, 729 F.3d 943, 952-53 (3d Cir. 1984). At a bare minimum, therefore, this Court should grant a new trial on the public use and on-sale bars for the same reasons described above.

**IV. CONCLUSION**

For the foregoing reasons, this Court should grant Leader’s motion for judgment as a matter of law that the ‘761 Patent is not invalid, that the provisional application supports the claims of the ‘761 Patent, and that Facebook directs or controls its employees and users. In the alternative, this Court should grant a new trial on those issues.

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Paul J. André  
Lisa Kobialka  
King & Spalding, LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065-6109  
(650) 590-7100

Dated: August 25, 2010  
979903

By: /s/ Philip A. Rovner

Philip A. Rovner (#3215)  
Jonathan A. Choa (#5319)  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)  
[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)

*Attorneys for Plaintiff and Counterdefendant  
Leader Technologies, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LEADER TECHNOLOGIES, INC.,	)	
a Delaware corporation,	)	
	)	
Plaintiff-Counterdefendant,	)	Civil Action No. 08-862-LPS
	)	
v.	)	
	)	
FACEBOOK, INC.,	)	
a Delaware corporation,	)	
	)	
Defendant-Counterclaimant.	)	

**DECLARATION OF PAUL ANDRE IN SUPPORT OF PLAINTIFF LEADER  
TECHNOLOGIES, INC.'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF  
LAW OR A NEW TRIAL PURSUANT TO RULES 50(b) AND 59 OF  
THE FED. R. CIV. P.**

**OF COUNSEL:**

Paul J. André  
Lisa Kobialka  
KING & SPALDING, LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065-6109  
(650) 590-7100

Dated: August 25, 2010

Philip A. Rovner (#3215)  
Jonathan A. Choa (#5319)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)  
[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)

*Attorneys for Plaintiff and Counterdefendant  
Leader Technologies, Inc.*



I, Paul Andre, hereby declare as follows:

1. I am an attorney with the law firm King & Spalding LLP, counsel for Plaintiff Leader Technologies, Inc. I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts. I make this declaration in support of Plaintiff Leader Technologies, Inc.'s Renewed Motion for Judgment as a Matter of Law or a New Trial Pursuant to Rules 50(b) and 59 of the Fed. R. Civ. P. ("Leader's Motion").

2. Attached hereto is a true and correct copy of documents referenced in Leader's Motion:

<b>Exhibit</b>	<b>Trial Exhibit</b>	<b>Description</b>
1	PTX 1	U.S. Patent No. 7,139,761, bearing bates numbers LTI 000001-31.
2	PTX 3	Provisional Application for U.S. Patent No. 7,139,761, dated December 11, 2002, bearing bates numbers LTI 000742-60.
3	PTX 145	Facebook Platform White Paper, dated March 24, 2009, bearing bates numbers FB 00109890-91.
4	PTX 628	Facebook Terms of Use, dated September 23, 2008, bearing bates numbers LTI 000717-24.
5	PTX 773	Beta Agreement between Leader Technologies, Inc. and Limited Brands, Inc., dated January 23, 2003, bearing bates numbers LTI 022231-39.
6	PTX 886	Facebook web page, Creating and Uploading Photos, bearing bates numbers LTI 156902-05.
7	PTX 920	Facebook web page, Using the Publisher, bearing bates numbers LTI 157010-11.
8	PTX 1000	Facebook Statement of Rights and Responsibilities, accessed on April 8, 2010, bearing bates numbers LTI 157155-57.

<b>Exhibit</b>	<b>Trial Exhibit</b>	<b>Description</b>
9	PTX 1058	Non-Disclosure Agreement between Leader Technologies, Inc. and Douglas W. Fleser, dated April 10, 2001, bearing bates numbers LTI 149069-77.
10	PTX 1125	Pseudo code implementation of Context and Tracking Components
11	PTX 1234	Broad Agency Announcement (BAA) and Program Research & Development (PRDA) Industry Guide, dated May 2001.
12	DTX 178	Letter regarding Leader Report from Michael McKibben, dated December 10, 2001, bearing bates numbers LTI 014121-27.
13	DTX 179	Leader Technologies LLC White Paper "Advanced Cross-Platform Communications & Anti-terrorism Command Center Prototype," dated January 9, 2002, bearing bates numbers LTI 048195-206.
14	DTX 181	E-mail from Steve Hanna to Karen Houser, dated August 29, 2002, bearing bates numbers LTI 145929-32.
15	DTX 182	E-mail from Nancy McKibben to Michael McKibben, dated December 3, 2002, bearing bates numbers LTI 102315-17.
16	DTX 184	E-mail from Steve Hanna to cwwall@computerwizards.com, dated October 10, 2002, bearing bates numbers LTI 105611-13.
17	DTX 185	E-mail from Michael McKibben to Len Schlesinger, dated November 21, 2002, bearing bates numbers LTI 074788-89.
18	DTX 679	Service Provider Agreement between Limited Technologies, Inc. and Boston Scientific Corporation, dated July 16, 2003, bearing bates numbers LTI 006441-54.
19	Excerpt of DTX 725	Non-Disclosure Agreement between Leader Technologies, Inc. and Vincent Russo, dated April 2, 2001, bearing bates numbers LTI 153001-03.

<b>Exhibit</b>	<b>Trial Exhibit</b>	<b>Description</b>
20	Excerpt of DTX 725	Non-Disclosure Agreement between Leader Technologies LLC and Len Schlesinger, dated June 7, 2001, bearing bates numbers LTI 151129-37.
21	DTX 776	E-mail from Steve Hanna to cwcalls@computerwizards.com, dated November 26, 2002, bearing bates numbers LTI 111341-42.
22	DTX 852	Leader Technologies LLC Quad Chart, bearing bates numbers LTI 049126-27.
23	DTX 963	Leader Technologies, Inc.'s First Supplemental Responses to Facebook, Inc.'s Interrogatories Nos. 3 and 9 (REDACTED)
24	DTX 969	Leader Technologies, Inc.'s Second Supplemental Response to Facebook, Inc.'s Interrogatory No. 1, First Supplemental Responses to Facebook's Interrogatory Nos. 4, 11-17 and Third Supplemental Responses to Facebook's Interrogatory No. 9 (REDACTED)
25	DTX 1348	E-mail from Steve Hanna to cwcalls@computerwizards.com, dated April 3, 2001, bearing bates number LTI 103307.
26		Transcript of Trial Proceedings, Pages 372-73, 387, 392-94, 445, 452-53, 468, 677-79, 1257-58, 1260-62, 1300-03, 1316-20, 1324-34, 1337, 1340-45, 1356-61, 1363-67, 1374, 1411, 1413-16, 1424, 1429, 1431, 1463-91, 1505-16, 1518-35, 1544-61, 1739-87, 2012, 2038, 2046, 2049-50, 2062

I declare under penalty of perjury under the laws of the State of California and the United States that each of the above statements is true and correct. Executed on August 25, 2010 in Redwood Shores, California.

  
Paul Andre

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I, Philip A. Rovner, hereby certify that on August 25, 2010, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

**BY CM-ECF AND E-MAIL**

Thomas P. Preston, Esq.  
Steven L. Caponi, Esq.  
Blank Rome LLP  
1201 Market Street  
Wilmington, DE 19801  
[Preston-T@blankrome.com](mailto:Preston-T@blankrome.com)  
[caponi@blankrome.com](mailto:caponi@blankrome.com)

I hereby certify that on August 25, 2010 I have sent by E-mail the foregoing document to the following non-registered participants:

Heidi L. Keefe, Esq.  
Mark R. Weinstein, Esq.  
Jeffrey Norberg, Esq.  
Melissa H. Keyes, Esq.  
Cooley LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
[hkeefe@cooley.com](mailto:hkeefe@cooley.com)  
[mweinstein@cooley.com](mailto:mweinstein@cooley.com)  
[jnorberg@cooley.com](mailto:jnorberg@cooley.com)  
[mkeyes@cooley.com](mailto:mkeyes@cooley.com)

/s/ Philip A. Rovner  
Philip A. Rovner (#3215)  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P. O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

# **EXHIBIT 1**



US007139761B2

(12) **United States Patent**  
**McKibben et al.**

(10) **Patent No.:** **US 7,139,761 B2**  
(45) **Date of Patent:** **Nov. 21, 2006**

(54) **DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES**

(75) Inventors: **Michael T. McKibben**, Columbus, OH (US); **Jeffrey R. Lamb**, Westerville, OH (US)

(73) Assignee: **Leader Technologies, Inc.**, Westerville, OH (US)

(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **10/732,744**

(22) Filed: **Dec. 10, 2003**

(65) **Prior Publication Data**

US 2004/0122835 A1 Jun. 24, 2004

**Related U.S. Application Data**

(60) Provisional application No. 60/432,255, filed on Dec. 11, 2002.

(51) Int. Cl. **G06F 17/30** (2006.01)

(52) U.S. Cl. **707/10**

(58) **Field of Classification Search** **707/1-10, 707/100-104.1; 379/202.01; 715/753; 725/87, 725/112; 709/202, 204, 205**  
See application file for complete search history.

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

6,154,465 A 11/2000 Pickett

6,236,971 B1 5/2001 Stefik et al.  
6,311,228 B1 10/2001 Ray  
6,418,461 B1 7/2002 Barnhouse et al.  
6,421,678 B1 \* 7/2002 Smiga et al. 707/102  
6,539,371 B1 3/2003 Bleizeffer et al.  
2002/0001301 A1 1/2002 Sarkissian et al.  
2002/0078150 A1 \* 6/2002 Thompson et al. 709/204  
2002/0143877 A1 \* 10/2002 Hackbarth et al. 709/205  
2003/0069849 A1 4/2003 Stefik et al.  
2003/0217096 A1 \* 11/2003 McKelvie et al. 709/202

**OTHER PUBLICATIONS**

International Written Opinion, PCT/US03/39421, mailed Nov. 15, 2004.

Diane Mizrahi; Patent Cooperation Treaty International Search Report; Jun. 27, 2004; Alexandria, Virginia.

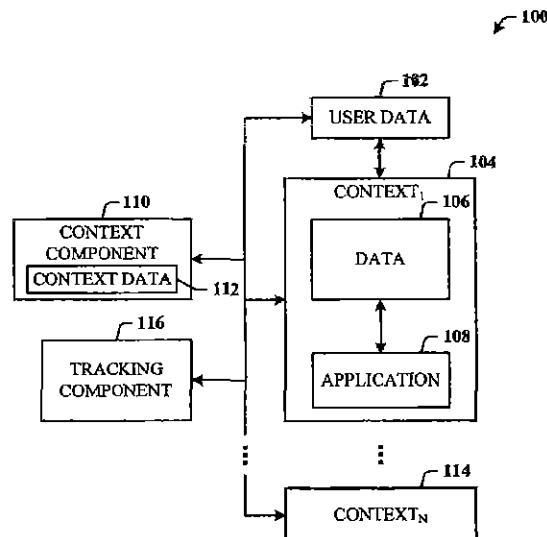
\* cited by examiner

Primary Examiner—Diane Mizrahi

(57) **ABSTRACT**

A data management tool. The tool is a unified, horizontal system for communications, organization, information processing, and data storage. The tool operates seamlessly with existing platforms, and is a common workflow layer that is automated with a scalable, relational database. The tool uses one or both of a relational and object database engine that facilitates at least many-to-many relationships among data elements. The highest contextual assumption is that there exists an entity that consists of one or more users. The data storage model first assumes that files are associated with the user. Thus, data generated by applications is associated with an individual, group of individuals, and topical content and not simply with a folder, as in traditional systems.

**35 Claims, 18 Drawing Sheets**



Plaintiff's Trial Exhibit  
**PTX-1**

Case No. 08-CV-00862

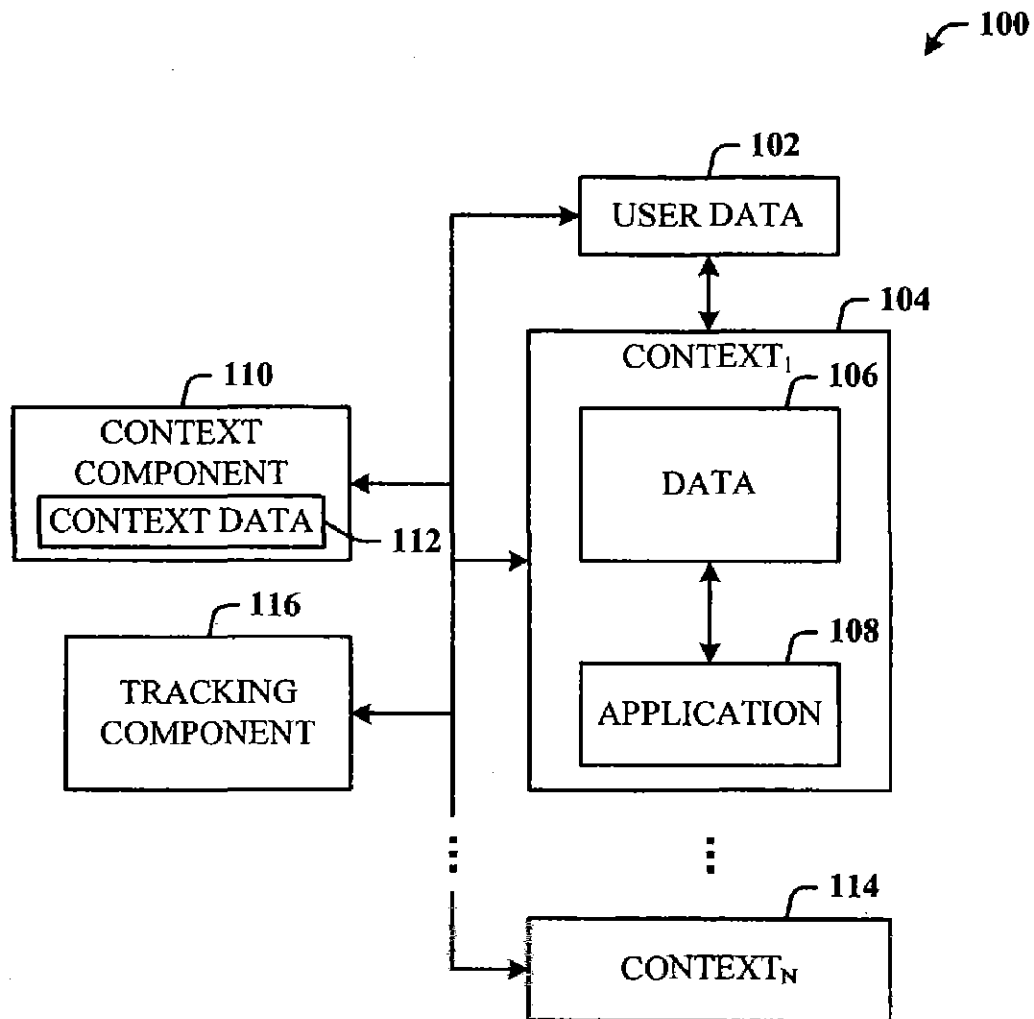
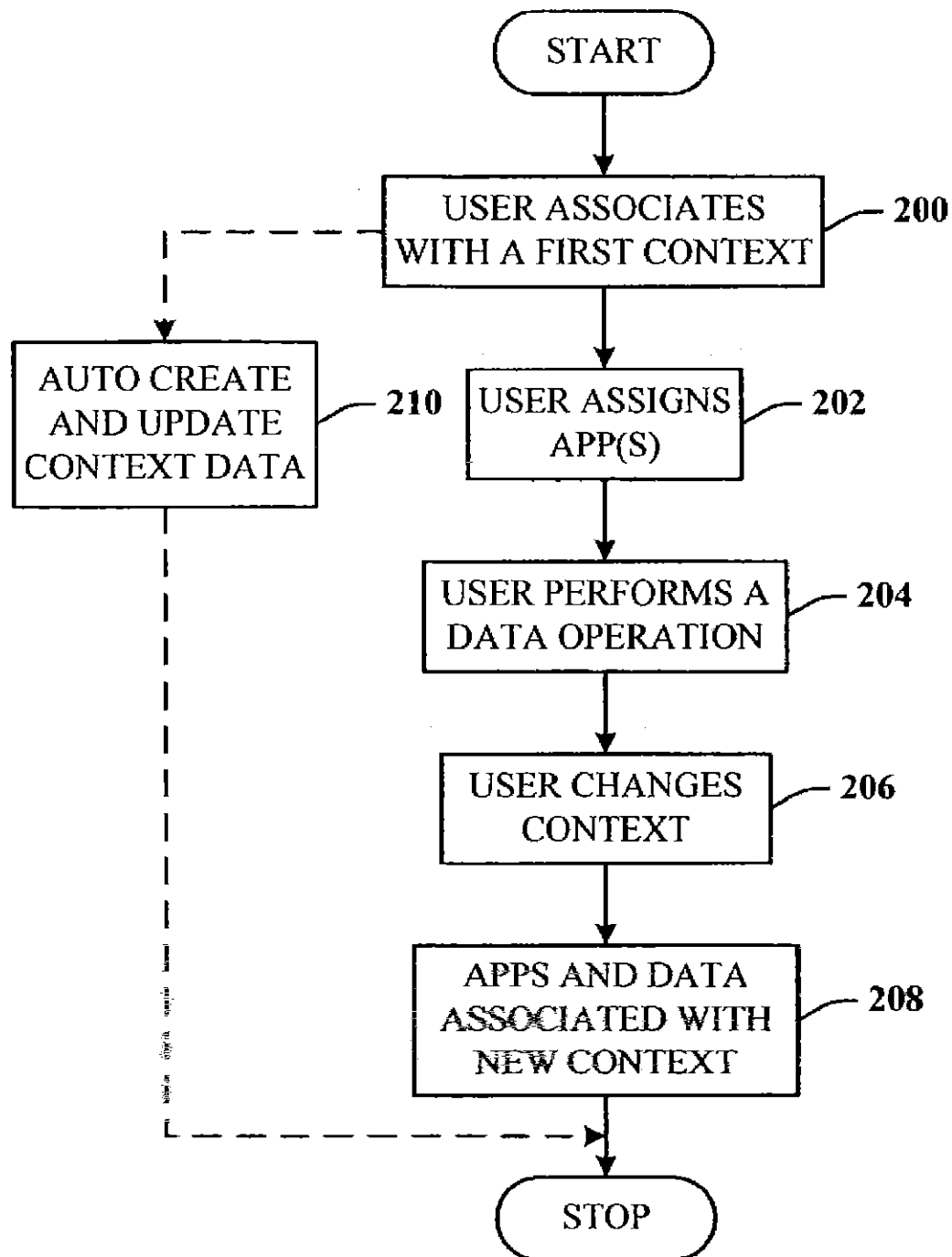


FIG. 1

**FIG. 2**



U.S. Patent

Nov. 21, 2006

Sheet 3 of 18

US 7,139,761 B2

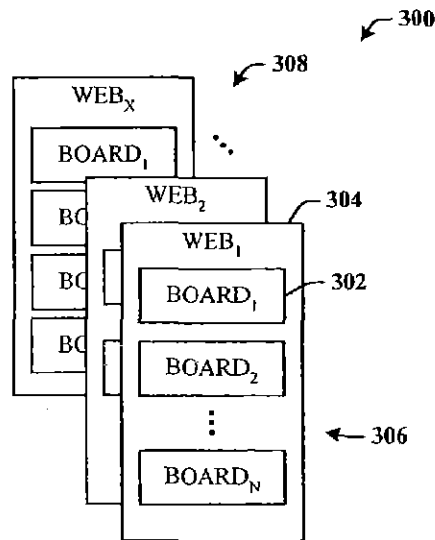


FIG. 3

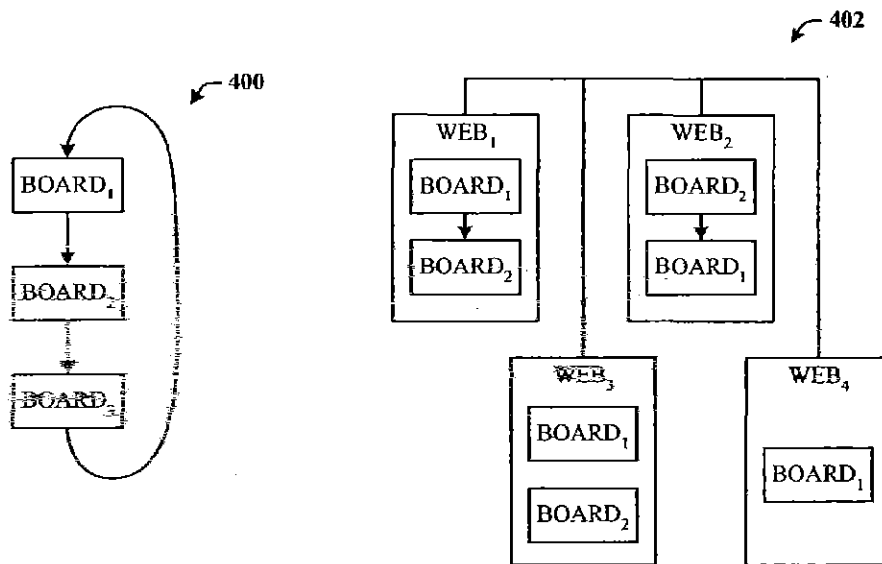
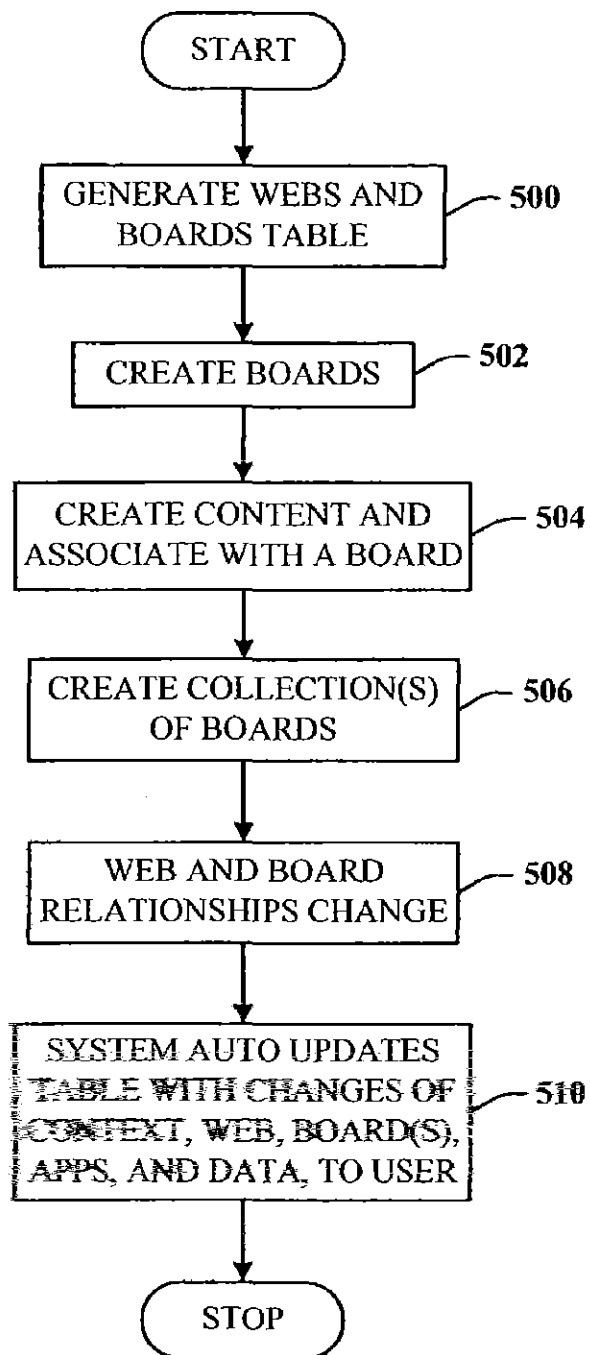


FIG. 4A

FIG. 4B

**FIG. 5**

U.S. Patent

Nov. 21, 2006

Sheet 5 of 18

US 7,139,761 B2

600

WEBS AND BOARDS TABLE			
USER(S)	WEB(S)	BOARD(S)	BOARD(S) P/C RELATION
1,2,3	W1	B11, B12, B14	B11: B12; B14
6	W2	B23, B25	NA
7,8	W1,W3	B36,B37	B36:B37;B36

FIG. 6

700

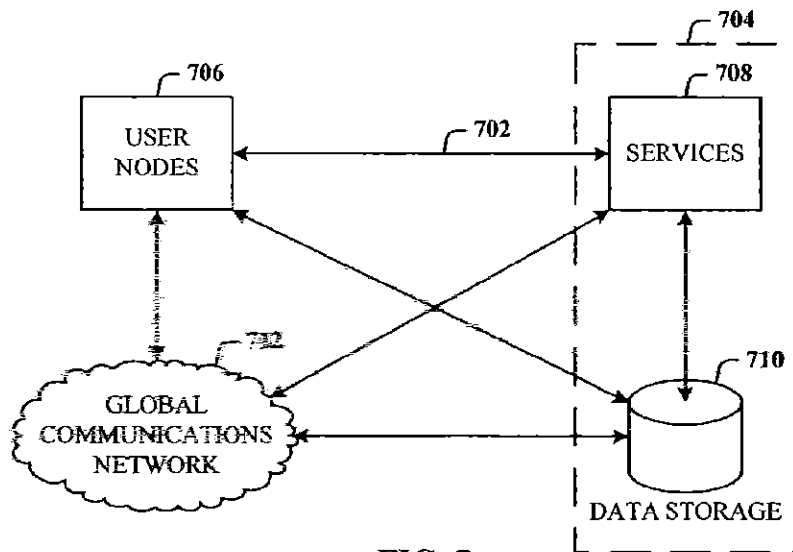
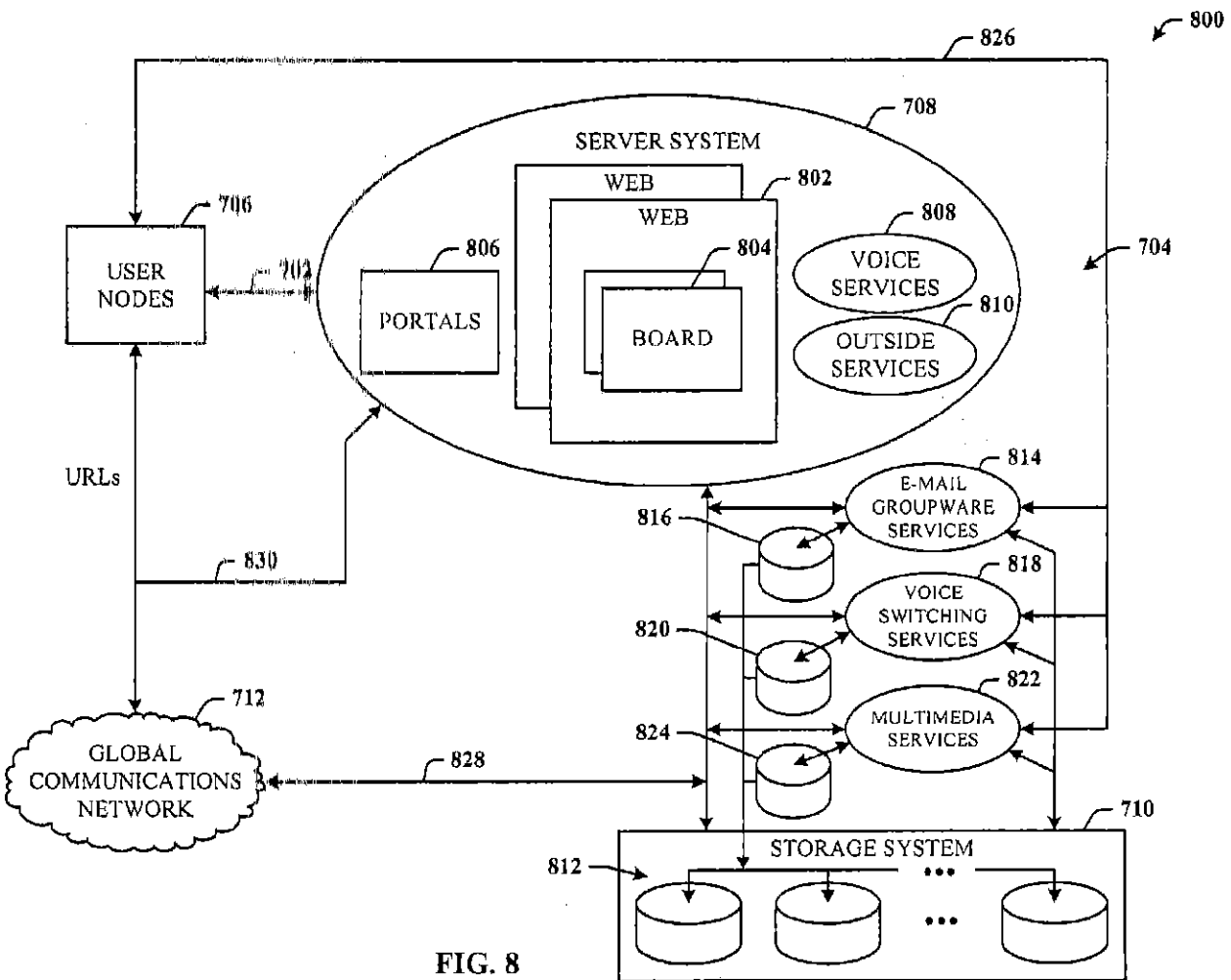


FIG. 7



U.S. Patent

Nov. 21, 2006

Sheet 7 of 18

US 7,139,761 B2

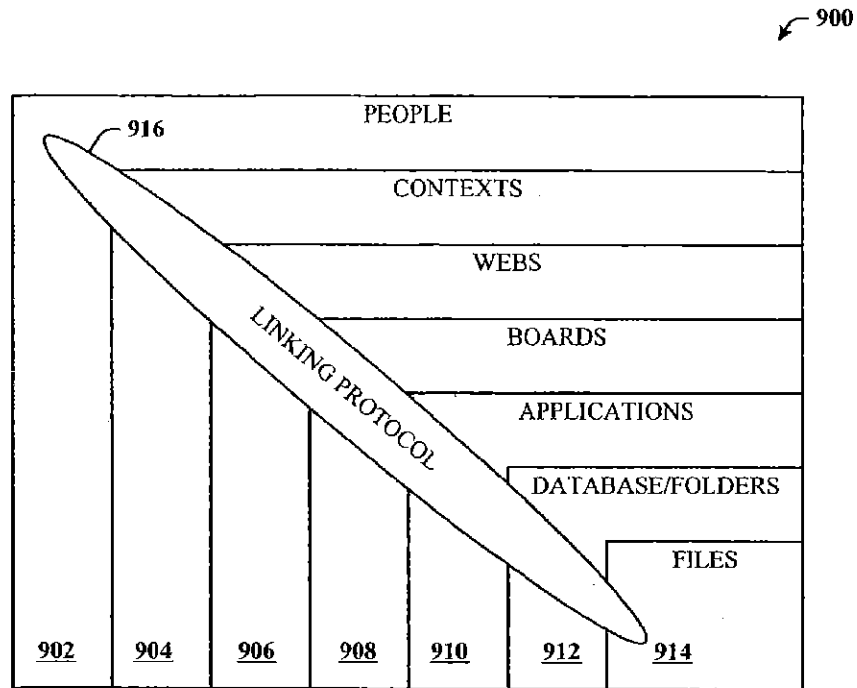


FIG. 9

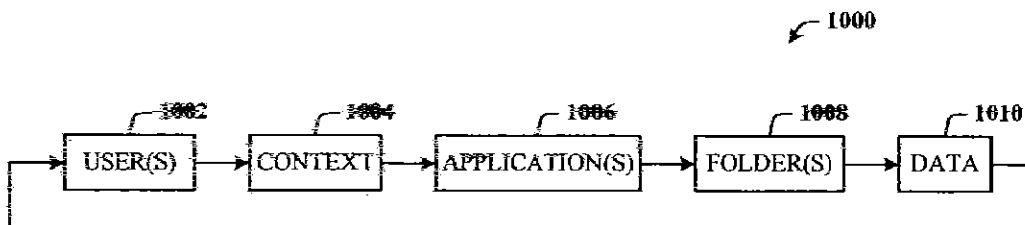


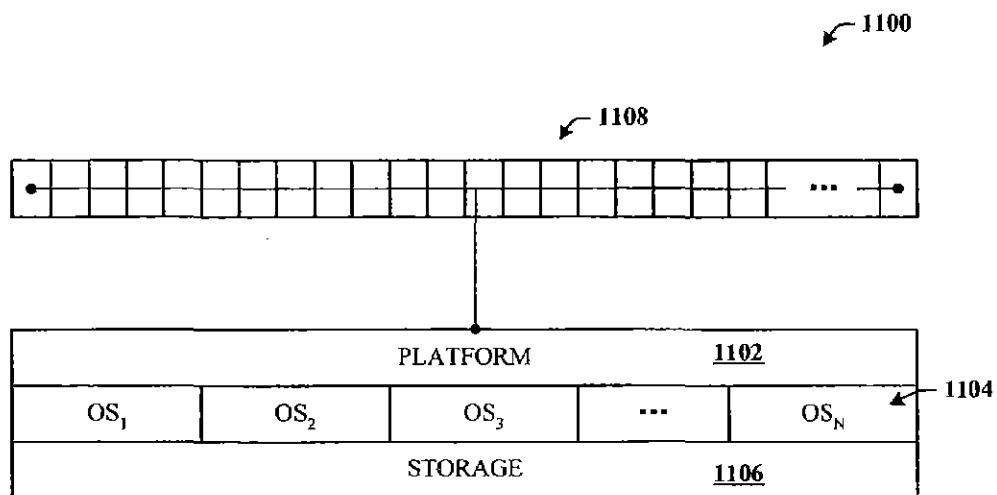
FIG. 10

**U.S. Patent**

**Nov. 21, 2006**

**Sheet 8 of 18**

**US 7,139,761 B2**



**FIG. 11**

U.S. Patent

Nov. 21, 2006

Sheet 9 of 18

US 7,139,761 B2

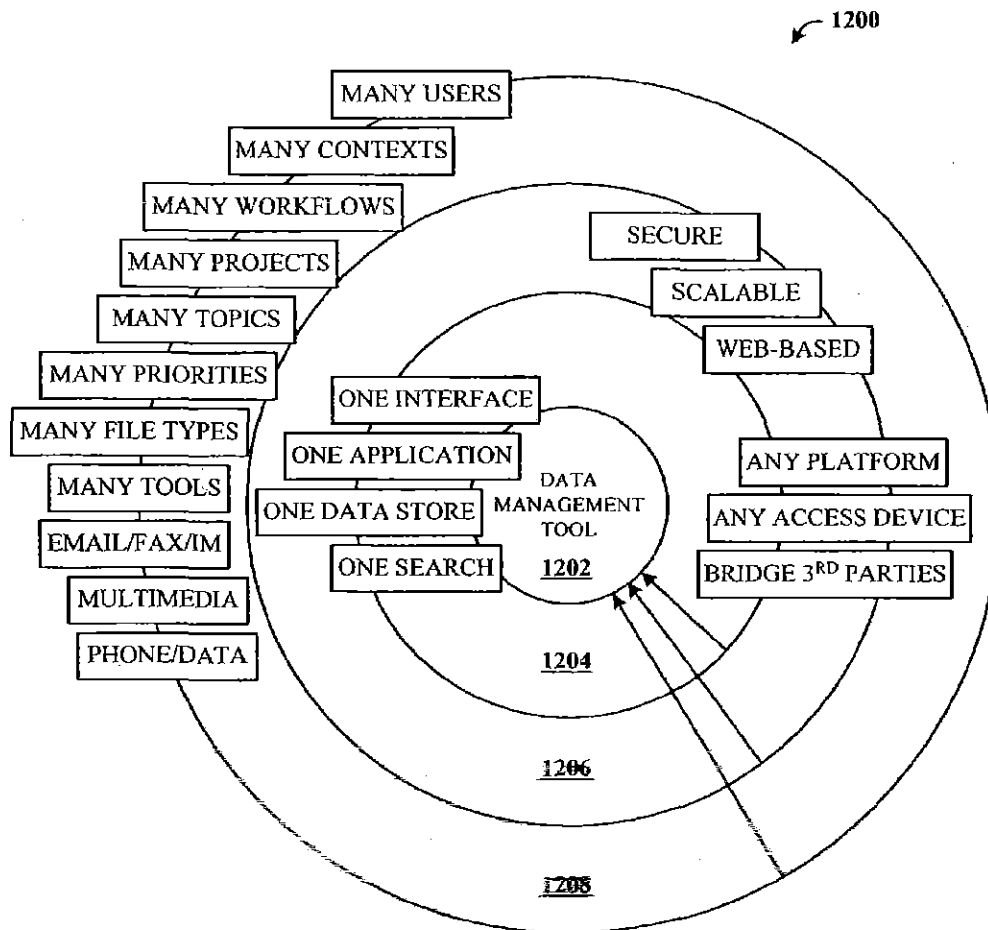


FIG. 12

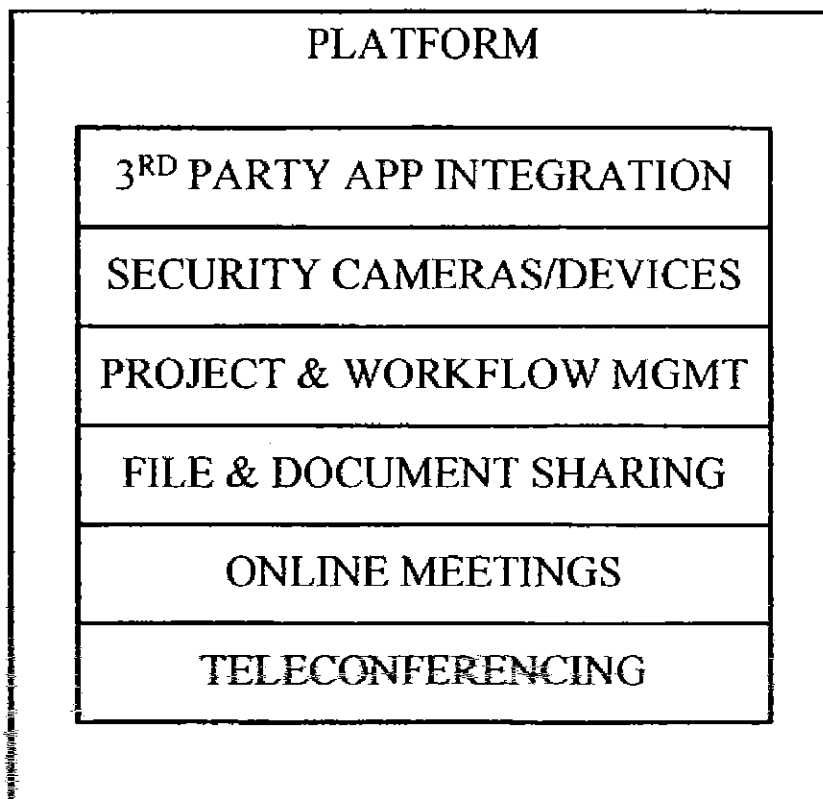
**U.S. Patent**

**Nov. 21, 2006**

**Sheet 10 of 18**

**US 7,139,761 B2**

**1300**



**FIG. 13**



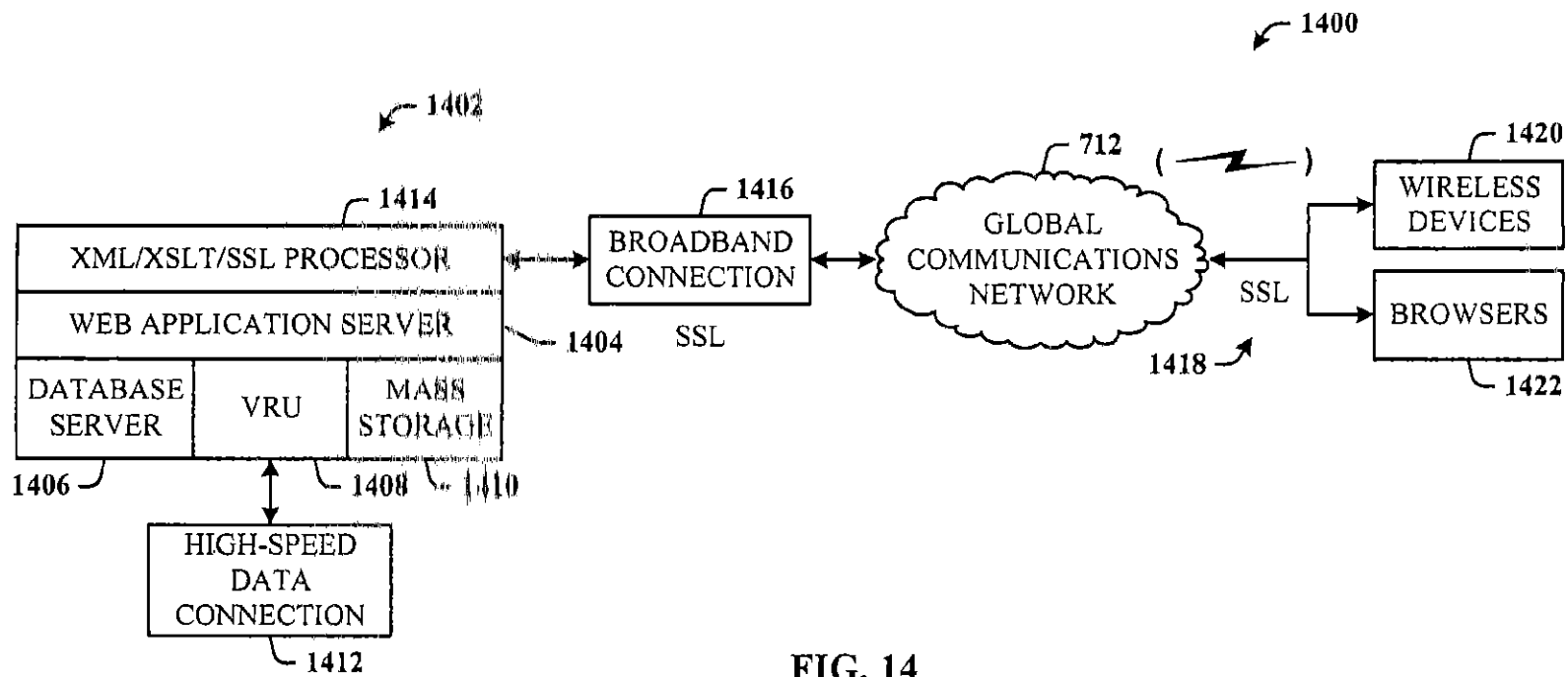


FIG. 14

U.S. Patent

Nov. 21, 2006

Sheet 12 of 18

US 7,139,761 B2

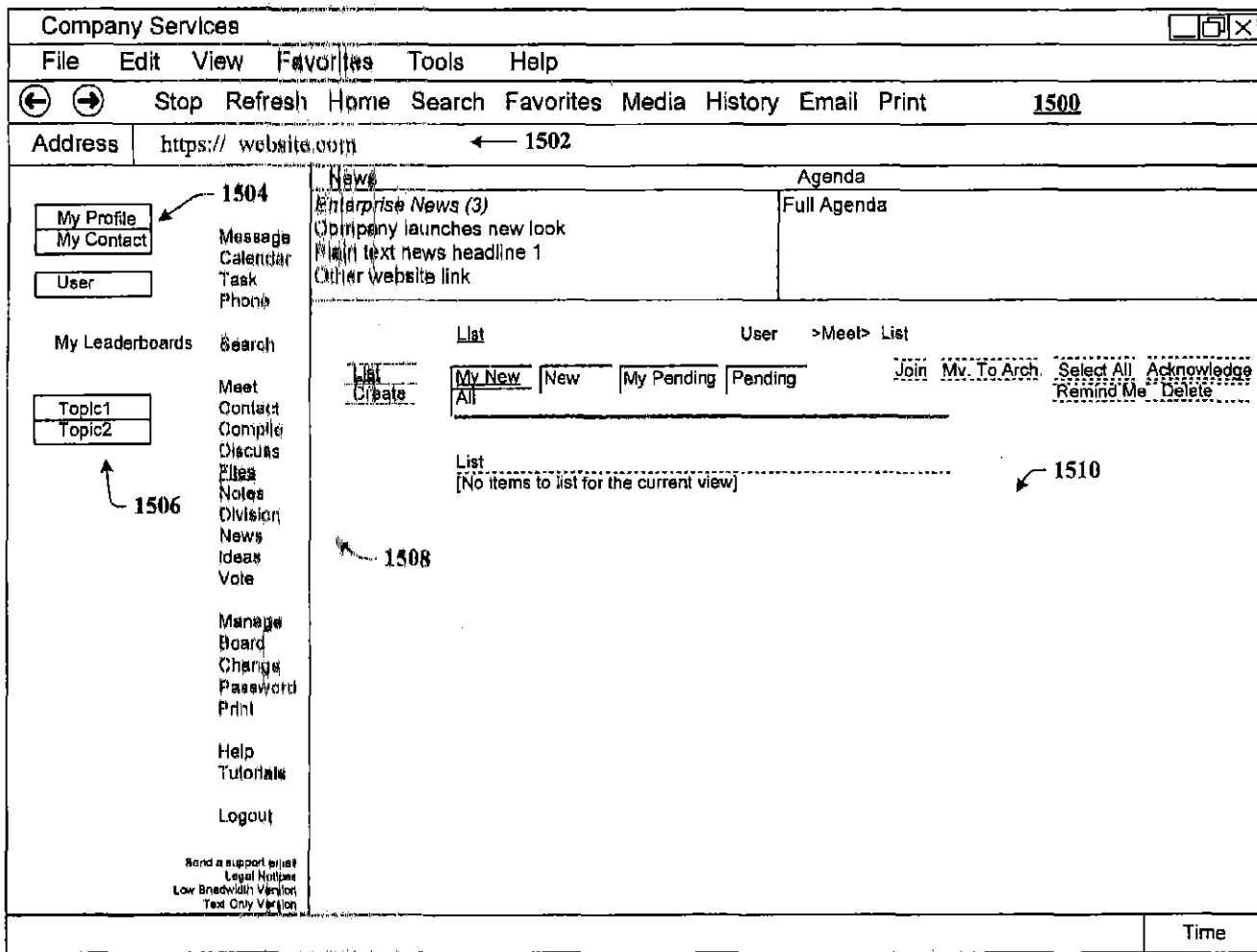


FIG. 15

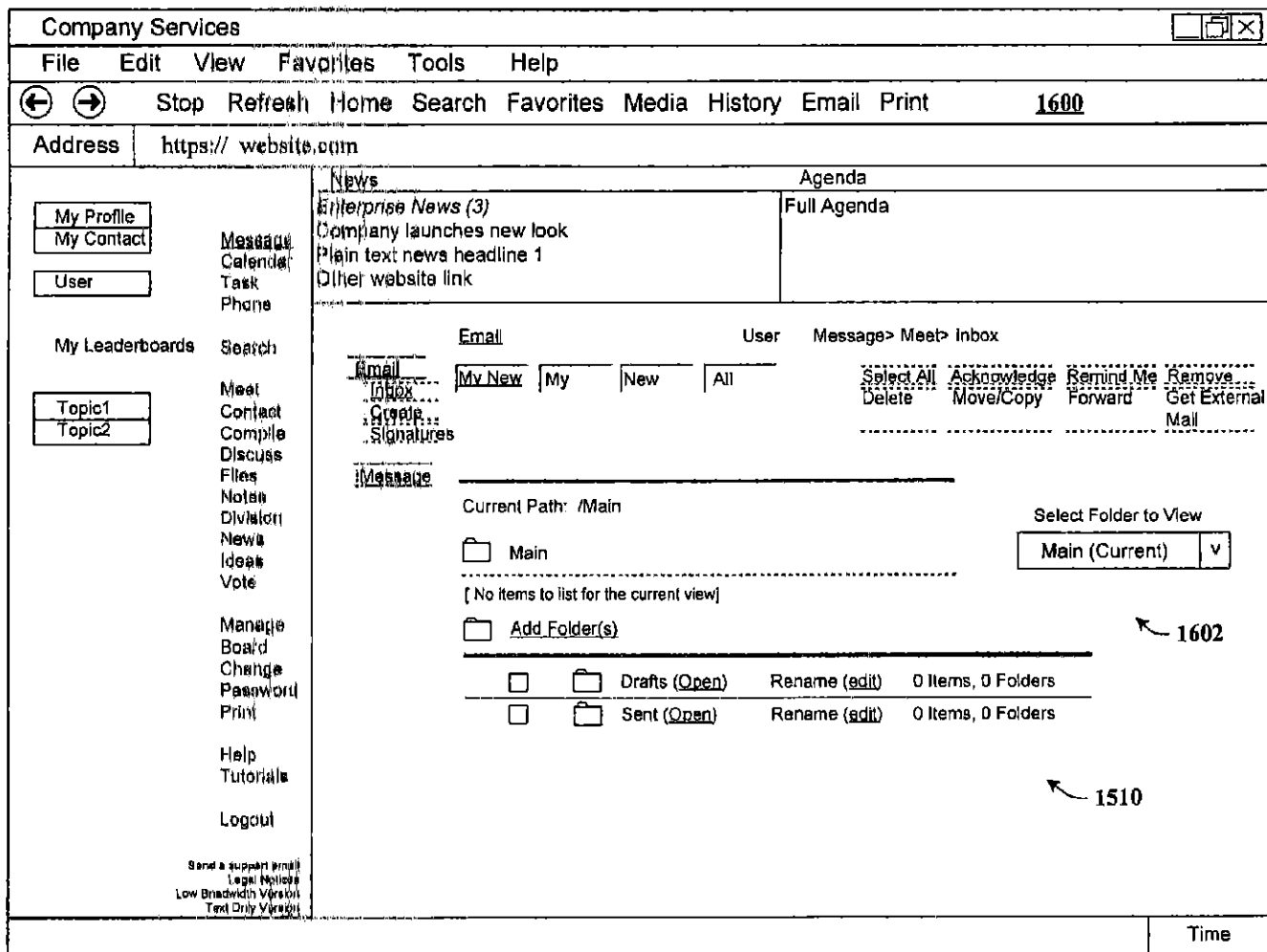


FIG. 16

U.S. Patent

Nov. 21, 2006

Sheet 14 of 18

US 7,139,761 B2

Company Services

File Edit View Favorites Tools Help

Stop Refresh Home Search Favorites Media History Email Print 1700

Address https:// website.com 1502

My Profile

My Contact

User

My Leaderboards

Topic1

Topic2

Manage Board

Change Password

Print

Help

Tutorials

Logout

Send a support email

Legal Notices

Low Bandwidth Version

Text Only Version

Message Calendar

Task

Phone

Search

Meet

Contact

Complete

Discuss

Files

Notes

Division

News

Ideas

Vote

Manage Board

Change Password

Print

Help

Tutorials

Logout

Send a support email

Legal Notices

Low Bandwidth Version

Text Only Version

News

Enterprise News (3)

Company launches new look

Plain text news headline 1

Clicker website link

Agenda

Full Agenda

Edit

User

Manage Board > Edit

Update

General

Tools

Users

General Leaderboard Attributes

Host	Date	Time
User	Date	Time

Description

My Board

Leaderboard Name

User

Board Nickname

Nickname

Email Address

email@address.net

External Email Properties

Pop Server

User Name

Password

Leave messages on server

Incoming Fax Number

None

Incoming Fax Pin

None

Incoming Voice Mail Number

None

Incoming Voice Mail Pin

None

1702

1510

Time

FIG. 17

U.S. Patent

Nov. 21, 2006

Sheet 15 of 18

US 7,139,761 B2

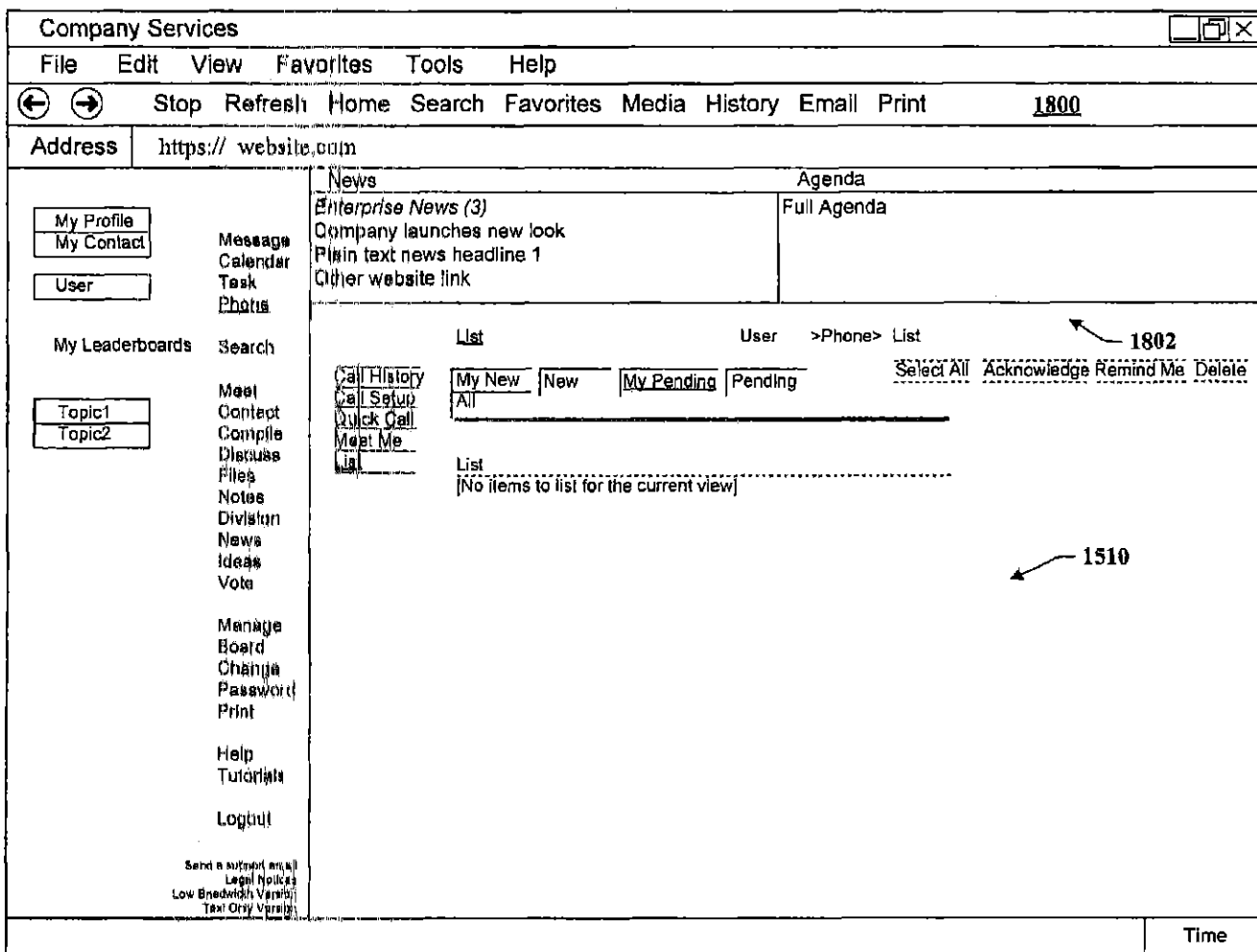


FIG. 18

U.S. Patent

Nov. 21, 2006

Sheet 16 of 18

US 7,139,761 B2

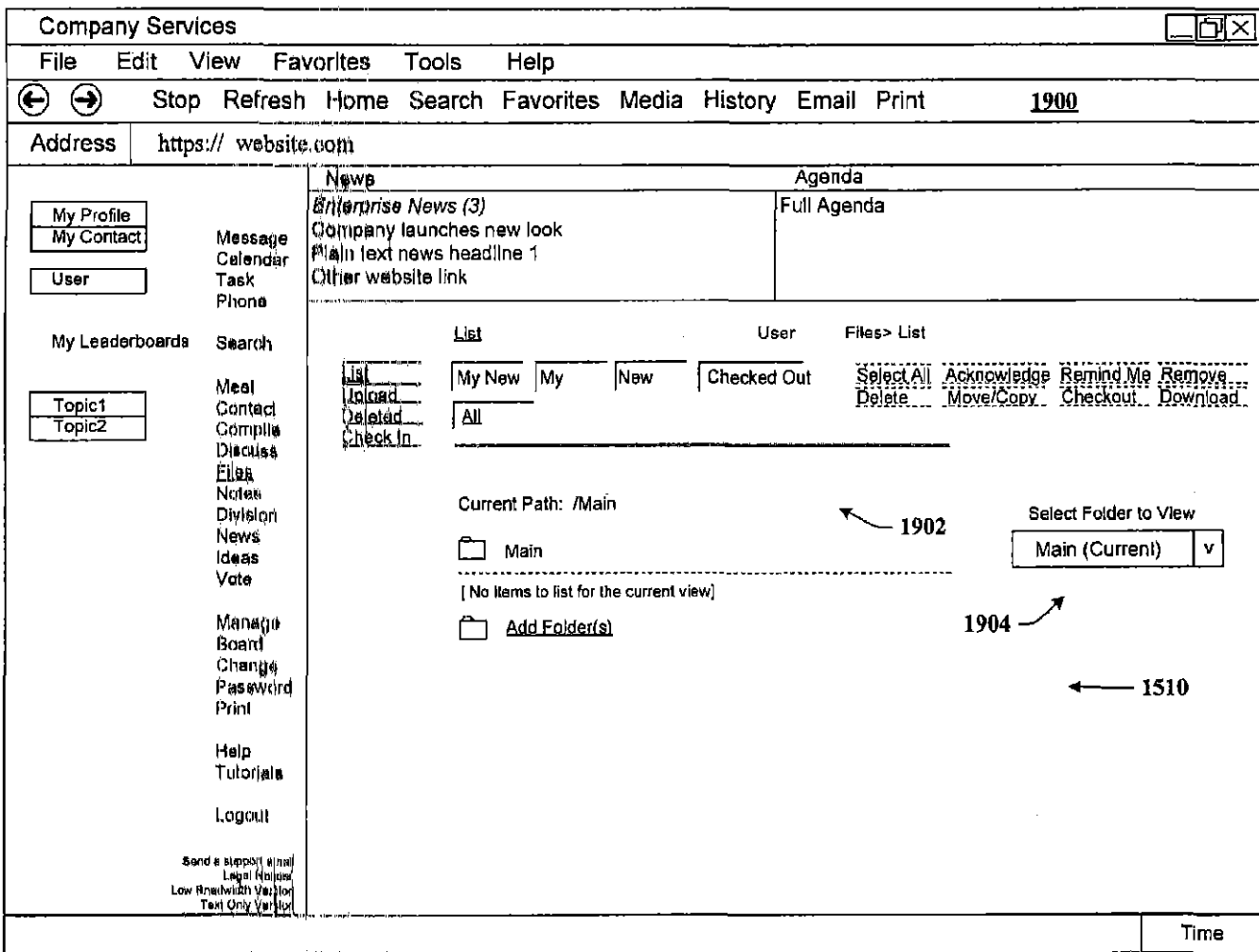


FIG. 19

Company Services		File Edit View Favorites Tools Help																			
<input type="button" value="←"/> <input type="button" value="→"/> Stop Refresh Home Search Favorites Media History Email Print		2000																			
Address		https:// website.com																			
<div> <div>My Profile</div> <div>My Contact</div> <div>User</div> </div> <div> <div>My Leaderboards</div> <div>Topic1</div> <div>Topic2</div> </div>		<div> <div>Message</div> <div>Calendar</div> <div>Task</div> <div>Phone</div> </div> <div> <div>Search</div> <div> <div>My Contact</div> <div>Compile</div> <div>Discuss</div> <div>Files</div> <div>Notes</div> <div>Division</div> <div>News</div> <div>Ideas</div> <div>Vote</div> </div> <div> <div>Manage Board</div> <div>Change Password</div> <div>Print</div> </div> <div> <div>Help</div> <div>Tutorials</div> <div>Logout</div> </div> </div>																			
<div> <div>News</div> <div>Enterprise News (3)</div> <div>Company launches new look</div> <div>Plain text news headline 1</div> <div>Other website link</div> </div> <div> <div>Agenda</div> <div>Full Agenda</div> </div>		<div> <div>List</div> <div> <div>My New</div> <div>My</div> <div>My Pending</div> <div>Pending</div> </div> <div> <div>Join</div> <div>My To Arch.</div> <div>Select All</div> <div>Acknowledge</div> <div>Remind Me</div> <div>Delete</div> </div> </div> <div> <div>My Contact</div> <div>My Boards</div> </div> <div> <table border="1"> <thead> <tr> <th>Board Name</th> <th>Host</th> </tr> </thead> <tbody> <tr> <td>Board1</td> <td>User</td> </tr> <tr> <td>Board2</td> <td>User2</td> </tr> <tr> <td>Board3</td> <td>User2</td> </tr> </tbody> </table> </div> <div> <div>Web Name</div> <div> <table border="1"> <tbody> <tr> <td>Parent</td> <td>Child</td> </tr> <tr> <td>Admin</td> <td>Administration</td> </tr> </tbody> </table> </div> </div> <div> <div>Special Projects Web</div> <div> <table border="1"> <tbody> <tr> <td>Parent</td> <td>Child</td> </tr> <tr> <td>Board5</td> <td>Board4</td> </tr> <tr> <td>Board4</td> <td>Board2</td> </tr> </tbody> </table> </div> </div>		Board Name	Host	Board1	User	Board2	User2	Board3	User2	Parent	Child	Admin	Administration	Parent	Child	Board5	Board4	Board4	Board2
Board Name	Host																				
Board1	User																				
Board2	User2																				
Board3	User2																				
Parent	Child																				
Admin	Administration																				
Parent	Child																				
Board5	Board4																				
Board4	Board2																				

FIG. 20

U.S. Patent

Nov. 21, 2006

Sheet 18 of 18

US 7,139,761 B2

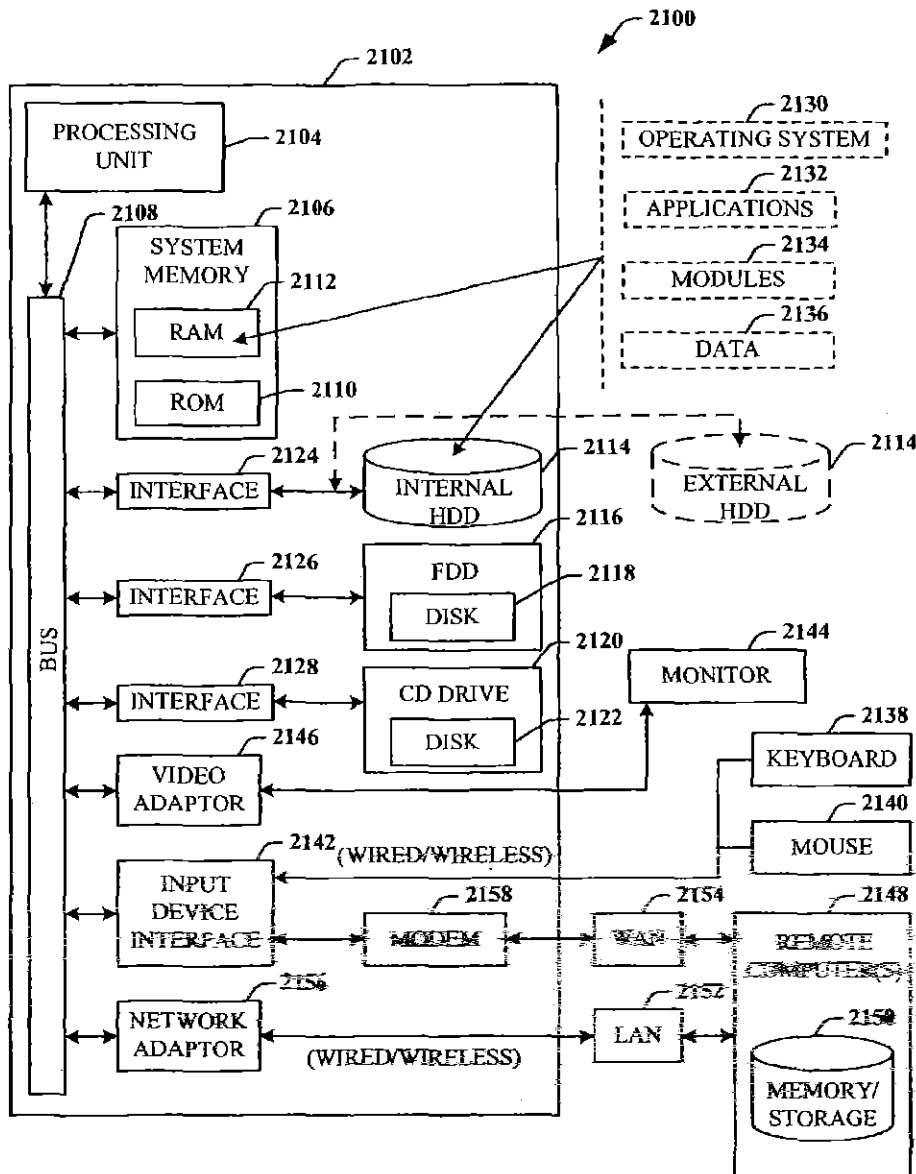


FIG. 21



US 7,139,761 B2

1

# **DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES**

## **CROSS-REFERENCE TO RELATED APPLICATIONS**

This application claims the benefit of U.S. Provisional Patent application Ser. No. 60/432,255 entitled "METHOD FOR DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES", filed Dec. 11, 2002; and is related to U.S. patent application Ser. No. 10/731,906 entitled "CONTEXT INSTANTIATED APPLICATION PROTOCOL" filed on Dec. 10, 2003.

## **TECHNICAL FIELD**

This invention is related to management and storage of electronic information. More particularly, this invention relates to new structures and methods for creating relationships between users, applications, files, and folders.

## **BACKGROUND OF THE INVENTION**

Digital communications presently supply solutions to users in ways that are completely divorced from their business context. A particular item of communication provides little or no inherent understanding of how that communication furthers the purpose and intent of the group or enterprise. In other words, an email (electronic mail) inbox collects email messages about all topics, both business and personal. The email application itself is not discerning about topic, priority, or context beyond perhaps rudimentary "message filters" that will look for certain key words or people, and then place those items in target folders. Generally, the application simply presents a sequential list of messages received. Similarly, a fax machine receives fax pages in sequence. The fax machine is not discerning about topic, priority, or context, and simply outputs fax pages. Once received, it remains the task of the recipient to sort, categorize, and organize these items of communication in ways most meaningful to that person. The organization part of the task generally occurs outside the context of the particular communications tool itself.

Typical methods for organization of communications are limited and fragmented. For example, for an email, the recipient may either leave all the email in the inbox or move it to another electronic folder. For a fax, the recipient is likely to place that received fax in a file folder that is identified by project name or name of recipient. These typical methods of organizing communications are wholly inadequate for a number of reasons. The recipient must do all the work of organization and categorization of the communications rather than the system itself do that work. Automation of the organization of communications is non-existent. The linkage between business strategy and an individual act of communication, a leadership priority, is non-existent. With respect to categorization, the items themselves rarely apply to only one topic of interest. As such, under current systems, the items would need to be manually stored in multiple locations (either electronic or "brick and mortar" folders). For example, a letter faxed to a sales manager may contain information about contact addresses, market intelligence data, specific product requests, and financial accounting.

2

Data items often relate to organizational issues for which one or more work groups need access; access that is denied when the recipient "buries" that item in his/her personal filing system, electronic or otherwise. Thus, the sharing of knowledge in this context is prohibitive.

Prior art communications tools do not know the business and/or personal context(s) within which files are created and used. For example, a person may create three files in a word processor, one relating to sales, the second relating to operations, and the third relating to a son's football team. However, the word processor itself has no way of knowing to automatically store those three files in at least three different places. Insofar as security and privacy are concerned, the applications and associated file storage methods are generally insecure, not conforming to a single, dependable security model.

Known software applications create and store files outside of a contextual framework. For example, when a user creates a word processing file using a conventional word processor application, the user typically must select a single folder within which to store that file. The file may be stored in an existing folder or the user may create a new folder to receive the file. This file management method is known as Lightweight Directory Application Protocol (LDAP). LDAP borrowed the physical world paper file management scheme where a machine/application creates files, stores those files in individual folders, and stores those folders in cabinets. Under this scheme, context is completely independent of the application. File context is limited to the decision made by the user about the folder in which the file should be stored. The user decision does not adequately represent or reflect the true context of the file given that the file may contain information that could reasonable be stored in multiple folders.

LDAP systems are suited for smaller one-to-many and many-to-one relationships. For example, an e-mail message to ten recipients is a one-to-many relationship, while ten customers sending orders to a single vendor exemplifies a many-to-one relationship. In the case of the former, the e-mail is stored in an Outbox, and the ten recipients store the received message in their respective folders, called an Inbox. In the latter case, the ten received orders are placed in an Orders folder for the associated the product.

Conventional systems are designed to allow multiple users to access the same file for collaboration purposes, ~~however, this feature does not change the basic one-to-many and many-to-one storage paradigm. Conventional systems only attempt to optimize it.~~

Another limitation of LDAP is that little or no information is contained within the file about the user and, the context and circumstances of the user at the time the file was created. The people elements of an organization are simply too multi-dimensional for the limitations of conventional systems. Current processes designed to add context to files, such as a metadata tagging approach, involve having a knowledge officer view files after they have been stored and create metadata tags with additional key words associated with the file for search purposes.

The best that existing technology has done is to respond to niche requirements where automation made sense: telephone switching, voice mail, e-mail, file transfer, paging, and file storage, for example. The trend is toward a convergence of the technologies, but convergence becomes an enormous problem with these legacy systems that are now encumbered by outdated data handling and storage models that are mainframe and/or hierarchical in nature.

LTI 000020

US 7,139,761 B2

3

Notwithstanding the usefulness of the above-described methods, a need still exists for a communications tool that associates files generated by applications with individuals, groups, and topical context automatically.

#### SUMMARY OF THE INVENTION

The following presents a simplified summary of the invention in order to provide a basic understanding of some aspects of the invention. This summary is not an extensive overview of the invention. It is not intended to identify key/critical elements of the invention or to delineate the scope of the invention. Its sole purpose is to present some concepts of the invention in a simplified form as a prelude to the more detailed description that is presented later.

The present invention disclosed and claimed herein, in one aspect thereof, is a data management tool that is a unified, horizontal system for communications, organization, information processing, and data storage. The tool installs on existing platforms, and is a common workflow layer that is automated with a scalable, relational database. The tool includes a relational database engine that facilitates many-to-many relationships among data elements, in addition to, one-to-many and many-to-many relationships.

The data management tool includes a novel architecture where the highest contextual assumption is that there exists an entity that consists of one or more users. The data storage model first assumes that files are associated with the user. Thus, data generated by applications is associated with an individual, group of individuals, and topical content, and not simply with a folder, as in traditional systems.

When a user logs in to the system that employs the tool, the user enters into a personal workspace environment. This workspace is called a board, and is associated with a user context. From within this board, the tool makes accessible to the user a suite of applications for creating and manipulating data. Any user operating within any board has access to the suite of applications associated with that board, and can obtain access to any data in any form (e.g., documents and files) created by the applications and to which he or she has permission. Moreover, thereafter, the user can then move to shared workspaces (or boards), and access the same data or other data.

Data created within the board is immediately associated with the user, the user's permission level, the current workspace, any other desired workspace that the user designates, and the application. This association is captured in a form of metadata and tagged to the data being created. The metadata automatically captures the context in which the data was created as the data is being created. Additionally, the data content is indexed to facilitate searching for the content in a number of different ways in the future by the user or other users. This tagging process is universal, in that, the data model allows for any binary data (e.g., files), as well as any set of definable data to be accepted into the system. The system is not restricted to processing e-mail, faxes, calendar events, meetings, phone calls, etc., that are included in the bundled system, but can also accommodate whatever data the user chooses to use. The system is also universal insofar as its user interaction can be through a browser that is pervasively employed for use with conventional operating systems.

In that the tool supports multiple users, there can be multiple boards. Two or more boards (or workspace environments) can be grouped as a collection of boards, also called a web. Boards can exist in any number of different webs. The association of webs and boards is stored in a table.

4

As a user creates a context, or moves from one context to at least one other context, the data created and applications used previously by the user automatically follows the user to the next context. The change in user context is captured dynamically. All files and groups of files can be associated with any other file in the system, allowing a system user the flexibility in determining dynamic associations.

In addition to the macro view provided by webs and boards, the user can also create the more familiar hierarchical folders within any board. These are virtual folders, and nothing is physically stored in these folders.

In another aspect of the present invention, the tool provides the seamless facilitation, collection, compilation, and distribution of data.

In yet another aspect of the present invention, the tool provides links to enterprise leadership priorities.

In still another aspect of the present invention, the tool performs communications tasks while simultaneously reminding the user of his/her individual work priorities.

In another aspect thereof, the tool automatically stores contextual information relating to an item of communication and utilizes that contextual information in performance of communication tasks.

In yet another aspect thereof, the tool integrates two or more different applications such as telephony, unified messaging, decision support, document management, portals, chat, collaboration, search, vote, relationship management, calendar, personal information management, profiling, directory management, executive information systems, dashboards, cockpits, tasking, meeting, conferencing, etc., into a common application.

In another aspect thereof, the tool provides a structure for defining relationships between complex collections of data.

In still another aspect of the present invention, the tool provides a process for automating workflow between multiple entities.

To the accomplishment of the foregoing and related ends, certain illustrative aspects of the invention are described herein in connection with the following description and the annexed drawings. These aspects are indicative, however, of but a few of the various ways in which the principles of the invention may be employed and the present invention is intended to include all such aspects and their equivalents. Other advantages and novel features of the invention may become apparent from the following detailed description of the invention when considered in conjunction with the drawings.

#### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 illustrates a block diagram of a system that facilitates the management of data in accordance with the present invention.

FIG. 2 illustrates a flow chart of a process of the present invention.

FIG. 3 illustrates a system employing a board and a web in accordance with the present invention.

FIG. 4A illustrates a diagram of board relationships.

FIG. 4B illustrates board/web relationship diagram.

FIG. 5 illustrates a flow chart of a process for board and web generation in accordance with the present invention.

FIG. 6 illustrates a sample webs-and-boards table used in accordance with the present invention.

FIG. 7 illustrates a block diagram of system in accordance with the present invention.

FIG. 8 illustrates a more detailed block diagram of a system of the present invention.

US 7,139,761 B2

5

FIG. 9 illustrates a diagram of a general structure of the management tool system.

FIG. 10 illustrates a level flow diagram of the hierarchy of the present invention for associating one or more users, context, applications, and folders with data.

FIG. 11 illustrates a system operational in accordance with the present invention.

FIG. 12 illustrates a design integration chart of the disclosed invention.

FIG. 13 illustrates one implementation of a platform system accordance with the present invention.

FIG. 14 illustrates a general system configuration of the present invention.

FIG. 15 illustrates a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with meeting information in accordance with the present invention.

FIG. 16 illustrates a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with e-mail information in accordance with the present invention.

FIG. 17 illustrates a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with a board management option in accordance with the present invention.

FIG. 18 illustrates a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with a phone option in accordance with the present invention.

FIG. 19 illustrates a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with a files option in accordance with the present invention.

FIG. 20 illustrates a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with a user context in accordance with the present invention.

FIG. 21 illustrates a block diagram of a computer operable to execute the disclosed architecture.

#### DETAILED DESCRIPTION OF THE INVENTION

The present invention is now described with reference to the drawings, wherein like reference numerals are used to refer to like elements throughout. In the following description, for purposes of explanation, numerous specific details are set forth in order to provide a thorough understanding of the present invention. It may be evident, however, that the present invention may be practiced without these specific details. In other instances, well-known structures and devices are shown in block diagram form in order to facilitate describing the present invention.

As used in this application, the terms "component" and "system" are intended to refer to a computer-related entity, either hardware, a combination of hardware and software, software, or software in execution. For example, a component may be, but is not limited to being, a process running on a processor, a processor, an object, an executable, a thread of execution, a program, and/or a computer. By way of illustration, both an application running on a server and the server can be a component. One or more components may reside within a process and/or thread of execution and a component may be localized on one computer and/or distributed between two or more computers.

As used herein, the term "inference" refers generally to the process of reasoning about or inferring states of the

6

system, environment, and/or user from a set of observations as captured via events and/or data. Inference can be employed to identify a specific context or action, or can generate a probability distribution over states, for example. The inference can be probabilistic—that is, the computation of a probability distribution over states of interest based on a consideration of data and events. Inference can also refer to techniques employed for composing higher-level events from a set of events and/or data. Such inference results in the construction of new events or actions from a set of observed events and/or stored event data, whether or not the events are correlated in close temporal proximity, and whether the events and data come from one or several event and data sources.

Referring now to FIG. 1, there is illustrated a block diagram of a system 100 that facilitates the management of data in accordance with the present invention. The data management tool includes a novel architecture where the highest contextual assumption is that there exists an entity that consists of one or more users. The data management and storage model first assumes that data is associated with the user. Thus, data generated by an application employed by the user is associated with the user, groups of users, and topical content; and not simply with a folder, as in traditional systems.

In support thereof, when a user logs-in to the system 100, user data 102 is generated and associated with at least the user and the login process. The user automatically enters into a user workspace or a first context 104 (also denoted CONTEXT<sub>1</sub>) or environment. This environment can be a default user workspace, or workspace environment pre-designated by the user or an administrator after login, for example. After login, the user can perform data operations (e.g., create and manipulate) on a data 106 in any number of ways, including, but not limited to, viewing, editing, copying, moving, and deleting the data. Such data operations can be performed using at least one application 108. For example, where the data 106 is text data, a text editing or word processing application can be employed. Many different text editor and/or word processing applications exist that can be used to create, view, edit, copy, and move the data 106, to name just a few of the operations. Where the data 106 is program code, the application 108 is one that is suitable for providing user access and interaction therewith. Where the data 106 is a voice file, the application 108 can be an application suitable for playing the voice file. This all occurs in association with the first context 104.

The system 100 also includes a context component 110 in association with the first context 104 to monitor and generate context data 112 associated with data operations of the user in the first context 104. The context data 112 includes at least data representative of the user (e.g., some or all of the user data 102), data representative of the first context 104, data representative of the data 106, and data representative of the application 108. The context data 112 can be stored in the form of a table (or any other suitable data structure) for access and processing, and at any location, as desired.

The system 100 can include a plurality of the contexts, denoted as CONTEXT<sub>1</sub>, . . . , CONTEXT<sub>N</sub>. Thus, in addition to the first context 104, there is at least a second context 114 with which the context component 110 is associated. This is because the user of the first context 104 can move to the second context 114, and perform many different data operations therein which will then be associated with that user in that second context 114. The data operations performed in the second context 114 are also

US 7,139,761 B2

7

associated with the user and stored automatically. Such user activities and data operations in the one or more contexts of the system 100 and movement of the user between contexts are tracked using a tracking component 116. Thus, data generated by applications is associated with an individual, group of individuals, and topical content; and not simply with a folder, as in traditional systems.

Referring now to FIG. 2, there is illustrated a flow chart of a process of the present invention. While, for purposes of simplicity of explanation, the one or more methodologies shown herein, e.g., in the form of a flow chart, are shown and described as a series of acts, it is to be understood and appreciated that the present invention is not limited by the order of acts, as some acts may, in accordance with the present invention, occur in a different order and/or concurrently with other acts from that shown and described herein. For example, those skilled in the art will understand and appreciate that a methodology could alternatively be represented as a series of interrelated states or events, such as in a state diagram. Moreover, not all illustrated acts may be required to implement a methodology in accordance with the present invention.

At 200, a user is associated with a first context. This can occur by the user logging in to a system and automatically entering a user workspace, which workspace is associated with the first context. At 202, the user assigns applications for use in the user context. This can occur explicitly by the user manually selecting the application(s) for association with the context, or implicitly by the user launching an application and performing data operations within the context. At 204, the user performs a data operation. At 206, the user changes context from the first context to a second context. At 208, the data and application(s) are then automatically associated with the second context. The process then reaches a Stop block.

As the user performs data operations in the first and second contexts, the system automatically creates and updates context data, as indicated at 210. This occurs transparently to the user, as indicated by the dashed line.

Referring now to FIG. 3, there is illustrated a system 300 employing a board 302 and a web 304 in accordance with the present invention. In the past, intuitive, dynamic, and changeable workflow processes have proved to be too dynamic and expensive for automation. Boards and webs are used to automate workflow processes and define relationships between data and applications. As users create and change their contexts, the data (e.g., files) and applications automatically follow, the shifts in context being captured dynamically in the context data. As used herein, a "board" is defined as a collection of data and application functionality related to a user-defined topic. For example, a user-defined topic may be a department of a company or a project that involves the company. In the case of a project, the board preferably includes all of the data relating to that project including email, tasks, calendar events, ideas, discussions, meetings, phone calls, files, contact records, people, etc. Data and applications may be grouped in a board based on the identity of the tag. As used herein, the term "web" refers to a collection of interrelated boards.

As implemented, the web 304 of the system 300 can include a plurality 306 of the boards 302 (also denoted as BOARD<sub>1</sub>, BOARD<sub>2</sub>, . . . , BOARD<sub>N</sub>). The plurality of boards 306 can each be associated with a single user, one with a single user, and others with multiples users, including or not including the user. The system 300 can also employ a plurality of webs 308 (also denoted WEB<sub>1</sub>, WEB<sub>2</sub>, . . . , WEB<sub>X</sub>). The many boards 306 can be grouped in different

8

combinations as webs. For example, BOARD<sub>1</sub> and BOARD<sub>2</sub> can be grouped as WEB<sub>2</sub>. Thus, where WEB<sub>1</sub> includes three boards all related to a single project, the boards 306 can include finance, accounting, and resources, for example.

Referring now to FIG. 4A, there is illustrated a diagram 400 of board relationships. Boards in a web may have, for example, a parent-child relationship, although this is not required. A given board can have more than one parent and more than one child. A board cannot be its own child or its own parent. However, boards can have various relationships to each other. For example, a board may be part of a circular relationship of any complexity. Illustrated herein, a first board, BOARD<sub>1</sub>, is parent to a second board, BOARD<sub>2</sub>. The second board, BOARD<sub>2</sub>, is parent to a third board, BOARD<sub>3</sub>, and BOARD<sub>3</sub> is parent to the first board, BOARD<sub>1</sub>.

Referring now to FIG. 4B, there is illustrated board/web relationship diagram 402. Boards can exist in any number of webs. Many boards will exist in more than one web. The web represents a certain view of the relationships among boards. That is, the view can be hierarchical, or the view can be in the form of a work-flow. Additionally, the relationship between two boards on one web is independent of the relationship between those same two boards on other webs. As shown, in a first web, WEB<sub>1</sub>, BOARD<sub>1</sub> is a parent to BOARD<sub>2</sub>. Yet, in a second web, WEB<sub>2</sub>, BOARD<sub>1</sub> is a child to BOARD<sub>2</sub>. In a third web, WEB<sub>3</sub>, BOARD<sub>1</sub> and BOARD<sub>2</sub> have no relationship, but exist independent of one another. In a fourth web, WEB<sub>4</sub>, BOARD<sub>1</sub> exists, but BOARD<sub>2</sub> does not. These are but a few examples of the web/board relationships that can exist in accordance with the present invention.

In accordance with the invention, webs may be used to maintain the location of content within a complex and changing set of boards and support automation of a workflow process. One example of automation of a changing workflow process can be illustrated where the workflow process to be automated initially is represented by A→B→C, and ultimately changed to A→B/C→D. Three different groups of people are assigned to each item, where the resulting distribution is A(1, 2, 3)+B(4, 5, 6)+C(7, 8, 9).

In the known LDAP environment, it is necessary for the automation sequence to predetermine how work data flows from A to B and C. Then the automation module for inputs to D must be spelled out and rewritten to consolidate the split inputs from B and C. As such, the automation sequence for this workflow change will always lag behind the ability of the people involved to start working with the new workflow assumptions.

In contrast, and in accordance with the present invention, webs and boards are the context for applications, files, and folders. Hence, the workflow process may be readily reorganized by making a change to one or more of the webs and boards. By simply adding the board D and rearranging some of the relationships of A, B, and C, the workflow is quickly reorganized and implemented.

The disclosed system has associated therewith a routing algorithm, referred to herein as a "webslice." A webslice is a relationship rule that defines a relationship between a web and one or more boards of that web. If the web changes (e.g., a board is added), and meets the criteria of the rule, the content will be on the new board as well. For example, the rule can include a web ID, a starting board ID, and "transversal" data (i.e., the relationship rule), in the following format:

US 7,139,761 B2

9

webslice (target board)=<webID; starting board ID; transversal data>.

Thus, if a system includes two webs, W1 and W2, where web W1 includes five boards: A (the starting board), B, C, D, and E, with each subsequent board a child to the previous board (i.e., B is child of A, C is child of B, etc.), the webslice data "slicing" to board E will be similar to the following:

webslice (board E)=<W1; board A; A→B→C→D→E>.

It is to be appreciated that where a child board has at least two parent boards, the webslice data can include at least two paths. For example, consider that A is the parent to both B and C, with B and C the parents to D. A webslice to D can be obtained in one of two ways.

webslice (board D)=<W1; board A; A→B→D>, or

webslice (board D)=<W1; board A; A→C→D>.

Moreover, since the webslice to a given board of a web can take at least two different paths, one path can be longer than the other to the desired board. Consider that A is the parent to both B and C, with B the parent to D, and C the parent to E, and E the parent to D. A webslice to D can be obtained in one of two ways:

webslice (board D)=<W1; board A; A→B→D>, or

webslice (board D)=<W1; board A; A→C→E→D>.

These examples are only but a few of the relationships that can be extracted using a webslice. The webslice can also take the forms of the following: "Just the board I started from" (a default); "All child boards"; "All sibling boards"; and, "All descendant boards", for example.

Thus, by using at least these three basic entities for the webslice (i.e., the web ID, the starting board ID, and the transversal data), the boards associated with a given content can be ascertained. Since content is associated with context, and the board is used in part to define the context, the system knows the content associations whereupon a change of web structure, the system knows with which board(s) the content is associated, both before and after the structure change. In keeping with one aspect of the invention, the location of the content may be determined dynamically at runtime using the webslice. Alternatively, the associated location of content may be determined by detecting changes in structure, detecting the temporary location of the content on the boards in the routing algorithm before and after the change, and adjusting the location of the affected content as part of the change in structure. Of course, the webslice data is not limited to the three aspects indicated hereinabove, but may include further information, such as at least one application ID and user ID (that uniquely identifies the creator of the content), for example.

Data created while the user is in the board is immediately associated with the user, the current workspace, any other desired workspace that the user designates, and the application. This association is captured in a form of metadata and tagged to the data being created. The metadata automatically captures the context in which the data was created as the data is being created. Additionally, the data content is indexed to facilitate searching for the content in number of different ways in the future by the user or other users. This tagging process is universal, in that, the data model allows for any binary data (e.g., files), as well as any set of definable data to be accepted into the system. The system is not restricted to processing e-mail, faxes, calendar events, meetings, phone calls, etc., that are included in the bundled system, but can also accommodate whatever data the user chooses to define. The system is also universal insofar as user interaction can be through a browser that is pervasively employed for use with conventional operating systems.

10

Referring now to FIG. 5, there is illustrated a flow chart of a process for board and web generation in accordance with the present invention. At 500, a webs-and-boards table is created to track the relationship of said aspects. At 502, a user creates a board. This can be via an administrator initially configuring a person's user workspace, or thereafter, a user creating another workspace, for example, a shared workspace. At 504, the user performs data operations while in the board. The data and applications employed to operate on the data are then included as content associated with the user in this particular context. Given that there can be multiple users, there can be a corresponding one or more webs associated with the one or more users. A BOARD(S) column lists the number of boards, and select numbers of the boards can now be grouped in collections or webs, as indicated at 506, to facilitate workflow, for example. For any number of reasons, the web and board relationships can be changed, as indicated at 508. At 510, the webs-and-boards table is automatically updated as these changes occur. The process then reaches a Stop block.

Referring now to FIG. 6, there is illustrated a sample webs-and-boards table 600 used in accordance with the present invention. The table 600 includes a user information column related to a number of users (1-3 and 6-8), under the heading of USER(S). This is because the novel invention first begins by associating all aspects with the user. The table 600 also includes a WEB(S) column that associates one or more webs (W1, W2, and W3) with the one or more users. A BOARD(S) column lists the lists the boards (e.g., B11, B12, and B14) with a given web. Here the users 1, 2 and 3 are associated with a web W1 that comprises a collection boards B11, B12, and B14 (where the first digit is the associated web number, and the second digit is the board number). The table 600 also includes a parent/child relationships column (denoted as BOARD(S) P/C RELATION). Here, board B11 is the parent, and board B12 is a child, and a parent to board B14. The table 600 is not limited to the columns provided, but can include more information, as desired.

Referring now to FIG. 7, there is illustrated a block diagram of system 700 in accordance with the present invention. Generally, the system 700 includes an internal network 702 on which is disposed a services system 704 and one or more users 706 seeking use of the services system 704. The services system 704 further includes a services component 708 and an associated data storage system 710 for storing data and programs. The services system 704 includes the data management tool of the present invention.

A user at one of the user nodes 706 can access the services system 704 via a browser over a wired/wireless communication link. Given that a browser is a principal means for access, the user node can be any type of computing device and operating system that supports a browser, whether the browser is a full-blown program typically used on a desktop computing system, or a modified or slimmed down browser interface employed in a portable computing device, e.g., a personal data assistant (PDA), wireless computing tablet, and cellular/digital telephone. As illustrated, the user nodes 706 also have direct access to the data storage system 710.

The user nodes 706 can also access a global communications network 712, e.g., the Internet, using conventional communication means, thereby providing a second path for accessing the services system 704, that further facilitates direct access to the services 708 and/or the storage system 710. This second path is most important, since a user can access the system 704 from essentially anywhere.

LTI 000024

US 7,139,761 B2

11

The services system 704 can be utilized internal to a corporate environment operating on, for example, an intranet, and providing such services only to corporate users. In another implementation, the system 704 can be disposed external to the corporate environment such that the company subscribes to the system services via a vendor.

Referring now to FIG. 8, there is illustrated a more detailed block diagram of a system 800 of the present invention. The system 800 includes the internal network 702 on which is disposed the services system 704 and the one or more users 706 seeking use of the services of the services component 708 provided thereby. The services of the services component 708 facilitate the use of the data management tool, which employs one or more webs 802 and boards 804. The tool further provides portal services 806 for accessing the services from various internal and external network locations using the TCP/IP suite of protocols. Other services provided include, but are not limited to, voice services 808 and outside services 810. Outside services 810 facilitate including non-employees and the use of third-party applications in specific projects in the system by providing various levels of access to any number of data locations and services. Read/write permissions can be granularized to the file level, if desired.

The data storage system 710 includes a number of storage methodologies 812 for handling and processing data. For example, one methodology enables large numbers of users to organize files and documents around many projects simultaneously. Data of any kind and size can be uploaded to a common shared workspace or board. Varying levels of access can be provided to the uploaded data. Other methodologies are associated with storing the data, archiving the data, data warehousing, library data, and an idea registry for tracking that aspect of the companies intellectual capital. The storage system 710 facilitates the storage and access of metadata libraries that link hierarchical and non-hierarchical LDAP folders.

As indicated hereinabove, the management tool operates seamlessly with existing computing system applications, and existing system services. For example, the conventional system services can include at least the following: e-mail, collaboration and groupware services 814 having an associated e-mail, collaboration and groupware storage system 816, voice switching services 818 (e.g., telephone and paging functions) having an associated voice data storage system 820; and multimedia services 822 having an associated multimedia storage system 824. The storage systems 816, 820, and 824 can connect to the storage system 710 to facilitate data transfer and storage in accordance with the various methodologies of the storage system 710.

A user of the users node 706 can also access the e-mail/collaboration/groupware services 814, voice switching services 818, and multimedia services 822 indirectly through the services system 704 using a multi-user data manipulation engine, e.g., OLAP (On-Line Analytical Processing). Alternatively, the user can access these services 814, 818, and 822 directly over the network 702, but shown separately as a communication link 826, and through the services 708 without using the multi-user engine.

The user can also access the services 704, other services 814, 818, and 822, and data storage system 710 over the global communications network 712 via a link 828. This is facilitated through the user browser by directing the browser to a website using a URL (Uniform Resource Locator) or through an alternative link 830.

The management tool is browser-based and incorporates a strong-encryption scheme (e.g., using 128-bit SSL (secure

12

socket layer) protocol). This means that data transmitted between the user computer and the services server is substantially secure. Furthermore, data shall not be cached, which means that there is no information footprint left on the user computer after the user logs off. The user can access data securely from virtually any network node using any type of browser. The data is stored encrypted on the storage system 710.

Referring now to FIG. 9, there is illustrated a diagram of a general structure of the management tool system 900. The structure starts at a high level with the user at a user level 902. The user level 902 is next associated with a context level 904 that defines all contexts in which the user can be included. Under the context level 904 is a web level 906 that associates one or more of the webs with one or more of the contexts of the context level 904. A boards level 908 underlies the webs level 906 and provides associations of the many boards with one or more of the webs. An applications level 910 facilitates associating one or more applications with a board designated at the board level 908. A database/folders level 912 underlies the applications level 910, and facilitates storing at least data, tables, and context information generated from the upper levels in folders, in the form of, e.g., files, at an associated underlying file level 914. A linking protocol 916 provides cross-level communication for facilitating all aspects of data processing and communication at all levels of the data management system 900.

Referring now to FIG. 10, there is a level flow diagram 1000 illustrating the hierarchy of the present invention for associating one or more users 1002, context 1004, applications 1006, and folders 1008 with data 1010. The approach is for file storage pointers of an application to be dynamic, governed initially by the folder within which the application is launched. Additionally, the file storage pointers are then accessible and acted upon by the same application from any folder in the system. This is a dynamic non-linear implementation.

Traditional collaborative technologies, like groupware, allow groups of users to take action on the same file substantially simultaneously. However, in preparation for such capabilities, all users must have compatible versions of the same application that is to be used for working with the file. The context for any folder is limited to a one-to-many and many-to-one relationship. Essentially, the folder possesses a singular context to the directory tree in which it resides.

In contrast, the disclosed architecture assumes that the highest contextual level is that of an entity consisting of a group of users forming a many-to-many architecture. The users create and use the files within the context of the workspaces or boards of one or more users, which may or may not have web relationships. In this implementation, the board is similar in function to a folder in conventional LDAP systems.

The user then uses a suite of applications within a board, with any file created being immediately associated with the user, that board, any other board desired, and the application. In other words, by the person doing simply his/her work, an enormous amount of metadata about the context(s) for that work is captured automatically. Additionally, the system indexes the content to facilitate the other ways in which the users of the system might want to search on that file in the future—ways and future contexts which are not and cannot be known by the users in advance and certainly are not facilitated by conventional systems.

The system facilitates the use of an array of applications that act independently of the boards from which they were

LTI 000025

US 7,139,761 B2

13

launched, and those boards are capable of being ordered in a myriad of collections of relationships (i.e., webs). The applications can traverse the webs to the boards associated with the information.

In addition to a macro view obtained by webs and boards, the user can also create familiar hierarchical folders within any board. These are virtual folders, in that their storage is governed by the process described above. No data is physically stored in these folders. Finally, any file or group of files can be associated with any other file in the system, allowing the users of the system infinite flexibility in determining dynamic associations among the macro/micro components of the system.

Referring now to FIG. 11, there is illustrated a system 1100 operational in accordance with the present invention. The system 1100 includes a data management platform 1102 suitable for accommodating any number conventional operating systems (OS) 1104 (also denoted OS<sub>1</sub>, OS<sub>2</sub>, OS<sub>3</sub>, . . . , OS<sub>N</sub>). The system 1100 also facilitates the use of a single data storage system 1106 suitable for use with any of the operating systems 1104, whereas conventionally, a given OS may require a certain data storage file structure. The platform 1102 is OS-independent, and provides a single point of contact for multiple users and resources 1108.

Referring now to FIG. 12, there is illustrated a design integration chart 1200 of the disclosed invention. At the core of the system is a data management tool 1202 that facilitates all of the outlying features and capabilities. The tool 1202 facilitates, at a second layer 1204, one interface (via a browser), one application (the tool itself), one data store (associate with the management tool), and one search mechanism for finding any data element of the data store. Of course, any third party applications typically have their own search tool to search for files and folders that may also be used. At a third layer 1206, the system 1200 facilitates a secure operating environment, a scalable environment, and web-based. Moreover, the system 1200 can be implemented on any software and/or hardware platform, accommodate access from any device, and bridge to third party applications and devices. At an outer layer 1208, the system 1200 facilitates one or more instances of the following: users, contexts, workflows, projects, user-defined topics, priorities, file types, and tools. The system 1200 also is suitable for use with e-mail, facsimile, and instant messaging subsystems, multimedia services, and voice systems (e.g., phone and paging data).

The system 1200 captures and catalogs data automatically. Users, projects, permissions and communication tools can be readily configured, along with the exchange of voice information, data, and video data, seamlessly. As users collaborate, the system 1200 captures context information, and automatically records when and how data is shared, who updated the data, how often the data was accessed, what additional information the data was linked to, etc. Meeting information can be stored automatically, including, but not limited to, who attended, the documents shared, instant messages captured, handouts used, slides presented, etc. A later search can retrieve this information along with the context(s) within which the data was generated and used.

The system 1200 enables larger numbers of users to organize communications around many projects substantially simultaneously. It can relate those projects to one another using whatever workflow model(s) are required, and dynamically assign modular communications tools (e.g., e-mail, voice mail, fax, teleconferencing, document sharing, etc.) to those many projects as desired. The system 1200 automatically indexes that information within the context(s)

14

in which it is received and used. This way, when a user searches the system 1200 for information, the user not only gets the information sought, but also can see how the information is currently being used by other users and project groups in the whole system. Traditionally, if a document was to be associated with seven different projects, for example, the document would be stored in seven different file locations and version control could be a significant problem. In accordance with the present invention, the document is seamlessly linked to all seven projects. Thus, only one version exists, and version control is much easier to address.

The disclosed system architecture is suited to relational and object database structures for use on a large scale. The data management tool uses both relational and object storage approaches to facilitate at least Internet-based data communications.

Referring now to FIG. 13, there is illustrated one implementation of a platform system 1300 in accordance with the present invention. The platform system 1300 includes the capability of third-party application integration, security cameras and other devices for data input, project and workflow management and, file and document sharing. The platform system 1300 also accommodates online meetings between logged-in users, and teleconferencing between the users, if desired. The teleconferencing can be initiated using the platform system 1300.

Referring now to FIG. 14, there is illustrated a general system configuration 1400 of the present invention. The system 1400 includes a platform 1402 that hosts at least the data management tool, here called a web application server 1404. The server 1404 provides a common layer to underlying services that include a database server 1406, a VRU (voice response unit) 1408 (also called an interactive VRU or IVRU) and mass storage system 1410. The VRU 1408 facilitates interactive calling features for a user via remote touchtone signals and to voice data to the caller such that the caller can make choices in response to predetermined options presented by the system.

The platform 1402 can utilize at least one multi-channel data communication connection 1412 (e.g., T1, DS3) into the VRU subsystem 1408 for communicating voice information and interacting with features of the platform 1402. As indicated previously, the invention can accommodate user communication from virtually any accessible network node. To facilitate such an interface, the platform 1402 can include a processor 1414 suitable for XML (eXtensible Markup Language), XSLT (eXtensible Stylesheet Language Transformations), and SSL processing. The processor 1414 can also access web-based services utilizing SOAP (Simple Object Access Protocol). SOAP employs XML syntax to send text commands across the network using HTTP (Hypertext Transport Protocol). Thus, there is a high-speed connection 1416 (e.g., broadband) that interfaces to the processor layer 1414 for use with multiple communication exchanges with remote users disposed on the global communication network 712. The remote users can access the platform system 1402 via a SSL connection 1418 using portable wired/wireless devices 1420, and by way of the associated browsers 1422.

Referring now to FIG. 15, there is illustrated a screenshot of a management tool window 1500 of a browser (e.g., Internet Explorer by Microsoft Corporation) used as a user interface to facilitate user interaction with meeting information in accordance with the present invention. The window 1500 includes an address field 1502 that indicates the default protocol and URL address for accessing the data manage-

LTI 000026

US 7,139,761 B2

15

ment system of the present invention. Here, HTTP is used to access the server via network. The "https:" indicates the connection will be to a secure port instead of a default web port. The window 1500 also includes a user area 1504 that indicates the name of the user logged into the system. There is also provided a topic area 1506 that lists the various boards associated with the user-defined topics. Here, the user has defined two topics: a Topic 1 and a Topic 2.

The window 1500 also includes an application (or services) area 1508 that lists many applications selectable by the user while in this particular window 1500. The applications presented to the user from this window 1500 include but are not limited to the following: Message, Calendar, Task, Phone, Search, Meet, Contact, Compile, Discuss, Files, Notes, Division, News, Ideas, Vote, Manage Board, Change, Password, Print, Help, Tutorial, and Logout. Depending on the user permissions provided by an administrator, the user may see more or fewer applications.

Here, the Meet application option is selected to allow user interaction with setting up a meeting related to projects of the user. The Meet application option further includes List and Create sub-options. When the List sub-option is selected, a center viewing area 1510 is used to present board, context, web address and other information so that the user can review the existing board and context information related to setting up a meeting. Selection the Create sub-option allows the user to create a meeting in association with one or more of the boards and make changes to existing board relationships and contexts. Other user-selectable options are provided such that the user can Join in a session with one or more other users, Move data to Archive, Select all objects, set a Reminder for himself or herself, and Delete boards.

The Messaging option allows the user to give out an e-mail address of a project work area, enabling senders to send the messages to right place. Thus, the user no longer needs to manually move the messages to the appropriate folders once received in a personal message inbox. Additionally, incoming faxes are routed to the appropriate board for storage and review. Keywords and phrases in the fax are automatically indexed. Later retrieval is accommodated simply by performing a search for the keywords or phrases. Moreover, a given board can be assigned a fax number. Thus, all faxes coming in can be routed to that number, and on to the associated board.

The Vote option allows the company and organizations to communicate and gather opinions by way of voting. A question can be entered, and the users selected to whom the question(s) should be posed.

Referring now to FIG. 16, there is illustrated a screenshot of a management tool window 1600 of a browser used as a user interface to facilitate user interaction with unified messaging, including e-mail, voice mail and fax information in accordance with the present invention. The window 1600 includes many of the same fields and informational areas of the previous windows (e.g., areas 1502, 1504, 1506, and 1508 of window 1500 of FIG. 15). Here, the Message option is selected to allow user interaction with various forms of messaging support by the disclosed management architecture. The Message option further includes an instant messaging (IMessage) sub-option, in this particular implementation.

When the Email-Inbox sub-option is selected, the center viewing area 1510 is used to present the user's messaging inbox folders. The user can then open these folders to view the e-mail, voice mail and fax messages stored therein. The center viewing area 1510 also includes a drop-down menu

16

1602 that allows the user to select from a variety of different folders (e.g., Main, Drafts) of the e-mail system. The user can also create and sign messages with a digital signature.

As before, other user-selectable options are provided such that the user can manipulate messaging information, including, but not limited to, Select All, Delete, Acknowledge, Remind Me, Remove, Move/Copy, Forward, and Get External Mail.

There is also provided a News link that allows the user to link to the latest corporate and/or division news.

Referring now to FIG. 17, there is illustrated a screenshot of a management tool window 1700 of a browser used as a user interface to facilitate user interaction with a board management option in accordance with the present invention. The window 1700 includes many of the same fields and informational areas of the previous windows (e.g., areas 1502, 1504, 1506, and 1508 of window 1500 of FIG. 15). Here, the Manage Board option is selected to allow user interaction with various forms of user management of boards. The associated sub-options allow the user to Edit the board attributes, and set permission levels thereto, in this particular implementation. Of course, many different additional or different options can be provided (in this window and other windows), at the discretion of the administrator. The system allows for new attributes to be added to this option as the need arises.

The center viewing area 1510 presents general board attributes 1702 of the user (e.g., user name, data, and time), and several fields for entering user information, including in this implementation, but not limited to, board description, board name, board nickname, board e-mail address, external e-mail properties (e.g., POP server, user name, and password), fax information (e.g., incoming fax number for the board and incoming fax PIN), and voice mail information (e.g., incoming voice mail number and incoming voice mail PIN).

Referring now to FIG. 18, there is illustrated a screenshot of a management tool window 1800 of a browser used as a user interface to facilitate user interaction with a phone option in accordance with the present invention. The window 1800 includes many of the same fields and informational areas of the previous windows (e.g., areas 1502, 1504, 1506, and 1508 of window 1500 of FIG. 15). The sub-options include Call History, Call Setup, Quick Call, Meet Me, and List. The central viewing area 1510 for this window 1800 simply includes a listing of phone-related events for the given user.

As before, other user-selectable options are provided such that the user can manipulate phone information, including, but not limited to, Select All, Delete, Acknowledge, and Remind Me. In addition, as with the other windows, there is include an Agenda area 1802 for presenting any agenda information of a meeting or upcoming event.

Referring now to FIG. 19, there is illustrated a screenshot of a management tool window 1900 of a browser used as a user interface to facilitate user interaction with a files option in accordance with the present invention. The window 1900 includes many of the same fields and informational areas of the previous windows (e.g., areas 1502, 1504, 1506, and 1508 of window 1500 of FIG. 15). Here, the sub-options include List, Upload, Deleted, and Check In. Thus, data can at least be listed, uploaded to the system and/or a board, deleted from the system and/or board, and checked in from a previous checkout process.

The window 1900 includes the central viewing area 1510 for viewing information requested or selected for presentation. There is also a user control area 1902 that facilitates

LTI 000027



US 7,139,761 B2

17

listing user documents that are checked out of the system or board. There is also provided a dropdown menu 1904 for selecting from a number of folder viewing options.

Other user-selectable options are provided such that the user can manipulate documents, including, but not limited to, Select All, Delete, Acknowledge, Remind Me, Remove, Move/Copy, Check Out and Download.

Referring now to FIG. 20, there is illustrated a screenshot of a management tool window of a browser used as a user interface to facilitate user interaction with a user context in accordance with the present invention. Here, the My Context option was selected while in the Meet application option. Thus, the context information of the user is posted within the meeting space. The window 2000 also includes many of the same fields and informational areas of the previous windows (e.g., areas 1502, 1504, 1506, and 1508 of window 1500 of FIG. 15). Here, the sub-options associated with Meet include List and Create. Thus, data can at least be listed and created in accordance with the associated need. Note that other data can also be accessed and presented within an application option, for example, My Profile will show the user profile data.

The window 2000 includes the central viewing area 1510 for viewing information requested or selected for presentation. Here, the user has selected the presentation of the user context information, which also includes board information and relationships. For example, board names Board1, Board2, and Board3 are listed, along with the hosts, User (the current user) for Board1, and User2 for both boards Board2 and Board3. The web name is also listed for the collection of these three boards.

There is a Special Projects Web listed, and the associated parent/child relationships of the associated boards. For example, Board6 is a parent to Board4, and Board4 is also a parent to Board2.

Other user-selectable options are provided for the Meet option, such as Join, Move to Archive, Select All, Delete, Acknowledge, and Remind Me.

These are but only a few of the numerous windows employed to facilitate user interaction, input, and control of the management tool system. Many other windows are provided to support, for example, printing, user help, communications security, presenting user documents to other users, metering user performance, dialog and discovery forums, calendar functions, task functions, leadership tools, file system management, user context, telephone services, e-mail, voicemail, faxes, video conferencing, web conferencing, security video, reverse 911, voice broadcasting, first response unified messaging capabilities, specialized APIs, software development kit, conduct and store meetings, organizing personal contact information, enterprise webs, chat sessions, intellectual notes and ideas, workflows, compilations, user profiles, news, searching, user alerts, integration of third-party users and resources, multimedia information, user permissions, system configuration, and wireless portable device interfaces, just to name a few.

Referring now to FIG. 21, there is illustrated a block diagram of a computer operable to execute the disclosed architecture. In order to provide additional context for various aspects of the present invention, FIG. 21 and the following discussion are intended to provide a brief, general description of a suitable computing environment 2100 in which the various aspects of the present invention may be implemented. While the invention has been described above in the general context of computer-executable instructions that may run on one or more computers, those skilled in the art will recognize that the invention also may be imple-

18

mented in combination with other program modules and/or as a combination of hardware and software.

Generally, program modules include routines, programs, components, data structures, etc., that perform particular tasks or implement particular abstract data types. Moreover, those skilled in the art will appreciate that the inventive methods may be practiced with other computer system configurations, including single-processor or multiprocessor computer systems, minicomputers, mainframe computers, as well as personal computers, hand-held computing devices, microprocessor-based or programmable consumer electronics, and the like, each of which may be operatively coupled to one or more associated devices.

The illustrated aspects of the invention may also be practiced in distributed computing environments where certain tasks are performed by remote processing devices that are linked through a communications network. In a distributed computing environment, program modules may be located in both local and remote memory storage devices.

A computer typically includes a variety of computer-readable media. Computer-readable media can be any available media that can be accessed by the computer and includes both volatile and nonvolatile media, removable and non-removable media. By way of example, and not limitation, computer readable media can comprise computer storage media and communication media. Computer storage media includes volatile and nonvolatile, removable and non-removable media implemented in any method or technology for storage of information such as computer readable instructions, data structures, program modules or other data. Computer storage media includes, but is not limited to, RAM, ROM, EEPROM, flash memory or other memory technology, CD-ROM, digital video disk (DVD) or other optical disk storage, magnetic cassettes, magnetic tape, magnetic disk storage or other magnetic storage devices, or any other medium which can be used to store the desired information and which can be accessed by the computer.

With reference again to FIG. 21, there is illustrated an exemplary environment 2100 for implementing various aspects of the invention that includes a computer 2102, the computer 2102 including a processing unit 2104, a system memory 2106 and a system bus 2108. The system bus 2108 couples system components including, but not limited to, the system memory 2106 to the processing unit 2104. The processing unit 2104 may be any of various commercially available processors. Dual microprocessors and other multi-processor architectures may also be employed as the processing unit 2104.

The system bus 2108 can be any of several types of bus structure that may further interconnect to a memory bus (with or without a memory controller), a peripheral bus, and a local bus using any of a variety of commercially available bus architectures. The system memory 2106 includes read only memory (ROM) 2110 and random access memory (RAM) 2112. A basic input/output system (BIOS) is stored in a non-volatile memory 2110 such as ROM, EPROM, EEPROM, which BIOS contains the basic routines that help to transfer information between elements within the computer 2102, such as during start-up. The RAM 2112 can also include a high-speed RAM such as static RAM for caching data.

The computer 2102 further includes an internal hard disk drive (HDD) 2114 (e.g., EIDE, SATA), which internal hard disk drive 2114 may also be configured for external use in a suitable chassis (not shown), a magnetic floppy disk drive (FDD) 2116, (e.g., to read from or write to a removable diskette 2118) and an optical disk drive 2120, (e.g., reading

US 7,139,761 B2

19

a CD-ROM disk 2122 or, to read from or write to other high capacity optical media such as the DVD). The hard disk drive 2114, magnetic disk drive 2116 and optical disk drive 2120 can be connected to the system bus 2108 by a hard disk drive interface 2124, a magnetic disk drive interface 2126 and an optical drive interface 2128, respectively. The interface 2124 for external drive implementations includes at least one or both of Universal Serial Bus (USB) and IEEE 1394 interface technologies.

The drives and their associated computer-readable media provide nonvolatile storage of data, data structures, computer-executable instructions, and so forth. For the computer 2102, the drives and media accommodate the storage of any data in a suitable digital format. Although the description of computer-readable media above refers to a HDD, a removable magnetic diskette, and a removable optical media such as a CD or DVD, it should be appreciated by those skilled in the art that other types of media which are readable by a computer, such as zip drives, magnetic cassettes, flash memory cards, cartridges, and the like, may also be used in the exemplary operating environment, and further, that any such media may contain computer-executable instructions for performing the methods of the present invention.

A number of program modules can be stored in the drives and RAM 2112, including an operating system 2130, one or more application programs 2132, other program modules 2134 and program data 2136. All or portions of the operating system, applications, modules, and/or data can also be cached in the RAM 2112.

It is appreciated that the present invention can be implemented with various commercially available operating systems or combinations of operating systems.

A user can enter commands and information into the computer 2102 through one or more wired/wireless input devices, e.g., a keyboard 2138 and a pointing device, such as a mouse 2140. Other input devices (not shown) may include a microphone, an IR remote control, a joystick, a game pad, a stylus pen, touch screen, or the like. These and other input devices are often connected to the processing unit 2104 through an input device interface 2142 that is coupled to the system bus 2108, but may be connected by other interfaces, such as a parallel port, an IEEE 1394 serial port, a game port, a USB port, an IR interface, etc.

A monitor 2144 or other type of display device is also connected to the system bus 2108 via an interface, such as a video adapter 2146. In addition to the monitor 2144, a computer typically includes other peripheral output devices (not shown), such as speakers, printers, etc.

The computer 2102 may operate in a networked environment using logical connections via wired and/or wireless communications to one or more remote computers, such as a remote computer(s) 2148. The remote computer(s) 2148 may be a workstation, a server computer, a router, a personal computer, portable computer, microprocessor-based entertainment appliance, a peer device or other common network node, and typically includes many or all of the elements described relative to the computer 2102, although, for purposes of brevity, only a memory storage device 2150 is illustrated. The logical connections depicted include wired/wireless connectivity to a local area network (LAN) 2152 and/or larger networks, e.g., a wide area network (WAN) 2154. Such LAN and WAN networking environments are commonplace in offices, and companies, and facilitate enterprise-wide computer networks, such as intranets, all of which may connect to a global communication network, e.g., the Internet.

20

When used in a LAN networking environment, the computer 2102 is connected to the local network 2152 through a wired and/or wireless communication network interface or adapter 2156. The adaptor 2156 may facilitate wired or wireless communication to the LAN 2152, which may also include a wireless access point disposed thereon for communicating with the wireless adaptor 2156. When used in a WAN networking environment, the computer 2102 can include a modem 2158, or is connected to a communications server on the LAN, or has other means for establishing communications over the WAN 2154, such as by way of the Internet. The modem 2158, which may be internal or external and a wired or wireless device, is connected to the system bus 2108 via the serial port interface 2142. In a networked environment, program modules depicted relative to the computer 2102, or portions thereof, may be stored in the remote memory/storage device 2150. It will be appreciated that the network connections shown are exemplary and other means of establishing a communications link between the computers may be used.

The computer 2102 is operable to communicate with any wireless devices or entities operably disposed in wireless communication, e.g., a printer, scanner, desktop and/or portable computer, portable data assistant, communications satellite, any piece of equipment or location associated with a wirelessly detectable tag (e.g., a kiosk, news stand, restroom), and telephone. This includes at least Wi-Fi and Bluetooth™ wireless technologies. Thus, the communication may be a predefined structure as with conventional network or simply an ad hoc communication between at least two devices.

Wi-Fi or Wireless Fidelity, allows connection to the Internet from a couch at home, a bed in a hotel room or a conference room at work, without wires. Wi-Fi is a wireless technology like a cell phone that enables such devices, e.g., computers, to send and receive data indoors and out, and anywhere within the range of a base station. Wi-Fi networks use radio technologies called IEEE 802.11 (a, b, g, etc.) to provide secure, reliable, fast wireless connectivity. A Wi-Fi network can be used to connect computers to each other, to the Internet, and to wired networks (which use IEEE 802.3 or Ethernet). Wi-Fi networks operate in the unlicensed 2.4 and 5 GHz radio bands, with an 11 Mbps (802.11a) or 54 Mbps (802.11b) data rate or with products that contain both bands (dual band), so the networks can provide real-world performance similar to the basic 10BaseT wired Ethernet networks used in many offices.

What has been described above includes examples of the present invention. It is, of course, not possible to describe every conceivable combination of components or methodologies for purposes of describing the present invention, but one of ordinary skill in the art may recognize that many further combinations and permutations of the present invention are possible. Accordingly, the present invention is intended to embrace all such alterations, modifications and variations that fall within the spirit and scope of the appended claims. Furthermore, to the extent that the term "includes" is used in either the detailed description or the claims, such term is intended to be inclusive in a manner similar to the term "comprising" as "comprising" is interpreted when employed as a transitional word in a claim.

What is claimed is:

1. A computer-implemented network-based system that facilitates management of data, comprising:
  - a computer-implemented context component of the network-based system for capturing context information associated with user-defined data created by user inter-

US 7,139,761 B2

21

action of a user in a first context of the network-based system, the context component dynamically storing the context information in metadata associated with the user-defined data, the user-defined data and metadata stored on a storage component of the network-based system; and

a computer-implemented tracking component of the network-based system for tracking a change of the user from the first context to a second context of the network-based system and dynamically updating the stored metadata based on the change, wherein the user accesses the data from the second context.

2. The system of claim 1, the context component is associated with a workspace, which is a collection of data and application functionality related to the user-defined data.

3. The system of claim 1, the context component is associated with a web, which web is a collection of inter-related workspaces, the web maintains a location of data of the respective interrelated workspaces when one or more of the interrelated workspaces are moved into a different workspace interrelationship.

4. The system of claim 1, the context information includes a relationship between the user and at least one of an application, application data, and user environment.

5. The system of claim 1, the context component captures context information of the first context and context information related to at least one other context.

6. The system of claim 5, the context information of the at least one other context is at least one of stipulated by the user and suggested automatically by the system based upon search and association criteria set by the user.

7. The system of claim 1, wherein data created in the first context is associated with data created in the second context.

8. The system of claim 1, the context information is tagged to the user-defined data via the metadata when the user-defined data is created.

9. A computer-implemented method of managing data, comprising computer-executable acts of:

creating data within a user environment of a web-based computing platform via user interaction with the user environment by a user using an application, the data in the form of at least files and documents;

dynamically associating metadata with the data, the data and metadata stored on a storage component of the web-based computing platform, the metadata includes information related to the user, the data, the application, and the user environment;

tracking movement of the user from the user environment of the web-based computing platform to a second user environment of the web-based computing platform; and

dynamically updating the stored metadata with an association of the data, the application, and the second user environment wherein the user employs at least one of the application and the data from the second environment.

10. The method of claim 9, further comprising capturing context information of the user.

11. The method of claim 9, further comprising indexing content of the user environment such that a plurality of users can access the content from an associated plurality of user environments.

12. The method of claim 9, the least one of the data and the application is associated automatically with the second user environment.

22

13. The method of claim 9, further comprising accessing the user environment and the second user environment using a browser.

14. The method of claim 9, further comprising communicating with the user environment using a TCP/IP communication protocol.

15. The method of claim 9, further comprising locating the user environment from a remote location using a URL address.

16. The method of claim 9, further comprising accessing the user environment via a portable wireless device.

17. A computer-implemented method of managing data, comprising computer-executable acts of:

generating a plurality of user environments in a web-based system;

ordering two or more of the plurality of user environments according to different arrangements of the user environments;

providing a plurality of applications for generating and processing data in the user environments, data of a user environment is dynamically associated with the user environment in metadata that corresponds to the data;

creating an association of the data with a second user environment when the data is accessed from the second user environment;

dynamically storing the association of the data and the second user environment in the metadata;

storing in a storage component ordering information related to the ordering of the two or more of the plurality of user environments; and

traversing the different arrangements of the user environments with one or more of the applications based on the ordering information to locate the data associated with the user environments.

18. The method of claim 17, the act of traversing is performed using a webslice that includes traversal information for locating the data associated with a given user environment.

19. The method of claim 18, the traversal information includes at least a collection ID, a user environment ID, and a routing path to the location of the environment data.

20. The method of claim 17, the different arrangements, user environments, and associated data carry both hierarchical and non-hierarchical associations simultaneously within the plurality of applications.

21. A computer-readable medium for storing computer-executable instructions for a method of managing data, the method comprising:

creating data related to user interaction of a user within a user workspace of a web-based computing platform using an application;

dynamically associating metadata with the data, the data and metadata stored on the web-based computing platform, the metadata includes information related to the user of the user workspace, to the data, to the application and to the user workspace;

tracking movement of the user from the user workspace to a second user workspace of the web-based computing platform;

dynamically associating the data and the application with the second user workspace in the metadata such that the user employs the application and data from the second user workspace; and

indexing the data created in the user workspace such that a plurality of different users can access the data via the metadata from a corresponding plurality of different user workspaces.

LTI 000030

US 7,139,761 B2

23

22. A computer-implemented system that facilitates management of data, comprising:

computer-implemented means for creating data by interaction of a user within a user workspace of a server using an application;

computer-implemented means for associating metadata with the data, the metadata stored in association with the data on storage means of the server, the metadata includes information related to a user of the user workspace, to the data, to the application and to the user workspace;

computer-implemented means for tracking movement of the user from the user workspace to a second user workspace of the server, and

computer-implemented means for dynamically associating the data and the application with the second user workspace in the metadata such that the user can employ the application and data from the second user workspace.

23. A computer-implemented system that facilitates management of data, comprising:

a computer-implemented context component of a web-based server for defining a first user workspace of the web-based server, assigning one or more applications to the first user workspace, capturing context data associated with user interaction of a user while in the first user workspace, and for dynamically storing the context data as metadata on a storage component of the web-based server, which metadata is dynamically associated with data created in the first user workspace; and

a computer-implemented tracking component of the web-based server for tracking change information associated with a change in access of the user from the first user workspace to a second user workspace, and dynamically storing the change information on the storage component as part of the metadata, wherein the user accesses the data from the second user workspace.

24. The system of claim 23, wherein the tracking component automatically creates the metadata when the user accesses the first user workspace.

25. The system of claim 23, wherein the context component captures relationship data associated with a relationship between the first user workspace and at least one other user workspace.

26. The system of claim 23, wherein an application associated with the first user workspace is automatically

24

accessible via the second user workspace when the user moves from the first user workspace to the second user workspace.

27. The system of claim 23, wherein context data relating to an item of communication is automatically stored and used in performance of communication tasks.

28. The system of claim 23, wherein the context component captures data and application functionality related to a user-defined topic of the first user workspace, and includes the data and application functionality in the metadata.

29. The system of claim 23, wherein when the data created in the first user workspace is accessed from the second user workspace, in response to which the context component adds information to the metadata about the second user workspace.

30. The system of claim 23, wherein the first user workspace is associated with a plurality of different applications, the plurality of different applications comprising telephony, unified messaging, decision support, document management, portals, chat, collaboration, search, vote, relationship management, calendar, personal information management, profiling, directory management, executive information systems, dashboards, cockpits, tasking, meeting and, web and video conferencing.

31. The system of claim 23, wherein the storage component stores the data and the metadata according to at least one of a relational and an object storage methodology.

32. The system of claim 23, wherein storing of the metadata in the storage component in association with data facilitates many-to-many functionality of the data via the metadata.

33. The system of claim 23, wherein the first user workspace provides access to at least one communications tool, which includes e-mail, voicemail, fax, teleconferencing, instant message, chat, contacts, calendar, task, notes, news, ideas, vote, web and video conferencing, and document sharing functionality.

34. The system of claim 23, wherein one or more applications include file storage pointers that are dynamic and associated with the first user workspace.

35. The system of claim 23, wherein the context component facilitates encryption of the data generated in the first user workspace.

\* \* \* \* \*

# **EXHIBIT 10**

### **Pseudo code implementation of Context and Tracking Components**

This report describes the implementation in pseudo code of a context and a context tracking functionality based on the descriptions provided in the provisional patent application. The design approach was to articulate into pseudo code a generalization of the workflow example provided in ATTACHMENT 2 of the provisional patent application. In that regards, the pseudo code contains two basic elements:

- (a) a generic application skeleton that allows the user to navigate through contexts as defined in a particular workflow (referred to as Webslice in ATTACHMENT 2) and where the change of context is identified automatically
- (b) an implementation of a context (referred to as Boards in ATTACHMENT 2)

Those two elements also utilize the source code described in the Web and WebSlice classes as described in ATTACHMENT 2 of the provisional patent application.

Plaintiff's Trial Exhibit

**PTX-1125**

Case No. 08-CV-00862

**Class: WebApp**

```

import java.awt.AWTEvent;
import java.awt.Menu;
import java.awt.MenuItem;
import java.awt.event.ActionListener;
import java.util.Collection;
import java.util.Iterator;
import java.util.List;

/**
 * This class represents the general skeleton of an application
 * (e.g. web based application) that would provide an end-user
 * with the basic interface to create contexts, navigate across
 * them based on the workflows relevant to the user and track
 * changes to contexts.
 */
public class WebApp {
    /* the basic elements to keep track of */
    private Collection<Web> webs;
    private Web currentUserWeb; // the specific web. It is possible to have multiple webs
                                // and the user selects one at any particular time
    private Board currentUserCtx; // the specific context within a particular web
    private WebSlice currentUserWorkFlow;
    private String userID;

    /*
     * UI elements
     */
    private Menu menuWebs;
    private Menu menuWebSlices;
    private Menu menuBoards;

    /**
     * Constructor
     * @param the User that is using the particular instance of the application
     */
    public WebApp(String userName) {
        this.userID = userName;
        this.currentUserWeb = null;
        this.currentUserCtx = null;
        this.currentUserWorkFlow = null;
        setupWebApp();
    }

    /*
     * We assume that there is some persistent repository where the definitions of Webs
     * WebSlices and Boards are stored. This method would access such data and present it
     * to the user. Upon selection of the relevant UI elements on the part of the user,
     * the basic elements (e.g. currentUserWeb, currentUserCtx, currentUserWorkflow) would
     * be defined
     */
    public void setupWebApp() {
        /*
         * For simplicity sake, we assume that the persistent storage interface referred to
         * in page 11 of the provisional patent application (CollectionFactory)
         */
        this.webs = CollectionFactory.getPersistentCapableCollectionOfWebs();
        /*
         * At this point we would have a collection of instantiated Web objects.
         * The next step would be to present the list of available Webs to the user
         * through some UI element (e.g. a menu) so the user select the web of interest.
         */
        menuWebs = new Menu("Webs");
        menuWebSlices = new Menu("Workflows");
        menuBoards = new Menu("Contexts");
        for(Iterator iter = webs.iterator(); iter.hasNext(); ) {
            Web w = (Web) iter.next();
            menuWebs.add(new MenuItem(w.getName()));
            // getName method is defined in ATTACHMENT 2, page 12
        }
        /*
         * The UI element would have event-based mechanism such as a listener that
         * automatically detect the users' selection. Upon reception of the event,
         * the application can automatically update its internal state. Specifically,
         * once a use selects a particular Web, the variable currentUserWeb can be
         * updated and the list of available Contexts (or Boards) in the Web can be
         * retrieved and displayed.
         */
    }

```

```

menuWebs.addActionListener(new ActionListener() {
    public void actionPerformed(AWTEvent e) {
        MenuItem m = (MenuItem)e.getSource();
        String webName = m.getLabel();
        // the getWebByName method would iterate over the webs collection
        // and return the right object
        currentUserWeb = this.getWebByName(webName);
        currentUserCtx = null;
        currentUserWorkFlow = null;
        /*
         * We now have the a Web object. The first step is to update the
         * menus with the webslices
         */
        menuWebSlices.removeAll();
        menuBoards.removeAll();
        Collection<WebSlice> slices =
CollectionFactory.getPersistentCapableCollectionOfWebSlices();
        for(Iterator iter = slices.iterator(); iter.hasNext(); ) {
            WebSlice ws = (WebSlice) iter.next();
            menuBoards.add(new MenuItem(ws.getName()));
        }
    }
});

/*
 * The next step is to add a listener to the menu of Workflows (webslices)
 */
menuWebSlices.addActionListener(new ActionListener() {
    public void actionPerformed(AWTEvent e) {
        MenuItem m = (MenuItem)e.getSource();
        String webSliceName = m.getLabel();
        Collection<WebSlice> slices =
CollectionFactory.getPersistentCapableCollectionOfWebSlices();
        for(Iterator iter = slices.iterator(); iter.hasNext(); ) {
            WebSlice ws = (WebSlice) iter.next();
            if (webSliceName.equals(ws.getName())) {
                currentUserWorkFlow = ws;
            }
        }
        currentUserCtx = null;
        menuBoards.removeAll();
        /*
         * We now update the menu with the appropriate list of contexts (boards)
         */
        List boards = currentUserWeb.getBoardsList();
        // getBoardsList method is defined in ATTACHMENT 2, page 14
        for(Iterator iter = boards.iterator(); iter.hasNext(); ) {
            Board b = (Board) iter.next();
            menuBoards.add(new MenuItem(b.getName()));
        }
    }
});

/*
 * Finally, we add a listener to the menu of Contexts (Boards)
 */
menuBoards.addActionListener(new ActionListener() {
    public void actionPerformed(AWTEvent e) {
        MenuItem m = (MenuItem)e.getSource();
        String boardName = m.getLabel();
        /*
         * the getBoardByName method would iterate over the
         * currentUserWeb's list of boards and return the right
         * Board object corresponding to the boardName string
         */
        Board oldCtx = currentUserCtx;
        currentUserCtx = getBoardByName(boardName);
        if (oldCtx != null && oldCtx.getName() != currentUserCtx.getName()) {
            //The user changed contexts
            currentUserCtx.importDataFromParent(currentUserWeb,
                                                currentUserWorkFlow);
        }
        /*
         * At this point a particular UI element that articulates the context
         * should be updated. For instance, a list of applications as well as
         * the list of data elements that are available could be displayed
         * using the data provided by the accessor methods from the Board Class
         * such getAllDataItems(),getAllUpstreamDataItems() and getAllAppItems()
         */
    }
});

```



```

        });
    }
    /**
     */
    public Web getWebByName(String name) {
        for (Iterator iter = webs.iterator(); iter.hasNext(); ) {
            Web w = (Web)iter.next();
            if (name.equals(w.geName())) {
                return w;
            }
        }
        return null;
    }
    /**
     */
    public Board getBoardByName(String name) {
        List boards = currentUserWeb.getBoardsList();
        // getBoardsList method is defined in ATTACHMENT 2, page 14
        for (Iterator iter = boards.iterator(); iter.hasNext(); ) {
            Board b = (Board) iter.next();
            if (name.equals(b.geName())) {
                return b;
            }
        }
        return null;
    }
} //END-OF-CLASS

```

**Class: Board**

```

import java.util.Collection;
import java.util.HashMap;
import java.util.HashSet;
import java.util.Iterator;

/**
 * A Board represents a particular context that consists of a collection of data
 * and applications. Building the example of workflow in ATTACHMENT 2, we also
 * assume that a Board contains a collection of individuals associated with the context
 */
public class Board {
    /* the basic constituent elements of a Board */
    HashMap<String,DataItem> data; // a hash table of data objects (e.g. files, emails, etc)
    HashMap<String,AppItem> apps; // a hash table of applications
    HashSet<String> users; // a hash table of users associated with the context
                                // (following the workflow example)

    String name;

    /* another set of elements that might be useful are those data items from upstream
    * contexts in the workflow that that might be relevant to the current context
    */
    HashMap<String,DataItem> upstreamData;

    /**
    * Constructor
    * @param the name of the Board
    */
    public Board(String name) {
        this.name = name;
        data = new HashMap<String,DataItem>();
        apps = new HashMap<String,AppItem>();
        users = new HashSet<String>();

        upstreamData = new HashMap<String,DataItem>();
    }

    /**
    * As users move across contexts, they might find the need to access data items from
    * upstream context in the workflow. This method imports the data items from the
    * Board's parent nodes
    * ASSUMPTION: error would generate some appropriate exception
    */
    public void importDataFromParent(Web w, WebSlice ws) {
        if (w.contains(this)) { // we only do work if this Board belongs to the Web
                                // method defined in ATTACHMENT 2, Web class, page 13
            /*
            * get the set of boards that are part of the workflow of interest as
            * represented by the webslice
            */
            Board[] boardsInWS = ws.getBoards();
            // method defined in ATTACHMENT 2, WebSlice class, page 18
            /*
            * get the list of the parents of the current board.
            */
            Set<Boards> parents = w.getParents(this);
            // method defined in ATTACHMENT 2, Web class, page 14
            /*
            * we import data from the parents that are in the webslice
            */
            for(int i=0; i < boardsInWS.length(); ) {
                if (parents.contains(boardsInWS[i])) {
                    Collection dataToImport = boardsInWS[i].getAllDataItems();
                    for(Iterator iter = dataToImport.iterator(); iter.hasNext();) {
                        DataItem ditem = (DataItem)iter.next();
                        if (!upstreamData.containsKey(ditem.id)) {
                            upstreamData.put(ditem.id,ditem);
                        }
                    }
                }
            }
        }
    }

    /**
    * A particular data item might move from context to context as the workflow
    * progresses. This method transfer an imported data item into the permanent set of
    * data items of the board.
    * ASSUMPTION: error would generate some appropriate exception

```

```

    */
    public void transferDataItem(DataItem d) {
        if (!data.containsKey(d.id)) { data.put(d.id,d); }
    }

    /**
     * As described in ATTACHMENT 2, a particular workflow could be modified such that
     * two interrelated Boards (e.g. A->B->C->D) are merged into a combined context
     * (e.g. A->B/C->D). This method accomplishes such operation.
     * ASSUMPTION: error would generate some appropriate exception
     */
    public void merge(Board src) {
        /**
         * we start by merging the data items
         */
        Collection dataToMerge = src.getAllDataItems();
        for(Iterator iter = dataToMerge.iterator(); iter.hasNext();) {
            DataItem ditem = (DataItem)iter.next();
            if (!data.containsKey(ditem.id)) { data.put(ditem.id,ditem); }
        }
        /**
         * 2nd, we merge the list of applications available in this context
         */
        dataToMerge = src.getAllAppItems();
        for(Iterator iter = dataToMerge.iterator(); iter.hasNext();) {
            AppItem ditem = (AppItem)iter.next();
            if (!apps.containsKey(ditem.id)) { apps.put(ditem.id,ditem); }
        }
        /**
         * Finally, we merge the set of users associated with the context
         */
        for(Iterator iter = src.getAllUsers(); iter.hasNext();) {
            String user = (String)iter.next();
            users.add(user);
        }
    }

    /**
     * accessor methods
     */
    public String getName() {
        return this.name;
    }
    public void addDataItem(DataItem d) {
        data.put(d.id,d);
    }
    public void removeDataItem(String did) {
        data.remove(did);
    }
    public void removeDataItem(DataItem d) {
        data.remove(d.id);
    }
    public Collection<DataItem> getAllDataItems() {
        return data.values();
    }
    public DataItem getDataItem(String did) {
        return data.get(did);
    }
    public boolean hasDataItem(String did) {
        return data.containsKey(did);
    }
    public boolean hasDataItem(DataItem d) {
        return data.containsKey(d.id);
    }
    public Collection<DataItem> getAllUpstreamDataItems() {
        return upstreamData.values();
    }
    public void addAppItem(AppItem d) {
        apps.put(d.id,d);
    }
    public void removeAppItem(String did) {
        apps.remove(did);
    }
    public void removeAppItem(AppItem d) {
        apps.remove(d.id);
    }
    public Collection<AppItem> getAllAppItems() {
        return apps.values();
    }
    public AppItem getAppItem(String did) {

```

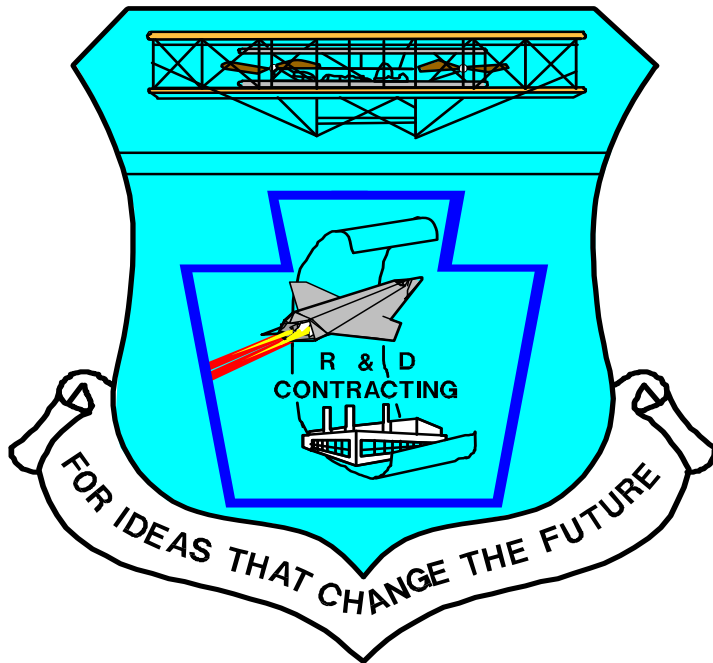
```
        return apps.get(did);
    }
    public boolean hasAppItem(String did) {
        return apps.containsKey(did);
    }
    public boolean hasAppItem(AppItem d) {
        return apps.containsKey(d.id);
    }
    public void addUser(String uid) {
        users.add(uid);
    }
    public void removeUser(String uid) {
        users.remove(uid);
    }
    public Iterator<String> getAllUsers() {
        return users.iterator();
    }
    public boolean hasUser(String uid) {
        return users.contains(uid);
    }
} //END-OF-CLASS
```

# **EXHIBIT 11**

---

**BROAD AGENCY ANNOUNCEMENT (BAA)  
AND  
PROGRAM RESEARCH & DEVELOPMENT (PRDA)**

***INDUSTRY GUIDE***



***AIR FORCE RESEARCH LABORATORY***

***WRIGHT RESEARCH SITE***

***WRIGHT-PATTERSON AFB***

Plaintiff's Trial Exhibit

**PTX-1234**

Case No. 08-CV-00862

May 2001

## **FOREWORD**

Broad Agency Announcements (BAA) and Program Research and Development Announcements (PRDA) are popular mechanisms for procuring basic and applied research as well as advanced technology development at the Air Force Research Laboratory (AFRL). This guide was prepared in an effort to provide industry as well as educational and nonprofit organizations with the important aspects of the BAA/PRDA process. A team of Government professionals who consulted with various Industry representatives prepared it. It is hoped that by better understanding the process, there will be less frustration in the overall proposal preparation. Likewise, better proposals will save time for our Government teams and ease their frustration as well.

Additionally, Wright Research Site is fully committed to engaging in electronic commerce aimed towards paperless acquisition. This guide reflects that commitment by including new procedures focused on conducting business electronically to the maximum extent practicable.

Keep in mind that this is a guide. While we have tried to thoroughly explain the process, regulatory guidance often requires us to change our procedures. You are encouraged to contact the points of contact, both technical and contracting, listed in the synopsis to obtain the latest information.

We share a common goal with industry to provide the best possible research and development efforts to the Air Force. We hope this guide makes it easier to achieve this goal by facilitating the overall BAA/PRDA process, especially for newer and less-established firms. We welcome any comments or suggestions you may have for improving on the contents of this guide. Please address them to Mr. Nicholas Zindorf, Det 1 AFRL/PKC, 2310 8<sup>th</sup> Street, Area B Building 167 Wright-Patterson AFB, OH 45433-7607; E-mail [nicholas.zindorf@wpafb.af.mil](mailto:nicholas.zindorf@wpafb.af.mil).

## **TABLE OF CONTENTS**

<b>Foreword .....</b>	<b>i</b>
<b>Glossary .....</b>	<b>iii</b>
<b>Chapter 1: BAA/PRDA Process Review .....</b>	<b>1</b>
<b>Chapter 2: Synopsis/Announcement Information .....</b>	<b>4</b>
<b>Chapter 3: Proposal Preparation .....</b>	<b>6</b>
<b>Chapter 4: White Paper/Proposal Evaluation .....</b>	<b>12</b>
<b>Chapter 5: Technical and Cost Negotiations .....</b>	<b>14</b>
<b>Chapter 6: Assistance Instruments Information.....</b>	<b>17</b>
<b>Chapter 7: Post Award.....</b>	<b>20</b>
<b>Attachments</b>	
<b>1. Sample CBDNet Synopsis .....</b>	<b>21</b>
<b>2. BAA/PRDA Process Flow.....</b>	<b>22</b>



## GLOSSARY

**AFMCFARS:** Air Force Materiel Command Federal Acquisition Regulation Supplement. This and other Federal Acquisition Regulations can be viewed at <http://farsite.hill.af.mil/VFafmca.htm>.

**Assistance Instruments:** See [Chapter 6](#) for definition.

**Commerce Business Daily (CBD):** The public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD publishes a new edition every business day. BAA/PRDA synopses are published in this document (website: <http://cbdnet.access.gpo.gov/>) and provide a direct link to the Electronic Posting System where the announcement is published in full.

**Contract Negotiator:** Term used interchangeably to include the Contracting Officer or Contract Negotiator. Be advised, however, that only a Contracting Officer is warranted to obligate the Government. Regulations specify several other functions that must be performed by a Contracting Officer.

**Cooperative Agreement:** An assistance instrument in which there will be substantial involvement between the Government and the recipient to perform basic research, applied research, and advanced technology development. A cost-sharing arrangement may be required.

**Department of Defense Grant and Agreement Regulations (DODGARS):** Regulations that pertain strictly to grants and cooperative agreements. DODGARS (<http://web7.whs.osd.mil/pdf/32106r/32106r.htm>) does not pertain to other transactions.

**Electronic Posting System (EPS)[now called FedBizOps]:** A government-wide electronic posting system that allows government buyers to post notices of procurements directly on the Internet. Click on [http://www.eps.gov/pilotGeneralInfo/eps\\_exec.htm](http://www.eps.gov/pilotGeneralInfo/eps_exec.htm) for background information and a description of the program in detail. Interested offerors can view and download notices and solicitations from this site.

**Government Furnished Property/Facilities/Data (GFP/F/D):** Property/ facilities/data owned by the Government that is furnished to a contractor that needs these items to perform the contract. GFP also includes property that a contractor acquires with contract funds during contract performance.

**Grant:** An assistance instrument under which the Government provides assistance to a recipient (college/university/non-profit organization) used for basic or applied research. There is no substantial Government involvement.

**Other Transactions for Research:** An assistance instrument under which the Government provides assistance to a recipient (can be a single contractor or a team of

contractors) to transfer something of value to the public sector. Substantial Government involvement and 50/50 cost sharing are required.

***Other Transactions for Prototype under Section 845:*** A non-contractual instrument used for prototype development relevant to a weapon system or weapon. This type of Other Transaction is for the acquisition of goods and services for the direct benefit of the government where cost sharing is not required

***Project Engineer (PE):*** Term used interchangeably to include an AFRL Project Engineer, Project Manager, Program Manager, Scientist, Senior Scientist or Contract Monitor. Individual responsible for overseeing/managing a Science & Technology (S&T) project.

***PRDA/BAA Announcement:*** The announcement posted on the Electronic Posting System website <http://www.eps.gov/> that sets forth the requirements of the program effort and due date for proposals. The EPS website is linked from our website in Current Contracting Opportunities <http://www.wrs.afrl.af.mil/contract/>.

***Statement of Work (SOW):*** The document that captures the technical content of the contractual effort and incorporated into the contract. The contract may incorporate portions of the offeror's technical proposal instead of a formal SOW.

***Synopsis:*** An individual BAA/PRDA notice published in the Commerce Business Daily (CBD). Can also be used to announce awards, provide information on future contracting actions, etc.

***Technology Investment Agreement:*** A class of assistance instruments used to carry out basic, applied and advanced research projects, and the research is to be performed by for-profit firms or by consortia that include for-profit firms. A 50-50 cost sharing arrangement is required.

***Wright Research Site (WRS):*** Reference to the geographical location of five Air Force Research Laboratory (AFRL) Technology Directorates: Air Vehicles (VA), Materials (ML), Propulsion (PR), Human Effectiveness (HE) and Sensors (SN) at Wright-Patterson AFB.

## CHAPTER 1

### BAA/PRDA PROCESS OVERVIEW

#### DEFINITION

- a. The distinction between a Broad Agency Announcement (BAA) and Program Research and Development Announcement (PRDA) is at best subtle or occasionally even transparent. Though the contracting method is likely to be very similar, generally speaking the difference is outlined in bold in the two following paragraphs. Definitions for these types of research are located in [DFARS 235.001](#).
- b. A BAA is a publication in the Commerce Business Daily and the Electronic Posting System (EPS) of a competitive selection for **basic** and **applied research** where the research is not related to the development of a specific system or hardware procurement. A BAA is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs. The BAA technique is used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.
- c. A PRDA is a publication in the Commerce Business Daily and the EPS of a requiring activity's interest in new and creative research or development solutions to scientific or engineering problems, with the intent to solicit competitive proposals. A PRDA may be an appropriate contracting method for **applied research** and **advanced technology development** that has general application and is not system specific (e.g., not related to the development of a specific weapon system or a specific hardware development effort). The PRDA is an Air Force-developed procedure that pre-dates the BAA and is not used by other agencies.

#### PURPOSE

BAA and PRDA techniques will be used to the maximum extent consistent with applicable regulations and procedures. They are not intended to replace existing contracting procedures where a technical requirement can be sufficiently defined for solicitation. BAAs and PRDAs should be considered when the Government desires new and creative solutions to problem statements and/or advances in knowledge, understanding, technology and state-of-the-art. The Government must be able to state its objectives in terms of areas of need or interest rather than specific solutions or outcomes. Development of prototype hardware may be pursued under either technique; however, such development must demonstrate a particular technical approach or solution. It should not be for the purpose of acquiring specific hardware that has already been defined or developed by the Government.

- a. **BAAs:** BAAs are used for *basic research* and *applied research* in broadly stated areas of scientific study and experimentation directed towards advancing the state of the art. BAAs will not be used for research efforts related to specific weapon systems or hardware development.
- b. **PRDAs:** PRDAs are intended for *applied research* and *advanced technology development* that has general application and is not system specific (e.g., not related to the development of a specific weapon system or a specific hardware development effort).

#### TRENDS

- a. Both BAAs and PRDAs are used far more extensively in Science and Technology (S&T) acquisitions than formal Requests for Proposal (RFPs) because of their flexibility. This practice is expected to continue. In addition, the Air Force Materiel Command's (AFMC) goal for the year 2000 is to have paperless acquisitions. This initiative will introduce a new trend for Wright Research Site (WRS)

Contracting of synopsisizing in the CBD (both electronic and hard copy) a notice of the announcement. The electronic [CBDNet](http://www.cbdnet.gov) provides an Internet link to the Electronic Posting System (now termed FedBizOpps) website <http://www.eps.gov/> where the announcement is posted in full. Consistent with FAR 5.102(a)(7) WRS intends to employ the solicitation process via the electronic medium.

b. The Air Force Research Laboratory (AFRL) makes awards under BAAs issued by other Government agencies such as Defense Advanced Research Project Agency (DARPA), Defense Logistics Agency (DLA), etc., provided these agencies follow established BAA guidelines as required by the Federal Acquisition Regulation (FAR).

#### ADVANTAGES OF THE BAA AND PRDA PROCESSES

The BAA/PRDA process offers several advantages over other competitive acquisition processes. Advantages include:

1. BAAs/PRDAs encourage creative and unique ideas by giving offerors the flexibility to propose solutions to stated Government technical areas of interest or problems.
2. Offerors may respond to all or part of the areas of interest or problems in the announcement. Offerors should contact the Project Engineer if they are considering proposing to only a part of the announcement requirements.
3. The Government may choose to procure all or part of an offeror's proposal. The Government also has the flexibility to determine the appropriate instrument (e.g., contract, grant, cooperative agreement, technology investment agreement or other transaction).
4. The offeror defines the Statement of Work (SOW) in accordance with the proposed solution to the Government-stated technical areas of interest or problems.
5. Government technical focal point may communicate with offerors until the technical evaluation is finalized.
6. Acquisition time is reduced.

#### BAA/PRDA PROCESSES

- a. **Open-Ended** A BAA or PRDA may be published to allow white papers or proposals to be submitted within a specified period. Initial offers generally are brief descriptive white papers or abstracts, but may also be full technical and cost proposals. Submissions are reviewed/evaluated as received during the period that the solicitation is open. Offerors that submitted white papers may be invited to submit full technical and cost proposals. Some open-ended BAAs/PRDAs allow white papers or proposals at any time during the solicitation period while others may specify incremental due dates during the period the announcement is open.
- b. **Single-Step** The single-step process is used to request full technical and cost proposals by a single date published in the CBD announcement. Proposals are evaluated immediately subsequent to receipt of the proposals by the evaluation team. This process is employed most frequently at WRS.
- c. **Two-Step** Under this process, potential offerors are invited to submit brief descriptive white papers/abstracts and a rough order of magnitude (ROM) by a date specified in both the CBD notice and the announcement. The Technical Evaluation Team evaluates these within a specific time period. Offerors that submitted white papers found to be of interest may be requested to submit formal technical and cost proposals by a specified date. Note, however, that any offeror may submit a full proposal even if they were not requested to submit one. All proposals are then evaluated as a group. The two-step

process reduces acquisition resources for both the Government and industry. It may be considered when a large number of proposals are anticipated or to determine if further Government interest is warranted. If further interest is not warranted, industry saves unnecessary bid and proposal costs and the Government saves evaluation time

Alternatively, the team may decide that offerors not submitting a white paper will not be eligible to receive an award. The requirement to submit a white paper to be eligible for award must have been stated in the announcement. All proposals then are evaluated as a group.

d. **Oral Presentations** The Government may request oral presentations to substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the selection process. Oral presentations may be particularly useful in communicating capabilities, past performance, work plans or approaches, staff resources, transition plans, and sample tasks. Oral presentations may occur at any time during the BAA/PRDA processes described above.

The contractor will find specific information, including procedures, if oral presentations are requested in the announcement. Areas to consider are: time limits, presenters, place and date of presentations, evaluators, documentation requirements, how evaluation factors will be evaluated during the presentations, etc. The following parts of the proposal may be requested in writing: Statement of Work (technical information to be referenced in the proposal); resumes; representations and certifications; cost or price proposals; and signed offer sheet. See [FAR 15.102](#) for further information.

## **COMMUNICATION WITH THE GOVERNMENT**

a. Laboratory technical personnel may continue to talk directly with offerors on a BAA/PRDA acquisition to resolve questions and provide general program information until a purchase request is received in the contracting office. Direct communications will operate in both directions, but questions on status or the evaluation process often delay the acquisition. The offeror should initiate discussions only when absolutely necessary. The following is prohibited:

- Discussion of other offerors' proposals,
- Discussion of rating information, and
- Proposal revision during technical discussion.

b. In addition, questions outside the scope of the technical focal point, such as contract terms and conditions or projected award schedule, should be referred to the Contracting Officer or Contract Negotiator.

## **BAA/PRDA PROCESS FLOW**

[Attachment 2](#) depicts a BAA or PRDA single-step process. This flowchart is intended to give a general overview of the steps involved in the overall process. Using a different method, such as the open-ended or two-step process could alter the flow somewhat.

## CHAPTER 2

### SYNOPSIS/ANNOUNCEMENT INFORMATION

#### GENERAL

Although funding requirements are never secure, AFRL only issues a BAA/PRDA announcement when the Government is reasonably assured that funding will be available at the time of award. A notice is first posted electronically in the CBDNet and EPS and subsequently published in hard copy in the CBD. *The notice published in the hard copy CBD represents the official notification to prospective offerors of a potential Air Force acquisition.* It constitutes the only notice of the acquisition, and provides the Internet web site address for accessing the actual solicitation information. [Attachment #1](#) to this guide is a sample WRS BAA/PRDA CBD notice. The WRS web page also contains current contracting opportunities and links customers to the EPS website, where the entire announcement is provided. **No hard copy of the web announcement will be published/issued/mailed.** No solicitation (RFP) will be issued other than what is provided at the specified web site, unless an amendment to the solicitation is issued. For any amendments/revisions made to the BAA/PRDA announcement, a notice will be issued in the CBD which will providing the Internet web site address for accessing the amendment.

#### ANNOUNCEMENTS

a. A BAA/PRDA Announcement outline may include the following:

1. ANNOUNCEMENT

2. INTRODUCTION

SECTION A: STATEMENT OF PROBLEM/OBJECTIVE

SECTION B: AWARD INFORMATION

SECTION C: PROPOSAL PREPARATION INSTRUCTIONS

SECTION D: BASIS FOR AWARD

SECTION E: OTHER INFORMATION TO OFFERORS

3. ORAL PRESENTATION INSTRUCTIONS

4. TECHNICAL SUPPLEMENTAL INFORMATION MODEL CONTRACT

5. REPRESENTATIONS AND CERTIFICATIONS

6. CONTRACT DATA REQUIREMENTS LIST (CDRL)

7. DD FORM 254

b. **CBD Notice** The sample BAA/PRDA CBD notice, reflected as [attachment #1](#) herein, is printed in the U.S. Government Procurements, Services, A, Research and Development section of the CBD. The CBD announcement provides the purpose of the acquisition and identifies what area(s) of research or what problem(s) need to be solved. It includes technical and contracting points of contact that can provide additional assistance if needed. The CBD notice provides the web site (EPS) for the actual BAA/PRDA announcement for offerors to access. Potential offerors are encouraged to make contact with the listed individuals for possible clarifications via telephone, or in person; written requests should be avoided if possible. The areas discussed below are those that usually generate the most questions from potential offerors. Hopefully, the following paragraphs will clarify the information in the solicitation and answer many potential questions.

c. **Announcement Revisions** Changes to the BAA/PRDA announcement can only be made by publishing a notice of the revision (amendment) in a subsequent CBD notice. The entire amendment is published in EPS. Amendments to an announcement are used to extend proposal due dates or clarify requirements. They may be used to change or modify existing minor technical requirements. A new announcement may be issued and the old one canceled if the requirements change substantially. Offerors should monitor all CBD issues subsequent to the original one, up to the time of the proposal due date. Any notice of any amendment will appear in the same section of the CBD as the original notice.

d. **Late Proposals** The due date for proposals will be specified in the solicitation. As a minimum, offerors will have 45 days to submit a proposal; longer times will be specified, if applicable. The proposal due date is usually firm. Late proposals are only accepted if they comply with the provisions of FAR clause 52.215-1(c)(3). Most WRS announcements specify a proposal due date (Single Step Process). If it allows incremental due dates, the announcement is Open-Ended (see Chapter 1), and proposals may be submitted by the specified increment(s). A proposal due date can only be changed through a formal amendment of the announcement, which is published in a notice of the CBD and on the EPS website. In addition, technical and cost proposals are due on the same date unless noted otherwise in the solicitation. In the Two-Step Process, the late proposal rule may apply to both due dates, (1) the due date for the receipt of the white papers/abstracts, and (2) the due date for the receipt of a formal proposal, but it must be clearly stated in the solicitations for each.

e. **Multiple Awards.** Many announcements result in multiple awards. When applicable, the announcement may specify a government-estimated level of effort anticipated for each contract award. However, to allow for program flexibility, the Government may not provide a level of effort for each award, but may instead indicate the total value of all awards anticipated. Occasionally, however, WRS may award only a part or parts of a proposal rather than acquiring the entire proposal. In those instances, an estimated level of effort or total contract value is not necessarily helpful.

f. **Source Lists.** Due to the nature of the BAA/PRDA process, the WRS contracting office does not prepare a "source list" or "bidders list." Therefore, such a list is not available. Please do not request one.

g. **Availability of Reference Documents**

Copies of specifications or Data Item Descriptions (DIDs) cited in the announcement may be obtained at the Department of Defense Single Stock Point for Mil Specs and Standards website:

<http://www.dodssp.daps.mil/>. Their Help Desk phone number is 215-697-6257/6936.

Copies of the DOD Index of Specifications and Standards and Acquisition Management Systems and Data Requirements Control List, DOD 5010.12-L, may also be ordered from this website. This site also provides access to several data base systems for DOD-wide standardization document information management and other digital libraries. Another website provides some of the DIDs that are commonly cited in WRS announcements:

<http://www.mn.afrl.af.mil/public/dids/didshelp.html>.



## CHAPTER 3

### PROPOSAL PREPARATION

#### GENERAL

a. The technical/cost proposal submitted by an offeror in response to a BAA/PRDA is the only vehicle available to the offeror for receiving consideration for award. The proposal must stand on its own merit; only information provided in the proposal can be used in the evaluation process leading to an award. The proposal should be prepared simply and economically, providing straightforward, concise delineation of capabilities necessary to perform the work proposed. The technical proposal must be accompanied by a cost/price proposal because cost and technical considerations are reviewed simultaneously.

b. Proposals containing data that are not to be disclosed to the public for any purpose or used by the Government except for evaluation purposes must include the following statement on their title pages:

***The proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror as a result of, or in connection with, the submission of these data, the Government shall have the right to duplicate, use, or disclose these data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use the information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained on sheets (insert page numbers or otherwise identify the sheets).***

Each restricted data sheet should be marked as follows:

***Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation.***

c. In an effort to move toward paperless contracting, the cost and technical proposals may be submitted via electronic means on computer disk or CD-ROM. Note, however, that a paper copy of each proposal may also be required to be submitted with the electronic medium. Please refer to the individual announcement instructions. Please note that classified information must NOT be transmitted via e-mail or through the internet; however, if needed or required, classified information on computer disk or CD-ROM must be handled in the same manner as classified paperwork. If proposals are not submitted on computer disk or CD-ROM, they must be submitted in an original and a specified number of copies. Format of the electronic submittals will be specified in the announcement.

d. The technical proposal checklist below is provided for your assistance to prepare your technical proposal.

***Note: Always compare the guide instructions with the announcement instructions as they may be tailored for some projects. Tailoring may differ somewhat from the instructions herein. Should that occur, you should comply with the announcement proposal preparation instructions.***

#### PROPOSAL CONTENTS/CHECKLIST

##### PART I - Technical Proposal



Cover Page  
Table of Contents

### **Technical Approach**

Background/Scope/Program Objectives  
Program Plan  
Technical Discussion  
Program schedule (e.g., include tasking milestone chart(s))

### **Capabilities and Relevant Experience**

Related Government/commercial contracts, previous or related IR&D work, etc.  
Facilities/Resources  
Resumes of Key Personnel

### **Management**

Program Organization Chart(s)  
Management Approach  
Appendix

### **PART II - Offeror Statement of Work**

- 1.0 Scope
- 2.0 Requirements

**NOTE: PLEASE USE THE DECIMAL NUMBERING SYSTEM ABOVE FOR SOW PROPOSAL PREPARATION**

## **PROPOSAL CONTENTS**

### **PART I - Technical Proposal**

- a. **Cover Page:** The cover page should include the BAA/PRDA title and reference number, name and telephone number for the principal points of contact (both technical and contractual), and any other information that identifies the proposal. The cover page should also contain the proprietary data disclosure statement, if applicable.
- b. **Table of Contents:** Include a Table of Contents immediately following the cover page.
- c. **Technical Approach**
  - 1. **Background/Scope/Program Objectives:** The technical proposal must convey an understanding of the problems or limitations of the general technology area and the intended application(s). It should be an overall summary of the technical issues addressed by the offeror's proposal without merely repeating the requirements. This should provide a vision of what will ultimately be achieved and what solution this effort will produce.
  - 2. **Program Plan:** The program plan should present an orderly progression of the technical and management efforts to be performed. Upper and lower bounds should be placed on what will be attempted or investigated within the confines of program funding. Some redundancy is inevitable but should be used judiciously to stress key points.

3. **Technical Discussion:** In this section, the offerors should provide technical detail and analysis necessary to support the technical approach they are proposing. They must clearly identify the core of the intended approach. If the offeror has a "new and creative" solution to the problem(s), that solution should be developed and analyzed in this section. The proposal should include a risk assessment of key technical, schedule or cost areas and their potential impact on the program. If subcontractors are proposed, identify why selected and what tasks they are to perform. The offeror shall reference/acknowledge all specified data items (in the contract data requirements list (CDRL)) that were published in the announcement.

4. **Program Schedule:** The schedule represents the offeror's plan to perform the program tasks in an orderly, timely manner. Provide each major task identified in the SOW as a separate line on the program schedule chart. Provide a schedule of when the data item descriptions (DID) identified in the announcement are to be delivered.

**d. Capabilities and Relevant Experience**

1. Identify related Government/commercial contracts/previous or related IR&D work
2. Identify facilities/resources proposed for the effort
3. Identify and provide resumes of all key personnel (include key subcontract/consultant personnel)

**e. Management**

1. **Program Organization:** Identify the program organization. Organizational charts may be helpful in showing the structure of the program.

2. **Management Approach:** Identify management approach to assure contract completion (e.g., meeting schedule, cost and program goals).

3. **Appendix(es):** Appendices may include technical reports, published papers, and referenced material in support of the offeror's proposal. Do not provide commercial product advertising brochures. Please be aware that these may be included in the proposal page limitation. The individual announcement may specify that limitation, so it is important to verify this in each BAA/PRDA.

**PART II - Offeror Statement of Work**

a. The SOW developed by the offeror and included in the proposal may be incorporated into a binding contract. Developing the SOW as a separate and distinct part of the proposal (Part II) will allow us to incorporate it with minimal time and effort. The proposed SOW must contain a summary description of the technical methodology as well as the task description, but not in so much detail as to make the contract inflexible. Do not include any proprietary information in the SOW. Contractors may request copies of our contracts under the Freedom of Information Act; consequently, it is imperative that no company-sensitive information be included in the SOW of the technical proposal.

b. The following is offered as a recommended format for the SOW. Begin this section on a new page. Start your SOW at Paragraph 1.0.

1. **1.0 - Scope:** This section includes a statement of what the program covers. This should include the technology area to be investigated, objectives/goals, and major milestones for the effort.
2. **2.0 - Requirements:**

(a) The work effort should be segregated into major tasks and identified in separately numbered paragraphs (similar to the numbered breakdown of these paragraphs). Each numbered major task should delineate by subtask the work to be performed, including any cost-sharing work, and should be sequentially numbered

(b) The offeror must identify all reviews and when/where (identify by milestone or task) they will be conducted.

(c) Any and all hardware/software to be delivered to the Government as a result of the program must be identified.

**NOTE: Always compare the guide instructions with the announcement instructions as they may be tailored for some projects. Tailoring may differ somewhat from the instructions herein. Should that occur, you should comply with the announcement instructions.**

#### **GUIDELINES FOR COST PROPOSALS**

a. Adequate price competition, as defined in FAR 15.403-(c)(1), is normally anticipated on all BAA/PRDA proposals submitted to DET 1 AFRL/PK. If it is later determined that adequate price competition *does not* exist, and the threshold for a negotiated contract is expected to exceed \$550,000 then the submission of cost or pricing data may be required as defined in FAR 15.401. When cost or pricing data are required, the contracting officer shall require the offeror to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

The cost or pricing data.

- (1) A certificate of current cost or pricing data, in the format specified in FAR 15.406-2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.
- (2) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data will not be considered cost or pricing data as defined in FAR 15.401 and will not be certified in accordance with FAR 15.406-2.

b. **Cost Sharing:** AFRL policy is that the Government will normally fully fund all R&D efforts with appropriated funds. However, there may be occasions where an offeror might anticipate some commercial or other form of additional benefit from participation in an AFRL project and may be willing to share in the costs of the project. In such cases, the offeror will be requested to verify or otherwise substantiate it and a cost sharing arrangement may be used. If so, a cost-sharing arrangement will be incorporated in the resulting award. No type of federal funding may be used as a source for the contractor's share of the cost. There are certain programs that may require cost sharing, such as Manufacturing Technology, which statutorily require cost sharing. Certain types of assistance instruments, such as Technology Investment Agreements or some Cooperative Agreements, may also require cost sharing. On assistance instruments, however, some type of federal funding, such as IR&D, may be appropriate or acceptable.

c. **Cost Element Breakdown:** Clear, concise and accurate cost proposals reflect the offeror's financial plan for accomplishing the effort contained in the technical proposal. As a part of its cost proposal, the offeror shall submit other than cost or pricing data in the format suggested by FAR 15.403-5(b)(1), or in contractor's format containing the information outlined below, together with supporting breakdowns. All direct costs (labor, material, travel, computer, etc.) as well as labor and overhead rates should be provided by Government Fiscal Year (GFY; i.e., 1 Oct - 30 Sep). Following this narrative is an example of

pricing information that may be required. The supporting schedules may include summary level estimating rationale used to generate the proposed costs. Information such as historical cost information, judgment, analogy to other similar efforts, etc. is generally accepted methods of projecting labor expenditures. Purchase order history, catalog prices, vendor quotations, firm negotiated values, engineering estimates, etc. are generally accepted methods of projecting material requirements. The cost element breakdown(s) may include the following.

1. **Direct Costs:** For direct inputs such as labor hours, material dollars, non-factored travel costs, computer usage, etc. provide supporting documentation, by Government fiscal year, (1 Oct through 30 Sep) such as:

Labor Hours by Category of Labor (by GFY year)  
 Labor/Overhead Rates by Category (by GFY year)  
 Overhead/Factor Base Identification  
 Breakout of Travel Computations  
 Kinds, Types, and Detailed Pricing of Materials  
 Amount and Kind of Computer Usage and How Costs Derived

Direct labor hours, with their applicable rates, must be broken out by Government fiscal year and the bases used clearly identified. For material costs identify what will be purchased and the basis for the estimated cost, e.g. vendor quote, engineering estimate, etc.

2. **Labor and Overhead Rates:** The source of labor and overhead rates and all pricing factors should be identified. For instance, if a Forward Pricing Rate Agreement (FPRA) is in existence, that should be noted, along with the Administrative Contracting Officer's (ACO's) name and telephone number. If the rates are based on current experience in your organization, provide the history base used and clearly identify all escalation, by year, applied to derive the proposed rates. If computer usage is determined by a rate, identify the basis used and rationale used to derive the rate.
3. **Material/Equipment:** List all material/equipment items with associated costs and advise if the costs are based on vendor quotes, data and/or engineering estimates; provide copies of vendor quotes and/or catalog pricing data.
4. **Subcontractor Costs:** Submit all subcontractor proposals and analyses with your cost proposal. If the subcontractor will not submit cost and pricing information to the offeror, this information must be submitted directly to the Government for analysis. On all subcontracts and interdivisional transfers, provide the method of selection used to determine the subcontractor and the proposed contract type of each subcontract. An explanation shall be provided if the offeror proposes a different amount than that quoted by the subcontractor.
5. **Special Tooling or Test Equipment:** When special tooling, and/or test equipment is proposed, attach a brief description of said items and indicate if they are solely for the performance of this particular contract or project and if they are or are not already available in the offeror's existing facilities. Indicate quantities, unit prices, whether items are to be purchased or fabricated, whether items are of a severable nature and the basis of the price. These items may be included under Direct Material in the summary format.
6. **Consultants:** When consultants are proposed to be used in the performance of the contract, indicate the specific project or area in which such services are to be used. Identify each consultant, number of hours or days to be used and the consultant's

rate per hour or day. State the basis of said rate and give your analysis of the acceptability of the consultant's rate.

7. **Facilities Capital Cost of Money:** If Facilities Capital Cost of Money is claimed, a properly executed DD Form 1861 is required in support of the dollars proposed.

If an offeror takes exceptions to the requirements called out in the announcement (e.g., base support, Government-furnished property (GFP), CDRLs), these should be clearly stated in the cost proposal.

## CHAPTER 4

### WHITE PAPER/PROPOSAL EVALUATION

#### WHITE PAPER EVALUATION:

If the Two-Step process (see [Chapter 1](#)) was used, offerors will be required to submit a white paper or proposal abstract. The evaluation team will evaluate the white paper to determine its overall technical value and interest to the Government. Offerors that submitted white papers found to be of interest may be requested to submit formal technical and cost proposals by a specific date. However, offerors may still submit a full proposal on any white paper even if they were not requested to do so.

#### PROPOSAL EVALUATION:

Proposals are evaluated solely on the criteria published in the announcement. The proposal must stand on its own merit as submitted. During the technical evaluation, the Government technical point of contact may initiate a request for technical clarification. Refer to [Chapter 1](#) in the paragraph entitled [COMMUNICATION WITH THE GOVERNMENT](#), for a further explanation of this difference. Once a purchase request has been submitted to the contracting office, all other contacts must be made through the CO or assigned Contract Negotiator. The technical point of contact will refer any contractor's questions to the CO after the request has been initiated.

#### EVALUATION OF ORAL PRESENTATIONS:

Offerors may be required to present part or all of their proposals orally (See [Chapter 1](#), in the section entitled [Oral Presentations](#)). This would consist of a briefing format where the offeror would present their proposal to the evaluation team. **Specific requirements for oral presentations may vary with each announcement so offerors must read the proposal preparation instructions carefully.** Submission of presentation slides will normally be required at time of any written proposal documents. Offerors are usually given a specific amount of time to present their proposal and/or a maximum number of charts that they can present. Since communications are allowed during the evaluation, members of the evaluation team will usually be permitted to ask questions. The questions will be for clarifications or further explanation only, as the evaluation team is not allowed to provide feedback (positive or negative) to the offeror during the presentation. The offeror will usually be given the option of answering the question immediately or providing the answer at a later time. The evaluation team will base their evaluation on the content of the presentation and not on the "polish or style" of the presentation. As mentioned in Chapter 1, some written information may still be required and advance copies of the presentation charts are usually required. If presentation slides have also been submitted, no changes, other than administrative, are permitted. Cost proposals are usually not included in the oral presentation. As stated in the paragraph above ([PROPOSAL EVALUATION](#)), the entire proposal (written portions and those portions that are orally presented) will be evaluated solely on the criteria published in the announcement and the proposal must stand on its own merit as presented/submitted.

#### **TECHNICAL CLASSIFICATIONS:**

The technical evaluation will classify proposals into three categories as required by AFMC FAR Supplement 5335.016-90(d.2). See AFMC FAR Supplement [5335.016-90\(d.2\)](#) for definitions of the categories.

#### **AWARDS:**

a. **Multiple Awards and Flexibility in Awards made:**

Under the BAA/PRDA method, multiple awards are generally made based on the quality of the proposals and availability of funding. Occasionally, the AF may be interested in buying only a certain portion (or portions) of a proposal. The BAA/PRDA method provides the flexibility to make an award for only those portions or tasks of the proposal that are of interest to the Government. You will be notified in writing if the Government intends on making an award based on your proposal. The notification will indicate if all or only portions of your proposal will be included in the award.

b. **Sequence of Awards:**

In most BAAs/PRDAs, awards are usually made to Category I proposals prior to awards being made to any Category II proposals. However, because of the uniqueness of the BAA/PRDA evaluation process, it may be the case that while your overall proposal may be ranked in Category II (or even Category III) a certain part of the proposal may be ranked Category I or II. In this case the flexibility of the BAA/PRDA process (mentioned in paragraph a.) will allow the Government to make an award for that portion of your proposal that is of high interest to the Government. It may also be the case that another division of the laboratory or even another agency may be interested in your proposed approach (or a portion of the proposal) and provide funds to make an award for your effort. Once again, the flexibility of this process allows us to make awards in these instances. In fact, the BAA/PRDA notification letter to Category I and II offerors states; "If additional funds become available and you are considered for an additional award, you will be contacted to confirm your continued interest and to discuss the currency of your proposal". Category III proposals, with the exception of certain parts of the proposal (as described above) essentially have no chance for award.

#### **USE OF OUTSIDE CONSULTANTS FOR EVALUATION:**

All BAA/PRDA proposals are evaluated by Government personnel or as otherwise specified in the announcement. In some cases, when the necessary expertise cannot be found within the Government, outside consultants may be included on the evaluation team. This will be indicated in the announcement.



## CHAPTER 5

### TECHNICAL AND COST NEGOTIATIONS

#### NOTIFICATION OF SELECTION

- a. **Type of Arrangement:** The period between selection of the proposal(s) and award(s) requires a coordinated effort among WRS technical and contracting personnel. The team works to award the best possible cost and technical arrangement. The contracting officer works with the other team members to determine the appropriate award vehicle and pricing arrangement. Choices include contracts or assistance instruments (grants, cooperative agreements, technology investment agreements and other transactions). Information concerning these types of arrangements is available from the contracting officer.
- b. **Notification:** Once the evaluations are completed, the offerors selected for negotiation are notified. The Government negotiator may verbally notify those offerors of their selection and discuss any further actions they must take. This telephone conversation will be confirmed in writing. In lieu of a telephone call, the negotiator may send a letter notifying those offerors whose proposal was selected for negotiation. The letter will include further instructions, a model contract/instrument, and a set of Representations and Certifications (contract only) that must be completed by the offeror. The model contract/instrument provides the basis for negotiations on all award requirements, terms, and conditions. If the offeror takes exception to any requirements, these must be specifically identified in the reply to the negotiator. The reply must include the completed Representations and Certifications and all information required by the Government.
- c. **Model Contract:** If the posted announcement contains a model contract, one will not be forwarded with the notification letter. If any clause changes are affected, the Government negotiator will identify them to the offeror. The offeror should within its initial proposal submittal address any exceptions to terms and conditions of the model that was posted on the web.
- d. **RDSS/C:** If the determination is to negotiate a contract, the contracting officer (CO) must also consider whether to award a contract using the Research and Development Streamlined Solicitations/Contract (RDSS/C) format. Information on RDSS/C can be found on <http://www.rdss.osd.mil/>. This format includes clauses only at the Federal Acquisition Regulation (FAR) and Department of Defense FAR (DFARS) level, except for a small set of local procedures, such as access to Air Force installations, or base support requirements. There are several factors the CO must consider, such as the type contract, multiple unique clauses, etc.
- e. **Updated Price Proposal/Information:** The notification letter may instruct the offeror to respond with either an updated price proposal or additional pricing information that should accompany it. An offeror also may elect to update a proposal to reflect current costs. The offeror is required to submit information on only those elements that have changed from the original proposal. A new complete cost proposal is not required.
- f. **Technical Proposal Changes:** Normally, if the Government technical evaluators need any clarifications, the Project Engineer or CO/Negotiator will contact the offeror before completion of the evaluation and issuance of the notification letter. However, a proposal may be selected for negotiations, although additional technical data is still required. If this occurs, the Government negotiator will request any technical documentation needed.
- g. **Buying Part Versus All:** Normally, an entire proposal effort is purchased; however, a WRS Technology Directorate (TD) will sometimes be interested in acquiring part of a proposal. This is one



reason the announcement proposal instructions require offerors to write a technical SOW in the form of separate tasks. It facilitates evaluation, provides an easy way to select the desired tasks, and facilitates cost trackability by task. If a WRS TD decides to buy only part of a proposal, the notification letter may request the offeror to revise the price proposal to reflect only what will be purchased.

h. **Clearance Review:** After the Government has received all the information and documentation requested by the announcement, the Government will evaluate that information. The Government negotiator will obtain offeror rate information from the contract administration or Defense Contract Audit Agency (DCAA) office in order to develop a Government price negotiation position. The Government negotiator will also develop the Government position on any other issues subject to negotiation (e.g., SOW, technical considerations, terms and conditions, etc.). This Government position is then provided to the CO for clearance review and, depending on the value of the proposed effort, forwarded to a Clearance Approval Authority (CAA). After review, the CAA approves the clearance and authorizes the negotiator to begin negotiations. The Government negotiator then contacts the offeror to begin negotiations.

## NEGOTIATIONS

a. **Technical:** Any unresolved technical issues, such as the SOW, will normally be negotiated first. Typically, negotiations involve specific language issues or determining Government needs versus effort proposed. In most cases, the negotiator will request the offeror's SOW once the technical tasks or issues are agreed upon. It is important to resolve these matters as quickly as possible to avoid numerous iterations of the SOW by both the offeror and the Government. Most of these negotiations are conducted via telephone and supplemented by either telefax or E-mail. If many complex issues arise, the Government negotiator may request face-to-face meetings to resolve them.

b. **Terms and Conditions:** Any exceptions, changes, or additions to the model contract/instrument should be clearly identified and justification should be provided for each. Some may affect pricing or technical considerations (e.g., limited and restricted rights, licensing agreements, or royalties) and should normally be resolved before negotiating cost and fee/price. If the RDSS/C format is determined the best to use, there will likely be few, if any, exceptions allowable to the clauses.

c. **Cost and fee (if applicable)/Price** should be negotiated last. If rates, factors, or other cost elements change during the course of negotiations, the Government negotiator must be informed as quickly as possible to preclude any delays. The offeror may be asked to document these changes. To expedite negotiations, this information should be sent via telefax if it is not too voluminous. The great majority of BAA/PRDA actions will likely result in adequate price competition based on the FAR criteria. The contracting officer is responsible for evaluating the reasonableness of those offered prices. The analytical techniques and procedures employed mean to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition will determine the level of detail of the analysis required. FAR 15.404-1(d) requires that cost realism analysis be used on all cost reimbursement contracts to determine the probable cost of performance of the offeror. That cost may not necessarily coincide with the offeror's. Additionally, the government also performs a risk assessment. In that regard, the assessed risk should be commensurate with the fee. If the proposed and government assessed fee differ, then fee, like cost, will be negotiated.

d. **Early Effective Date:** Occasionally, circumstances arise within a peculiar program that may result in the offeror requesting an early effective date. An early effective date involves an offeror agreeing or requesting to start work on an award after the successful conclusion of negotiations, but without issuance of a signed award. The offeror assumes all risk in this situation. AFMC FAR Supplement 5304.190 requires that if there is no contract, all incurred costs shall be at the offeror's risk and not allowable on any Government contract. The offeror must weigh the benefit of starting an effort with an early effective date against the possibility that a contract will not be awarded. If the Government agrees to an early effective date, the CO will confirm the negotiated date in writing along with the provision of total cost risk assumption in the event that no award is issued. When the award is forwarded for signature, the early date the parties agreed to will be placed in the "Effective Date" block of the contract,

which acknowledges allowability of the costs incurred prior to the offeror and CO signatures reflected on the document. Otherwise, the effective date is the mailing date. On assistance instruments, recognition of some pre-award costs may be acceptable and negotiated with the grants officer; however, costs which pre-date the announcement cannot be recognized.

e. **Agreement:** Once negotiations have been concluded, the Government negotiator will ask the offeror to confirm the negotiations in writing. The confirmation should include the cost and fee or price, and any terms and conditions agreed to (e.g., phase cost and fee, SOW changes, contract clause or instrument article exceptions, Small Business Subcontracting Plan, etc.). For an effort where the contracting officer determines there was not adequate price competition, if the total price of the contract reaches the regulatory threshold, the offeror must furnish to the Government a Certificate of Current Cost or Pricing Data as soon as possible following negotiations. While the offeror prepares this documentation, the Government negotiator initiates the contract preparation process.

f. **Document and File Preparation:** Once negotiations have successfully concluded, the Government negotiator begins to prepare the document and contract file for award. The file and document are submitted to the government legal office for their review.

g. **Offeror Signature:** Often the negotiator may submit the contract for legal review and contractor signature simultaneously. In this case the negotiator may ask the contractor to withhold signature until completion of that review. Any exceptions taken should be immediately brought to the attention of the Government negotiator via telephone for resolution prior to signing and forwarding the document. Without this initial contact, signing the document contingent upon making any excepted changes will needlessly cause delay of the award, particularly if it is a condition that the Government finds unacceptable. Any changes agreed to will be reflected in the final document.

h. **CO Signature and Distribution:** After the contractor has signed and returned the document, the CO signs the contract and the document is distributed. If it exceeds five million dollars, by regulation the CO must wait three days for public announcement of the award before distribution can be made.

## CHAPTER 6

### ASSISTANCE INSTRUMENTS INFORMATION

#### BACKGROUND

An award may be made from a BAA or PRDA announcement in the form of a grant, cooperative agreement, TIA or other transaction rather than a contract. These are known as "Assistance Instruments." Assistance Instruments (AI) are appropriate when the goal of the acquisition is to provide assistance by transferring a thing of value (such as money or government facilities) to accomplish a public purpose. On the other hand, a FAR contract is usually more appropriate when the goal of the acquisition is the purchase of goods or services for the direct benefit of the government. An AI, while legally termed a contract, is not subject to FAR. There are three basic kinds of AI's: (1) Grants, (2) Cooperative Agreements (CA) and (3) Other Transactions (OT) for Research. There is a new, very flexible class of agreements called Technology Investment Agreements (TIAs) that may be either a CA or OT, depending on the patent language contained in the document.

#### GENERAL

AI's differ from contracts in that they are usually more streamlined and less complex. AIs establish a "partnership" between the government and the recipient rather than a "buyer/seller" relationship that is common with a FAR contract. A grant does not require substantial Government involvement, where a CA or OT for research does require substantial Government involvement. Substantial Government involvement is defined as involvement, of a technical nature, over and above the normal program management functions. AI's are similar to contracts in that they both require basic cost and technical proposals (including the requirement for a proposed SOW) as well as negotiation and agreement on terms and conditions. They differ in that agreement is reached on an estimated budget rather than a fair and reasonable price. The DOD Grant and Agreement Regulations (DODGARs) is the guidance for grants and cooperative agreements. TIAs and other transactions are governed by separate DDR&E issued guidance. The web site for the DODGARs is <http://web7.whs.osd.mil/pdf/32106r/32106r.htm>. This web site also provides guidance and directions on Department-wide policies and procedures applicable to the award and administration of DOD grants, cooperative agreements and other transactions for research. Another web site that may be helpful on AI information includes <http://www.wrs.af.mil/contract/grants.htm>.

#### WHEN A GRANT IS AWARDED

Grants are normally awarded for basic and applied research efforts. They are intended to be used when the end objective is to advance the state of knowledge in an area of science or technology; to find a solution to a specific problem; or to achieve improved performance or reduce cost where no specific end result or product, other than documentation, is required. With a grant, there is not substantial involvement required between the government and the recipient. Any hardware involved would be for demonstration or proof-of-principle purposes only. The award of a grant must meet several other requirements in addition to the above. A grant must provide to the Government, as a minimum, a paid up license and march-in rights in patents. The following characteristics apply to a grant award:

- a. Primarily awarded to educational or non/profit organizations.
- b. Classified information is usually not involved.
- c. There is no fee or profit.
- d. DOD Grant and Agreement Regulations (DODGARs) does apply.
- e. Substantial involvement between the government and recipient is not required.

- f. Not subject to the terms of a procurement contract.

#### **WHEN A COOPERATIVE AGREEMENT IS AWARDED**

CA's are normally awarded for basic research, applied research, or advanced research or development efforts. A CA will require substantial involvement between the Government and the Recipient. A cost-sharing arrangement may be required. A CA must provide to the Government a paid up license and march-in rights in patents. The following characteristics apply to a CA award:

- a. Used when a contract and grant has been determined inappropriate.
- b. Substantial involvement between the government and recipient is required.
- c. Paid up license and march-in rights in patents must be obtained. Government Purpose Rights in Data usually is obtained.
- d. There is no profit/fee.
- f. Cost-share may be required and it may consist of other than cash; IR&D cost sharing allowable.
- g. Not subject to the terms of the Federal Acquisition Regulation.
- h. DODGARs does apply.

#### **WHEN AN OTHER TRANSACTION IS AWARDED**

An OT for research is used when it has been determined that a contract, grant, or CA is not appropriate. OT's are undefined legal instruments. An OT created under 10 U.S.C 2371 may only be used for purposes specifically authorized by law such as for basic, applied and advanced research. A 50/50 cost-share is required unless waived. The Government does not require paid up license and march-in rights in patents. An OT will require substantial involvement between the Government and the Recipient. The following characteristics apply to an OT for research award:

- a. Paid up license and march-in rights in patents not required.
- b. 50/50 cost sharing is required unless waived.
- c. Not subject to the terms of a procurement contract.
- d. DODGARs does not apply to OT's.
- e. Substantial involvement between the government and recipient is required.

#### **WHEN A TECHNOLOGY INVESTMENT AGREEMENT (TIA) IS AWARDED**

A TIA is a class of assistance instrument that may be either a CA or OT depending on the patent language included in the agreement. This instrument is used for stimulation or support of basic, applied, and advanced research, when it is appropriate to use assistance instruments and the research is to be performed by a for-profit firm or a consortia that includes for-profit firms, particularly firms that traditionally do not do business with the government. TIAs allow for flexibility in a number of areas that are often barriers to participation by firms that normally do not do business with the government, including standards for financial management systems, cost principles, and rights to technical data and computer software. The following characteristics apply to a TIA:

- a. Recipient must include a for-profit company.

- b. Used when a contract and grant has been determined inappropriate
- c. 50/50 cost share required unless waived.
- d. Paid up license and march-in rights in patents may be required if TIA is determined to be a CA. Not required if TIA is determined to be an OT for research.
- e. There is no profit/fee.
- f. Recipient may be a consortium (made up of multiple firms teaming together) that includes a for-profit firm.
- g. More flexibility in reporting requirements and payment procedures may be negotiated. Payment may be made based on completion of technical milestones.
- h. DDR&E guidance applies.
- i. Substantial involvement between the government and recipient expected.

#### **MODEL DOCUMENT AND NEGOTIATIONS**

After determining that an AI is the proper vehicle for award and upon selection of the proper type of AI, a model document will be issued to the recipient for review. The recipient should disseminate the model document to all recipient team members, if a consortium arrangement is applicable, for review. The recipient may be asked to provide back up cost information that substantiates the estimated budget for the award and gives clear insight into the costs shared by each side. Therefore, a budget proposal for the total program is required that provides a cost breakout of all recipient team members and/or subcontractors, as applicable. Fact-finding will usually be necessary to allow the negotiator to obtain the necessary information to evaluate the reasonableness of the costs proposed as well as the reasonableness or any proposed cost share. Negotiations should involve all the team members, the recipient team and government team, in order to communicate and finalize issues as expeditiously as possible regarding budget and other terms and conditions.

#### **OT FOR PROTOTYPE CREATED UNDER SECTION 845 OF PL 103-160**

The use of an Other Transaction (OT) for a prototype project was authorized by Section 845 of PL 103-160. This use of an OT is not considered an assistance instrument but rather an acquisition instrument. It is used when there is prototype development involved relevant to a major weapon or weapon system.

## **CHAPTER 7**

### **POST AWARD**

#### **LETTER NOTIFICATION**

The CO will notify Offerors whose proposals have not been selected for an award as soon as possible. This notification will be via a letter. If a proposal is acceptable for award (Category I or II) but sufficient funds are not currently available for an award, the offeror will be notified of this; however, the CO will also request that the proposal be available for possible future negotiation and award if funds become available.

#### **CBD NOTICE**

A notice of all awards made in connection with BAAs and PRDAs will be published in the CBD unless exempted by regulation.

#### **PRE AWARD DEBRIEFINGS**

When a proposal is not selected for award, an offeror may submit a written request for a debriefing of the evaluation results, prior to award, within three days after receiving notification of non-selection in the competition. See [FAR 15.505\(a\)](#). WRS desire is that the debriefing be relatively informal, and be accomplished either at Wright-Patterson AFB or by telephone/teleconference.

#### **POST AWARD DEBRIEFINGS**

If an offeror not selected for award was not provided a pre-award notification and desires a debriefing, the offeror may request one within 3 days after the date on which that offeror has received a post award notification of contract award in accordance with FAR 15.503(b). See [FAR 15.506](#).

#### **PROPOSAL RETENTION**

If a proposal is selected for award, the Government will retain several copies of it for reference purposes. The Government will normally destroy all but one copy of unsuccessful proposals; this copy will be retained as part of the official contract file. If proposals are sent on a floppy disc or compact disc, these may be returned to the offeror.

#### **FINAL REPORT**

After award, all offerors who submitted a proposal may submit a written request to the WRS Technology Directorate office to receive a copy of the final technical report resulting from the BAA or PRDA award(s).

## SAMPLE CBDNET SYNOPSIS

CBD Hard copy  
publication date

Internet CBD  
issue date

Commerce Business Daily: Posted in CBDNet on August 27, 1998]  
[Printed Issue Date: August 31, 1998]  
From the Commerce Business Daily Online via GPO Access  
[cbdnet.access.gpo.gov]

SUBJECT: A-- [Proposal due date] PLOITATION TESTBED (MSET) SYSTEM INTEGRATION  
SOL PRDA No. [redacted]  
DUE 013000

POC Contact Amy Claire, Contract Negotiator, (937) 255-2902,  
or Vicki A. Fry, Contracting Officer, (937) 255-2902

DESC: Air Force Research Laboratory, Sensors Directorate, Sensor  
Automatic Target Recognition Technology Division (AFRL/SNA)  
solicits research proposals for Multi-Sensor Exploitation  
Testbed (MSET) System Integration. The purpose of this effort  
is to develop an engineering prototype of a multi-sensor exploitation  
system that (1) provides a semi-automated capability to analyze  
and exploit multi-spectral and hyper-spectral (MSI/HSI) imagery,  
synthetic aperture radar (SAR) imagery, and foliage penetration  
(FOPEN) SAR imagery either individually or in combination and  
(2) can be used to evaluate and demonstrate the operational  
utility of using multi-sensor imagery to aid an image analyst

in the detection and identification of ground targets of interest.  
Interested offerors may view and/or download the full text of the  
Research and Development Announcement (PRDA) by using the following  
98-07-SNK, by accessing the Electronic Posting System at  
<http://www.eps.gov/>. Proposals in response to this PRDA must be received  
by 30Jan00 3:00 Eastern Daylight time, addressed to the attention of  
Amy Claire, AFRL/SNKR, Building 7, Area B, 2530 C Street, Wright-Patterson  
Air Force Base, OH 45433-7607. Direct questions to the Contracting  
point of contact: Amy Claire, AFRL/SNKR, 937-255-2902, Fax  
(937) 255-3985, e-mail [claireab@sensors.wpafb.af.mil](mailto:claireab@sensors.wpafb.af.mil).\*\*\*\*\*

EPS link to PRDA  
announcement

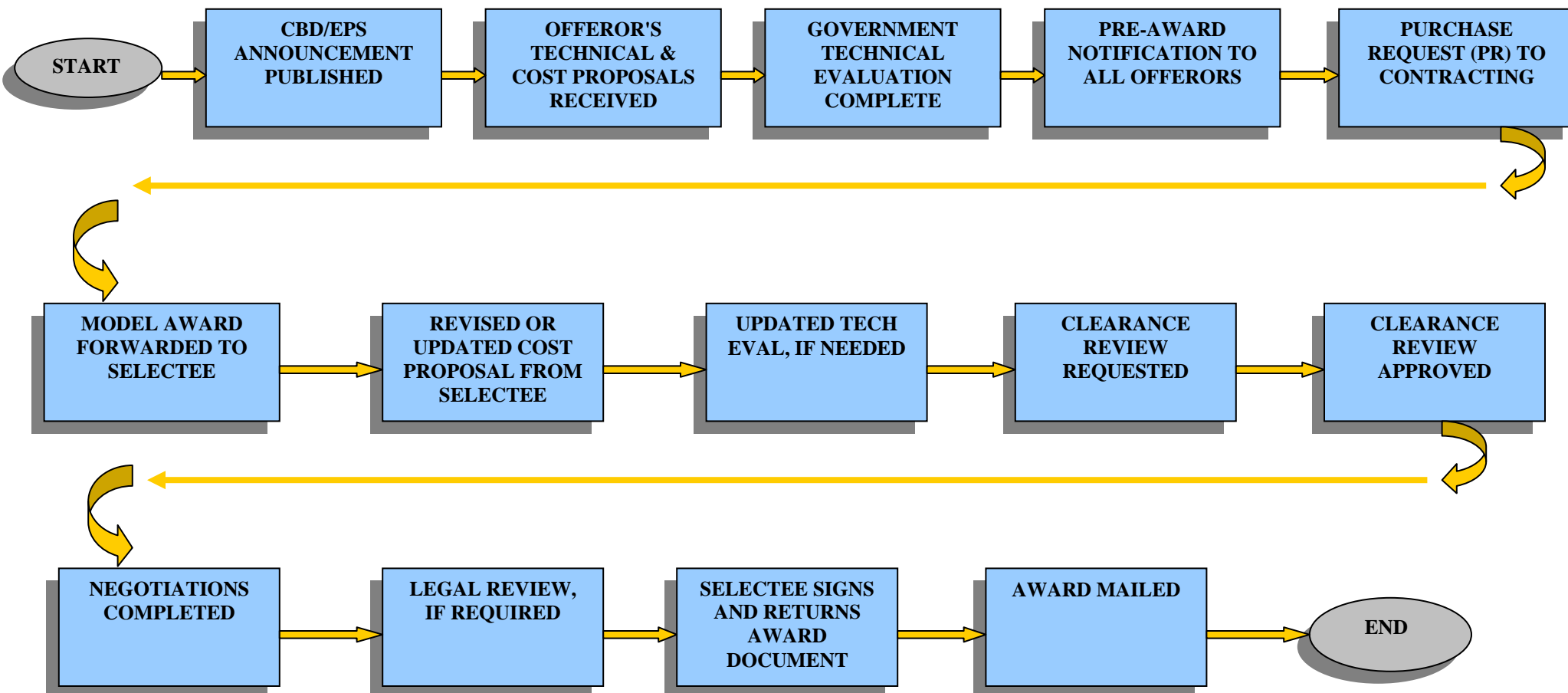
Contracting POC  
E-mail address

Attachment #1





**BAA/PRDA PROCESS FLOW -- SINGLE STEP PROCESS**



## **EXHIBIT 12**

To: ..... Leader Members  
From: ..... Michael T. McKibben  
Founder, CEO & Senior Manager  
Subject: ... Leader Report  
Date: ..... December 10, 2001

### Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.  
Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.

**H**oliday Greetings! I hope this letter finds you healthy and happy at this special time of year. Speaking for myself, I know that I am hugging my loved ones just a little tighter this year and appreciating them just a little more after the events of September 11.

I am pleased to bring you a strong report on the state of the company as we move into this 2001 holiday season. This is the first printed communication I have sent to all our members since September 11, so please permit me to put those events in a little Leader context.

While all of us in the Leader team work tirelessly, we have heavy hearts. Reports are still coming in from our members in the New York and New Jersey areas of family, friends, neighbors, colleagues and acquaintances who died in the tragedy of September 11, 2001. We hear about the recurring nightmares among the children of members who live near Ground Zero. One Leader member lost 5 in his company plus the loss of the 3-year old son of an employee who was a passenger on one of the planes. Another Leader member attended 9 funerals in the span of two weeks – all services for dads who left grieving widows and young children. One Leader Director lost his best friend who worked on the 104<sup>th</sup> floor of Tower 1. Yet another Leader Director was a good friend of conservative commentator Barbara Olson, wife of the Solicitor General, who was a passenger on American Flight 77 that crashed into the Pentagon. Unfortunately, we could fill pages relating similar stories.



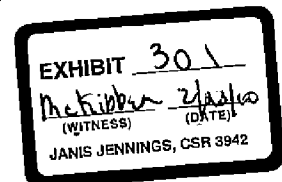
United We Stand

Our corporate website at [www.leader.com](http://www.leader.com) expresses some of our feelings. I think the additional thing I will say is that we have suddenly become more aware of what it means to be American and what it means to live in a *free country*. We are not perfect, for sure, but our Founding Fathers, in their wisdom and guided by God, did set in motion a new type of governance on this planet; a governance that depends upon moral men and women; a type of governance that gives hope and opportunity to the entrepreneurial spirit. Leader is a good example of that. Back in 1997 I had an idea for a new business and new product platform. Armed with that idea (and little else), I set up office in our spare bedroom and began planning for the company that is now Leader Technologies. We had no enterprise sponsors, no deep pockets, no insider relationships... just a dream, sheer determination and a country where dreams can be realized if one is willing to work hard. **Only in America.** Others like Ben Zacks, Michael Greulich, Adam Steiger, Brad Whiteman, Major General Freeze, Jeff Lamb, Steve & Tina Engle, and Karen Houser caught the vision (forgive me for not naming every Leader insider here – please see their names at the company website under “Management”). We

Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.

Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.



HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

LTI\_014121

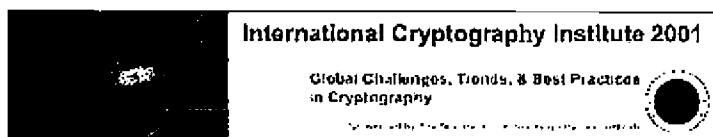
DEFENDANT'S EXHIBIT  
DTX 0178  
CASE NO. 1:08-CV-00862-LPS

Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 2 of 6

gained traction steadily. Along the way we met each of you. You caught the vision. The rest is history that brings us to today and the main purpose of this letter which is to set the wheels in motion for the next phase of growth in our company.

**Whatever it is about our country that makes Leader possible is some of what is unique about America.** We must hold fast to these unique qualities and make sure we preserve those lofty principles for posterity.

We are pleased to report the following highlights of the successful work efforts of the Leader team. This list is by no means comprehensive, nor can it convey the significant levels of "behind the scenes" effort underway. I can tell you that the length and breadth of Leader's sales, marketing and alliance-building expands daily in commercial, academic and government circles. Very powerful and influential people are being introduced to Leader and our technology. There is *much interest and enthusiasm* for the breakthroughs we have made in communications technology.



For example, just last week I attended with our Director Ed Detwiler and CTO Jeff Lamb the invitation-only International

Cryptography<sup>1</sup> Institute 2001 in Washington D.C. Speaker after speaker discussed the state of modern computing and laid out their recommended agendas for the next decade. Those agendas had **Leader2Leader™** written all over them, metaphorically speaking. Many of the United States' leading thinkers on e-commerce, cryptography, electronic security and privacy were at this invitation-only conference. People like Phil Zimmerman, the inventor of PGP and crusader for privacy rights in cyberspace; Dr. Whitfield Diffie, Sun Microsystems Vice President and inventor of the Diffie/Hellman encryption standard; Bruce Sterling, science fiction writer and author of *The Hacker Crackdown: Law and Disorder on the Electronic Frontier*; Special Agent Marcus C. Thomas, Section Chief of the FBI's Cyber Technology Section at Quantico; Brigadier General James Armor, Directorate Director, the National Reconnaissance Office; and David Kahn, historian and author of the seminal work on the history of cryptography, *The Codebreakers*; and many others of equal stature. These people presented many sides of the issue and sometimes disagreed fundamentally. However, there was an uncanny convergence of agreement that platforms (like Leader's) are needed to help the national interest vs. personal privacy debate find its footing.

**Breaking News:** I have just engaged Phil Zimmerman, the inventor of PGP<sup>2</sup>, to consult with our technical team on our privacy and security systems and standards. *InfoWorld* named Phil one of the Top 10 Innovators in E-business in 2000. Phil received the 1995 Chrysler Award for Innovation in Design. We will also be talking to Phil about the potential for a strategic alliance with respect to new products he is developing and our emerging product lines.

<sup>1</sup> Cryptography deals with the storing and transmission of data so that it is secure and private. Despite the fact that "crypto" goes back many millennia (it's a Greek word meaning hidden writing), modern-day standards have only started to emerge recently. Competing interests abound in this field all the way from the open-standards folks and civil libertarians on one side to privacy advocates, government, law enforcement and intelligence on the other. For example, we want the CIA to be able to intercept and decrypt Osama bin Laden's electronic communiqués to his international cells, but do you want them to have those same powers to open and read your love letters to your sweetheart? Tough issues.

<sup>2</sup> PGP is the de facto international standard for E-mail encryption today.

Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.

Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.

Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 3 of 6

Other business highlights:

1. **LeaderPhone™ Teleconferencing Services** officially launched in September 2001. Go to [www.leaderphone.com](http://www.leaderphone.com) to sign up and use it. Spread the word. I am pleased to announce that the company is now booking revenue. Early sales affiliates include Anysystem.com (New York), Communications Marketing Systems (Denver), Data-tell (Columbus), Ameritraining (Columbus), Adelphia (Pittsburgh). Early customers include the preceding plus the Minneapolis Jaycees, The Fountains (healthcare), the Railroad Engineer's Union, and The National Intellectual Property Law Institute. A host of new sales accounts are being lined up by Tom Ayres, our new Chief Sales and Marketing Officer. As an example, Data-tell has a 20+ person direct sales force and sells telecommunications products to the Fortune 2000. As of last Friday, LeaderPhone™ will become their teleconferencing offering. Also, we are now slated for an appointment with Ford Motor Company that is interested in looking at LeaderPhone™ for their 5,000,000 teleconferencing minutes per month.
2. Fenwick & West LLP, a leading Silicon Valley high technology law firm, has been engaged to assist us in positioning the company for growth. Fenwick & West was named a Fortune 2001 "100 BEST COMPANIES TO WORK FOR." They have offices in Palo Alto, San Francisco and Washington DC. You can read more about Fenwick and West on their website at [www.fenwick.com](http://www.fenwick.com).
3. Steven P. Gonzalez, former AT&T Sales Vice President for IP Services joins the Board. You can read more about Steve on our website. Go to [www.leader.com](http://www.leader.com) then click the "Management" button. I am thrilled to have Steve on our Board. In my opinion, Steve is probably the most experienced and successful corporate sales executive in telecom and high technology today. He is experienced on both sides of the ball (data and telecom). This experience will serve us well. Steve has had many other offers for Board seats and has selected Leader among them. As an example of Steve's hands on experience, Steve created and profitably ran a 150+ person e-commerce direct sales force that sold all of AT&T's e-commerce products until the mid-1990's. (Read: They sold electronic stuff at a profit, grew their business every year, and made real money. Strangely, this had become a novel thought during the heady dotcom days but is now coming back into vogue. As most of you will recall, I have been preaching good fundamentals from Day 1.)



Fig. 1: LeaderPhone™ Teleconferencing Services Home Page

Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.

Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.

Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 4 of 6

4. Leader is on the cusp of signing research and development agreement with a major national research laboratory for sales rights to advanced technology developed by the laboratory to be marketed in conjunction with the Leader2Leader™ enterprise platform. As some of you are aware, this agreement has been in process for a number of months now. It experienced various delays due to procedural shortcomings on the other side that have now been worked out. In fact, officials from this laboratory recently made a two-day trip to Columbus for meetings at our offices. Leader's association with this laboratory, while enabling us to obtain powerful intellectual property rights, also "puts us on the map" with respect to technological validation. It is akin to having an AT&T Bell Labs endorsement. In addition, it positions our technology for wide deployment among prospective government purchasers.
5. Leader teams with the University of Dayton Research Institute to pursue a joint venture with Wright Patterson Air Force Base to install Leader2Leader™ at Wright Patterson and build special data sharing modules for use by the US Air Force. I cannot say a lot more about this opportunity other than it is in process now. Funding meetings are occurring right now for this project. We already have the technical sign-off from the government customer, now we must get through the financing hurdles, which, tragically, became suddenly easier after September 11.
6. Thomas E. Ayres, former AT&T General Manager and former Area Vice President of Rhythms NetConnections, joins Leader as Chief Sales and Marketing Officer. I have known Tom and his wife Susan for 8 years. He is a highly skilled corporate sales executive, superb sales force motivator, and powerful closer. He exceeds his plan wherever he goes. He, like Steve Gonzalez, is experienced on "both sides of the ball" (data and telecom) which makes his experience tailor-made for marketing LeaderPhone™, Leader2Leader™ and Click2Leader™.
7. Bill DeGenaro, former Director of Business Research & Analysis for 3M Company and former Director of Strategic Countermeasures Planning for the White House joins the Leader Advisory Board. Bill has already made the trip to Columbus to train our personnel on detecting industrial espionage techniques that could be used against Leader to steal our trade secrets. Bill is also a highly skilled corporate strategist. His advice will be invaluable as we grow. Few people know that much of the 3M Company quality story written about in *Built to Last* (HarperBusiness) was a plan conceived and implement by none other than our new Advisor, Bill DeGenaro, when he was a 3M Company executive.



Fig. 2 – Our large enterprise B2B Brand.

Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.

Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.

Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 5 of 6

8. Other significant Market Validations continue:

- a. **Jerry Rampelt**, a National Malcolm Baldrige Award Examiner, invests. For those of you unfamiliar with "the quality movement" in corporate America, the Malcolm Baldrige Award is the Super Bowl ring of quality. The Baldrige Committee is comprised of the finest strategy and organizational development minds in the world. Jerry's investment couldn't be a better signal to the quality world that **Leader2Leader™** is about ready to compete for the ring.
  - b. **Anysystem.com**, a major re-seller of large system computer gear, invests significant platform hardware for the staging of **Leader2Leader(tm)**. This development allows us a lot of flexibility to engage major beta users in testing **Leader2Leader™** in the coming months. With this platform, we don't need to bother internal IT shops with our requirements. We can simply invite "early innovator" testers from these firms to use the **Leader2Leader™** beta on our equipment and under our supervision and support. I cannot tell you how many selling obstacles this platform overcomes.
  - c. **Len Schlesinger**, COO, The Limited and formerly the George F. Baker, Jr. Professor of Business Administration at the Harvard Business School agrees to this endorsement after his latest viewing of the **Leader2Leader™** platform: "This is impressive. I could help manage the entire Limited family of companies from the **Leader2Leader™** system." Len saw our concepts back in 1998 and has followed us from a distance. While The Limited is not yet a customer, it is a testament to how far we've come that one of the most powerful people in the fashion world is willing to have his name associated with Leader even before the product is ready.
  - d. **Ed Detwiler**, former Sr. Vice President of Bank One, joins the Leader Board of Directors and makes a personal investment: "Leader has a unique Fortune 50 caliber management team for a 3.5-year-old up start company. Ed built what is today the 5<sup>th</sup> largest banking computer system in the United States. As many of you know, Ed has now joined Leader on a full time basis, is a Director, and is our **LeaderPhone™** Product Manager.
  - e. **Toni Ayres**, former AT&T General Manager and Vice President at Rhythms NetConnections says upon joining the Leader team as Chief Sales and Marketing Officer: "Every bit of my experience in the telecommunications and networking arenas tells me that Leader's product line will be in great demand. I plan to make my retirement with this opportunity. This opportunity is once in a lifetime."
  - f. **Steve Monaghan**, former Vice President for Ericsson: "**Leader2Leader™** is complete. You have nailed all the issues that have prevented others from being successful at what you have done. I want on board the Leader team." (Note: We have just reached agreement with Steve and he just started selling enterprise accounts for Leader full time last week.)
9. **Financing.** We continue to raise "angel" money from a small number of accredited investors. We are preparing to discuss financing with venture capitalists regarding a \$7-10 million round. If you or someone you know may have an interest in



Fig. 3 – Our Internet subscription-based B2B & B2C Brad.

Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.

Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.

Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 6 of 6

considering an investment prior to us completing this \$7-10 million round, please contact me.

10. **Intellectual Property.** We have filed for numerous trademarks. Copyright and patent filings are being prepared by our intellectual property counsel, The Chandler Law Firm Chartered.
11. **Shift from LLC to C corporate form; 3-for-2 Split.** Our key advisors have recommended that we make the planned shift from LLC to C corporate form now. The Managers of Leader LLC agreed. You will receive separate materials concerning the entity conversion transaction. **We have decided that in conjunction with the re-capitalization from an LLC to C corporation we will, in effect, split all Member equity holdings 3 for 2.**

On my own behalf and on behalf of the whole Leader team I want to thank you for being a part of a business opportunity that I believe can reshape modern computing. It isn't many times in one's lifetime that one can be a part of such a possibility. This Merger (shift of corporate form to a C corporation) is a next step along that pathway.

Have a wonderful holiday season with your friends and family. We have a lot to be thankful for.

Yours sincerely,

Michael T. McKibben  
CEO & Senior Manager  
Leader Technologies LLC

Proprietary & Confidential

Do not make copies. Do not distribute. Store securely.

Subject to Trade Secrets Law and the Leader Proprietary & Confidentiality Agreement.



www.leader.com

Leader.

921 Eastwood Drive  
Suite 116  
Westerville, Ohio 43081  
USA

614 890.1986 VOICE  
614 864-7922 FAX



**To:** Leader Members  
**From:** Mike McKibben, CEO & Senior Manager  
**Date:** May 1, 2002  
**Subject:** Status Report & LLC-to-C Corp Conversion

Greetings to each of you and your families. I hope this letter finds you happy and in good health. I have much to report and too little space to report it, so I will try to summarize.

**Leader2Leader™** trials are starting as we speak. In fact, I did my first remote presentation Friday – I was here in Columbus and the other person was in Washington D.C. It went well. It is gratifying to see the pent up demand for our platform. The response from those who have seen the platform is uniformly enthusiastic, from both large and small companies. Our task over this next year is to solidify our financing and roll out the platform to accommodate this demand. We are working hard to make sure we take full advantage of the global business potential of our powerful communications platform. **Click2Lead™** will be the subscription version of the platform version that will enable anyone to sign up and use the product. We expect that **Click2Lead™** will be available starting sometime in the summer after the platform has been sufficiently debugged.


**LeaderPhone™ Teleconferencing Services** is out on the market now, is working like a champ and gaining customers. Our sales ramp up has been slower than expected, but we continue to refine our approaches and affiliate relationships to speed that up. I am pleased to tell you that **LeaderPhone™** is currently under evaluation to become the teleconferencing service for the Commonwealth of Pennsylvania. One of its unique features is the ability of the server to call you (instead of you calling a 1-800 number with a pre-defined PIN number). This powerful feature, even though much more convenient, takes customers some getting used to. They are used to having to work harder to get into a conference call! For this reason, we will likely offer a more expensive operator-assisted service as well to mimic what people do now.

**Leader Smart Camera™**. As many of you know, we have acquired the property rights to a Smart Camera™ developed at a well-known National Research Laboratory. We have also entered a Cooperative Research and Development Agreement with that laboratory. These are very valuable rights to a video security camera that will be connected to the **Leader2Leader™** platform and marketed as "Leader Smart Camera™". We believe that, especially following the events of September 11, these devices and our platform will be in great demand. We are currently pursuing a single local opportunity that would deploy 100 cameras this year. As with **LeaderPhone™** we plan to put an executive and budget in place to pursue this very important vertical market for **Leader2Leader™**.

**Moving Forward.** One of the important next steps in Leader's business strategy is to better position the company for future growth. We believe this can best be facilitated by the conversion of the company from an Ohio limited liability company to a Delaware C corporation.

The enclosed LLC-to-C conversion package explains what will happen. Please feel free to call me if you have any questions. This mailing is informational. There is nothing for you to do yet. Stay tuned and we will let you know when you are to cast your vote.

Yours truly,

  
Michael T. McKibben  
CEO & Senior Manager

Proprietary & Confidential  
Trade Secrets

Proprietary & Confidential

## **EXHIBIT 13**

---

**BAA Number:** 02-Q-4655

**Mission Area:** Information Integration Center

**Requirement No:** 109 / ALT-109-LEADER-1220WP

**Proposal Title:** Advanced Cross-platform Communications &  
Anti-terrorism Command Center Prototype<sup>1</sup>

## White Paper

**Offeror:** Leader Technologies LLC  
**Point of Contact:** Michael T. McKibben  
Chief Executive Officer  
921 Eastwind Drive, Suite 118  
Westerville, Ohio 43081  
(614) 890-1986 VOICE  
(614) 864-7922 FAX  
[mmckibben@leader.com](mailto:mmckibben@leader.com) EMAIL  
<http://www.leader.com> WWW

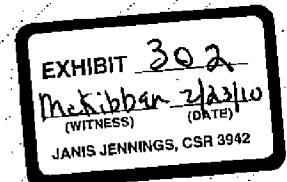
### Proprietary & Confidential

© Copyright 2001, January 9, 2002  
Leader Technologies LLC, Michael T. McKibben  
All Rights Reserved.

This document contains  
TRADE SECRETS



<sup>1</sup> Ref. Quad Chart, ALT-109-LEADER-122001.pdf



HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

LTI\_048195

DEFENDANT'S EXHIBIT  
DTX 0179  
CASE NO. 1:08-CV-00862-LPS

BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 1 of 12

## Leader White Paper

**This White Paper is in support of our proposal Requirement No. 109 / ALT-109-LEADER-1220WP to the Under Secretary of Defense for Acquisition, Technology and Logistics (USD (AT&L)) and Combating Terrorism Technology Support Office (CTTSO) Technical Support Working Group (TSWG) Broad Agency Announcement (BAA), 02-Q-4655 (referred to herein as “BAA”) for funding an Advanced Cross-platform Communications Environment and Anti-terrorism Command Center Prototype**

### 1 Introduction

We at Leader Technologies (“Leader”), in cooperation with the *concurring* co-venturer University of Dayton Research Institute (“UDRI”), are pleased to offer the following White Paper in support of our BAA funding submittal. Wright Patterson Air Force Base (“WPAFB”), Douglas W. Fleser, Deputy CIO, is the *concurring* customer having identified a number of areas of mission-critical need at WPAFB for which Leader Technologies has built specific solutions over the last 3.5-years of intensive research and development. Since September 11 it became patently clear that this WPAFB project has direct benefit to the War on Terrorism (and therefore to the BAA) without any change to the technical specifications or requirements for WPAFB. We at Leader intend to cooperate extensively with Mr. Fleser and his WPAFB team, and simultaneously to cooperate with the BAA in extending the WPAFB as required by the BAA. In addition, we have engaged the capable resources of the UDRI in the implementation of this \$12,074,495 Phase 1 proposal to be delivered over the following 12 months. Cost Displacement and ROI studies for this project have already yielded numbers in the 500-1500% range.

The tragic events of September 11, 2001 have only further heightened the urgency of this project. In addition to this project being able to thoroughly support the WPAFB technical requirements, this project can now join the frontlines in our War on Terrorism by providing a fully-operational NORAD-like Anti-terrorism Command & Control Theater environment prototype that can support the needs of the Secretary for Homeland Security, NSA, FBI, CIA, FEMA and the CDC in their requirements to improve communications and collaboration capabilities.

**Proprietary & Confidential. This document contains TRADE SECRETS.**  
 © Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 2 of 12

Little did we know when we set out to build Leader2Leader™ 3.5 years ago that it would be tailor-made for the War on Terrorism effort.

## 2 Problem Statement

"One of the things that the president has commissioned me to do in his Executive Order is make sure that the gap, the delay in information-sharing no longer exists as we combat this war on terrorism."

*Tom Ridge, Director for Homeland Security, December 17, 2001*

"A lack of technology needed to analyze and integrate data from disparate sources is proving to be an early answer to people asking how the U.S. disaster could have occurred, security experts admit."

*Infoworld, September 14, 2001*

A similar problem statement can be applied to the customer of this proposed BAA grant, namely Wright Patterson Air Force Base, Douglas W. Fleser, Deputy CIO. Mr. Fleser has identified four areas of priority for WPAFB: records management, acquisitions, management, engineering collaboration, and knowledge management. Prior to September 11, 2001, Mr. Fleser felt a growing sense of priority and urgency to these priorities as they related mainly, at the time, to the coming "brain drain" of federal employees with significant knowledge of our most critical defense systems, and, as it related to facilitating secure, distributed engineering collaboration environments across the United States Air Force communications network.

The tragic events of September 11, 2001 have only served to heighten the priority for what Mr. Fleser had previously identified as his set of needs. In fact, this WPAFB BAA can very clearly "kill two birds with one stone" by becoming the prototype for a NORAD-like Anti-terrorism Command and Control Theater for potential use by the Secretary for Homeland Security that is fed data from existing data repositories. This same system can then be evaluated for use in related security applications with the Center for Disease Control (CDC), the Federal Emergency Management Agency (FEMA) as well as such agencies as the FBI, NSA, Federal Reserve and Secret Service. In fact, Leader is now fielding preliminary inquiries from state agencies who are now tasked with establishing state-wide homeland defense systems.

**Proprietary & Confidential. This document contains TRADE SECRETS.**

© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

During the past 3.5 years, Leader has developed a fully-scalable enterprise-class communications platform that combines previously disparate communications and collaboration applications into a common, integrated and secure environment. Leader's research have discovered and fixed a plethora of serious shortcomings and flaws in prevailing platform assumptions about mere aggregation vs. true integration of communications technologies (see

Figure 1: The Communications "Glass Ceiling"

Ceiling"). These discoveries point to why such platforms as Lotus Notes and Microsoft Exchange are patently ill-suited for the task at hand. Armed with these discoveries, Leader set out to build the Digital Leaderboard™ System that will be used by enterprises under the brand name Leader2Leader™. Mr.

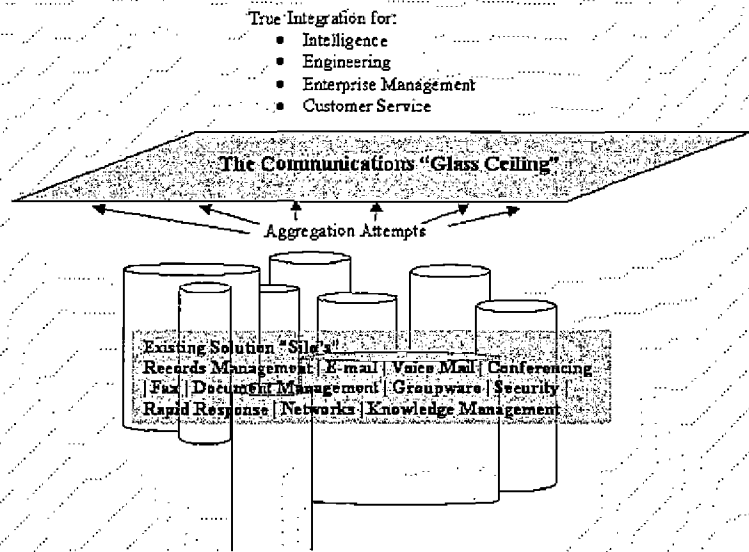


Figure 1: The Communications "Glass Ceiling"

Fleser believes that the Leader2Leader™

platform will form a solid foundations for his top strategic priorities for WPAFB. In the course of implementing the Leader2Leader™ foundation, Mr. Fleser has requested that Leader with UDRI's assistance develop a number of database management modules that will seamlessly tie the Leader2Leader™ system with existing WPAFB data base applications and thus create on contiguous collaboration environment.

### 3 Objectives

To implement a new Leader2Leader™ enterprise-wide collaboration environment at Wright Patterson Air Force Base (WPAFB) that satisfies priority WPAFB infrastructure needs in records management, acquisitions, management, engineering collaboration, and knowledge management.

**Proprietary & Confidential. This document contains TRADE SECRETS.**

© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 4 of 12

To develop LeaderCube™ data integration modules as bridges between six high priority WPAFB data repositories and the Leader2Leader™ collaboration system.

To build a prototype NORAD-like Anti-terrorism Command and Control Theater at WPAFB to evaluate the capabilities of the Leader2Leader™ / LeaderCubes™ environment for use as the collaboration engine for inter-agency collaboration within the DoD, DCD, FEMA, etc.

To include the LeaderCubes™ developed as a part of the BAA into the commercialization of the Leader2Leader™ platform that is already well underway and for which there is substantial commercial, academic and government interest.

#### 4 Summary of Approach

Leader uses a combination of Waterfall and Extreme programming engineering methodologies project methodologies. The Waterfall methodology is employed up to the alpha phase of a project, at which time the team switches to Extreme Programming methods to drive the product through testing and into production. This combination of methodologies has proven quite successful in the completion of Leader's first commercial product, LeaderPhone™ Teleconferencing Services.

WPAFB will use the LeaderPhone™ services within its firewalls. WPAFB will become a classical beta customer for the full Leader2Leader™ platform and will receive commensurate licenses to do so. Leader will develop LeaderCubes™ according to specifications developed jointly with WPAFB for the tying of WPAFB mission-critical systems with Leader2Leader™ after which WPAFB will receive a perpetual internal license to the LeaderCubes™ according to the BAA intellectual property agreement.

Leader is already commercializing LeaderPhone™ and Leader2Leader™ to government, commerce and education and plans to add the LeaderCubes™ to its product mix at the end of this BAA. Field support will be maintained in the normal course of Leader's ongoing Customer Service program.

**Proprietary & Confidential. This document contains TRADE SECRETS.**  
© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 5 of 12

**5 Identification of Rights in Technical Data and Computer Software/Patent Rights**

As per the TSWG 02-Q-4665 BAA Package Requirement 3.2.3.4, Identification of Rights in Technical Data and Computer Software/Patent Rights, we present the following chart as outlined in DFARS 252.227-7017(d).

<b>Technical Data</b>			
<b>Computer Software To be Furnished With Restrictions</b>	<b>Basis for Assertion</b>	<b>Asserted Rights Category</b>	<b>Name of Person Asserting Restrictions</b>
Digital Leaderboard™ System software and online user documentation supplied under the brand name Leader2Leader™ and Click2Lead™	Fully developed at private expense	Wholly-owned	Michael T. McKibben
LeaderPhone™ System software and online user documentation supplied under the brand name LeaderPhone™ Teleconferencing Services	Fully developed at private expense	Wholly-owned	Michael T. McKibben
49 Digital Leaderboard™ System software sub-components supplied under the brand name Leader2Leader™ and Click2Leader™	Fully developed at private expense	Wholly-owned	Michael T. McKibben
Leader Cubes™ concept, software and online user documentation	Partially developed at private expense	Leader will further develop certain LeaderCubes™ as a part of this BAA project and license their use to the US Government, and retain commercial and IP rights	Michael T. McKibben

Table 1: Identification of Rights in Technical Data and Computer Software/Patent Rights

**6 Team Qualifications & Resources**

The Leader team is staffed with information technology and management veterans with extensive, multi-disciplined skills in all phases of this project from organization and management to programming, implementation and customer support. In fact, the Leader resumes read like a *Who's Who* in American business and technology. To name a few and their accomplishments:

- a. **Michael T. McKibben, Founder & CEO** – Formerly, rebuilt AT&T's Windows messaging and enhanced fax infrastructure; the principal designer of Leader2Leader™
- b. **Brad Whiteman, CIO** – Formerly, conceived and built the Shared Data Warehouse for the Department of Defense

**Proprietary & Confidential. This document contains TRADE SECRETS.**

© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.



BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 6 of 12

- c. **Ed Detwiler, Director** – Formerly, built and managed Bank One's thrice-redundant global banking infrastructure.
- d. **Jeff Lamb, CTO** – Former senior architect for the National Air Intelligence Center (NAIC)
- e. **Steve Hanna, VP of Engineering** – Former Lockheed and Oracle senior project manager for SIGINT projects at WPAFB
- f. **Tom Ayres, Chief Sales and Marketing Officer** – Former AT&T Sales Executive in telecommunications, data networking and e-commerce
- g. **Steve Gonzalez, Director** – Former AT&T Vice President in charge of over \$4 billion in annual sales of IP services.
- h. **Professor James Chandler, Director** – President of the National Intellectual Property Law Institute and a principal security, intelligence and intellectual property advisor to over 202 jurisdictions worldwide.
- i. **Major General James Freeze, US Army (ret.), Director** – former head of the US Army Security Agency; Asst. Deputy Director of NSA; author of "The Freeze Report" on Department of Energy security.
- j. **William "Bill" DeGenaro, Advisor** – former Chief of Strategic Planning for 3M Company and former White House Chief of Strategic Countermeasures for the Reagan and Bush Administrations
- k. **University of Dayton Research Institute** – Staff with approximately 300 full-time engineers, scientists, and support personnel with annual revenues exceeding \$40M, provides basic and applied research for government and industry. UDRI has both a long history of IT development (see: Appendix C) and long-standing R&D relationship with numerous entities at WPAFB.
- l. **Clancy W. Cross, Associate Research Analyst, UDRI** – Currently head of the UDRI Web Development Center
- m. **Ronald L. Thomas, Senior Software Engineer** – Responsible for proposals, design and implementation for the UDRI Web Development Center

Leader currently has the facilities and computer resources to build and support this proposed project. Leader has approximately 6,000 square feet of secure engineering and management facilities in Westerville, Ohio and employs over 20 full-time people. Leader's facility is secured to a high commercial standard, including video surveillance, intrusion, fire and smoke detection. Leader also leases co-location facilities in the Columbus area as

**Proprietary & Confidential. This document contains TRADE SECRETS.**  
© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 7 of 12

well as maintains robust development servers on premises. Leader will soon expand its co-located facilities within a major telco provider. UDRI will use existing facilities to provide the documentation, training and testing services specified in this proposal.

## **7 Expected Outcomes**

### **7.1 Deliverables**

- a. Leader2Leader™ software licenses for 20,000 WPAFB employees
- b. Six (6) LeaderCube™ unlimited (for internal use) software licenses with full documentation
- c. Six (6) WPAFB data repositories fully integrated into the Leader2Leader™ platform
- d. Leader2Leader™ hardware and hosting platform fully tested and operational at WPAFB
- e. WPAFB customer and technical support staff trained and in place
- f. A NORAD-like Anti-terrorism Command and Control Theater full operational in prototype form at WPAFB or other mutually suitable location.

### **7.2 Timing**

- a. Leader2Leader™ platform installation and training will be fully implemented by the end of Q1 of 2002.
- b. LeaderCube™ development, testing, implementation, documentation and training for six (6) modules will be completed by the end of Q2 of 2002.
- c. The NORAD-like Anti-terrorism Command & Control Theater prototype will be completed by the end of Q2 of 2002, unless this priority is moved up by BAA to address the pressing needs of the Secretary for Homeland Security.

**Proprietary & Confidential. This document contains TRADE SECRETS.**  
© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 8 of 12

### 7.3 Benefits to Client

- a. WPAFB will receive a working, integrated, scalable, flexible solution to its Records Management, Acquisitions Management, Engineering Collaboration and Knowledge Management priority projections in a time frame that is factors ahead of where WPAFB thought it could be in a 6-12 month time frame if all of these projects were let separately.
- b. BAA will have a fully operational NORAD-like Anti-terrorism Command and Control Theater prototype from which various applications and uses can be determined – all in a very short period of time; much shorter than if all those projects were just going out to bid in the coming months.
- c. WPAFB Cost Displacement Studies already done on this project (and which will be included in the complete project plan) indicate that this BAA can, at minimum, create a more than 500% return on investment, without including a plethora of intangible values. Inclusion of reasonable values for intangible benefits puts the ROI well over 1,500%.

### 8 Risks and Risk Mitigation

The Leader2Leader™ platform is operational now with low user volumes. A potential risk is performance problems that have not yet been tested for large numbers of concurrent users. This risk is mitigated by the fact that Leader is using industry-standard components that are already proven to be scalable in other high volume web environments. Therefore, we believe that any potential scale problems can be mitigated by normal software optimization during the stress testing phase. An additional risk is that the LeaderCube™ modules have not been built yet and there is no assurance that they will work properly. This risk is mitigated by the fact that these systems integration modules are familiar to many of the Leader technical principals (in large scale environments) from their work in previous companies and they, from their experience do not anticipate this requirement to be more burdensome than anything they have implemented successfully in the past.

**Proprietary & Confidential. This document contains TRADE SECRETS.**  
© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

**9 Project Plan Management Milestones & Deliverables**

This BAA is a one-year contract with a five-year tail. All of the heavy development work will occur in the first 12 months. The ensuing 5 years of the tail will entail some hardware upgrading as well as ongoing Leader2Leader™ licensing and a support contract.

**Table 2: BAA Funding Request - ALT-109-LEADER-1220WP**

Prepared by Michael T. McKibben, CEO, Leader Technologies &amp; Clancy Cross, University of Dayton

Project Plan, Deliverables &amp; Use of Funds

January 9, 2002

Use of Funds

Description	Total Requested	Month (from commencement of BAA)												Totals
		1	2	3	4	5	6	7	8	9	10	11	12	
Leader - Cube Dev.	\$1,424,495	237,415	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708		1,424,495
UD - Cube Dev.	\$1,350,000	225,000	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500		1,350,000
WPAFB - Platform Expenses	\$400,000	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	400,000
NORAD-like Anti-terrorism Theater expenses	\$500,000	\$500,000												500,000
Leader2Leader™ licenses	\$8,400,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	8,400,000
	\$12,074,495	\$1,695,748	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$733,333	\$12,074,495
<b>Headcount</b>														
Leader – Leader2Leader™ Installation & Support and LeaderCube™ Technical Staffing & Support		11.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	0.0	71
UD -- LeaderCube™ Documentation, Training, Performance Testing, Helps, Usability Studies & Systems Integration		11.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	0.0	68
WPAFB – Platform hardware and Support		2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	25
		25.2	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	2.1	164
<b>Product Deliverables</b>														
Leader2Leader™		Leader2 Leader™ platform installation & staging	Leader2 Leader™ beta installation	Leader2 Leader™ beta installation		Leader2 Leader™ enterprise installation								
LeaderCubes™		LeaderCube™ 1			LeaderCube™ 2		LeaderCube™ 3		LeaderCube™ 4		LeaderCubes™ 5 & 6			
NORAD-like Anti-terrorism Theater Prototype											NORAD-like Anti-terrorism Command & Control Theater prototype, fully operational			

**Proprietary & Confidential. This document contains TRADE SECRETS.**

© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

Table 2: BAA Funding Request, continued

Prepared by Michael T. McKibben, CEO, Leader Technologies &amp; Clancy Cross, University of Dayton

Project Plan, Deliverables &amp; Use of Funds

January 9, 2002

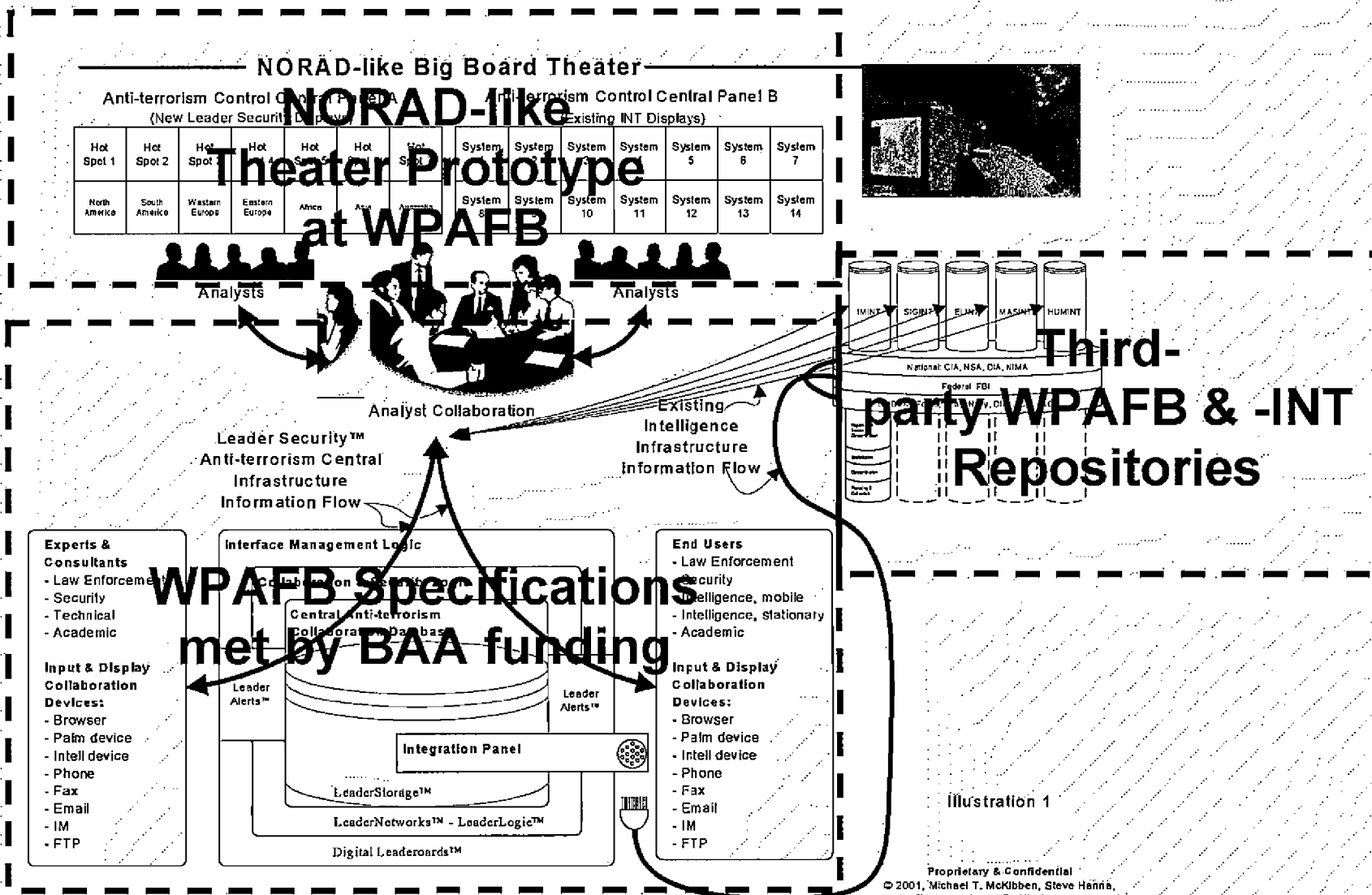
## WPAFB-UD-Leader Project Costs Worksheet

WPAFB user base =		20,000		Year								
Costs	Source	Units	Unit descriptor	Costs	Cost per unit descriptor	1	2	3	4	5	6	Totals
Leader2Leader™ licenses, term	Leader	20,000	users	\$	35.00/user/month	8,400,000	8,400,000	8,400,000				
Leader2Leader™ licenses, tail	Leader	20,000	users	\$	35.00/user/month				8,400,000	8,400,000	8,400,000	
Hardware platform & support, term	Leader	20,000	users	\$	449,495/system	449,495						
Hardware platform & support, tail	WPAFB	20,000	users	\$	449,492/system				449,492			
Development environment	Leader	1	system	\$	75,000/system	75,000	15,000	15,000	15,000	15,000	15,000	
NORAD-like Command & Control Theater prototype						450,000						
Internal Bandwidth	WPAFB				No net change							
External Bandwidth	WPAFB				No net change							
Facilities & Management	WPAFB	200	square footage	\$	500/foot/year	100,000	100,000	100,000	100,000	100,000	100,000	
LeaderCube™ Development	Leader	6db	silc cubes	\$	150,000/cube	900,000	180,000	180,000	180,000	180,000	180,000	
LeaderCube™ Documentation, Training & Help	Univ. of Dayton	6db	silc cubes	\$	41,667/cube	250,000						
LeaderCube™ Performance Testing	Univ. of Dayton	6db	silc cubes	\$	83,333/cube	500,000						
LeaderCube™ System Integration	Univ. of Dayton	6db	silc cubes	\$	83,333/cube	500,000						
WPAFB Metrics Studies	Univ. of Dayton	3	years	\$	100,000/year	300,000	100,000	100,000				
NORAD-like Command & Control Theater facility	WPAFB	2,000	square man-	\$	25/foot/year	50,000						
WPAFB Leader2Leader™ internal help desk	WPAFB	1.25	years/year	\$	120,000/person/year	150,000	150,000	150,000	150,000	150,000	150,000	
WPAFB LeaderCube™ internal technical support	WPAFB	1.25	years/year	\$	120,000/person/year	150,000	150,000	150,000	150,000	150,000	150,000	
Total R&D Costs						12,074,495	8,695,000	8,695,000	9,144,492	8,695,000	8,695,000	55,998,987

Proprietary &amp; Confidential. This document contains TRADE SECRETS.

© Copyright 2002, January 9, 2002, Leader Technologies LLC, Michael T. McKibben, All Rights Reserved.

10 Figure 2: NORAD-like Big Board Theater for Anti-terrorism Command and Control



# **EXHIBIT 14**

**From:** Steve Hanna <steve@computerwizards.com>  
**Sent:** Thursday, August 29, 2002 10:26 AM  
**To:** khouser@leader.com  
**Subject:** [Fwd: Yesterday in CWC (Monday-Wednesday, 8/26-28/2002)]

---

Karen ... just wanted to share this one with you .... you no doubt will not fully approve of all that I share, but I thought this one would be meaningful to you.  
Steve

GENERAL:

Mike had 2 demos on Tuesday (one to the State of OH Police who are interested in the L2L platform); yesterday there was one demo/presentation to the Ohio Education Association.  
The calendar does not show any demos today or tomorrow, however I believe that Mike has activity on Friday?

---

\*\* I had lunch with Mike yesterday. I thought that I would take a few minutes and jot down some of the highlights from the conversation to keep everyone as 'in the loop' as possible.

Mike is very excited about where are as a company and the current contacts that he has been and is making, both on the investor front, but also with prospective customers.

Last week he meet with the 10th largest law firms in the U.S. and they were interested in the use of the LP service and also in L2L. There turned out to be a huge coincidence that worked in our favor, as the head of this firm was a former student of professor Chandler, Mike took full advantage of this relationship and got the professor on the phone real time to engage in major smoozing. The firm would like to get involved .... 1) they are trying out LP 2) they may work with us to get us in front of big \$\$ investors to complete the new large round of investment \$\$ .... for this they would like to be our corporate council, which is in conflict with the current relationship we have with Fenwick & West .... more balls for Mike to juggle...:-)

He was encouraged by the meeting with Dell computers, but he did not dwell on that; he said that they (Dell) were to have an internal meeting yesterday to discuss the LP service & them ..... he had not heard anything as of mid day yesterday.

Mike acknowledged the fact that we are in 'low' period financially; he is aggressively attacking that issue (as we have observed over the past two weeks);

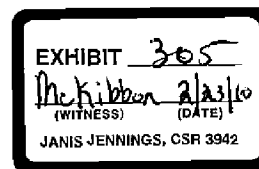
his view is that things will continue to be tight for at least the next 6 weeks, and should ease some after that.

Mike feels that we are close to bigger deals on both the LP and L2L front. There are high level discussions happening with companies such as Mastercard, Bankone and others for wholesale use of the LP service; there are follow up meetings scheduled with multi-national corporations regarding the L2L platform, as well as strong interests from smaller organizations such as the Ohio Police, etc.

---

Good news / Bad news ...My perspective:

-First, the bad news .... Karen's last full time employment with Leader



Highly Confidential - Attorneys' Eyes Only

LTI 145929

DEFENDANT'S EXHIBIT  
DTX 0181  
CASE NO. 1:08-CV-00862-LPS



is this week .... she keeps telling everyone that is the case but there just does not seem to be the concern / preparation on the part of the rest of Leader that there SHOULD be. I am afraid that those in the position to make a difference are too busy and are relying too much on her promise to work part time in the future ..... what they aren't grasping is that she WILL be PART-TIME only .... she will not be there to do all of the underlying tasks that keep the office propped up each and every day.

I have come to respect and rely on Karen, professionally and as a friend ..... she will be sorely missed.

-Scott Heitkamp (accountant):

Scott is on board and has jumped in with both feet. He is doing a great job in these early days with the company. I liked Gloria and miss seeing her at the office, but I have to say that Scott is a more outgoing, aggressive force in the accounting/controller position and will be a very positive factor for Leader and CWC.

-Lisa Porter (in-house direct Sales person):

Lisa has hit the ground running. She has come up to speed on the LP product very fast and has immediately begun the process of establishing a customer base. Her experience and direct customer contact will be a very positive force for our team, and we need to pay attention to her inputs when they start coming to us, as the result of her first hand exposure to LP customers.

-Kim Wohlford - LP Operator plus:

Kim was a steal! She was brought in under the umbrella of providing the LP Operator assistance to LP customers. It was understood up front that there was a huge unknown as to the level of effort for the operator position, and as a result we made sure that the person knew that they would be asked to wear many hats, at least one of those being an admin. assistant hat. Well, she not only easily covers the operator & admin. requirements, she brings developer talents that have already been engaged.

-Jerry Rampelt - Senior level, business development, etc.:

Jerry's role is not one that most of us have direct day-to-day contact with, however it 'appears' that he is a positive factor already. Mike has been a one-man show on the investor & business development front for quite a while. Jerry is bringing with him a 'new' set of potential investors and companies that might be interested in the Leader products. He has set up many investor and potential customer meetings. I don't think that he is a dynamic presenter, etc. (like Mike), but he appears to be a great front man, establishing contacts with investors and companies and 'setting the table' for Mike. Time will tell how well this all works out, but so far so good.

[I provided these notes to give the remote folks greater insight into the newest members of our larger team and their roles ..... I hope it is helpful]

---

PERSONNEL Misc.:

Travel / vacation:

-none Monday

-Eric and I were in Columbus Tuesday & Wednesday (yesterday).

\*Vonda's birthday is Today ..... Happy Birthday Vonda!

NON LEADER CUSTOMER ACTIVITIES:

\*\*\*\*Flag is continuing to be a problem .... yesterday Bud and others spent time trying to resolve performance issues; today the saga continues .... email 'seems' ok, but taskman is unavailable, and other hosted sites on that server are hit and miss.

Spammotel - Bud has assembled a new server for the new version of Spammote; once configured this will be shipped to Jeff and he will begin work on the modified version of spammotel .... \*\*Bud has run into issues with the server that have delayed its completion  
Atlas - Jeff is continuing some low level work for Chuck.

LEADERPHONE(tm) Support & Development:

-We created the branch and began testing Monday ... initial problems were uncovered by Betsy; testing Tuesday and Wednesday uncovered cosmetic issues that Andrew and Wendy addressed. There are low level issues identified, but no show stoppers.  
-work continues in the background, identifying the necessary pieces of a redundant LP system

L2L:

-Andrea & Betsy are working changes to User Package ... these are being done on Tim's branch and will be merged with Tim's work to main soon.  
-the long awaited release of VBSF (3.1) occurred yesterday; Tim is making final tweaks to the current branch that implements all of the necessary new schema, etc. for 3.x compatibility, while still using VBSF 2.3 features; this will be merged to main soon (perhaps today) and we will test and fix remaining areas in the application. A new branch will be created by Tim, where he will implement the performance enhancing features of 3.1.  
-Mark has implemented the PDF file conversion feature for projector, and this will go to main today

MILESTONES:

o move the Beta equipment suite from Leader to the hosting facility (Adelphia).... now looking like the 2nd week in Sept.  
o start the external beta with external customer(s) .... now looking like NET 2nd week in Sept.

SC:

-Work is continuing at a low level (Eric, and Bill)

--

Steven E. Hanna  
Vice President of Technologies  
Leader Technologies Incorporated  
Spectrum Commerce Center  
921 Eastwind Drive, Suite 118  
Westerville, Ohio 43018  
(614) 890-1986 Voice  
shanna@leader.com Email  
hanna1@palm.net (Mobile email)  
www.leader.com WWW

This message contains proprietary and confidential trade secret information intended for the sole use of the intended recipient(s). This message is protected by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996 which stipulates that any violation of said laws may

be subject to penalties of \$10M and up to 15 years imprisonment, and various other penalties. This message is also subject to the Leader Proprietary & Confidentiality Agreement. If you have received or are viewing this message in error, please delete it immediately and kindly notify the Leader CEO, Michael T. McKibben at (614) 890-1986 or mmckibben@leader.com. Abuse of Leader copyrights, trademarks, service marks, trade secrets and all other proprietary property rights will be prosecuted to the fullest extent of the law. Click on "Report a Security Incident" at www.leader.com if you have knowledge of improper use of this information.

--

Steven E. Hanna  
Vice President of Technologies  
Leader Technologies Incorporated  
Spectrum Commerce Center  
921 Eastwind Drive, Suite 118  
Westerville, Ohio 43018  
(614) 890-1986 Voice  
shanna@leader.com Email  
hanna1@palm.net (Mobile email)  
www.leader.com WWW

This message contains proprietary and confidential trade secret information intended for the sole use of the intended recipient(s). This message is protected by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996 which stipulates that any violation of said laws may be subject to penalties of \$10M and up to 15 years imprisonment, and various other penalties. This message is also subject to the Leader Proprietary & Confidentiality Agreement. If you have received or are viewing this message in error, please delete it immediately and kindly notify the Leader CEO, Michael T. McKibben at (614) 890-1986 or mmckibben@leader.com. Abuse of Leader copyrights, trademarks, service marks, trade secrets and all other proprietary property rights will be prosecuted to the fullest extent of the law. Click on "Report a Security Incident" at www.leader.com if you have knowledge of improper use of this information.

# **EXHIBIT 15**

**From:** Nancy J. McKibben <nmckibben@att.net>  
**Sent:** Tuesday, December 3, 2002 4:51 PM  
**To:** mmckibben@leader.com  
**Subject:** RE: Progress

---

Hi honey -

sounds good to me. Are you getting a good response?

Love you,  
Nancy

-----  
This message contains proprietary & confidential trade secret information that is intended for the named recipient(s) only. (c) 2002, Leader Technologies Incorporated, Michael T. McKibben, All Rights Reserved.

-----Original Message-----

**From:** Michael T. McKibben [mailto:mmckibben@leader.com]  
**Sent:** Tuesday, December 03, 2002 11:43 AM  
**To:** mmckibben@leader.com  
**Subject:** Progress

Proprietary & Confidential Information  
Hi All:

In light of our financing circumstances, I wanted to give you a quick update. The news is very positive on all fronts except short term financing, where making progress is akin to *extracting teeth*. Go figure. Two years ago one could raise money on counting eyeballs, now you practically have to sacrifice your first born to get it. Leader's story has never been better, and yet, raising operating cash has never been harder. "This too will pass."

Based upon current investment presentations lined up and current conversations underway, I anticipate that we will be able to bring our deferred salaries current by the end of the month. This is an estimation, of course, and could change based on the results of the projected financing presentations over the next few weeks. But, I think it is a reasonable expectation based upon what is planned. Late yesterday evening I got a verbal confirmation of some additional financing to be received from my last Arizona trip. I will work to get that money in as soon as possible. I was able to raise a modest amount of money last week in Tucson. This amount was enough to cover essential operating expenses including health insurances, communications, equipment leases, rent, utilities, travel, etc. It was also enough to allow us to pay a "Christmas bonus" which we will get out this week. This will be in addition to the deferred salaries and is intended to help carry each of you through this time. Also, just so everyone knows, when Carrie was finding a place for the Christmas party, we had to commit to the place in advance. We are committed to that event (i.e., the money's already spent). We need to all go and have a great time! Ebenezer Scrooge (read: the current miserly market for R&D investing) isn't going to spoil our Christmas!

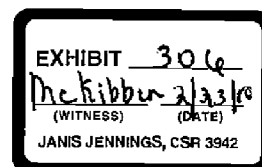
Once we are through this period, I will sit down with Brad, Jeff and Steve to come up with an appropriate equity options package for you in consideration for the personal sacrifices you are now making.

**On Sales**

We have the following prospects in the pipeline:

- Several large and medium-sized systems integration and defense contractors – homeland security application, medical systems, knowledge management, collaboration, teleconferencing, video conferencing, security cameras
- Major pharmaceutical – clinical trials, security, collaboration, teleconferencing
- Major healthcare consortium / Major national research hospital – homeland security, physician continuing education, teleconferencing, video conferencing, emergency broadcasting

Highly Confidential - Attorneys' Eyes Only



LT102315

DEFENDANT'S EXHIBIT  
DTX 0182  
CASE NO. 1:08-CV-00862-LPS

- Major bank – next-generation ATM, custom account management, collaboration, service delivery engine
- Major clothing retailer – new product design collaboration, project teams, store communications, teleconferencing
- Major financial services player – teleconferencing, value-added services delivery, custom account management.
- Several major international law firms – teleconferencing, client collaboration
- Regional healthcare organization – file sharing, mobile support

All of the following meetings and customers represent a deal, that once under contract, will change our valuation position with institutional investors.

I meet with the **Limited CIO**, Jon Ricker, on Wednesday to discuss our next steps with them toward a contract. I am hoping this moves along quickly at this stage. They have already done their due diligence and are interested.

I met with **Boston Scientific** last week. They want to use L2L Files tool to coordinate all clinical trials globally. That constitutes 35 trials, up to 80 hospitals per trial and 15 people per hospital. We are exchanging a mutual NDA and will proceed immediately to a prototype, which should take all of one day to put together. The last thing that must be tested is our scalability. (Stop the presses... their NDA just arrived for my signature.)

**American Express** is coming back with strong interest after Unified System's meetings with them and my meeting with them last Tuesday. They want me to fly to New York to discuss them investing in Leader plus them go-branding LeaderPhone and Leader2Leader.

**Applied Materials**: I do a L2L demo for them tomorrow. They are looking to the possibility of placing both a LeaderPhone Appliance and Leader2Leader Appliance behind their firewalls.

**A Japanese Bank** is looking to use the L2L platform as the basis for their new IP-based ATM system in the Pacific Rim. This opportunity is being pursued in conjunction with Ernst & Young.

These are just a few in addition to the new sign ups we are seeing daily.

#### **On Financing**

I am slated to go back to Tucson twice this month to meet with new prospective angel investors. We are also pursuing angel financing in Wisconsin. On the institutional financing front, we have firm interest from:

- Blue Chip Ventures
- River Cities Capital
- Primus Fund
- Battelle Venture Fund
- American Express
- In addition, we have retained Vox Partners, an investment banking firm out of Dallas, Texas to assist us over the next 60 days (the length of their contract) to secure our \$10M round. The main negotiating point is the valuation of the company. Current company valuations in general have created a buyer's market for companies at our stage of development: that is, just coming into revenues. The most significant factor that can improve our negotiating position in these valuation discussions is the acquisition of "marquee" paying customers. In other words, brand-name customers that provide third party validation for the interest of the market in Leader's products. The longer we can hold out with regard to our cash needs, and at the same time get name customers signed up, the better our valuation will be. The practical implication of this strategy for you as a shareholder is that it will mean less dilution of your stock when the institutional money invests. Said another way, the quicker we take this \$10M in the near term, the more dilution that occurs. It is in the shareholders best interest not to take this money too quickly... if we can sustain ourselves in the interim. This interim financing over the next few months requires some additional angel investing which we are pursuing.

#### **On Prospective Estimations**

Forward-looking projections are, at best, educated guesswork. The challenge when letting you know about "possibilities" and "prospects" and "likelihoods" is that no human being, in fact, has a crystal ball on the future. And yet, everyone wants to hear from me what can, could or will happen going forward. This is the balancing act we face in sharing prospective opportunities. It's tough. It's a two-edged sword, if we're right, we're the heroes. If we're wrong, we're the bad guys! I

believe what I have shared is reasonable, but we cannot promise it 100%. The general economy is on rocky financial times. Since we live in this economy, those things affect us to. That said, I believe we are at the "corner turning" stage. It isn't easy building a company from scratch. But we have done it. Also, we are not infallible. We make projections based on the best information we have, but as we move forward, we must alter and adjust those projections based on what actually happens. For example, projections prepared and presented just a few years ago were based upon market conditions that are very different from the ones we face now. That said, I still think our projections are reasonable... once we have a full contingent of funding, which all of our projections were predicated upon. This down economy is, in fact, forcing companies to consider more economical alternatives. Ours is such an alternative. The bottom line is that we have built the product we said we would build. Now predicting how it will sell and be accepted in the market (and how fast) is a whole new ball game which are starting to enter. I can assure you that we are making every effort to "make it happen."

I hope this gives you a better feel for what is going on. There is a lot of activity and I firmly believe it will pan out in the near term. This current situation is but a blip on the radar screen. As always, where there is a will there is a way. We don't want to lose anybody because of their individual cash flow constraints if we can avoid it. A little good fortune and one good break is all we need in addition to all our hard work. We are very close.

I would welcome the opportunity to speak with each of you individually. Or, if you would prefer to ask questions via Email, that's OK too. I have been through these kinds of situations many times in my life and career. Perhaps there is a perspective I can bring to your personal situation that might help you think of options and approaches that you might not have thought of. Perhaps not. But, we've been through so much together, it is certainly worth a try. Therefore, especially before you might decide to do something precipitous, please do sit down with me, or me and Jeff, or me and Steve, or me and Brad so we can talk about your concerns.

Your truly,

—Mike

-----  
 Michael T. McKibben  
 Chairman & CEO  
 Leader Technologies Incorporated  
 Spectrum Commerce Center  
 921 Eastwind Drive, Suite 118  
 Westerville, Ohio 43081  
 (614) 890-1986 Voice  
 (614) 864-7922 Fax  
 (614) 496-5442 Cellular  
[mmckibben@leader.com](mailto:mmckibben@leader.com) Email  
[www.leader.com](http://www.leader.com) WWW

This message contains proprietary and confidential trade secret information intended for the sole use of the intended recipient(s). This message is protected by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996 which stipulates that any violation of said laws may be subject to penalties of \$10M and up to 15 years imprisonment, and various other penalties. This message is also subject to the Leader Proprietary & Confidentiality Agreement. If you have received or are viewing this message in error, please delete it immediately and kindly notify the Leader CEO, Michael T. McKibben at (614) 890-1986 or [mmckibben@leader.com](mailto:mmckibben@leader.com). Abuse of Leader copyrights, trademarks, service marks, trade secrets and all other proprietary property rights will be prosecuted to the fullest extent of the law. Click on "Report a Security Incident" at [www.leader.com](http://www.leader.com) if you have knowledge of improper use of this information.

-----

# **EXHIBIT 16**



**From:** Steve Hanna <steve@computerwizards.com>  
**Sent:** Thursday, October 10, 2002 8:09 AM  
**To:** cwwall@computerwizards.com  
**Subject:** Yesterday in CWC (Tuesady-Wednesday, 10/8-9/2002)

---

Note: you will see a duplicate of this in the form of a reduced version that I am sending to leaderdev this morning .....

**GENERAL:**

Mike & Jerry had meetings and demos Tuesday and Wednesday; Mike and Jerry are in Cleveland today for meetings and demos (Mike indicated that the Mars demo would be some time around 9:30 this morning).

**\*\*Mike & Jerry** are talking with a large company that is a long distance phone service provider or sorts .... they are more of a broker, buying and selling from all the major carriers and as a result, they can resell minutes in bulk at a much reduced rate. Jerry feels that we can cut our long distance phone costs in half, thereby allowing us to lower our price on LP and/or increase our profit margin.

\*\*\*\*\*

**Financial Status:**

Mike received confirmation late yesterday for depositing the investor funds; this will be deposited this morning; Leader will work with the bank to make these funds immediately available such that we can get & deposit a check today from Leader. At this moment we are still projecting a Tuesday pay date.

\*\*\*\*\*

**PERSONNEL Misc.:**

Travel / vacation:

- o Jeff out most of Monday and Tuesday
- o I was in Columbus Monday and Tuesday
- o Eric was in Columbus Tuesday and Yesterday

\*\*\*\*\*

**DEVELOPMENT OVERVIEW:**

-We are in the midst of an extremely important and demanding development cycle. With our limited resources we have to support activities on a variety of fronts, and that is frustrating for all of us ..... but that is just the way it has to be right now.

We are asking for as much of your time as you can give now in support of these tasks.

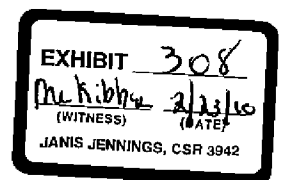
Below is an attempt to summarize the different efforts and who is working these primarily, at this time.

**\*\*L2L :** we have verbally committed to selling a system to Boston Scientific; in general, the current level of functionality is sufficient for the initial roll out to Boston Scientific (with some exceptions .... one being the implementation of the Idea Registry). Below are the current tasks associated with L2L:

1)Performance -> 1st order is implementing VBSF 3.01 in the application ... Tim, Jeff

-> 2nd order will be use of Optimizit across the updated system .... Jeff

2)U/D Mars -> work through current problems on main as we did for LP and u/d Mikes demo & beta machine so that the code gets more exercise .... Mark (POC), Andrea, Wendy, Kim (Dave and Steve testing)



Highly Confidential - Attorneys' Eyes Only

LT1105611

DEFENDANT'S EXHIBIT  
DTX 0184  
CASE NO. 1:08-CV-00862-LPS

3)Idea Registry Implementation -> Betsy

**\*\*SC:** Mike & Jerry tell us that they have a customer (SWACO) and they feel that a contract could be in place within 1-2 months: -> Eric and Bill primary (Tim and Bud part time)

\*LP Redundant system = Brad and Jeff, and Bud

\*LP production system support -> all as required .... right now we do not have a 'next update' scheduled and will try to delay work in this area

\*\*\*\*\*

NON LEADER CUSTOMER ACTIVITIES:

o DuJour: DOWN

o UVJVS: n/a

o Spammotel: experienced a major slowdown over night Tuesday, starting in the evening; Bud was able to remove a bad email that was monopolizing the majority of the system resources; also, Jeff has been spending some time working with the new Spammotel server

o Atlas - n/a

LEADERPHONE(tm) Support & Development:

o Following the Monday night production update, a problem was discovered in the Sales tool (this was found by Brad Dorsey); Betsy fixed this Tuesday afternoon and a small update was done Tuesday night.

o Yesterday, another issue was uncovered in the Backoffice arena that resulted in a customers cc being rejected .... something to do with the user's address processing; Bill fixed this problem and made the change on production as well.

o we are going forward with the changes to get CTI and the Application using common vbsf jar files.

o various members of the team are working actions/research tasks associated with establishing the redundant LP system

L2L:

o we have shifted our focus back to L2L; we are targeting an update to Mars as soon as we can get the code on cleaned up; Mark is the POC for this effort, and we will be creating a CVS branch today

MILESTONES:

o move the Beta equipment suite from Leader to the hosting facility (Adelphia).... TBR ?????

o start the external beta with external customer(s) .... TBR ?????

SC:

-Bill and Eric are the primary resources working this. We have turned the heat up on this based on the understanding from Mike that he is working a deal for implementing the SC capability at SWACO.

Steven E. Hanna

Vice President of Technologies

Leader Technologies Incorporated

Spectrum Commerce Center

921 Eastwind Drive, Suite 118

Westerville, Ohio 43018

(614) 890-1986 Voice

shanna@leader.com Email

hanna1@palm.net (Mobile email)

www.leader.com WWW

This message contains proprietary and confidential trade secret information intended for the sole use of the intended recipient(s). This message is protected by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996 which stipulates that any violation of said laws may be subject to penalties of \$10M and up to 15 years imprisonment, and various other penalties. This message is also subject to the Leader Proprietary & Confidentiality Agreement. If you have received or are viewing this message in error, please delete it immediately and kindly notify the Leader CEO, Michael T. McKibben at (614) 890-1986 or [mmckibben@leader.com](mailto:mmckibben@leader.com). Abuse of Leader copyrights, trademarks, service marks, trade secrets and all other proprietary property rights will be prosecuted to the fullest extent of the law. Click on "Report a Security Incident" at [www.leader.com](http://www.leader.com) if you have knowledge of improper use of this information.

# **EXHIBIT 17**

**From:** Michael T. McKibben <mmckibben@leader.com>  
**Sent:** Thursday, November 21, 2002 9:01 AM  
**To:** LSchlesinger@LIMITED.com  
**Subject:** Limited-Leader update

---

Hi Len:

Kurt Schnieders and Herb Berger visited our offices on Monday for a briefing. It was a productive meeting. The next step was for them to discuss immediate possibilities with Jon and Kathleen then for Kathleen to get back to us.

In parallel, I now have all four Ohio-based VC's interested in funding our **\$10M round**. They are **Primus, Blue Chip, Battelle Venture Partners** and **River Cities**. (We are working on others, but these guys are the the furthest along.) A key element in finalizing this financing at a decent valuation is to show them a major contract or pending major contract.

Would you be willing to field a call from the lead VC among this group? They want to hear why a major player is interested in this technology. At this stage, even an estimate from you of what the Leader contract amount will be would go a long way in my valuation negotiations. FYI, interestingly Len, of our three value propositions: *leadership, collaboration* and *intellectual capital*, these guys only get it on the collaboration piece. The strategic and intellectual capital value of what we've built is lost on them. Nonetheless, they see the potential just from the collaboration features.

In exchange for Limited's support in helping us secure this VC round, I'd like to offer the following sweetheart deal:

**LeaderPhone®** – We're ready to supply teleconferencing to Limited at 5 cents per minute plus the long distance charge. The VCs will simply want to hear what Limited's minutes-per-month ramp up projection is over 6-12-18 months. We will also add Limited-requested custom features at no charge. In addition, if needed, we have Sprint ready to stand with us on unique supplier requirements you might have if that is necessary. We are actually moving to a least-cost routing supplier right now that is much cheaper than Sprint and actually contracts with Sprint, AT&T, etc. We'll configure this part of the solution however Jon and Kathleen wish.

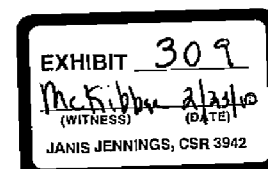
**Leader2Leader®** – The ideal "marquee" Leader2Leader® contract for us in these VC valuation negotiations would be a \$1.5 million license of Leader2Leader®. May I suggest that Limited purchase the licenses for 2,000 Leader2Leader® user-seats for 3 years. That works out to \$20.83 per user per month. We can include a clause which would permit any unused license fees to be applied to future LeaderPhone® charges at your discretion. This helps us in another way... it also helps us establish a market rate for our user licenses. We had projected it to be \$20-40 per month depending on amounts of storage used. Clearly, with Limited we will be generous on storage and thus create plenty of value there. In addition, we will be very flexible in adding Limited-requested features to the system.

My assessment so far is that we have potentially strong fits in:

- **TELECONFERENCING:** more features, less cost, more secure
- **DESIGN RESOURCES/COLLABORATION:** more features, more convenient, less cost, easier to support, more secure, dynamic online resources, version control
- **PROJECT RESOURCES/COLLABORATION:** ditto
- **SUPPLIER RESOURCES/COLLABORATION:** ditto
- **STORE RESOURCES/COMMUNICATIONS:** online training and store resources, cuts courier costs, easier to support, thin client makes for easier support of basic communications like Email, fax, file exchange, bulletin boards, news, ideas, feedback, security, supports handhelds We look forward to reviewing the short list from our meeting with Kurt and Herb.

Thanks, Len, for your support and encouragement. These steps most definitely will "put us over the top" in our next step of growth.

I look forward to hearing from you on how quickly you think we can reasonably move on this. The sooner the better for us. It's brutal out here in the financing world right now. Every "angle" to get these financing guys out of the cellar is golden.



Highly Confidential - Attorneys' Eyes Only

LT1074788

**DEFENDANT'S EXHIBIT**  
**DTX 0185**  
**CASE NO. 1:08-CV-00862-LPS**

Yours truly,

—Mike

Michael T. McKibben  
Chairman & CEO  
Leader Technologies Incorporated  
(614) 890-1986 VOICE  
(614) 496-5442 CELL  
[mmckibben@leader.com](mailto:mmckibben@leader.com) EMAIL

---

This message contains proprietary and confidential trade secret information intended for the sole use of the intended recipient(s). This message is protected by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996 which stipulates that any violation of said laws may be subject to penalties of \$10M and up to 15 years imprisonment, and various other penalties. This message is also subject to the Leader Proprietary & Confidentiality Agreement. If you have received or are viewing this message in error, please delete it immediately and kindly notify the Leader CEO, Michael T. McKibben at (614) 890-1986 or [mmckibben@leader.com](mailto:mmckibben@leader.com). Abuse of Leader copyrights, trademarks, service marks, trade secrets and all other proprietary property rights will be prosecuted to the fullest extent of the law. Click on "Report a Security Incident" at [www.leader.com](http://www.leader.com) if you have knowledge of improper use of this Information.

-----

## **EXHIBIT 18**

### **SERVICE PROVIDER AGREEMENT**

This Service Provider Agreement (the “**Agreement**”), dated as of July 16, 2003 (the “**Effective Date**”), is made by and between Boston Scientific Corporation, a Delaware corporation with offices at One Boston Scientific Place, Natick, Massachusetts 01760 (“**BSC**”), and Leader Technologies Incorporated., a Delaware corporation with offices at 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (“**Leader**”).

WHEREAS, Leader has developed products and technical expertise in providing various product-related services, such as installation, implementation, training, maintenance, hosting, support and business development services, and

WHEREAS, BSC desires to have Leader provide such services in connection with its proprietary software licensed by Leader to BSC, and Leader desires to provide such services in accordance with the terms set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

#### **1. DEFINITIONS.**

As used herein, the following terms shall have the meanings indicated:

1.1 “**External Business Partners**” means those Leader third parties listed on Exhibit B, as may be modified from time to time upon mutual agreement of the parties, which parties have executed an instrument, in the form of Exhibit C, agreeing to be bound by the terms and conditions of this Agreement [Covered in Exhibit C]

1.2 “**Confidential Information**” means any information disclosed previously or in the future by one party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, business plans, source code, software, documentation, financial analyses, marketing plans, forecasts, suppliers, customer names, customer lists, customer data, product plans, products, services, inventions, processes, designs, drawings, engineering or hardware configuration information, know-how, trade secrets, or any other proprietary or business information), which is designated as “Confidential,” “Proprietary” or some similar designation, or other information, the confidential or proprietary nature of which is reasonably apparent under the circumstances. Confidential Information shall also include information disclosed to a party by a third party pursuant to a nondisclosure obligation.

1.3 “**Marks**” means the trademarks, service marks, trade names, logos and other proprietary words and symbols of Leader and its External Business Partners.

1.4 “**Leader Technology**” means any and all data models, data integration tools or technology, data processing systems or mechanisms, computer code, including objects and tools, trade secrets, know-how, processes, inventions, discoveries, original works of authorship and derivative works thereof, developments, concepts, improvements and trademarks that Leader has prepared, developed, acquired or otherwise obtained rights in prior to the Effective Date or may thereafter prepare, develop, acquire or otherwise obtain rights in other than the Deliverables.

1.5 “**Delay**” shall have the meaning set forth in Section 3.2.

1.6 “**Deliverable**” means designs, computer software (in source code and object code form), documentation, drawings, applications, software services and all other deliverables that are created or developed by Leader in connection with the provision of Services hereunder.

1.7 “**Services**” shall have the meaning set forth in Section 2.4.

1.8 “**Statement of Work**” shall have the meaning set forth in Section 2.3.



**2. SERVICES; CHANGE ORDERS.**

2.1 Installation, Implementation and Training Services. Leader shall provide the installation, implementation and training services and Deliverables set forth in **Exhibit A** in accordance with the schedule and other terms set forth in such exhibit.

2.2 Maintenance, Hosting and Support Services. Leader shall provide the maintenance, hosting and support services and Deliverables set forth in **Exhibit A** in accordance with the schedule and other terms set forth in such exhibit.

2.3 Statements of Work. From time to time, Leader and BSC may agree on additional services to be performed, and in that case, shall prepare a statement of work ("**Statement of Work**") that outlines the additional services to be performed. Each Statement of Work, upon execution by both of the parties hereto, will be a new agreement.

2.4 Services. Leader shall perform for BSC the services ("**Services**") described in the exhibits attached hereto and each Statement of Work.

2.5 Change Orders. Any changes to the scope of Services or the Deliverables shall be mutually agreed upon in writing executed by authorized representatives of both parties ("**Change Order**"). The parties acknowledge that such changes may affect both the schedule and costs set forth in an exhibit or Statement of Work. At a minimum, each Change Order shall document (i) the change requested and its effect on the Deliverables, (ii) any adjustments to the schedule set forth in the exhibit or Statement of Work, and (iii) any increase or decrease in the costs specified in such exhibit or Statement of Work.

**3. LEADER RESPONSIBILITIES.**

3.1 Responsibilities. Leader shall perform those tasks and assume those responsibilities set forth in the exhibits and Statements of Work, and to the extent Leader fails to do so, BSC will not be responsible for paying for the affected services. BSC acknowledges and agrees that Leader's performance is dependent on BSC's timely and effective satisfaction of all of BSC's material responsibilities hereunder and timely decisions and approvals by BSC. Leader is entitled to rely on all decisions and approvals of BSC in connection with the Services provided hereunder.

3.2 Failure to Perform Responsibilities. In the event BSC fails to perform its material responsibilities under Section 3.1 or materially impedes Leader's performance of the Services (a "**Delay**"), Leader shall, upon specific notice to BSC with respect thereof, be excused from any delay or non-performance of its obligations under this Agreement, beginning upon the date the Delay arises, to the extent such Leader delay or non-performance results from such Delay; provided that Leader shall work with BSC to minimize the impact or potential impact of any such Delay. BSC shall continue to pay Leader for Services actually performed by Leader prior to and during any such period of Delay by BSC. Leader acknowledges that such Delays may affect the fees payable by BSC pursuant to the applicable exhibits and Statements of Work.

**4. LICENSE GRANTS.**

4.1 License to Deliverables. Leader grants to BSC a non-exclusive, non-transferable (except as provided in Section 11.1) license to use the Deliverables for its internal business purposes; which shall include independent third parties approved by BSC who participate in the internal business purpose, subject to the terms and conditions of this Agreement. BSC may not re-sell the Services for any purpose other than its internal business purpose.

4.2 Terms and Restrictions. BSC shall not: (i) reverse engineer, disassemble, decompile, or decode the Deliverables; (ii) derive source code, methodologies or proprietary algorithms from the Deliverables; (iii) modify the Deliverables or otherwise create any derivative work from the Deliverables; or (iv) sell, assign, sublicense or otherwise transfer the Deliverables, except as provided in Section 11.1.

**5. PROPRIETARY RIGHTS.**

5.1 Leader Technology. Leader shall retain all right, title and interest, including all intellectual property rights, in and to all Leader Technology.

5.2 Deliverables. Unless otherwise specified in an exhibit or Statement of Work, Leader shall own all right, title and interest, including all intellectual property rights, in and to all Deliverables, except for the license rights granted to BSC pursuant to Section 4.

5.3 Marks. Each of Leader and its External Business Partners shall retain all right, title, and interest in its respective Marks, and all goodwill arising from BSC use of such Marks shall inure to the benefit of the Leader or its External Business Partners, as applicable. BSC shall not challenge the Marks or the registration thereof or attempt to register any trademarks, service marks, trade names, logos or proprietary words or symbols confusingly similar to the Marks.

**6. COMPENSATION.**

6.1 Fees. BSC shall pay Leader the compensation set forth in the exhibits and Statements of Work for the performance of the Services. Such fees may be on a usage basis, a time and materials basis, or on a milestone basis, or otherwise as agreed by the parties.

6.2 Expense Reimbursement. BSC shall pay, to the extent incurred by Leader in the performance of the Services, and with prior written approval from BSC: (1) reasonable out-of-pocket expenses such as long-distance telephone charges, postage, and shipping costs; and (2) reasonable travel, lodging and living expenses incurred by Leader's personnel, and (3) other pass-through costs such as printing, webcasting, etc.

6.3 Taxes. BSC shall pay or reimburse Leader for any taxes, such as sales, use or excise taxes, and similar charges of any kind imposed by any federal, state or local governmental entity for Deliverables and/or Services provided under this Agreement, excluding only taxes based solely upon Leader's income.

6.4 Payment Terms. All fees quoted and payments made shall be in U.S. Dollars. Leader shall submit monthly invoices, and BSC shall pay all such amounts within thirty (30) days after the date of invoice. Leader may not invoice until services are performed.

6.5 Late Payment. Any amounts due hereunder and not paid within thirty (30) days of the date of invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, determined and compounded on a daily basis from the date due until the date paid.

**7. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL LEADER'S LIABILITY ARISING OUT OF THIS AGREEMENT OR RELATING TO THE SERVICES OR DELIVERABLES PROVIDED HEREUNDER EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY LEADER HEREUNDER REGARDLESS OF WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY. IN NO EVENT WILL LEADER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER PECUNIARY LOSS), IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE DELIVERABLES OR SERVICES PERFORMED HEREUNDER, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, INCLUDING NEGLIGENCE, EVEN IF LEADER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8. CONFIDENTIALITY.**

8.1 Non-use and Non-disclosure. Neither party shall use the Confidential Information of the other party for any purpose other than in accordance with this Agreement. Neither party shall disclose the Confidential Information of the

other party to anyone other than its employees and contractors who legitimately need access to it and who have signed proprietary and confidentiality agreements comparable in scope to this Section 8. Each party shall use the same degree of care to protect the Confidential Information of the other party as it uses to protect its own confidential information of like nature, which in no circumstances shall be less than reasonable care.

8.2 **Exceptions.** Confidential Information shall not include information (a) already lawfully known to the receiving party if the receiving party does not then have a duty to maintain its confidentiality, (b) developed independently by the receiving party, (c) generally known to the public through no fault of the receiving party; (d) lawfully obtained from a third party not obligated to preserve its confidentiality; (e) required to be disclosed by law, regulation or order of a court of competent jurisdiction or other governmental authority.

8.3 **Remedy for Breach.** The parties acknowledge that either party's breach of Section 8.1 would cause the other party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach, the non-breaching party shall be entitled to injunctive relief in addition to any other remedies it may have at law or in equity.

## 9. **WARRANTY; DISCLAIMER.**

9.1 **Warranty.** Leader represents and warrants that the Services shall be provided in a workmanlike manner in accordance with applicable professional standards. With specific regard to data security, Leader shall secure all data transmissions from client machines to the Leader server with 128-bit Secure Socket Layer connections. All BSC files shall be encrypted on Leader servers at at least 128-bit encryption for each file and those files shall be stored on at least 128-bit encrypted hard drives. All files are backed up on a redundant basis: once an hour for a day, once a day for a week, once a week for a month, and once a month for a year. Access to the root directories on Leader servers shall be restricted only to authorized Leader personnel on a need-to-know basis. Currently three (3) Leader systems administrators have root access; this number may fluctuate as required by internal systems administration and maintenance requirements. All Leader systems administrators are bound by proprietary and confidentiality agreements that commit them individually to maintain and protect all customer data as a trade secret property of the customer in perpetuity. Leader collocation facilities are secured by both key and key lock box access. The collocation facility is further secured by intrusion and fire detection as well as both backup generator and battery continuous power systems.

9.2 **Disclaimer.** EXCEPT AS SET FORTH ABOVE, LEADER MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES PERFORMED UNDER THIS AGREEMENT OR ANY EXHIBITS OR STATEMENTS OF WORK, OR THE DELIVERABLES, AND LEADER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

## 10. **TERM AND TERMINATION.**

10.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of two (2) years, unless earlier terminated in accordance with Section 10.2 below. Thereafter, on an annual basis, the parties may mutually agree to renew this Agreement for one (1) year terms.

10.2 **Termination.** This Agreement may be terminated as follows:

(a) By Leader or BSC, immediately upon written notice of termination to the other party, in the event of a material breach of this Agreement by the other party, if such breach continues uncured for a period of thirty (30) days after written notice of such breach is provided to the breaching party; or

(b) By Leader or BSC, immediately upon written notice of termination to the other party, in the event the other party: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) files a voluntary bankruptcy petition; (iv) acquiesces to any involuntary bankruptcy petition; (v) is adjudicated bankrupt; or (vi) ceases to do business.

(c) By BSC for convenience with 30 days prior written notice.

10.3 Effect of Termination. Upon the expiration or termination of this Agreement for any reason: (i) BSC shall immediately pay to Leader all amounts due and outstanding as of the date of such termination or expiration; and (ii) each party shall return to the other party the originals and all copies of such other party's Confidential Information in its possession or under its control.

10.4 Survival. The respective rights and obligations of the parties under Sections 4.1, 4.2, 5, 7, 8, 9.2, 10.3, 10.4 and 11 of this Agreement shall survive the termination or expiration of this Agreement.

## 11. MISCELLANEOUS.

11.1 Assignment. Either party may assign this Agreement in connection with a merger, corporate reorganization or sale of all or substantially all of its relevant assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.2 Amendment; Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party to be charged. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

11.3 Governing Law. This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws provisions.

11.4 Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the address for the applicable party first written above, or at such other address as may hereafter be furnished in writing by either party hereto to the other. Such notice will be deemed to have been given as of the date it is delivered.

11.5 Independent Contractors. The parties are independent contractors. Neither party shall be deemed to be an employee, agent, partner or legal representative of the other for any purpose, and neither party shall have any right, power or authority to create any obligation or responsibility on behalf of the other.

11.6 Severability. If any provision of this Agreement is held by a court or tribunal of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.

11.7 Headings and References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

11.8 Complete Understanding. This Agreement including all exhibits constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement.

11.9 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and together which shall constitute one instrument.

11.10 Force Majeure. The obligations hereunder of each party shall be suspended while and to the extent that such party is prevented from complying herewith in whole or in part by any event beyond the reasonable control of such party, which for purposes of this Agreement shall include, without limitation, acts of God, earthquakes, unavoidable accidents, laws, rules, regulations or orders of government authorities, acts of war (declared or not), hostilities, blockades, civil disturbances, embargoes, strikes or any other similar event or cause.

11.11 Subcontractors. BSC expressly consents to Leader's use of subcontractors in connection with the performance of Services hereunder, provided that for purposes of this Agreement, Leader shall be responsible for such

subcontractors' performance of that portion of the Services that have been subcontracted to them. Leader will provide prior notice to BSC in the event that a subcontractor is utilized that has not been previously approved and added to the list of Leader External Business Partners in Appendix B.

11.12 Export Restrictions. BSC agrees to comply fully with all relevant export laws and regulations of the United States to ensure that no information or technical data provided pursuant to this Agreement, including, but not limited to, the Deliverables, is exported or re-exported directly or indirectly in violation of law.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the Effective Date:

**Boston Scientific Corporation**

By: Janet M'Kelly  
Print Name: Janet M'Kelly  
Title: CIO

**Leader Technologies Incorporated**

By: Michael T. McKibben  
Print Name: MICHAEL T. MCKIBBEN  
Title: CEO

**EXHIBIT A**

**INSTALLATION, IMPLEMENTATION, TRAINING, MAINTENANCE,  
HOSTING AND SUPPORT SERVICES**

**Boston Scientific Corporation, ELECT Clinical  
Trials Leader2Leader™ Collaboration System**

**SYSTEM INITIALIZATION & TRAINING**

1. Document workflow, frequency, and special user requirements; delivered by BSC.
2. User names, user groups and leaderboard workspace names; provided by BSC.
3. User, user groups and leaderboards (folders) set up by Leader with confirmation of appropriate structure from BSC.
4. Orientation of BSC ELECT Leader2Leader™ systems administrator on account management, permissions, password changes, help system, teleconferencing services, operator support, security, encryption, professional service support, potential firewall issues, etc.; provided by Leader.
5. Written and electronic step-by-step user guides; prepared by Leader.
6. Two (2) training webinars; presented by Leader to personnel selected and approved by BSC.

**MONTHLY USER LICENSE**

1. 10-user license.
2. Help desk and technical support.
3. Additional 10 user licenses (this trial only).
4. Up to 1GB storage.
5. Re-negotiate per user license fee once requirement exceeds 20 users with the agreement that the price per user will decrease the more users we add assuming no additional feature or support requirements.

**DELIVERABLES**

1. 128-bit secure Internet-based Leader2Leader™ file sharing system delivered substantially in accordance with the ELECT specification entitled ELECT Collaboration Requirements in Exhibit D. At minimum, this will be enabled by access to multiple Digital Leaderboards™ and the Leader Files™ tool on non-host accounts. The host account will also have the Leader Admin™ and Leader Manage Board™ tools enabled for managing the network and user accounts.
2. Support both internal and approved external users.
3. Upon expiration of agreement or termination, CD of data and data wipe of the Leader system.

**COSTS**

1. \$750 per month for up to 20 users; billed monthly.
2. Maintenance fee of 17.5% of monthly fee.
3. Additional storage over 1GB: \$7.50 per GB per month; charged in per GB increments (e.g., any increment between 1 GB and 1.999 GB is charged for an additional GB, etc)
4. Per diem professional service rate and billing frequency to be negotiated on a case by case basis based upon the Statement of Work.

## **MAINTENANCE SERVICE LEVELS**

### **1. Maintenance Service Level Commitments**

#### **1.1. Application Hosting**

##### **1.1.1. Environment**

All Hardware, Software, and Internet connectivity services provided as part of Application Hosting are designed, implemented, and supported to maintain a monthly service level of 99.8% uptime or greater.

Uptime is defined as the time during which the majority of the site is available to users, within normal operating parameters.

For the purposes of calculating uptime, all circumstances beyond Leader's direct and immediate control, or failure by any third party to perform in accordance with the terms and conditions agreed to by such third party, will be excluded from such computations. For example, if Citynet collocation services were to lose backbone connectivity for a period of two hours, those two hours will not be counted against any uptime calculation.

##### **1.1.1.1. Hardware**

The hardware may include items such as: application, database, and storage servers; routers, switches, and load balancers; power supply and backup equipment; firewalls; testing and troubleshooting equipment; and other hardware required for BSC operation and support.

##### **1.1.1.2. Software**

This includes the operating system, application development platform, application functionality, analysis tools, and other platform components required for Leader operation and support.

##### **1.1.1.3. Internet Connectivity**

All application hosting includes connectivity to the Internet. (BSC's low initial volume requirements are not anticipated to be an issue here.).

##### **1.1.1.4. Third Party Maintenance, Upgrades, and Additions**

All hardware and software components may, at the sole discretion of Leader be covered by Third Party Maintenance or Upgrade agreements.

Leader may, from time to time, at its sole discretion, upgrade software components to enhance or improve service.

Leader may, from time to time, at its sole discretion, add new software components to enhance or improve service.

#### **1.1.2. System Administration**

In order for Leader to provide effective System Administration, all customers must abide by reasonable systems administration policies and procedures that may from time to time be established by Leader. BSC requires a 5 day notice of any scheduled maintenance. Notice can be sent to Dave Hahn at [hahnd@bsci.com](mailto:hahnd@bsci.com)

##### **1.1.2.1. Performance Monitoring and Tuning**

Leader will monitor system performance, including responsiveness, and make necessary modifications to the system to ensure optimal performance.

**1.1.2.2. Maintenance Compliance**

All software will be updated with the latest patches, as deemed necessary by Leader. All hardware will be monitored for recalls or additional necessary features, as well as periodic regularly scheduled maintenance, as per manufacturer or industry standard recommendations.

**1.1.2.3. Security**

Hardware and software security will be the responsibility of Leader. Security includes firewall administration and maintenance, as well as security patches.

**1.1.2.4. Network**

Leader will ensure network connectivity and serve as the main contact for Internet or other network connectivity issues.

Leader should be designated as the technical contact for all DNS related activities, and will serve in the capacity thereof.

**1.1.2.5. Backups**

All data and web servers will be backed up nightly and incrementally using a robust configuration of network-based backup servers.

**1.1.3. Database Administration**

**1.1.3.1. Performance Monitoring and Tuning**

Leader will monitor database system performance, including responsiveness, and make necessary modifications to the system to ensure optimal performance.

**1.1.3.2. Report Writing**

Any data and activity reports offered as standard reports by Leader will be made available to BSC. Any additional reports requested by BSC will be handled as a Statement of Work.

**1.1.4. Disaster recovery**

Leader will keep and periodically test a disaster recovery plan. This may include multiple personnel, additional equipment, and software.

**1.2. Help Desk**

Leader will provide advanced technical and domain support through email and telephone. The helpdesk for all Leader customers, including BSC, will consist of a full-time support technician, a dedicated support telephone number, an issue tracking system, and email support.

Between the hours of 9 AM to 5 PM Eastern Time Monday through Friday, excluding United States holidays, henceforth called "Standard Business Hours", all support calls should first be triaged by Leader. Specifically, BSC will provide Level 1 technical support and call triage (i.e., answering non-technical and lower level technical questions). Leader will be available to BSC staff via email and telephone to provide Level 2 and Level 3 technical support through BSC staff members on a 24 x 7 basis.

Support calls originating after Standard Business Hours will be considered After Hours Support calls and will be available to BSC on a 24 x 7 basis. These calls will be directed to an After Hours Support number, which will then page the on-call Leader Support Technician. Once the page has been received, the Support Technician will respond to the page within 20 minutes.

Whether Standard or After Hours, all inquiries will be time stamped and logged, and will be processed or escalated within four (4) hours.

The help desk function will be supported by a software system to track, at a minimum, date, time, incident number, inquiry type, incident description, and incident resolution.



Periodically, frequent inquiries will be summarized in a frequently asked questions document and made available to BSC. To enable Leader to better track issues related to BSC, Leader will track all queries it receives through the help desk tracking system, and enter reported bugs in a bug tracking tool.

**EXHIBIT B**

**LEADER EXTERNAL BUSINESS PARTNERS**

Citynet Holdings, LLC (collocation provider)

AnySystem.com (equipment provider)

**EXHIBIT C**

**LEADER EXTERNAL BUSINESS PARTNERS AGREEMENT**

The undersigned, \_\_\_\_\_ (“External Business Partners”), hereby agrees to be bound by certain terms and conditions of the Service Provider Agreement between Leader Technologies Incorporated and Boston Scientific Corporation, dated as of \_\_\_\_\_, 200\_\_ (the “Agreement”), as such terms and conditions relate to “External Business Partners” and as referenced below with said terms and conditions provided to the External Business Partners by Leader.

Terms and conditions to be disclosed to the External Business Partner:

Section 4.	License Grants
Section 5.	Proprietary Rights
Section 8.	Confidentiality
Section 11.2	Amendment; Waiver
Section 11.6	Severability
Section 11.11	Subcontractors
Exhibit A	Maintenance Service Levels only; no other sections of the exhibit
Exhibit C	

IN WITNESS WHEREOF, the undersigned, a duly authorized representative of External Business Partners, executes this External Business Partners Agreement as of the date written below.

External Business Partner: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D****ELECT COLLABORATION REQUIREMENTS****Summary**

The ELECT trial has needs to send/receive sensitive lab data between business partners. This data is relatively small in volume (hundreds) and frequency (weekly). The data is used to track the status of core lab readings and to provide for reconciliation between company systems. For ELECT, the actual data will not be transmitted, but tracking files will be.

As such, the type of collaboration the ELECT trial is pursuing is some internet-based, secure file-sharing capabilities. While it could be expanded to include sites, the scope of these requirements is limited to just our core lab partners.

**Requirements****User Counts****External users:**

Angio core lab	2
ECG core lab	2
National PI	1
Sites	7

**Internal users:**

Data Management	2
Safety Group	1
Monitoring	2
Clinical Staff	3

Total	20
-------	----

**File Volumes**

File volumes are expected to be very small over a two-year period.

File	Frequency	Size Each	Total Size
Angio Tracking File (lab-produced)	1/week	50k	10MB
ECG Tracking File (lab-produced)	1/week	50k	10MB
Enrollment File (BSC-produced)	1/week	30k	6MB
Weekly Report (BSC-produced)	1/week	2MB	100MB
Newsletter (BSC-produced)	1/month	5MB	120MB
Document Updates (BSC-produced)	as needed	20MB	20MB
Miscellaneous files	as needed	-	200MB
<b>TOTAL</b>			<b>&lt;500MB</b>

**Security**

To properly restrict access to various folders, and to account for additional studies, the following user groups should exist.

Group	Description
ELECT_BSC_DM	ELECT trial, BSC Data Management
ELECT_BSC_SAFETY	ELECT trial, BSC Safety Group
ELECT_BSC_CLINICAL	ELECT trial, BSC Clinical Team
ELECT_BSC_MONITOR	ELECT trial, BSC Monitoring Team
ELECT_ANGIO_LAB	ELECT trial, Angio Core Lab
ELECT_ECG_LAB	ELECT trial, ECG Core Lab
ELECT_SITE_COORD	ELECT trial, site coordinator
ELECT_SITE_PI	ELECT trial, primary investigator

In addition, the following requirements should exist.

1. Access to files/folders must be restricted by a user/password scheme as well as role(s).
2. BSC must approve access for any user prior to granting them access to the system.
3. The password must expire – and user be forced to change – every 60 days.
4. Each user should be allowed to have multiple roles assigned to their login.
5. Transmission of any data files must use at least 128-bit encryption.

**Folders**

The following folders are proposed:

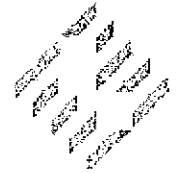
Folder	Content, access
ELECT	
Core Lab – Angio	Data files produces by Angio Core Lab ELECT_ANGIO_LAB: read/create/update/delete ELECT_BSC_DM: read/delete ELECT_BSC_SAFETY: read ELECT_BSC_CLINICAL: read
Core Lab – ECG	Data files produces by Angio ECG Lab ELECT_ECG_LAB: read/create/update/delete ELECT_BSC_DM: read/delete ELECT_BSC_SAFETY: read ELECT_BSC_CLINICAL: read
Sites	Currently empty, but could contain site-specific subfolders. ELECT_BSC_CLINICAL: read/create/update/delete ELECT_SITE_COORD: read ELECT_SITE_PI: read
Sponsor	Sponsor-generated files
Enrollment	Enrollment files produces by BSC. ELECT_ANGIO_LAB: read ELECT_ECG_LAB: read ELECT_BSC_DM: read/create/update/delete ELECT_BSC_SAFETY: read ELECT_BSC_CLINICAL: read ELECT_SITE_COORD: read ELECT_SITE_PI: read

# **EXHIBIT 19**

Leader,

LEADER TECHNOLOGIES LLC  
10000 LEE ROAD  
COLUMBUS, OHIO 43240-1100

614 890.1986 VOICE  
614 864.7922 FAX



## Proprietary & Confidentiality Agreement

In connection with your interest in business relationships between you, Vincent Russo ("RECIPIENT" or you) and Leader Technologies LLC, a.k.a. Leader Technologies, Ltd., an Ohio limited liability company ("Leader"), Leader will be furnishing you with certain information which is either non-public, confidential or proprietary in nature. All information ascertained by or furnished to you, your directors, officers, employees, agents or representatives, including without limitation attorneys, accountants, consultants and financial advisors (collectively, "representatives"), by Leader or its representatives, and all analyses, compilations, data, studies or other documents prepared by you or your representatives containing or based in whole or in part on any such furnished information or reflecting your review of, or interest in, Leader is hereinafter referred to as the "Information". In consideration of your being furnished with the Information you agree that:

1. The Information will be kept confidential and will not, without the prior written consent of Leader be disclosed by you or your representatives, in any manner whatsoever, in whole or in part, and will not be used by you or your representatives directly or indirectly for any purpose other than evaluating the business relationship referred to above. Moreover, you agree to transmit the Information only to those representatives who need to know the Information for the purpose of evaluating the business relationship referred to above, who are informed by you of the confidential nature of the Information and who agree to be bound by the terms of this Agreement by executing the attached single document prior to receiving such information. You agree to notify Leader as to the identity of such representatives prior to any dissemination of Information and to obtain Leaders consent to such disclosure due to the highly sensitive market nature of said Information. You will be responsible for any breach of this Agreement by your representatives. You also agree to abide by applicable law with respect to disclosure of personnel records and the right to privacy.
2. Neither party hereto nor its representatives will, without the prior written consent of the other party, disclose to any other person the fact that the Information has been made available, that discussions or negotiations are taking place concerning a possible business relationship involving Leader or any of the terms, conditions or other facts with respect to any such possible business relationship, including the status thereof, except as required by law or by the rules of any recognized stock exchange and then, if circumstances permit, only with prior written notice as soon as possible to such other party. If circumstances make it impossible to give such prior written notice, then any disclosure made shall be no more extensive than is necessary to meet the minimum requirement imposed on the party making such disclosure.
3. The Information, and all copies thereof, except for that portion of the Information which consists of analyses, compilations, data, studies or other documents prepared by you or your representatives will remain the absolute property of Leader and will be returned without retaining any copies thereof to Leader immediately upon Leaders request. That portion of the Information which consists of analyses,

Proprietary & Confidential

VINCENT RUSSO  
Proprietary & Confidentiality Agreement, page 2 of 2

compilations, data, studies or other documents prepared by you will be immediately destroyed at the request of Leader and such destruction will be confirmed to Leader in writing.

4. This Agreement shall be inoperative as to such portions of the Information which (i) are or become generally available to the public other than as a result of an unauthorized disclosure by you or your representatives; (ii) become available to you on a non-confidential basis from any source excluding Leader or its representatives, which source has represented to you (and which you have no reason to disbelieve after due inquiry) is entitled to disclose it; or (iii) was known to you on a non-confidential basis prior to its disclosure to you by Leader or one of its representatives.
5. You understand that Leader has endeavored to include in the Information those materials which are believed to be reliable and relevant for the purpose of your evaluation, but you acknowledge that neither Leader nor any of its representatives makes any representation or warranty as to the accuracy or completeness of the Information. You agree that neither Leader nor any of its representatives shall have any liability to you or to any of your representatives as a result of the use of the Information by you or your representatives, it being understood that only those particular representations and warranties which may be made in any definitive agreements, when, as and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreements, shall have any legal effect.
6. In the event that you or anyone to whom you transmit the Information pursuant to this Agreement are requested or become legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you will provide Leader with prompt written notice so that Leader may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. In the event that such protective order or other remedy is not obtained, or that Leader waives compliance with the provisions of this Agreement, you will furnish only that portion of the Information which is legally required.
7. It is further understood and agreed that you will not directly contact employees of Leader in connection with the Information or a potential business relationship involving Leader without prior authorization of Michael T. McKibben, Senior Manager of Leader. You further agree that if you meet with management as a part of any due diligence visit, then you will not solicit for employment any of Leaders executives or key employees for a period of three years from the date of that visit.
8. It is further understood and agreed that no failure or delay by Leader in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
9. The restrictions imposed hereby shall continue for a period of five years from the date on which you last receive or prepare, as the case may be, any Information.

Proprietary & Confidential




VINCENT RUSSO  
Proprietary & Confidentiality Agreement, page 3 of 3

10. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to agreements made and to be performed within such State.

Please return a signed copy of this Proprietary & Confidentiality Agreement to Leader, c/o Michael T. McKibben, Chairman, CEO & Senior Manager, Spectrum Commerce Center, 921 Eastwind Drive, Westerville, Ohio 43081.

**Confirmed and Agreed to by Vincent Russo**

When signing *individually*:



Signature

VINCENT J. RUSSO

Print Name

When signing on behalf of your *organization*:

Signature

Print Name

INDIVIDUALLY

Apr 2, '01

Date

ORGANIZATION Name & Your Title

Date

Proprietary & Confidential

## **EXHIBIT 2**

12/11/02

A/PROV

PTO/SB/16 (10-01)

Approved for use through 10/31/2002 OMB 0651-0032

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PROVISIONAL APPLICATION FOR PATENT COVER SHEET**

This is a request for filing a PROVISIONAL APPLICATION FOR PATENT under 37 CFR 1.53 (c).

Express Mail Label No.  

12/11/02

12/11/02

**INVENTOR(S)**

Given Name (first and middle [if any])	Family Name or Surname	Residence (City and either State or Foreign Country)
Michael T. Jeff R.	McKibben Lamb	Westerville, Ohio Westerville, Ohio

☐ Additional inventors are being named on the \_\_\_\_\_ separately numbered sheets attached hereto**TITLE OF THE INVENTION (500 characters max)**

METHOD FOR DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES

Direct all correspondence to:

**CORRESPONDENCE ADDRESS**☒ Customer Number

25534

Place Customer Number  
Bar Code Label here

OR

Type Customer Number here

☐ Firm or  
Individual Name

Address

Address

City

State

ZIP

Country

Telephone

Fax

**ENCLOSED APPLICATION PARTS (check all that apply)**☒ Specification Number of Pages

18

☐ CD(s), Number☐ Drawing(s) Number of Sheets☐ Other (specify)☐ Application Data Sheet. See 37 CFR 1.76**METHOD OF PAYMENT OF FILING FEES FOR THIS PROVISIONAL APPLICATION FOR PATENT**☒ Applicant claims small entity status. See 37 CFR 1.27.☒ A check or money order is enclosed to cover the filing fees☐ The Commissioner is hereby authorized to charge filing fees or credit any overpayment to Deposit Account Number:  FILING FEE  
AMOUNT (\$)

80.00

☐ Payment by credit card. Form PTO-2038 is attached.

The invention was made by an agency of the United States Government or under a contract with an agency of the United States Government

☒ No☐ Yes, the name of the U.S. Government agency and the Government contract number are \_\_\_\_\_

Respectfully submitted,

SIGNATURE

Date

12/11/2002

REGISTRATION NO.

34715

(if appropriate)

Docket Number:

547.0003P

TYPED or PRINTED NAME Frederick N. SamuelsTELEPHONE 202-331-8777**USE ONLY FOR FILING A PROVISIONAL APPLICATION FOR PATENT**

This collection of information is required by 37 CFR 1.51. The information is used by the public to file (and by the PTO to process) a provisional application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the complete provisional application to the PTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C., 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Box Provisional Application, Assistant Commissioner for Patents, Washington, D.C. 20231.

Plaintiff's Trial Exhibit

**PTX-3**

Case No. 08-CV-00862

LTI 000742

## **METHOD FOR DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES**

### **I. Field of the Invention**

**[0001]** This invention relates to management and storage of electronic information. More particularly, this invention relates to new structures and methods for creating relationships between users, applications, files and folders.

### **II. Background of the Invention**

**[0002]** Digital communications solutions are presently supplied to users in ways that are completely divorced from their business context. A particular item of communication provides little or no inherent understanding of how that communication furthers the purpose and intent of the group or enterprise. In other words, an email inbox collects emails about all topics, business and personal. The email application itself is not discerning about topic, priority or context beyond perhaps rudimentary "message filters" that will look for certain key words or people then place those items in target folders. Generally, it simply presents a sequential list of messages received. Similarly, a fax machine receives fax pages in sequence. A fax machine is not discerning about topic, priority or context. It simply outputs fax pages. Once received, it remains the task of the recipient to sort, categorize and organize these items of communication in ways most meaningful to that person. The organization task generally occurs outside the context of the particular communications tool itself.

**[0003]** Typical methods for organization of communications are limited and fragmented. For example, for an email, the recipient may either leave all email in the inbox or move it to another electronic folder. For a fax, the recipient is likely to place that fax in a file folder that is identified by project name or name of recipient. These

typical methods of organizing communications are wholly inadequate for a number of reasons:

[0004] 1. **Organization** – the recipient is left to do all the work of organization and categorization of the communications rather than having the systems themselves doing that work for them, automatically.

[0005] 2. **Leadership** – the linkage between business strategy and an individual act of communication is non-existent.

[0006] 3. **Categorization** – the items themselves rarely apply to only one topic of interest. As such, under current systems, the items would need to be manually stored in multiple locations (either electronic or “brick and mortar” folders). For example, a fax letter to a sales manager may contain information about contact addresses, market intelligence data, specific product requests, and financial accounting.

[0007] 4. **Knowledge Sharing** – items often relate to organizational issues for which one or more work groups need access; access that is denied when the recipient “buries” that item in his/her personal filing system, electronic or otherwise.

[0008] 5. **Context** – prior art communications tools do not know the business and/or personal context(s) within which files are created and used. For example, a person may create three files in a word processor, one relating to sales, the second relating to operations and the third relating to his son’s football team. However, the word processor itself has no way of knowing to automatically store those three files in at least three different places.

[0009] 6. **Security & Privacy** – the applications and their file storage methods are generally insecure; they do not conform to a single, dependable security model.

**[0010]** Known software applications create and store files outside of a contextual framework. For example, when a user creates a Microsoft Word (\*.doc) file in Microsoft Word 2000, the user must select a single folder within which to store that file. The file may be stored in an existing folder or the user may create a new folder to receive the file. This file management method is known as Lightweight Directory Application Protocol (LDAP). LDAP borrowed the physical world paper file management scheme where a machine/application creates files, stores those files in individual folders and stores those folders in cabinets. Under this scheme, context is completely independent of the application. File context is limited to the decision made by the user about which folder the file should be stored. The user decision does not adequately represent reflect the true context of the file given that the file may contain information that could reasonable be stored in multiple folders.

**[0011]** Another limitation of LDAP is that little or no information is contained within the file about the user and the context and circumstances of the user at the time the file was created. Current processes designed to add context to files such as the "meta-data" tagging approach, involve having a knowledge officer view files after they have been stored and create meta-data tags with additional key words associated with the file for search purposes.

**[0012]** Notwithstanding the usefulness of the above-described methods, a need still exists for a communications tool that associates files generated by applications with individuals, groups and topical context.

### **III. Summary of the Invention**

**[0013]** It is an object of the invention to provide a communication tool that seamlessly facilitates, collects, compiles and distributes communication data.

**[0014]** It is a further object of the invention to provide a communication tool that links communication data to enterprise leadership priorities.

**[0015]** It is another objective of the invention to provide a communication tool that performs communications tasks while simultaneously reminding the user of his/her individual work priorities.

**[0016]** It is still a further object of the invention to provide a communication tool that automatically stores contextual information relating to an item of communication and utilizes that contextual in performance of communication tasks.

**[0017]** Still another object of the invention is to provide a communication tool that integrates two or more different communication applications such as telephony, unified messaging, decision support, document management, portals, chat, collaboration, search, vote, relationship management, calendar, personal information management, profiling, directory management, executive information systems, dashboards, cockpits, tasking, meeting, conferencing, etc. into a common application.

**[0018]** Still a further object of the invention is to provide a structure for defining relationships between complex collections of data.

**[0019]** Yet another object of the invention is to provide a process for automating workflow between multiple entities.

**[0020]**

[0021] Given the following enabling description, the invention should become evident to a person of ordinary skill in the art.

#### **IV. Description of the Embodiments**

[0022] In the past, intuitive, dynamic, changeable workflow processes have proved to be too dynamic and expensive for automation. The present invention utilizes "boards" and "webs" to automate workflow processes and define relationships between data and applications. As users create and change their contexts, the files and applications automatically follow, dynamically capturing those shifts in context.

[0023] As used herein, a "board" is defined as a collection of data and application functionality related to a user-defined topic. For example, a user defined topic may be a department of a company or a project that involves the company. In the case of a project, the board preferably includes all of the data relating to that project including email, tasks, calendar events, ideas, discussions, meetings, phone calls, files, contact records, people, etc. Data and applications may be grouped in a board based on the identity of the tag.

[0024] As used herein, the term "web" refers to a collection of interrelated boards. Boards in a web may have, for example, a parent-child relationship. A given board may have more than one parent and may have more than one child. A board may not be its own child or its own parent. However, boards may have various relationships to each other. For example, a board may be part of a circular relationship of any complexity such as the following: A is parent to B; B is parent to C and C is parent to A.

[0025] In accordance with the invention, webs may be used to maintain the location of content within a complex and changing set of boards and support automation of the



workflow process. Automation of the workflow process may shown by the following example.

### **Example**

The workflow process to be automated is  $A \rightarrow B \rightarrow C$ . Three different people are assigned to each item. Therefore  $A(1,2,3) \rightarrow B(4,5,6) \rightarrow C(7,8,9)$ . The workflow change desired in this example is  $A \rightarrow B/C \rightarrow C$ .

In the known environment, LDAP, it is necessary for the automation sequence to predetermine how work data flows from A to B and C. Then, the automation module for inputs to D must be spelled out and rewritten to consolidate split input from B and C. As such, the automation support for this workflow change will always lag behind the ability of the people involved to start working with the new workflow assumptions.

In contrast, in accordance with the present invention, webs and boards are preferably the context for applications, files and folders. Hence, the workflow process may be readily reorganized by making a change to one or more of the webs and boards.

In preferred embodiments, webs may be utilized to maintain the location of content within a complex and changing set of boards. Content is preferably associated with a routing algorithm referred to herein as a webslice. Thus the content has an intelligent quality whereby upon a change of structure of the web, the content knows which board or boards it should be on both before and after the change of structure. In keeping with a preferred aspect of the invention, the location of the content may be

determined at dynamically at run using the routing algorithm. Alternatively, the loction of content may be determined by detecting changes in structure, detecting the temporary location fo the content on the boards in the routing algorithm before and after the change and adjusting the location of the affected content as part of the change in structure.

## ATTACHMENT 2

"board" Module

### "WEB VERSION 1" WORKING DESCRIPTION

Webs are collections of boards and a collection of parent-child relationships between those boards. Boards in a web may have more than one parent and may have more than one child. A board may not be its own child (and thus may not be its own parent), but may participate in a circular relationship of any complexity (A is parent to B. B is parent to C. C is parent to A).

WebSlices are a way of representing an algorithm that's ultimate output is a set of boards. A webslice consists of a Web, a starting board, and a traversal (of arbitrary complexity). Take for example a web of boards a b and c where b and c are children of a. A webslice that referenced this board, started at a and used a traversal of "all children" would return b and c. If the same traversal on the same web had started at b, the empty set would be the result.

Webs can be utilized to maintain the location of content within a complex and changing set of boards. If content has a webslice associated with it, then any change of structure in the web would still result in the content (with the webslice) knowing what boards it should be on both before and after the change of structure. Actually effecting this change of location can be done by allowing the "location" to be determined dynamically at run time using the webslice or can be accomplished by detecting changes in structure, detecting the (temporary) location of the content on the boards in the slice before and after the change and adjusting the location of the affected content as part of the change in web structure.

CIAP also facilitates a new business workflow process. Workflow automation is currently a site-specific effort. The workflow between A to B to C must be clearly specified in all its variables prior to automation. Automation fixes this workflow in code. Changes to the workflow require manual changes to the code. Predictable, repeatable, transactional and hierarchical workflow processes are best suited to this approach. LDAP and hierarchical storage models work best in this environment. Multiple applications work independently of the storage, generating and reporting data to and from the storage model.

Intuitive, dynamic, changeable workflow processes have proved too dynamic and expensive for automation. CIAP changes that. CIAP is key off users and context, not off of applications and files. As users create and change their contexts, the files and applications automatically follow, dynamically capturing those shifts of context.



are processes nonetheless. CIAP allows for the simultaneous automation of repeatable and dynamic processes.

In CIAP, the People, Webs and Boards become the automatic context for Applications, Files and Folders. In LDAP the Applications, Files and Folders have *no* inherent relationship to the People or their Context. The implications of this difference on the automation of workflow process are profound.

---

Looking at the code for Web (my comments in []'s):

```
package com.leader.osapplication.board;

import java.util.*;
import com.leader.util.*;
import com.leader.debug.*;
import com.leader.persist.*;
import com.leader.persist.vbsf.*;
import com.leader.osapplication.*;
import com.leader.osapplication.field.*;
import com.leader.osapplication.util.*;
import com.leader.osapplication.actions.*;
import com.leader.osapplication.framework.*;
import com.leader.osapplication.exception.*;
import com.leader.osapplication.interfaces.*;
import com.leader.osapplication.sessionstate.*;

/**
 * A collections of boards with connected relationships tying them
 * together.
 * The stereotypical example is an org chart in a company where each
 * person is
 * a node on the web.
 *
 * @author Jeff R. Lamb
 * @author Betsy Foote
 * @author Eric Rosenberg
 */
public class Web extends Content {

    public static final String RELATIONSHIPS_LIST_FIELD_ID =
"existingRelationshipsList";
    public static final String CHILD_BOARD_FIELD_ID = "childBoard";
    public static final String PARENT_BOARD_FIELD_ID = "parentBoard";

    [These are the relationships that make up the web. If a board
    participates in any relationship in this collection, then they are part
    of this web]

    private Collection relationships =
CollectionFactory.getPersistenceCapableCollection();

    [Webs-are named to allow them to be easy to work with for the users]

    private String name;
```

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084 1085 1086 1087 1088 1089 1090 1091 1092 1093 1094 1095 1096 1097 1098 1099 1100 1101 1102 1103 1104 1105 1106 1107 1108 1109 1110 1111 1112 1113 1114 1115 1116 1117 1118 1119 1120 1121 1122 1123 1124 1125 1126 1127 1128 1129 1130 1131 1132 1133 1134 1135 1136 1137 1138 1139 1140 1141 1142 1143 1144 1145 1146 1147 1148 1149 1150 1151 1152 1153 1154 1155 1156 1157 1158 1159 1160 1161 1162 1163 1164 1165 1166 1167 1168 1169 1170 1171 1172 1173 1174 1175 1176 1177 1178 1179 1180 1181 1182 1183 1184 1185 1186 1187 1188 1189 1190 1191 1192 1193 1194 1195 1196 1197 1198 1199 1200 1201 1202 1203 1204 1205 1206 1207 1208 1209 1210 1211 1212 1213 1214 1215 1216 1217 1218 1219 1220 1221 1222 1223 1224 1225 1226 1227 1228 1229 1230 1231 1232 1233 1234 1235 1236 1237 1238 1239 1240 1241 1242 1243 1244 1245 1246 1247 1248 1249 1250 1251 1252 1253 1254 1255 1256 1257 1258 1259 1260 1261 1262 1263 1264 1265 1266 1267 1268 1269 1270 1271 1272 1273 1274 1275 1276 1277 1278 1279 1280 1281 1282 1283 1284 1285 1286 1287 1288 1289 1290 1291 1292 1293 1294 1295 1296 1297 1298 1299 1300 1301 1302 1303 1304 1305 1306 1307 1308 1309 1310 1311 1312 1313 1314 1315 1316 1317 1318 1319 1320 1321 1322 1323 1324 1325 1326 1327 1328 1329 1330 1331 1332 1333 1334 1335 1336 1337 1338 1339 1340 1341 1342 1343 1344 1345 1346 1347 1348 1349 1350 1351 1352 1353 1354 1355 1356 1357 1358 1359 1360 1361 1362 1363 1364 1365 1366 1367 1368 1369 1370 1371 1372 1373 1374 1375 1376 1377 1378 1379 1380 1381 1382 1383 1384 1385 1386 1387 1388 1389 1390 1391 1392 1393 1394 1395 1396 1397 1398 1399 1400 1401 1402 1403 1404 1405 1406 1407 1408 1409 1410 1411 1412 1413 1414 1415 1416 1417 1418 1419 1420 1421 1422 1423 1424 1425 1426 1427 1428 1429 1430 1431 1432 1433 1434 1435 1436 1437 1438 1439 1440 1441 1442 1443 1444 1445 1446 1447 1448 1449 1450 1451 1452 1453 1454 1455 1456 1457 1458 1459 1460 1461 1462 1463 1464 1465 1466 1467 1468 1469 1470 1471 1472 1473 1474 1475 1476 1477 1478 1479 1480 1481 1482 1483 1484 1485 1486 1487 1488 1489 1490 1491 1492 1493 1494 1495 1496 1497 1498 1499 1500 1501 1502 1503 1504 1505 1506 1507 1508 1509 1510 1511 1512 1513 1514 1515 1516 1517 1518 1519 1520 1521 1522 1523 1524 1525 1526 1527 1528 1529 1530 1531 1532 1533 1534 1535 1536 1537 1538 1539 1540 1541 1542 1543 1544 1545 1546 1547 1548 1549 1550 1551 1552 1553 1554 1555 1556 1557 1558 1559 1560 1561 1562 1563 1564 1565 1566 1567 1568 1569 1570 1571 1572 1573 1574 1575 1576 1577 1578 1579 1580 1581 1582 1583 1584 1585 1586 1587 1588 1589 1590 1591 1592 1593 1594 1595 1596 1597 1598 1599 1600 1601 1602 1603 1604 1605 1606 1607 1608 1609 1610 1611 1612 1613 1614 1615 1616 1617 1618 1619 1620 1621 1622 1623 1624 1625 1626 1627 1628 1629 1630 1631 1632 1633 1634 1635 1636 1637 1638 1639 1640 1641 1642 1643 1644 1645 1646 1647 1648 1649 1650 1651 1652 1653 1654 1655 1656 1657 1658 1659 1660 1661 1662 1663 1664 1665 1666 1667 1668 1669 1670 1671 1672 1673 1674 1675 1676 1677 1678 1679 1680 1681 1682 1683 1684 1685 1686 1687 1688 1689 1690 1691 1692 1693 1694 1695 1696 1697 1698 1699 1700 1701 1702 1703 1704 1705 1706 1707 1708 1709 1710 1711 1712 1713 1714 1715 1716 1717 1718 1719 1720 1721 1722 1723 1724 1725 1726 1727 1728 1729 1730 1731 1732 1733 1734 1735 1736 1737 1738 1739 1740 1741 1742 1743 1744 1745 1746 1747 1748 1749 1750 1751 1752 1753 1754 1755 1756 1757 1758 1759 1760 1761 1762 1763 1764 1765 1766 1767 1768 1769 1770 1771 1772 1773 1774 1775 1776 1777 1778 1779 1780 1781 1782 1783 1784 1785 1786 1787 1788 1789 1790 1791 1792 1793 1794 1795 1796 1797 1798 1799 1800 1801 1802 1803 1804 1805 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823 1824 1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 267

```

    */
    public void addWebRelationship(WebRelationship relationship){
        if(relationship != null){
            relationships.add(relationship);
        }
    }

    /**
     * Remove a WebRelationship from the Web.
     * @param relationship The relationship to remove.
     */
    public void removeWebRelationship(WebRelationship relationship){
        if(relationship != null){
            relationships.remove(relationship);
        }
    }

    /**
     * Remove a WebRelationship from the Web.
     * @param relationshipId The object id of the relationship to remove.
     */
    public void removeWebRelationship(Long relationshipId){
        if(relationshipId != null){
            Iterator iterator = relationships.iterator();
            while(iterator.hasNext()){
                WebRelationship relationship =
(WebRelationship)iterator.next();
                if(relationshipId.equals(relationship.getId())){
                    removeWebRelationship(relationship);
                }
            }
        }
    }

    /**
     * Get all the WebRelationships on this Web. If there are no
    relationships,
     * return a 0 length array.
     * @return WebRelationship array.
     */
    private WebRelationship[] getWebRelationships(){
        return (WebRelationship [])new ArrayList(relationships).toArray(new
WebRelationship[relationships.size()]); //WebRelationship
[[])relationships.toArray(new WebRelationship[relationships.size()]);
    }

    /**
     * Determine whether a given board is in this web.
     * @param board Board we want to check on.
     * @return boolean True if board is in this web, false otherwise.
     */
    public boolean contains(Board board){
        List webBoards = getBoardsList();
        return webBoards.contains(board);
    }

    /**

```

```

    * Get all the board included in this Web.  If there are no
relationships,
    * and hence no boards, return an empty List.
    * @return Board[] Array of boards in this Web.
    */
    public List getBoardsList(){
        List boardList = new ArrayList();
        WebRelationship[] relations = getWebRelationships();
        for (int i=0; i < relations.length; i++){
            Board parent = relations[i].getParent();
            Board child = relations[i].getChild();
            if (!boardList.contains(parent)) boardList.add(parent);
            if (!boardList.contains(child)) boardList.add(child);
        }
        return boardList;
    }

    /**
    * Get all the Children of a Board on this Web.
    * @param board the board to find children of.
    * @return Set of children Boards.  0 size set if board parameter is
null
    * or when there are no children.
    */
    public Set getChildren(Board board){
        Set childrenSet = new HashSet();
        if(board == null){
            return childrenSet;
        }
        Iterator allRelationships = relationships.iterator();
        while (allRelationships.hasNext()){
            WebRelationship relationship =
(WebRelationship)allRelationships.next();
            if (relationship.getParent().getId().equals(board.getId())){
                childrenSet.add(relationship.getChild());
            }
        }
        return childrenSet;
    }

    /**
    * Get all the Parents of a Board on this Web.
    * @param board the board to find parents of.
    * @return Set of parent Boards.  0 size set if board parameter is
null
    * or when there are no parents.
    */
    public Set getParents(Board board){
        Set parentsSet = new HashSet();
        if(board == null){
            return parentsSet;
        }
        Iterator allRelationships = relationships.iterator();
        while (allRelationships.hasNext()){
            WebRelationship relationship =
(WebRelationship)allRelationships.next();
            if (relationship.getChild().getId().equals(board.getId())){

```



1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

```

        parentsSet.add(relationship.getParent());
    }
}
return parentsSet;
}

/**
 * Get all the Peers (all children of all parents of the board).
 * @param board the board to find siblings of.
 * @return Set of Boards. 0 size set if board parameter is null
 * or when there are no peers.
 */
public Set getPeers(Board board){
    Set childrenOfParents = new HashSet();
    if(board == null){
        return childrenOfParents;
    }
    Set parentBoards = getParents(board);
    Iterator parentBoardsIterator = parentBoards.iterator();
    while(parentBoardsIterator.hasNext()){
        Set children = getChildren((Board)parentBoardsIterator.next());
        childrenOfParents.addAll(children);
    }
    childrenOfParents.remove(board);
    return childrenOfParents;
}

//CI
public Field[] getDisplayFields(RequestState requestState) throws
LeaderException{
    List fields = new ArrayList();
    TextField textField = new TextField("name",getName(), "Web Name");
    textField.setLinkText("(Edit)");
    textField.setUrlId(LeaderConstants.BOARD_WEB_TOOL,""+getId());
    FieldUtilities.makeFieldAToolActivator(textField, requestState,
this, getContentToolCode(),getContentToolCode());
    fields.add(textField);
    Field[] dateFields = DateField.getComponentFields(new
DateTimeField(getLastModified()));
    dateFields[0].setTitle("Last Modified Date");
    fields.add(dateFields[0]);
    fields.add(dateFields[1]);
    return (Field[])fields.toArray(new Field[fields.size()]);
}

//CI
public String getDisplayName(){
    return "Web";
}

//CI
public Form getForm(RequestState requestState,int displayCode,int
toolCode) {
    Debug.println("Web.getForm: for " + this, Debug.DEBUG);
    Form form = new ConcreteForm("webForm", "General Web Attributes");
    int pageIndex = 0;
    int selectedIndex = requestState.getMultiPageIndex();

```

```

        toolCode = getContentToolCode();

        //Web name sub-form.
        Page page = new ConcretePage("createWebPage", pageIndex,
selectedIndex);
        SubForm sub = new ConcreteSubForm("webNameSubForm", "Web name");
        sub.add(new TextField("webNameTextField", (getName() != null ?
getName() : ""), "Web name", true));
        page.add(sub);

        //Existing relationships sub-form.
        sub = new ConcreteSubForm("existingWebRelationshipsSubForm",
"Existing Web Relationships");
        sub.add(getWebRelationshipsListField(requestState.getPairsMap()));

        InterfaceAction action = new
InterfaceAction("removeRelationship", "Remove Relationship", toolCode,
true);

        action.addActionListener(RemoveWebRelationshipActionListener.GLOBAL);
        action.addInterfaceListener(AddInterfaceListener.GLOBAL);
        action.setErrorInterfaceListener(AddInterfaceListener.GLOBAL);
        sub.addAction(action);
        page.add(sub);

        //Add new Relationships sub-form
        sub = new ConcreteSubForm("createRelationshipsSubForm", "Create New
Relationship");
        SingleSelectGroupKeyField boardDropDown = new
BoardKeyField(PARENT_BOARD_FIELD_ID, "Parent Board", null,
requestState.getCurrentUser().getId());
        sub.add(boardDropDown);
        boardDropDown = new BoardKeyField(CHILD_BOARD_FIELD_ID, "Child
Board", null, requestState.getCurrentUser().getId());
        sub.add(boardDropDown);
        action = new InterfaceAction("addRelationship", "Add
Relationship", toolCode, true);
        action.addActionListener(AddWebRelationshipActionListener.GLOBAL);
        action.addInterfaceListener(AddInterfaceListener.GLOBAL);
        action.setErrorInterfaceListener(AddInterfaceListener.GLOBAL);
        sub.addAction(action);
        page.add(sub);

        form.add(page);
        return form;
    }

    /**VBSF*/
    private Collection getRelationshipsCollection(){
        return relationships;
    }

    /**VBSF*/
    private void setRelationshipsCollection(Collection collection){
        this.relationships = collection;
    }

```

```

/**
 * Return a Field representing a list view of the web relationships
in this
 * web. This is used by the getForm method, and by the
MyContextInterface.
 * @param pairs SE
 * @return a Field
 */
public Field getWebRelationshipsListField(Map pairs){
    Iterator iterator = relationships.iterator();
    List displayFieldsList = new ArrayList();
    Long[] keys = new Long[relationships.size()];
    for(int i=0; iterator.hasNext(); i++){
        WebRelationship relationship = (WebRelationship)iterator.next();
        keys[i] = relationship.getId();
        displayFieldsList.add(relationship.getDisplayFields());
    }
    Long[] selectedKeys =
MultiSelectListKeyField.convert(RELATIONSHIPS_LIST_FIELD_ID, pairs);
    Field[][] displayFields = (Field[][])(displayFieldsList.toArray(new
Field[relationships.size()][0]));
    MultiSelectListKeyField relationshipsList = new
MultiSelectListKeyField(RELATIONSHIPS_LIST_FIELD_ID, keys, "Existing
Web Relationships", selectedKeys, displayFields);
    return relationshipsList;
}
}

```

[END Web.java]

Looking at the code for WebSlice.java:

```

package com.leader.osapplication.board;

import com.leader.osapplication.framework.*;
import com.leader.osapplication.*;
import com.leader.osapplication.util.*;
import com.leader.osapplication.exception.*;
import com.leader.osapplication.sessionstate.*;
import com.leader.debug.*;
import java.util.*;

/**
 * A collection of enough information to isolate a set of boards from
the set
 * of all boards. This is typically codified as a Web to use, a
starting board
 * and a Traversal. The Traversal is then used to travel across the Web
from
 * the starting board and return a list of Boards.
 *
 * @author Jeff R. Lamb
 * @author Eric Rosenberg
 */
public class WebSlice extends AbstractPersistedObject{

    private Web web;

```

```

private Board board;
private Traversal traversal;

/**VBSF*/
private WebSlice(){
    super();
}

/**
 * Constructor
 * @param webToUse which Web is this WebSlice a slice of
 * @param boardToUse when you start moving around the Web, where do
you
 * start from?
 * @param traversalToUse what traversal (strategy) should be used to
 * move around the Web to carve out this WebSlice
 */
public WebSlice(Web webToUse, Board boardToUse, Traversal
traversalToUse){
    this();
    setWeb(webToUse);
    setBoard(boardToUse);
    setTraversal(traversalToUse);
}

/**
 * Return the boards that are currently part of this webslice. This
can
 * change as the web that the webslice lies on is edited.
 * @return the boards that are a member of the slice
 */
public Board[] getBoards(){
    return getTraversal().getBoards(web, board);
}

/**
 * Specify the web that that this webslice is taken from.
 * @param webToUse the web to use if coming up with the set of boards
the
 * web slice represents
 */
public void setWeb(Web webToUse){ this.web = webToUse; }

/**
 * Get the web that the webslice is taken from.
 * @return web that the web slice is a part of
 */
public Web getWeb(){ return this.web;}

/**
 * Specify the board that is the starting point for this webslice
 * @param boardToUse the board that is the starting point for the
webslice
 * @throws IllegalArgumentException if boardToUse is not in this web
 */
public void setBoard(Board boardToUse){

```

```
/**VBSF*/
private int getTraversalCode() { return
TraversalFactory.getCode(traversal); }
```

```
/**VBSF*/
private void setTraversalCode(int code){ this.traversal =
TraversalFactory.getTraversal(code);}

```

# **EXHIBIT 20**

www.leader.com

Leader

Leader Technologies LLC  
 10000  
 10000  
 10000

614 890-1956 VOICE  
 614 864-7922 FAX



## Proprietary & Confidentiality Agreement

In connection with your interest in business relationships between you, **Len Schlesinger** ("RECIPIENT" or you) and Leader Technologies LLC, a.k.a. Leader Technologies, Ltd., an Ohio limited liability company ("Leader"), Leader will be furnishing you with certain information which is either non-public, confidential or proprietary in nature. All information ascertained by or furnished to you, your directors, officers, employees, agents or representatives, including without limitation attorneys, accountants, consultants and financial advisors (collectively, "representatives"), by Leader or its representatives, and all analyses, compilations, data, studies or other documents prepared by you or your representatives containing or based in whole or in part on any such furnished information or reflecting your review of, or interest in, Leader is hereinafter referred to as the "Information". In consideration of your being furnished with the Information you agree that:

1. The Information will be kept confidential and will not, without the prior written consent of Leader be disclosed by you or your representatives, in any manner whatsoever, in whole or in part, and will not be used by you or your representatives directly or indirectly for any purpose other than evaluating the business relationship referred to above. Moreover, you agree to transmit the Information only to those representatives who need to know the Information for the purpose of evaluating the business relationship referred to above, who are informed by you of the confidential nature of the Information and who agree to be bound by the terms of this Agreement by executing the attached single document prior to receiving such information. You agree to notify Leader as to the identity of such representatives prior to any dissemination of Information and to obtain Leaders consent to such disclosure due to the highly sensitive market nature of said Information. You will be responsible for any breach of this Agreement by your representatives. You also agree to abide by applicable law with respect to disclosure of personnel records and the right to privacy.
2. Neither party hereto nor its representatives will, without the prior written consent of the other party, disclose to any other person the fact that the Information has been made available, that discussions or negotiations are taking place concerning a possible business relationship involving Leader or any of the terms, conditions or other facts with respect to any such possible business relationship, including the status thereof, except as required by law or by the rules of any recognized stock exchange and then, if circumstances permit, only with prior written notice as soon as possible to such other party. If circumstances make it impossible to give such prior written notice, then any disclosure made shall be no more extensive than is necessary to meet the minimum requirement imposed on the party making such disclosure.
3. The Information, and all copies thereof, except for that portion of the Information which consists of analyses, compilations, data, studies or other documents prepared by you or your representatives will remain the absolute property of Leader and will be returned without retaining any copies thereof to Leader immediately upon Leaders request. That portion of the Information which consists of analyses,

Proprietary &amp; Confidential

LEN SCHLESINGER  
 Proprietary & Confidentiality Agreement, page 2 of 2

compilations, data, studies or other documents prepared by you will be immediately destroyed at the request of Leader and such destruction will be confirmed to Leader in writing.

4. This Agreement shall be inoperative as to such portions of the Information which (i) are or become generally available to the public other than as a result of an unauthorized disclosure by you or your representatives; (ii) become available to you on a non-confidential basis from any source excluding Leader or its representatives, which source has represented to you (and which you have no reason to disbelieve after due inquiry) is entitled to disclose it; or (iii) was known to you on a non-confidential basis prior to its disclosure to you by Leader or one of its representatives.
5. You understand that Leader has endeavored to include in the Information those materials which are believed to be reliable and relevant for the purpose of your evaluation, but you acknowledge that neither Leader nor any of its representatives makes any representation or warranty as to the accuracy or completeness of the Information. You agree that neither Leader nor any of its representatives shall have any liability to you or to any of your representatives as a result of the use of the Information by you or your representatives, it being understood that only those particular representations and warranties which may be made in any definitive agreements, when, as and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreements, shall have any legal effect.
6. In the event that you or anyone to whom you transmit the Information pursuant to this Agreement are requested or become legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you will provide Leader with prompt written notice so that Leader may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. In the event that such protective order or other remedy is not obtained, or that Leader waives compliance with the provisions of this Agreement, you will furnish only that portion of the Information which is legally required.
7. It is further understood and agreed that you will not directly contact employees of Leader in connection with the Information or a potential business relationship involving Leader without prior authorization of Michael T. McKibben, Senior Manager of Leader. You further agree that if you meet with management as a part of any due diligence visit, then you will not solicit for employment any of Leaders executives or key employees for a period of three years from the date of that visit.
8. It is further understood and agreed that no failure or delay by Leader in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
9. The restrictions imposed hereby shall continue for a period of five years from the date on which you last receive or prepare, as the case may be, any Information.

Proprietary & Confidential



LEN SCHLESINGER  
Proprietary & Confidentiality Agreement, page 3 of 3

10. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to agreements made and to be performed within such State.

Please return a signed copy of this Proprietary & Confidentiality Agreement to Leader, c/o Michael T. McKibben, Chairman, CEO & Senior Manager, Spectrum Commerce Center, 921 Eastwind Drive, Westerville, Ohio 43081.

**Confirmed and Agreed to by Len Schlesinger**

When signing *individually*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

INDIVIDUALLY

\_\_\_\_\_  
Date

When signing on behalf of your *organization*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
ORGANIZATION Name & Your Title

\_\_\_\_\_  
Date

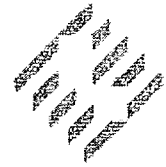
Proprietary & Confidential

www.leader.com

Leader

Leader Technologies, Inc.  
 921 Eastwind Drive  
 Westerville, Ohio 43081  
 USA

614 890.1986 VOICE  
 614 864.7922 FAX



## Agreement of Confidence

**INSTRUCTIONS:** The preceding pages of the Proprietary & Confidentiality Agreement constitute your agreement with Leader. **This page is for your use.** If you would like to disclose confidential Leader information to a third party, you can do so assuming you have first cleared your intent to disclose with Leader and then had them execute this Agreement of Confidence. This agreement binds that third party to your Proprietary & Confidentiality Agreement. The other option is to ask Leader to arrange for that third party to enter into their own Proprietary & Confidentiality Agreement.

I, \_\_\_\_\_ (name of recipient), agree to hold in confidence all information received from **Len Schlesinger** ("DISCLOSER"), regarding Leader Technologies LLC, aka Leader Technologies, Ltd. ("Leader") no matter what form the information is in, written, oral or otherwise. I understand that the Information being disclosed to me is to be held inviolate and shall remain secret as any unintentional or intentional dissemination or even discussions could have detrimental and irreparable consequences to the business of Leader and its business opportunities. I further agree to be bound by the Proprietary and Confidentiality Agreement executed by DISCLOSER in favor of Leader.

I further understand that for DISCLOSER to even approach me regarding a business relationship with Leader, Leader has granted its consent to these discussions being fully satisfied that I will abide by the terms of this Agreement of Confidence.

### Confirmed and Agreed to by:

When signing *individually*:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Print Name

INDIVIDUALLY

\_\_\_\_\_  
 Date

When signing on behalf of your *organization*:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Print Name

ORGANIZATION Name & your Title

\_\_\_\_\_  
 Date

*Note to discloser: Please forward this Agreement of Confidence immediately to:*

**Michael T. McKibben, Chairman & CEO**

**Leader Technologies LLC**

921 Eastwind Drive, Suite 118

Westerville, Ohio 43081

(614) 890-1986 VOICE

(614) 864-7922 FAX

mmckibben@leader.com EMAIL

www.leader.com WWW

Proprietary & Confidential

In connection with your interest in business relationships between you, Len Schlesinger ("RECIPIENT" or you) and Leader Technologies LLC, a.k.a. Leader Technologies, Ltd., an Ohio limited liability company ("Leader"), Leader will be furnishing you with certain information which is either non-public, confidential or proprietary in nature. All information ascertained by or furnished to you, your directors, officers, employees, agents or representatives, including without limitation attorneys, accountants, consultants and financial advisors (collectively, "representatives"), by Leader or its representatives, and all analyses, compilations, data, studies or other documents prepared by you or your representatives containing or based in whole or in part on any such furnished information or reflecting your review of, or interest in, Leader is hereinafter referred to as the "Information". In consideration of your being furnished with the Information you agree that:

1. The Information will be kept confidential and will not, without the prior written consent of Leader be disclosed by you or your representatives, in any manner whatsoever, in whole or in part, and will not be used by you or your representatives directly or indirectly for any purpose other than evaluating the business relationship referred to above. Moreover, you agree to transmit the Information only to those representatives who need to know the Information for the purpose of evaluating the business relationship referred to above, who are informed by you of the confidential nature of the Information and who agree to be bound by the terms of this Agreement by executing the attached single document prior to receiving such information. You agree to notify Leader as to the identity of such representatives prior to any dissemination of Information and to obtain Leaders consent to such disclosure due to the highly sensitive market nature of said Information. You will be responsible for any breach of this Agreement by your representatives. You also agree to abide by applicable law with respect to disclosure of personnel records and the right to privacy.
2. Neither party hereto nor its representatives will, without the prior written consent of the other party, disclose to any other person the fact that the Information has been made available, that discussions or negotiations are taking place concerning a possible business relationship involving Leader or any of the terms, conditions or other facts with respect to any such possible business relationship, including the status thereof, except as required by law or by the rules of any recognized stock exchange and then, if circumstances permit, only with prior written notice as soon as possible to such other party. If circumstances make it impossible to give such prior written notice, then any disclosure made shall be no more extensive than is necessary to meet the minimum requirement imposed on the party making such disclosure.
3. The Information, and all copies thereof, except for that portion of the Information which consists of analyses, compilations, data, studies or other documents prepared by you or your representatives will remain the absolute property of Leader and will be returned without retaining any copies thereof to Leader immediately upon Leaders request. That portion of the Information which consists of analyses,

Proprietary & Confidential

www.hugoboss.com

Leader.

614 890.7986 VOICE  
614 864.7942 FAX

614 890.7986 VOICE  
614 864.7942 FAX



LEN SCHLESINGER  
Proprietary & Confidentiality Agreement, page 2 of 2

compilations, data, studies or other documents prepared by you will be immediately destroyed at the request of Leader and such destruction will be confirmed to Leader in writing.

4. This Agreement shall be inoperative as to such portions of the Information which (i) are or become generally available to the public other than as a result of an unauthorized disclosure by you or your representatives; (ii) become available to you on a non-confidential basis from any source excluding Leader or its representatives, which source has represented to you (and which you have no reason to disbelieve after due inquiry) is entitled to disclose it; or (iii) was known to you on a non-confidential basis prior to its disclosure to you by Leader or one of its representatives.
5. You understand that Leader has endeavored to include in the Information those materials which are believed to be reliable and relevant for the purpose of your evaluation, but you acknowledge that neither Leader nor any of its representatives makes any representation or warranty as to the accuracy or completeness of the Information. You agree that neither Leader nor any of its representatives shall have any liability to you or to any of your representatives as a result of the use of the Information by you or your representatives. It being understood that only those particular representations and warranties which may be made in any definitive agreements, when, as and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreements, shall have any legal effect.
6. In the event that you or anyone to whom you transmit the Information pursuant to this Agreement are requested or become legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you will provide Leader with prompt written notice so that Leader may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. In the event that such protective order or other remedy is not obtained, or that Leader waives compliance with the provisions of this Agreement, you will furnish only that portion of the Information which is legally required.
7. It is further understood and agreed that you will not directly contact employees of Leader in connection with the Information or a potential business relationship involving Leader without prior authorization of Michael T. McKibben, Senior Manager of Leader. You further agree that if you meet with management as a part of any due diligence visit, then you will not solicit for employment any of Leaders executives or key employees for a period of three years from the date of that visit.
8. It is further understood and agreed that no failure or delay by Leader in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
9. The restrictions imposed hereby shall continue for a period of five years from the date on which you last receive or prepare, as the case may be, any Information.

Leader.

Proprietary & Confidential

LEN SCHLESINGER  
Proprietary & Confidentiality Agreement, page 3 of 3

10. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to agreements made and to be performed within such State.

Please return a signed copy of this Proprietary & Confidentiality Agreement to Leader, c/o Michael T. McKibben, Chairman, CEO & Senior Manager, Spectrum Commerce Center, 921 Eastwind Drive, Westerville, Ohio 43081.

**Confirmed and Agreed to by Len Schlesinger**

When signing *Individually*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

INDIVIDUALLY

\_\_\_\_\_  
Date

When signing on behalf of your *organization*:

  
\_\_\_\_\_  
Signature

*Len Schlesinger*  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
ORGANIZATION Name & Your Title

*6/7/01*  
\_\_\_\_\_  
Date

Proprietary & Confidential

Leader.

614 890-1986 VOICE  
614 864-7922 FAX  
www.leader.com

614 890-1986 VOICE  
614 864-7922 FAX



## Agreement of Confidence

**INSTRUCTIONS:** The preceding pages of the Proprietary & Confidentiality Agreement constitute your agreement with Leader. This page is for your use. If you would like to disclose confidential Leader information to a third party, you can do so assuming you have first cleared your intent to disclose with Leader and then had them execute this Agreement of Confidence. This agreement binds that third party to your Proprietary & Confidentiality Agreement. The other option is to ask Leader to arrange for that third party to enter into their own Proprietary & Confidentiality Agreement.

I, \_\_\_\_\_ (name of recipient), agree to hold in confidence all Information received from Len Schlesinger ("DISCLOSER"), regarding Leader Technologies LLC, aka Leader Technologies, Ltd. ("Leader") no matter what form the information is in, written, oral or otherwise. I understand that the Information being disclosed to me is to be held inviolate and shall remain secret as any unintentional or intentional dissemination or even discussions could have detrimental and irreparable consequences to the business of Leader and its business opportunities. I further agree to be bound by the Proprietary and Confidentiality Agreement executed by DISCLOSER in favor of Leader.

I further understand that for DISCLOSER to even approach me regarding a business relationship with Leader, Leader has granted its consent to these discussions being fully satisfied that I will abide by the terms of this Agreement of Confidence.

### Confirmed and Agreed to by:

When signing *individually*:

Signature

Print Name

INDIVIDUALLY

Date

When signing on behalf of your organization:

Signature

Print Name

ORGANIZATION Name & your Title

Date

*Note to discloser: Please forward this Agreement of Confidence immediately to:*

**Michael T. McKibben, Chairman & CEO**  
Leader Technologies LLC  
921 Eastwind Drive, Suite 118  
Westerville, Ohio 43081  
(614) 890-1986 V OICE  
(614) 864-7922 FAX  
mmckibben@leader.com EMAIL  
www.leader.com WWW

Proprietary & Confidential

# **EXHIBIT 21**



**From:** Steve Hanna <steve@computerwizards.com>  
**Sent:** Tuesday, November 26, 2002 9:11 AM  
**To:** cwcall@computerwizards.com  
**Subject:** Yesterday in CWC (Monday, 11/25/2002)

---

GENERAL:

o Yesterday, Mike had a meeting with Boston Scientific; he was demo'ing L2L functionality for senior staff members. They had a list of functionality that they are looking for in a tool to support their national clinical testing, etc. They are in need of a very secure system that will support full document management functions, provide varied levels of access to content, support local and distributed access, support search for content, support collaborative meetings/conferences ..... in a nut-shell, they are looking for L2L.

\*\*\* Mike called after the meeting, he was very excited and said that the demo 'was flawless, not one glitch, and I didn't have to tap dance at any point ..... they are going to buy;

Mike said that they are to put together a plan (proposal) over the next two weeks that lays out how/when they would bring L2L into BSC.

o Today, Mike is in AZ. and there are major meetings with Angel investors; these include demos of a) LP production, b) LP Meet Me on Zeus (this will be further coordinated today), and c) L2L on Mars

-Wed. Mike returns to Columbus

-Thur./Fri. Leader Holiday

-Mon./Tue. (2,3 Dec.) Mike to CA

\*\*\*\*\*

Financial Status:

Mike is picking up some funding checks when in AZ today; he is also making a pitch to some very capable investors this afternoon / evening.

\*\*\*\*\*

PERSONNEL Misc.:

Travel / vacation:

o none yesterday

o I am planning in Columbus today only

NON LEADER CUSTOMER ACTIVITIES:

o DuJour: DOWN

o UVJVS: n/a

o Spammotel: Wendy (I think) was able to clear the email problem yesterday

o Atlas - n/a

LEADERPHONE(tm) Support & Development:

o Busy day yesterday ..... we made some ground in fixing problems, but also uncovered and document more problems ..... I do not think that we will be doing an update tonight.

L2L:

\*\* Right now, we are focusing primarily on those issues that affect LP.

Some work is proceeding on more general L2L issues.

o Mark will be continuing to work the file conversion issues

MILESTONES:

Highly Confidential - Attorneys' Eyes Only

LT1111341

DEFENDANT'S EXHIBIT  
DTX 0776  
CASE NO. 1:08-CV-00862-LPS

o L2L R1 ready for Beta ..... 20 Dec.

SC:

o on hold until after 20 Dec.

--

Steven E. Hanna  
Vice President of Technologies  
Leader Technologies Incorporated  
Spectrum Commerce Center  
921 Eastwind Drive, Suite 118  
Westerville, Ohio 43018  
(614) 890-1986 Voice  
shanna@leader.com Email  
hanna1@palm.net (Mobile email)  
www.leader.com WWW

This message contains proprietary and confidential trade secret information intended for the sole use of the intended recipient(s). This message is protected by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996 which stipulates that any violation of said laws may be subject to penalties of \$10M and up to 15 years imprisonment, and various other penalties. This message is also subject to the Leader Proprietary & Confidentiality Agreement. If you have received or are viewing this message in error, please delete it immediately and kindly notify the Leader CEO, Michael T. McKibben at (614) 890-1986 or mmckibben@leader.com. Abuse of Leader copyrights, trademarks, service marks, trade secrets and all other proprietary property rights will be prosecuted to the fullest extent of the law. Click on "Report a Security Incident" at www.leader.com if you have knowledge of improper use of this information.

## **EXHIBIT 22**

**BAA Number:** 02-Q-4655

**Mission Area:** Information Integration Center

**Requirement No:** 109 / ALT-109-LEADER-122001

**Proposal Title:** Advanced Cross-platform Communications & Anti-terrorism Command Center Prototype

## Quad Chart

**Offeror:** Leader Technologies LLC  
**Point of Contact:** Michael T. McKibben  
Chief Executive Officer  
921 Eastwind Drive, Suite 118  
Westerville, Ohio 43081  
(614) 890-1986 VOICE  
(614) 864-7922 FAX  
[mmckibben@leader.com](mailto:mmckibben@leader.com) EMAIL  
<http://www.leader.com/> WWW

### Proprietary & Confidential

© Copyright 2001, December 20, 2001,  
Leader Technologies LLC, Michael T. McKibben,  
All Rights Reserved.

This document contains  
TRADE SECRETS.

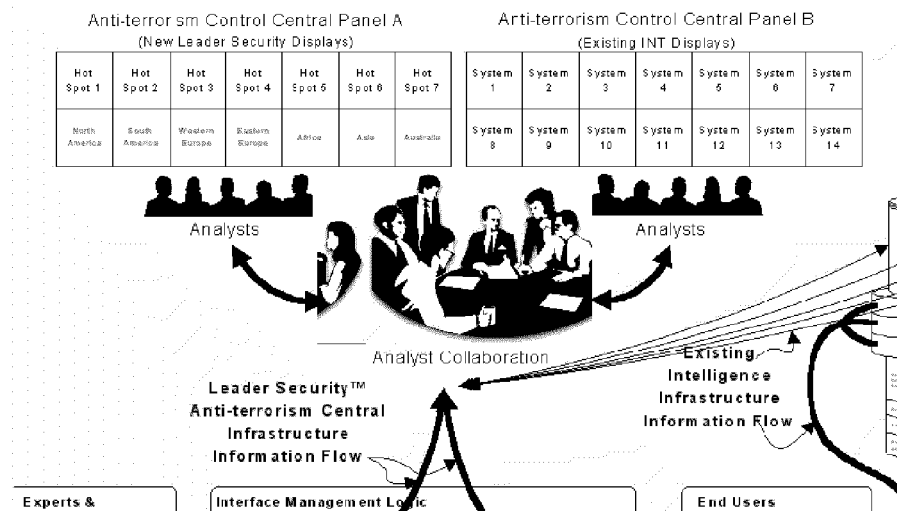


BAA Number: 02-Q-4655  
Mission Area: Information Integration Center  
Requirement Number: 109 / ALT-109-LEADER-122001  
Proposal Title: Advanced Cross-platform Communications & Anti-terrorism Command Center Prototype

Leader Technologies LLC  
December 20, 2001

Proprietary & Confidential  
© 2001, Leader, MTM.

## NORAD-like Big Board Anti-terrorism Theater



## Operational Capability

- ◆ Highly secure, scalable information backbone for Wright-Patterson Air Force Base (WPAFB) that unifies four previously disparate, high-priority WPAFB functions into a single integrated approach: (1) records management, (2) acquisitions management, (3) engineering collaboration, and (4) knowledge management.
- ◆ Simultaneously provides an information backbone prototype for a fully operational NORAD-like Anti-terrorism Big Board Theater that provides a wide-area communications and collaboration engine for the coordination of multi-agency anti-terrorism efforts.
- ◆ Agencies expressing interest: United States Air Force (USAF). Other BAA Requirements with which this project is highly synergistic: R-101/2/4/5/6/7/8/9/11/20, R-210, R-300/14, R400/1/10/11/12/13/16.
- ◆ Wright-Patterson Air Force Base (WPAFB) is the concurring customer. The University of Dayton Research Institute (UDRI) is the co-venturer.

## Proposed Technical Approach

### Task 1

- ◆ Acquire, install, train and support platform hardware and licenses to the Leader2Leader™ information processing backbone

### Task 2

- ◆ Develop, install, train and support LeaderCube™ integration modules to provide a seamless integration of Leader2Leader with existing WPAFB applications and data stores

### Task 3

- ◆ Construct, train and support a fully operational NORAD-like Big Board Theater prototype to demonstrate the ability of the system to seamlessly coordinate communications and collaboration across multiple agencies

### Platforms Supported (all major)

UNIX, Solaris, Windows (all versions), Linux, AIX, Macintosh, Palm, WAP...

### Key Concept

Leader research discovered and fixed a plethora of serious shortcomings and flaws in prevailing platform assumptions about *mere aggregation* vs. *true integration* of communications technologies.

## ROM Cost and Schedule

- ◆ **Phase 1 - \$12,074,495** over a period of 12 months from inception of the BAA project
- ◆ **Phase 2 - \$8,695,000** project tail per year for five years to maintain WPAFB-wide information backbone following Phase 1

### Deliverables

- ◆ 20,000 Leader2Leader™ user licenses
- ◆ Six (6) fully documented and operational LeaderCube™ data integration modules for use by WPAFB and other government agencies
- ◆ Fully operational WPAFB hardware platform to support 20,000 Leader2Leader™ users
- ◆ Fully operational sixteen (16) screen NORAD-like Big Board Theater and analyst punch-up workstation consoles

### Corporate Information

**Offeror:** Leader Technologies LLC • **POC:** Michael T. McKibben • 921 Eastwind Drive, Suite 118 • Westerville, OH 43081 USA • Phone: (614) 890-19876 • Fax: (614) 864-7922 • Email: mmckibben@leader.com

This document contains **TRADE SECRETS**.

## **EXHIBIT 23**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware  
corporation,

Plaintiff-Counterdefendant,

v.

FACEBOOK, INC., a Delaware corporation,

Defendant-Counterclaimant

Civil Action No. 08-862-JJF

**HIGHLY CONFIDENTIAL—  
FOR ATTORNEY'S EYES ONLY**

**LEADER TECHNOLOGIES, INC.'S FIRST SUPPLEMENTAL RESPONSES  
TO FACEBOOK, INC.'S INTERROGATORIES NOS. 3 AND 9**

Redacted

**INTERROGATORY NO. 9:**

For each claim of the '761 Patent that LTI contends is practiced by any product(s) and/or services of LTI, identify all such product(s) and/or service(s) and provide a chart identifying specifically where each limitation of each claim is found within such product(s) and/or service(s).

Redacted

**FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:**

Redacted

Leader2Leader® powered by the Digital Leaderboard® engine is covered by the '761

Patent.

Redacted



POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Paul J. André  
Lisa Kobialka  
King & Spalding, LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065-6109  
(650) 590-7100

Dated: April 17, 2009  
912447

By: \_\_\_\_\_



Philip A. Rovner (#3215)  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

*Attorneys for Plaintiff-Counterdefendant  
Leader Technologies, Inc.*

**VERIFICATION**

I, Michael T. McKibben, Chairman and Founder of Leader Technologies, Inc., being duly sworn, deposes and says that I am authorized to sign this Verification and that I am informed and believe that the factual statements in **Plaintiff Leader Technologies, Inc.'s First Supplemental Responses to Facebook, Inc.'s Interrogatories Nos. 3 and 9** are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury under the laws of the State of Ohio and the United States that the above statement is true and correct.

April 17, 2009  
Date

Michael T. McKibben  
Michael T. McKibben

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**


I, Philip A. Rovner, hereby certify that on April 17, 2009, true and correct copies of the within document were served on the following counsel of record, at the addresses and in the manner indicated:

**BY HAND DELIVERY AND E-MAIL**

Thomas P. Preston, Esq.  
Steven L. Caponi, Esq.  
Blank Rome LLP  
1201 Market Street  
Wilmington, DE 19801  
[Preston-T@blankrome.com](mailto:Preston-T@blankrome.com)  
[caponi@blankrome.com](mailto:caponi@blankrome.com)

**BY E-MAIL**

Heidi L. Keefe, Esq.  
Mark R. Weinstein, Esq.  
Craig W. Clark, Esq.  
Melissa H. Keyes, Esq.  
White & Case LLP  
3000 El Camino Real  
5 Palo Alto Square, 9<sup>th</sup> Floor  
Palo Alto, CA 94306  
[hkeefe@whitecase.com](mailto:hkeefe@whitecase.com); [mweinstein@whitecase.com](mailto:mweinstein@whitecase.com)  
[cclark@whitecase.com](mailto:cclark@whitecase.com); [mkeyes@whitecase.com](mailto:mkeyes@whitecase.com)

  
Philip A. Rovner (#3215)  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P. O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

## **EXHIBIT 24**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware corporation,	)	
	)	
Plaintiff-Counterdefendant,	)	Civil Action No. 08-862-JJF/LPS
	)	
v.	)	<b>HIGHLY CONFIDENTIAL--</b>
	)	<b>FOR ATTORNEY'S EYES ONLY</b>
FACEBOOK, INC., a Delaware corporation,	)	
	)	
Defendant-Counterclaimant	)	

**LEADER TECHNOLOGIES, INC.'S SECOND SUPPLEMENTAL RESPONSE  
TO FACEBOOK, INC.'S INTERROGATORY NO. 1, FIRST SUPPLEMENTAL  
RESPONSES TO FACEBOOK'S INTERROGATORY NOS. 4, 11-17 AND  
THIRD SUPPLEMENTAL RESPONSE TO FACEBOOK'S  
INTERROGATORY NO. 9**

Redacted

Redacted

**INTERROGATORY NO. 9:**

For each claim of the '761 Patent that LTI contends is practiced by any product(s) and/or services of LTI, identify all such product(s) and/or service(s) and provide a chart identifying specifically where each limitation of each claim is found within such product(s) and/or service(s).

**THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:**

Redacted

Leader2Leader® powered by the Digital Leaderboard® engine is the only product or service provided by Leader which embodies, either literally or under the doctrine of equivalents, any of the asserted claims of the '761 Patent. Leader2Leader® powered by the Digital Leaderboard® engine embodies the following asserted claims of the '761 Patent: 1-17, 21, 23-26, 29, and 31-34.

Redacted

Redacted

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Paul J. André  
Lisa Kobialka  
James Hannah  
King & Spalding, LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065-6109  
(650) 590-7100

Dated: October 28, 2009  
939709

By: Philip A. Rovner  
Philip A. Rovner (#3215)  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

*Attorneys for Plaintiff-Counterdefendant  
Leader Technologies, Inc.*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

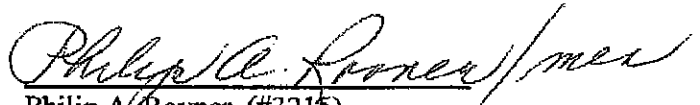
I, Philip A. Rovner, hereby certify that on October 28, 2009, true and correct copies of the within document were served on the following counsel of record, at the addresses and in the manner indicated:

**BY EMAIL AND HAND DELIVERY**

Thomas P. Preston, Esq.  
Steven L. Caponi, Esq.  
Blank Rome LLP  
1201 Market Street  
Wilmington, DE 19801  
[Preston-T@blankrome.com](mailto:Preston-T@blankrome.com)  
[caponi@blankrome.com](mailto:caponi@blankrome.com)

**BY E-MAIL**

Heidi L. Keefe, Esq.  
Mark R. Weinstein, Esq.  
Jeffrey Norberg, Esq.  
Cooley Godward Kronish LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
[hkeefe@cooley.com](mailto:hkeefe@cooley.com)  
[mweinstein@cooley.com](mailto:mweinstein@cooley.com)  
[jnorberg@cooley.com](mailto:jnorberg@cooley.com)



Philip A. Rovner (#3215)  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P. O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

## **EXHIBIT 25**

**From:** Steve Hanna <steve@computerwizards.com>  
**Sent:** Tuesday, April 3, 2001 7:59 AM  
**To:** cwcall@computerwizards.com  
**Subject:** 4/3/2001 - Yesterday in CWC (Monday, 4/02/2001)

---

General

Eric and I attended meetings with various groups at the University of Dayton and a representative from Wright Patterson AFB. The meetings were coordinated by Colombe Nicholas, a Leader Board of Director, who is also a UD Trustee. The list of participants from UD was very distinguished (Dean of graduate studies, Director of Technology Partnerships, Head of the UD Research Institute Web Development Center, Dean of the Law school, Director of the Program in Law and Technology for the Law school, Associate Provost for Advanced Technology, Associate Provost and CIO for Information Technology Dept.; the WPAFB rep. was the number one ranking civilian at WPAFB - Executive Director of Aeronautical Systems Center)

Most of the day was spent with the UD folks. The purpose was to expose them to the product and explore any possibilities for joint collaboration, etc. There was interest on the part of UD for continued dialog, and the near term focus will be on potentially having a small group participate in the Beta testing.

Overall the demos were very successful, however there was a major snafu at the end of day when we were to present to the WPAFB rep. We had moved our equipment to 3 different locations throughout the day, set up and demo'd etc.; the set up for the last demo hosed up and trashed Mikes laptop! We ended up getting a loaner machine and connecting to the demo from it, but Mike did not have the powerpoint presentation to talk from, etc.

Although this demo was very limited, the WPAFB rep. did acknowledge that it would be beneficial for us to reschedule a meeting with WPAFB and that he would have key members of his staff there to see it, now that he had an understanding of what the product is all about.

Leader Product Development

We made the decision yesterday to stay the course and finish up the iteration that we had worked all last week. The goal is to finish this ASAP and then move into a new Iteration plan.

I saw a significant amount of cvs traffic throughout the day yesterday, however I am unable to do an update this morning to evaluate where the system state.

We will discuss the current state and direction at this mornings meeting.

# **EXHIBIT 26 – PART 1**

309

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,	)	Trial Volume 2
INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 08-862-JJF-LPS
v.	)	
	)	
FACEBOOK, INC., a	)	
Delaware corporation,	)	
	)	
Defendant.	)	

Tuesday, July 20, 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  
Hawkins Reporting Service  
715 North King Street - Wilmington, Delaware 19801  
(302) 658-6697 FAX (302) 658-8418

1 I mean, what we are now familiar  
2 with, the internet browser, was still in its  
3 infancy. And so what we were looking at back  
4 then were basically corporate websites that were  
5 electronic brochures.

6 So there was no interactivity.  
7 And basically you put up a page and it looked  
8 like a brochure you could tell about your  
9 company. So that was one of the motivations to  
10 start Leader was to start looking at how we  
11 could develop interactive software. That  
12 doesn't say there wasn't any, but it was all in  
13 its infancy.

14 Q. And back when you started Leader  
15 in 1997, were there big companies around or --  
16 strike that.

17 Back when you started Leader, was  
18 Google around?

19 A. No. Google didn't start until  
20 1998.

21 Q. And how about Facebook?

22 A. Facebook much later, 2004.

23 Q. What were your goals when you  
24 founded Leader?

1           A. My goal was to use the internet as  
2   a platform for doing large-scale communications  
3   and collaboration.

4           Q. And what do you mean by that,  
5   "large-scale communication and collaboration"?

6           A. Well, back then --

7           MR. RHODES: Your Honor, may I be  
8   heard?

9           THE COURT: You have an objection?

10          MR. RHODES: Yes. I was still  
11   under the trigger. Objection; 402.

12          THE COURT: Mr. Andre?

13          MR. ANDRE: Your Honor, we are  
14   just laying background of the founding of the  
15   company.

16          THE COURT: Overruled.

17          THE WITNESS: Could you repeat  
18   your question?

19   BY MR. ANDRE:

20          Q. Yeah. I think I forgot it. I'll  
21   ask you : --

22          A. Oh, okay.

23          Q. -- what were your goals when you  
24   founded Leader?

1 result -- strike that.

2 Is this the process that  
3 eventually resulted in the technology in the  
4 '761 patent?

5 A. Yes, it is.

6 Q. When did you conceive of the  
7 invention of the '761 patent?

8 A. In 1999.

9 Q. I would like you to turn to what's  
10 been marked as PTX 768.

11 MR. ANDRE: Your Honor, while he's  
12 getting water, I would also like to move in PTX  
13 767 into evidence.

14 MR. RHODES: I stated my  
15 objection.

16 THE COURT: Right. It's admitted.

17 MR. ANDRE: Thank you, Your Honor.

18 BY MR. ANDRE:

19 Q. Mr. McKibben, if you look at  
20 what's been marked as PTX 768. Can you identify  
21 this document?

22 A. Yes. This was a design planning  
23 document that we had been working on through  
24 1999 that described the technology that we



1 project after you came up with the idea?

2 A. We had about fifteen or twenty  
3 people working on it.

4 Q. And how did the development work  
5 proceed?

6 A. It proceeded well. It proceeded  
7 like any engineering project, it had its ups and  
8 downs, its fits and starts. We would go down  
9 this path and realize this wasn't it and then go  
10 down this path. But we have a very open,  
11 collaborative, frank environment and it was  
12 quite a process. It took several years.

13 Q. And at that time, did you have a  
14 lot of tools available to you to develop this  
15 type of technology?

16 A. No, we had to create our own  
17 tools.

18 Q. At what point did you think you  
19 had the technology that would eventually become  
20 the invention of the '761 patent?

21 A. In late 2002.

22 Q. So from the time you founded  
23 Leader in 1997 until you had the technology on  
24 the '761 patent in late 2002, how many man-hours

1 did you -- did it take to develop the  
2 technology?

3 A. About 145,000.

4 Q. And how much money did Leader  
5 spend to develop this technology?

6 A. Over \$10 million.

7 Q. After you finally had this  
8 technology built and it was working, what did  
9 you do?

10 A. We filed a patent.

11 Q. I would like you to turn to what's  
12 been marked as PTX 3 in your book.

13 MR. ANDRE: Your Honor, I would  
14 like to move into evidence PTX 768.

15 THE COURT: It's admitted.

16 BY MR. ANDRE:

17 Q. Mr. McKibben, do you recognize  
18 what's been marked as PTX 3?

19 A. Yes, I do.

20 Q. What is this document?

21 A. This is an application for the  
22 patent. It includes a write-up of the invention  
23 and some of the source code.

24 Q. When did you file this patent

1 application?

2 A. December 11th, 2002.

3 Q. And why did you file this patent  
4 application?

5 A. We wanted to protect this idea and  
6 get a patent on it.

7 Q. Why did you decide to file a  
8 provisional patent application?

9 A. Because as soon as we felt we had  
10 a working invention, we wanted to protect it.

11 Q. Can you tell us what is included  
12 in the patent application?

13 A. Well, on the front is a write-up,  
14 a description in text of our invention. And  
15 then there are a number of pages of actual code  
16 that we took from the working code and included  
17 in the patent so that somebody in computer  
18 science could understand what we had invented.

19 Q. And how did you decide what code  
20 to put into the provisional patent application?

21 A. We looked at the entire body of  
22 code and pulled up code that we felt reflected  
23 all the key ideas that we were describing in  
24 this text.

1 you know, felt like we had something pretty  
2 special. We immediately started talking about  
3 project plans, how are we going to get this  
4 built?

5 And I started writing a lot of  
6 code, stayed up a lot of nights asking employees  
7 to do the same. So, yeah, a lot of hands-on  
8 keyboard time again.

9 Q. How long did it take -- well, how  
10 long did you work on this project to get it  
11 implemented so the technology was actually  
12 implemented?

13 A. We worked all the way through,  
14 what, until two kinds of times for us.

15 One, we wanted to get to an  
16 implemented version of the idea that we had. So  
17 we worked on that for a couple of years.

18 Maybe three, probably in the, you  
19 know, '99 to 2002ish time frame.

20 And then we didn't -- from our  
21 perspective, it wasn't any break, or milestone  
22 or stop. We kept because we were still trying  
23 to pursue building a commercial product.

24 So we -- you know, we just kept

1 that's provided in the provisional application,  
2 does it have some meaning?

3 A. Yeah. This is very -- again, just  
4 like there is a lot of actions implied in a  
5 recipe, this is very dense. There is a lot of  
6 meaning in every line. And you have to know  
7 what -- you have to go in and parse each word  
8 and go through it. And it was intentionally  
9 picked for that reason. It's a very, very dense  
10 informational section of the giant pile of code  
11 that we had at that time.

12 Q. So why did you and Mr. McKibben  
13 wait to file the patent application until  
14 December of 2002?

15 A. We were waiting to finish the  
16 implementation because we thought we had to to  
17 file a provisional.

18 Q. And so when you say you were  
19 waiting to finish the implementation, I just  
20 want to make sure I understand. What do you  
21 mean by the implementation?

22 A. We were finishing writing the code  
23 that was the embodiment of that  
24 invention/concept that we had.

1 Q. And so is that what you were doing  
2 between the time you came up with the idea  
3 through December of 2002?

4 A. That's what I was doing. That's  
5 what my team was doing. We had other duties,  
6 too, but a lot of hands on keyboard trying to  
7 make this thing live, real, all the lines we  
8 needed on the computer's hard drive.

9 Q. Mr. Lamb, were you deposed in this  
10 particular case?

11 A. I was.

12 Q. Were you asked very similar  
13 questions with respect to what was in the code?

14 A. Yeah, a lot of similar questions.

15 Q. Did you have a chance to review  
16 your deposition testimony?

17 A. I did.

18 Q. Before today?

19 A. Yes.

20 Q. And is all the testimony that you  
21 provided today --

22 MS. KEEFE: Objection.

23 THE COURT: What is the objection?

24 MS. KEEFE: Objection, Your Honor.

1 Q. I think there were a couple of  
2 times you were asked when you left Leader2Leader  
3 to go work somewhere else. I just want to make  
4 clear, you never worked at Leader2Leader?

5 A. Right, the company was Leader.

6 Q. Fair enough.

7 A. Leader Technologies, you know.

8 Q. So when you talk about  
9 Leader2Leader, are you talking about the  
10 technology of the '761 patent?

11 A. I still have the habits of that  
12 period of time myself and the developers used  
13 the term Leader2Leader to refer to a collection  
14 of technologies and applications that we were  
15 trying to build, not the '761 patent. That was  
16 -- that wasn't what we thought.

17 Q. So it's not the same thing in your  
18 mind?

19 A. Certainly it wasn't the same thing  
20 in my mind and it wouldn't have been the same  
21 thing in the developers' mind.

22 Q. When you talk about that time  
23 period, you said between you and the development  
24 team when you talked about Leader2Leader, what

613

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, ) Trial Volume 3  
INC., )  
)  
Plaintiff, )  
) C.A. No. 08-862-JJF-LPS  
v. )  
)  
FACEBOOK, INC., a )  
Delaware corporation, )  
)  
Defendant. )

July 21, 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  
Hawkins Reporting Service  
715 North King Street - Wilmington, Delaware 19801  
(302) 658-6697 FAX (302) 658-8418



1 code, my own experience with the website, the  
2 deposition of the employees of Facebook that  
3 used the website routinely.

4 Q. Did you rely on the confidential  
5 documents as well?

6 A. Yes.

7 Q. Let me direct your attention to  
8 PTX-145. Dr. Vigna, are you familiar with this  
9 document?

10 A. Yes.

11 Q. What is this document?

12 A. So this platform White paper that  
13 describes how testing is performed when new  
14 functionality is introduced on the website. And  
15 I think that interesting -- yeah, that paragraph  
16 is particularly interesting. It says that every  
17 time that they want to add some functionality,  
18 they have the engineers bang on that particular  
19 piece of code in every way possible.

20 So this explains that they have  
21 their own employees go through the steps of  
22 performing particular actions such as fanning  
23 the page or uploading a photo internally to make  
24 sure that a functionality works correctly.

1 Q. So does PTX-145 support your  
2 opinion that the Facebook employees actually  
3 practice the methods of Claim 9?

4 A. Yes.

5 MR. ANDRE: Your Honor, I'd like  
6 to move PTX-145 into evidence.

7 MS. KEEFE: No objection, Your  
8 Honor.

9 THE COURT: It's admitted.

10 BY MR. ANDRE:

11 Q. Also, I'd like to turn your  
12 attention to PTX-1000. Dr. Vigna, are you --  
13 and I am sorry, let's go back to PTX-145 real  
14 quick. I'm sorry.

15 Dr. Vigna, go up to the top here.  
16 Is this a -- PTX-145, is this a confidential  
17 internal document of Facebook's wiki?

18 A. Yes.

19 Q. Thank you.

20 Now, let's go to PTX-1000.

21 Dr. Vigna, are you familiar with  
22 what's been marked as PTX-1000?

23 A. Yeah. It's the Statement of  
24 Rights and Responsibilities.

1 Q. And who is this directed to?

2 A. This is directed to users of the  
3 website.

4 Q. And if you scroll down this page  
5 just a little bit, you see all these you will,  
6 you will, you will and you will not?

7 A. Yes.

8 Q. Does that inform your opinion that  
9 Facebook directs or controls the actions of the  
10 users?

11 A. Yes.

12 Q. How does it do so?

13 A. Because it tells the user what  
14 they can and cannot do.

15 Q. Dr. Vigna, in your own personal  
16 experience, have you witnessed individuals  
17 posting to walls and/or up loading photographs?

18 A. Yeah. I mean, I do that routinely  
19 on my own Facebook page. So I've done it  
20 several times.

21 I've done it, for example, for  
22 preparing the exhibits, of course, that I showed  
23 you. I had to post things.

24 And I've witnessed many, many

945

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, ) Trial Volume 4  
INC., )  
)  
Plaintiff, )  
) C.A. No. 08-862-JJF-LPS  
v. )  
)  
FACEBOOK, INC., a )  
Delaware corporation, )  
)  
Defendant. )

July 22, 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

Hawkins Reporting Service  
715 North King Street - Wilmington, Delaware 19801  
(302) 658-6697 FAX (302) 658-8418

1 Q. And then he talks, he keeps  
2 talking about -- if you read to yourself, he  
3 talks about some kind of snafu with the -- at  
4 the end of the day when we were to present to  
5 the Wright Patterson Air Force Base rep. Do you  
6 see that?

7 A. I do.

8 Q. Then he goes on at the next  
9 paragraph says although, do you see that  
10 sentence?

11 A. Yes.

12 Q. It says, "Although, this demo was  
13 very limited. The Wright Patterson Air Force  
14 Base rep did acknowledge that it would be  
15 beneficial for us to reschedule."

16 Do you see that?

17 A. Yes.

18 Q. That was what I was eluding to  
19 earlier when you were telling your shareholders  
20 in December of 2001 about Wright Patterson, the  
21 work to get to that point had begun at least by  
22 April of 2001; correct?

23 A. This was the initial meeting with  
24 the gentlemen, yes.

1 Q. And at the time of this initial  
2 meeting, would you agree with me that there was  
3 perhaps a very limited, but there was some kind  
4 of demonstration; right?

5 A. As I recall this meeting, we  
6 demoed LeaderPhone, we demoed Leader  
7 SmartCamera, and we demoed a few screen shots of  
8 Leader2Leader.

9 Q. And at the time, at the very  
10 moment that those screen shots went up on April  
11 2 of 2001, with representatives from the Air  
12 Force, did you have a signed confidentiality  
13 agreement in place?

14 A. Yes.

15 Q. Are you sure about that?

16 A. Very positive.

17 Q. Let's take a look at -- well,  
18 Leader's SmartCamera runs on the Leader2Leader  
19 platform; right?

20 A. Well, as I explained earlier, the  
21 Leader2Leader name is a brand name. Under it  
22 has a number -- it's a suite of technologies,  
23 and one of those is Leader SmartCamera that we  
24 developed in conjunction with Lawrence Livermore

1 A. That's it.

2 Q. I'm sorry.

3 A. It's a lot of NDA's.

4 Q. No, it's just I got confused. If  
5 you look in the top of the document, it looks  
6 like some kind of stamp up there, time stamp.  
7 This is a confidentiality agreement, correct?

8 A. It is. This is the one we  
9 generally use.

10 Q. And is Douglas Fleiser, he's the  
11 individual associated with the Wright Patterson  
12 Air Force Base?

13 A. He is in their advanced  
14 technologies section, but he is not the man who  
15 was at the meeting referred to by Mr. Hanna.

16 Q. And in the upper right-hand corner  
17 it looks like there is a date of April 16, 2001.  
18 Do you see that?

19 A. I do.

20 Q. And if I could ask you to then  
21 flip to the end of the agreement, which is page  
22 three, and blow up that signature block. Do you  
23 see a signature there?

24 A. I do.

1 Q. What is the date on that  
2 signature?

3 A. April 10th, 2001.

4 Q. Do you agree with me that that's  
5 after April 2, 2001; right?

6 A. April 10th is after April two.

7 Q. And if you go a couple more pages,  
8 you'll come to a fax cover sheet. Do you see  
9 that?

10 A. I do.

11 Q. So am I correct in assuming that  
12 this came to Leader from Wright Patterson Air  
13 Force Base on April 13, 2001?

14 A. Yes, up at the top it says April  
15 13, 2001 on the fax header.

16 Q. At the time that the Leader2Leader  
17 screen shots popped up in front of the  
18 representatives of Wright Patterson Air Force  
19 Base on April 2, this contract had yet to be  
20 signed; right?

21 A. That's not what happened. There  
22 was another gentleman by the name of Vincent  
23 Rashow who was the chief civilian running Wright  
24 Patterson Air Force Base at the first meeting



1 and he signed a NDA on April 2nd.

2 Q. Let's take a look --

3 MR. RHODES: I'll move into  
4 evidence, Your Honor, exhibit 75.

5 MS. KOBIALKA: 725A, no objection.

6 MR. RHODES: 725A.

7 THE COURT: It's admitted.

8 BY MR. RHODES:

9 Q. Let's take a look at DTX 852.  
10 Hopefully it's the next tab. Do you see this  
11 document?

12 A. I do.

13 Q. It's another one of the Wright  
14 Patterson Air Force base documents?

15 A. It's not only Wright Patterson Air  
16 Force base, but it's also the University of  
17 Dayton Research Institute.

18 Q. I'm just focusing for a moment on  
19 Wright Patterson. Is this a document that  
20 Leader prepared?

21 A. No, it's not. It was a joint  
22 preparation between Wright Patterson, University  
23 of Dayton Research Institute and Leader  
24 Technologies.

1274

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,	)	Trial Volume 5
INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 08-862-JJF-LPS
v.	)	
	)	
FACEBOOK, INC., a	)	
Delaware corporation,	)	
	)	
Defendant.	)	

Friday, July 23, 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  
Hawkins Reporting Service  
715 North King Street - Wilmington, Delaware 19801  
(302) 658-6697 FAX (302) 658-8418

1 Q. Did you sign one before?

2 A. We had a confidentiality agreement  
3 sometime in September when I met them the first  
4 time.

5 Q. Why would you sign another one the  
6 day after the meeting if there was already one  
7 in place?

8 A. Well, we often do that with large  
9 companies, because we're dealing with different  
10 sections of the company as we have conversations  
11 that roll through the organization.

12 Q. All right. So let's get this  
13 right. So we saw that with the Wright-Patterson  
14 Air Force Base, within a few days of that  
15 demonstration, you signed a confidentiality  
16 agreement. Do you recall that from yesterday?

17 A. What I recall, we had a  
18 confidentiality agreement when we had a first  
19 meeting.

20 Q. I'm trying to understand the  
21 pattern. You sign a confidentiality agreement,  
22 and you have a meeting and sign another one?

23 A. We were protective of our  
24 technology during that period because we knew we

1 had something special, and we were taking extra  
2 efforts to protect it; therefore, when you're  
3 dealing with a large organization, you're  
4 dealing with different people, and just because  
5 you get a general corporate NDA, you try to  
6 emphasize to the person you're talking to that  
7 may not have seen the corporate NDA that this is  
8 a proprietary conversation.

9 So we would often have multiple  
10 nondisclosure agreements with these  
11 organizations in order to emphasize the fact  
12 that we had trade secrets we wanted to protect.

13 MR. RHODES: I'll move into  
14 evidence DTX 0736.

15 MS. KOBIALKA: No objection.

16 THE COURT: Admitted.

17 MR. RHODES: Two more or three  
18 more. DTX 182, and, Ken, let's be a little  
19 careful with this one. Only show the from/sent  
20 material above the hard line there for a moment.

21 BY MR. RHODES:

22 Q. This is, I assume, the e-mail  
23 correspondence between you and your wife.

24 A. Yes, that's what it appears to be.

1 Q. And it's from December 3, 2002?

2 A. Right, yes.

3 Q. So once again this is more than  
4 one year before the filing of the final patent  
5 application; correct?

6 A. That's correct.

7 Q. Let's see if I can direct your  
8 attention to page two, the third paragraph that  
9 deals with Boston Scientific.

10 So a week before December 3rd,  
11 there's a reference that you met with Boston  
12 Scientific. Do you see that?

13 A. I do.

14 Q. That's the same meeting we were  
15 just talking about of November 25th?

16 A. Yes, that is.

17 Q. And you talk about what they want  
18 to use Leader2Leader files for. You say we are  
19 exchanging a mutual NDA. That means you guys  
20 are going to enter into a confidentiality  
21 agreement; right?

22 A. Again we were going to enter into  
23 another one, yes.

24 Q. Another one. And you say in the

1     parenthetical at the end, "Stop the presses.  
2     Their NDA just arrived for my signature."  
3     Right?

4             A.    Okay.

5             Q.    And that would be just -- the  
6     sequence of steps is that on November 25th you  
7     have the demonstration to the people at Boston  
8     Scientific of the Leader2Leader technology;  
9     right?

10            A.    Yes, 25th.   Yes.

11            Q.    The confidentiality agreement that  
12     arrived for your signature says on its face that  
13     it's effective the day after, on November 26th;  
14     correct?

15            A.    On its face, it does say that.

16     Yes.

17            Q.    And here you're telling your wife  
18     that very document has just arrived for your  
19     signature on December 3rd; right?

20            A.    Yes, that's what I'm saying.

21            MR. RHODES:   Your Honor, I move  
22     into evidence DTX 182.

23            MS. KOBIALKA:   No objection.

24            THE COURT:   Admitted.

1 to get set up.

2 Mr. McKibben, you've been asked a  
3 lot of questions yesterday and today about  
4 Leader2Leader. And there was one very important  
5 question that hadn't been asked yet which is:  
6 Is Leader2Leader exactly the same thing as the  
7 technology of the '761 patent?

8 MR. RHODES: Objection, Your  
9 Honor. Leading.

10 MS. KOBIALKA: This is  
11 cross-examination.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MS. KOBIALKA:

15 Q. Okay. So we probably need to  
16 discuss a little bit about what, in fact,  
17 Leader2Leader is and then how that plays with  
18 respect to the technology in the '761 patent; is  
19 that right?

20 A. That is correct.

21 Q. Okay. I believe you mentioned  
22 that Leader2Leader is a suite of technologies  
23 that falls under a brand; is that right?

24 A. That is correct.

1 Q. And I think it's helpful if we  
2 take a look at what you mean by that. What do  
3 you mean by a brand?

4 A. Well, in this case, Leader2Leader  
5 was a brand name that we acquired from the  
6 Patent & Trademark Office. And we use it in the  
7 similar way you would use a name for any kind of  
8 product line or suite of products.

9 And it's a name you apply to, in  
10 this case, multiple technologies that we were  
11 developing simultaneously.

12 Q. Okay. So let's say prior to when  
13 you filed the provisional patent application,  
14 and what date was that?

15 A. December 11th, 2002.

16 Q. Okay. So December 11th, 2002.

17 And prior to that date, what  
18 technologies fell under this Leader2Leader  
19 brand? And I'm going to go over here and see if  
20 I can help demonstrate it.

21 A. Okay. Well, as I was pointing out  
22 in Mr. Rhodes' question on Mr. Schlesinger's  
23 email, we had many brand names under the  
24 umbrella of Leader2Leader. For example,



1 LeaderPhone, LeaderMail.

2 MR. ANDRE: Your Honor, may I --

3 THE COURT: You may help.

4 MR. ANDRE: Sorry.

5 MS. KOBIALKA: My apologies.

6 Sorry. This thing is about as big as I am.

7 All right. Everyone can see that?

8 BY MS. KOBIALKA:

9 Q. So we had, all right,

10 Leader2Leader. You mentioned LeaderPhone?

11 A. Right, LeaderPhone.

12 Q. What else was there?

13 A. LeaderMail.

14 Q. Do you have another example?

15 A. Leader Smart Camera.

16 Q. Anything else?

17 A. Then there would be LeaderFile.

18 Q. Okay.

19 A. LeaderNews.

20 Q. All right.

21 A. Leader -- I can keep going.

22 Q. All right. But there was all

23 different technologies that included this Leader

24 name in it --

1 A. Yes.

2 Q. -- that fell under this brand. So  
3 this is overarching brands; correct?

4 A. Correct.

5 Q. And so it could include  
6 LeaderPhone?

7 A. Yes.

8 Q. It could include LeaderFile?

9 A. Yes.

10 Q. LeaderMail? Leader Smart Camera?

11 A. Yes.

12 Q. Could it include LeaderVoicemail?

13 A. Yes. It could.

14 Q. LeaderChat?

15 A. Yes.

16 Q. LeaderContact?

17 A. Yes.

18 Q. So there was a variety of things?

19 A. A variety of things.

20 Q. And so when you're talking about  
21 the suite of technologies, LeaderPhone is just  
22 an example of one of those technologies;  
23 correct?

24 MR. RHODES: Objection. This is a

1 friendly witness.

2 THE COURT: It's  
3 cross-examination. Overruled.

4 MS. KOBIALKA: Thank you, Your  
5 Honor.

6 THE WITNESS: I'm sorry. Can you  
7 repeat the question?

8 BY MS. KOBIALKA:

9 Q. When you're talking about the  
10 suite of technologies, LeaderPhone is just one  
11 of those technologies as an example?

12 A. That's correct.

13 Q. Okay.

14 A. You could put them together any  
15 way you wanted to.

16 Q. Okay. Now, was LeaderPhone, could  
17 that be sold just separately and apart from  
18 Leader2Leader?

19 A. Yes, it could. And it is.

20 Q. Okay. At some point, you had the  
21 technology of the '761 patent; correct?

22 A. On December 11th, 2002, we did.  
23 Yes.

24 Q. Okay. And then you had a product

1 right.

2 So you founded the company  
3 sometime in 1997; is that right?

4 A. Yes, that's correct.

5 Q. And when did the patent issue for  
6 the -- we'll find it. It will be on there at  
7 some point. There it is.

8 And when did the patent issue?  
9 The 761 patent.

10 A. November 23rd, 2006.

11 Q. So November 2006. And when did  
12 you file the provisional patent application?

13 A. On December 11, 2002.

14 Q. Okay. There was reference earlier  
15 in questions about the final patent application.  
16 The final application was in connection with the  
17 filing that occurred after, I believe, it was  
18 December 10, 2003.

19 Do you believe that the  
20 December 11, 2002, wasn't the filing of the  
21 patent application that led to the 761 patent?

22 A. We never thought of it that way.

23 Q. So prior December 11, 2002, when  
24 you referred to Leader2Leader, did that include

1 the 761 technology that's a plug-in to  
2 Leader2Leader?

3 A. No, it couldn't have because that  
4 technology wasn't done until days before the  
5 December 11, 2002, filing.

6 Q. How do you know that?

7 A. I vividly remember that because  
8 this had been a long R and D cycle, and we had  
9 been struggling during 2002 to get the code  
10 ready, and we ran into some more difficulties,  
11 so we were working into the fall.

12 And within days of actually  
13 getting the code working, the technology  
14 working, we actually pulled a section of that  
15 code out of the working code and put it into the  
16 provisional patent, and we went to the patent  
17 office.

18 Q. That's all the pages of code we've  
19 been seeing on that provisional patent  
20 application?

21 A. Yes.

22 Q. You wanted to make sure you had  
23 your code before you did the filing?

24 A. So that would tell a computer

1 science person how the system works.

2 Q. Now, the technologies that fell  
3 under Leader2Leader change and develop over  
4 time?

5 A. Certainly. That's the nature of  
6 any software R and D project. You start small  
7 and keep growing and solve problems and come  
8 down blind alleys and come back. As we did  
9 that, the technology grew, and as it grew, we  
10 got more and more excited about our invention.

11 Q. Can you give me an analogy for a  
12 brand that's changed over time.

13 A. Well, yeah, as an example, I  
14 understand that this Leader2Leader brand  
15 question is what were we talking about, so for  
16 example, let's take the Corvette.

17 Corvette today is a great brand  
18 name. It's been a brand name around for many  
19 decades, and today it has blue tooth. But in  
20 2002, I don't believe it had blue tooth phone  
21 technology, so between that time, you've got the  
22 same brand, but the technology is changed, and  
23 that's the basis on which there's a difference  
24 when you refer to Leader2Leader, as to what's

1 under the hood.

2 Q. Okay. So prior to December 11,  
3 2002, was there any technology in Leader2Leader  
4 that could permit someone to move from one work  
5 space to another work space?

6 A. No, it wasn't done yet.

7 Q. Or move from board to board within  
8 the system?

9 A. No, that technology was not done  
10 until a few days before December 11, 2002.

11 Q. You couldn't track any movement  
12 obviously since you didn't have that movement;  
13 right?

14 A. It was not finished until right  
15 before 2002. That is correct.

16 Q. At some point, you had a version  
17 of the software; right? Is that correct?

18 A. Yeah, right around that time  
19 December 11th.

20 Q. Okay. And you started to do some  
21 beta testing of that software; right?

22 A. Yeah, what happens after that is  
23 we had an experimental version then, so we  
24 started doing experimental testing first inside

1 our company, and then as 2003 rolled around, we  
2 started talking to a few companies about  
3 participating in this experimental beta program  
4 to continue to refine the invention.

5 Q. What do you mean by beta program?

6 A. Well, in software, first you build  
7 it, and then you want to start testing it. And  
8 so us in the computer science world, we break  
9 that testing into two parts.

10 And the first part is when you  
11 just do it internally and just test it among  
12 your employees. That's called an alpha test,  
13 alpha examination test.

14 And once you feel like you have  
15 bugs worked out, you give it to a few third  
16 parties who are usually friendly and will put up  
17 with things not working right and crashing and  
18 bugs, and you put it out for testing, and that's  
19 what we started doing in early 2003.

20 Q. Around that same time in 2003, did  
21 you also publish a white paper entitled "What  
22 Convergence Was Meant To Be"?

23 A. I do recall publishing that paper,  
24 yes.



1 MS. KOBIALKA: And, Your Honor,  
2 may I approach?

3 THE COURT: The witness? Yes, you  
4 may.

5 BY MS. KOBIALKA:

6 Q. Do you have that document in front  
7 of you currently?

8 A. I do.

9 Q. We've marked that as PTX 1240, and  
10 you authored this particular document?

11 A. Yes, I did.

12 MS. KOBIALKA: At this time, Your  
13 Honor, I'd like to move this into evidence.

14 MR. RHODES: No objection.

15 THE COURT: Admitted.

16 BY MS. KOBIALKA:

17 Q. We had looked at some  
18 interrogatory responses yesterday, so I'd like  
19 to point to those. That was DTX 963 and DTX  
20 969. Maybe we could pull up 963.

21 What I'm interested in looking at  
22 was the question -- what the actual  
23 interrogatory was. That would be for  
24 interrogatory number nine.

1           A. I believe it was the first tab in  
2     the big binder?

3           Q. That's correct.

4           So, Mr. McKibben, is it correct to  
5     say you were asked, "For each claim of the 761  
6     patent that LTI contends is practiced by  
7     any products and/or services of LTI,  
8     identify all such products and/or  
9     services and provide a chart specifying  
10    where each limitation of each claim is  
11    found within the product."

12           Is that correct?

13          A. That's what I read.

14          Q. And what did you understand you  
15     were being asked with respect to that  
16     interrogatory?

17           MR. RHODES: Objection, Your  
18     Honor. I'm going to object to that as a  
19     conclusion, and I renew my objection of her  
20     leading of 611(c).

21           THE COURT: I overrule the  
22     leading.

23           Ms. Kobialka, calling for  
24     conclusion?

1 MS. KOBIALKA: I asked his  
2 understanding of what was being asked of him.

3 THE COURT: Overruled. You can  
4 answer the question if you recall it.

5 THE WITNESS: I recall.

6 It's being asked what aspects of  
7 our products and/or services today practice the  
8 761 patent today.

9 BY MS. KOBIALKA:

10 Q. Today. So what do you mean by  
11 today?

12 A. Well, I mean, the question had to  
13 have occurred -- they're asking about the 761  
14 patent, which did not issue until November 23,  
15 2006. So this question had to refer to whatever  
16 our products and services were after  
17 November 23, 2006, and so that was the answer I  
18 gave.

19 Q. If we go down to the response  
20 where it says "Leader2Leader powered by Digital  
21 Leaderboard engine is covered by the 761  
22 patent." Do you see that?

23 A. I do.

24 Q. Was that an accurate statement

1 when you answered that response?

2 A. It is because we did do  
3 Leader2Leader powered by Digital Leaderboard,  
4 and we did use the technology after December 23,  
5 2006.

6 Q. Is that a true statement today in  
7 2010?

8 A. Yes, it is.

9 Q. And is that a true statement in  
10 2008?

11 A. Yes, it was.

12 Q. And would it have been a true  
13 statement in 2007?

14 A. Yes, I believe so.

15 Q. Would that have been a true  
16 statement prior to December of 2002?

17 A. No, it could not have because that  
18 technology of the 761 patent did not exist at  
19 that time.

20 Q. Now, we heard a lot of questions  
21 about demonstrations that you had done, and you  
22 mentioned something about NDA. What are you  
23 talking about when you say NDA?

24 A. It's a very common practice in the

1 software business where you're building  
2 something that takes, sometimes, years to build,  
3 and you're the trying to raise money to pay your  
4 programmers and feed your staff, that you go out  
5 and you talk to investors to get money to be  
6 able to pay your bills.

7 And so the practice in our  
8 business is to, if you're going to do that and  
9 still protect your intellectual property, the  
10 first thing you have to do before you present  
11 any of your business information to that third  
12 party is you get them to agree to a  
13 confidentiality agreement.

14 The shorthand is NDA. It means  
15 nondisclosure agreement. People refer to it as  
16 NDA, but it's a confidentiality agreement where  
17 that person is willing to agree to the trade  
18 secret laws of the United States where you can  
19 have confidential information.

20 Q. Did Leader have an NDA policy in  
21 place?

22 A. We did.

23 Q. Starting from when?

24 A. From the inception of the company.

1 Q. And you were a bit paranoid about  
2 protecting confidential and proprietary  
3 information.

4 A. I have been accused of being  
5 paranoid.

6 Q. And that you also required your  
7 family members to sign NDAs as well?

8 A. I do.

9 Q. Did your daughter, who was an  
10 intern at Leader, sign an NDA?

11 A. She did.

12 Q. How many NDAs do you think you  
13 have currently?

14 A. The last count was about 2400.

15 Q. Was it your understanding this NDA  
16 was intended to protect all of the different  
17 technologies that were confidential and  
18 proprietary to Leader?

19 A. Yes. It's my understanding of the  
20 non-disclosure agreements that they protect all  
21 business information in the company, whether  
22 it's financials, whether it's technology,  
23 whether it's sales plans, business strategy.  
24 Whatever it is, it protects it.

1 A. He attended my very first meeting  
2 with Boston Scientific.

3 Q. Is it correct to say you would  
4 never do a demonstration of any of the  
5 proprietary technology of Leader unless there  
6 was an NDA in place?

7 A. I never presented our technology  
8 without a confidentiality agreement in place.

9 Q. And during any of the  
10 demonstrations that you did prior to December  
11 11, 2002, did you ever show anyone what was  
12 under the hood, so to speak, of the  
13 Leader2Leader technologies?

14 A. Well, prior to that time, it  
15 didn't exist. So I couldn't have shown it.

16 Q. Well, I'm talking about just  
17 Leader2Leader generally, I'm not referring to  
18 the technology of the '761 patent. So let me  
19 try that again.

20 A. Oh, okay.

21 Q. During any of your demonstrations  
22 prior to December 11th, 2002, did you ever show  
23 anyone what was under the hood of Leader2Leader?

24 A. We showed different aspects,

1 THE COURT: Hold on a second.

2 MR. RHODES: As a phrase,  
3 technology of the '761, I thought we were  
4 talking about the products, Leader2Leader.

5 THE COURT: Sustained. Let's  
6 restate the question.

7 BY MS. KOBIALKA:

8 Q. At any time, did you ever  
9 demonstrate the '761 technology that was plugged  
10 in to Leader2Leader?

11 MR. RHODES: Objection. Same  
12 objection.

13 THE COURT: Overruled. If you can  
14 answer the question, answer it.

15 MS. KOBIALKA: Thank you.

16 THE WITNESS: Yes, we did. After  
17 December 11, 2002, that technology was working.  
18 And as I recall, the very first time we ever  
19 showed the actual working technology was in the  
20 advanced technology lab at The Limited to about  
21 10 or 15 of their technology researchers.

22 BY MS. KOBIALKA:

23 Q. Let's talk about Wright Patterson.  
24 So you had a meeting, I believe, with Wright



1 Patterson around April 2 of 2001; correct?

2 A. As I recall, that was our first  
3 contact with Wright Patterson. Yes.

4 Q. Okay. And we had looked at one of  
5 the NDAs that you had with Wright Patterson. It  
6 was PTX 1058.

7 If you want to take a look at  
8 that. You want to look on the screen?

9 That might --

10 A. Oh, okay. Okay.

11 Q. Yeah.

12 A. Yes.

13 Q. And you remember seeing this  
14 particular NDA?

15 A. I do.

16 Q. The meeting that you had on April  
17 2nd, 2001, was it with Mr. Fleser?

18 A. No. I had not met him yet.

19 Q. Okay. Who was at that meeting?

20 A. The person at that meeting was  
21 invited by the senior people from University of  
22 Dayton to attend. And he was the top civilian  
23 at the Wright Patterson Air Force Base. His  
24 name was Vincent Russo.

1 Q. Did you obtain an NDA for Mr.  
2 Russo?

3 A. I did.

4 MR. KOBIALKA: Your Honor, I'd  
5 like to approach and provide this to the  
6 witness.

7 THE COURT: You may.

8 MS. KOBIALKA: It is part of DTX  
9 725, which had numerous exhibits. So I'd be  
10 happy to re-mark it as a PTX number so we don't  
11 have to mark 2,000 of --

12 THE COURT: It's fine. Keep it as  
13 it is.

14 MS. KOBIALKA: So this is DTX 725,  
15 and it starts with Bates number LTI 153001  
16 through 3003.

17 BY MS. KOBIALKA:

18 Q. Is this the NDA that you had with  
19 Mr. Russo?

20 A. Yes. Not that one.

21 Q. It's in the middle of the  
22 document.

23 MS. KOBIALKA: At this time, Your  
24 Honor, I'd like to move in, I guess, the entire

1 Exhibit 725 into evidence.

2 MR. RHODES: No objection.

3 THE COURT: It's admitted. We're  
4 still trying to get the correct page on the  
5 screen; is that correct?

6 MS. KOBIALKA: That's correct.

7 BY MS. KOBIALKA:

8 Q. While we're getting the correct  
9 page up on the screen, that meeting on April  
10 2nd, 2001, did you disclose any of the  
11 technology of the '761 patent?

12 A. No, it was impossible. It didn't  
13 exist then.

14 Q. Did you demonstrate it?

15 A. It didn't exist. I did a demo.

16 Q. What did you demonstrate to them?

17 A. Some of the elements of  
18 Leader2Leader.

19 Q. Now, you had talked about a White  
20 paper and there was a Quad paper in connection  
21 with DARPA.

22 A. Right.

23 Q. What is DARPA?

24 A. It's a -- it's the primary funder

1 of advanced technology research run by the  
2 Department of Defense.

3 Q. And can we take a look at DTX 179?  
4 And that is in the jury binders.

5 Do you have it in front of you?

6 A. Yes, I do.

7 Q. Okay. I'd like to take a look at  
8 the page that has the Bates number on the bottom  
9 48199. If you could take a look at the second  
10 paragraph from the bottom where it says WPAFB,  
11 which is I believe Wright Patterson Air Force  
12 Base will use the LeaderPhone services within  
13 its fire walls. WPAFB will become a classical  
14 beta customer for the full Leader2Leader  
15 platform and will receive commensurate licenses  
16 to do so.

17 Do you see that?

18 A. Yes, I do.

19 Q. What specific technology were you  
20 talking about in this document?

21 A. I was talking about various  
22 elements of the Leader2Leader platform as you  
23 illustrated up on the easel that we were showing  
24 to them and they were expressing interest in.

1 Q. How do you know it didn't include  
2 the technology of the '761 patent?

3 A. Because that technology didn't  
4 exist yet, so it couldn't have.

5 Q. So was this a joint -- I heard --  
6 I believe you testified yesterday this was some  
7 sort of a joint development project?

8 A. Right.

9 Q. Okay. What were you guys  
10 discussing about what you were going to jointly  
11 develop together?

12 A. Well, at that time, this was right  
13 after the September 11th terrorist attack. And  
14 they were interested in talking to us about  
15 using some of our technologies in conjunction  
16 with some of their other research to help the  
17 problem that was identified by the 9/11 disaster  
18 in getting different intelligence agency data to  
19 speak -- to talk together basically.

20 Q. And let's flip towards the end.  
21 It's Page 9 of this document, which is entitled  
22 Project Plan Management Milestones and  
23 Deliverables.

24 Okay. Do you see that?

1 objecting to the question with respect to?

2 MS. KOBIALKA: Your Honor, it was  
3 brought in.

4 THE COURT: I'm overruling it.  
5 You can explore this area.

6 MS. KOBIALKA: I'd like to mark  
7 these NDAs together to make it easier. They  
8 would be PTX 1175, PTX 1049, PTX 1173, PTX 1174,  
9 PTX 1172.

10 And one day, Mr. Andre will keep  
11 up with me.

12 May I approach?

13 THE COURT: You may.

14 BY MS. KOBIALKA:

15 Q. Mr. McKibben, are these the NDAs  
16 for the individuals I just identified?

17 A. Yes, they are.

18 Q. And why did you obtain so many  
19 NDAs from a single entity?

20 A. Well, with larger companies, you  
21 find as a small company, an entrepreneur, that  
22 people forget they signed NDAs. If it's a  
23 corporate NDA, you want to make a point.

24 When you're talking to someone

# **EXHIBIT 26 PART 2**

1 individually, you have them do it too to make  
2 the point they're covered under their company's  
3 confidentiality requirements.

4 Q. We heard a lot about the e-mail  
5 you sent to Mr. Schlessinger on November 21st  
6 and reference to the sweetheart deal, and that's  
7 exhibit DTX 185. So can you just briefly  
8 describe what the context of this particular  
9 e-mail was.

10 A. Yeah, it was an e-mail to a person  
11 who was friendly to the company who for a number  
12 of years had been, kind of, morally supporting  
13 our effort, and as we got closer to the -- as we  
14 proceeded in our development, I kept him  
15 informed just on a casual basis.

16 And when we got where I could show  
17 him some of the early elements of Leader2Leader,  
18 we started talking again, and Len is an -- I  
19 call him an entrepreneur-friendly CEO, probably  
20 the most entrepreneur-friendly CEO I met.

21 He knows as you continually  
22 develop your systems as a small company, it  
23 costs money, and when I came to him with this  
24 e-mail, we had an opportunity to bring in about



1 \$10 million in one form or another, and I was  
2 asking for his help to get this \$10 million  
3 funding round.

4 Q. So at the time you were talking  
5 about Leader2Leader, what specific technologies  
6 under the suite of technologies were you talking  
7 about?

8 A. As I recall at that time, we were  
9 largely talking about Leader Phone, Leader File,  
10 and Leader Message.

11 Q. If we could take a look at some of  
12 the e-mails that were shown previously, let's  
13 start with 776.

14 Now, this is an e-mail from  
15 Mr. Hanna to CWCAL at computer wizards. Do you  
16 know what that e-mail is?

17 A. I do. That was a broadcast list  
18 to our developers.

19 Q. Leader's developers?

20 A. Yes.

21 Q. If we scroll down, we go to LP.  
22 It says, "Right now we are focusing primarily on  
23 those issues that affect LP. Some work is  
24 proceeding on more general L2L issues."

1 What does LP refer to?

2 A. That's the developer shorthand for  
3 Leader Phone.

4 Q. Around this time, this is what you  
5 were discussing with The Limited; correct?

6 A. That is correct.

7 Q. Okay. So now I'd like to turn to  
8 exhibit 766. This is DTX 766, and this is an  
9 e-mail between you and Mr. Butler.

10 And look at The Limited here, and  
11 you were asked a number of questions about that.  
12 Were you referring to your discussions you had  
13 previously in November with Mr. Schlessinger in  
14 connection with this description to Mr. Butler  
15 about your negotiations with The Limited?

16 A. Yes, I was, and we were generally  
17 very excited that this major company was getting  
18 ready to endorse what we were doing, and we were  
19 talking with -- about Leader Phone and elements  
20 of the Leader2Leader suite that existed at the  
21 time, and the reference there to a contract was  
22 in relation to an experimental beta program.

23 Q. And so you had further discussions  
24 with The Limited about eventually doing a beta

1 program?

2 A. Yes, we did.

3 Q. After you sent the e-mail to  
4 Mr. Schlessinger on November 21, what was their  
5 response?

6 A. Well, that e-mail that we're  
7 referring to was an attention-getter e-mail. It  
8 got his attention, and he said, "Let's start out  
9 something. Let's test this and see how we may  
10 want to use it in your various divisions."

11 And that's what those five bullets  
12 in that e-mail before are referring to. They  
13 were referring to the potential fits within the  
14 organization.

15 Q. The five bullets you're referring  
16 to are the ones in the November 21st, 2003  
17 email, which is Exhibit 185.

18 We have just blown it up. On  
19 Exhibit 185, are those the five bullets point  
20 you're referring to?

21 A. That is correct.

22 Q. Okay. At some point, did you  
23 draft a beta testing agreement with The Limited?

24 A. Yes. Within months of this

1 agreement at Mr. Schlesinger's direction, their  
2 advanced technology group engaged us in  
3 discussions. And in fact, this email talks  
4 about two of those gentlemen.

5 And we organized an experimental  
6 beta program within The Limited, and we got it  
7 down to an actual contract statement.

8 Q. So at some point after you sent  
9 the November 21st, 2002 email, did Leader obtain  
10 the technology of the '761 patent?

11 A. Yes. A few days with -- around  
12 December 11th, 2002.

13 Q. And so at some point after you  
14 filed your patent application, did you discuss  
15 with The Limited about including the technology  
16 of the '761 patent into the Leader2Leader suite  
17 of technologies that you were discussing with  
18 them?

19 A. We were so excited to show  
20 somebody, that they opened up their lab to us  
21 and we showed it the first opportunity we had  
22 within their testing lab.

23 Q. Okay. Can you describe what that  
24 demonstration was that you provided to The

1 order just to get one connection.

2 So to have two connections in a  
3 conference room where the person's only got an  
4 hour and to have two computers, it was just too  
5 cumbersome. And we never did it.

6 Q. All right. I'd like to show you a  
7 draft of The Limited brand beta agreement marked  
8 as PTX 773.

9 MS. KOBIALKA: May I approach?

10 THE COURT: You may.

11 BY MS. KOBIALKA:

12 Q. Do you recognize this document,  
13 Mr. McKibben?

14 A. Yes, I do.

15 Q. And what is the document?

16 A. This was the result of our  
17 discussions during the first few months of 2003  
18 to finalize an initial experimental test with  
19 them. We called it the Beta Agreement.

20 Q. Okay. Let's talk about Boston  
21 Scientific.

22 In some of your first meetings  
23 with Boston Scientific, did Professor Chandler  
24 attend with you?

1           A. Actually Professor Chandler  
2 introduced us to Boston Scientific and he  
3 attended the first meeting.

4           Q. And you had an NDA at that first  
5 meeting; correct?

6           A. We had a confidentiality agreement  
7 at the very first meeting.

8           Q. I think we have enough NDAs in the  
9 record, so I'll just ask some questions. What  
10 was that meeting about that you were discussing  
11 back in September of 2002?

12          A. That was a meeting with the chief  
13 security officer for Boston Scientific and the  
14 professor and him had been a colleague for many  
15 years, years in the National Intellectual Law  
16 Institute.

17                 That meeting was primarily  
18 introductory and it was to generally discuss our  
19 products. I recall showing him LeaderPhone and  
20 discussing the possibilities with that.

21                 And the other aspect of our  
22 technology that he was primarily interested in  
23 was the Leader Smart Camera, because he was in  
24 charge of all of the security systems for Boston

1 Scientific worldwide.

2 Q. What is Leader Smart Camera, just  
3 generally and very quickly?

4 A. Okay. Leader Smart Camera is a  
5 technology that was invented at Lawrence  
6 Livermore National Laboratories.

7 And we had acquired rights to  
8 include in our Leader2Leader framework  
9 technologies. And basically what it was  
10 invented to do was provide perimeter security  
11 for nuclear securities of the United States  
12 government.

13 Q. At some point, did you begin to  
14 have discussions with Boston Scientific about  
15 implementing the technology of the '761 patent  
16 and doing a beta test with Boston Scientific?

17 A. Yes, we did in 2003.

18 Q. I'd like to mark DTX I believe  
19 it's 769, which is a service provider agreement.

20 MR. ANDRE: 679.

21 MS. KOBIALKA: 679. My apologies.

22 May I approach?

23 THE COURT: You may.

24 BY MS. KOBIALKA:

1 Q. Mr. McKibben, what is this  
2 document you have in front of you?

3 A. This is the service provider  
4 agreement that we developed with Boston  
5 Scientific for the experimental beta program  
6 with them in the -- starting late summer of  
7 2003.

8 Was this the first beta program  
9 for the technology that included the technology  
10 of the '761 patent for Leader2Leader?

11 A. Yes, it was.

12 MS. KOBIALKA: Your Honor, I'd  
13 like to move in Exhibit DTX 679 into evidence.

14 THE COURT: Admitted.

15 BY MS. KOBIALKA:

16 Q. And can you turn to Exhibit A?

17 A. Okay.

18 Q. And in Exhibit A under monthly  
19 user license, how many licenses were granted in  
20 this document?

21 A. Ten user licenses.

22 Q. So that the ten user licenses  
23 indicates to you that this was just intended to  
24 be a small beta test; is that correct?



1 A. That is correct.

2 Q. When you originally started  
3 talking to Boston Scientific, you were talking  
4 about one set of technologies involved in the  
5 Leader2Leader product; correct?

6 And did that change over time to  
7 include the '761 patent?

8 A. Yeah. As I stated earlier, the  
9 first meetings discussed primarily LeaderPhone  
10 and Leader Smart Camera.

11 And then the gentleman named Lynn  
12 Mattice suggested that he -- he heard a little  
13 bit about Leader2Leader and suggested that he  
14 wasn't the right person to hear about our  
15 technologies. And so he suggested I come back  
16 and do a presentation for information technology  
17 people that would more appreciate what we were  
18 doing.

19 Q. And eventually then you began to  
20 have discussions with them once you had the  
21 technology of the '761 patent to be included in  
22 the Leader2Leader product offering that you were  
23 discussing with Boston Scientific; correct?

24 A. Right.

1 BY MR. RHODES:

2 Q. Are you able to identify any  
3 iteration of the Leader2Leader product that, in  
4 your opinion, did not implement what's claimed  
5 in the '761 patent?

6 A. So may I ask a question? Am I  
7 able to identify any element at any time that  
8 didn't implement?

9 Q. Leader -- I'll try to clear this  
10 up.

11 Leader2Leader, as you said,  
12 evolved over time; right?

13 A. Correct.

14 Q. And now -- and there were many  
15 iterations of it; correct?

16 A. Correct.

17 Q. Now, I'm asking you: Were  
18 there -- was there ever an iteration of the  
19 Leader2Leader platform that did not embody the  
20 '761 patent?

21 A. Any time before December 11, 2002,  
22 it couldn't have because, it didn't exist.

23 MR. RHODES: Okay. May I play the  
24 record, Your Honor?

1           A. Well, what I did was, I looked for  
2     the ideas, what's in each one of the elements.  
3     Can I find a match of the provisional  
4     application?

5           So for example, at one level, are  
6     the words there? At another level, if the words  
7     aren't there, is the idea there?

8           There's some code included in the  
9     provisional application. I looked at the code,  
10    and I asked, does the code actually have any of  
11    these words or ideas within it?

12           So that's how I did my comparison.

13           Q. Can you pull up a slide of claim  
14    one, please. Just go to the patent itself and  
15    show claim one.

16           So for example, this is claim one;  
17    is that right?

18           A. Right.

19           Q. Now, are there -- what elements in  
20    claim one are you talking about when you say  
21    that there are ideas that are in the claim that  
22    are not in the provisional application?

23           A. We see two major elements. We see  
24    two paragraphs.

1 which is a little figure we see clearly.

2 So this is obviously important.

3 It's on the very front of the patent, and  
4 there's -- on the left side we see this thing  
5 called a context component and this thing called  
6 a tracking component. This is part of the 761  
7 patent.

8 Q. Are those figures in the  
9 provisional patent?

10 A. This figure is not in the  
11 provisional patent. There's no figures at all  
12 in the provisional patent.

13 Q. Are there more figures in the  
14 issued patent?

15 A. There's twenty or twenty-one.  
16 However you count in the issued patent, there's  
17 quite a lot more.

18 Q. Are there other differences  
19 between, just facial differences between the  
20 provisional patent application and the final  
21 patent?

22 A. Well, the provisional application  
23 is a lot shorter, for one thing. And I  
24 actually --

1 Q. Did you prepare a slide?

2 A. Yes. So here's a good  
3 side-by-side comparison.

4 The provisional application, as I  
5 mentioned, is quite a bit shorter. We see  
6 there's nine and a half pages of text, plus  
7 eight and a half pages of code.

8 And it's in quotes because I don't  
9 actually know if it's working code or just  
10 something that was written that never actually  
11 ran. There's nothing in the application that  
12 says that.

13 Whereas the final patent  
14 application has 39 pages of text. You know, so  
15 this is substantially more stuff in it.

16 The provisional has no figures to  
17 illustrate a concept whereas the final patent  
18 application has 22 figures.

19 I mention words like tracking,  
20 context, context data, metadata. There's  
21 absolutely no mention of the word tracking in  
22 the provisional application. And in the final  
23 patent application, tracking is an element of  
24 every single asserted claim, and it's also

1 described thoroughly in the specification.

2 In the provisional application,  
3 there's no mention of context data or this idea  
4 of metadata. Well, there is of storing  
5 metadata.

6 There is one mention of metadata  
7 that I'll talk about shortly. But there's no  
8 mention of these terms of context data at all.

9 Whereas in the final patent, their  
10 context data and metadata are in -- are elements  
11 of each and every one of the independent claims.  
12 And it's also claimed in the -- described in the  
13 specification.

14 Q. And you mentioned that the  
15 metadata is used once in the provisional, but  
16 it's not used as -- the same way in the final?

17 A. And again, metadata is in each and  
18 every one of the elements of the asserted -- of  
19 the independent claims that are asserted in this  
20 case.

21 Q. Can you describe for us some of  
22 the examples of the description of context  
23 components and context data that you found in  
24 the patent itself? And I think you had some

1 slides for that as well.

2 A. Sure.

3 Q. Column 6.

4 A. Well --

5 Q. Oh, go ahead. Did you want to  
6 talk about this?

7 A. Sure. Maybe we can just bring  
8 them both up at the same time. Okay.

9 This just elaborates a little bit  
10 more about what I said before. Tracking appears  
11 zero times. Track appears zero times.

12 Metadata appears once. And as I  
13 mentioned, not in the way it's used, access  
14 appears twice. And whereas these terms are  
15 really heavily used in the final patent.

16 They appear 64 times. So that was  
17 back to the question of, you know, on the face  
18 level, you know, are there stark differences.  
19 And the answer is yes.

20 Q. Okay. So you mentioned that these  
21 terms appear numerous times in the final  
22 application?

23 A. That's correct.

24 Q. Before we dive into the

1 description of metadata storage or update in the  
2 provisional application?

3 A. Well, it's just not there. In  
4 fact, they -- the term metadata is used only  
5 once, and it's used as a description of what was  
6 available previously.

7 And the way it's used is in a  
8 different way from the way it's described in the  
9 '761 patent.

10 In fact, I have some -- I've  
11 highlighted some materials about that.

12 Q. Actually, no, before we bring that  
13 up --

14 A. That's not --

15 Q. No. No, before we bring that up,  
16 so with metadata, I just want to back up and  
17 make sure this concept is very clear.

18 Where does metadata storage and  
19 update -- in fact, let's bring up Claim 1 again.

20 Where does metadata and storage  
21 appear in Claim 1?

22 A. Okay. So it appears in -- let's  
23 take a look at this.

24 So if we look at the first



1 the provisional application?

2 A. Well, as I mentioned, the word  
3 metadata appears only once and it appears in a  
4 completely different context. In fact, as part  
5 of the background of the invention.

6 And there's -- there's nothing  
7 else in the -- in the provisional that actually  
8 has any concept of metadata, nor is there  
9 anything in the code, nor is there anything in  
10 the examples. I didn't see it.

11 Q. Can you please pull up the  
12 background of the provisional.

13 So is this the paragraph that  
14 describes metadata?

15 A. Yes. So let me just see where it  
16 is, if it's this particular part.

17 Maybe it's the next paragraph.  
18 I'm not sure.

19 Q. How about Paragraph 11?

20 A. Yeah, keep going.

21 There we go. In fact, if you  
22 include Paragraph 12 as well, that would be  
23 good.

24 So this is in the background of

1 They're talking about it as, Oh, it was done  
2 manually and we can do better than that.

3 But that's it. That's the only  
4 use of the word metadata in this entire  
5 provisional is to say, Here's what's been done  
6 before.

7 And it's wrong or it's not wrong,  
8 but it's not enough.

9 Q. If the provisional doesn't  
10 describe metadata storage and updating, what  
11 does it describe?

12 A. So I prepared a series of slides  
13 on power point to try to illustrate this. If we  
14 could bring that up. There we go.

15 So the provisional application  
16 describes this idea -- describes here a lot of  
17 the ideas in it. So there is stuff in there.  
18 It's just not the stuff that's in the asserted  
19 claims.

20 So the first thing it does, it  
21 describes these things called boards. And  
22 boards are essentially a collection of data and  
23 application functions.

24 So these are things like, Well,

1 captured and put in the knowledge repository.

2 If we go on. And, in fact, even  
3 in the claims of Swartz, Swartz actually says  
4 that his system generates this audit trail to  
5 represent the flow of data. So, again, we have  
6 this notion of tracking in one of the claims.

7 And in Claim 5, he actually says  
8 that all this is dy -- that the system  
9 dynamically stores information about these  
10 transactions. So this is all happening as  
11 people are doing their work.

12 Q. Now, how do these features that  
13 you've just described compare to the claims of  
14 the '761 patent?

15 A. Well, they pretty well -- well,  
16 not pretty well. They describe using Claim 1 as  
17 an example. This describes what Claim 1 is  
18 doing.

19 Q. Can we go through the animation  
20 again and have you use the language of Claim 1?

21 A. Okay. I just want to get the  
22 language of Claim 1 in front of me to see.

23 Q. Why don't you put it up on the  
24 white board to the side of you, so we can have

1 it at both places at the same time.

2 A. Okay. That would be helpful.

3 Q. Just make sure it's clean for us.

4 So Dr. Greenberg, I'm going to have you help us  
5 step through the Swartz patent and what it  
6 discloses with each and every one of the  
7 limitations from Claim 1.

8 A. Sure. But let's back up one more  
9 step, because -- and even again remember that  
10 I'm talking about the data docket software is  
11 kind of watching what's going on, and the data  
12 docket software actually has software that's  
13 equivalent to the -- what we'll see here is a  
14 context component and also the tracking  
15 component. So now we can move through that.

16 Later I'll talk about it being a  
17 network-based system. But here we have the data  
18 docket context software is a context component  
19 and it captures the context information  
20 associated with the user-defined data.

21 So if we step through this, again  
22 we see here at the bottom, it's talking about a  
23 captured metadata associated with the  
24 information. So it's characterized in context.

1 So there we go, we're characterizing context.

2 And then it says, the context  
3 component dynamically storing the context  
4 information in metadata. And that's mentioned.  
5 That quote also captures that.

6 We see the captures metadata and  
7 so it's there.

8 Q. So Dr. Greenberg, I'm sorry. Just  
9 to slow down one second.

10 A. Yeah.

11 Q. So which portions of Claim 1 are  
12 you saying map to the quote that we have here on  
13 the screen?

14 A. Okay. Right now I'm looking at  
15 the first element of Claim 1.

16 Q. So is that computer-implemented  
17 context component of the network-based system  
18 for capturing context information associated  
19 with user-defined data created by user  
20 interaction of a user in the first context of  
21 the network-based system?

22 A. That's correct.

23 Q. Okay.

24 A. And then I went on to talk about

1 the context component dynamically storing the  
2 context information metadata. And we see the  
3 metadata over there.

4 Q. And which -- which portion of this  
5 language -- seems a little obvious, but which  
6 portion of this language tells you that?

7 A. Well, captures metadata associated  
8 with the information shared, stored and accessed  
9 by the users of the data.

10 Q. So is that just generic metadata  
11 or is that a specific type of metadata?

12 A. No, this is -- well, it's very  
13 specific, because it says below, so as to  
14 characterize the contents. Right.

15 This is all about what are people  
16 doing in a context? What exactly is happening?  
17 As in this case, they're using that customer  
18 data analysis software system.

19 Q. Thank you. Please go on.

20 A. Okay. Can I see the next  
21 animation just to -- okay.

22 So we have in the second claim, we  
23 have a computer-implemented tracking component  
24 of the network-based system for tracking a

1 change of the user from the first context to a  
2 second context of the system and then  
3 dynamically updating the stored metadata based  
4 on the change.

5 Now, here in this quote, he says  
6 we have this knowledge integration middleware,  
7 so that does some of the tracking that's  
8 preferably employed to identify, including  
9 tracking, monitoring and analyzing the context  
10 in which information is employed.

11 So, again, we have the tracking  
12 coming into play, which is what that claim is  
13 all about. And if we keep on going.

14 And here we see in the claim, it  
15 generates an audit trail. And that's part of  
16 the storage functionality. Right.

17 As people are doing what they're  
18 doing, it's being stored. And we see that in  
19 Claim 5 as well. That is the dynamically  
20 stored. Right.

21 So we're dynamically storing  
22 information about these transactions as people  
23 are doing them.

24 Q. How do we know that it's the same

1 metadata that's being updated?

2 A. Well, this is a whole point of the  
3 system. Right.

4 It's about capturing this  
5 knowledge path, which I mentioned before. It's  
6 about what is it that people are doing and can  
7 we actually create that as a knowledge path.

8 So it's all related. It's not  
9 just different stuff. It's related from what  
10 happens within a context.

11 How do we track what people are  
12 doing as they move from one context to the  
13 other? How do we store what happens in the  
14 second context? How do we store all that as  
15 metadata?

16 So it presents this knowledge  
17 path.

18 Q. And where was Mr. Swartz when he  
19 wrote this patent?

20 A. I'm not sure where he went to. I  
21 do know that the patent was assigned to -- was  
22 assigned to Xerox. So I can assume that he was  
23 working for Xerox at the time or he had some  
24 relationship with them.



1 But I don't know that for sure.

2 All I know is that Xerox is, in fact, the actual  
3 assignee.

4 Q. And when was this, again?

5 A. I'll have to look back on that  
6 first page, but I said it was late '90s.

7 Could I just have it right in  
8 front of me?

9 Q. That's okay. So when was that  
10 filed again?

11 A. So he filed it in 1998, and I  
12 think this is, what, five years before the '761.  
13 So quite a long time before the '761 patent.

14 Q. Dr. Greenberg, what is your  
15 opinion as to whether or not Swartz discloses  
16 each and every element of Claim 1 of the '761  
17 patent?

18 A. My opinion is that it does  
19 disclose each and every element of the -- of  
20 Claim 1 of the '761 patent.

21 Q. And what does that mean?

22 A. Well, what it means is  
23 essentially -- well, what it means is that the  
24 ideas that are presented in the '761 patent

1 appear in the Swartz patent. So -- so and I  
2 should be more specific.

3 The ideas that are present in each  
4 and every element of Claim 1 are presented in  
5 Swartz. Swartz actually had these ideas well  
6 before that and published it.

7 Q. And do you have an opinion as to  
8 whether or not that affects the validity of the  
9 '761 patent, Claim 1?

10 A. Yes. My understanding of patent  
11 law is that prior art essentially discloses each  
12 and every element in the claim and that that  
13 claim would be invalid.

14 Q. Have you also applied the  
15 teachings from the Swartz patent to the other  
16 claims of the '761 patent?

17 A. Yes, I have.

18 Q. And can we go through those now?

19 A. Sure.

20 Q. Put up Claim 4.

21 A. I think before that, I had  
22 something that actually looked at the language  
23 of Claim 1.

24 Q. Absolutely.

1           A. Yeah, because I think -- I don't  
2 think I finished with Claim 1 because there's  
3 another point that I -- well.

4           Q. Oh, no. Thank you very much.

5           Sorry if I missed a step.

6           A. So what I wanted to say, these are  
7 -- on the left, we see excerpts from Claim 1  
8 from the elements of Claim 1. On the right, we  
9 see language from Swartz.

10           And I think you've seen some of  
11 this before. But I really want to stress that  
12 not only are the ideas that Swartz talks about  
13 essentially or they disclose what's in those  
14 claims, but he uses almost exactly the same  
15 language. So we have -- it's not just, oh,  
16 Here's an idea. There's debates about it.

17           But the language in it is very,  
18 very similar language. So in the '761 patent,  
19 the element -- one of the elements talks about  
20 dynamically storing the context information and  
21 in metadata associated with the user-defined  
22 data, the user-defined data metadata stored, and  
23 a storage component.

24

1           And we look at Swartz, and he says  
2       such a system also preferably captures metadata  
3       associated with the information shared, stored  
4       and accessed by users of the data, so as  
5       characterized the context in which information  
6       is being used.

7           So we see the words are the same.  
8       Well, the ideas are the same and the words are  
9       the same.

10          If we can keep on going here in  
11       the '761 patent element in the of Claim 1, we  
12       see the tracking component of a network-based  
13       system for tracking a change of the user from  
14       the first context to a second context. And you  
15       see in the quotes on the right where he talks  
16       about his knowledge integration middleware that  
17       is employed to identify.

18          And here he talks about including  
19       tracking the context so as to enable the use of  
20       such context in the management of knowledge.  
21       So, again, we see the idea of tracking context  
22       and other things in the Swartz.

23          Furthermore, in the '761, it talks  
24       about dynamically updating metadata on the

1 database.

2 On a change in Swartz, he says the  
3 recording of the data should be done  
4 automatically, electronically, with dynamic  
5 linkages to the source information, so all this  
6 is happening as things occur.

7 I believe there's one more at the  
8 end of claim one. It says "wherein the user  
9 accesses the data from the second context," and  
10 in Swartz, Swartz says "such a system also  
11 preferably captures metadata associated  
12 with the system changed, stored, and  
13 accessed by the users of the data so as  
14 to characterize the context in which the  
15 information is being used."

16 Very similar words. There's many  
17 ways to describe the invention. What I found  
18 compelling about Swartz is not only does he have  
19 the same ideas, the words he uses are identical  
20 to what the 761 patent had five years later.

21 Q. Thank you. Can we move on to  
22 claim four.

23 A. Sure, I think that's it on that.

24 Q. Here's claim four. Are you

1 familiar with claim four?

2 A. Yes.

3 Q. And do you have an opinion as to  
4 whether or not the Swartz patent discloses as  
5 prior art the information claimed in claim four?

6 A. Yes, they do, and my opinion is  
7 that it does disclose it.

8 Q. Why is that?

9 A. Well, claim four adds that the  
10 context information includes a relationship  
11 between the users and at least one of an  
12 application, application data user, and  
13 environment.

14 I've already spoken about how  
15 Swartz defines a knowledge path. That captures  
16 everything that's going on. We showed a quote  
17 that says this is the user information and the  
18 application data. That's satisfied here.

19 Q. What is your opinion about claim  
20 four?

21 A. That Swartz essentially discloses  
22 what's in claim four.

23 Q. Essentially or --

24 A. It does. Sorry. It does disclose

1 what's in claim four.

2 Q. Do you have an opinion regarding  
3 claim seven?

4 A. Yes, I do.

5 Q. Is this claim seven?

6 A. Yes.

7 Q. What does claim seven add?

8 A. Claim seven adds that data created  
9 in the first context is associated with data  
10 created in the second context.

11 I addressed this with the tracking  
12 and by Swartz's use of language like "knowledge  
13 path," that essentially it's not just  
14 recapturing what happens here, and they're  
15 disconnected.

16 He really is interested in the  
17 whole path of knowledge as a sequence over time.  
18 We already saw terms like audit trails. All  
19 these things are to take the data and relate  
20 them together across all these contexts.

21 Q. What is your opinion regarding  
22 Swartz and claim seven?

23 A. Swartz anticipates claim seven.

24 Q. When you say anticipate, what do

1 you mean?

2 A. It means it discloses the idea in  
3 claim seven.

4 Q. Do you have an opinion as to claim  
5 nine?

6 A. I do.

7 Q. What is your opinion regarding  
8 claim nine?

9 A. So claim nine is a variation of  
10 claim one. In claim one it -- so here we have  
11 -- in claim nine -- instead of --

12 So we talk about a  
13 computer-implemented method. Now, Swartz is  
14 describing a system, so it's obviously a  
15 computer-implemented method, and it comprises  
16 computer-executable acts. We're talking about a  
17 computer system, so it does that.

18 Creating data within a user  
19 environment. Now, this is one of the  
20 differences. In claim one, it talks about  
21 context. In claim seven, it talks about user  
22 environment. The Court has actually construed  
23 context to be the same as environment. That's  
24 how it defines it. In one sense, that's



1 satisfied.

2 More generally, Swartz is  
3 describing all the stuff people are doing in a  
4 system, so that's their environment for doing  
5 their work, so that's all satisfied by Swartz.

6 Then it says of a web-based  
7 computing platform. And this is also another  
8 difference from claim one, and I identified  
9 parts in the patent that shows Swartz discloses  
10 the web-based computing platform.

11 Q. This one of those?

12 A. Yes, it is. Here's an excerpt  
13 from Swartz.

14 He says, "Knowledge management  
15 level also includes data docket web-based  
16 knowledge reporter." So clearly this is a  
17 web-based system or it has capabilities of a  
18 web-based system, so this is a web-based  
19 platform.

20 At the bottom we see the data  
21 docket being accessed by the web browser.  
22 Clearly this is a web-based platform.

23 Q. What about the other elements of  
24 claim nine?

1           A. So okay. So the rest of claim one  
2     is pretty well -- the rest of the first element  
3     of claim one is what we've seen before in a user  
4     interaction with the user environment or context  
5     by user using an application. The data and form  
6     and files and documents. We talked about this.

7           The second paragraph says  
8     "dynamically associates metadata with the data  
9     and the data and metadata stored on a storage  
10    component of the web-based computing platform."  
11    We've already seen it's web based.

12           Q. Is it stored?

13           A. Yes.

14           Q. And is the metadata dynamically  
15    associated with the data?

16           A. We -- all that before when I  
17    talked about dynamic, the bottom part says the  
18    information includes -- metadata includes the  
19    information related to the user, the data, the  
20    application, and the user environment.

21           The third element says tracking  
22    movement of the user from the user environment  
23    of the web-based computing platform to a second  
24    user environment of the web-based computer.

1 platform, and we talked about that in claim one,  
2 except here it's web based, and we showed that's  
3 web based.

4 Finally, dynamically updating  
5 stored metadata with an association of the data  
6 to the application and the second user  
7 environment. For this entire claim, we've  
8 already covered -- we talked about dynamically  
9 updated stored metadata.

10 Q. For the very last portion?

11 A. Remember that this is all about  
12 users being able to review their decisions and  
13 to see all the things that have happened, so  
14 this is where a person can employ at least one  
15 application from the data to the second  
16 environment, second context in fact, at any  
17 time.

18 Q. What does that mean to you? The  
19 user employed one of the applications and the  
20 data?

21 A. It means they can look at the data  
22 at a later time. It's not just stored in the  
23 system for nobody to look at it. This is  
24 something for people to use and review.

1 Q. What is your opinion regarding  
2 claim nine and the Swartz patent?

3 A. That claim nine anticipates the  
4 761 patent. That is, it discloses each and  
5 every element.

6 Sorry. Said that wrong. Swartz  
7 discloses each and every element of claim nine  
8 of the 761 patent.

9 Q. Thank you.

10 Do you have an opinion regarding  
11 claim eleven of the 761 patent regarding the  
12 Swartz reference?

13 A. Claim eleven essentially adds  
14 comprising indexing contents of the user  
15 environment such that a plurality of users can  
16 access the content from an associate plurality  
17 of user environments.

18 Q. Let's start from the --

19 A. Okay.

20 Q. -- very beginning --

21 A. Claim nine.

22 Q. -- claim eleven.

23 A. Sorry. Claim eleven adds the  
24 method of claim nine further comprising indexing

1 content of the user environment subset of  
2 plurality of users can access the content from  
3 an associated plurality of user environments.

4 Q. From a plurality of user --

5 A. Plurality of users can access the  
6 content from an associated plurality of user  
7 environments.

8 Q. What does that mean?

9 A. Essentially this means that the  
10 content is indexed, so an index is created so  
11 that one or more people can access it from one  
12 or more user environments.

13 Q. Is that disclosed in the Swartz  
14 patent?

15 A. Yes, it is. I believe I  
16 identified the part. Here it is.

17 Here's an example. This is  
18 something that's fairly familiar to most people,  
19 is part of searching. So the ability to  
20 initiate and retrieve information that indexes  
21 documents across the enterprise by accessing  
22 industry standard databases and presenting the  
23 results ins an easy-to-use and read format.

24 Q. What is your opinion regarding

1 claim eleven and the Swartz patent as it relates  
2 to the 761 patent?

3 A. My opinion is that Swartz  
4 anticipates or discloses claim eleven of the 761  
5 patent.

6 Q. Do you have an opinion regarding  
7 claim twenty-one --

8 A. Yes, I do.

9 Q. -- of the 761 patent as it relates  
10 to Swartz?

11 A. Yes, my opinion as before is that  
12 Swartz discloses each and every element of claim  
13 twenty-one.

14 Q. How is that?

15 A. Again there's a lot of  
16 similarities between this and the previous  
17 claims. I'm going to highlight the differences.

18 We're talking about a  
19 computer-readable medium for storing  
20 computer-executable instructions. Essentially  
21 this means we have a computer program that's  
22 stored somewhere.

23 And again Swartz describes a  
24 computer-based system, so anyone skilled in the

1     art knows that would be on a computer-readable  
2     medium.

3             And the first element, he talks  
4     now about the user workspace instead of a  
5     context or user environment. There's parts of  
6     the patent where the 761 patent talks about a  
7     user workspace as being the same as an  
8     environment or context, but it's safe to say  
9     that Swartz is describing a system where people  
10    are working within that system, so that's their  
11    using workspace, so whether or not we look at  
12    the definitions, that this is what Swartz is all  
13    about as well.

14            Then he talks about a web-based  
15    computing platform. We talked about that. We  
16    talked about dynamically associating metadata  
17    with data. We talked about everything in that  
18    second element before. We talk about tracking  
19    movement, and I've talked about web-based  
20    computing platform.

21            In the third element, we have  
22    tracking movement from the user workspace to the  
23    second user workspace of the web-based computing  
24    platform. Swartz talks about tracking movement.

1      Essentially the systems are using workspaces,  
2      and it's a web-based computing platform.

3                      Then the fourth element says  
4      dynamically associated with data and the  
5      application of the second user workspace and the  
6      metadata such that the user employed the  
7      application and data from the second user  
8      workspace --

9                      I remember to slow down.

10                     -- and again we've seen all that  
11      before. This is just done in the context of a  
12      user workspace instead of environment.

13                     And the final one, he adds  
14      indexing the data creating the user workspace  
15      such that a plurality of different users can  
16      access the data via the metadata from a  
17      corresponding plurality of the different user  
18      workspaces. It's just bringing what is -- I  
19      think it was claim eleven that talks about  
20      indexing, so I've already spoken about how  
21      Swartz discloses that.

22                     Q. What is your opinion regarding  
23      claim twenty-one of the 761 patent vis-a-vis  
24      Swartz?



1           A. My opinion is that Swartz  
2     discloses each and every element of claim  
3     twenty-one of the 761 patent.

4           Q. Do you have an opinion regarding  
5     claim twenty-three?

6           A. This is very much the same with  
7     some minor differences. I know it seems  
8     tedious.

9           Here he talks about a  
10    computer-implemented system, and again Swartz is  
11    talking about a computer system, so it's a  
12    computer-implemented system.

13          Now he's talking about a  
14    computer-implemented context component. Swartz  
15    is talking about the data docket system, which  
16    is software, computer-implemented context  
17    component.

18          Now, a web-based server instead of  
19    a web-based platform, I believe, and we saw how  
20    we can access this system via the web, so this  
21    would give it the functionality of a web-based  
22    server for defining, first, user work space of  
23    the web-based server assigning one or more  
24    applications to the first user work space

1 capturing context data associated with user  
2 interaction of the user while in the first user  
3 workspace.

4 Essentially I've already spoken  
5 about that in terms of how Swartz says we try to  
6 capture everything people are doing. Within the  
7 system context user workspace, this includes  
8 applications and other things and then it says  
9 for dynamically storing the context data as  
10 metadata on a storage component of a web-based  
11 server.

12 Again I addressed all this before.  
13 We talked about how it's dynamically stored. We  
14 talked about how this is a web-based server, and  
15 it says metadata which is dynamically associated  
16 with data created in the first user workspace.  
17 That's all things I mentioned before.

18 The second element is very similar  
19 to what was previously seen. You have a  
20 computer-implemented tracking component, and  
21 again the data docket software includes the  
22 computer software, so it's computer implemented  
23 and does tracking.

24 We talked about the server aspect

1 and tracking change information associated with  
2 the change in access from the first user  
3 workspace to a second user workspace, and we  
4 talked about storage component as part of the  
5 metadata and the user accessing that data from  
6 the second workspace.

7 Q. What is your opinion regarding  
8 twenty-three?

9 A. That Swartz discloses each and  
10 every element of the twenty-three.

11 Q. Do you have an opinion regarding  
12 claim twenty-five?

13 A. Sure.

14 So claim twenty-five adds on to  
15 claim twenty-three where he says the context  
16 component captures relationship data associated  
17 with the relationship between the first user  
18 workspace and at least one other workspace.

19 I spoke about this earlier when I  
20 talked about the knowledge path. It's capturing  
21 the relationship within a context or system or  
22 user workspace and how they move to the next one  
23 over the knowledge path, what happens over time.

24 Q. Do you have an opinion regarding

1 claim twenty-three?

2 A. Yes, that, Swartz anticipates.

3 Q. I'm sorry. Twenty-five. I said  
4 it wrong.

5 With respect to claim twenty-five,  
6 do you have an opinion?

7 A. Yes, Swartz anticipates or  
8 discloses claim twenty-five of the 761 patent.

9 Q. Do you have an opinion regarding  
10 claim thirty-one?

11 A. Sure. Claim thirty-one says  
12 essentially -- takes -- I have to stop using  
13 essentially.

14 Takes claim twenty-three and adds  
15 that the storage component stores the data and  
16 the metadata according to at least one other  
17 relational and object storage methodology, so it  
18 has to do at least one or the other.

19 Q. What is a relational storage  
20 methodology?

21 A. Well, a relational storage method  
22 is a relational database. It's a method used  
23 for many decades in the industry to store data  
24 on tables for later retrieval.

1 Q. Does Swartz disclose this?

2 A. Yes, I believe what he discloses  
3 specifically is the second part of that, where  
4 there's an object.

5 Can we go back to the claim. Just  
6 go back one.

7 So what he disclosed specifically  
8 is an object storage methodology, although  
9 relational storage would be known to one skilled  
10 in the art as well.

11 If we go back, we see Swartz says  
12 another aspect of the present invention  
13 visualizes objects and linkages maintained in  
14 the integration knowledge base, so here he talks  
15 about objects being maintained in the knowledge  
16 base.

17 Q. Do you have an opinion regarding  
18 thirty-one?

19 A. Yes.

20 Q. What is that?

21 A. That Swartz anticipates or  
22 discloses the claim.

23 Q. Thirty-one?

24 A. Thirty-one.

1 Q. Do you also have an opinion  
2 regarding, finally, claim thirty-two?

3 A. Yes. So Claim 32 adds onto Claim  
4 23 where it says storing of the metadata in the  
5 storage component in association with data  
6 facilitates many-to-many functionality of the  
7 data via the metadata.

8 Q. What does that mean?

9 A. Well, what the Court has construed  
10 is that many to many means that essentially two  
11 or more people can access -- I'm trying to  
12 remember what the Court's construction was.

13 Q. You used --

14 A. Two or more people. I used the  
15 Court's. Essentially it means that two or more  
16 people can access two or more things in here.

17 And what we're really getting at  
18 is that this isn't just a system for one person  
19 to access one thing. It's for many people to  
20 access many things from many different places.

21 I think that's the essence of it.  
22 Now, just to remind you what Swartz is all about  
23 is about this knowledge path.

24 Right. He's talked about this big

1 system where people from a whole bunch of  
2 different places can query to find out what is  
3 it that people did? What is it that they did in  
4 this context and that context? Where were  
5 decisions made? How can I understand what's  
6 happened over time?

7 So -- so this is exactly what  
8 Swartz is about. This isn't a single user  
9 system. It's an enterprise-wide system that  
10 allows multiple people to access data from  
11 multiple places.

12 Q. So what is your opinion regarding  
13 Claim 32?

14 A. That Swartz anticipates Claim 32  
15 of the '761 patent.

16 Q. Can we pull up the face page of  
17 the '761 patent, please? Can we highlight the  
18 box that's titled References Cited, please?

19 Dr. Greenberg, do you see the  
20 Swartz patent mentioned here?

21 A. No, I do not.

22 Q. So just in sum, what is your  
23 opinion as it relates to how the prior art  
24 Swartz patent applies to the asserted claims of

1 of activity is actually captured and stored.

2 And here's an example from Page 828 to 83.

3 Some of the things that may be  
4 captured, things like opening a document,  
5 editing the document's profile, checking out,  
6 copying or checking in a document, whether  
7 somebody viewed it or whether somebody created a  
8 new version.

9 This is just a system sampling of  
10 the content information that can be tracked.  
11 And now if we go on. I think there's one more.

12 The person can access that  
13 information from any time. We saw them  
14 accessing their history record from the history  
15 window. But I believe there's also means to  
16 access the document itself.

17 Q. Are there particular features --  
18 so are the particular features of the system you  
19 just described applicable to the claims of the  
20 '761 patent?

21 A. Well, yes.

22 Q. Can you use Claim 1 as an example  
23 and walk us through it?

24 A. Sure. So here's Claim 1.



1           And we saw in the first part  
2     here -- well, first it says a  
3     computer-implemented network-based system.  
4     IManage -- first, it should say that iManage is  
5     network based and I believe I've identified a  
6     part of the manual that shows that.

7           Do we have that? Yes, there it  
8     is.

9           So here -- here's the way that  
10    iManage shows itself. We see a client-server  
11    relationship which is vernacular for -- for one  
12    application talking to another kind of -- sorry,  
13    one system using -- usually on a PC talking to  
14    another system called the server or the network.

15          And we see that -- that we have  
16    all -- all these things are networked together.  
17    Essentially these little lightning bolts that  
18    says that we can access those stored across  
19    different cities or places. So the  
20    network-based system.

21          Q. Just so the record is clear, where  
22    is this in the document?

23          A. Well, this is Figure 1.1.

24          Q. Thank you.

1 Does the iManage documentation  
2 include other elements from Claim 1?

3 A. Yes. So we then have in the first  
4 element, it says the computer-implemented  
5 context component. I've already described how  
6 the history system can capture information that  
7 happens within a certain application setting of  
8 the document. That is, people are using with  
9 this that setting or from particular locations.

10 We already talked about how it's  
11 network based. And I've shown you how it  
12 captures context information. We saw that in  
13 that history window.

14 That is associated with  
15 user-defined data which is the third line. When  
16 the user-defined data -- in this case, the  
17 documents they're working on, we saw that  
18 Microsoft Window document.

19 Clearly the user is interacting in  
20 a first context of a network-based system in  
21 this case. iManage actually has many different  
22 contexts that you could use. It talks about the  
23 location the computer's using it on and the  
24 things you're doing on that computer is one

# **EXHIBIT 26 PART 3**

1 possible context.

2 It talks about here's the  
3 application. You're using the document. You're  
4 using it in that application and the stuff  
5 you're doing with in that. And that's another  
6 example of a context.

7 Then if we go on, it says the  
8 context component dynamically storing the  
9 context information in metadata associated with  
10 the user-defined data.

11 Now, we saw that in the history  
12 list, the history list says here's the data.  
13 That is the name of the file that we're working  
14 on and here's all the activities that people are  
15 doing on it.

16 Q. Is there a portion of the iManage  
17 documentation that describes some of the other  
18 metadata that may also be captured?

19 A. Yes. And I believe I've  
20 identified that.

21 If we can bring that up. So this  
22 is the part of the iManage manual and I can't  
23 recall what page it's on.

24 Q. Could it be in chapter 3?

1           A. It's very possible. So here this  
2 is the section of the manual that says history  
3 of document activity. This is what we're  
4 talking about, the activities or metadata that  
5 can be captured.

6           And it says displaying history of  
7 document activity. And it says -- let me just  
8 try to go to the bottom just above the bullet  
9 point. The line says the types of activities  
10 typically recorded in the document activity  
11 record.

12           So this is of the history. Right,  
13 the history system you saw are things like  
14 opening and closing the document in an  
15 integrated application that we saw an example of  
16 that with Word, how long the document was open.  
17 Whether the document's profile was edited,  
18 changing the access rights of the document.

19           Q. What does that mean?

20           A. It means who can actually see,  
21 read or edit the document usually. Printing a  
22 document and how many pages were printed.

23           And this is, for example, if you  
24 want to do an accounting and actually charge

1 people for printing, that would be a use of  
2 that.

3 Checking out, copying and/or  
4 checking in the document. So that's who has  
5 copies currently out. So that if I know that  
6 you have a copy of a document out, maybe if  
7 you're editing it, then I may not want to change  
8 it, because otherwise we'll have two different  
9 versions and it will enter into confusion.

10 Whether the document is viewed or  
11 who's viewing it. Whether the document was  
12 mailed, whether somebody created a new version  
13 of the document. A computer location where the  
14 activity took place.

15 Q. What does that mean?

16 A. It means essentially what computer  
17 did you do all this activity from? So was this  
18 from your home computer, your laptop, your  
19 office computer, internet cafe? Where did you  
20 do your work?

21 And finally, any comments the user  
22 wanted to make about their own activities. So  
23 this is a free-form field where you can put in  
24 any information you want.

1           So really this captures a lot of  
2     information about what people are doing.

3           Q. And what about the rest of the  
4     elements of Claim 1?

5           A. Well, let's go back to Claim 1.  
6     So we were -- where were we?

7           Here?

8           Q. I think.

9           A. So we talked about capturing  
10    context information. We're in the first  
11    element.

12           So we talked about what -- where  
13    are we? Okay.

14           Q. I think we're at the part of the  
15    storage.

16           A. So the context component  
17    dynamically --

18           THE REPORTER: Could you please  
19    slow down.

20           THE WITNESS: Thanks. Keep  
21    reminding me.

22           The context component dynamically  
23    storing the context information in metadata. We  
24    saw that associated with the user-defined data.

1 We saw that.

2 That's -- it's like -- that's the  
3 document people are using.

4 The user-defined data and metadata  
5 stored on a storage component of the  
6 network-based system. And early identified that  
7 iManage has those storage components. In fact,  
8 that was also in that graphic that I showed up.

9 The second element talks about a  
10 computer-implemented tracking component of the  
11 network-based system. And this is software  
12 that's also part of the history system, because  
13 we saw how it could track what people are doing  
14 across computer locations, across applications  
15 and, in fact, across many activities for  
16 tracking a change of the user from the first  
17 context to a second context.

18 And we saw that in the history  
19 window where you could see the sequence of  
20 events, how people would do things in one place  
21 and then they would actually do things in a  
22 different or separate context.

23 We saw it. It was a network-based  
24 system and as well, this is dynamic, because



1 this history list is -- this history record is  
2 created on the fly.

3 As people do things, the system  
4 will actually record all the events that they're  
5 doing. And then finally, it says, Wherein the  
6 user can access the data from the second  
7 context. And I have a slide here -- sorry, not  
8 a slide, but a part of the reference manual that  
9 I'd like to illustrate for this one.

10 Yes.

11 Q. Where are we in the document?

12 A. So we're on Chapter 3, Page 3,  
13 Figure 3.26.

14 So if we expand that. This is the  
15 figure we've seen before, but now if you look at  
16 the very bottom, we're in the history tab. But  
17 if you look over one, two, three left, we see  
18 something called Quick View.

19 And Quick View is an ability to  
20 look at that document and read a read-only  
21 version of that document. So here we have that  
22 last part of that claim element where users can  
23 access the data.

24 I should add that you can also

1 that -- iManage lets you do more. You can also  
2 manage the document version. And there's a tab  
3 for that or even related documents or the  
4 profile of that document you can access.

5 Q. So after all of that, Dr.  
6 Greenberg, do you have an opinion regarding the  
7 Swartz, the iManage publication and how it  
8 relates to Claim 1 of the '761 patent?

9 A. Yes, I do.

10 Q. And what is that?

11 A. That the iManage reference manual  
12 discloses each and every element of Claim 1.

13 Q. Do you have an opinion regarding  
14 the iManage documentation vis-a-vis Claim 4 of  
15 the '761 patent?

16 A. Yes, I do. So here we see -- I've  
17 mentioned this before in talking about Swartz,  
18 that this adds a relationship between the user  
19 and at least one of an application data and user  
20 environments is clearly disclosed in the history  
21 table.

22 I've shown you -- we saw the user  
23 -- we saw the application data, which is the  
24 document name, user environment, things like the

1 application they're using, and so on.

2 Q. Do you have an opinion regarding  
3 claim four?

4 A. Yes.

5 Q. What is your opinion regarding  
6 claim four and the iManage reference manual?

7 A. That the iManage reference manual  
8 discloses claim four.

9 Q. And I'm sorry we have to go  
10 through this with such tedium, but the law makes  
11 us do it.

12 Do you have an opinion regarding  
13 claim seven?

14 A. Claim seven adds "where data  
15 created in the first context is associated with  
16 data created in the second context." We saw  
17 that again in the history system, where it was  
18 shown as a record of here's what happened at one  
19 step versus another versus another.

20 So it shows a movement between  
21 these and thus the relationship.

22 Q. What is your opinion regarding the  
23 iManage reference manual and claim seven?

24 A. That the iManage reference manual

1 discloses claim seven.

2 Q. Do you have an opinion regarding  
3 claim nine?

4 A. Claim nine.

5 THE COURT: Let me interrupt  
6 before we go to claim nine. We'll take a break  
7 for fifteen minutes.

8 MS. KEEFE: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (The jury exited the courtroom at  
11 2:59 p.m.)

12 THE COURT: Feel free to step  
13 down.

14 Mr. Andre.

15 MR. ANDRE: Your Honor, based on  
16 counsel representation, I had our expert fly in  
17 last night to be prepared to testify this  
18 morning, and obviously I don't think we'll be  
19 lucky to get this witness off the stand at this  
20 point, so do I have your permission to send him  
21 home?

22 THE COURT: Ms. Keefe, how much  
23 longer do you think this will be?

24 MS. KEEFE: It all depends on how

1 can get it all done Monday. The only thing I  
2 want you to think about, if the first witness  
3 goes on and off and we go to late morning, then  
4 you instruct --

5 THE COURT: Let's talk about this  
6 after we get through the evidence today.

7 THE CLERK: All rise.

8 (The jury entered the courtroom at  
9 3:18 p.m.)

10 THE CLERK: Please be seated.

11 THE COURT: Welcome back, and  
12 let's get started.

13 MS. KEEFE: That's fine. Just --  
14 you don't need to put it back. Thank you,  
15 though.

16 BY MS. KEEFE:

17 Q. Dr. Greenberg, I think right  
18 before the break we were going to dive into the  
19 claim nine and apply it to the iManage Reference  
20 Manual.

21 A. That's correct.

22 Q. Do you have an opinion regarding  
23 claim nine and the iManage Reference Manual?

24 A. Yes, I do.

1 Q. What is that opinion?

2 A. That iManage discloses each and  
3 every element of claim nine.

4 Q. Why is that?

5 A. If we go through this, we see a  
6 computer-implemented method of managing data  
7 comprising computer-executable acts, so iManage  
8 defines a computer system; therefore, it's a  
9 computer-implemented method.

10 We see creating data within the  
11 user environment of a web-based computing  
12 platform. I believe I've identified some parts  
13 of the iManage manual that show it's web based  
14 if we could bring that up, so here's one part,  
15 which is on --

16 Q. Where are we in the document?

17 A. Unfortunately it's hidden by this.  
18 Chapter three, page three.

19 It says "In order to send a  
20 document URL link, your system must include an  
21 iManage worksite web component server." So this  
22 illustrates that iManage has web capabilities.  
23 It's a web platform.

24 If we can go on, and there's

1 another one where it says here, on page  
2 seventy-four, it says you can send a copy of a  
3 document, a link of a document, or URL link of a  
4 document through e-mail from iManage desk site.  
5 The fact that you can send a URL to a document  
6 also says that iManage must be web based.

7 Q. Anything else?

8 A. I believe there's one more, and  
9 here it says -- in chapter six, page  
10 fifty-seven, it says in the worksite box, you  
11 can enter the URL for accessing the iManage  
12 worksite in the base path field, and there's  
13 further things that talk about sending document  
14 to URL link or sending folder to URL link.

15 Q. Was there a figure that showed  
16 that in the reference manual?

17 A. Yes. Well, it doesn't show this.  
18 It shows another capability where we see that  
19 iManage itself, in fact, has an address bar, and  
20 this is where it says web URL. That's directly  
21 from their image, so you can access things from  
22 the web, so yet again shows capabilities of a  
23 web-based platform.

24 Q. What about the remaining elements

1 of claim nine?

2 A. Let's take a look. So it  
3 continues in the first paragraph "via user  
4 interaction with the user environment by a user  
5 using an application." The data, in the form of  
6 at least files and documents.

7 We've seen that before. We're not  
8 talking about user environment. The Court has  
9 defined the context to be the same as  
10 environment.

11 Regardless of that, the iManage  
12 system, all these contexts are user environments  
13 where users do their work.

14 The next element says dynamically  
15 associating metadata with the data, and we've  
16 seen that before. We saw that in the history  
17 list.

18 The data and metadata stored on a  
19 storage component on a web-based computing  
20 platform, which is the same as claim one, but it  
21 now has web-based computing platform.

22 And we saw that the metadata  
23 includes information related to the user, the  
24 data, the application, and the user environment.



1 And again we saw that before as part of the  
2 history record as well as the documents that  
3 list what iManage can, do and there it all is  
4 right there.

5 So if we can go on --

6 Q. What about the remaining elements  
7 of claim nine?

8 A. Back to claim nine. So now we're  
9 at the third element or third paragraph, where  
10 it says "tracking movement of the user from the  
11 user environment of the web-based computing  
12 platform to a second user environment of the  
13 web-based computing platform."

14 This is all things we've seen  
15 before except that it uses different words,  
16 "user environment," that we addressed,  
17 "web-based computing platform" that we  
18 addressed, so this is all covered.

19 Q. What about the last section?

20 A. Again very similar to what we've  
21 seen before.

22 "Dynamically associating the  
23 stored metadata with an association of  
24 the data, the application, and the

1 second user environment, wherein the  
2 user employs at least one of the  
3 application and the data from the second  
4 user from the second environment."

5 And again this is all things we've  
6 seen before. We saw that in the history record.  
7 I've shown how you can access information  
8 through those tabs on the bottom of the history  
9 window. I've shown how you dynamically update  
10 the stored metadata as part of this history  
11 record.

12 Q. So what is your opinion regarding  
13 claim nine and how it applies to the iManage  
14 Reference Manual?

15 A. That iManage discloses each and  
16 every element of claim nine.

17 Q. Do you have an opinion regarding  
18 claim eleven?

19 A. Yes, I do.

20 Q. What is that?

21 A. That iManage discloses claim  
22 eleven.

23 Q. What does claim eleven add to  
24 claim nine?

1           A. Claim eleven adds "further  
2           comprising indexing content to the user  
3           environment such that a plurality of  
4           users can access the content from an  
5           associated plurality of user  
6           environments."

7           Q. Where is that in the iManage  
8           Reference Manual?

9           A. I showed a quote previously.  
10          We'll bring it up again.

11                 When the iManage system describes  
12          itself, it describes itself as having three  
13          distinct entities: A file server, a set of  
14          information tables, or database. And these, by  
15          the way, have indexes to them and then it also  
16          says a set of index collections to the full-text  
17          documents in the library.

18           Q. Where is this in the iManage  
19           Reference Manual?

20           A. This is chapter one, page  
21          nineteen. If you look at the bottom, it says  
22          these three components work together to organize  
23          and index your documents, so for emphasis of  
24          that.

1 Q. With that, what is your opinion  
2 regarding how the iManage Reference Manual  
3 applies to claim eleven?

4 A. My opinion is that iManage  
5 discloses what's in claim eleven.

6 Q. Do you have an opinion regarding  
7 claim sixteen and how it applies to the iManage  
8 Reference Manual?

9 A. Yes, this is one we haven't seen  
10 before, at least not in my testimony. It's the  
11 method of claim nine further comprising  
12 accessing the user environment by importable  
13 wireless device.

14 Q. What does that mean?

15 A. Well, it essentially means can we  
16 access the -- we can access all the stuff from a  
17 wireless device such as laptop or PDA or  
18 something like that.

19 Q. What is your opinion regarding  
20 claim sixteen?

21 A. That iManage discloses claim  
22 sixteen.

23 Q. How does it do that?

24 A. I brought an identified part in

1 the reference manual that talks about iManage  
2 portable, and if we look at the first paragraph,  
3 it says a portable mode of operation allows you  
4 to take an iManage desk site document management  
5 system on the road with you, and it helps you  
6 synchronize your work with the network.

7 So this is around the year 2000  
8 and -- sorry. 1999. I can't recall the exact  
9 date, but at that time there was a lot of stuff  
10 about what we called road warriors. These are  
11 people who would work in the office and then  
12 would take their stuff on the road and access  
13 their materials from computers elsewhere, a  
14 portable computer, or wireless laptop computer.

15 And what iManage has in this  
16 disclosure, it says that you can take your stuff  
17 on the road with you, and you can access -- not  
18 only will we let you work disconnected, but if  
19 you're connected at any time -- and that could  
20 be through your wireless device -- you would be  
21 able to access all the information as if you  
22 were wired.

23 Q. And where in the iManage Reference  
24 Manual are we looking at?

1 A. We're on the first page of chapter  
2 eight.

3 Q. What is your opinion regarding  
4 claim sixteen and the iManage Reference Manual?

5 A. That the iManage Reference Manual  
6 discloses the information in claim sixteen.

7 Q. Do you have an opinion regarding  
8 claim twenty-one and how it applies to the  
9 iManage Reference Manual?

10 A. Yes.

11 Q. What is that?

12 A. That the iManage discloses what  
13 each and every element of claim twenty-one.

14 Q. How is that?

15 A. Again we see the computer-readable  
16 medium for storing computer-executable  
17 instructions, and this is -- again iManage  
18 Reference Manual describes a computer system;  
19 therefore, one skilled in the art would know it  
20 would be on a computer-readable medium for  
21 storing computer-executable instructions.

22 And the system manages data and  
23 then it says "creating data related to user  
24 interaction of a user within a user workspace of

1 a web-based computing platform."

2 We talked about all this before.

3 The only difference is that it's a user  
4 workspace. IManage gives a place for people to  
5 do their work, so by definition it gives them a  
6 user workspace, so that's covered.

7 The second elements is dynamically  
8 associated metadata with the data. We saw that  
9 on the history system. The data and metadata  
10 stored on the web-based computing platform, and  
11 again we talked about all this before.

12 The metadata includes information  
13 related to the user of the user workspace to the  
14 data, to the application, and to the user  
15 workspace. We saw that before in the history  
16 record plus the section that describes what the  
17 information captured.

18 Q. How about the tracking?

19 A. So we see tracking movement of the  
20 user from the user workspace to a second user  
21 workspace of the web-based computing platform,  
22 and again we've seen that this is just now in  
23 the context of a user workspace.

24 Do I have to read each and every

1 one of these?

2 Q. Unfortunately we have to go  
3 through each one so we know that each reference  
4 applies to every element.

5 A. Okay.

6 Q. What about the dynamic association  
7 of the data and the application with the second  
8 user workspace and the metadata?

9 A. Again we've seen that before. We  
10 talked about the history record shows the data  
11 and the application and the second user  
12 workspace, and that's stored as metadata.

13 Q. What about the user employing the  
14 application and data from the second user  
15 workspace?

16 A. Again we've seen that before. We  
17 saw that we have a history record people can  
18 see. They can actually bring up the document,  
19 and they have other means for accessing versions  
20 of that document.

21 Q. And finally, what about the  
22 iManage Reference Manual's discussion of  
23 indexing the data created in the user workspace  
24 such that a plurality of different users can



1 access the data via the metadata from a  
2 corresponding plurality of different user  
3 workspaces?

4 A. Again we've seen that before in  
5 the previous claim about indexes, so this is  
6 covered as well.

7 Q. What is your opinion regarding  
8 claim twenty-one and the iManage Reference  
9 Manual?

10 A. That -- that the iManage Reference  
11 Manual discloses each and every element of the  
12 claim twenty-one.

13 Q. What about claim twenty-three?

14 A. Claim twenty-three talks about a  
15 computer-implemented system that facilitates  
16 management of data. The iManage Reference  
17 Manual talked about a computer-implemented  
18 system.

19 Q. Does the iManage Reference Manual  
20 have a computer-implemented context component?

21 A. Yes, it does, and in this case, it  
22 also says it's of a web-based server. You can  
23 access things from it via the web; therefore,  
24 there has to be a server as well.

1 Q. Does the iManage Reference Manual  
2 disclose workspaces?

3 A. Yes, it does, and we already spoke  
4 about user workspaces.

5 Q. What about capturing context data  
6 associated with user interaction of a user while  
7 in the first user workspace?

8 A. Yes, it does, and we talked about.

9 Q. What about the rest?

10 A. All this was spoken about  
11 previously. It dynamically stores the context  
12 data as metadata on a storage component.

13 In this case it's on a web-based  
14 server, which it is, and data is associated with  
15 data created in the first user workspace.

16 Q. What about the  
17 computer-implemented tracking component of the  
18 web-based server for tracking change in  
19 information associated with a change in access  
20 of the user from the first user workspace to the  
21 second user workspace? Is that in the iManage  
22 Reference Manual?

23 A. Yeah, it is.

24 Q. What about the rest?

1           A. Essentially it's a rewording of  
2 everything I've covered already.

3           Q. What is your opinion regarding  
4 claim twenty-three as it applies to the iManage  
5 Reference Manual prior art?

6           A. That iManage covers -- discloses  
7 each and every element of claim twenty-three.

8           Q. Almost there.

9           What about claim twenty-five? Do  
10 you have an opinion on claim twenty-five?

11          A. Okay. So claim 1025 is that the  
12 context component capturing relationship data  
13 associated with a relationship between the first  
14 user workspace and at least one other user  
15 workspace, and I've already described that, in  
16 that people are working, user workspace, and  
17 this is shown as part of the history system.

18          Q. Where is that? Here?

19          A. Yes.

20          Q. And here, for the record, would be  
21 in figure 3.26; is that correct?

22          A. That's correct. We see that as  
23 part of the user's view of the history.

24          Q. What is your opinion regarding

1 claim twenty-five?

2 A. That the iManage Reference Manual  
3 discloses claim twenty-five.

4 Q. With respect to claim thirty-one,  
5 do you have an opinion?

6 A. Yes, this claim says that the  
7 storage component stores the data and the  
8 metadata according to at least one of a  
9 relational or object storage methodology, and  
10 we've seen that before in the description of  
11 what iManage does. It actually talks about  
12 databases. It talks about tables and things  
13 like this.

14 Q. Where is that in reference manual?

15 A. I believe I identified it.

16 If we look at this here, there we  
17 see the second one talks about information  
18 tables or databases. We talked about the file  
19 server and source of file. Files are objects,  
20 so all that's covered.

21 Q. If we go back to the claim  
22 language, and why does the mention simply of  
23 tables tell us that we have relational and/or  
24 object storage methodology?

1 A. It said databases before, and it  
2 said a table, so that's a relational database.

3 Q. What's your opinion regarding  
4 claim thirty-one?

5 A. That iManage discloses claim  
6 thirty-one.

7 Q. And finally, claim thirty-two. Do  
8 you have an opinion regarding thirty-two?

9 A. Yes, I do.

10 Q. What is your opinion regarding  
11 claim thirty-two and the iManage Reference  
12 Manual?

13 A. IManage discloses claim  
14 thirty-two.

15 Q. Why is that?

16 A. Here we have -- this speaks to the  
17 Many2Many functionality of data and iManage as a  
18 document management system. That's what it's  
19 for. As I mentioned at the beginning, it says  
20 so thousands of users can access millions of  
21 documents and all the information within them.  
22 This is for multiple people to access multiple  
23 things.

24 Q. What is your opinion regarding

1 claim thirty-two vis-a-vis the iManage Reference  
2 Manual?

3 A. That the iManage Reference Manual  
4 discloses what is found in claim thirty-two.

5 Q. Have you heard of the term  
6 enabling reference or enables prior art?

7 A. Yes, I have.

8 Q. What does that mean?

9 A. It means that the description is  
10 rich enough that one of ordinary skill in the  
11 art could build a system that has those  
12 characteristics.

13 Q. As far as the claims of the 761  
14 patent -- just have those in mind -- is it your  
15 opinion that the iManage Reference Manual is an  
16 enabling reference?

17 MR. ANDRE: Objection, Your Honor.  
18 Outside the scope of this expert's report.

19 THE COURT: We'll note the  
20 objection. You may answer if you have the  
21 question in mind.

22 THE WITNESS: Can you read back  
23 the question, please, or restate the question.

24 BY MS. KEEFE:

1 THE COURT: Objection noted.

2 THE WITNESS: Except for the  
3 differences -- except for all the disclosures,  
4 the text, the figures are identical, yes.

5 BY MS. KEEFE:

6 Q. Are there particular features of  
7 the system disclosed by Hubert in the European  
8 patent application and the U.S.?

9 Let me back up. Are there  
10 features in the Hubert reference that are  
11 comparable to the elements of the claims in the  
12 761 patent?

13 A. Yes, there are.

14 Q. And using claim one first as an  
15 example, can we walk through the language and  
16 compare it to the Hubert reference, please.

17 A. Sure. Here's claim one.

18 I think what I'd like to also do  
19 is I have a PowerPoint slide that -- like with  
20 Swartz, there's a lot of similar language that's  
21 used, so like in Swartz we saw that they used  
22 similar language.

23 Well Hubert, it's also the same.  
24 Here's from the 761 patent from claim one, one

1 of the elements.

2 It says, "dynamically storing the  
3 context information in metadata associated with  
4 the user defined data." The user defined data  
5 and metadata stored on the storage component,  
6 this is what Hubert says. He says certain  
7 additional data called metadata is stored with  
8 the document.

9 Metadata is simply data about  
10 data. Again similar words.

11 If we keep going, 761 describes  
12 the tracking component for tracking a change of  
13 the user from a first context to a second  
14 context. Hubert says there is also a need for a  
15 system and method managing documents which  
16 tracks all of the information about what  
17 happened to a document during its whole  
18 lifetime.

19 I guess there is a further need  
20 for a system and method of managing documents  
21 that can track a document's path of  
22 distribution, so by path we're talking about its  
23 movement from environment to environment,  
24 context to context. It's very similar language



1       that Hubert uses.

2               Q.   Thank you.   We now go back and try  
3       to apply the language you found in Hubert to  
4       claim one of the 761 patent, please.

5               A.   Sure.   So we see a  
6       computer-implemented, network-based system.  
7       That's what Hubert is describing, that it's  
8       network based.   Well, it's running over the  
9       internet, and we see the first element, a  
10      computer-implemented context component of the  
11      network-based system for capturing context  
12      information.

13              Now I've identified places in  
14      Hubert that shows us if we could bring that up,  
15      so here we have page four of Hubert.   It talks  
16      about the -- what's something that in part  
17      behaves as a context component.   It says  
18      optional tool eighteen is shown in metadocument  
19      ten, and let me find the relevant part to it.

20              To continue in this embodiment,  
21      tool eighteen is an embedded software program  
22      which generates and stores processing  
23      information for this, and associated metadata  
24      for indexing and retrieving the processing

1 information, it follows by saying whenever the  
2 metadocument is accessed or processed, the tool  
3 generates a piece of processing information and  
4 metadata to record that fact. And this is  
5 exactly what a context component is supposed to  
6 do.

7 I should mention there's another  
8 embodiment or method where this system, instead  
9 of being part of the metadocument, is part of  
10 the source or environment. Hubert has several  
11 ways of describing a context component.

12 Q. What about the remaining elements  
13 of claim one?

14 A. Let's take a look where are we.

15 Q. We're at dynamically storing the  
16 context information.

17 A. That claim essentially says the  
18 same thing, that information is captured and  
19 stored as it happens.

20 Then for the second element, it  
21 talks about a computer-implemented tracking  
22 component for tracking a change of the user from  
23 a first context to a second context of the  
24 computer-based system.

1           And I've identified a part in the  
2     Hubert that shows this. Okay. So if we go  
3     to -- let me see here.

4           Okay. So at the end of that first  
5     line, it says Source 32 includes a processing  
6     program, if we can highlight that, and which  
7     processes the document information by copying  
8     the document text and storing it in a new  
9     document.

10           But most importantly, if you go to  
11     the, let's see, the next line. Sorry, skip a  
12     line. And it says a record of the fact that the  
13     meta-document 20 was received at Source 32 is  
14     stored as processing information and processing  
15     information is part of the metadata. So this is  
16     tracking the movement.

17           We see that we have this  
18     processing program that tracks the movement in  
19     this case, the receipt of this document of the  
20     second source. So there is one example of a --  
21     of a tracking component.

22           Q. And what about the next portion of  
23     the claim that talks about dynamic updates?

24           A. Well, yes. As I mentioned before,

1 all this is happening on the fly and stored as  
2 part of the document. So this is also disclosed  
3 by Hubert.

4 Q. And what about the final portion  
5 wherein the user accesses the data from the  
6 second context?

7 A. Well, again, Hubert is all about  
8 we have documents, and people should be able to  
9 access that document and all the information at  
10 any time. This is precisely what Hubert was  
11 trying to do.

12 Q. So what is your opinion regarding  
13 Claim 1 of the '761 patent vis-a-vis the prior  
14 art Hubert patent?

15 A. My opinion is that Hubert  
16 discloses each and every element of Claim 1.

17 Q. Do you have an opinion regarding  
18 Claim 4 of the '761 patent vis-a-vis the Hubert  
19 patent?

20 A. Yes, I do.

21 Q. And what is that?

22 A. So here we -- they add a  
23 relationship between the user and at least one  
24 of the application data and user environment.

1 Q. And where is that in Hubert?

2 A. I believe I've identified here --  
3 let's see. So if we look at the second  
4 sentence, it says namespaces. It says each of  
5 them is, more or less, dedicated to an  
6 application or a domain.

7 So it's talking about this as part  
8 of the metadata model. Maybe I should start  
9 from the beginning.

10 It says clearly, part of the value  
11 of the metadata model depends on namespaces and  
12 some of these namespaces are associated to an  
13 application or domain.

14 Q. Dr. Greenberg, what is a  
15 namespace?

16 A. A namespace is a way to  
17 essentially uniquely identify a set of data. So  
18 in this case, the name space would say, Here are  
19 things that happen within this application or  
20 within this domain.

21 So later on it's the last -- the  
22 second to last line. It says suppose we want to  
23 encode the identity of the reader, the rating he  
24 or she gives an associated comment. So we --

1 here we see that the system also will capture  
2 the user and that's enough to satisfy that claim  
3 element.

4 Q. So what is your opinion regarding  
5 claims regarding this Claim 4?

6 A. That Hubert discloses Claim 4.

7 Q. Do you have an opinion regarding  
8 Claim 7?

9 A. Sure. Claim 7 says wherein data  
10 created in the first context is associated with  
11 data created in the second context.

12 Now, remember, we talked about the  
13 meta for -- of the bee carrying pollen from  
14 place to place. So there's the association.  
15 It's capturing -- the meta-document is capturing  
16 not only what happens in one environment, but  
17 also what's happening between environments as  
18 things are moved around between these contexts.

19 Q. So what is your opinion regarding  
20 Claim 7 vis-a-vis the Hubert prior art patent?

21 A. That Hubert discloses everything  
22 in Claim 7.

23 Q. Do you have an opinion regarding  
24 Claim 9?

1 A. Yeah.

2 Q. And what is that?

3 A. So here we have a  
4 computer-implemented method. You know, Hubert  
5 is a computing system, so it discloses that.

6 We talked -- in the first element,  
7 now it talks about a user environment. You  
8 know, in fact, Hubert uses that term and uses  
9 the term environment. And so we have that.

10 Hubert is a web-based computing  
11 platform. I've shown you that Hubert says it  
12 runs over the internet. And I believe I have a  
13 few other places.

14 Do I? I can't remember.

15 Let me see.

16 Q. So what are we seeing here in  
17 Paragraph 9?

18 A. I -- this isn't -- I don't think  
19 this is the right one.

20 Q. But Hubert is a system that works  
21 over the internet; is that right?

22 A. That's correct.

23 Q. And so is that really all you need  
24 to establish that element?

1           A. Well, it's not all you need. It  
2     certainly is one of skilled in the art would  
3     know that. And I believe there's later  
4     references I have that talk about it working  
5     over at the -- over the web. So....

6           Q. What about the next element of  
7     Claim 9?

8           A. Okay. So we have dynamically  
9     associating metadata with the data. We saw that  
10    Hubert had stored on the storage component. We  
11    saw that.

12           We saw information related to the  
13    user, the data, the application and the user  
14    environment. I've actually covered that  
15    already.

16           We saw this tracking of movement  
17    and we have -- and that's already been  
18    discussed. And we also saw the dynamic updating  
19    stored metadata with all the other parts of that  
20    element.

21           Q. And what about the last portion of  
22    the user employing at least one of the  
23    application and the data from the second  
24    environment?



1           A. Yes. Well, this -- again, this is  
2     the whole point of the system that as you -- you  
3     can access your document at any time and see  
4     what's happened to it. So clearly this is what  
5     Hubert was all about.

6           Q. So what is your opinion regarding  
7     Claim 9 and the Hubert prior art patent?

8           A. That -- that Hubert discloses each  
9     and every element of Claim 9.

10          Q. Do you have an opinion regarding  
11     Claim 11?

12          A. Okay. Let's take a look.

13                 So this is the one that talks  
14     about indexing the content of the user  
15     environment.

16          Q. Does Hubert disclose indexing?

17          A. Yes, he does.

18          Q. Where is that?

19          A. So here we see in -- if you look  
20     at the end of the second line or it's -- well,  
21     there it says information pertaining to each  
22     processing step is stored with the document  
23     along with metadata for indexing and retrieving  
24     the processing information.

1 Q. So do you have an opinion  
2 regarding Claim 11 vis-a-vis the Hubert patent?

3 A. Yes, I do.

4 Q. And what is that opinion?

5 A. That Hubert discloses Claim 11.

6 Q. Do you have an opinion regarding  
7 Claim 21?

8 A. Yes, I do.

9 Q. And what is that?

10 A. So that Hubert discloses each and  
11 every element of Claim 21.

12 Q. Why is that?

13 A. Well, let's look at this again.  
14 Hubert discloses a competing system.

15 So one skilled in the art would  
16 know that's on the computer readable medium.  
17 We've pretty well seen everything in the first  
18 element with the exception that we're talking  
19 about a user workspace. And again, we're  
20 talking about a meta- document.

21 This is a place where people are  
22 supposed to do their work. So, by definition,  
23 this is a user workspace.

24 The second element talks about

1 dynamically associating metadata with the data.

2 We've seen that.

3 That's stored on web-based  
4 computing platform. We talked about this. This  
5 is on the internet. It's stored.

6 Q. What about the tracking of the  
7 movement of the user from a first user workspace  
8 to a second user workspace?

9 A. Yes. We've already seen that  
10 where, in fact, in Figure 2 you saw how it  
11 actually tracks the movement of a person from  
12 one source or environment, which is also their  
13 user workspace. And it's over the internet. So  
14 it's a web-based computing platform.

15 Q. And we can remember Hubert best  
16 because of the little bumble bee; is that right?

17 A. Yeah. That's a whole tracking of  
18 the movement thing. This whole idea of  
19 pollenization, if you think of this little bee  
20 going from flower to flower to flower, which in  
21 this case would be user workspace collecting  
22 stuff that's happened in each place and bringing  
23 it to the next one and leaving it behind and  
24 taking some more stuff that's happening and then

1 going onto the next. That's the knowledge  
2 that's being captured.

3 Q. And what about the dynamic  
4 association of the data and the application with  
5 the second user workspace in the metadata?

6 A. Yeah. So that's -- well, we saw  
7 that this is -- we've actually covered all of  
8 that before and we've -- I've also described how  
9 the person should be able to access all that  
10 from any context. It's the whole point of  
11 Hubert.

12 Q. And the last element of indexing?

13 A. That's essentially a remix of what  
14 I discussed previously. I've shown you the  
15 index in regard to this does do indexing and  
16 it's just been remixed into here. I think I  
17 covered that in Claim 11.

18 Q. Yes.

19 A. Yes.

20 Q. So what is your opinion regarding  
21 Claim 21?

22 A. That Hubert discloses each and  
23 every element of Claim 21.

24 Q. I'm sorry. We're almost there.

1                   What about Claim 23? Do you have  
2                   an opinion there?

3                   A. Yes, I do.

4                   Q. And what is that?

5                   A. That Hubert discloses each and  
6                   every element of Claim 23.

7                   Q. And why?

8                   A. So now we're talking about a  
9                   computer-implemented system. Again, this is  
10                  back to the same thing. Hubert's talking about  
11                  a computer system.

12                  We now see a computer-implemented  
13                  context component of a web-based server. The  
14                  fact that you can access this information over  
15                  the internet would make it a web-based server.

16                  We saw the first user workspace  
17                  before. In fact, we saw all of this. All of  
18                  this was essentially covered on the previous  
19                  screens on my discussion. We saw capturing of  
20                  context data associated with user interaction.

21                  We saw dynamically storing the  
22                  context data as metadata on a storage. We saw  
23                  metadata being dynamically associated with data  
24                  created in the first user workspace.

1 Q. And does Hubert also disclose the  
2 computer-implemented tracking component?

3 A. Yes, it does, in much the same  
4 same way that I said before. Remember the bee  
5 with its pollen.

6 There's a track component, that  
7 processing part of the system that tracks the  
8 change information associated with a user moving  
9 between these user workspaces.

10 Q. And so what is your opinion  
11 regarding Claim 23 vis-a-vis the prior art  
12 Hubert patent?

13 A. That Hubert discloses each and  
14 every element of Claim 23.

15 Q. Do you have an opinion on Claim  
16 25?

17 A. Let's take a look. So here we're  
18 talking about a relationship capturing a  
19 relationship between the first user workspace  
20 and at least one other user workspace. And I've  
21 actually addressed this before.

22 But remember that bee with the  
23 pollen. This is essentially -- it is capturing  
24 their relationship, in this case, in the

1 meta-document itself.

2 Q. And so what is your opinion  
3 regarding Claim 25?

4 A. That Hubert discloses Claim 25.

5 Q. Only two more. So what about  
6 Claim 31, do you have an opinion?

7 A. Sure. So here it says the storage  
8 component stores the data and the metadata  
9 according to at least one of a relational and an  
10 object storage methodology.

11 Q. And does Hubert disclose that?

12 A. Yes, he does.

13 Q. Where does he do that?

14 A. I have a call out here. Here we  
15 see emerging technology such as RDF metadata and  
16 DOM, document object model, will readily enable  
17 implementation of meta-documents.

18 I should mention that RDF is a  
19 standard that's developed for the web. So  
20 again, it's, you know, another argument about  
21 all this being web-based platform, web-based  
22 system.

23 Q. So what is your opinion regarding  
24 Claim 31?

1 A. That Hubert discloses Claim 31.

2 Q. And finally, do you have an  
3 opinion regarding Claim 32?

4 A. Yes, I do.

5 Q. And what is that?

6 A. That Hubert discloses Claim 32.

7 Q. And why is that?

8 A. So this goes back to the  
9 many-to-many functionality. And again, Hubert  
10 was all about how can people access information  
11 about these documents?

12 And this is -- you know, goes to  
13 the heart of the Hubert system. It's all about  
14 multiple people accessing information.

15 He even uses the example of people  
16 trying to access ratings that people may give on  
17 documents. So it's all about finding what's  
18 happened.

19 Q. And so what is your opinion  
20 regarding Claim 32 vis-a-vis the prior art  
21 Hubert patent?

22 A. That Hubert discloses what's in  
23 Claim 32.

24 Q. Could you please pull back up the



1643

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

Hawkins Reporting Service  
715 North King Street - Wilmington, Delaware 19801  
(302) 658-6697 FAX (302) 658-8418

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

# **EXHIBIT 26 PART 4**

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?

1896

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

---

LEADER TECHNOLOGIES,	)	Trial Day 7
INC., a Delaware	)	
corporation,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	C.A. No. 08-862-JJF-LPS
	)	
FACEBOOK, INC., a	)	
Delaware corporation,	)	
	)	
DEFENDANT.	)	

---

Tuesday, July 27, 2010  
9:00 a.m.

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

APPEARANCES:

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

-and-

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

Counsel for Plaintiff

1 in the world is practicing today, Facebook does  
2 not infringe it. And why? Because Facebook  
3 never updates the stored metadata. The stored  
4 metadata. We'll talk about that.

5 And then these three claims here  
6 have a unique defense to them. These are the  
7 ones that require one of the Facebook users to  
8 do something, to practice one of the necessary  
9 steps, and the question is whether we control or  
10 direct the Facebook users, and I'm going walk  
11 you through that.

12 And then I'm going walk you  
13 through the invalidity arguments, and then I'm  
14 going to end with this whole discussion that  
15 we've been having in this case about whether  
16 they sold or offered to sell something. That  
17 touches on a pretty important point of  
18 credibility that I want to come back to.

19 This is our position. Obviously  
20 we do not infringe. Remember the relationship  
21 of independent claims to dependent claims. The  
22 dependent claims simply are everything in the  
23 independent claim plus something else. You add  
24 one more step to it, so if you find that there's

1 quality we've seen in this courtroom, the  
2 experts, the Facebook folks, would they have  
3 thought to make this wirelessly? If you think  
4 they would have, it's obvious.

5           Then for obviousness we can  
6 combine their summary of the invention,  
7 wireless, be able to access data remotely via  
8 wireless. This is the last piece of the story.

9           The piece I want to focus on for a  
10 minute, this is the piece of the story that's  
11 really a classical jury issue because you have  
12 to believe somebody on this one. This is the  
13 story that involves what people are really good  
14 at, ordinary people. Is someone's story true?

15           So let me explain what the issue  
16 is. The law says that you can't jump the gun.  
17 If you're going to file for a patent, the law  
18 says that you can't jump the gun. If you need  
19 to file a patent, then you need to file it, and  
20 for one year beforehand you're given a grace  
21 period, but if more than one year before the  
22 filing you're out in the market trying to offer  
23 it for sale or demonstrating it, all bets are  
24 off. The inventor is completely in control of

1 provisional and map it to the final, what does  
2 it look like? This is what's missing from the  
3 provisional. What I'm showing you is the final.  
4 That's not full disclosure, and it's a  
5 requirement because you're asking the federal  
6 government to give you the monopoly of a patent,  
7 so you have to disclose it fully.

8 Now there's a timeline. This  
9 becomes the effective date because now that's  
10 one year before they actually filed the  
11 application because the provisional is gone.  
12 Look at all this activity right up to the  
13 deadline here, so now the story is, we weren't  
14 offering to sell the thing that had the special  
15 sauce in it. We weren't offering to sell  
16 Leader2Leader that had the invention in it. We  
17 were offering to sell something else.

18 Mr. McKibben was on the stand  
19 twice, and twice he did not put before you the  
20 versions of the product. He never showed you  
21 the product, did he? And he didn't say it has  
22 this one or this one or this one. It's just  
23 sort of on December 11, 2002, the very moment in  
24 time they filed the provisional, that's the

1 copyrighted it. And the date. What does he say  
2 that he's selling? What's the goal? To  
3 implement a Leader2Leader to  
4 enterprise-collaboration environment. Okay.  
5 Never offered to sell.

6 He has an extensive body of  
7 financial information. He's going to try to get  
8 \$8.5 million of the government's money based on  
9 that change? DTX 184 at the bottom. He's  
10 saying he didn't offer to sell a product that  
11 has the product in it because if you believe he  
12 sold it on December 10th or 9th or 8th of 2002,  
13 this lawsuit that he brought isn't going to fly,  
14 but look what he's saying at the time, not when  
15 he's in trial, but eight years ago. In writing,  
16 people.

17 This is October 10th. We have  
18 verbally committed to selling a system. What  
19 system was he trying to sell? So based on that  
20 change two months before the invention is  
21 completed, is he selling last year's Corvette or  
22 the one with the Bluetooth, the secret sauce?  
23 Do you really believe he would be trying to sell  
24 these guys the system that doesn't have this



1 great invention? Does that make sense to you?

2           It's your call. You make the  
3 decision, but nonsense he invented this thing in  
4 1999 and he's invested \$10 million into it, and  
5 we're right on the cusp of the invention, and  
6 he's not talking about the one with the patented  
7 technology in it. He's selling last year's  
8 model without the Bluetooth. That what he says.

9           The Limited. This is the -- this  
10 is an interesting one. He needs  
11 Mr. Schlessinger to confirm that they've got a  
12 deal so he can go over the to the VC and get the  
13 deal and then he'll get money. Investment  
14 money. That's what he's doing with this one.  
15 This one is getting closer to the strike of  
16 midnight, when this lawsuit turns into a  
17 pumpkin. November 21st.

18           And, Your Honor, I'll finish  
19 within ten minutes.

20           I'd like to offer the sweetheart  
21 deal. Sweetheart deal. That's an offer. Only  
22 question is, what is the offer?

23           And there was a lot of effort to  
24 separate out Leader2Leader to LeaderPhone, but

1 we had a good meeting. But again I  
2 don't know who my audience because I  
3 don't remember who this person is."

4 Do you get my point? When he has  
5 a purpose, a commercial purpose, he sometimes  
6 uses something called hyperbole, which is an  
7 overstatement to make a point. He has every  
8 reason to thread this needle, ladies and  
9 gentlemen, because if he doesn't, the lawsuit he  
10 brought against Facebook, that dog won't hunt.

11 And this jury instruction, I'd ask  
12 that you look at this because this is the  
13 instruction you have to look at to assess  
14 credibility. What it tells you is if there are  
15 parts of the story that are contradictory and  
16 inconsistent, you can ask yourself whether you  
17 want to leave the whole story. That's what it  
18 says. That's 1.7.

19 So I'll leave you with this. This  
20 is a very serious case to Facebook. This is an  
21 invention which counsel says solved everything  
22 which nobody else is using. Facebook is not  
23 using. Facebook does not infringe. This patent  
24 -- this patent is invalid, and Facebook takes it

# **EXHIBIT 3**

## Facebook Platform White Paper IX Last modified Tuesday, March 24, 2009 at 4:55pm by Dave Fetterma

### IX. Development Implications

The Facebook Development Platform does not exist of its own merit; it relies on both user-facing Facebook concepts (e.g. “Facebook events”) and the engineering necessary to support it (e.g. the code to support “events”). The public API is not a replacement for users, groups, events, photos, and the like; it is merely a broadening of the audience for those pieces of information. If the concept of an event were to change in the Facebook application, it would not do justice to Facebook, nor the developers who come to depend on both on their users’ notion of a Facebook event and the technical specification of event data, to fail to update the notion of group for the outside community.

Therefore, the deployment of the public API implies that the data must retain a certain integrity otherwise not specifically required on the site. The development implications of the public API are then twofold:

- The integrity of the data must be maintained in a rigorous way. This means, there must be dedicated testing of the API when any code in the Facebook logic changes, to avoid passing bugs to everyone dependent upon the API.
- The data interface must be maintained and versioned tightly. Even the smallest change could disrupt the site of an outside partner, who we must (conservatively) assume is tightly coupled to every aspect of our functionality.

#### 1. Testing

Let us say we are changing a piece of Facebook functionality for [www.facebook.com](http://www.facebook.com), say search, during daily operations. This usually involves the search developers making a change, doing sandbox testing, and verifying to the best of their knowledge that the code change breaks nothing, and works as intended. Before pushing the code to live servers, the changes are copied to beta servers on [inour.facebook.com](http://inour.facebook.com), and available Facebook engineers of all sorts are told to “bang around” on this feature to make sure there are no (obvious) bugs. The code is then pushed live. Invariably, bugs are found in that (or any other) feature, they are fixed, and the process iterates until the level of bugs is sufficiently small. This ‘iterative’ process serves as our main testing strategy. If bugs exist, they are visible on the Facebook site for a hopefully short time before they are fixed. In the normal case, faulty Facebook display and business logic affects the site. In the worst case, faulty Facebook logic affects the data, which is largely unrecoverable.

For all its faults, this strategy at most affects the Facebook site. The Development Platform primarily exists to enable outside applications to build off the Facebook site. A bug unchecked then could affect or ruin someone else’s application, or all outside applications, which does much more damage to our relationships and reputation, not to mention the applications we empower through the API. For this reason, Facebook changes require a defined and dedicated test suite and process.

We are currently developing this suite, which needs to run at an acceptable level by the time of full release. However, we need to make sure that for all changes, this suite is run at the time of every push or hotfix affecting non-display logic not strictly in the [www.facebook.com](http://www.facebook.com) display layer.

The main drawback here is that our development and push process is slowed, and we could lose some agility. The resounding positive, however, comes when we have a dedicated testing process for the API, which in turn, verifies a good portion of the [www.facebook.com](http://www.facebook.com) functionality as well.

We need this test suite integrated into our daily development process, and visible to the entire engineering organization, beyond those directly responsible for its maintenance on the Platform engineering team.

#### 2. Interface Versioning

Even if the functionality of [www.facebook.com](http://www.facebook.com) is not broken by a completely unintentional bug, alterations to the scheme of the data contained defining, say, a “Facebook group”, can affect the public API if they are not properly communicated. The test suite comes in handy here, too, since these changes, at the time of push, will break the tight interface exposed by the API. However, we need a way to build on top of the existing contract we give out to applications developed on the API.

The first part is *communication*. Again, this is a process change. Changes to the data provided by our key public APIs need to be communicated to the Platform engineering team. We need a process to facilitate this.

The second part is *technical versioning*. If a data change meets with universal approval, the API either needs to back port its functionality to maintain something of an old interface, support multiple versions of the API contract, or be able to effectively drop old versions. This responsibility falls to the engineers of the public API, the Platform team.

First, simply adding to the API’s functionality requires none of these measures. Even in a strict interface, adding members orthogonal to existing ones does not ruin the dependent code in any meaningful way. If the first edition of the API shipped without, say, notes are added and the API adds a way to interact with them, these new separate procedures can be added without fear.

*Back porting* is suitable when the change is very small. For instance, if the data structure for a user’s network affiliations is changed from including a field for a network key to containing a substructure containing that key, the public API should translate that to maintain the old interface. This involves some work but does not engender inherent complexity.

*Multiple versioning* is the best choice when functionality has changed significantly for the better. The new interface has been deemed more useful, faster, cleaner, etc. and the API users should also enjoy that goodness. In order to not break applications using the now ‘old interface’, both old and new versions can be supported. This is a technical challenge, but entirely solvable within the Platform engineering organization. We are trying to achieve version support right from the first release.

*Dropping old versions* occurs after multiple versioning for a period of time. Partners are notified of the change, the date for dropping support for old versions, and that change happens. Naturally, we try to avoid this, especially for large partners with inflexible engineering, or client applications that have already been downloaded. Good planning is necessary to make sure this option is avoided, but there are times when it is necessary. Supporting dozens of different versions remains much worse than requiring our partners to evolve just as we do.

#### The Three-Version Queue

One elegant plan for combining these three features together is a three-version queue system. At any time, we maintain (at least) versions A, B, and C, where A, B, and C are some version numbers like 1.0.1, 1.0.2, 1.0.3. These correspond to ideas like “legacy”, “current”, and “latest”. Version A additionally has an expiration time associated with it. When version A expires, the addition of version D immediately drops version A, and the timer begins on version B, the new “legacy” version. A reasonable timeout, especially once large partners with fixed release schedules enter the picture, would be on the order of 90 days.

Plaintiff’s Trial Exhibit  
**PTX-145**  
Case No. 08-CV-00862

This *multiple versioning scheme* incorporates *backporting* for all but the latest version, and *drops old versions* on a public schedule. The developer application selects the interface version within the request protocol (likely an element in the XML procedure call).

Prev Section <<

Next Section >>

(touch)

# **EXHIBIT 4**

☐ Remember Me[Forgot your password?](#)

## Terms of Use

Date of Last Revision: September 23, 2008

Welcome to Facebook, a social utility that connects you with the people around you. The Facebook service and network (collectively, "Facebook" or "the Service") are operated by Facebook, Inc. and its corporate affiliates (collectively, "us", "we" or "the Company"). By accessing or using our web site at [www.facebook.com](http://www.facebook.com) or the mobile version thereof (together the "Site") or by posting a Share Button on your site, you (the "User") signify that you have read, understand and agree to be bound by these Terms of Use ("Terms of Use" or "Agreement"), whether or not you are a registered member of Facebook. We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Service or the Site after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Service or the Site. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Use and to review such changes.

**PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED.**

## Eligibility

Membership in the Service is void where prohibited. This Site is intended solely for users who are thirteen (13) years of age or older, and users of the Site under 18 who are currently in high school or college. Any registration by, use of or access to the Site by anyone under 13, or by anyone who is under 18 and not in high school or college, is unauthorized, unlicensed and in violation of these Terms of Use. By using the Service or the Site, you represent and warrant that you are 13 or older and in high school or college, or else that you are 18 or older, and that you agree to and to abide by all of the terms and conditions of this Agreement.

## Registration Data; Account Security

In consideration of your use of the Site, you agree to (a) provide accurate, current and complete information about you as may be prompted by any registration forms on the Site ("Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration Data, and any other information you provide to Company, to keep it accurate, current and complete; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

## Proprietary Rights in Site Content; Limited License

All content on the Site and available through the Service, including designs, text, graphics, pictures, video, information, applications, software, music, sound and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of the Company, its users or its licensors with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission, except that the foregoing does not apply to your own User Content (as defined below) that you legally post on the Site. Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and the Site Content and to download or print a copy of any portion of the Site Content to which you have properly gained access solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. Except for your own User Content, you may not upload or republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation, and any other use of the Site Content is strictly prohibited. Such license is subject to these Terms of Use and does not permit use of any data mining, robots, scraping or similar data gathering or extraction methods. Any use of the Site or the Site Content other than as specifically authorized herein, without the prior written permission of Company, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time without notice and with or without cause.

## Trademarks

32665, FACEBOOK, THE FACEBOOK, FACEBOOKHIGH, FBOOK, POKE, THE WALL and other Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress of Company in the U.S. and/or other countries. Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

## User Conduct

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook

Plaintiff's Trial Exhibit

**PTX-628**

Case No. 08-CV-00862

Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

In addition, you agree not to use the Service or the Site to:

- harvest or collect email addresses or other contact information of other users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site;
- use automated scripts to collect information from or otherwise interact with the Service or the Site;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share, store or otherwise make available any videos other than those of a personal nature that: (i) are of you or your friends, (ii) are taken by you or your friends, or (iii) are original art or animation created by you or your friends;
- register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;
- impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- intimidate or harass another;
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site.
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.

Without limiting any of the foregoing, you also agree to abide by our [Facebook Code of Conduct](#) that provides further information regarding the authorized conduct of users on Facebook.

---

### User Content Posted on the Site

---

You are solely responsible for the photos, profiles (including your name, image, and likeness), messages, notes, text, information, music, video, advertisements, listings, and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other users (collectively the "User Content"). You may not post, transmit, or share User Content on the Site or Service that you did not create or that you do not have permission to post. You understand and agree that the Company may, but is not obligated to, review the Site and may delete or remove (without notice) any Site Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of the Company violates this Agreement or the Facebook Code of Conduct, or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others. You are solely responsible at your sole cost and expense for creating backup copies and replacing any User Content you post or store on the Site or provide to the Company.

When you post User Content to the Site, you authorize and direct us to make such copies thereof as we deem necessary in order to facilitate the posting and storage of the User Content on the Site. By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing. You may remove your User Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content. Facebook does not assert any ownership over your User Content; rather, as between us and you, subject to the rights granted to us in these Terms, you retain full ownership of all of your User Content and any intellectual property rights or other proprietary rights associated with your User Content.

---

### Facebook Mobile Services

---



The Service includes certain services that are available via your mobile phone, including (i) the ability to upload content to Facebook via your mobile phone (Mobile Uploads), (ii) the ability to receive and reply to Facebook messages, to poke and receive pokes and to write wall posts using text messaging (Mobile Texts), (iii) the ability to browse Facebook from your mobile phone (Mobile Web), and (iv) the ability to access certain Facebook features through a mobile application you have downloaded and installed on your mobile phone (Mobile Client) (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. Therefore, you should check with your carrier to find out if the Mobile Services are available for your mobile devices, and what restrictions, if any, may be applicable to your use of such Mobile Services. By using the Mobile Services, you agree that we may communicate with you regarding Facebook and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Facebook account information to ensure that your messages are not sent to the person that acquires your old number.

---

### Copyright Complaints

We respect the intellectual property rights of others and we prohibit users from uploading, posting or otherwise transmitting on the Facebook website or service any materials that violate another party's intellectual property rights. When we receive proper Notification of Alleged Copyright Infringement as described in our Facebook Copyright Policy, we promptly remove or disable access to the allegedly infringing material and terminate the accounts of repeat infringers as described herein in accordance with the Digital Millennium Copyright Act. If you believe that any material on the Site infringes upon any copyright which you own or control, you may send a written notification of such infringement to our Designated Agent. Please see our Facebook Copyright Policy for more information on how to report infringement of your copyright.

---

### Repeat Infringer Policy

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances and at Company's sole discretion, members who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Site and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

---

### Third Party Websites and Content

The Site contains (or you may be sent through the Site or the Service) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Applications, Software or Content"). Such Third Party Sites and Third Party Applications, Software or Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Applications, Software or Content posted on, available through or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Sites or the Third Party Applications, Software or Content. Inclusion of, linking to or permitting the use or installation of any Third Party Site or any Third Party Applications, Software or Content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third Party Sites or to use or install any Third Party Applications, Software or Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the Site or relating to any applications you use or install from the site.

---

### Share Service

Company offers a feature whereby users of the Site can share with others or post to their own member profile, videos, articles and other Third Party Applications, Software or Content from, and/or links to, Third Party Sites through the Service (the "Share Service"). You acknowledge and agree that your use of the Share Services and all links, User Content or Third Party Applications, Software or Content shared through the Share Service is subject to, and will fully comply with the user conduct rules set forth above and the other terms and conditions set forth in these Terms of Use.

---

### Use of Share Links by Online Content Providers

Subject to the terms and conditions of these Terms of Use, Third Party Sites that meet the requirements set forth below may place a Share Link (as described below), in the form approved by Company, on pages of their web sites to facilitate use of the Share Service. A Third Party Site that posts a Share Link on its web site is referred to herein as an "Online Content Provider" and shall abide and be subject to the applicable sections of these Terms of Use. A "Share Link" is a button and/or a text link appearing on an Online Content Provider's web page that, upon being clicked by a user, enables us to launch a sharing mechanism through which users can share with others or post to their own member profile, links and content from that page.

In the event that the Share Link is a button that contains any icons or other graphic images, trademarks or other proprietary materials of the Company, Online Content Provider is granted permission to use such images, trademarks or other materials solely for the purpose of placing the Share Link on Online Content Provider's site

and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agrees to immediately remove all Share Links from its site.

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain any web content that if shared or posted by a user would be a violation of the user conduct rules set forth above. Without limiting the foregoing, Online Content Provider agrees not to post a Share Link on any web site that contains, and represents and warrants that such web site does not and will not contain, any content that is infringing, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, lewd, fraudulent, or invasive of privacy or publicity rights or that may expose Company or its users to any harm or liability of any type. Upon including of a Share Link, Online Content Provider agrees to defend, indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with such Share Link, any links, content or other items or materials which may be shared or posted through such Share Link, or any breach or alleged breach of the foregoing representations and warranties.

By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

### Facebook Marketplace

---

All listings posted on or through the Facebook Marketplace service and all transactions conducted in connection therewith are subject to and governed by the Facebook Marketplace Guidelines (the "Guidelines") as well as these Terms of Use. When you use Facebook Marketplace in any manner you are agreeing to abide by and be subject to the Guidelines and the other applicable rules set forth in these Terms of Use. The Guidelines are subject to change without prior notice at any time, in the Company's sole discretion, so you should review the Guidelines each time you use Facebook Marketplace. Parties to a transaction are solely responsible for all interactions with each other, for arranging for payment and the exchange of the goods or services purchased if applicable, and for the results and performance of any transaction or relationship entered into through Facebook Marketplace. You acknowledge that Facebook is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, to pay any amounts due, or to deliver any merchandise or services as promised, or for any other aspect of the transaction. Any fees or payments collected by Facebook applicable to Facebook Marketplace are set forth on the Site, and all terms and conditions applicable to such fees are set forth in the Facebook Terms of Sale. However, please note that the Terms of Sale do not apply to your purchases of products or services from third parties through Facebook Marketplace, as those transactions are strictly between you and the other party to the transaction. ALL USE OF FACEBOOK MARKETPLACE IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

### Facebook Platform Applications

---

The Facebook Platform is a set of APIs and services provided by Facebook that enable third-party developers ("Platform Developers") to create websites and applications that retrieve data made available by Facebook and its users and/or that retrieve authorized data from third-party sites for use on the Facebook Site ("Platform Applications")

Platform Developers may use the Facebook Platform and create Platform Applications only in accordance with the terms and conditions set forth in an agreement entered into between Facebook and the Platform Developer ("Developer Terms"). Our standard Developer Terms consist of the Facebook Developer Terms of Service and the related Facebook Platform Application Guidelines. We may from time to time enter into separate agreements with certain third party Platform Developers that contain different or additional terms, provided however, that each such separate agreement will require the third party Platform Developer to only display your information in accordance with your Facebook privacy settings. The standard Developer Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these documents from time to time. ALL USE OF THE FACEBOOK PLATFORM IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Users who install Platform Applications must agree to the terms and conditions set forth in the Platform Application Terms of Use ("Application User Terms") and in these Terms of Use. The Application User Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these terms each time you install an application and from time to time. Platform Developers may require you to agree to their own terms of service, privacy policies and/or other policies as a condition of using Platform Applications. Platform Applications have not been approved, endorsed, or reviewed in any manner by Facebook, and we are not responsible for your use of or inability to use any Platform Applications, including the content, accuracy, or reliability of such Application and the privacy practices or other policies of Developers. YOU USE SUCH PLATFORM APPLICATIONS AT YOUR OWN RISK.

If you, your friends or members of your network use any Platform Applications, such Platform Applications may access and share certain information about you with others in accordance with your privacy settings as further described in our Privacy Policy. Platform Developers are required to agree to restrictions on access, storage and use of such information. However, while we have undertaken contractual and technical steps to restrict possible misuse of such information by such Platform Developers, we do not screen or approve Developers, and we cannot and do not guarantee that all Platform Developers will abide by such restrictions and agreements. Certain actions you take through the Platform Applications may be displayed to your friends in your profile, mini-feed and news feed, and you may opt-out of displaying your Platform Application actions on the Privacy Settings page. Please report any suspected misuse of information through the Facebook Platform as described in our Privacy Policy.

You may set your preferences for your news feed and mini-feed [here](#).

### Facebook Connect

---

Facebook Connect ("Connect") enables participating third party websites to work just like Facebook Platform applications. Once you allow a third party website to connect with Facebook, you will be able to use your Facebook login information to log into that website. The third party website will be able to: generate and publish news feed and other stories about actions you take on their website; access Facebook information related to you (including your profile information, friends, and privacy settings) so you can use your Facebook information on the third party site; and allow you to interact with your friends on the website. In order to make Connect possible, you agree to allow Facebook to check your Facebook cookies when you are visiting participating third party websites, and allow Facebook to receive information concerning the actions you take on those third party websites. In addition, once you allow a participating third party website to connect with Facebook, you agree to allow Facebook and such third party website to generate and publish news feed and other stories about actions you take on the website without any additional permission. In the event you no longer want the third party website to publish stories about you, you can always disable this feature by changing your application settings.

When your friends connect their Facebook account with a participating third party website, Facebook Connect will enable them to find Facebook friends that may also be users of that third party website, and invite them to use Connect as well. If you do not want your friends to be able to invite you, you may change your privacy settings to disable this feature.

Connect also gives you the ability to permit Facebook and participating third party websites to generate and publish news feed and other stories about actions you have taken on such websites, even if you have not gone through the Connect process. In such cases, you will be asked whether you want to publish the story on Facebook, and will be given the opportunity to save your answer for future stories. In the event you want to change your settings for that website, visit your application settings.

Like Platform Applications, third party websites that participate in Connect are required, among other things, to protect your privacy consistent with your Facebook privacy settings and Facebook's privacy policy.

### Facebook Pages

---

Facebook Pages are special profiles used solely for commercial, political, or charitable purposes. You may not set up a Facebook Page on behalf of another individual or entity unless you are authorized to do so. This includes fan Facebook Pages, as well as Facebook Pages to support or criticize another individual or entity.

FACEBOOK DOES NOT PRE-SCREEN OR APPROVE FACEBOOK PAGES, AND CANNOT GUARANTEE THAT A FACEBOOK PAGE WAS ACTUALLY CREATED AND IS BEING OPERATED BY THE INDIVIDUAL OR ENTITY THAT IS THE SUBJECT OF A FACEBOOK PAGE. NOR IS FACEBOOK RESPONSIBLE FOR THE CONTENT OF ANY FACEBOOK PAGE, OR ANY TRANSACTIONS ENTERED INTO OR OTHER ACTIONS TAKEN ON OR IN CONNECTION WITH ANY FACEBOOK PAGE, INCLUDING HOW THE OWNER OF THE FACEBOOK PAGE COLLECTS, HANDLES, USES AND / OR SHARES ANY PERSONAL INFORMATION IT MAY COLLECT FROM USERS (PLEASE REVIEW THE FACEBOOK PRIVACY POLICY IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING THE USE OR SHARING OF YOUR PERSONAL INFORMATION). YOU SHOULD BE CAREFUL BEFORE PROVIDING ANY PERSONAL INFORMATION TO OR ENTERING INTO ANY TRANSACTION IN CONNECTION WITH A FACEBOOK PAGE.

In addition to these Terms of Use, Facebook Pages are subject to and governed by certain Additional Terms Applicable to Facebook Pages. The Additional Terms Applicable to Facebook Pages control in the event of any conflict between them and the Terms of Use.

### Terms of Sale

---

Please refer to our Terms of Sale for the terms, conditions and policies applicable to your purchase of products or services from Company. By ordering products or services from Company through the Site, you agree to be bound by and accept the Terms of Sale. The Terms of Sale are subject to change without prior notice at any time, in Company's sole discretion so you should review the Terms of Sale each time you make a purchase.

### User Disputes

---

You are solely responsible for your interactions with other Facebook users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

### Privacy

---

We care about the privacy of our users. Click [here](#) to view the Facebook's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

### Disclaimers

---

The Company is not responsible or liable in any manner for any User Content or Third Party Applications, Software or Content posted on the Site or in connection with the Service, whether posted or caused by users of the Site, by Facebook, by third parties or by any of the equipment or programming associated with or utilized in the Site or

the Service. Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content you may encounter on the Site or in connection with any User Content or Third Party Applications, Software or Content. The Company is not responsible for the conduct, whether online or offline, of any user of the Site or Service.

The Site and the Service may be temporarily unavailable from time to time for maintenance or other reasons. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Site or combination thereof, including injury or damage to User's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using or downloading materials in connection with the Web and/or in connection with the Service, including any Mobile Client software. Under no circumstances will the Company be responsible for any loss or damage, including any loss or damage to any User Content or personal injury or death, resulting from anyone's use of the Site or the Service, any User Content or Third Party Applications, Software or Content posted on or through the Site or the Service or transmitted to Users, or any interactions between users of the Site, whether online or offline.

THE SITE, THE SERVICE (INCLUDING THE MOBILE SERVICES, THE SHARE SERVICE AND THE MARKETPLACE SERVICE), ANY PLATFORM APPLICATIONS AND THE SITE CONTENT ARE PROVIDED "AS-IS" AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE COMPANY CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SITE AND/OR THE SERVICE AND/OR ANY PLATFORM APPLICATIONS. COMPANY DOES NOT REPRESENT OR WARRANT THAT SOFTWARE, CONTENT OR MATERIALS ON THE SITE, THE SERVICE OR ANY PLATFORM APPLICATIONS ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE OR THAT THE SITE OR SERVICE ITS SERVERS, OR ANY PLATFORM APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, YOU SHOULD EXERCISE CAUTION IN THE USE AND DOWNLOADING OF ANY SUCH SOFTWARE, CONTENT OR MATERIALS AND USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN CONTENT, MATERIAL, DATA OR SOFTWARE (INCLUDING ANY MOBILE CLIENT) FROM OR THROUGH THE SERVICE AND ANY PLATFORM APPLICATIONS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR YOUR USE THEREOF AND ANY DAMAGES TO YOUR MOBILE DEVICE OR COMPUTER SYSTEM, LOSS OF DATA OR OTHER HARM OF ANY KIND THAT MAY RESULT.

The Company reserves the right to change any and all content, software and other items used or contained in the Site and any Services and Platform Applications offered through the Site at any time without notice. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by Company.

### **Limitation on Liability**

---

IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

### **Termination**

---

The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site or through any Platform Application and/or prohibit you from using or accessing the Service or the Site or any Platform Application (or any portion, aspect or feature of the Service or the Site or any Platform Application) for any reason, or no reason, at any time in its sole discretion, with or without notice, including if it believes that you are under 13, or under 18 and not in high school or college. When we are notified that a user has died, we will generally, but are not obligated to, keep the user's account active under a special memorialized status for a period of time determined by us to allow other users to post and view comments.

### **Governing Law; Venue and Jurisdiction**

---

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise

between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.

#### Arbitration

---

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) years after the cause of action arose.

#### Indemnity

---

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Applications, Software or Content you post or share on or through the Site (including through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

#### Submissions

---

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

#### Definitions and Constructions

---

Unless otherwise specified, the terms "includes", "including", "e.g.", "for example", and other similar terms are deemed to include the term "without limitation" immediately thereafter. Terms used in these Terms with the initial letter(s) capitalized will have the meaning attributed to them in these Terms.

#### Other

---

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

#### Questions

---

Please visit our [Help](#) page or these [links](#) for more information.

- [Facebook Copyright Policy](#)
- [Facebook Terms of Sale](#)
- [Facebook Marketplace Guidelines](#)
- [Facebook Platform Application Guidelines](#)
- [Platform Application Terms of Use](#)
- [Facebook Developer Terms of Service](#)

# **EXHIBIT 5**

**Draft**

**Limited Brands, Inc.**

**Leader Beta Agreement**

**T**HIS BETA AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2003 by and between Leader Technologies Incorporated, a Delaware corporation ("Leader"), and Limited Brands, Inc., a Delaware corporation ("Limited") (each corporation a "Party," and collectively, the "Parties").

WHEREAS Limited has interest in **LeaderPhone®** and **Leader2Leader®** products and services invented by Leader for various uses in its business.

WHEREAS Limited wishes to evaluate the products and services first within its Advance Technology Group ("ATG").

WHEREAS ATG wishes to evaluate the products and services in order to implement project management prototypes and provide bug, feature and performance improvement feedback and recommendations. Additionally, ATG wishes to develop "desires and best fits" recommendations and a roll out plan for follow on phases including but not limited to the roll out plan for Project Management Office ("PMO") applications (the "Agreement").

WHEREAS Leader wishes to provide Limited with such products and services.

NOW, THEREFORE, in consideration of the above premises and for the duties and obligations set forth herein, the parties agree as follows:

1. Products and Services to be Provided by Leader. Leader will provide LeaderPhone® and Leader2Leader™ software and system products and services ("Products and Services") to enable Limited to implement LeaderPhone® Teleconferencing Services and Leader2Leader® according to the project plan and budget ("Project Plan and Budget") attached hereto as Appendix A.
2. Mutual Proprietary & Confidentiality Agreement. Limited and Leader agree to execute the mutual proprietary and confidentiality agreement ("Mutual Proprietary & Confidentiality Agreement") attached hereto as Appendix B.
3. Future Agreements. Upon satisfactory completion of the work in this Agreement, it is the intent of the Parties and a component of the scope of work in this Agreement to plan and submit for approval additional agreements between the Parties whereby the Products and Services will prospectively be introduced to the Project Management Office ("PMO") and from there to wider deployments within the Limited organization.
4. Project Quantities. The Limited may, at its sole discretion, change the user metrics and requirements ("Project Quantities") such as the number of users supported, number of telephone lines required, integration cubes to be developed, and number of Leader personnel required for support. Limited agrees that Leader may then change its level of service accordingly.
5. LeaderPhone® End User License Agreement. Limited agrees to the LeaderPhone® end user license agreement ("LeaderPhone® End User License Agreement") as available for download at the LeaderPhone® website at <https://www.leaderphone.com/leader/useragreement.jsp>.
6. Leader2Leader™ Beta User License Agreement. Limited agrees to execute the Leader2Leader™ beta user license agreement ("Leader2Leader™ Beta User License Agreement") attached hereto as Appendix C that will be in effect during this Agreement.

Plaintiff's Trial Exhibit

**PTX-773**

Case No. 08-CV-00862

**Proprietary & Confidential, Rev. 02-02-03**

© 2003, January 23, 2003, Leader Technologies Incorporated, Patents Pending, All Rights Reserved.



**Draft**

7. Intellectual Property. Limited agrees that Leader is and shall remain the sole owner of all intellectual property provided and developed by Leader in the performance of its obligations under this Agreement
8. Compensation. Leader shall receive compensation ("Compensation") according to the schedule of payments for Products and Services as specified in the Project Plan and Budget, Appendix A. Changes in Project Quantities shall change the Project Plan and Budget projections and fees accordingly. Limited agrees to make the payment at the execution of this Agreement.
9. Customization. Limited may request Leader from time to time to perform modifications to the Products and Services to support specific requirements. Leader may at its sole discretion determine whether to include those modifications as a part of the Project Plan and Budget or whether those modifications should be the subject of a separate agreement or an addendum to this Agreement.
10. Term of Agreement. This Agreement shall be sixty (60) days ("Term") from the date set forth herein.
11. Site Access, Hardware, Software and Documentation. The Parties agree to provide full site access during normal business hours to all tangible and intangible properties owned by either Party that may be located from time to time in the facilities of the other Party. The Parties further agree that all property owned by either Party shall remain the property of that Party under all circumstances and that said property shall be returned promptly upon request of the owner of the property.
12. Independent Contractors. The Parties hereto are independent contractors. Nothing herein shall be deemed to constitute either party as the representative, agent, partner or joint venture of the other. The respective personnel of each Party are neither agents nor employees of the other Party for federal tax purposes or any other purpose whatsoever, and are not entitled to any employee benefits of the other Party.
13. Amendment; Waiver; Survival. Any modification or amendment of any provision of this Agreement must be in writing and bear the signature of the duly authorized representative of each of the Parties. The failure of any Party to enforce any right it is granted herein, or to require the performance by the other Party hereto of any provision of this Agreement, or the waiver by any Party of any breach of this Agreement, shall not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of this Agreement. All provisions of this Agreement that by their own terms take effect upon the termination of this Agreement or by their nature survive termination shall survive such termination.
14. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable and the unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal and enforceable, come closest to the intention of the parties underlying the invalid or unenforceable provision.
15. Counterparts. This Agreement may be executed simultaneously in two or more counterparts any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.
16. Entire Agreement. This Agreement and Appendices constitute the entire agreement between Limited and Leader with respect to the subject matter hereof and supersede all prior agreements, promises, understandings and negotiations, whether written or oral, regarding the subject matter hereof.

***Draft***

**Limited Brands, Inc. – Leader Beta License Agreement, Page 3 of 9**

17. Headings. The descriptive headings in this Agreement have been inserted for convenience only and do not constitute a part of this Agreement.
18. Notices. Except as is otherwise provided in this Agreement, (a) whenever notice is required by the Provisions of this Agreement or otherwise to be given to the Company, such notice will be in writing addressed to the Company at 921 Eastwind Drive, Suite 118, Westerville, OH 43081, Attention: Michael T. McKibben, mmckibben@leader.com and (b) whenever notice is required by the provisions of this Agreement or otherwise to be given to Limited, such notice will be in writing addressed to Limited at \_\_\_\_\_, Attention: \_\_\_\_\_, Any notice referred to herein may be given in writing or by telephone, so long as such notice is immediately confirmed in writing. Notice (unless actual) will be effective upon mailing.

Confirmed and agreed to by:

**LIMITED BRANDS, INC.**

**LEADER TECHNOLOGIES INCORPORATED**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Michael T. McKibben

Title: Chairman & CEO

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

**Proprietary & Confidential, Rev. 02-28-03**

© 2003, January 23, 2003, Leader Technologies Incorporated, Patents Pending, All Rights Reserved.

**Draft****Appendix A****Project Plan & Budget**

Duration 60 days  
 Limited users supported: 15 people  
 Limited work group: Advanced Technology Group (ATG)

The ATG group shall obtain LeaderPhone® and Leader2Leader™ user accounts, including multiple fax and voice mail numbers. Leader will provide these services on an ASP basis. This will be an ATG testing environment as well as a “scoping phase” in which performance metrics will be determined. ATG will report on bug, features and performance improvement feedback and recommendations. In addition, actual specifications will be written for link between the Products and Services and the Limited Active Directory. The work product for this phase will be a Project Plan for Phase 2 which will most likely involve roll out of Leader2Leader® and LeaderPhone™ within the Project Management Office (“PMO”).

**Deliverables**

1. ATG group gets LeaderPhone® & Leader2Leader™ user accounts
2. Leader provisions LeaderPhone® & Leader2Leader™ servers on ASP basis
3. Leader provisions 1.4 T1 lines for testing Leader Voice Mail™ and Leader Fax™.
4. Leader and ATG jointly develop the project specification for the Limited Active Directory.
5. Leader develops call restriction feature on LeaderPhone® requested by the Limited
6. ATG group to implement project management prototypes and provide bug, feature and performance improvement feedback and recommendations.
7. ATG group to develop “desires and best fits” recommendations and “next step” project plan to be submitted for approval that will likely involve roll out to the PMO.

**Costs**

Leader2Leader™ beta test licenses	\$7,500
Active Directory cube development planning	\$15,000
LeaderPhone® call restriction feature implemented	\$10,000
Leader Voice Mail™ & Leader Fax™ costs	\$1,000
Leader FTEs total <sup>1</sup>	\$16,000
<b>Total</b>	<b><u>\$49,500</u></b>

<sup>1</sup> Includes training, services, technical support, documentation, consultations, etc.

***Draft***

## **Appendix B**

### **Mutual Proprietary & Confidentiality Agreement**

[To be inserted by Limited.]

**Proprietary & Confidential, Rev. 02-28-03**

© 2003, January 23, 2003, Leader Technologies Incorporated, Patents Pending, All Rights Reserved.

*Draft***Appendix C****Leader2Leader™ Beta User License Agreement**

THIS BETA USER LICENSE AGREEMENT (the "Agreement") is entered into as of the date first referenced herein by and between Leader Technologies Incorporated, a Delaware corporation ("Leader"), and Limited Brands, Inc., a Delaware corporation (the "Company") (each a "Party," and collectively, the "Parties").

WHEREAS Leader licenses certain software products.

WHEREAS Company wishes to evaluate such software for potential future uses in its business processes.

NOW, THEREFORE, in consideration for the rights and obligations set forth herein, the parties agree as follows:

**1. DEFINITIONS.**

1.1 "Intellectual Property Rights" means patent rights (including patent applications and disclosures), trademarks, trade dress, copyrights, trade secrets, know-how, business information, plans, Moral Rights and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.2 "Moral Rights" means any rights to claim authorship of a work, to object to or prevent any modification of a work, to withdraw from circulation or control the publication or distribution of a work, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is called or generally referred to as a "moral right."

1.3 "Products" means Leader's software products in object code form, and any updates, bug fixes or modifications thereto or derivative works created there from.

**2. LICENSE.**

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Leader grants to Company a nonexclusive, nontransferable, nonsublicensable, limited license to use the Products solely at the Company's site(s), solely in connection with computers owned or controlled by Company, for the sole purpose of Company's internal evaluation of the Products during the term of this Agreement.

2.2 License Restrictions. Company acknowledges and agrees that: (i) Company will use the Products only for the purposes of evaluating the Product's performance and providing feedback to Leader and for no commercial or any other purpose, (ii) Company will not disclose to any third party the results of any benchmark tests or other evaluation of the Products, (iii) the Products contain trade secrets of Leader and Company agrees not to disassemble, decompile or reverse engineer Products, or to permit any third party to do so, (iv) Company will not modify, adapt or create derivative works of the Products, (v) Company will be using a preliminary version of the Products and Leader reserves the right at any time to alter the features, specifications, capabilities, manufacturing release dates, and general availability of the Products; (vi) Company will not rent, lease, loan, resell, transfer, or sublicense the Products (including but not limited to offering the functionality of the Products on a time sharing basis) (vii) use of the Products may result in unexpected results, loss of or damage to data, project delays or other unpredictable damage or loss to Company, and (viii) Company will use the Product only in a secured location at the Site, and prohibit remote access to the Product central servers (over LAN or WAN access or otherwise), and shall restrict use of the Product to those employees of Company with a need to know and use the Product as set forth herein.

2.3 Limited Rights. Company's rights in or to the Products are limited to those expressly granted in this Section 2. Leader reserves all rights and licenses in and to the Products not expressly granted to Company under this Agreement.

**Proprietary & Confidential, Rev. 02-28-03**

© 2003, January 23, 2003, Leader Technologies Incorporated, Patents Pending, All Rights Reserved.

*Draft*3. OWNERSHIP.

Leader and/or its licensors owns all worldwide right, title and interest in and to the Products, including all worldwide Intellectual Property Rights therein. Company will not delete or in any manner alter the copyright, trademark, patent and other proprietary rights notices appearing in or on the Products as delivered to Company. Company will reproduce such notices in and on all copies it makes of the Products in any form, including but not limited to print, screen captures, and digital files.

4. SUPPORT, FEEDBACK.

Leader will have no obligation to provide Company with any maintenance and support services for the Products except as otherwise specified by separate agreement. At the end of the term of this Agreement, Company shall deliver to Leader a final written report summarizing Company's evaluation of the Products ("Product Evaluation"). Leader shall be free to use the Product Evaluation and any other feedback on the Products, including without limitation incorporating any of Company's suggestions into Leader products, or for purposes of advertising, without obligation or payment to Company. All such feedback and the Product Evaluations are and shall be the sole and exclusive property of Leader and Company hereby assigns to Leader all of its rights, title and interest in and to such feedback and Product Evaluations including any Intellectual Property Rights therein.

5. WARRANTY DISCLAIMER.

Leader does not warrant (i) that the Products will meet Company's requirements, (ii) that the Products will operate in the combinations that Company may select, (iii) that the Products will serve the purposes intended by Company, or (iv) that the operation of the Products will be error free or uninterrupted or that all Product errors will be corrected. THE PRODUCTS ARE PROVIDED TO COMPANY "AS IS" AND WITHOUT WARRANTY OF ANY KIND. LEADER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING, OR USAGE OF TRADE.

6. LIMITATION OF LIABILITY.

IN NO EVENT WILL LEADER BE LIABLE TO COMPANY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, BUSINESS, REVENUE OR PROFITS, BUSINESS INTERRUPTION, LOSS OF SUBSTITUTE PRODUCTS OR SERVICES OR OTHER ECONOMIC LOSS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF LEADER'S PRODUCTS OR SERVICES, WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT LEADER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

7. TERM AND TERMINATION.

7.1 Term. This Agreement will begin on the Effective Date and will remain in effect for a period of three (3) months thereafter unless sooner terminated as provided below.

7.2 Early Termination. Each party will have the right to terminate this Agreement, with or without cause, upon thirty (30) days' written notice to the other party. Leader may terminate this Agreement immediately upon written notice if Company exceeds the scope of the license granted herein, violates Leader's Intellectual Property Rights, or breaches its confidentiality obligations under this Agreement.

***Draft***

7.3 Effect of Termination. Upon any termination of this Agreement the rights and licenses granted under this Agreement shall automatically terminate and Company will promptly return to Leader (or, at Leader's request, destroy) the applicable Products and all copies and portions thereof and all other Confidential Information which does not relate to portions of this Agreement still in effect, in all forms and types of media, and certify in writing to Leader that Company has complied with the foregoing.

8.4 Nonexclusive Remedy. The exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

8.5 Survival. The rights and obligations of the parties contained in Sections 1, 3, 5, 6, 7, 8.3, 8.4, 8.5 and 9 will survive the termination of this Agreement.

## 9. GENERAL.

9.1 Assignment. Company may not assign this Agreement, in whole or in part, without Leader's prior written consent. Any attempt to assign this Agreement without such consent is null and void.

9.2 Governing Law. This Agreement will be governed by Ohio law excluding its conflicts of law principles, and excluding the United Nations Convention on Contracts for the International Sale of Goods.

9.3 Severability. If for any reason any provision of this Agreement is found to be invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

9.4 Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

9.5 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

9.6 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

9.7 Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9.8 Export Control. Company agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to ensure that neither the Products, nor any direct product thereof are (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) are intended to be used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

9.9 Entire Agreement. This Agreement constitutes the complete understanding and agreement between the parties regarding Leader product beta licensing and supercedes all prior or contemporaneous agreements or understandings, written or oral, relating to the subject matter herein. Any waiver, modifications or amendment of any provisions of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

**Proprietary & Confidential, Rev. 02-28-03**

© 2003, January 23, 2003, Leader Technologies Incorporated, Patents Pending, All Rights Reserved.

***Draft***

**Limited Brands, Inc. – Leader Beta License Agreement, Page 9 of 9**

9.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.11 No Third Party Beneficiaries. Leader and Company agree that there shall be no third party beneficiaries to this Agreement.

9.12 Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Confirmed and agreed to by:

**LIMITED**

**LEADER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Michael T. McKibben

Title: Chairman & CEO

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Date

**Proprietary & Confidential, Rev. 02-28-03**

© 2003, January 23, 2003, Leader Technologies Incorporated, Patents Pending, All Rights Reserved.



# **EXHIBIT 6**

☐ Keep me logged in

[Forgot your password?](#)

Email

Password

## Help Center

Search

Using Facebook

Help Discussions

Getting Started

Safety

### Photos > Photos: Creating and uploading [Hide All](#)

#### How do I add photos and create an album?

To create an album and upload photos, take the following steps:

1. Go to your profile.
2. Click the Photos tab.
3. Click the "Create a Photo Album" button.
4. Follow the on-screen directions. If you have not yet done so, you may be prompted to first install the Facebook Plug In, which allows easy uploading of your photos. Please click "Install" and "Allow" to any prompts that appear while the application is uploading. If you are having any trouble installing or using the photo upload application, try the simple version located at the bottom of the "Add More Photos" tab.

For photos to appear under the "View Photos of" profile link, you will need to be tagged in the photos. To tag yourself in a photo that you have uploaded, just go to the photo and click the "Tag This Photo" link beneath it, then select "me."

<http://www.facebook.com/help/?faq=12548>

#### How do I add or change a profile picture?

You can add or change a profile picture in any of the following ways:

- To set a photo that you or a friend has already uploaded to Facebook as your profile picture, select "Make Profile Picture" at the bottom right when you are viewing the photo.
- To upload a picture that you have saved on your computer, move your mouse over your profile picture and click the pencil icon. Select "Upload a picture" from the drop-down menu and follow the on-screen directions.
- To take a new profile picture using your webcam, move your mouse over your profile picture and click the pencil icon. Select "Take a picture" from the drop-down menu and follow the on-screen directions. If you choose to take a picture using your webcam, you may first have to allow your Flash player to access your webcam.

You can edit the thumbnail version of your profile picture at any time by moving your mouse over your profile picture, clicking the pencil icon, and selecting "Edit Thumbnail." If you wish, you can also remove your profile picture by moving your mouse over your profile picture, clicking the pencil icon, and selecting "Remove your Picture."

If you are having trouble adding or changing your profile picture, please note that you cannot upload a photo if it is more than three times as tall as it is wide. If you are still experiencing this problem, please report the issue [here](#).

<http://www.facebook.com/help/?faq=13568>

#### I'm being prompted to install the Facebook Plug-In when I upload photos. What is this?

The Facebook Plug-in is a free browser extension that was built by Facebook and designed to improve your experience on the site. For example, you can use the Facebook Plug-In to speed up and simplify the photo upload process.

To install the Facebook Plug-In on your computer, simply click "Install" when you see the dialogue box prompt. Installation should not take longer than two minutes.

When the installation is complete, you'll be able to use the Facebook Plug-In to upload your photos. The top half of the box allows you to select folders where you upload photos from; the bottom half of the box is where you can choose which photos you'd like to upload. Click the "Use Selected Photos" button when you're ready to upload.

<http://www.facebook.com/help/?faq=16480>

#### How do I install the Facebook Plug-In?

To install the Facebook Plug-In on your computer, simply click "Install" when you see the dialogue box prompt. The box will appear anytime you do something on the site that requires the plug-in: for example, when you are adding photos to the site. Installation should not take longer than two minutes.

<http://www.facebook.com/help/?faq=16481>

### Community Help

To get more information about **Photos**: **Creating and uploading**, visit the [Community Help Center](#).

### Available Languages

This page is available in the following languages:

العربية  
Čeština  
Dansk  
Deutsch  
English (US)  
Español (España)  
Español  
Suomi  
Français (France)  
עברית  
Italiano  
日本語  
한국어  
Norsk (bokmål)  
Nederlands  
Polski  
Português (Brasil)  
Português (Portugal)  
Pycckий  
Türkçe

Plaintiff's Trial Exhibit  
**PTX-886**

Case No. 08-CV-00862

#### How do I uninstall the Facebook Plug-In?

To uninstall the Facebook Plug-in, take the following steps:

##### Windows

1. Select "Control Panel" from the Start menu.
2. Click "Add or Remove Programs."
3. Find "Facebook Plug-In" in the list and follow the on-screen instructions to remove the program.

##### Mac

1. Go into your Home directory.
2. Select "Library."
3. Select "Internet Plug-Ins."
4. Delete all files that begin with "fbplugin".

##### Linux

1. Go to the following path: ~/.mozilla/plugins/
2. Delete all files beginning with "npfbbook".

<http://www.facebook.com/help/?tag=16482>

#### How do I share photos or share an album with someone?

You can share a Facebook photo with any of your friends on Facebook by clicking on the "Share" link located under a photo or photo album. Please note that in order to send a photo to a friend in a Facebook message, the photo needs to exist either in a Facebook album or elsewhere on the internet. If it exists elsewhere on the internet, copy the URL (web address) of the photo and paste it into your message to that person, and a preview of the photo will appear. If the photo does not exist on the internet, upload the photo to one of your Facebook albums. Then, click the "Share" link below the photo to send a link and preview of the photo to your friend. For instructions on how to upload, please see the answer above.

Identify the people in your photos by tagging the images. To do this, follow the steps below:

1. Go to the Photos page and select "My Photos."
2. Click on the "Edit Album" link of the album that you want to tag.
3. Click on a person's face in the photo and then select their name in the box that pops up. If their name is not in the box, you can type it in the text field.
4. Repeat this process for everyone in the photo that you would like to tag. If you need to tag yourself, select "me."
5. After you have finished tagging your photos, click "Save Changes" at the bottom of the page.

Please note that when you tag a friend in a photo, it will be accessible from the "View Photos of" link beneath their profile picture.

You can also tag someone else's photos while browsing them. To do this, click on "Tag This Photo" from the actions listed under the photo.

<http://www.facebook.com/help/?tag=13406>

#### How does tagging work? How do I remove a tag?

You can identify people in your photos by tagging the images.

To tag your photos, please follow the steps below:

1. Go to the Photos page and select "My Photos."
2. Click the "Edit Album" link of the album that you want to tag.
3. Click on a person's face in the photo and then select their name in the box that pops up. If their name is not in the box, you can type it in the text field. If you need to tag yourself, select "me."
4. Repeat this process for everyone in the photo that you would like to tag.
5. Click "Save Changes" when you are done.

Please note that when you tag a friend in a photo, it will be accessible from the "View Photos of" link beneath their profile picture. You can also tag someone else's photos while browsing them. To do this, click on "Tag This Photo" from the actions listed under the photo.

To remove the tag from a photo that someone else has uploaded and tagged you in, simply view the photo, and then choose "remove tag" at the bottom next to your name. The photo will no longer be linked to your profile. Please note that if you tag a user in a photo that you did not upload, you cannot remove or edit the tag. Only the owner of the photo and the tagged user will be able to do so.



Please note that you can set your notifications so that you always know when someone tags you or one of your photos. If you wish to remove a tag made on a photo that you uploaded, please select the "remove tag" link when viewing the photo.  
<http://www.facebook.com/help/?faq=13407>

#### What does "Post a Photo" on the Wall mean?

If you'd like to add single images with comments to your own Wall or a friend's Wall, you can select the "Post a Photo" option in the Publisher box. Photos you upload to your own Wall with this method will appear in the "Wall Photos" album in your My Photos section and in your Photos tab. Photos you upload on your friends' Walls with this method will not be placed in an album.  
<http://www.facebook.com/help/?faq=13170>

#### How can I post a photo to my Wall?

To post a photo on your own Wall, follow the steps below:

1. Click "Write something..." and select the "Photo" link when it appears.
2. Select "Upload a Photo."
3. Click the "Browse" button and select an image to upload.
4. Add an optional comment.
5. Click the "Share" button.

<http://www.facebook.com/help/?faq=14359>

#### How can I post a photo to my friend's Wall?

To post a photo on a friend's Wall, follow the steps below:

1. Click "Write something..." and select the "Photo" link when it appears.
2. Select "Upload a Photo."
3. Click the "Browse" button and select an image to upload.
4. Add an optional comment.
5. Click the "Share" button.

<http://www.facebook.com/help/?faq=14361>

#### How many photos can I upload?

You can upload 200 photos per album and create as many albums as you want.

You can upload 100 photos into the Mobile Uploads album. If you add more than 100, a second album is automatically created.

<http://www.facebook.com/help/?faq=13064>

#### How do I add an application box, and what's the Boxes tab?

The Boxes tab serves as a home for your applications.

If an application supports profile boxes, you can choose to add it to your profile by editing the application's settings. To add a box, follow the steps below:

1. Click the "Applications" in the bottom left corner of any page.
2. Select the "Edit" link.
3. Click the "Edit" link to the right of any application.
4. Select the "Profile" tab of the window that appears.
5. Click the "add" link next to "Box."

<http://www.facebook.com/help/?faq=13168>

#### I'm having trouble uploading photos. I can't upload any photos using the Advanced Uploader.

Please make sure you are using an unedited version of the image. Editing the photo using third party software may cause it to upload incorrectly or fail to upload entirely.

Please also make sure that the length or width of the photo you are uploading is not over three times longer than the other dimension.

Please note that we only support the uploading of .jpg, .gif, .bmp, and .png files.

The maximum file size is 15 MB.

Please make sure that you have the latest version of your browser installed and have also updated to the latest version of [Java](#). If you continue to experience problems, please report this issue [here](#).

<http://www.facebook.com/help/?faq=13265>

#### How do I edit the privacy settings for my photo albums?

To edit your album privacy, follow the steps below:

1. Go to the photo album.
2. Click the "Edit Photos" link at the top of the screen.
3. Select the Edit Info tab.
4. Update your album privacy.

Please also take note that if the photo resides in an album you do not own, then the owner of the album will need to adjust the album privacy. This may affect the visibility of photos in "View More Photos of Me" under your profile picture.

Note that you can also access the photo album privacy settings by going to your Privacy Settings page, clicking "Profile", and then clicking "Edit Photo Albums Privacy Settings" in the section titled "Photos tagged of you."

<http://www.facebook.com/help/?faq=13268>

#### My photo albums don't appear on my Wall after being uploaded.

To adjust the Wall permissions for the Photos application and allow or prevent it from publishing stories on your Wall, please follow these steps:

1. Select "Application Settings" from the Settings drop-down menu at the top right of any page.
2. Click "Edit Settings" to the right of the Photos application.
3. In the Edit Photo Settings box, select the Wall tab.
4. Change the setting to allow or restrict the application from publishing stories.

<http://www.facebook.com/help/?faq=14492>

#### I cannot add any more photos to an album.

The "Add More Photos" link will disappear from an album when you have added 200 photos to it. Please create a new album for more photos, or move photos in the current album to another to allow photos to be added to the existing album.

<http://www.facebook.com/help/?faq=13961>

#### I can't find my Photos application.

To access the Photos application if you do not see it in the Applications menu, type "Photos" into the search box at the top of the page and follow the link that appears. While using the application, you will see the option to bookmark it in the bar at the bottom of the page. You may adjust the order of your bookmarks at any time by dragging them within the Applications menu.

You can also edit the settings for an application at any time by selecting "Application Settings" from the Settings drop-down menu at the top of the page.

<http://www.facebook.com/help/?faq=13266>

#### My question is not listed above.

Find questions and answers from other users [here](#).

<http://www.facebook.com/help/?faq=12572>

# **EXHIBIT 7**





Chat (0)

new word with a space before it.

2. Directly after the "@" symbol, type any part of the name you would like to tag. A new drop-down menu will appear with all matching entries. You can tag friends, Pages, groups, events and applications.
3. Click the name you would like to tag. It will appear as a blue link in your post. You can tag multiple different names in the same post.

People who can see your post will be able to click through to view the profile, Page, group or event you tag, but only if the existing privacy settings permit this.

Tagging allows you to more actively mention your friends and other things you are connected to on Facebook. It also lets you direct a post at specific people while still keeping the conversation open. Friends you tag will receive a notification and Wall story that you have tagged them, and also when someone else comments on a post they are tagged in.

<http://www.facebook.com/help/?faq=15925>

#### What can I tag in a post?

You can tag the following things in a post:

- Your confirmed friends
  - Pages you are a fan of
  - Events you are attending
  - Your groups
  - Applications you've used
- To tag any of these things, enter the "@" symbol followed by the name.

Groups will show a group icon next to their name in the drop-down menu, and events will show a calendar icon. Pages will show the Page photo, and profiles will show the profile photo.

When you tag an application, the link in your post will lead to the application's Page. You can only tag applications that you have used.

<http://www.facebook.com/help/?faq=15927>

#### Who can tag me? Can I exclude someone from tagging me?

Only your confirmed friends can tag you in their posts. If you have blocked someone or removed them as a friend, they will not be able to tag you. If you have blocked someone, and then a mutual friend tags you in their post, the person you blocked will not be able to view your profile by clicking on your name.

<http://www.facebook.com/help/?faq=15928>

#### My question is not listed above.

Find questions and answers from users in the "Questions and Answers from Users" section [here](#).

<http://www.facebook.com/help/?faq=14879>

New privacy controls for the Publisher

Have a suggestion about tagging in posts? Tell us about it.

How do I update my status?

How to use the Wall feature



# **EXHIBIT 8**

facebook

☐ Keep me logged in[Forgot your password?](#)

Email

Password

This agreement was written in English (US). Please note that Section 16 contains certain changes to the general terms for users outside the United States.

Date of Last Revision: December 21, 2009

## Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities ("Statement") derives from the Facebook Principles, and governs our relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement.

### 1. Privacy

Your privacy is very important to us. We designed our Privacy Policy to make important disclosures about how you can use Facebook to share with others and how we collect and can use your content and information. We encourage you to read the Privacy Policy, and to use it to help make informed decisions.

### 2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:

1. For content that is covered by intellectual property rights, like photos and videos ("IP content"), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook ("IP License"). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.
2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).
3. When you add an application and use Platform, your content and information is shared with the application. We require applications to respect your privacy settings, but your agreement with that application will control how the application can use the content and information you share. (To learn more about Platform, read our About Platform page.)
4. When you publish content or information using the "everyone" setting, it means that everyone, including people off of Facebook, will have access to that information and we may not have control over what they do with it.
5. We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them).

### 3. Safety

We do our best to keep Facebook safe, but we cannot guarantee it. We need your help to do that, which includes the following commitments:

1. You will not send or otherwise post unauthorized commercial communications (such as spam) on Facebook.
2. You will not collect users' content or information, or otherwise access Facebook, using automated means (such as harvesting bots, robots, spiders, or scrapers) without our permission.
3. You will not engage in unlawful multi-level marketing, such as a pyramid scheme, on Facebook.
4. You will not upload viruses or other malicious code.
5. You will not solicit login information or access an account belonging to someone else.
6. You will not bully, intimidate, or harass any user.
7. You will not post content that is hateful, threatening, pornographic, or that contains nudity or graphic or gratuitous violence.
8. You will not develop or operate a third party application containing, or advertise or otherwise market alcohol-related or other mature content without appropriate age-based restrictions.
9. You will not offer any contest, giveaway, or sweepstakes ("promotion") on Facebook without our prior written consent. If we consent, you take full responsibility for the promotion, and will follow our Promotions Guidelines and all applicable laws.
10. You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory.
11. You will not do anything that could disable, overburden, or impair the proper working of Facebook, such as a denial of service attack.
12. You will not facilitate or encourage any violations of this Statement.

### 4. Registration and Account Security

Facebook users provide their real names and information, and we need your help to keep it that way. Here are some commitments you make to us relating to registering and maintaining the security of your account:

1. You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission.
2. You will not use your personal profile for your own commercial gain (such as selling your status update to an advertiser).
3. You will not use Facebook if you are under 13.
4. You will not use Facebook if you are a convicted sex offender.
5. You will keep your contact information accurate and up-to-date.
6. You will not share your password, let anyone else access your account, or do anything else that might jeopardize the security of your account.
7. You will not transfer your account to anyone without first getting our written permission.
8. If you select a username for your account we reserve the right to remove or reclaim it if we believe appropriate (such as when a trademark owner complains about a username that does not closely relate to a user's actual name).

### 5. Protecting Other People's Rights

We respect other people's rights, and expect you to do the same.

1. You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law.
2. We can remove any content or information you post on Facebook if we believe that it violates this Statement.
3. We will provide you with tools to help you protect your intellectual property rights. To learn more, visit our How to Report Claims of Intellectual Property Infringement page.
4. If we remove your content for infringing someone else's copyright, and you believe we removed it by mistake, we will provide you with an opportunity to appeal.
5. If you repeatedly infringe other people's intellectual property rights, we will disable your account when appropriate.
6. You will not use our copyrights or trademarks (including Facebook, the Facebook and F Logos, FB, Face, Poke, Wall and 32665), or any confusingly similar marks, without our written permission.
7. If you collect information from users, you will: obtain their consent, make it clear you (and not Facebook) are the one collecting their information, and post a privacy policy explaining what information you collect and how you will use it.
8. You will not post anyone's identification documents or sensitive financial information on Facebook.
9. You will not send email invitations to non-users without their consent.

### 6. Mobile

1. We currently provide our mobile services for free, but please be aware that your carrier's normal rates and fees, such as text messaging fees, will still apply.
2. In the event you change or deactivate your mobile telephone number, you will update your account information on Facebook within 48 hours to ensure that your messages are not sent to the person who acquires your old number.

### 7. Payments

Plaintiff's Trial Exhibit

PTX-1000

Case No. 08-CV-00862

LTI 157155



If you make a payment on Facebook or use Facebook Credits, you agree to our Payments Terms.

## 8. Special Provisions Applicable to Share Links

If you include our Share Link button on your website, the following additional terms apply to you:

1. We give you permission to use Facebook's Share Link button so that users can post links or content from your website on Facebook.
2. You give us permission to use such links and content on Facebook.
3. You will not place a Share Link button on any page containing content that would violate this Statement if posted on Facebook.

## 9. Special Provisions Applicable to Developers/Operators of Applications and Websites

If you are a developer or operator of a Platform application or website, the following additional terms apply to you:

1. You are responsible for your application and its content and all uses you make of Platform. This includes ensuring your application or use of Platform meets our Developer Principles and Policies and our Advertising Guidelines.
2. Your access to and use of data you receive from Facebook, will be limited as follows:
  1. You will only request data you need to operate your application.
  2. You will only use the data you receive for your application, and will only use it in connection with Facebook.
  3. You will have a privacy policy or otherwise make it clear to users what user data you are going to use and how you will use, display, or share that data.
  4. You will not use, display, or share a user's data in a manner inconsistent with the user's privacy settings.
  5. You will delete all data you received from us relating to any user who deauthorizes, disconnects, or otherwise disassociates from your application unless otherwise permitted in our Developer Principles and Policies.
  6. You will delete all data you received from Facebook if we disable your application or ask you to do so.
  7. We can require you to update any data you have received from us.
  8. We can limit your access to data.
  9. You will not transfer the data you receive from us (or enable that data to be transferred) without our prior consent.
3. You will not give us information that you independently collect from a user or a user's content without that user's consent.
4. You will make it easy for users to remove or disconnect from your application.
5. You will make it easy for users to contact you. We can also share your email address with users.
6. You will provide customer support for your application.
7. You will not show third party ads or web search boxes on Facebook user profiles or Pages.
8. We give you all rights necessary to use the code, APIs (along with all data received), or tools we provide to you, but only in connection with your application.
9. You will not sell, transfer, or sublicense our code, APIs, or tools to anyone.
10. You will not misrepresent your relationship with Facebook to others.
11. You may use the logos we make available to developers or issue a press release or other public statement so long as you follow our Developer Principles and Policies.
12. We can issue a press release describing our relationship with you.
13. You will comply with all applicable laws. In particular you will (if applicable):
  1. have a policy for removing infringing content and terminating repeat infringers that complies with the Digital Millennium Copyright Act.
  2. comply with the Video Privacy Protection Act ("VPPA"), and will obtain any opt-in consent necessary from users so that user data subject to the VPPA may be shared on Facebook. You represent that any disclosure to us will not be incidental to the ordinary course of your business.
14. We do not guarantee that Platform will always be free.
15. You give us all rights necessary to enable your application to work with Facebook, including the right to incorporate content you provide to us into streams, profiles, and user action stories.
16. You give us the right to link to or frame your application and place content, including ads, around your application.
17. We can analyze your application, content, and data for any purpose, including commercial (such as for targeting the delivery of advertisements and indexing content for search).
18. To ensure your application is safe for users, we can audit it.
19. We can create applications that offer similar features and services to, or otherwise compete with, your application.

## 10. About Advertisements on Facebook

Our goal is to deliver ads that are not only valuable to advertisers, but also valuable to you. In order to do that, you agree to the following:

1. You can use your privacy settings to limit how your name and profile picture may be associated with commercial or sponsored content served by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.
2. We do not give your content or information to advertisers without your consent.
3. You understand that we may not always identify paid services and communications as such.

## 11. Special Provisions Applicable to Advertisers

You can target your specific audience by buying ads on Facebook or our publisher network. The following additional terms apply to you if you place an order through our online advertising portal ("Order"):

1. When you place an Order, you will tell us the type of advertising you want to buy, the amount you want to spend, and your bid. If we accept your Order, we will deliver your ads as inventory becomes available.
2. You will pay for your Orders in accordance with our Payments Terms. The amount you owe will be calculated based on our tracking mechanisms.
3. Your ads will comply with our Advertising Guidelines.
4. We will determine the size, placement, and positioning of your ads.
5. We do not guarantee the activity that your ads will receive, such as the number of clicks you will get.
6. We cannot control how people interact with your ads, and are not responsible for click fraud or other improper actions that affect the cost of running ads. We do, however, have systems to detect and filter certain suspicious activity, learn more here.
7. You can cancel your Order at any time through our online portal, but it may take up to 24 hours before the ad stops running.
8. Our license to run your ad will end when we have completed your Order. You understand, however, that if users have interacted with your ads, your ads may remain until the users delete it.
9. We can use your ads and related content and information for marketing or promotional purposes.
10. You will not issue any press release or make public statements about your relationship with Facebook without written permission.
11. We may reject or remove any ad for any reason.

If you are placing ads on someone else's behalf, we need to make sure you have permission to place those ads, including the following:

12. You warrant that you have the legal authority to bind the advertiser to this Statement.
13. You agree that if the advertiser you represent violates this Statement, we may hold you responsible for that violation.

## 12. Special Provisions Applicable to Pages

1. Pages are special profiles that may only be used to promote a business or other commercial, political, or charitable organization or endeavor (including non-profit organizations, political campaigns, bands, and celebrities).
2. You may only administer a Facebook Page if you are an authorized representative of the subject of the Page.
3. Pages can only post content and information under the "everyone" setting.
4. When you publish content or information to your Page we have no obligation to distribute your content or information to users.
5. If you use a Fan Box widget off of our site to promote your Page, others will be able to copy and place the widget elsewhere.
6. You may not place a Fan Box widget in an advertisement.
7. If you collect user information on your Page, Section 9 of this Statement also applies to you.
8. If you display advertising on your Page, Section 11 of this Statement also applies to you.
9. You may not establish terms beyond those set forth in this Statement to govern the posting of content by users on a Page you administer, except you may disclose the types of content you will remove from your Page and grounds for which you may ban a user from accessing the Page.
10. You will restrict access to your Page in order to comply with all applicable laws. For example, if your Page includes content not suitable for minors, you will use your Page to block minors from accessing your Page.

LTI 157156



**13. Amendments**

1. We can change this Statement if we provide you notice (by posting the change on the Facebook Site Governance Page) and an opportunity to comment. To get notice of any future changes to this Statement, visit our Facebook Site Governance Page and become a fan.
2. For changes to sections 7, 8, 9, and 11 (sections relating to payments, application developers, website operators, and advertisers), we will give you a minimum of three days notice. For all other changes we will give you a minimum of seven days notice. All such comments must be made on the Facebook Site Governance Page.
3. If more than 7,000 users comment on the proposed change, we will also give you the opportunity to participate in a vote in which you will be provided alternatives. The vote shall be binding on us if more than 30% of all active registered users as of the date of the notice vote.
4. We can make changes for legal or administrative reasons upon notice without opportunity to comment.

**14. Termination**

If you violate the letter or spirit of this Statement, or otherwise create possible legal exposure for us, we can stop providing all or part of Facebook to you. We will notify you by email or at the next time you attempt to access your account. You may also delete your account or disable your application at any time. In all such cases, this Statement shall terminate, but the following provisions will still apply: 2.2, 2.4, 3-5, 8.2, 9.1-9.3, 9.9, 9.10, 9.13, 9.15.1, 9.18, 10.3, 11.2, 11.5, 11.6, 11.9, 11.12, 11.13, and 14-18.

**15. Disputes**

1. You will resolve any claim, cause of action or dispute ("claim") you have with us arising out of or relating to this Statement or Facebook exclusively in a state or federal court located in Santa Clara County. The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions. You agree to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
2. If anyone brings a claim against us related to your actions, content or information on Facebook, you will indemnify and hold us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.
3. WE TRY TO KEEP FACEBOOK UP, BUG-FREE, AND SAFE, BUT YOU USE IT AT YOUR OWN RISK. WE ARE PROVIDING FACEBOOK "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE DO NOT GUARANTEE THAT FACEBOOK WILL BE SAFE OR SECURE. FACEBOOK IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." WE WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS STATEMENT OR FACEBOOK, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY ARISING OUT OF THIS STATEMENT OR FACEBOOK WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FACEBOOK'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

**16. Special Provisions Applicable to Users Outside the United States**

We strive to create a global community with consistent standards for everyone, but we also strive to respect local laws. The following provisions apply to users outside the United States:

1. You consent to having your personal data transferred to and processed in the United States.
2. If you are located in a country embargoed by the United States, or are on the U.S. Treasury Department's list of Specially Designated Nationals you will not engage in commercial activities on Facebook (such as advertising or payments) or operate a Platform application or website.
3. Certain specific terms that apply only for German users are available [here](#).

**17. Definitions**

1. By "Facebook" we mean the features and services we make available, including through (a) our website at [www.facebook.com](http://www.facebook.com) and any other Facebook branded or co-branded websites (including sub-domains, international versions, widgets, and mobile versions); (b) our Platform; and (c) other media, software (such as a toolbar), devices, or networks now existing or later developed.
2. By "us," "we" and "our" we mean Facebook, Inc., or if you are outside of the United States, Facebook Ireland Limited.
3. By "Platform" we mean a set of APIs and services that enable applications, developers, operators or services, including Connect and RSS feeds, to retrieve data from Facebook or provide data to us.
4. By "information" we mean facts and other information about you, including actions you take.
5. By "content" we mean anything you post on Facebook that would not be included in the definition of "information."
6. By "data" we mean content and information that third parties can retrieve from Facebook or provide to Facebook through Platform.
7. By "post" we mean post on Facebook or otherwise make available to us (such as by using an application).
8. By "use" we mean use, copy, publicly perform or display, distribute, modify, translate, and create derivative works of.
9. By "active registered user" we mean a user who has logged into Facebook at least once in the previous 30 days.
10. By "application" we mean any application or website (including Connect sites) that uses or accesses Platform, as well as anything else that receives data.

**18. Other**

1. This Statement makes up the entire agreement between the parties regarding Facebook, and supersedes any prior agreements.
2. If any portion of this Statement is found to be unenforceable, the remaining portion will remain in full force and effect.
3. If we fail to enforce any of this Statement, it will not be considered a waiver.
4. Any amendment to or waiver of this Statement must be made in writing and signed by us.
5. You will not transfer any of your rights or obligations under this Statement to anyone else without our consent.
6. All of our rights and obligations under this Statement are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.
7. Nothing in this Statement shall prevent us from complying with the law.
8. This Statement does not confer any third party beneficiary rights.

You may also want to review the following documents:

Privacy Policy: The Privacy Policy is designed to help you understand how we collect and use information.

Payment Terms: These additional terms apply to all payments made on or through Facebook.

About Platform: This page helps you better understand what happens when you add a third-party application or use Facebook Connect, including how they may access and use your data.

Developer Principles and Policies: These guidelines outline the policies that apply to applications, including Connect sites.

Advertising Guidelines: These guidelines outline the policies that apply to advertisements placed on Facebook.

Promotions Guidelines: These guidelines outline the policies that apply if you have obtained written pre-approval from us to offer contests, sweepstakes, and other types of promotions on Facebook.

How to Report Claims of Intellectual Property Infringement

How to Appeal Claims of Copyright Infringement

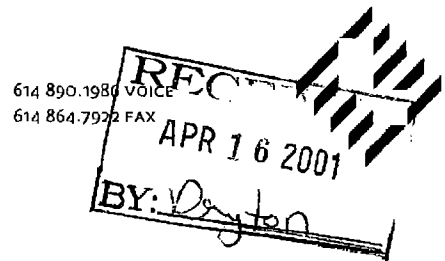
To access the Statement of Rights and Responsibilities in several different languages, please use the following links:

French translation (Français)  
Italian translation (Italiano)  
German translation (Deutsch)  
Spanish translation (Español)

# **EXHIBIT 9**

www.leader.com

Leader.



### Proprietary & Confidentiality Agreement

In connection with your interest in business relationships between you, **Douglas W. Fleser** ( "RECIPIENT" or you) and Leader Technologies LLC, a.k.a. Leader Technologies, Ltd., an Ohio limited liability company ("Leader"), Leader will be furnishing you with certain information which is either non-public, confidential or proprietary in nature. All information ascertained by or furnished to you, your directors, officers, employees, agents or representatives, including without limitation attorneys, accountants, consultants and financial advisors (collectively, "representatives"), by Leader or its representatives, and all analyses, compilations, data, studies or other documents prepared by you or your representatives containing or based in whole or in part on any such furnished information or reflecting your review of, or interest in, Leader is hereinafter referred to as the "Information". In consideration of your being furnished with the Information you agree that:

1. The Information will be kept confidential and will not, without the prior written consent of Leader be disclosed by you or your representatives, in any manner whatsoever, in whole or in part, and will not be used by you or your representatives directly or indirectly for any purpose other than evaluating the business relationship referred to above. Moreover, you agree to transmit the Information only to those representatives who need to know the Information for the purpose of evaluating the business relationship referred to above, who are informed by you of the confidential nature of the Information and who agree to be bound by the terms of this Agreement by executing the attached single document prior to receiving such information. You agree to notify Leader as to the identity of such representatives prior to any dissemination of Information and to obtain Leaders consent to such disclosure due to the highly sensitive market nature of said Information. You will be responsible for any breach of this Agreement by your representatives. You also agree to abide by applicable law with respect to disclosure of personnel records and the right to privacy.
2. Neither party hereto nor its representatives will, without the prior written consent of the other party, disclose to any other person the fact that the Information has been made available, that discussions or negotiations are taking place concerning a possible business relationship involving Leader or any of the terms, conditions or other facts with respect to any such possible business relationship, including the status thereof, except as required by law or by the rules of any recognized stock exchange and then, if circumstances permit, only with prior written notice as soon as possible to such other party. If circumstances make it impossible to give such prior written notice, then any disclosure made shall be no more extensive than is necessary to meet the minimum requirement imposed on the party making such disclosure.
3. The Information, and all copies thereof, except for that portion of the Information which consists of analyses, compilations, data, studies or other documents prepared by you or your representatives will remain the absolute property of Leader and will be returned without retaining any copies thereof to Leader immediately upon Leaders request. That portion of the Information which consists of analyses,

Proprietary &amp; Confidential

Plaintiff's Trial Exhibit

**PTX-1058**

Case No. 08-CV-00862

DOUGLAS W. FLESER  
 Proprietary & Confidentiality Agreement, page 2 of 4

compilations, data, studies or other documents prepared by you will be immediately destroyed at the request of Leader and such destruction will be confirmed to Leader in writing.

4. This Agreement shall be inoperative as to such portions of the Information which (i) are or become generally available to the public other than as a result of an unauthorized disclosure by you or your representatives; (ii) become available to you on a non-confidential basis from any source excluding Leader or its representatives, which source has represented to you (and which you have no reason to disbelieve after due inquiry) is entitled to disclose it; or (iii) was known to you on a non-confidential basis prior to its disclosure to you by Leader or one of its representatives.
5. You understand that Leader has endeavored to include in the Information those materials which are believed to be reliable and relevant for the purpose of your evaluation, but you acknowledge that neither Leader nor any of its representatives makes any representation or warranty as to the accuracy or completeness of the Information. You agree that neither Leader nor any of its representatives shall have any liability to you or to any of your representatives as a result of the use of the Information by you or your representatives, it being understood that only those particular representations and warranties which may be made in any definitive agreements, when, as and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreements, shall have any legal effect.
6. In the event that you or anyone to whom you transmit the Information pursuant to this Agreement are requested or become legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you will provide Leader with prompt written notice so that Leader may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. In the event that such protective order or other remedy is not obtained, or that Leader waives compliance with the provisions of this Agreement, you will furnish only that portion of the Information which is legally required.
7. It is further understood and agreed that you will not directly contact employees of Leader in connection with the Information or a potential business relationship involving Leader without prior authorization of Michael T. McKibben, Senior Manager of Leader. You further agree that if you meet with management as a part of any due diligence visit, then you will not solicit for employment any of Leaders executives or key employees for a period of three years from the date of that visit.
8. It is further understood and agreed that no failure or delay by Leader in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
9. The restrictions imposed hereby shall continue for a period of five years from the date on which you last receive or prepare, as the case may be, any Information.

Proprietary & Confidential

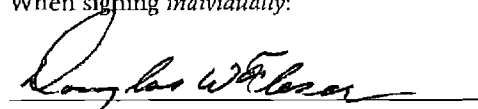
DOUGLAS W. FLESER  
Proprietary & Confidentiality Agreement, page 3 of 4

10. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to agreements made and to be performed within such State.

Please return a signed copy of this Proprietary & Confidentiality Agreement to Leader, c/o Michael T. McKibben, Chairman, CEO & Senior Manager, Spectrum Commerce Center, 921 Eastwind Drive, Westerville, Ohio 43081.

**Confirmed and Agreed to by Douglas W. Fleser**

When signing *individually*:

  
Signature

Douglas W. Fleser  
Print Name

INDIVIDUALLY

4.10.01  
Date

When signing on behalf of your *organization*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
ORGANIZATION Name & Your Title

\_\_\_\_\_  
Date

Leader.

Proprietary & Confidential



www.leader.com

Leader.

10000 Eastwind Drive  
Westerville, Ohio 43081  
Tel: 614.890.1986  
Fax: 614.864.7922

614.890.1986 VOICE  
614.864.7922 FAX



## Agreement of Confidence

**INSTRUCTIONS:** The preceding pages of the Proprietary & Confidentiality Agreement constitute your agreement with Leader. **This page is for your use.** If you would like to disclose confidential Leader information to a third party, you can do so assuming you have first cleared your intent to disclose with Leader and then had them execute this Agreement of Confidence. This agreement binds that third party to your Proprietary & Confidentiality Agreement. The other option is to ask Leader to arrange for that third party to enter into their own Proprietary & Confidentiality Agreement.

I, \_\_\_\_\_ (name of recipient), agree to hold in confidence all Information received from **Douglas W. Fleser** ( "DISCLOSER"), regarding Leader Technologies LLC, aka Leader Technologies, Ltd. ( "Leader") no matter what form the information is in, written, oral or otherwise. I understand that the Information being disclosed to me is to be held inviolate and shall remain secret as any unintentional or intentional dissemination or even discussions could have detrimental and irreparable consequences to the business of Leader and its business opportunities. I further agree to be bound by the Proprietary and Confidentiality Agreement executed by DISCLOSER in favor of Leader.

I further understand that for DISCLOSER to even approach me regarding a business relationship with Leader, Leader has granted its consent to these discussions being fully satisfied that I will abide by the terms of this Agreement of Confidence.

### Confirmed and Agreed to by:

When signing *individually*:

When signing on behalf of your *organization*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
INDIVIDUALLY

\_\_\_\_\_  
ORGANIZATION Name & your Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

*Note to discloser: Please forward this Agreement of Confidence immediately to:*

**Michael T. McKibben, Chairman & CEO**

**Leader Technologies LLC**

921 Eastwind Drive, Suite 118

Westerville, Ohio 43081

(614) 890-1986 V OICE

(614) 864-7922 FAX

mmckibben@leader.com EMAIL

www.leader.com WWW

Proprietary & Confidential

ATTENTION: INFORMATION ATTACHED MAY CONTAIN PRIVACY ACT MATERIAL



FAX Transmission from  
**ASC/HP**  
Information Technology Directorate  
2435 Fifth Street, Bldg 676  
Wright-Patterson AFB OH 45433-7802



Chief Information Office (CIO)  
Major Shared Resource Center (MSRC)  
Simulation and Analysis Facility (SIMAF)

To: <u>Michael T. McKibben</u>	From: <u>Douglas W. Elser</u>
Office: <u>Leader Technologies LLC</u>	Office: <u>ASC/HP</u>
Phone: <u>(614) 890-1986</u>	Phone: <u>(937) 255- (937) 904-5103</u>
FAX: <u>(614) 864-7922</u>	FAX: <u>(937) 255-1787 - DSN 785-1787</u>

REMARKS:

Sent By: \_\_\_\_\_

Date: 4/13/01

Page 1 of 3

Time: 08:05

"DO NOT TRANSMIT CLASSIFIED INFORMATION OVER UNSECURE TELECOMMUNICATION SYSTEMS. OFFICIAL DOD TELECOMMUNICATIONS ARE SUBJECT TO MONITORING. USING DOD TELECOMMUNICATIONS CONSTITUTES CONSENT TO MONITORING." AFI 33-219.16.3.3  
k:cynthia/officeatuff/orma/faxsheet.ppt

www.leader.com

Leader.

614 890.1986 VOICE  
614 864.7922 FAX

## Proprietary & Confidentiality Agreement

In connection with your interest in business relationships between you, **Douglas W. Fleiser** ( "RECIPIENT" or you) and Leader Technologies LLC, a.k.a. Leader Technologies, Ltd., an Ohio limited liability company ("Leader"), Leader will be furnishing you with certain information which is either non-public, confidential or proprietary in nature. All information ascertained by or furnished to you, your directors, officers, employees, agents or representatives, including without limitation attorneys, accountants, consultants and financial advisors (collectively, "representatives"), by Leader or its representatives, and all analyses, compilations, data, studies or other documents prepared by you or your representatives containing or based in whole or in part on any such furnished information or reflecting your review of, or interest in, Leader is hereinafter referred to as the "Information". In consideration of your being furnished with the Information you agree that:

1. The Information will be kept confidential and will not, without the prior written consent of Leader be disclosed by you or your representatives, in any manner whatsoever, in whole or in part, and will not be used by you or your representatives directly or indirectly for any purpose other than evaluating the business relationship referred to above. Moreover, you agree to transmit the Information only to those representatives who need to know the Information for the purpose of evaluating the business relationship referred to above, who are informed by you of the confidential nature of the Information and who agree to be bound by the terms of this Agreement by executing the attached single document prior to receiving such information. You agree to notify Leader as to the identity of such representatives prior to any dissemination of Information and to obtain Leaders consent to such disclosure due to the highly sensitive market nature of said Information. You will be responsible for any breach of this Agreement by your representatives. You also agree to abide by applicable law with respect to disclosure of personnel records and the right to privacy.
2. Neither party hereto nor its representatives will, without the prior written consent of the other party, disclose to any other person the fact that the Information has been made available, that discussions or negotiations are taking place concerning a possible business relationship involving Leader or any of the terms, conditions or other facts with respect to any such possible business relationship, including the status thereof, except as required by law or by the rules of any recognized stock exchange and then, if circumstances permit, only with prior written notice as soon as possible to such other party. If circumstances make it impossible to give such prior written notice, then any disclosure made shall be no more extensive than is necessary to meet the minimum requirement imposed on the party making such disclosure.
3. The Information, and all copies thereof, except for that portion of the Information which consists of analyses, compilations, data, studies or other documents prepared by you or your representatives will remain the absolute property of Leader and will be returned without retaining any copies thereof to Leader immediately upon Leaders request. That portion of the Information which consists of analyses,

Proprietary &amp; Confidential

DOUGLAS W. FLESER  
Proprietary & Confidentiality Agreement, page 2 of 4

compilations, data, studies or other documents prepared by you will be immediately destroyed at the request of Leader and such destruction will be confirmed to Leader in writing.

4. This Agreement shall be inoperative as to such portions of the Information which (i) are or become generally available to the public other than as a result of an unauthorized disclosure by you or your representatives; (ii) become available to you on a non-confidential basis from any source excluding Leader or its representatives, which source has represented to you (and which you have no reason to disbelieve after due inquiry) is entitled to disclose it; or (iii) was known to you on a non-confidential basis prior to its disclosure to you by Leader or one of its representatives.
5. You understand that Leader has endeavored to include in the Information those materials which are believed to be reliable and relevant for the purpose of your evaluation, but you acknowledge that neither Leader nor any of its representatives makes any representation or warranty as to the accuracy or completeness of the Information. You agree that neither Leader nor any of its representatives shall have any liability to you or to any of your representatives as a result of the use of the Information by you or your representatives, it being understood that only those particular representations and warranties which may be made in any definitive agreements, when, as and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreements, shall have any legal effect.
6. In the event that you or anyone to whom you transmit the Information pursuant to this Agreement are requested or become legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you will provide Leader with prompt written notice so that Leader may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the Agreement. In the event that such protective order or other remedy is not obtained, or that Leader waives compliance with the provisions of this Agreement, you will furnish only that portion of the Information which is legally required.
7. It is further understood and agreed that you will not directly contact employees of Leader in connection with the Information or a potential business relationship involving Leader without prior authorization of Michael T. McKibben, Senior Manager of Leader. You further agree that if you meet with management as a part of any due diligence visit, then you will not solicit for employment any of Leaders executives or key employees for a period of three years from the date of that visit.
8. It is further understood and agreed that no failure or delay by Leader in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
9. The restrictions imposed hereby shall continue for a period of five years from the date on which you last receive or prepare, as the case may be, any Information.

Proprietary & Confidential

Leader.

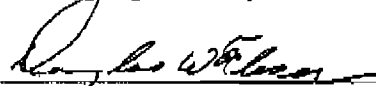
DOUGLAS W. FLESER  
Proprietary & Confidentiality Agreement, page 3 of 4

10. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to agreements made and to be performed within such State.

Please return a signed copy of this Proprietary & Confidentiality Agreement to Leader, c/o Michael T. McKibben, Chairman, CEO & Senior Manager, Spectrum Commerce Center, 921 Eastwind Drive, Westerville, Ohio 43081.

**Confirmed and Agreed to by Douglas W. Fleser**

When signing *individually*:

  
\_\_\_\_\_  
Signature

Douglas W. Fleser  
\_\_\_\_\_  
Print Name

INDIVIDUALLY

4.10.01  
\_\_\_\_\_  
Date

When signing on behalf of your *organization*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
ORGANIZATION Name & Your Title

\_\_\_\_\_  
Date

Leader

Proprietary & Confidential

www.leader.com

Leader.

921 Eastwind Drive  
Suite 118  
Westerville, Ohio 43081  
USA

614 890 1986 VOICE  
614 864.7922 FAX



## Agreement of Confidence

*INSTRUCTIONS: The preceding pages of the Proprietary & Confidentiality Agreement constitute your agreement with Leader. This page is for your use. If you would like to disclose confidential Leader information to a third party, you can do so assuming you have first cleared your intent to disclose with Leader and then had them execute this Agreement of Confidence. This agreement binds that third party to your Proprietary & Confidentiality Agreement. The other option is to ask Leader to arrange for that third party to enter into their own Proprietary & Confidentiality Agreement.*

I, \_\_\_\_\_ (name of recipient), agree to hold in confidence all information received from **Douglas W. Fleiser** ( "DISCLOSER"), regarding Leader Technologies LLC, aka Leader Technologies, Ltd. ("Leader") no matter what form the information is in, written, oral or otherwise. I understand that the information being disclosed to me is to be held inviolate and shall remain secret as any unintentional or intentional dissemination or even discussions could have detrimental and irreparable consequences to the business of Leader and its business opportunities. I further agree to be bound by the Proprietary and Confidentiality Agreement executed by DISCLOSER in favor of Leader.

I further understand that for DISCLOSER to even approach me regarding a business relationship with Leader, Leader has granted its consent to these discussions being fully satisfied that I will abide by the terms of this Agreement of Confidence.

### Confirmed and Agreed to by:

When signing *individually*:

When signing on behalf of your *organization*:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
INDIVIDUALLY

\_\_\_\_\_  
ORGANIZATION Name & your Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

*Note to discloser: Please forward this Agreement of Confidence immediately to:*

**Michael T. McKibben, Chairman & CEO**

**Leader Technologies LLC**

921 Eastwind Drive, Suite 118

Westerville, Ohio 43081

(614) 890-1986 VOICE

(614) 864-7922 FAX

mmckibben@leader.com EMAIL

www.leader.com WWW

Proprietary & Confidential

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I, Philip A. Rovner, hereby certify that on August 25, 2010, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

**BY CM-ECF AND E-MAIL**

Thomas P. Preston, Esq.  
Steven L. Caponi, Esq.  
Blank Rome LLP  
1201 Market Street  
Wilmington, DE 19801  
[Preston-T@blankrome.com](mailto:Preston-T@blankrome.com)  
[caponi@blankrome.com](mailto:caponi@blankrome.com)

I hereby certify that on August 25, 2010 I have sent by E-mail the foregoing document to the following non-registered participants:

Heidi L. Keefe, Esq.  
Mark R. Weinstein, Esq.  
Jeffrey Norberg, Esq.  
Melissa H. Keyes, Esq.  
Cooley LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
[hkeefe@cooley.com](mailto:hkeefe@cooley.com)  
[mweinstein@cooley.com](mailto:mweinstein@cooley.com)  
[jnorberg@cooley.com](mailto:jnorberg@cooley.com)  
[mkeyes@cooley.com](mailto:mkeyes@cooley.com)

/s/ Philip A. Rovner  
Philip A. Rovner (#3215)  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P. O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)