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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

YIELD DYNAMICS, INC., Plaintiff and Appellant, v. TEA SYSTEMS CORPORATION, et al., Defendants and Respondents.	H029604 (Santa Clara County Super. Ct. No. CV000690) ORDER MODIFYING OPINION AND DENYING REHEARING NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on August 23, 2007, be modified as follows:

1. On page 17, line 15, the word "in" is to be inserted between the words "procedures" and "question" so that the sentence reads:

Similarly, Yield seizes upon the court's statement that the procedures in question "did not perform any of the applications which make these programs commercially attractive."

2. On page 19, line 27, the word "can" is to be inserted between the words "it" and "form" so that the sentence reads:

The factfinder is entitled to expect evidence from which it can form some solid sense of *how* useful the information is, e.g., *how much* time, money, or labor it would save, or at least that these savings would be "more than trivial."

3. On page 27, line 15, the word "he" is changed to "the" so the sentence reads:

The rationale for including the second category of code was obscure at best and opaque at worst, and the inclusion of the third category—code that "used" the eight assertedly purloined routines—was not self-evidently sound.

4. On page 31, lines 4, after the sentence ending "time will be inferred" add as footnote 19 the following footnote, which will require renumbering of all subsequent footnotes:

[19] On petition for rehearing, Yield asserts that the asset purchase agreement did specify a time for delivery of the three files at issue. This assertion relies on contract language, elided from Yield's brief, which it contends required delivery of the files on the agreement's "Effective Date," which was May 28, 1999, about a year and half before defendant delivered the files. What the cited provision actually states is "effective as of the close of business on the Effective Date," Zavecz would "sell, transfer, convey, assign and deliver . . . all of [his] *right, title and interest* in and to all [his] assets . . . which [he] was using or the use of which was necessary or related to . . . the operation of the Business . . . including but not limited to those listed below . . . ." This is not a clear undertaking to deliver physical possession of a particular file or block of code. That the failure to do so was not viewed as an immediate breach may be inferred from the passage of a year and a half before defendant demanded delivery. Assuming he was obligated to deliver physical possession of particular property upon demand, he had a reasonable time within which to do so.

5. On page 32, line 20, the word "to" is inserted between the words "obligated" and "assign" so that the sentence reads:

Yield argues that Zavecz breached the "Inventions Agreement," under which he was obligated to assign to Yield any inventions made while he was employed by Yield.

6. On page 34, first line the numbers "11323" are changed to "1132" so the line reads:

lacked the intention to perform their undertakings. (See *id*. at p. 1132 ["A declaration of

There is no change in the judgment.

Appellant's petition for rehearing is denied.

Dated: _____

RUSHING, P.J.

I CONCUR:

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ELIA, J.