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.)
)   **PUBLIC VERSION**
FACEBOOK, INC.,)
a Delaware corporation,)
)
     Defendant-Counterclaimant.)
)

PLAINTIFF LEADER TECHNOLOGIES, INC.'S COUNTER-STATEMENT OF DISPUTED MATERIAL FACTS TO FACEBOOK'S MOTION FOR SUMMARY JUDGMENT OF INVALIDITY BASED ON ANTICIPATION UNDER 35 U.S.C. § 102(b) [MOTION NO. 6 OF 6]

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I. INTRODUCTION

This Counterstatement is made pursuant to the Court's standing Memorandum Order that allows a party opposing a Rule 56 summary judgment motion to file a Counterstatement certifying that genuine issues of material fact exist and setting out the material facts in dispute. This Counterstatement is filed in lieu of an answering brief in response to defendant Facebook, Inc.'s ("Facebook") motion for summary judgment of invalidity of claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32 of U.S. Patent No .7,139,761 (the "761 Patent") under 35 U.S.C. § 102(b) because of U.S. Patent No. 6,236,994 ("Swartz") (D.I. 408) ("Motion"), and supporting brief (D.I. 410) ("Brief"). Accordingly, Leader Technologies, Inc. ("Leader") certifies that there are genuine issues of material fact in dispute that preclude granting Facebook's Motion under the standards set forth in Federal Rule of Civil Procedure 56. Leader reserves the right to later dispute any and all material facts identified by Facebook that are not specifically addressed herein.

In Facebook's Statement certifying that no genuine issues of material facts exist with regard to the facts argued in support of its motion, Facebook did not enumerate the facts it alleges to be undisputed. Furthermore, Facebook appears to admit that the most important facts, those related to the disclosure of Swartz, are disputed. Facebook did this by placing the entirety of its discussion of the scope of Swartz in the "Arguments" of its Brief, and not in the "Summary of Undisputed Facts" section. To this end, Facebook has failed to specifically allege that it is undisputed that a single element of the claims of the '761 Patent is disclosed in Swartz.

Accordingly, in this Counterstatement, Leader will identify the disputed facts that Facebook relies upon in its memorandum in support of this motion. Because Facebook's Motion is based on these disputed issues of material fact, Facebook's motion should be denied.

II. COUNTERSTATEMENT OF DISPUTED MATERIAL FACTS

1.   Facebook states "[e]ach and every limitation of the alleged invention of U.S.

Patent No. 7,139,761 (the "761 patent") was disclosed, using nearly identical language, in U.S.

Patent No 6,236,994 to Ronald Swartz ("Swartz")." D.I. 410 at 1. This fact is DISPUTED.

Facebook sole argument used to support its position was a claim chart inserted into their

argument section, comparing the disclosure of Swartz with the claims of the '761 Patent. This

claim chart is very similar to the claim chart Facebook presented in the expert report of Dr. Saul

Greenberg as Exhibit C-6. Even ignoring that these arguments were summarily rejected by the

Patent Office, Leader has already thoroughly disputed them during the litigation through its

rebuttal expert on validity. Facebook has simply ignored the counter-argument put forward by

Leader's validity expert, Dr. Herbsleb, and has failed to address any of his arguments. In his

expert report Dr. Herbsleb stated:

> I disagree that the '994 Patent anticipates the '761 Patent. First, it is my opinion
> that the '761 Patent is valid in light of the '994 Patent because Dr. Greenberg fails
> to provide sufficient proof required to invalidate a patent. Specifically, Dr.
> Greenberg's descriptions are extremely general, do not address all of the
> elements, and are often inaccurate as to the actual disclosure. Moreover, his
> citations do not support his conclusions. As a consequence, Dr. Greenberg's
> disclosure has not provided sufficient evidence. Therefore, it is my opinion that
> Dr. Greenberg has failed to provide sufficient evidence to render the '761 invalid.

Herbsleb Report, ¶ 245.

> Moreover, I disagree that the '994 Patent invalidates the '761 Patent because the
> '994 Patent does not disclose each and every element of the asserted claims. With
> regard to Claim 1, the '994 Patent does not disclose a context component nor a
> tracking component as provided in the '761 Patent.

Herbsleb Report, ¶ 246.

> Dr. Greenberg's opinion that the '994 Patent discloses all of the elements of the
> asserted claims of the '761 Patent is wrong for several reasons. Generally, the
> '994 Patent discloses a middleware system. '994 Patent, Col. 1, ll. 9-15; Col. 4, ll.
> 12-18. Middleware is generally known as software that connects other software
> together. It commonly provides functionality which allows completely different

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software system to operate together. The '761 Patent on the other hand is a system which captures environmental and tracking information and stores the information on a storage component so that data can be shared among users in multiple contexts. '761 Patent, Col. 2, ll. 50-59; Col. 13, ll. 47-54. Therefore, it is my opinion that the premise of the '994 Patent is significantly different than, and thus does not invalidate, the '761 Patent.

Herbsleb Report, ¶ 247.

Specifically, the '994 Patent does not disclose a context component as recited in Claim 1. None of the citations provided by Dr. Greenberg describe a context component that captures context information associated with user-defined data. This is because the '994 Patent teaches middleware, and the middleware merely gathers the information that is already provided by other systems in order to create an audit trail. '994 Patent, Col. 1, ll. 9-15; Col. 4, ll. 12-18 As such, there is no disclosure of a system which contains a context component as recited in Claim 1. In fact, the concept of a context (as environment) is completely absent. Moreover, the system does not keep track of contexts, or users moving among contexts. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 248.

In addition, the '994 Patent does not teach a tracking component as recited in Claim 1. It appears that Dr. Greenberg also believes that a tracking component is not explicitly disclosed as he states that the '994 Patent "necessarily involves tracking a change from one context to another." I disagree with Dr. Greenberg's statement as tracking a change from one context to another is not implicitly taught. In addition, it is irrelevant because the claim requires tracking a user from one context to another. There is nothing is the '994 Patent which teaches the tracking of a user from one context to another. In fact, tracking a user from one context to another has no utility for the system disclosed in the '994 Patent because it is middleware which keeps track of the information associated with documents, not users. Furthermore, there is also nothing which teaches updating the metadata based on the change when a user access data from a second context. Dr. Greenberg's citations do not provide any support, and actually teach away from this limitation because the situations involve sending a document from one system to another, and not where a user accesses data from a second context. '994 Patent, Col. 19, ll. 38-63; Col. 20, ll. 14-28. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 249.

As discussed above, Claim 1 of the '761 Patent is valid in light of the '994 Patent. Because Claim 4 is dependent on Claim 1, Claim 4 is also valid in light of the '994 Patent. For at least this reason, the '994 Patent does not invalidate the '761 Patent.

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Herbsleb Report, ¶ 250.

> Furthermore, I disagree with Dr. Greenberg's opinion that the '994 Patent discloses the capturing of context information which includes a relationship between the user and at least one of an application, application data, and user environment. As discussed above, the '994 Patent teaches a middleware system which imports data from other systems, and does not disclose capturing context information. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 251.

> As discussed above, Claim 1 of the '761 Patent is valid in light of the '994 Patent. Because Claim 7 is dependent on Claim 1, Claim 7 is also valid in light of the '994 Patent. For at least this reason, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 252.

> Furthermore, I disagree with Dr. Greenberg's opinion that the '994 Patent discloses that data created in the first context is associated with data created in the second context as the concept of contexts in completely absent for the '994 Patent. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 253.

> For Claim 7, Dr. Greenberg again attempts to include by reference the analysis he provided for Claim 1. I do not believe such incorporation by reference fully addresses all of the limitations of Claim 7 because Claim 1 and Claim 7 are directed to different systems and contain different limitations. To the extent Dr. Greenberg has failed to address all of the additional limitations of Claim 7, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed Dr. Greenberg's opinion in my analysis above.

Herbsleb Report, ¶ 254.

> I disagree with Dr. Greenberg's opinion that the '994 Patent invalidates Claim 9 of the '761 Patent. Specifically, I disagree that the '994 Patent discloses the computer-executable act of creating data within a user environment of a web-based computer 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. The '994 Patent teaches a middleware system that combines data from different sources for review, and the middleware system merely gathers the information that is already provided by other systems (e.g., Documentum EDMS and SAS/PH-Clinical Software). '994 Patent, Col. 1, ll. 9-15; Col. 4, ll. 12-18. Other applications may feed documents into the system, but the middleware system is not disclosed to be

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used to create documents. As such, there is no disclosure of a system which contains a context component as recited in Claim 1. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 255.

I disagree that the '994 Patent discloses the computer-executable act of 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. The '994 Patent does not disclose dynamically associating metadata with the data. The '994 Patent teaches a middleware system that combines data from different sources for review, and the middleware merely gathers the information that is already provided by other systems (e.g., Documentum EDMS and SAS/PHClinical Software). '994 Patent, Col. 1, ll. 9-15; Col. 4, ll. 12-18. The '994 Patent does not teach dynamically associating metadata with this data as it is created. Rather, the '994 Patent teaches a system where any metadata is already included with the documents. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 256.

Again, Dr. Greenberg attempts to include by reference the analysis he provided from Claims 1 and 4 into his analysis of the various elements of Claim 9. I do not believe such incorporation by reference fully addresses all of the limitations of Claim 9 because Claim 1 and 4 are directed to different systems and contain different limitations the Claim 9. To the extent Dr. Greenberg has failed to address all of the additional limitations of Claim 9, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed Dr. Greenberg's opinion in my analysis above.

Herbsleb Report, ¶ 257.

As discussed above, Claim 9 of the '761 Patent is valid in light of the '994 Patent. Because Claim 11 is dependent on Claim 9, Claim 11 is also valid in light of the '994 Patent. For at least this reason, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 258.

Furthermore, I disagree with Dr. Greenberg's opinion that the '994 Patent discloses indexing content of the user environment such that a plurality of users can access the content from an associated plurality of user environments. For this claim, Dr. Greenberg has only cited to sections of the '994 Patent which disclose links from a document viewed in the Documentum EDMS document to a data in the SAS/PH-Clinical Software application. Simply creating a link to outside data is not equivalent to indexing data. Furthermore, the '994 Patent does not disclose indexing data so a plurality of user can access the data from a plurality of

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workspaces. Rather, the '994 Patent teaches that links to the data can only be accessed from one purported workspace, the Documentum EDMS interface. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 259.

Dr. Greenberg has failed to provide any citations indicating how the limitation of Claim 16 is met by the '994 Patent. However, in his analysis he indicates that accessing the user environment via a portable wireless device is obvious. As such, I refer below to my discussion refuting the obviousness of Claim 16.

Herbsleb Report, ¶ 260.

I disagree with the claim chart that the '994 Patent invalidates Claim 21 of the '761 Patent. First, the claim chart continues to use an incomplete analysis to support his assertions. For example, he fails to provide citations to the '994 Patent that disclose all elements of Claim 21. Furthermore, I disagree that the '994 Patent discloses the computer-readable medium for creating data related to user interaction of a user within a user workspace of a web-based computing platform using an application. First, as citations to the '994 Patent is not provided for all elements of Claim 21, it is improper to assert that the '994 Patent discloses this claim.

Herbsleb Report, ¶ 261.

In addition, the claim chart attempts to include by reference the analysis he provided from Claim 9a into his analysis of Claim 21. I do not believe such incorporation by reference fully addresses all of the limitations of Claim 21 because Claim 9 is directed to a different system and contain different limitations. For example, the claim chart fails to define what he asserts to be a "user workspace." The term "user workspace" is not used in Claim 9. As a result, the claim chart's method of merely incorporating by reference results in inconsistencies as he seems to define "application" and "user workspace" as the same thing. To the extent the claim chart has failed to address all of the additional limitations of Claim 21, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed this aspect of the claim chart in my analysis above.

Herbsleb Report, ¶ 262.

With regard to the second element of Claim 21, the claim chart simply attempts to include by reference the analysis he provided from Claim 9b or duplicates the same analysis and citations from Claim 9. I do not believe such incorporation by reference or duplication of analysis fully addresses all of the limitations of Claim 21 because Claim 9 is directed to a different system and contains different limitations. For example, the claim chart fails to define what he asserts to be a "user workspace." The term "user workspace" is not used in Claim 9. As a result, the claim chart's method of merely incorporating by reference results in

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inconsistencies as he seems to define "application" and "user workspace" as the same thing. To the extent the claim chart has failed to address all of the additional limitations of Claim 21, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed this aspect of the claim chart in my analysis above.

Herbsleb Report, ¶ 263.

> Again, with regard to the third element of Claim 21, the claim chart simply attempts to include by reference the analysis he provided from Claim 9c or duplicates the same analysis and citations from Claim 9. I do not believe such incorporation by reference or duplication of analysis fully addresses all of the limitations of Claim 21 because Claim 9 is directed to a different system and contains different limitations. For example, the claim chart fails to define what he asserts to be a "user workspace." The term "user workspace" is not used in Claim 9. As a result, the claim chart's method of merely incorporating by reference results in inconsistencies as he seems to define "application" and "user workspace" as the same thing. To the extent the claim chart has failed to address all of the additional limitations of Claim 21, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed this aspect of the claim chart in my analysis above.

Herbsleb Report, ¶ 264.

> Again, with regard to the fourth element of Claim 21, the claim chart simply attempts to include by reference the analysis he provided from Claim 9d or duplicates the same analysis and citations from Claim 9. I do not believe such incorporation by reference or duplication of analysis fully addresses all of the limitations of Claim 21 because Claim 9 is directed to a different system and contains different limitations. For example, the claim chart fails to define what he asserts to be a "user workspace." The term "user workspace" is not used in Claim 9. As a result, the claim chart's method of merely incorporating by reference results in inconsistencies as he seems to define "application" and "user workspace" as the same thing. To the extent the claim chart has failed to address all of the additional limitations of Claim 21, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed this aspect of the claim chart in my analysis above.

Herbsleb Report, ¶ 265.

> Again, with regard to the fifth element of Claim 21, the claim chart simply attempts to include by reference the analysis he provided from Claim 11 or duplicates the same analysis and citations from Claim 11. I do not believe such incorporation by reference or duplication of analysis fully addresses all of the limitations of Claim 21 because Claim 11 is directed to a different system and contains different limitations. For example, the claim chart fails to define what he asserts to be "user workspace," which is a term not used in Claim 11. To the extent the claim chart has failed to address all of the additional limitations of

Claim 21, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed this aspect of the claim chart in my analysis above.

Herbsleb Report, ¶ 266.

I disagree with Dr. Greenberg's opinion that the '994 Patent invalidates Claim 23 of the '761 Patent. Specifically, I disagree that the '994 Patent discloses a computer implemented context component of a web-based server for defining a first user workspace of the web-based server. Dr. Greenberg relies on applications (e.g., Documentum EDMS and SAS/PHClinical Software) which feed information into the middleware system in his analysis. These are not workspace as recited in Claim 23 of the '761 Patent and are not web-based systems. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 267.

I disagree with Dr. Greenberg's opinion that the '994 Patent invalidates Claim 23 of the '761 Patent. Specifically, I disagree that the '994 Patent discloses a computer implemented context component which assigns one or more applications to the first user workspace as described in Claim 23. Dr. Greenberg relies on the separate applications (e.g., Documentum EDMS and SAS/PH-Clinical Software) feeding information into the middleware system of the '994 Patent as the user workspace. These programs are separate and independent programs which cannot be assigned to each other and do not form a workspace. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 268.

For most of the elements of Claim 23, Dr. Greenberg attempts to include by reference the analysis he provided for Claims 1 and 9. I do not believe such incorporation by reference fully addresses all of the limitations of Claim 23 because Claims 1 and 9 are directed to different systems and contain different limitations then Claim 23. To the extent Dr. Greenberg has failed to address all of the additional limitations of Claim 23, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed Dr. Greenberg's opinion in my analysis above.

Herbsleb Report, ¶ 269.

As discussed above, Claim 23 of the '761 Patent is valid in light of the '994 Patent. Because Claim 25 is dependent on Claim 23, Claim 25 is also valid in light of the '994 Patent. For at least this reason, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 270.

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Furthermore, I disagree with Dr. Greenberg's opinion that the '994 Patent discloses that the context component captures relationship data associated with a relationship between the first user workspace and at least one other user workspace. Dr. Greenberg has identified workspaces as individual and separate software applications which feed documents into the middleware system (e.g., Documentum EDMS and SAS/PH-Clinical Software). However, Dr. Greenberg cites no support for his assertion that relationship data is captured which is associated with the relationship between these separate software applications. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 271.

For Claim 25, Dr. Greenberg again attempts to include by reference the analysis he provided for Claim 1. I do not believe such incorporation by reference fully addresses all of the limitations of Claim 25 because Claim 1 is directed to different systems and contain different limitations. To the extent Dr. Greenberg has failed to address all of the additional limitations of Claim 25, it is my opinion that he has not provided sufficient evidence to prove the '761 Patent is invalid. Otherwise, I have addressed Dr. Greenberg's opinion in my analysis above.

Herbsleb Report, ¶ 272.

As discussed above, Claim 23 of the '761 Patent is valid in light of the '994 Patent. Because Claim 31 is dependent on Claim 23, Claim 31 is also valid in light of the '994 Patent. For at least this reason, the '994 Patent does not invalidate the '761 Patent. Moreover, Dr. Greenberg has failed to provide sufficient evidence to prove that the '761 Patent is invalid. For at least these reasons, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 273.

As discussed above, Claim 23 of the '761 Patent is valid in light of the '994 Patent. Because Claim 32 is dependent on Claim 23, Claim 32 is also valid in light of the '994 Patent. Moreover, Dr. Greenberg has failed to provide sufficient evidence to prove that the '761 Patent is invalid. For at least this reason, the '994 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 274.

Furthermore, I disagree with Dr. Greenberg's opinion that the '994 Patent discloses storing of the metadata in the storage component in association with data facilitates many-to-many functionality of the data via the metadata. The '575 Patent does not disclose that metadata is used to facilitate the functionality of two or more users using two or more data files. For at least these reasons, the '575 Patent does not invalidate the '761 Patent.

Herbsleb Report, ¶ 275.

Dr. Herbsleb also stated the following arguments which were not addressed:

> To the extent Dr. Greenberg is referring to the '761 Patent, I disagree with his characterization of audit trails. Audit trails are created by software that logs events and actions in a system in order to create a record, typically to show that the system has been used in ways that comply with regulations, standards, or accepted practices. An audit does not create workspaces or environments, and it does not track users from one context to another. Moreover, I do not agree that the '994 Patent is a prior art reference that includes an audit trail which meet the limitations of the asserted claims.

Herbsleb Report, ¶ 76.

> To the extent Dr. Greenberg is referring to the '761 Patent, I disagree with his characterization of history systems. Dr. Greenberg is correct that history systems share many similarities with audit systems, and that they create a list of the user's actions. As with audit trails, history systems do not create workspaces or environments, and it does not track users from one context to another. Moreover, I do not agree that the '994 Patent nor the iManage manual are prior art references that include history systems which meet the limitations of the asserted claims.

Herbsleb Report, ¶ 77.

> To the extent Dr. Greenberg is referring to the '761 Patent, I disagree with his characterization of version control systems. As a document is changed over time, a version control system can be used to store the document before and after each change. Each change creates a new version of the document. The purpose is typically to allow a user to recover from an unwanted change, and go back to an earlier version. For example the "undo" functionality in a word processor allows the user to recover from an undesirable change by going back to the previous version, i.e., the version before the undesired change. As with audit trails and history systems, version control systems do not, however, create workspaces or environments, and it does not track users from one context to another. I do not believe version control systems are relevant to the '761 Patent. Moreover, I do not agree that the '994 Patent nor the iManage manual are prior art references that includes version control systems which meet the limitations of the asserted claims.

Herbsleb Report, ¶ 79.

Facebook's failure to address any of these counter-arguments leaves no doubt that there are material facts in dispute requiring that Facebook's motion for invalidity be denied.

2.   Facebook states that Swartz was not considered by the Patent Office. D.I. 410 at

1. This fact is DISPUTED. The Patent Office has determined that Swartz does not disclose any

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claims of the '761 Patent. Facebook submitted a claim chart in a Request for *Ex Parte* Reexamination against the '761 Patent which is nearly identical to the claim chart in Facebook's brief. Nearly the exact same positions found in Facebook's Brief were determined to be without merit by the examiner, who after combining the *Ex Parte* Reexamination with a pending *Inter Partes* Reexamination requested by Facebook, declined to adopt or use any rejection based on Swartz. The Patent Office applied the disclosure of Swartz to the broadest reasonable interpretation of the claims of the '761 Patent and still found the patent inapplicable as prior art. Manual of Patent Examining Procedure ("MPEP"), § 2111 ("[d]uring patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.'"). In other words, this means that the Patent Office uses a very low threshold for determining whether a particular reference is relevant to patentability. This is in contrast to the determination for validity of the patent, where Facebook has the higher burden of showing that the claims of the '761 Patent are invalid by clear and convincing evidence. *Honeywell Int'l Inc. v. Nikon Corp.*, 672 F. Supp. 2d 638, 641 (D. Del. 2009) citing *Pfaff v. Wells Elecs.*, 525 U.S. 55, 67 (1998). Because the Patent Office uses this lower threshold and still determined that Swartz was inapplicable to the '761 Patent, Facebook will undisputedly be unable to show that Swartz invalidates the '761 Patent under the higher burden of the district court, let alone be able to on summary judgment.

3. Facebook states that "[t]he '761 patent, entitled 'Dynamic Association of Electronically Stored Information with Iterative Workflow Changes,' issued from an application filed on December 10, 2003." D.I. 410 at 1. This fact is DISPUTED to the extent it fails to recognize that the '761 Patent claims priority to the Provisional Application 60/432,255, filed December 11, 2002.

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4.   Facebook states that "[t]he '761 patent purports to disclose a data management tool for use in 'communications, organization, information processing, and data storage.'" D.I. 410 at 1. This fact is DISPUTED to the extent it purports to limit the disclosure or claims of the '761 Patent.

5.   Facebook states that "One of the stated goals of the Swartz patent, like McKibben who followed, was to prevent the loss of information between individuals in a organization or enterprise working on large scale projects:

> Companies operating in regulated industries (e.g., aerospace, energy, healthcare, manufacturing, pharmaceuticals, telecommunications, utilities) are required to manage and review large amounts of information that is frequently generated over the course of several years. . . . Separate groups or organizations produce multiple iterations of these data and documents, with potentially thousands of statistical data analysis files linked to thousands of dependent documents. . . . Correspondingly, separate software systems for data analysis and document management have been adopted as discrete solutions."

D.I. 410 at 1-2. This fact is DISPUTED to the extent that Leader's '761 Patent and Swartz disclose completely different systems, addressed to different problems, and with different goals. Swartz is a specific middleware system directed to a very specific problem, namely the automation and linking of "statistical data analysis files linked to thousands of dependent documents." Swartz, Col 1, ll. 42-46. Swartz discloses a middleware application with the primary feature of providing links between reports and their underlying source documentation, and automating the flow of information between one or more independent applications controlling source data and an application for reports generated from this source data. *See* Swartz, Col. 4, ll. 48-67; Col. 5, ll. 9-22; Col. 8, ll. 49-60; Col. 9, ll. 5-8; Col. 18, ll. 21-31, Col. 20, l. 65 - Col. 21, l. 17. This function contrasts with the '761 Patent, which is directed to a complete underlying platform which provides a "unified, horizontal system for communication, organization,

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information processing, and data storage." '761 Patent, Abstract.

This fact is also DISPUTED to the extent it implies that the sole inventor of the '761 Patent is Michael McKibben, as Jeffrey Lamb is also an inventor on the patent.

6.   Facebook states that "[b]ecause such large scale collaborative processes run the risk of losing data as users continued to make changes to their documents over time, a need existed for a system and method to 'integrate and synchronize the flow of all information, processes and work practices necessary for making better and faster decisions within an enterprise.'" D.I. 410 at 2. This fact is DISPUTED to the extent Facebook purports to limit the purpose of the '761 Patent with a method to "integrate and synchronize the flow of all information, processes and work practices necessary for making better and faster decisions within an enterprise." This statement refers to the ability of the middleware in Swartz to link and automate flow of data between separate applications, while the '761 Patent is directed to a comprehensive underlying platform which provides a "unified, horizontal system for communication, organization, information processing, and data storage." '761 Patent, Abstract.

7.   Facebook states that "[S]wartz proposed a solution referred to as 'knowledge integration middleware,' which he defined as: 'any software used to assist in the integration of disparate information sources and their corresponding applications for the purposes of recording, distributing, and activating knowledge, knowledge applications, or knowledge services.'" D.I. 410 at 2. This fact is DISPUTED to the extent it purports that the disclosed cite from Swartz discloses a system similar to that in the claims of the '761 Patent. The citation quoted by Facebook reveals the limited focus of the middleware in Swartz for the specific task of "integration of disparate information sources." Swartz, Col. 6, ll. 18-22. The '761 Patent is different because it is directed to a complete underlying platform which provides "unified,

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horizontal system for communication, organization, information processing, and data storage."
'761 Patent, Abstract.

8.   Facebook states that "[i]n one embodiment, Swartz discloses a system known as 'DataDocket,' which 'manages the flow of information between two or more applications that comprise the information system of an enterprise.'" D.I. 410 at 2. This fact is DISPUTED to the extent it purports that the disclosed cite from Swartz discloses a system similar to that in the claims of the '761 Patent. The '761 Patent discloses a complete platform which does much more than simply "manage[] the flow of information between two or more applications." See '761 Patent, Abstract.

9.   Facebook states that "The management functions in Swartz rely on 'context information' that is automatically collected from users and applications, which is stored in a 'metadata catalog.'" D.I. 410 at 2. This fact is DISPUTED to the extent it purports that Swartz discloses a system which automatically generates metadata is related to user movement similar to that disclosed in the claims of the '761 Patent. Swartz discloses a middleware system where metadata is already included on the documents fed into the system, rather than being dynamically created. *See* Swartz, Col. 8, ll. 49-60.

10.   Facebook states that "[i]n particular, Swartz discloses a system that '*captures metadata* associated with the information shared, stored and accessed by the users of the data *so as to characterize the 'context' in which the information is being used.*"... ("More specifically, knowledge integration middleware is preferably employed to identify (including tracking, monitoring, analyzing) the context in which information is employed so as to enable the use of such context in the management of knowledge.")." D.I. 410 at 2 (emphasis in original). This fact is DISPUTED to the extent that it implies that the system discloses the dynamic creation of

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metadata in relation to user movement as in the '761 Patent. The middleware system of Swartz simply captures metadata which had already been created, rather than dynamically generating metadata. When read in context of the full quotation it becomes apparent that the metadata has already been generated and is simply collected from the documents. Swartz provides that:

> At a first or basic level, the DataDocket phase automates the process of transferring data analysis reports to a document management system for document production (e.g., regulatory approval submission), synchronizes information flow between a data repository and document repository (and respective documents therein), and provides linkages from the documents back to the data analysis software. Such a system also preferably captures metadata associated with the information shared, stored and accessed by the users of the data so as to characterize the "context" in which the information is being used.

Swartz, Col. 8, ll. 49-60.

11.   Facebook states that "[t]his context information and metadata can be used to create a 'knowledge path' that allows users to reflect back and track all interactions and transactions that took place with respect to their data." D.I. 410 at 2-3. This fact is DISPUTED to the extent it purports to imply that Swartz discloses anything related to the claims of the '761 Patent. Regarding the "knowledge path," Swartz states that it is "all the work required as part of building the proof for filing a regulatory application" and "anyone reviewing the proof should be able to retrace all steps taken from the finished application, back to the generation of the arguments and assertions made during analysis, and finally back to the original data." This simply describes how the transaction history of a particular report can be used to retrace the operations performed on a document and does not require the understanding of the context or tracking of the user. This is different from the invention of the '761 Patent, which uses context and tracking the movement of the user within the system. '761 Patent, Col. 21, ll. 7-12; Col. 21, ll. 49-58; Col. 22, ll. 57-63; Col. 23, ll. 31-37.

12.   Facebook states that "[i]t should come as no surprise that the Swartz '994

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previously disclosed each and every element later claimed by Mr. McKibben. They were *both* trying to solve the problem, in their own words, of information loss over time and use by many people." D.I. 410 at 4. This fact is DISPUTED. As discussed *supra*, the '761 Patent and Swartz are directed to systems which solved different problems in different ways. The '761 Patent relates to a complete architecture for managing data based on the context of the user using the data, while Swartz relates to the narrower problem of linking disparate data and documents on separate and independent applications through middleware. *See* Swartz, Col. 4, ll. 48-67; Col. 5, ll. 9-22; Col. 8, ll. 49-60; Col. 9, ll. 5-8; Col. 18, ll. 21-31, Col. 20, l. 65 - Col. 21, l. 17. While the improved platform and system disclosed in the '761 Patent does help to prevent "information loss over time and use by many people," it is far from the only or primary benefit provided, as implied by Facebook. The '761 Patent discloses a complete platform for communication, organization, information processing, and data storage. '761 Patent, Abstract.

This fact is also DISPUTED to the extent it implies that the sole inventor of the '761 Patent is Michael McKibben, as Jeffrey Lamb is also an inventor. *See* '761 Patent.

13. Facebook states that "[t]herefore, both needed tracking and metadata updating systems." D.I. 410 at 4. This fact is DISPUTED to the extent that Facebook implies that Swartz discloses a system which tracks user movement and updates metadata as disclosed in the claims of the '761 Patent. Swartz is completely devoid of any disclosure related to tracking user movements and dynamically updating metadata. Swartz does not disclose the system monitoring or tracking the users movements within a system or between applications, because there is no overarching system to track the user, only a middleware application for linking reports to data and automating data flow between these applications. *See* Swartz, Col. 4, ll. 48-67; Col. 5, ll. 9-22; Col. 8, ll. 49-60; Col. 9, ll. 5-8; Col. 18, ll. 21-31, Col. 20, l. 65 - Col. 21, l. 17.

14.   Facebook has inserted a claim chart which purports to disclose the basis that the asserted claims of the '761 Patent are invalid. D.I. 410 at 4-18. This fact is DISPUTED. As discussed in the introduction, Facebook's arguments have already by rejected by the patent examiner in his recent Office Action, and were vigorously disputed by Leader's expert witness in his validity report regarding the '761 Patent. *See* Reexamination; *see also* Herbsleb Expert Report. Leader disputes that Swartz invalidates any of the claims of the '761 Patent. As discussed *supra*, Swartz discloses a system for a very specific problem which it attempts to solve through a middleware system which links reports to source data and automating the flow of information. The claims chart in Facebook's Brief appears to be an attempt at word matching without regard for context, and any analysis typically just parrots back the claim language of the '761 Patent. For the Court's convenience a claim chart demonstrating the claim elements which are disputed to be included in the '994 has been set forth below.

Claim Language	Disputed
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 interaction of a user in a first context of the network-based system, the context component dynamically storing the context information in metadata	None of the citations provided by Facebook describe a context component that captures context information associated with user-defined data. This is because Swartz teaches middleware, and the middleware merely gathers the information that is already included with the document and provided by other systems in order to create an audit trail. Swartz, Col. 1, ll. 9-15; Col. 4, ll. 12-18. As

associated with the user-defined data, the user-defined data and metadata stored on a storage component of the network-based system; and	such, there is no disclosure of a system which contains a context component as recited in Claim 1. The middleware system in Swartz is only disclosed to collect data from independent applications, and it is not disclosed to dynamically collect context information. Swartz, Col. 8, ll. 49-60. In an attempt to support its position, Facebook cites a portion of Swartz stating that "Such a system preferably captures metadata associated with the information shared, stored and accessed by the user of the data." Swartz, Col. 8, ll. 56-60. However, this citation shows that the metadata was already created when it is captured by the middleware application, rather than the system capturing the context and dynamically store it in metadata.
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	Swartz does not disclose tracking a change of a user from a 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. There is nothing in

the data from the second context.	Swartz which teaches the tracking of a user moving from one context to another and updating metadata based on the change of context. Swartz discloses a middleware system that is fed documents from independent software applications. Swartz, Col. 10, ll. 15-21; Col. 19, ll. 52-63. The citations provided by Facebook disclose nothing more than creating a history of changes to the document and never even mentions the user once, only tracking the history of changes to the document. D.I. 410 at 7-8. Furthermore, there is also nothing in Swartz which teaches updating the metadata based on the change when a user accesses data from a second context. Facebook's citations do not provide any support, and actually teach away from this limitation because the situations involve sending a document from one system to another, and not where a user accesses data from a second context. Swartz, Col. 19, ll. 38-63; Col. 20, ll. 14-28. Similarly, Facebook's reliance on the "knowledge path" in Swartz is

	misplaced. D.I. 410 at 8. The knowledge path describes the steps taken in generating a specific report document, and is described as "all the work required as part of building the proof for filing a regulatory applications." Swartz, Col. 19, ll. 15-30. Nothing in this knowledge path discloses tracking of user movement, or even mentions the user at all; rather this describes the history of changes to the specific report. Swartz, Col. 19, ll. 15-30.
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.	Swartz does not disclose the capturing of context information which includes a relationship between the user and at least one of an application, application data, and user environment. Swartz teaches a middleware system which imports data from other independent applications, and does not disclose capturing context information.
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	Swartz does not disclose 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.

environment by a user using an application, the data in the form of at least files and documents;	Swartz teaches a middleware system that combines data from different sources for review, and the middleware system merely gathers the information that is already provided by other systems (e.g., Documentum EDMS and SAS/PH-Clinical Software). Swartz, Col. 1, ll. 9-15; Col. 4, ll. 12-18. For this element, Facebook has simply ignored the requirement of the data being created "within a user environment of a web-based computing platform via user interaction with the user environment by a user using an application." D.I. 401 at 9-10. Facebook states that the SAS/PH-Clinical application is a user environment, but ignores the requirement of an application creating data in this environment. In fact, there is no application used to create data in a user environment disclosed by Swartz.
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	Swartz does not disclose the computer-executable act of dynamically associating metadata with the data, the data and metadata stored on a storage component of the web-

related to the user, the data, the application, and the user environment;	based computing platform, the metadata includes information related to the user, the data, the application, and the user environment. Swartz does not disclose dynamically associating metadata with the data. The middleware system in Swartz is only disclosed to collect data from independent applications, and it is not disclosed to dynamically associate metadata with the data. Swartz, Col. 6, ll. 56-60. In an attempt to support its position, Facebook cites a portion of Swartz stating that "Such a system preferably captures metadata associated with the information shared, stored and accessed by the user of the data so as to characterize the 'context' in which the information is being used." Swartz, Col. 8, ll. 56-60. This citation shows that the metadata was already created and associated with the data before the information is fed into the system and read from the document shared, stored or accessed by the user.
tracking movement of the user from the user environment of the web-based computing	Swartz does not disclose tracking movement of the user from the user environment of the web-

platform to a second user environment of the web-based computing platform; and	based computing platform to a second user environment of the web-based computing platform. There is nothing in Swartz which teaches the tracking of a user from one user environment to a second user environment. Swartz discloses a middleware system that is fed documents from independent software applications separate from the middleware application. Swartz, Col. 10, ll. 15-21; Col. 19, ll. 52-63. The citations provided by Facebook disclose nothing more than creating a history of changes to the document and never even mentions the user. D.I. 410 at 7-8.
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.	Swartz does not disclose 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. Facebook's citations do not provide any support, and actually teach away from this limitation because the situations involve sending a document from one system to another, and not where a user

	accesses data from a second context. Swartz, Col. 19, ll. 38-63; Col. 20, ll. 14-28. The middleware system in Swartz is only disclosed to collect data from independent applications, and it is not disclosed to dynamically update metadata with the data. Swartz, Col. 6, ll. 56-60. Swartz states that "Such a system preferably captures metadata associated with the information shared, stored and accessed by the user of the data so as to characterize the 'context' in which the information is being used." Swartz, Col. 8, ll. 56-60. This citation shows that the metadata was already created before the information is fed into the system and is only taken from the document shared, stored or accessed by the user. The citations relied on by Facebook do not mention updating or changing metadata in any way.
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.	Swartz does not disclose indexing content of the user environment such that a plurality of users can access the content from an associated plurality of user environments. For this claim, Facebook has only cited to sections of Swartz

	which disclose links from a document viewed in the Documentum EDMS document to data in the SAS/PH-Clinical Software application. Simply creating a link to outside data is not equivalent to indexing data. D.I. 410 at 12. Furthermore, Swartz does not disclose indexing data so a plurality of user can access the data from a plurality of user environments. Rather, Swartz discloses the data being accessed from one purported user environment, the Documentum EDMS interface. Swartz, Col. 20, ll. 14-24.
16. The method of claim 9, further comprising accessing the user environment via a portable wireless device.	Facebook does not dispute that Swartz does not disclose accessing the user environment via a portable wireless device.
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;	Swartz does not disclose creating data related to user interaction of a user within a user workspace of a web-based computer platform using an application. Swartz teaches a middleware system that combines data from different sources for review, and the middleware system merely gathers the information that is already provided by other

	systems (e.g., Documentum EDMS and SAS/PH-Clinical Software). Swartz, Col. 1, ll. 9-15; Col. 4, ll. 12-18. For this element, Facebook has simply ignored the requirement of the data being created within "a user workspace of a web-based computer platform using an application." D.I. 401 at 13. Facebook simply states that the SAS/PH-Clinical application is a user workspace, but ignores the requirement of an application creating data in this purported workspace. In fact, there is no separate user workspace and application disclosed by Swartz.
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;	Swartz does not disclose dynamically associating metadata with the data. Swartz teaches a middleware system that combines data from different sources for review, and the middleware merely gathers the information that is already provided by other systems (e.g., Documentum EDMS and SAS/PH-Clinical Software). Swartz, Col. 1, ll. 9-15; Col. 4, ll. 12-18. Swartz does not teach dynamically associating metadata with this data as it is

	created. Rather, Swartz teaches a system where any metadata is already included with the documents. Swartz, Col. 8, ll. 49-60.
tracking movement of the user from the user workspace to a second user workspace of the web-based computing platform;	Swartz does not disclose tracking movement of the user from the user workspace to a second user workspace of the web-based computing platform. There is nothing is Swartz which teaches the tracking of a user from one user workspace to a second user workspace. Swartz discloses a middleware system that is fed documents from independent software applications separate from the middleware application. Swartz, Col. 10, ll. 15-21; Col. 19, ll. 52-63. The citations provided by Facebook disclose nothing more than creating a history of changes to the document and never even mentions the user, only the changes to the document. D.I. 410 at 7-8.
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	Swartz does not disclose 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. This is

	because Swartz teaches middleware, and the middleware merely gathers the information that is already included with the document and provided by other systems in order to create an audit trail. Swartz, Col. 1, ll. 9-15; Col. 4, ll. 12-18. The middleware system in Swartz is only disclosed to collect data from independent applications, and it is not disclosed to dynamically associate the data and the application with the second user workspace in metadata. The metadata was already created when it is captured rather than have a dynamic association in the metadata. Swartz, Col. 8, ll. 56-60.
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.	Swartz does not disclose 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. For this claim, Facebook has only cited to sections of Swartz which disclose links from a document viewed in the Documentum EDMS document to a data in the SAS/PH-Clinical Software application.

	Simply creating a link to outside data is not equivalent to indexing data. Furthermore, Swartz does not disclose indexing data so a plurality of user can access the data via metadata from a corresponding plurality of different user workspaces. Rather, Swartz only discloses links to the data that can only be accessed from one purported workspace, the Documentum EDMS interface.
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	Swartz does not disclose 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. This is because Swartz teaches middleware, and the middleware merely gathers the information that is already included with the document and provided by other systems in order to create an audit trail. Swartz, Col. 1, ll. 9-15; Col. 4, ll. 12-18. The middleware system in Swartz is only disclosed

	to collect data from independent applications, and it is not disclosed to dynamically collect context information. Swartz, Col. 8, ll. 49-60. In an attempt to support its position, Facebook cites a portion of Swartz stating that "Such a system preferably captures metadata associated with the information shared, stored and accessed by the user of the data." Swartz, Col. 8, ll. 56-60. However, this citation shows that the metadata was already created when it is captured by the middleware application, rather than the system capturing the context data and dynamically storing it in metadata.
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.	Swartz does not disclose 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. There is nothing in Swartz which teaches the tracking the change in access of the

	user from one workspace to another workspace. Swartz discloses a middleware system that is fed documents from independent software applications. Swartz, Col. 10, ll. 15-21; Col. 19, ll. 52-63. The citations provided by Facebook disclose nothing more than creating a history of changes to the document and never even mentions the user once, only tracking the history of the document. D.I. 410 at 19. Furthermore, there is also nothing in Swartz which teaches updating the metadata based on the change when a user access data from a second context. Facebook's citations do not provide any support, and actually teach away from this limitation because the situations involve sending a document from one system to another, and not where a user accesses data from a second context. Swartz, Col. 19, ll. 38-63; Col. 20, ll. 14-28. Similarly, Facebook's reliance on the "knowledge path" in Swartz is completely out of place. D.I. 410 at 8. The knowledge path is the steps taken in generating a specific report document, and is

	described as "all the work required as part of building the proof for filing a regulatory applications." Swartz, Col. 19, ll. 15-30. Nothing in this knowledge path discloses tracking the change in access of the user, or even mentions the user at all; rather this describes the history of changes to the specific report. Swartz, Col. 19, ll. 15-30.
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.	Swartz does not disclose that the context component captures relationship data associated with a relationship between the first user workspace and at least one other user workspace. Facebook has identified workspaces as individual and separate software applications which feed documents into the middleware system (e.g., Documentum EDMS and SAS/PH-Clinical Software). However, Facebook cites no support for its assertion that relationship data is captured which is associated with the relationship between these separate software applications.

15.   Facebook states that "[a]lthough Swartz does not explicitly disclose the use of a portable wireless device, claim 16 adds nothing of patentable significance and is invalid as

obvious." D.I. 410 at 18. This fact is DISPUTED. Claim 16 does add a further limitation and therefore is of patentable significance.

16. Facebook states that "[c]laim 16 recites nothing more than the trivial additional element of accessing a user environment form a 'portable wireless device.'" D.I. 410 at 18. This fact is DISPUTED. Claim 16 adds a new claim limitation and is more than a trivial element as the claim requires that the user environment be accessible from a portable wireless device.

III. CONCLUSION

For the reasons noted above, Facebook's motion for summary judgment of invalidity is based on disputed issues of material fact, and should be denied.

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

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on June 11, 2010, the within document

was filed with the Clerk of the Court using CM/ECF which will send notification of such

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