IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC.,	)	Trial Day 6
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

APPEARANCES CONTINUED:

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

-and-

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

Counsel for Defendant

THE CLERK: All rise.

THE COURT: Good morning, everyone.

(Everyone said, Good morning.)

THE CLERK: Please be seated.

THE COURT: Welcome to week two. All right.

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

Excuse me. I ran in too quickly.

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

It is also true that the '761 is

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

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

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

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

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

I'm denying the motion for a

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

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

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

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

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

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

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

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

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

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

all the instructions to you later today.

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

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

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

you.

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

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

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

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

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

MR. ANDRE: Thank you, Your Honor.

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

THE COURT: Okay.

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

MR. RHOADES: No objection.

THE COURT: Okay. It's admitted.

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

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

MR. RHOADES: I agree, Your Honor.

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

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

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

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

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

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

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

THE COURT: Did not.

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

THE COURT: Just draw out the

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

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

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

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

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

available or not?

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

THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The one that was used in the case

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

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

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

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

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

THE COURT: Mr. Andre.

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

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

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

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

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

If you noted the confidential

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

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

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

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

MR. ANDRE: Right.

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

MR. ANDRE: Only thing we know is

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

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

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

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

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

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

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

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

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

THE COURT: Ms. Keefe.

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

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

MS. KEEFE: None.

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

MS. KEEFE: Exactly.

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

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

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

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

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

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

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

MS. KEEFE: Thank you, Your Honor.

THE COURT: Anything else, Mr. Andre?

MR. ANDRE: No, Your Honor.

THE COURT: No.

And anything from Facebook?

MR. RHOADES: No, Your Honor.

THE COURT: Okay. All right.

Let's bring in the jury.

THE CLERK: All rise.

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

THE CLERK: Please be seated.

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

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

Professor, please come back to the stand.

Good morning, Professor.

THE WITNESS: Good morning.

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

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

BY MR. ANDRE:

Q. Good morning, Professor Greenberg.

A. Good morning.

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

A. Sure.

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

A. That's correct.

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

A. That's correct.

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

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

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

regarding anticipation; correct?

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

Q. That was for obviousness?

A. That's correct.

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

A. Sorry, that's --

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

A. Yes, that's correct.

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

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

A. That's correct.

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

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

A. Sorry.

Q. Do you know what these numbers are

called at the bottom?

A. That is the Bates number.

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

A. Just a few cases, yes.

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

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

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

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

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

A. I see that on that page, yes.

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

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

Q. I understand. I understand your

company is not marked confidential.

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

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

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

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

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

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

A. Yes.

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

A. Yes.

MS. KEEFE: Objection, Your Honor. 402.

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

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

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

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

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

A. Correct.

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

public documents; correct?

A. Fair enough.

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

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

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

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

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

A. I know.

Q. It's a real simple question.

A. I know.

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

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

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

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

Q. I think we're cross talking here.

A. Okay.

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

A. Ever.

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

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

change my opinion about the date.

Q. What do you mean the date?

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

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

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

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

A. Uh-huh.

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

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

time.

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

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

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

MS. KEEFE: Objection.

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

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

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

MR. ANDRE: Thank you, Your Honor.

Your Honor, it's not about the data, I just want to do ask one more question about the document itself.

BY MR. ANDRE:

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

A. And two years plus.

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

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

Q. You could reverse engineer from the document?

A. I would say so.

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

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

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

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

A. No, I had not.

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

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

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

A. The actual word does not appear.

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

A. Yes, I have it.

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

A. Okay. I'll look up there.

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

A. Sorry. The number was DT?

Q. DTX 1010.

A. Thank you.

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

Q. Page number. Bottom right-hand corner.

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

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

A. Yes, I do.

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

A. Yes, I do.

Q. What is DMS?

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

Q. It's a document management system?

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

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

A. I see that.

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

A. I do.

Q. This is what the iManage system is about?

A. It's describes the functions, yes.

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

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

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

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

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

A. That's correct.

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

A. I'll have to check.

Yes, it is.

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

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

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

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

A. It has a --

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

A. I'm sorry.

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

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

Q. The document management system.

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

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

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

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

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

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

So like you work off line a bit,

so then you can reconnect.

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

A. Beg your pardon?

Q. It's not an internet website?

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

Q. You don't know what website is?

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

Q. iManage Desktop system.

A. Okay.

Q. It's not an internet website?

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

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

Is that an internet website?

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

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

A. Okay. I just needed to clarify.

Q. Do you know what an internet website is?

A. Of course.

Q. Is the iManage system an internet website?

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

Q. There you go.

A. Yes.

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

A. Page 24?

Q. Yeah.

A. Okay.

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

A. I do.

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

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

Yes.

Q. Okay. Can you take that down.

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

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

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

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

Q. Do you recall testifying to that?

A. Yes.

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

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

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

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

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

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

A. Okay.

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

A. For web-based capabilities, yes.

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

A. That's correct.

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

A. Well, it's part of iManage.

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

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

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

So I am --

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

A. But it's part of iManage.

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

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

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

A. I believe so, yes.

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

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

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

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

How do they present themselves? In fact, I train my students with that. The function should be the user interface.

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

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

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

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

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

A. Okay.

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

A. That's correct.

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

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

A. That's correct.

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

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

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

A. That's correct.

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

A. That's correct.

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

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

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

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

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

Q. You can take down that.

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

A. Okay.

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

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

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

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

software. It does sit between things. Yes.

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

This figure here.

A. That's correct.

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

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

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

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

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

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

Q. Yeah.

A. It's a system.

Q. It's third parties?

A. Yes.

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

correct?

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

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

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

Q. So --

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

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

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

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

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

internet, either, does it?

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

Q. If you need to.

A. Okay. Thank you.

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

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

A. Okay.

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

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

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

Q. I understand. I understand.

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

A. On this figure, it does.

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

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

Let's go right up here.

A. I see that. Yes.

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

A. That's correct.

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

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

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

A. Well, in this case.

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

index; right, FileNet's Foundation?

A. Yes.

Q. Not the Swartz system itself; right?

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

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

THE COURT: Ms. Keefe.

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

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

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

It's talking about database. This

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

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

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

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

Go to DTX 604.

A. Okay.

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

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

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

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

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

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

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

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

A. Yes, it is.

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

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

And as well as part of this

pollination that I mentioned.

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

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

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

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

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

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

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

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

Q. The ideas there are disclosed.

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

A. That is correct.

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

A. That's correct.

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

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

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

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

A. That's correct.

Q. So --

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

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

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

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

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

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

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

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

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

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

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

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

A. I said it appears once in the background.

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

A. That's correct.

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

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

Q. Mm-hmm.

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

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

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

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

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

On page -- this is PTX 3 -- Page

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

A. Yes, I see that.

Q. You wouldn't consider that metadata?

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

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

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

Q. Go down to paragraph 16, where it says 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?

A. I see that.

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

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

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

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

Q. Sure. I want your clearest testimony.

And then go to the next page,

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

A. So --

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

A. Uh-huh.

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

A. Uh-huh.

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

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

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

A. No. You said tracking. Remember,

I showed --

Q. I understand you don't agree?

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

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

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

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

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

THE WITNESS: Thank you.

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

THE COURT: Yes.

(Side-bar discussion.)

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

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

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

THE COURT: Okay.

MS. KEEFE: Do you want me to respond?

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

MS. KEEFE: I agree.

THE COURT: Fine. Thank you.

(End of side-bar.)

THE COURT: Redirect.

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

BY MS. KEEFE:

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

A. Yes, I do.

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

A. Yes, he did.

Q. Could I turn your attention to paragraph 48.

A. Sorry. Are we looking at my report.

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

A. Okay.

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

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

MR. ANDRE: Objection, Your Honor. Hearsay.

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

THE COURT: Overruled.

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

Q. And regarding --

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

MS. KEEFE: I agree.

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

MS. KEEFE: Thank you.

BY MS. KEEFE:

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

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

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

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

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

MS. KEEFE: Thank you, Your Honor.

Nothing further, Dr. Greenberg. Thank you.

THE WITNESS: Thank you very much.

THE COURT: Thank you, Professor.

THE WITNESS: Thank you.

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

THE COURT: Okay. Thank you.

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

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

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

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

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

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

(Discussion at side-bar:)

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

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

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

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

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

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

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

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

MR. RHODES: May I speak, Your Honor?

THE COURT: Yes.

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

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

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

THE COURT: I understand.

(End of side-bar discussion.)

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

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

THE CLERK: All rise.

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

THE COURT: You can be seated.

Mr. Andre, come forward and make your motion.

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

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

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

prior art and are therefore not invalid for that reason.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Number fifteen, judgment as a

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

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

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

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

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

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

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

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

I have completed my motion, Your Honor.

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

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

MR. RHODES: Yes, Your Honor.

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

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

THE COURT: Thirty-five to forty minutes?

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

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

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

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

MR. WEINSTEIN: Thank you, Your Honor.

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

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

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

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

Facebook seeks judgment as a

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

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

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

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

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

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

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

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

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

With respect to the other elements, 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 associated with the user-defined data, the user-defined data and metadata stored on a storage component of the network-based system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. WEINSTEIN: I can do that,

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

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

MR. WEINSTEIN: I'll conclude very quickly.

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

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

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

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

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

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

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

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

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

I have three paragraphs left, Your Honor.

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

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

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

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

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

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

We'll see you in five minutes.

(A brief recess was taken.)

THE CLERK: All rise.

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

MR. ANDRE: Your Honor, before the

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

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

MR. ANDRE: Thank you.

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

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

THE COURT: That's fine.

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

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

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

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

THE COURT: Okay.

THE CLERK: All rise.

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

THE CLERK: Please be seated.

THE COURT: All right. Welcome back.

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

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

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

THE COURT: That's fine.

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

THE COURT: Have you shown the defense that?

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

THE COURT: Fine. You may distribute.

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

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

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

THE WITNESS: Yes, I do.

THE CLERK: Thank you. You may be seated.

THE COURT: Good morning.

THE WITNESS: Hi.

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

THE COURT: Oh, okay.

MS. KOBIALKA: Thank you very much.

BY MS. KOBIALKA:

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

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

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

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

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

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

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

A. Yes. Yes, I am.

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

A. Yes, that's right.

Q. What were you asked to do?

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

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

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

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

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

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

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

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

MS. KEEFE: No objection.

THE COURT Ms. Keefe. Okay.

BY MS. KOBIALKA:

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

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

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

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

that is in Dr. Greenberg's report.

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

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

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

And I think that completes the list.

Q. And you reviewed the provisional application?

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

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

A. Yes, I did.

Q. Who would that person be?

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

field, and/or perhaps several years of experience.

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

A. Sure. I think so.

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

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

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

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

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

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

A. Yes, I did.

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

A. Okay.

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

A. I do.

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

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

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

A. Yes, they are.

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

Thank you.

And do you see where the inventors

are listed on the '761 patent?

A. I do. Yes.

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

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

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

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

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

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

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

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

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

Q. And was he able to do that?

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

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

A. Okay.

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

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

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

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

code like this.

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

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

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

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

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

And I asked him later and he said

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

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

A. Mm-hmm.

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

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

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

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

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

construct something like that.

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

No. It's back. There we go.

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

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

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

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

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

do it.

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

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

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

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

So you have the things that you

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

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

So that's basically what a workspace is.

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

A. Right.

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

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

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

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

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

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

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

A. All right.

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

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

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

A. Yes, I do.

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

A. Yes. Okay.

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

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

A. Okay. Good.

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

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

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

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

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

metadata.

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

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

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

A. Okay.

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

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

Q. So right now we'll just go through

a few examples of that. Does that sound right?

A. Yes.

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

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

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

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

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

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

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

A. Right. All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Mm-hmm.

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

Thank you.

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

So this is storing basically relations between workspaces and information

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

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

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

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

Q. Okay.

A. I just forgot about it. Yeah.

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

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

Q. Can you give me some examples? Well, so what we've just talked about, does that

really relate to the context component of Claim 1.

A. Yes, that relates to the context component.

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

A. Sure. Let me get another.

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

A. Right.

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

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

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

Q. Okay. And I believe there's one

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

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

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

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

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

A. Yes.

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

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

And then we have another location in the code.

Q. Right. I believe it's on LTI 757.

I think the section that started add new relationships, if you could -- sub-form -- if you could blow that up.

Thank you.

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

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

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

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

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

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

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

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

skill could then use this to actually make something.

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

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

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

A. Okay.

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

A. Right.

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

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

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

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

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

Q. Okay. All right.

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

A. Mm-hmm.

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

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

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

A. Mm-hmm.

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

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

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

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

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

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

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

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

A. Okay.

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

Do you see that after the comma?

A. Yes, I do.

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

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

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

A. Sure.

Q. -- 9?

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

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

Q. -- or how would you do that?

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

A. Right.

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

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

A. Mm-hmm. Yes.

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

A. Yes. Yes.

Q. And can we refer to that also as

the tracking component of Claim 9?

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

Q. How is Claim 9 different than Claim 1?

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

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

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

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

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

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

provisional application?

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

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

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

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

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

Q. Okay.

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

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

A. 756?

Q. Six. Yes.

A. That's 46. Fifty-six.

There we go.

Q. And then it goes on to 57?

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

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

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

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

A. Yes. That's my understanding.

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

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

Q. And how about Claim 16?

A. So Claim 16 talks mainly -- the

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

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

A. Yes. I think they are fully disclosed.

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

A. So --

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

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

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

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

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

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

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

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

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

A. Okay.

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

A. Sure. I think we go to.

Q. PTX 3, please.

A. I think we go to LTI 747.

Q. You said 747?

A. I believe so. Yes.

Q. Okay.

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

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

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

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

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

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

A. Yes. It's my opinion it discloses

every element of those claims.

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

A. All right.

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

A. Mm-hmm.

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

A. Correct.

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

Do you see that?

A. Yes.

Q. That will be element two.

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

A. Right.

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

A. Mm-hmm.

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

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

So I'll refer to that as element five.

A. Okay.

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

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

It describes a context component. It describes a tracking component.

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

Q. With respect to indexing the data, --

A. Mm-hmm.

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

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

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

through everything to see if it's there. You would just naturally do this.

Q. And for the record, are you referring to what has LTI 758 at the bottom there?

A. Yes. Yes, that's what I'm referring to.

Q. Okay. We're in the last set of claims. Let's look at Claim 23, 25, 31 and 32.

A. Okay.

Q. And as soon as we have that up. Can you generally describe what Claim 23 discloses and how it's different than what we've already talked about?

A. Well, so what claim -- so we're looking at 23. Okay.

So this is now computer-implemented system. This is again, you know, basically describing a context component, but it says now it's on a web-based server, okay, which is a little bit different terminology than has been used so far.

And it also talked about assigning one or more applications to the first user

workspace and capturing context associated with the user interaction while in that workspace. So that's a little bit different than what we see.

The second element describes tracking change information, right, which is a little bit different associated with a change in access of the user from the first workspace to the second user workspace and dynamically storing the change on the storage component as part of the metadata, wherein the user accesses the data from the second user workspace.

So this describes slightly differently, but this is very similar to the tracking component that we've looked at already.

Q. Okay. So we can refer to Claim 23, the two elements. The first element being the context component that would be the entirety of the element and the second element being the tracking component, meaning the remainder of the claim; is that fair?

A. Yes, that makes sense.

Q. Okay. Could you provide an example in the provisional application where it

informs your opinion that all the elements of Claim 23 are disclosed in the provisional application?

If you can turn to PTX 3, I think it starts LTI 747. Paragraph 23, if we could enlarge that.

A. Mm-hmm. So here they're using the board to mean workspace in this claim. It's the same example workspace, same exact thing as a workspace, collection of data and functionality related to a user defined topic.

So this is sort of showing that the application functionality is related to a board. So data functionality is related to the boards.

If you look down at the bottom, the data application may be grouped in a board based on the identity of the tag (data and application. So if application can be grouped inside of a board there, it obviously referred to inside of a board, which is what the claim requires.

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

provisional application?

A. Yes, it's my opinion.

Q. If we can take a look now at the dependent claims, which are 25, 31 and 32. Could you briefly explain what the differences are or what the additions are to Claim 25, 31 and 32?

A. All right. So Claim 23, the context component, which is the thing that we have been talking about before captures relationship data associated with the relationship between the first user workspace and at least one user workspace. So they are saying that has to be a component by what's captured by the context component.

So it's being a little more specific about that.

So Claim 31 introduces the idea that the metadata is stored in at least one of a relational or object storage methodology. That's something new there.

And so Claim 32 is saying once again that storing the metadata in the storage component in association with the data

facilitates many-to-many functionality, which means more than one user being able to access more than one data file via the metadata.

So that's the, you know, new parts that have been introduced?

Q. Is it your opinion that in reading the entire provisional application, that all the elements of Claim 25, 31 and 32 are fully disclosed?

A. Yes. It's my opinion that all of them have been fully disclosed.

Q. Can we take a look at the provisional application, which is PTX 3 and can you provide a few examples where these additional examples from Claim 25, 31 and 32 are covered?

A. Sure. 747, Paragraph 22, if you can blow that up, please. Thank you.

Yeah. So the Claim 25 says there has to be -- a context component has to capture relationship data associated with a relationship between the first user workspace and at least one other user workspace. So as users create and change their context files and applications

automatically follow dynamically capturing those shifts in context.

So a shift in context is the movement from one workspace to another capturing the relationship between those workspaces. So that I think pretty well discloses Claim 25.

Q. Are there other places as well in this provisional application that would disclose that element?

A. Sure.

Q. Maybe we could turn to the next page and if we can look at the last paragraph.

What does this tell you?

A. Mm-hmm. So this is saying that if you have a collection of workspaces, which has -- they mean hereby webs, the content is associated with a routing algorithm referred to here as a webslice.

So, in other words, using this, this is a relationship between workspaces and content. So the webslice directs where the content goes. It knows which workspaces the content is associated with that creates a connection, a relationship between those

workspaces because they share the same content.

Q. Okay. Why don't we turn to Claim 31.

And let's look at it actually in the actual provisional itself for the additional element of Claim 31.

Can we go to PTX 3, please? LTI 7 -- yeah, the first page of the code there. Thank you.

Could you please explain what we have here and how that relates to Claim 31?

A. Sure. So I think I mentioned earlier if you see this import statement for vbsf, that does indicate an intention to store data in a relational database. So it makes it pretty clear that that's the technology that's used for storing the storage.

Q. In the code of the provisional application, there are other references to vbsf; isn't that right?

A. Right. There are a number of places where in the comments it refers to vbsf as, you know, where something's being stored, which is, you know, a further indication that

that's what is supposed to be happening there.

Q. Okay. If we could maybe turn to LTI 757. I think there might be another example of that that we can look at towards the bottom.

A. Yeah. These are a couple of examples that these particular collections get relationship collection. These are stored and retrieved from a relational database.

Q. Okay. Very good.

We're going to add on 32. Let's take a look to see where that last element of Claim 32 is disclosed in the provisional, an example of that. So maybe we can turn to Paragraph 1 under the Field of Invention of the provisional application PTX Number 3.

Thank you. Can you please explain whether or not this is an example of how that last element of Claim 32 is disclosed?

A. So management storage electronically creating a relationship between user applications files and folders. So users name more than one file, means more than one. I mean, that's what the many to many means.

So here we're seeing that the

intention is to create relationships between more than one user and more than one file which is what the claim says.

Q. Based on your understanding, is it your understanding that the provisional application meets all the requirements such that one can claim priority to the provisional application for the asserted claims of the '761 patent?

A. Yes, that is my opinion.

Q. Is it your opinion that one of ordinary skill in the art would be able to take the provisional application and make and use the invention of the asserted claims of the '761 patent?

A. Yes, it is. It is my opinion that using both the text and the code, one could -- one of ordinary skill in the art could do that.

Q. An is that opinion based on your review of the provisional application and the '761 patent as well as the work that was done by Mr. Marcello Caltaldo?

A. Yes. Those are the two bases.

One is my own review. The other

is actually handing it to a person of ordinary skill in the art and saying, Please make one of these, and he made one. So I assumed that one could do that.

Q. And just to make sure I didn't miss any claim, I want to make sure that we got that. It is your opinion that each and every element of the asserted claims we've talked about for all the reasons we've discussed today is, in fact, disclosed in the provisional application?

A. It is my opinion each and every element of every claim is disclosed.

Q. Okay. Let's turn to now the prior arts references.

Did you have a chance to review Dr. Greenberg's report?

A. I did. I reviewed his report.

Q. And do you understand that he's asserting certain references as prior art to the asserted claims of the '761 patent?

A. Right. I do understand that.

Q. Okay. What is your understanding of what constitutes prior art?

A. Well, in order to constitute prior art, it must be something that is publicly available. It must be something that was publicly available before the December 11th date of the filing of the provisional patent application.

And it must be something that is enabling, that would allow a person of ordinary skill in the art to actually make and use the invention without too much problem.

Q. What is your opinion regarding the references that Dr. Greenberg has cited against the asserted claims of the '761 patent?

A. So the -- none of those references disclose the elements of the claims of the '761 patent.

Q. Okay. Do you understand there are two different theories out there? One is called anticipation and the other is obviousness?

A. Mm-hmm.

Q. Could you just briefly explain what is your understanding of anticipation?

A. Well, my understanding of anticipation is that means that one reference

has to disclose each and every element of the patent of the invention in order to invalidate it.

And obviousness means that -- that several different things can be combined if there's some reason to think that they would be used together. They could be combined to render the invention just something that would be obvious.

Q. Well, why don't we turn to the tutorial slide that you had earlier in the case.

A. Okay.

Q. And looking at that, can you explain what problems the '761 patent sought to solve?

A. Right. Well, I think you recall maybe from the tutorial that we were talking about this kind of hierarchial arrangement where the user has to, you know, name a folder, you know, create a folder, decide how to name it and then to store data. The user has to then sort of figure out, you know, why each individual item should go in this hierarchy.

So that is one of the problems

that the '761 technology was assigned to solve and to make it much easier and more natural to share documents and keep track of users by, you know, using a technique to automatically update metadata.

Q. Do the references that Dr. Greenberg, that he cited, do they have anything in common?

A. They have something in common. That is that they are all basically document management systems.

They have nothing to do really with the users. They're all about documents and they all use this sort of hierarchial storage system.

So they disclose basically the same problem that the '761 technology was designed to solve. All these document management systems are centered around documents. They keep track of documents. They keep the histories for documents.

The '761 technology is all about users. It's all centered around users. It creates workspaces for users.

And it tracks users and what users do. So it's just a some completely different basis on which to build a system.

Q. Why don't we take a look at the abstract of the patent.

A. Yes.

Q. Is there something in the abstract information one of ordinary skill in the art, that that's what the invention of the '761 patent is?

A. Right. Absolutely.

If we start certain notes here, the highest contextual assumption is that there exists an entity that consists of one or more users. What that basically means is that there are -- everything is centered around users. Right.

There are -- there always has to be a user, an entity that represents one or more users as part of the system. Everything else is built around that.

And that's what makes this really very different from the document management, basically document management systems that are

cited as prior art.

Q. Let's turn to the prior art. Let's go to the iManage User Reference Manual, which is DTX 1010. Now, what is your understanding of what this user reference manual is?

A. Well, it's a manual intended for end users to -- you know, people who want to use the iManage DeskSite system would refer to this to figure out, you know, how to use it.

Q. And does it actually tell you how to build the iManage software?

A. Well, no, not at all. Actually it's as if, you know, we all have owners manuals for our cars that tell you, Here's how you operate the automatic transmission. For example, that tells me absolutely nothing about how to build an automatic transmission.

It's just -- it just doesn't disclose anything about that. So in the same way a user manual might tell me how to engage the functionality of the software, but it doesn't tell me anything about how to build it.

Q. All right. And within the four

corners of this document we've marked as DTX 1010, does it give you any information for one of ordinary skill in the art to be able to build the software in all the components that it might reference?

A. No, it doesn't. It doesn't say anything about how it's designed, what the structure looks like. It simply tells us how to use it once it's there.

Q. Do you know whether this iManage manual, which is marked as DTX 1010 whether that was publicly available in 2001 or 2002?

A. I have no idea.

Q. Now, do you have an opinion as to whether the iManage User Reference Manual is prior art to the '761 patent?

A. Yeah. Because it doesn't disclose, you know, how to make and use this invention, I would say it's not prior art. It doesn't qualify as prior art.

Q. What is the difference between the iManage User Manual and the information disclosed within the four corners of that document and the invention of the '761 patent?

A. Well, so the -- you mean the difference in nature of the technology that's described?

Q. Correct.

A. So the iManage DeskSite describes basically a document management system as we've been discussing. So it provides a way for an organization using a local network to kind of store documents in a central place and access those documents, have secure access. Probably has -- you know, has passwords and so on.

But it's basically just a way of creating, as you see on the left here, one big document repository system that people can put their documents into. And other people, if they have the right provisions, can pull them out. So that's the basic technology that's disclosed there.

Q. When you refer to one big document system and you're pointing with your pointer, just for the record, are you referring to the traditional hierarchial system?

A. Yes, I am. I'm referring to the traditional hierarchial system from the slide,

from the tutorial.

Q. Why don't we take a look at iManage Manual and go to Page 4. So could you explain to us, Dr. Herbsleb, what are we looking at here?

A. This is an example. Exactly an example of what I was talking about is that this is how iManage, you know, according to its own documentation, stores documents.

We see them put into hierarchy. Someone had to decide that this folder called corporate folder, called personal pages, public pages and then people name their pages and put them into folders. So this is very much the hierarchial storage system that is, you know, part of the problem that the '761 was trying to overcome.

Q. Is this just one example of the IManage Manual that provides you with this example?

A. Yes. If you look through it, you find many examples that are similar showing the hierarchial storage system.

Q. Why don't we take a look at

another portion on Page 83.

I believe it's Figure 3.26.

A. Mm-hmm.

Q. Can you explain: What are we looking at here?

A. Well, I mean, the caption makes pretty clear what we're looking at is a document history. So this is showing that for some particular document, these are the things that happen to that document.

All right. So this system is very document central. So you can see here somebody checks in the documents. They modified the documents.

Someone checked it out. Somebody created a different version of the document.

It just keeps track of everything that happens to that document.

Q. Well, does this figure show that the iManage manage system or the iManage -- strike that. Does this figure show that in the iManage User Manual, there is tracking of documents?

A. Yes. This sort of tracks

documents and it tracks what happens to documents. Sure.

Q. Does this figure show in the iManage User Manual that there's tracking of users?

A. No, absolutely not. There's no view that you can go to.

There's no view shots anywhere in the manual where you can sort of pull up some user and see what a user has done. That's not part of this technology.

It's all completely document central. And as you can see here, these are all entries of here of documents.

So it doesn't track users at all.

Q. Is there anything in the entirety of the iManage User Reference Manual that discloses tracking of users?

A. No, not that I could identify. I see nothing in there that tracks users.

Q. Is there anything in the iManage User Reference Manual that talks about workspace?

A. No, it does not have workspaces as

part of the technology. It doesn't provide, you know, environments places for people to do work with their tools and allow people to move from one workspace to another. There is none of that in the technology.

Q. Okay. Well, let's turn to Claim 1 of the '761 patent.

A. Okay.

Q. And take a look at that.

Unfortunately, since we shorthanded, actually could we turn to the other slide that we were referring to?

Since we shorthanded the elements here, I think I can refer to them as the context component of Claim 1. We know what we're talking about.

So in your opinion, does the iManage User Reference Manual disclose the context component element of Claim 1?

A. No, not at all. We -- again, we have to be very careful what we mean by context here because that's a word that gets used in many different ways. And what we have to use here is we have to use the construction that's

in the claim construction order, which says that context means environment.

Okay. So the software to provide a context and have a context component has to provide an environment for a workspace for the user.

And the technology described, iManage Manual just does not do that. So it does not have a context component, period.

Q. It doesn't have the entirety of the first element?

A. No. It just -- that's not there. There is no context component.

Q. Let's turn to the tracking component. Does the iManage User Reference Manual use -- disclose that tracking component of Claim 1?

A. No. Again, so if you see -- if you look at the tracking component, this is tracking a user changing a user from one context or environment or workspace to another context, which has to mean an environment or workspace.

All right. And then updating the stored metadata based on that tracking

information. Well, this doesn't have any part of this.

This doesn't have workspaces. It doesn't track users. It doesn't update metadata based on a change from one workspace to another. It just doesn't have any of that.

Q. Okay. Well, let's take a look at the dependent claims, which are 4 and 7. Does the iManage User Reference Manual disclose the other elements of Claim 4 and 7?

A. Right. So this is a dependent claim. So if Claim 1 is valid, I understand that these are also valid.

But it does not disclose anything about relationship of a user to context information of a relationship between a user and at least one of an application, application data, and user environment. It does not disclose data created in the first context associated with data created in the second context.

Well, as I mentioned, it doesn't have, you know, context in the software. So this can't satisfy Claim 7.

Q. Is it your opinion that the iManage User Reference Manual does not anticipate Claims 1, 4 and 7 of the '761 patent?

A. It's my opinion it does not anticipate any of those claims.

Q. Okay. Let's take a look now at Claim 9.

I believe we had already discussed the difference with Claim 1 and Claim 9 as it related to the web-based computing platform; right.

A. Right.

Q. Okay. Is there anything -- I'm sorry.

Were you going to --

A. Elements one and two are basically the context component. Three and four are basically the tracking component. And what's new here is web-based computing platform.

And it's a method of managing, right, method of managing data using a web-based computing platform.

Well, there's no indication in this manual that product is web based. There

is, you know, the predominant mode of operation appears to be over a local network.

There is one small reference. I think we may have it here to something web based.

Q. Right. If we could turn to the iManage User Manual and I believe it was AUTO 275.

A. Yes, if we focus in on the top here. This is about the only reference that I can recall in this manual to anything that's web like.

So it's saying up here that you can -- if you're set up correctly, send a document by email or you can send a link by email, and then someone can access your document through a URL, which would be a web-based access but. What this is saying is your system must include an iManage worksite web component server.

Well, that's not described anywhere in this manual. This is some other product apparently that has some kind of web functionality. We don't really know, you know,

what.

We just have this kind of very oblique sort of reference. So there's some mention of web, but it's for a different product. It's not even disclosed in this manual.

Q. Does the iManage User Reference teach a user environment?

A. No. There is just nothing like the user environment in this system. It's just all about documents.

Q. And does it disclose anything about metadata about the user environment?

A. Well, no. No.

Having no user environment, it also has no metadata about user environments.

Q. Okay. Why don't we take a look at Claims 11 and 16, which are the dependent claims to Claim 9.

A. Right. So Claim 11, as you see it, it talks about plurality of users accessing a content from an associated plurality of user environments. And again, having no user environments, you don't -- you can't have a

plurality of user environments.

So I don't think it discloses Claim 11.

Q. And how about Claim 16?

A. Well, no. There's really nothing at all in there about portable wireless devices or even about having kinds of data like voicemail that one typically accesses over a portable wireless device. There's no mention of it there.

Q. What is your opinion as to whether or not the iManage User Reference Manual anticipates Claim 9, 11 and 16?

A. It's my opinion it does not anticipate Claims 9, 11 and 16.

Q. Okay. Claim 21.

Is Claim 21 valid or what is your opinion with respect to whether or not Claim 21 is anticipated by the iManage User Reference Manual?

A. It's my opinion it's not anticipated by the iManage -- I'm forgetting the name of this thing -- iManage Reference User Manual. Sorry.

I think it's not anticipated by that.

Again, so I think each one of these elements mentions user workspace. They're first element user workspace in the second element. User workspace in the third element.

User workspace in the fourth element. User workspace in the fifth element. There's no user workspace here.

Also, it talks about, you know, web-based computing platform. There's nothing in there to indicate this particular product whose manual we have in front of us is web based. So it doesn't disclose any of these elements.

Q. And for the reasons that you've already testified previously with respect to the other claims and that also apply with respect to Claim 2 --

A. Correct.

Q. -- those apply here?

A. Right.

Q. So what is your opinion with respect to Claim 23 as it relates to the iManage

User Reference Manual, just in case I didn't ask earlier?

A. Claim 21 you mean?

Q. Did I say -- sorry, 21. Yes.

A. So that the iManage manual does not disclose any of the elements, I believe, of Claim 21.

Q. Let's turn to Claim 23.

Does the iManage User Reference Manual disclose any of the elements in Claim 23?

A. No, it does not. Again, we have a context component and we have a tracking component. And for all of the reasons I've mentioned before, it has neither of those.

And so it does not disclose any of the elements of Claim 23.

Q. And if we look at the dependent claims on Claim 23, which are Claim 25, 31 and 32, are those claims -- strike that.

Are Claims 25, 31 and 32 anticipated by the iManage User Reference Manual?

A. No, they're not, because these are claims dependent on Claim 23. And so Claim 23

is not anticipated.

None of these can be anticipated. They're simply making that claim more specific. So, no, none of these is disclosed by the iManage User Reference Manual.

Q. We're almost done talking about this one, so we'll -- if you look at Claim 25, there's a reference to the first user workspace. Do you see that?

A. Mm-hmm.

Q. Is that disclosed anywhere in the iManage User Manual?

A. No. There are no user workspaces in that technology.

Q. Okay. So is it your opinion that the asserted claims is valid over the iManage User Reference Manual?

A. My opinion is that all these references are valid as against the iManage User Reference Manual.

Q. Let's turn now to the Hubert reference --

A. Okay.

Q. -- which is DTX 922. Can you

explain to us what does Hubert disclose?

A. Hubert discloses something that they call a meta-document. Okay. So now a meta-document is like kind of like a regular document with some extra stuff.

And the extra stuff that goes along with it is kind of history of everything that's happened to that document. So if the document is a report, if that report gets translated from English to Spanish.

That would be recorded in the meta-document. If it gets sent from one person to another, that would be reported in the meta-document of the document.

All right. So it's basically you can think of what you would usually think about, a document plus some more information about, you know, what's happened to that document as it's moved from one place to another, been edited, been shipped around, so on. That's what it is.

Q. If you look at the title, which I believe is Line 54, enlarge that. It says meta-documents and method of managing them.

A. Mm-hmm.

Q. Is that a good description of what's in the Hubert reference here?

A. It is. It's -- again, it's very document central meaning that's what it's about. It's documents. It actually adds to the notion, it's sort of a fancy document. A document plus a little bit more information.

Q. How's that different from the invention of the '761 patent?

A. Well, the '761 patent is based around users and users' workspaces, you know, having environments for users and tracking users when I go from one environment to another environment and so on.

This is just about these meta-documents. It doesn't have any sense of users doing anything except it's recorded in history of a document. So again it's just sort of keeping a document history.

Q. Okay. Maybe we can take a look at Paragraph 11 of this reference.

A. Mm-hmm.

Q. Can you just explain what this describes here in Paragraph 11 of the Hubert

application, if you can see it?

A. Right. So it's talking about what is included in the meta-document. So we have what it calls the object-conveying document information. So that's just like a regular document.

All right. That's sort of a document part of the meta-document. It includes processing information pertaining to processing of the meta-document and metadata for indexing and retrieving the processing information.

It includes the fact that meta-document was processed by whom and any relevant tool used in the result of the processing. So, in other words, if the document gets sent from one person to another, that gets recorded in the processing information.

If you do something to it like I suppose even spell check it, or translate it or do anything like that, that gets recorded in the processing information, and so on. So that's the processing part.

Each time processing information is recorded on the document, appropriate

metadata index and retrieving the processing information is also stored on the meta-document. So it keeps its own history in the metadata. That's basically what this is saying.

Q. Is there anything about the users here?

A. There's absolutely nothing about a context, or environment or moving from one context to another, tracking users. I mean, it's just not centered around users. It's centered around these meta-documents.

Q. So, in your opinion, is it totally different than the '761 patent?

A. It's completely different.

Q. Okay. Are there figures in this application, this Hubert reference that explain what the Hubert reference is about?

A. Yeah. I think there are two figures as I recall.

Yeah. This is the first one.

This is just sort of showing what we just explained a second ago that, you know, there's data information. This is basically the document, a regular document.

And down here, this sort of tells you what processing has happened to the document. And that's stored index to the metadata, so that you can, you know, find that if you want to.

So that's just, you know, storing the history. The tool part is actually it's an optional part. It's a little bit of code that you can include if you want so the document updates its own history.

Basically that's what that tool is. It's just something that -- oh, I just -- it just notices that there was a translation that happened, so it updates the metadata to record that.

Q. Why don't we take a look at Figure 2, and if we can explain what that shows?

A. Yeah. Well, this is how a meta-document would go from one person to another.

So source one, that's a person whose -- here's a person that has this meta-document.

And it shows this link which says

internet. The description in the patent itself says the usual way of transmitting these would be as an email attachment. Okay.

So you would take this meta-document. You would attach it to an email and you would send it via an email to some other person who might then do something. And if they do something, that would be recorded as part of this document history as well.

Q. And that source two that you just pointed to?

A. Mm-hmm. So source two -- sorry. And they might do something to it and then extend along to source three.

That person might also do something to it. And as it goes through this chain being sent along through email, it just keeps track of what's happened to it.

Q. Is there anything in this figure that shows a user moving from one environment to another?

A. No. No. not at all.

I mean, it's just a document being sent from one user to the next.

Q. Is there anything in the Hubert reference at all that talks about a user moving from one environment to another?

A. No. No, there's nothing at all about that.

Q. Is it all about meta-documents?

A. It's completely about meta-documents. It is where the documents entered.

Q. In your opinion, is emailing a document from, let's say, source one to source two, the same thing as the on-line collaboration tool of the '761 patent?

A. No. This is not sort of an on-line system.

It's just a document that could be sent over the internet. But just as a textual document is not an on-line document, it's just a document that you can send through email.

Again, this is just sort of a fancier document that you could send through email. It's not an on-line collaboration tool.

Q. Let's take a look now at the claims and walk through these elements. So in

Claim 1, does the Hubert reference disclose the context component element of Claim 1?

A. No, not at all, for all the reasons I've already mentioned. There just is no context.

In the sense of an environment or user environment, there's nothing like that in the system. It's also not a network-based system.

It's just a document. There's no sense of being in a network.

As far as the tracking component, element two is concerned, again, it doesn't track users doing anything. It can't track users from first context to the second context because the technology doesn't provide user environments, or contexts or people.

So it doesn't disclose any of those things.

Q. For all the reasons we have already talked about, is it your opinion that the Hubert reference does not anticipate Claim 1 of the '761 patent?

A. The Hubert reference does not

anticipate Claim 1 of the '761 patent.

Q. Let's take a look at Claims 4 and 7. How about these claims, what is your opinion with respect to these claims?

A. Well, these claims are, you know, dependent on Claim 1. So since I believe Claim one is valid, those claims are also valid.

But, again, there's no user environment. Again, there's no context, you know.

So you can't have data created in one context associated with data in the second context. So because there is no context in the second context.

Q. When you say because Claim 1 is valid, it's also your opinion that these dependent claims are valid, is that because they don't have the elements of the system of Claim 1 that starts out on these dependent claims here?

A. Yes. They don't have the elements of the system under Claim 1.

Q. Let's turn to Claim 9.

Do you have an opinion as to whether or not the Hubert reference anticipates

Claim 9?

A. Right. Well, yes, I do. I am starting to feel like a broken record up here, but for the same reasons that you've been describing, there really is no context component. There really is no tracking component for exactly the reasons mentioned before.

It does not anticipate Claim 9 or even any of the elements of Claim 1.

Q. What about the web-based computing platform, which I believe is one of the differences we've identified?

A. Yeah. There's nothing like a web-based computing platform. A meta-document, as I said, is just a document. It's independent of a network.

It certainly doesn't necessarily live on the web. It's not a platform. It doesn't fit that at all.

Q. So let's turn to the dependent Claims 11 and 16.

A. Mm-hmm.

Q. And do you have an opinion as to

whether or not the Hubert reference anticipates Claim 11 and 16?

A. Right. So once again, it talks about associated plurality of user environments. Well, there are no user environments in a meta-document.

And this talks about -- Claim 16 talks about further comprising accessing the user environment via a portable wireless device. There's no mention of anything like that.

Q. So is it your opinion that Claims 9, 11 and 16 are valid over the Hubert reference?

A. Yes. It's my opinion that 9, 11 and 16 are valid as against the Hubert reference.

Q. Let's take a look at Claim 21.

A. Mm-hmm.

Q. Is Claim 21 valid over the Hubert reference?

A. Yes, in my opinion, Claim 21 is valid over the Hubert reference. Once again, this is the one that it pointed out, let's say, user workspace is mentioned in each element of

this claim. And the meta-document does not have any user workspaces in it.

It does not disclose any user workspaces; therefore, it doesn't really anticipate any of the elements of Claim 21.

Q. Let's turn to Claim 23?

A. Okay.

Q. Do you have an opinion with respect to Claim 23 as to whether or not it's anticipated by the Hubert reference?

A. Well, again, you know, this is basically -- the first element is the context component. The second element is the tracking component.

And for all the same reasons that I mentioned repeatedly, there is no context component. There is no tracking component.

There is no web-based server involved in this technology. For all of these reasons, it does not anticipate either of the elements of Claim 23.

Q. Are any of the elements of Claim 23 present in the Hubert reference?

A. No. None of the elements of Claim

23 are present in the Hubert reference?

Q. Would that be true of the other independent claims of the '761 patent?

A. That is true of all of the independent claims of the '761 patent.

Q. Can we take a look at the dependent claims, which are 25, 31, 32. Do you have an opinion with respect to whether the Hubert reference anticipates these claims?

A. Well, since it does not anticipate Claim 23, these claims are all dependent on Claim 23. To simply make it more specific, the Hubert reference does not anticipate any of these claims.

Q. Now, in the Hubert reference, there's the word -- the use of the word context. Is it used in the same way as the '761 patent?

A. No. It's not used in the same way at all. If we follow the claim construction order, then context means environment.

And in the Judge's description or discussion of how that terminology was settled, there's some mention of the user environment is part of an environment.

User environment is very much what we would call a workspace. It's where the user lives, does things, has tools for the user, keeps the user's stuff.

And the term context is not used at all in that way in the Hubert reference.

Q. I think we covered this. Is it your opinion that Hubert doesn't anticipate any of the asserted claims of the '761 patent?

A. Yes. It's my opinion that Hubert does not anticipate any of the claims in the '761 patent.

Q. Let's move to Swartz, which is PTX 919. What does the Swartz reference cover?

A. The Swartz reference, it discloses a system that creates audit trail or regulatory compliance purposes. So to give a little bit more description, the idea is that if you want to show that your work complies with regulatory requirements, let's say, for example, you're doing pharmaceutical tests. You're testing a drug or something.

There are very detailed regulations that dictate how you have to, you

know, do those tests. So what this Swartz invention does, the idea is that you first start out by creating a very detailed kind of work flow of all the steps that you need to undertake, so that you will be sure that you comply with regulations. Okay.

And then it sort of keeps track of everything that gets done. So if I do a statistical analysis, it sort of grabs the data and the analysis and plugs it into this audit trail. Right.

If someone writes a document, or does a sign off, or does a review or whatever it is that the regulations require, this second technology sort of takes the results of all those things, integrates them into an audit trail.

So when it gets to the end, you not only had to report, but you can establish exactly where everything came from. And so you can prove through that audit trail that you've complied with the regulations.

Q. Are there some figures that show what's disclosed here in this source reference?

A. Yeah. I think we can move forward and --

Q. Can we take a look at Figure 7?

A. Yeah. This is one of the figures.

So, again, here we're dealing with documents and we're also dealing with data. And what this system is doing is kind of integrating them and weaving them together into an audit trail.

As you can see, the way the data's stored here is just, you know, just like the other diagrams that we've seen. Again, folders have to be named. Individual items have to be placed into folders and that's how the data is organized.

All right. So you have clinical reports. Then you have to decide, okay, here are the reports that I want to put into that folder. And, you know, again, we have sort of storage in the way that creates all the problems that we talked about for people trying to share documents.

All right. And this is a problem that the '761 is trying to overcome.

Q. So when you referred to the other diagrams just earlier in your testimony, were you referring to the hierarchial structure?

A. Yes. Sorry.

I was. I was referring to the hierarchial structure of files and folders.

Q. Okay. Why don't we turn to Figure 11 of the Swartz patent, which that's DTX 109.

A. Yes.

Q. So now what does this show us?

A. This is, again, very much the same kind of thing showing how data gets stored in the system, showing files and folders that have to be named. And then you sort of choose where the different -- different files go in this hierarchial system.

Q. Does what's disclosed in Swartz care about the users?

A. No, not at all. It doesn't care about users. It's centered about all the operations necessary to get, you know, improved regulatory compliance. So that's what keeps track of -- it keeps track of all those steps that go into the creation of this report

documenting exactly how they were taken, so that you can prove at the end that you track them the right way.

It doesn't care about users. There's no workspace.

There's no moving of a user from one workspace to another workspace. It doesn't care about users.

Q. Why don't we take a look at Figure 2A?

A. Mm-hmm.

Q. What does this show us?

A. Well, this is again showing that the DataDocket Software, this is the Swartz technology, is sitting in the middle and it's interacting with some number of applications you might have. You know, some of these -- according to the wording in the patent, some of these regulatory compliance cases have thousands of documents and thousands of statistical analyses. And you might have any number of applications that you have to use to sort of create that document.

So DataDocket Software kind of

sits in the middle as middleware and collects all these different operations that happen as this process moves forward to create the audit trail. So here this is just showing sitting in the middle. It's a piece of middleware that kind of gathers up all the stuff that is stepping in the application and creates the audit trail.

Q. Why don't we take a look -- I think there's a description in the patent in Figure 2A. Take a look at Column 9, Lines 5 through 8.

Yes?

A. Mm-hmm.

Q. So can you explain what we are looking at here in Lines 5 through 8?

A. Right. So the way this works actually is this middleware sits above the operating system. Right.

And the application is run sort of, if you will, on top of the middleware, so the DataDocket kind of can intercept the data that's exchanged and facilitate the exchange of data between the applications so that you can

capture them and integrate them.

It has an integration component. It kind of weaves them together to create this trail of what happened.

Q. Is the primary idea behind the Swartz reference to manage the flow of raw source data to a final report?

A. Exactly. It's not at all about collaboration or sharing.

It's all about sort of pulling things together into an audit trail of documents and final report.

Q. I think there's some places that it's described here in the patent. If we could turn to Column 8, --

A. Mm-hmm.

Q. -- lines 49 through 56. So could you explain, you know, what is being described here?

A. I think we're starting at the line at a first or basic level, it automates the process of transferring data analysis reports to a document management system for document production.

So the idea is that it takes data from the application where the work is being done and kind of funnels into a document management system creating this history that -- so that this whole package can then be used for regulatory approval submission.

So, you know, it synchronizes information flow between data and a document repository. So it's weaving together these data and the documents into a single stream.

Q. Does this have anything to do with users?

A. No.

Q. Okay. Can we turn to one other place here in the patent?

I believe it's Column 6, Lines 22 through 26.

And Dr. Herbsleb, I was hoping you could explain what's being described here about what the Swartz reference is about.

A. Sure. Okay.

More specifically, the 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.

Okay. Here's one of those examples that it uses some of the terminology of '761, meaning tracking and context. It's using those words in a completely different way.

So context here is the context in this regulatory compliance scheme. Right.

So you want to show that as you're creating this document, that, you know, it's based on these data, analyzed in this way. And that's the kind of context it's referring to is weaving together the statistical data the document just talked about tracking.

It's talking about tracking what's going on in this regulatory compliance scheme, what's being done to the documents, what's being done to the data. There's no sense at all of it tracking people, or tracking users or having even workspaces for users.

So this is a completely different type of thing.

Q. Is there anything in the claims of

this Swartz reference that also demonstrates this point that you're making?

A. Sure.

Q. Can you turn to Claim 1 and 2?

A. Right. So a knowledge integration system for providing application interoperability for data analysis between heterogeneous documents and data sources. So basically what this describes is it has database memory.

It has a data source suitable for interoperatively performing data analysis. That basically means there's some application that's doing statistical analysis out there. That's the first data source.

And as a source of documents, all right, including document database memory. And then this has a knowledge integration application, which then kind of weaves together the documents and the data that support those documents to create this audit trail, this history. And that's basically what's what it's about.

Q. And if you look at Claim 2, --

A. Mm-hmm.

Q. -- does that confirm your understanding of what's been disclosed in the Swartz reference?

A. The knowledge system wherein the knowledge integration application generates an audit trail to represent the flow of data.

Q. Okay.

A. So, again, how does the data flow to create this report? That's' what it's trying to capture.

Q. Can we take a look at Claim 5 of the Swartz reference? And can you explain, what does this mean to one of ordinary skill in the art?

A. So this is storing -- the integration component is storing information about the integration transaction. So what it means here by integration transaction is when it takes some data in a document and pulls them together to sort of show that, you know, it's been done correctly. So those are the transactions it's talking about.

So it's -- so it stores those

transactions, everything, data and documents into a trail. It stores that history of transactions.

Q. It uses the words dynamically stores. Is that the same concept of dynamically stores or dynamic storing as disclosed in the '761 patent?

A. It doesn't really specify what dynamically is here. Just means that if, you know, something happens and then it stores the information. It's not really very specific about what that means.

Q. How is that different than what's disclosed in the '761 patent?

A. Well, so the '761 patent, what gets stored is, you know, the user takes some action and that updates, you know, the metadata either based on context information or the tracking information.

This doesn't really say that it's triggered necessarily by something the user does. It doesn't -- it's not clear what triggers it. It just says that it's, you know, stored over time.

Q. So by using the same words, does it mean the same thing from the Swartz reference to the '761?

A. No. No.

These words often get used in very different ways and we have a claim construction order that covers some of the words that are used here. We have to understand them in that sense.

Q. Okay. Let's look at the claims now. So we'll turn to Claim 1.

A. Mm-hmm.

Q. Do you have an opinion as to whether or not the Swartz reference discloses the context component element of Claim 1?

A. I have an opinion. It does not disclose the context element of Claim 1 for many of the same reasons we discussed. It doesn't have a context component.

There's nothing like an environment. There's nothing like a user workspace.

And so it can't do any of the things, you know, described in here because it

doesn't have user workspace.

Q. And how about the tracking component element of Claim 1?

A. The tracking component element of Claim 1 is essentially in the same story, it does not track users as they move from any context to any other context. It's not centered around users. It doesn't track users at all.

Q. Do you have an opinion as to whether or not the Swartz reference anticipates Claim 1 of the '761 patent?

A. I do. It does not anticipate in my opinion Claim 1 of the '761 patent.

Q. Let's look at Claims 4 and 7. What is your opinion with respect to whether or not the Swartz reference anticipates Claims 4 and 7 of the '761 patent?

A. Right. My opinion it does not anticipate Claim 4. Context information, this is information from a user environment in which the invention doesn't have, so it doesn't anticipate Claim 4.

Claim 7 talks about a first context associated with data created in the

second context. It doesn't have context in the software.

Q. So is it your opinion that four and seven --

A. It does not anticipate either Claim 4 or Claim 7.

Q. Let's turn to Claim 9. Do you have an opinion with respect to Claim 9 as to whether or not the Swartz reference anticipates Claim 9?

A. Well, as we discussed the first two elements comprise the context component, the section two elements comprise the tracking component and for all the same reasons that I have discussed, it does not anticipate any of the elements of Claim 9.

Q. Let's turn to Claims 11 and 16. What is your opinion with Claims 11 and 16 as to whether or not the Swartz reference anticipates those claims?

A. Well, again, we have indexing the content of the user environment. It has no user environment so it does not anticipate Claim 11. Accessing the user environment via a portable

wireless device, it has neither so it does not anticipate Claim 16.

Q. Is it your opinion also that since Claims 11 and 16 depend on Claim 9 that the same reasons you articulated for Claim 9 also apply to those two claims?

A. Right. Those same reasons apply here as well as additional reasons.

Q. Let's turn to Claim 21.

A. All right.

Q. Do you have an opinion as to whether or not Claim 21 is anticipated by the Swartz reference?

A. I do. My opinion is that Claim 21 is not anticipated by the Swartz reference. Again, we see here user workspace mentioned in every element of this claim. And there is, you know, no user workspace in the technology of Swartz disclosure, so I don't think that any of these elements are anticipated by Swartz.

Q. Let's turn to Claim 23. Do you have an opinion as to whether or not Claim 23 is anticipated by the Swartz reference?

A. Well, once again, I find myself

saying the same thing over and over again. I apologize if it's getting repetitive. But the first element is the context component. The second element is the tracking component. And once again, for all the reasons I have mentioned, it doesn't have a context component as described here. It does not have a tracking component as described here, so it does not anticipate either of the elements of Claim 23.

Q. How about the dependent claims, Claims 25, 31 and 32, which depend on Claim 23?

A. Well, they depend on Claim 23 in the sense that they just make it more specific. It does not anticipate any of these claims, either, for the same reasons.

Q. And when you say any of these claims, you're referring to 25, 31 and 32; is that correct?

A. That's correct.

Q. So is it your opinion that the Swartz reference doesn't anticipate any of the asserted claims for all the reasons you have testified to today?

A. It is my opinion that the Swartz

reference does not anticipate of these claims.

Q. Do you have an opinion as to whether or not the Swartz reference affects the validity of any of the asserted claims of the '761 patent?

A. I think the Swartz patent does not affect the validity of any of the claims in the '761 patent.

Q. Do you have an opinion as to whether or not the Hubert reference affects the validity of any of the asserted claims of the '761 patent?

A. I do have an opinion. I think that the Hubert reference does not affect the validity of any of the claims in the '761 patent.

Q. Do you have an opinion whether or not the iManage reference affects the validity of any of the asserted claims of the '761 patent?

A. I do. I believe the iManage user reference manual does not affect any of the claims of the '761 patent.

Q. Would there be any combination of

these references that we have just talked about that would render the asserted claims of the '761 patent obvious in your opinion?

A. No. In the first place, I haven't seen any reference that anyone has offered as to why someone would think to combine them anyway. There has really been no reason offered as to why we should do that. But even if we did, all suffer from the same problems as we've seen. I was saying the same thing over and over again, if you can combine them all, none of them has a context. None of them has a tracking component. None of them invalidates any single element of any of the claims. If you put them all together, they still don't invalidate any of the elements of any of the claims.

Q. Do those references actually practice the problems that the '761 patent sought to solve?

A. Yes. As we saw I think for all of them, there is the same hierarchal arrangement of data storage, folders, you name the folders, you put stuff in the folders, so it does not facilitate sharing in collaboration. In fact,

it creates -- it's the same kind of system that creates the problem that the '761 is trying to solve.

Q. In Dr. Greenberg's report based on your review of the it, did he provide the motivation to combine any of these references together that we have talked about?

A. No, I don't believe he provided any reason why someone would try to combine these references together.

Q. Would the fact that on the face of two of these references refer to an assignment to Xerox suggest a motivation to combine?

A. No, I believe those are Swartz and Hubert. No, I don't think so. You know, Xerox must have thousands or tens of thousands of patents. Just the fact that it's the same company doesn't suggest that you would automatically think they would be combined in some way.

Besides, I believe the Hubert patent was a European patent, so I believe Hubert is in Europe somewhere. And the Swartz patent was patented in the U.S., so it's not

even clear -- you know, they're in different continents presumably, that doesn't provide any reason to think that someone would combine those.

Q. Do you have an understanding for the concept of obviousness that we had talked about earlier whether an element-by-element analysis combining the references is required?

A. Yeah, my understanding is that it is required.

MS. KEEFE: Objection, Your Honor. 601, legal opinion.

MS. KOBIALKA: I'm asking for his understanding of --

THE COURT: Overruled. If he has an understanding, he can testify to it.

THE WITNESS: My understanding was that one must sort of look at each element in turn and find some reason to combine the references rather than saying all these things should be put together and somehow they add up to the invention.

Q. So in 2002, the time of the filing of the provisional, would it have been difficult

to convert a standalone software product into a web-based product?

A. Yeah, there are a number of problems, depending on the product it could be quite difficult. If you're creating a standalone product, you can use whatever you want to use on the computer, you're just totally unrestricted. If you're trying to create a web-based version of it, you have to create something that runs inside of a browser, that's a very, very restrictive environment, so it can be quite challenging to do that, let alone dealing with the fact that, you know, network conductivity might be there, it might not be there, it might die in the middle of a session, there are a number of things to deal with. It does not make it a trivial undertaking at all.

Q. I just asked that question in connection with 2002. Today would that answer be any different?

A. It would be easier now, still not trivial, but probably easier.

Q. How about in 2002, would it have been difficult to convert an existing product

into one that's accessible by a portable wireless device?

A. Yes, the portable wireless devices of 2002 have very small screens, for example, so to create some way to interact with an application on a little tiny screen is a very big problem.

And in 2002, that was before we heard much about 3G connectivity, so it was very, very small bandwidth, so it's hard to get something useful to run with a tiny bit of bandwidth and you have problems of being connected and disconnected and what to do when that happens. It's not a trivial exercise.

MS. KOBIALKA: Your Honor, this may be a good stopping point. I do have a little more and it would extend into the lunch break.

THE COURT: That's fine. I think it's an appropriate time for our lunch break and we'll allow our jurors to go out to get their lunch.

THE CLERK: All rise.

(Jury leaving the courtroom at

12:28 p.m.)

THE COURT: You can step down, Professor.

Ms. Kobialka, your estimate about how much longer on direct?

MS. KOBIALKA: Probably fifteen minutes.

THE COURT: We'll be in recess until 1:30.

(A brief recess was taken.)

THE COURT: Good afternoon. Anything we need to discuss before we bring the jury in?

MR. ANDRE: Just one quick matter, Your Honor, before the jury comes in. We'll be resting our case after Dr. Herbsleb. Before we do so, there was a stipulation early in the case about the commercial success of Facebook and I realize they have recently challenged that stipulation once again and we don't know if we should offer proof before we close our case or how the Judge wants us to handle that.

THE COURT: Right. Mr. Rhodes, do you want say something?

MR. RHODES: Not very much. I wanted to avoid evidence coming in on the matter. They over my objection got evidence in on the matter, so I told them there is no need for a stipulation, you can argue evidence.

THE COURT: Well, my plan right now is to have one sentence in the jury instructions at the obviousness portion that -- which I think is language that Leader proposed, Facebook's website is commercially successful, so that plus the evidence that came in is as much on commercial success as we're going to have.

Anything else before we bring the jury in?

MR. ANDRE: That's all, Your Honor. Thank you.

THE COURT: Mr. Rhodes?

MR. RHODES: No.

THE COURT: No. Let's bring the jury in.

THE CLERK: All rise.

(Jury entering the courtroom at 1:41 p.m.)

THE CLERK: Please be seated.

THE COURT: Good afternoon. Welcome back.

Ms. Kobialka, I believe you're still on.

MS. KOBIALKA: Yes. Thank you, Your Honor. I would like to finish up with Dr. Herbsleb. While he's on his way up to the stand, we would like to move PTX 1125 into evidence.

MS. KEEFE: No objection, Your Honor.

THE COURT: It's admitted.

BY MS. KOBIALKA:

Q. Dr. Herbsleb, in your opinion, would any of the references that we have discussed today used in combination in any way render any of the asserted claims of the '761 patent obvious?

A. No, they would not. As I mentioned they all suffer from very similar kind of issues, so putting them together doesn't help.

Q. And that's all based on the

reasons that you have already provided today; is that right?

A. Exactly.

Q. In your opinion, does the invention of the '761 patent address a long-felt but unresolved need in the industry?

A. I think it does. I mean, this 2002 time frame was right at the end of the period where I was doing research in collaboration technology at Bell Labs. We were trying to introduce and develop some technologies to help distribute teams and share documents and it was a huge problem. And I think others were suffering from very similar kinds of problems trying to figure out how to get global distributed teams to share, for example.

And, again, in terms of obviousness, I think if, you know, a solution to that had been obvious, someone would have come up with it some time ago.

Q. In your opinion, based on the techniques that were known around 2002, did those techniques teach a way from the invention

of the '761 patent as it related to users?

A. Yeah. I think what we saw in some of the other references are the kinds of things that were, you know, typical of the day, you know, hierarchy arranged filing systems, systems built around documents, managing documents, tracing history of documents, that is what was around.

So that would not lead someone to suddenly go in the other direction and build everything around users. I think that's a significant shift and I don't think that was at all obvious from the technologies that were prevalent at the time.

Q. In your opinion, did these factors provide evidence that the invention of the '761 patent is not obvious?

A. I think they do. I think they give another good indication that it was not obvious in that time frame.

MS. KOBIALKA: Thank you. No further questions at this time.

THE COURT: Thank you.

Cross-examination.

MS. KEEFE: Thank you.

CROSS-EXAMINATION

BY MS. KEEFE:

Q. Good afternoon, Dr. Herbsleb.

A. Good afternoon.

Q. Dr. Herbsleb, are you being paid to be an expert in this case?

A. Yes, I am.

Q. How much are you being compensated at?

A. They compensated my usual consultant fee which is $300 an hour.

Q. Dr. Herbsleb, you respect Dr. Greenberg, don't you?

A. I do.

Q. And, in fact, you would consider him to be an expert in collaboration technologies; correct?

A. I would, that's correct.

Q. And we've just heard you had expressed an opinion that the patent was nonobvious; right?

A. That's correct.

Q. And the only two considerations of

nonobviousness that you used were your belief that there was some long-felt but unresolved need and teaching away by others of the invention; is that right?

A. No. No. Those are not my only reasons for thinking that it was not obvious. I'm also thinking about the particular things that were disclosed in the references in the Greenberg report, and the other kinds of technology that were available and prevalent at the time. And all of those things together, along with the fact that there was a long-felt unmet need as well as teaching away, all those together caused me to think that it was definitely not obvious.

Q. But in your report, the only secondary considerations of nonobviousness that you listed were long-felt but unresolved need and teaching away by others from the invention; is that correct?

A. I don't believe so. I think that those are the only secondary considerations that I mentioned at the time. I believe that an examination of the references also indicates

that it was not obvious. I believe I commented in the report on the fact, for example, that Dr. Greenberg did not attempt to provide any justification for combining references to indicate obviousness, so that indicates that his report did not adequately support a finding of obviousness.

MS. KEEFE: Your Honor, I would like to play for the record at his deposition page 188, lines 10 through 14, please.

THE COURT: Hold on a second.

MS. KOBIALKA: No objection.

THE COURT: No objection. You can play it.

MS. KEEFE: Thank you.

(Videotape.)

Q. As I read your report, sir, your secondary considerations of nonobviousness are in the category of long-felt but unresolved need and teaching away by others from the invention. Is that accurate?

A. Yes. That's right.

BY MS. KEEFE:

Q. But Dr. Herbsleb, you couldn't

identify any products in the industry that implement the claims of the '761 patent that are asserted in this case, could you?

A. I couldn't seem to identify any products in the industry. Could you repeat it again.

Q. Absolutely. You could not identify any products out there in the industry that implement the claims of the '761 patent that are asserted in this case?

A. So as you recall during the deposition, I was just responding to Dr. Greenberg's report and I was sticking mostly to commenting on that report. So since I was not asked to prepare for that report any survey of products out there in the world, I didn't do that.

Q. And as a result, you did not identify any products out there in the industry that implement the claims of the '761 patent that are asserted in this case; correct?

A. I don't actually remember that, but that could well be true, yes.

Q. And you had no opinion one way or

the other as to whether anyone in the industry is following the teachings of the '761 patent; isn't that correct?

A. So, I don't recall. I may have said that.

Q. And you did not perform any tests to test how effective the '761 patent is?

MS. KOBIALKA: Objection. Outside the scope of his direct.

MS. KEEFE: It goes directly to the secondary considerations he's been discussing.

THE COURT: Overruled.

THE WITNESS: So, no, I didn't perform any tests, but I have on the other hand been involved in collaboration technology in sort of introducing collaboration technologies to industry and I think it's pretty clear that this technology is an effective approach to that.

Q. But you did not perform any tests to test the efficacy of the systems and methods claimed in the '761 patent, did you?

A. No, I didn't perform any

experiments or anything, no, that's correct.

Q. And you did not perform any surveys regarding the effectiveness of the systems and methods claimed in the '761 patent, did you?

A. No. As I pointed out, I was just responding to Dr. Greenberg's report, and it didn't seem to require conducting any experiments in surveys, I did not.

Q. Now, you talked about the code that was attached to the back of the provisional application.

A. That's right.

Q. And I think your testimony earlier this morning was that you talked about it for you being something like a recipe, we talked about sauteing something. Do you recall that?

A. I think what I said actually was that it is a concise way to convey information. That it's not the complete implementation of the invention disclosed, by any means, but it's something which would give someone skilled in the art, you know, information about how one would actually make and use this invention.

Q. But you also have testified before that the code attached to the provisional application is just pseudo code; correct?

A. Yes. Well, that goes along with the idea that it's mainly a communication device for other people who might want to make and use this invention. It's not really a full implementation as I said, but it is designed to be helpful, you know, to give information and hints to someone who might want to actually make this invention.

Q. To make hints, that is what you just said?

A. For someone practicing the art, it would give strong indications of how to implement, make and use this invention.

Q. And pseudo code would not actually function if you were to compile it into an executable program; right?

A. Pseudo code would not, right.

Q. And that's because it's not a real programing language; right?

A. So pseudo code is not a real programing language, but there is really kind of

a fine line here that I would like to clarify.

So the language that appears here looks very much like Java, although I didn't really try to compile it and test it and see if it actually runs. But the purpose of that code that looks a lot like Java is to provide information to someone skilled in the art so you know what kind of glasses had been imported, you would know how data was being stored, you would know where to go to access information about users, and so on.

Q. You mentioned a lot of things in that last answer that I would like to go through.

A. Okay.

Q. Can we actually see the import statement section of the provisional, please. So you mentioned these import statements quite a few times; is that correct?

A. That's right.

Q. And, in fact, the ones that we pointed to most frequently were the import.com. Leader.persist.vbsf, and the very last import, com.leader.osapplication.sessionstate; is that

correct?

A. That's correct.

Q. You just mentioned that an import statement imports classes that are defined elsewhere; is that right?

A. That's right.

Q. What is a class?

A. It is a unit of code.

Q. So an import statement is used to bring in code that lives somewhere else into the code without having to repeat that code right here; is that correct?

A. Yeah, it's used for, you know, very common sort of utilities and boiler plate sort of code that's used very frequently. And every Java program and most programing language these days import things like that.

Q. But with respect to the import statements that we have highlighted here, you can't really know what is in those classes unless you actually have access to the underlying source code that's being imported; isn't that correct?

A. I would say that's not correct. I

would say that anyone skilled in the art knows, you know, you don't know every single detail of exactly what is within those classes, but you know that VBSF is middleware that allows you to store information in a database, you know, that session statement is there to sort of capture and hold information about a session because web protocols are stableless and they can't catch a state, so you know that kind of stuff from just looking at the names of these things because those are very common names in the industry.

MS. KEEFE: Your Honor, I would like to play from the deposition at page 132, lines 19 through 22.

MS. KOBIALKA: I'll object. That's an incomplete clip. We need to continue on to --

THE COURT: Which lines do you propose in addition?

MS. KOBIALKA: At least page 133 through line one.

THE COURT: 133, one.

MS. KEEFE: That's fine, Your Honor.

THE COURT: Okay.

(Videotape:)

Q. You can't really know what's in these classes unless you actually have access to the underlying code. Correct?

A. So, that's correct -- except someone with skill in the art would be able to make reasonable guesses based on the names, I would maintain.

BY MS. KEEFE:

Q. And, in fact, the best you could do is guess as to what's in the code referred to in an import statement; isn't that correct?

A. Not in the sense of a wild guess, no. So as I said before, you don't know the details of how each one of those is implemented because you don't see the code. But VBSF are very common well understood terms so that anyone knowledgeable in the art would know basically what they're doing and they would tell you that if you are trying to make and use this invention, certain kinds of information are going to be stored in a relational database and certain kinds of information are going to be

stored in a session state. That would be clear.

MS. KEEFE: Your Honor, I would like to play page 133 lines, two through six.

MS. KOBIALKA: I'll object as incomplete. If it goes through line 13 on page.

THE COURT: No objection through line 13?

MS. KOBIALKA: Yes.

THE COURT: Ms. Keefe.

MS. KEEFE: I actually disagree, I literally asked the question directly and then the answer, but if that helps then we can go ahead and play it.

THE COURT: It helps. Let's go ahead and play it then, the whole portion.

(Videotape:)

Q. But that's the most they could make, is reasonable guesses?

A. Yes. But someone, you know, skilled in the art could make reasonable guesses, I think.

Yes. But someone, you know, skilled in the art could make reasonable guesses, I think.

Q. So let's talk about VBSF for a minute. What is VBSF?

A. Sort of a middleware that matches up object-oriented programs with relational databases so that it does the translation from the object model to a relational model, makes it much easier to use in a relational database.

BY MS. KEEFE:

Q. And, in fact, with respect to the sessions state classes, you were, in fact, speculating as to what was contained within them; isn't that correct?

A. So, are you talking about this clip? This clip is talking about VBSF.

Q. No, I'm talking about session state classes.

A. Session state classes.

Q. That were imported.

A. So, as I mentioned, you can't see the details of what is session state because the source code is not here. But it is sort of boiler plate type code. Session state is something that if you're writing a web and you have to maintain session state, it's usually the

same for almost every application, a set of things that you're doing in web protocols, they don't know that you have logged in, they don't know that you have seen this page but not that page. But session state captures that sort of information and holds it.

It is well-known that this is the purpose of session state libraries.

Q. But you agree that with respect to the session state, you were speculating as to what it contained?

A. I think that when something is well understood by people versed in the art it's not really quite speculation. It is a very informed inference.

MS. KEEFE: Your Honor, I would like to play from page 132, line five through line 18.

MS. KOBIALKA: Object, Your Honor. This isn't impeachment.

THE COURT: Pass up a copy, please of the transcript. 132, line five through 18?

MS. KEEFE: Yes, sir, Your Honor.

THE COURT: The objection is

overruled. You can play it.

MS. KEEFE: Thank you, Your Honor.

(Videotape:)

Q. So you would not know how to locate those classes. Correct?

A. So there are session state classes in Java, for example, that may be very similar to this, so the functionality of these kinds of classes -- the reason -- well, I'm speculating. But the reason they're not fully reproduced here is simply because they're fairly common kinds of things that you wouldn't need to look at.

Q. But you are speculating. I mean, you can't --

A. I am.

(End of videotape.)

A. So if I may clarify what I was speculating about is the reason they don't appear here, if you go back and carefully read that, I'm not speculating about what the classes mean, I'm saying I'm speculating the reason they don't appear here is because they're very common and they don't need to appear here.

Q. When you hired doctor -- you hired

Dr. Caltaldo to actually attempt an experiment, is that correct, using the provisional application?

A. I'm not sure if hire is the correct word. I'm the one that gave him the task, I did not pay him, someone else paid him, but yes, I gave him that task.

Q. And you agree that a person of ordinary skill in the art in this case can have as little as a bachelor of science in computer science according to your testimony; is that right?

A. Yes, that's right.

Q. But Dr. Caltaldo actually has a Ph.D.?

A. He does.

Q. And Dr. Caltaldo has more than ten years of experience in the field of computer science?

A. That's correct.

Q. And you consider him to be very talented; right?

A. He's talented, yes, but then on the other hand, as I said before, having a Ph.D.

does not necessarily enhance somebody's ability to create a web application. Having a Ph.D. you're doing research that takes you into an extremely specialized area and since I was his thesis supervisor, I can tell you it had absolutely nothing to do with web applications or even applications.

I think ten years of experience is, you know, probably fairly average for someone in industry, so I think if you put all that together, he was someone, you know, that would be a representative of someone who was well versed in the art.

Q. And other than assigning him this task, you didn't actually oversee Dr. Caltaldo in any way during the project; is that right?

A. Not in any way having to do with this, no.

Q. And you don't know if Dr. Caltaldo referenced any outside materials in coming up with the pseudo code that he developed; isn't that correct?

A. All I know is what he told me, and he told me he did not, when I asked him.

Q. But when you had your deposition taken in this case, you were asked the question, and you, in fact, answered that you did not know if Dr. Caltaldo had referenced any outside materials; isn't that correct?

A. That's correct. And it was the deposition that convinced me that that was a pretty important question and I ran off and asked Dr. Caltaldo at which point he told me he had not referenced any other materials in preparation.

Q. You didn't know during the time of your deposition whether or not Dr. Caltaldo had worked with anyone else in connection with his work; isn't that correct?

A. At the time of the deposition, I probably didn't know that.

Q. And similarly at the time of your deposition, you did not know whether anyone else had contributed to the content of the pseudo code that Dr. Caltaldo handed you; isn't that correct?

A. So there is a little wrinkle here that I should try to explain to make this clear

is that at some point in the deposition, I think it was at lunchtime or perhaps a break, I called Dr. Caltaldo and asked him some of these questions. So I didn't know during the first half, I knew some of the answers during the second half. There were some things I didn't think to ask him which I asked him yet later, so there are several different points in time here.

Q. Could we pull up the pseudo code, please. I think it's the new exhibit, 1125. 1125, please. Can you highlight just the title.

Dr. Herbsleb, is this the title of the report that Dr. Caltaldo gave you?

A. Yes, it is.

Q. And the terms at the end here, context and tracking components. Those are phrases used in the patent; isn't that correct?

A. That's correct, they are used in the patent.

Q. In fact, it's -- you testified earlier that it was possible that Dr. Caltaldo actually had a copy of the final patent when he was performing his analysis, didn't you?

A. I believe what I said is that it's

public information, that anybody can access that, so of course he had access to it as does everyone.

Q. Dr. Herbsleb, what Dr. Caltaldo built was actually pseudo code, wasn't it?

A. Well, again, it appears to be Java. It is very, very close to Java, but since I didn't compile it, I don't know if it really runs, so we could call it pseudo code. It looks just like Java.

Q. You testified before that Dr. Caltaldo did not build any actual working system in connection with his work with the provisional; isn't that correct?

A. That's correct, because it does make calls into the code, you know, provided in the provisional patent application which we didn't have in code form, so it couldn't run because it makes those calls to the code that's in the system.

Q. And the fact that it is pseudo code indicates to you that the code Dr. Caltaldo developed could not be used to create a working application; is that correct, by itself?

A. Not, it's not complete by itself, right, it does rely on the code in the provisional application.

Q. Dr. Herbsleb, with respect to the iManage reference materials, you testified that the iManage reference materials did not teach a web-based system; is that correct?

A. Yes, that's right.

Q. Can you please pull up page 41 of the iManage reference manual. This is in chapter two.

Dr. Herbsleb, could you please read for me the first sentence under the header web browsers out loud?

A. "IManage DeskSite has a web browser utility to allow you to quickly access the web directly from iManage Desktop."

Q. Thank you. Can you also please --

A. So could I comment on that. That does not mean that it's web-base system, that means it has a browser built into it. Browser simply goes out and makes the http requests and gets web pages, but iManage is not a web-based system. That is not to say the documents within

iManage is accessible in any way, it means you have a browser and you can go look at the web, that's all it says.

Q. Go you pull that back up again, please. But, in fact, can you read for me the tool bar here under the address and what is the name of that website?

A. Tool bar under the address. It's http.www.iManage.com.

Q. Thank you.

Can you now please turn to page 83 in Figure 3.26. I believe you also testified that it's your belief that iManage does not involve users, or taking care of tracking users or where users are; is that correct?

A. It does not track users from one context to another, that's correct.

Q. Can you read for me what the title is on the left-hand column of this figure in the iManage reference?

A. So that is the user, which in this case happens to be the same user four times in the row, it could be four different users. As the figure caption says this is a document

history in which whatever user happens to interact with the document. Those user names would show up there. In this case it happens to be the same user four times in a row, but if Bowen went to do anything else this would not track them.

Q. With the Hubert system, you also believe that the Hubert system has nothing to do with the web; is that correct?

A. The Hubert system has nothing to do with the web, that's right.

Q. Could you please pull up page 25 of the Hubert reference. Paragraph 25, I'm sorry. Can you please read for me the first sentence of paragraph 25 of Hubert?

A. "Meta-document 20 is then forwarded via the internet to source (environment) 34."

So the internet is not the same as the web. The Internet is the basic plumbing, the basic functionality. It's a big network that hooks computers together. The web is a set of servers built on protocols on top of the internet. So something going by Internet

doesn't necessarily mean something going by web. And the illustrations in the description here are sending something as an email attachment.

Q. Isn't it possible that one of ordinary skill in the art could see the word via the internet and also assume that it could be done via the worldwide web?

A. Well, it could be done, you know, with paper airplanes or something. It's not here.

Q. So you also said that Hubert had nothing to do with users, I believe; is that correct?

A. I said Hubert has nothing to do with tracking users from one context to another. It's not centered around users.

Q. Could we pull up paragraph four, please. Paragraph four was talking about what Hubert was trying to solve; is that correct? Sort of the background of what was wrong in the past?

A. Excuse me, let me take just a second to read this.

Q. Sure.

A. (Witness reviewing.) Yes.

Q. Okay.

A. So, in fact, at the end it actually says one of the problems was, in fact, most of the information about what happened to the document during its whole life, e.g., who read it, reviewed it, a user, where it was sent as an email attachment, who liked it, et cetera, is lost. So that is what it says.

And this as I believe I characterized it before is a document history, it's sort of here are all the things that happened to the meta-document, somebody read it, somebody else reviewed it, it got sent around, it's just accumulated history of what happened to it.

Q. Can we turn to paragraph nine, please. Here in paragraph nine, can you please read for me the highlighted sentence?

A. There is also a need for a system and method of managing documents which tracks all of the information about what happened to a document during its whole life (e.g., who reviewed it, where it was sent as an email

attachment, who liked it, et cetera).

So once again, that you know says that it is keeping a history of the document, everything that happens to a document.

Q. Keeping track of what user touches that document?

A. Exactly. So it's centered around the documents, it's not saying here is a user, here is what the user did, and here the user moving around from one context to another, it's not following users, it's following a document.

Q. Can we look at paragraph 14, please. Can you please read for me the sentence that's highlighted?

A. Sure.

"All of the processing information in the meta-document is explicit, accessible, and reusable so that other tools or other people in different contexts can benefit from it."

So this -- sorry.

Q. Thank you. That's all.

So with respect to the Swartz document, you also indicated that Swartz was not web based; is that correct?

A. So Swartz does have a brief mention of the web. I don't believe I testified to whether it was web based or not, but it does have a brief sort of hand wave that in the future embodiment it would be good if we could do this on the web. I don't think it contains much more than that.

Q. Can we pull up column nine, lines ten through fifteen, please. Is this what you were referred to?

A. No, actually it's not. The client will run on a client server system as depicted in Figure 3 to provide web-based operability, use and users will operate PC client systems. This is the kind of thing that I was talking about, yes.

Q. And I believe you also testified that Swartz didn't deal centrally with users; is that correct?

A. That's right.

Q. Can you please pull up column four, starting at line 55. Can you read me the first sentence starting line 55?

A. Okay. "Alternative or improved

embodiments of the invention will enable users to define and execute multiple tasks to be performed by one or more applications from anywhere within a document."

Q. And can you also turn, please, to column eight at line 55. Can you read that for me, please?

A. "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."

But again, this is all tracking information being integrated into an audit trail, so the word context shouldn't be confused with context component as here in the '761 patent.

MS. KEEFE: I have no further questions. Thank you, Dr. Herbsleb.

THE COURT: Thank you.

Redirect.

MS. KOBIALKA: Quickly.

REDIRECT EXAMINATION

BY MS. KOBIALKA:

Q. Dr. Herbsleb, when you were asked about whether or not the entirety of your opinion related to the long-felt need and teaching away for secondary considerations, was that just in reference to a specific paragraph in your report?

A. It was. That was just a specific paragraph. The report said considerably more about obviousness.

Q. And so the report provided much more background and information with respect to what your opinion was about why the invention of the '761 patent is valid?

A. I had much more information than that. That was merely one --that was merely the secondary considerations about obviousness. There was all the other talk about obviousness, and so there was a couple of hundred pages of stuff in addition to that.

Q. Did any of that snippets that were provided to you of the three references disclose -- indicate to you that the invention of the '761 patent was disclosed in any of those references?

A. Not at all. I still maintain that there was not a single element of a single claim disclosed in any of those references.

Q. And as an inventor of one of the prior art references actually cited during the prosecution of the '761 patent, is it still your opinion that the invention of the '761 patent is valid?

A. It is still my opinion that the '761 patent is valid.

MS. KOBIALKA: Thank you very much.

THE COURT: Thank you. You can step down.

THE WITNESS: Thank you.

MR. ANDRE: Your Honor, at this point Leader Technologies rests its case.

THE COURT: Okay. Thank you.

Mr. Rhodes.

MR. RHODES: Your Honor, I incorporate by reference the statements and motions made by Mr. Weinstein during our break this morning at this point in the proceedings.

THE COURT: I will take those

under advisement.

MR. RHODES: Thank you, Your Honor.

MR. ANDRE: In light we renew our motions as well, Your Honor.

THE COURT: I will take that under advisement as well.

Mr. Rhodes is there anything in the way of rebuttal on the validity case?

MR. RHODES: I'm happy to say that we have nothing further, Your Honor.

THE COURT: Okay. I believe that means we're at the close of evidence and we're going to be able to let our jurors go a little bit early today. Am I right about that, counsel?

MR. ANDRE: That's correct, Your Honor.

MR. RHODES: Yes, Your Honor.

THE COURT: We got them to agree on something.

Ladies and gentlemen of the jury, we have now completed the evidentiary portion of the case. What still remains is for me to

charge you, that is give you the legal instructions that you will apply to the facts as you find them, and for you to hear from both sides their argument as to why they think you should rule for them.

As you might imagine, it will take me and it will take counsel a little bit of time to gather our thoughts so that they can make sure that we get everything correct and make the best possible presentations to you. And as a result, I'm going to give all of you the afternoon off and we'll reconvene tomorrow morning at nine o'clock.

You'll hear first from me with the legal instructions, then you will hear from counsel. And once all that of that is done, the case will be submitted to you to begin your deliberations.

But so as to not to get ahead of ourselves, you're not to start deliberating yet. You're not to start discussing the case yet. You're not to discuss the case with anybody outside of the courtroom, either. Don't look at any media coverage if there is any. Don't do

any investigation. Don't use Facebook. And be back here tomorrow morning in time to get started at 9:00 a.m.

THE CLERK: All rise.

(Jury leaving the courtroom at 2:19 p.m.)

THE COURT: Counsel, we are going to take a break for about ten to fifteen minutes and then I'm came back in, I'll tell you a little bit about the jury instructions and then we'll let you all go.

MR. RHODES: I have some really ministerial housekeeping matters about exhibits and things that I would like to put on the record at some point.

THE COURT: Let's talk about that when I come back. Thanks.

(A brief recess was taken.)

THE COURT: All right. Before we get into whatever issues you all may have, let me just talk to you just a little bit about the jury instructions.

They are nearly complete, so they'll be filed later this afternoon and you'll

see them when you get back to your offices.

And I'm not going to go through instruction by instruction and tell you everything I was thinking about each one. But I do want to hit a few of the points for you.

First on 1.10 on deposition testimony, there won't be any explicit reference to Mr. Lamb or to the errata sheet. I'm content that I've allowed the parties to create a sufficient record that each side can argue the impact, if any, of the errata sheet and the corrected testimony. And I didn't think there was any reason to pull out and identify for the jury one particular type of credibility challenge to one particular witness.

On 3.3, which is just telling the jury which are the independent and which are the dependent claims and what are their relationships, I did not include Facebook's proposed charge. The more I thought about it and sat through the trial, I thought I think the record is pretty clear as to the relationship between the independent and dependent claims. I think the language proposed by Leader makes that

clear. I'm confident the jury understands how dependent and independent claims are related to one another.

On 3.4, on the claim construction for the case, I have added a construction for wherein to mean in which. There is -- this was proposed by Facebook rather late in the case. That portion of the instruction is not objected to by Leader, and I -- so I am going to include that construction.

I am not adding a negative construction of quote not when. Generally, of course, courts construe terms affirmatively and not negatively. Here if I were to go down the path of saying what things are not, there is a lot of things I would have to say in which is not, and arguably I would have to start saying what all the other claim terms that were in dispute are not. That would be confusing and unnecessary.

The experts, and by that I do mean experts, plural, experts more than one have testified as to how they understand the wherein language. Both sides have been permitted to

question the experts in ways that implicate the experts' understanding of the wherein term and both sides can argue consistent with the evidence that came in when they're discussing what wherein means.

In 3.4 I have also added some language along the lines proposed by Facebook with respect to the idea that the jurors are not to consider prosecution history or specification as a basis for altering the Court's claim construction.

A general point that affects a number of the instructions is that I'm not going to be instructing the jury on theories of indirect infringement. I'm only instructing on direct infringement, so I'm not including any instruction on induced infringement or contributory infringement.

I don't believe there has been evidence from which the jury could find that any third party other than Facebook is the direct infringer, nor do I think there is any evidence of Facebook's knowledge of the '761 patent at this trial.

So the instructions, the verdict form, and argument will be limited to theories of direct infringement, literal as well as Doctrine of Equivalents.

3.7, direct literal infringement, this is where I have addressed the issue of control or direction with respect to method claims, 9, 11 and 16. I'm telling the jury that this is a factual issue for them. I'm also identifying some of the factors that they can consider in making that factual determination.

My instruction accommodates my view that this is a factual dispute, and also what I have put in here is in my view consistent with the law.

4.10, obviousness, the only thing I wanted to point out there is as came up earlier today, I have added in a sentence that the Facebook website is commercially successful. I have also pointed out that it is for the jury to decide if Facebook embodies all of the asserted -- all of the claims of the '761 patent.

So what we will do tomorrow is I

will read to the jury all of the instructions through 5.2, so I'll stop after I read the unanimous verdict instruction, and I'll save for myself the duty to deliberate which tells them go ahead and start deliberating and that the Court has no opinion.

So after I read through all the way through 5.2, turn to Leader for argument, then Facebook, and then I'm going to let Leader have the last word if they have any time left. I'm not going to have a second Facebook argument solely on validity. So Facebook will stand up once, Leader twice, if they have got the time to do it.

That is it for me. I know I have a question about exhibits, but it was suggested there were issues that the parties wanted to raise, so let's go through those first.

Mr. Andre.

MR. ANDRE: The only issue we have is about exhibits. We have particularly cumbersome exhibits that are I believe DTX 725.

THE COURT: Is that thirteen volumes?

MR. ANDRE: The thirteen three-inch binders that are an exhibit. And I believe our paralegals have that ready to go, but we just want to know the logistics of how to -- people giving me death stares in the front row here.

THE COURT: I have a question about the logistics, too.

MR. ANDRE: How do you want us to get that to you?

THE COURT: First off, is there any objection to its admissibility?

MR. RHODES: I don't think we object to the admissibility. I question the wisdom of 3,000 documents in the room.

THE COURT: We don't need to argue about it. It is admitted. And let me confer with my deputy for a second.

All right. It's just going to be with all of the other exhibits in the custody of my deputy, so you'll just need to give it to us as you have given us any other exhibit, but it is admitted.

Anything further, Mr. Andre?

MR. ANDRE: I'm not sure how you want to handle the jury binders, if they actually take the jury binders away from them at this point and let them go with the official exhibits. If they are not, if they're going to keep their own individual jury binders, there probably needs to be some of those exhibits removed.

THE COURT: If they do keep their jury binders?

MR. ANDRE: If they do keep the jury binders, they need to have some of those exhibits removed because they have not been entered into evidence. And I believe counsel talked to me earlier about putting some exhibits in. I don't have a strong preference. I think it's probably easiest to just have them have the official set. Sometimes they write notes on their own exhibits. I don't know what they're doing. So I'm open to the Court's suggestion or the counsel's suggestion.

THE COURT: Let me hear what Facebook's position is.

MR. RHODES: First, Your Honor, I

just had one question about the Court's construction of the term wherein. On Friday, Mr. Andre I believe stated in open court that he would not argue when. If he starts to argue when in the closing, I wouldn't want to object. I can't stand making objections during someone's closing. I just wanted to address that with the Court. I heard him say to Your Honor I will not argue when.

THE COURT: I heard him say that, but what I have ruled today is that you're all free to make arguments on -- in which, or on wherein that are consistent with the evidence. So that may open the door to him arguing when. You can note an objection to any such argument now or right after the argument.

I certainly have a preference that you don't all get up in the middle of closing arguments and object left and right to one another. I don't think it helps you with the jury, anyway.

MR. RHODES: I agree. May I just lodge the objection at this moment that if he makes the argument that in which is the same as

when, we do object and we think that has gone beyond the Court's guidance in the case. I just want to note that for the record.

THE COURT: It has been noted.

Now on exhibits.

MR. RHODES: On exhibits just a couple of housekeeping matters. I don't have a particular view on the binders, Your Honor. Frankly, you know, that doesn't bother me what they want to do. We went through this morning the ones that we thought I had in a binder that I never used. They should obviously be taken out. I wanted to add the one that Ms. Keefe moved into evidence which was the nonconfidential iManage reference manual.

I don't know whether you want to take that one out and add this one or put them both in, that's your preference.

THE COURT: Let's talk about iManage first because I think I left the record kind of unclear there. To the extent we have jury binders, I'm keeping in that jury binder the quote confidential version of iManage.

MR. RHODES: That was DTX 1010.

THE COURT: 1010. So to the extent that I in any way indicated I was going to have that removed from the binder, I did not mean that. They have been removed from the binder. They will not be removed from the binder.

MR. RHODES: May I ask that we add to the binder DTX 925E.

THE COURT: You can request it and we'll add it to the binder if we're going to let them hang on to the jury binders. I need to think about that for a second and confer.

Hold on.

(Discussion off the record.)

THE COURT: All right. What I think is neatest and cleanness is if my staff retrieves all the jury binders which we're told are all in the jury room right now. Of course we don't let the jurors take them with them. We'll hold on to them. I can't imagine that anybody is going to need them, but we'll hold on to them. But the jury won't have them, so I think it's academic at this point what we put in or take out of the jury binders.

MR. RHODES: That makes it easier, then, Your Honor.

Then I just had a housekeeping question. Mr. Andre and I spoke last week about our closing demonstratives and we're both a little bit old school, it's closing, you get to do what you want.

We kind of had an understanding we wouldn't share them, but then I realized that you actually had a procedure in your order. I went back and looked at it. So I wanted to ask you what you wanted us to do and when you wanted us to do it.

I suspect he like me needs a little bit of time to be able to work the instructions, how they'll come in. My suggestion was going to be if you thought this made any sense was early tomorrow morning we just send each one a set, we agree those sets are frozen, it at least gives us an hour to look at it, make sure there is nothing completely off the wall.

THE COURT: Mr. Andre, any thoughts?

MR. ANDRE: As I told Mr. Rhodes, short of having naked pictures of me in his presentation, I wouldn't care what he put in it. But that being said, I don't really care. I think it's closing argument, and if you can get up and try to present something that's not been proven factually it hurts your case. So if he wants to have some type of objection procedure in the morning which can really disrupt obviously the close, I mean...

MR. RHODES: Actually, Mr. Andre and I actually agree on this, but I actually do have those photographs in my IPad.

THE COURT: No. That's all right. Please.

MR. RHODES: Your Honor, I would never besmirch the Court's integrity by showing those, because trust me, you wouldn't want to see them. We agree on this, actually, but don't want to --

THE COURT: I understand. You're both old school. It remains to be seen what I am. But I know I don't want the pictures.

I'm going to hopefully not regret

this, but I'm going to trust the two of you on modifying my procedure to the extent it's in the pretrial order, if you want to share, share. If you don't want to share, don't share.

MR. RHODES: Don't share. It's a deal.

THE COURT: Okay. Anything further, Mr. Rhodes?

MR. RHODES: No. We got the official file, so I think we're good there. And I think with that, unless there is anything else, no, I think we're good, Your Honor.

THE COURT: Okay. Mr. Andre?

MR. ANDRE: The special verdict form, will that come out with the jury instructions?

THE COURT: It will. You should have both of those within an hour.

MR. ANDRE: Thank you, Your Honor.

THE COURT: Have a good evening and we'll see you at nine o'clock tomorrow.

(Court recessed at 2:57 p.m.)

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Heather M. Triozzi, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public, do hereby certify that the foregoing record, Pages 1,643 to 1,895 inclusive, is a true and accurate transcript of my stenographic notes taken on July 26, 2010, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of July, 2010, at Wilmington.

Heather M. Triozzi, RPR, CSR
Cert. No. 184-PS