EXHIBIT 26 PART 2

individually, you have them do it too to make the point they're covered under their company's confidentiality requirements.

Q. We heard a lot about the e-mail you sent to Mr. Schlessinger on November 21st and reference to the sweetheart deal, and that's exhibit DTX 185. So can you just briefly describe what the context of this particular e-mail was.

A. Yeah, it was an e-mail to a person who was friendly to the company who for a number of years had been, kind of, morally supporting our effort, and as we got closer to the -- as we proceeded in our development, I kept him informed just on a casual basis.

And when we got where I could show him some of the early elements of Leader2Leader, we started talking again, and Len is an -- I call him an entrepreneur-friendly CEO, probably the most entrepreneur-friendly CEO I met.

He knows as you continually develop your systems as a small company, it costs money, and when I came to him with this e-mail, we had an opportunity to bring in about

$10 million in one form or another, and I was asking for his help to get this $10 million funding round.

Q. So at the time you were talking about Leader2Leader, what specific technologies under the suite of technologies were you talking about?

A. As I recall at that time, we were largely talking about Leader Phone, Leader File, and Leader Message.

Q. If we could take a look at some of the e-mails that were shown previously, let's start with 776.

Now, this is an e-mail from Mr. Hanna to CWCal at computer wizards. Do you know what that e-mail is?

A. I do. That was a broadcast list to our developers.

Q. Leader's developers?

A. Yes.

Q. If we scroll down, we go to LP. It says, "Right now we are focusing primarily on those issues that affect LP. Some work is proceeding on more general L2L issues."

What does LP refer to?

A. That's the developer shorthand for Leader Phone.

Q. Around this time, this is what you were discussing with The Limited; correct?

A. That is correct.

Q. Okay. So now I'd like to turn to exhibit 766. This is DTX 766, and this is an e-mail between you and Mr. Butler.

And look at The Limited here, and you were asked a number of questions about that. Were you referring to your discussions you had previously in November with Mr. Schlessinger in connection with this description to Mr. Butler about your negotiations with The Limited?

A. Yes, I was, and we were generally very excited that this major company was getting ready to endorse what we were doing, and we were talking with -- about Leader Phone and elements of the Leader2Leader suite that existed at the time, and the reference there to a contract was in relation to an experimental beta program.

Q. And so you had further discussions with The Limited about eventually doing a beta

program?

A. Yes, we did.

Q. After you sent the e-mail to Mr. Schlessinger on November 21, what was their response?

A. Well, that e-mail that we're referring to was an attention-getter e-mail. It got his attention, and he said, "Let's start out something. Let's test this and see how we may want to use it in your various divisions."

And that's what those five bullets in that e-mail before are referring to. They were referring to the potential fits within the organization.

Q. The five bullets you're referring to are the ones in the November 21st, 2003 email, which is Exhibit 185.

We have just blown it up. On Exhibit 185, are those the five bullets point you're referring to?

A. That is correct.

Q. Okay. At some point, did you draft a beta testing agreement with The Limited?

A. Yes. Within months of this

agreement at Mr. Schlesinger's direction, their advanced technology group engaged us in discussions. And in fact, this email talks about two of those gentlemen.

And we organized an experimental beta program within The Limited, and we got it down to an actual contract statement.

Q. So at some point after you sent the November 21st, 2002 email, did Leader obtain the technology of the '761 patent?

A. Yes. A few days with -- around December 11th, 2002.

Q. And so at some point after you filed your patent application, did you discuss with The Limited about including the technology of the '761 patent into the Leader2Leader suite of technologies that you were discussing with them?

A. We were so excited to show somebody, that they opened up their lab to us and we showed it the first opportunity we had within their testing lab.

Q. Okay. Can you describe what that demonstration was that you provided to The

order just to get one connection.

So to have two connections in a conference room where the person's only got an hour and to have two computers, it was just too cumbersome. And we never did it.

Q. All right. I'd like to show you a draft of The Limited brand beta agreement marked as PTX 773.

MS. KOBIALKA: May I approach?

THE COURT: You may.

BY MS. KOBIALKA:

Q. Do you recognize this document, Mr. McKibben?

A. Yes, I do.

Q. And what is the document?

A. This was the result of our discussions during the first few months of 2003 to finalize an initial experimental test with them. We called it the Beta Agreement.

Q. Okay. Let's talk about Boston Scientific.

In some of your first meetings with Boston Scientific, did Professor Chandler attend with you?

A. Actually Professor Chandler introduced us to Boston Scientific and he attended the first meeting.

Q. And you had an NDA at that first meeting; correct?

A. We had a confidentiality agreement at the very first meeting.

Q. I think we have enough NDAs in the record, so I'll just ask some questions. What was that meeting about that you were discussing back in September of 2002?

A. That was a meeting with the chief security officer for Boston Scientific and the professor and him had been a colleague for many years, years in the National Intellectual Law Institute.

That meeting was primarily introductory and it was to generally discuss our products. I recall showing him LeaderPhone and discussing the possibilities with that.

And the other aspect of our technology that he was primarily interested in was the Leader Smart Camera, because he was in charge of all of the security systems for Boston

Scientific worldwide.

Q. What is Leader Smart Camera, just generally and very quickly?

A. Okay. Leader Smart Camera is a technology that was invented at Lawrence Livermore National Laboratories.

And we had acquired rights to include in our Leader2Leader framework technologies. And basically what it was invented to do was provide perimeter security for nuclear securities of the United States government.

Q. At some point, did you begin to have discussions with Boston Scientific about implementing the technology of the '761 patent and doing a beta test with Boston Scientific?

A. Yes, we did in 2003.

Q. I'd like to mark DTX I believe it's 769, which is a service provider agreement.

MR. ANDRE: 679.

MS. KOBIALKA: 679. My apologies.

May I approach?

THE COURT: You may.

BY MS. KOBIALKA:

Q. Mr. McKibben, what is this document you have in front of you?

A. This is the service provider agreement that we developed with Boston Scientific for the experimental beta program with them in the -- starting late summer of 2003.

Was this the first beta program for the technology that included the technology of the '761 patent for Leader2Leader?

A. Yes, it was.

MS. KOBIALKA: Your Honor, I'd like to move in Exhibit DTX 679 into evidence.

THE COURT: Admitted.

BY MS. KOBIALKA:

Q. And can you turn to Exhibit A?

A. Okay.

Q. And in Exhibit A under monthly user license, how many licenses were granted in this document?

A. Ten user licenses.

Q. So that the ten user licenses indicates to you that this was just intended to be a small beta test; is that correct?

A. That is correct.

Q. When you originally started talking to Boston Scientific, you were talking about one set of technologies involved in the Leader2Leader product; correct?

And did that change over time to include the '761 patent?

A. Yeah. As I stated earlier, the first meetings discussed primarily LeaderPhone and Leader Smart Camera.

And then the gentleman named Lynn Mattice suggested that he -- he heard a little bit about Leader2Leader and suggested that he wasn't the right person to hear about our technologies. And so he suggested I come back and do a presentation for information technology people that would more appreciate what we were doing.

Q. And eventually then you began to have discussions with them once you had the technology of the '761 patent to be included in the Leader2Leader product offering that you were discussing with Boston Scientific; correct?

A. Right.

BY MR. RHODES:

Q. Are you able to identify any iteration of the Leader2Leader product that, in your opinion, did not implement what's claimed in the '761 patent?

A. So may I ask a question? Am I able to identify any element at any time that didn't implement?

Q. Leader -- I'll try to clear this up.

Leader2Leader, as you said, evolved over time; right?

A. Correct.

Q. And now -- and there were many iterations of it; correct?

A. Correct.

Q. Now, I'm asking you: Were there -- was there ever an iteration of the Leader2Leader platform that did not embody the '761 patent?

A. Any time before December 11, 2002, it couldn't have because, it didn't exist.

MR. RHODES: Okay. May I play the record, Your Honor?

A. Well, what I did was, I looked for the ideas, what's in each one of the elements. Can I find a match of the provisional application?

So for example, at one level, are the words there? At another level, if the words aren't there, is the idea there?

There's some code included in the provisional application. I looked at the code, and I asked, does the code actually have any of these words or ideas within it?

So that's how I did my comparison.

Q. Can you pull up a slide of claim one, please. Just go to the patent itself and show claim one.

So for example, this is claim one; is that right?

A. Right.

Q. Now, are there -- what elements in claim one are you talking about when you say that there are ideas that are in the claim that are not in the provisional application?

A. We see two major elements. We see two paragraphs.

which is a little figure we see clearly.

So this is obviously important. It's on the very front of the patent, and there's -- on the left side we see this thing called a context component and this thing called a tracking component. This is part of the 761 patent.

Q. Are those figures in the provisional patent?

A. This figure is not in the provisional patent. There's no figures at all in the provisional patent.

Q. Are there more figures in the issued patent?

A. There's twenty or twenty-one. However you count in the issued patent, there's quite a lot more.

Q. Are there other differences between, just facial differences between the provisional patent application and the final patent?

A. Well, the provisional application is a lot shorter, for one thing. And I actually --

Q. Did you prepare a slide?

A. Yes. So here's a good side-by-side comparison.

The provisional application, as I mentioned, is quite a bit shorter. We see there's nine and a half pages of text, plus eight and a half pages of code.

And it's in quotes because I don't actually know if it's working code or just something that was written that never actually ran. There's nothing in the application that says that.

Whereas the final patent application has 39 pages of text. You know, so this is substantially more stuff in it.

The provisional has no figures to illustrate a concept whereas the final patent application has 22 figures.

I mention words like tracking, context, context data, metadata. There's absolutely no mention of the word tracking in the provisional application. And in the final patent application, tracking is an element of every single asserted claim, and it's also

described thoroughly in the specification.

In the provisional application, there's no mention of context data or this idea of metadata. Well, there is of storing metadata.

There is one mention of metadata that I'll talk about shortly. But there's no mention of these terms of context data at all.

Whereas in the final patent, their context data and metadata are in -- are elements of each and every one of the independent claims. And it's also claimed in the -- described in the specification.

Q. And you mentioned that the metadata is used once in the provisional, but it's not used as -- the same way in the final?

A. And again, metadata is in each and every one of the elements of the asserted -- of the independent claims that are asserted in this case.

Q. Can you describe for us some of the examples of the description of context components and context data that you found in the patent itself? And I think you had some

slides for that as well.

A. Sure.

Q. Column 6.

A. Well --

Q. Oh, go ahead. Did you want to talk about this?

A. Sure. Maybe we can just bring them both up at the same time. Okay.

This just elaborates a little bit more about what I said before. Tracking appears zero times. Track appears zero times.

Metadata appears once. And as I mentioned, not in the way it's used, access appears twice. And whereas these terms are really heavily used in the final patent.

They appear 64 times. So that was back to the question of, you know, on the face level, you know, are there stark differences. And the answer is yes.

Q. Okay. So you mentioned that these terms appear numerous times in the final application?

A. That's correct.

Q. Before we dive into the

description of metadata storage or update in the provisional application?

A. Well, it's just not there. In fact, they -- the term metadata is used only once, and it's used as a description of what was available previously.

And the way it's used is in a different way from the way it's described in the '761 patent.

In fact, I have some -- I've highlighted some materials about that.

Q. Actually, no, before we bring that up --

A. That's not --

Q. No. No, before we bring that up, so with metadata, I just want to back up and make sure this concept is very clear.

Where does metadata storage and update -- in fact, let's bring up Claim 1 again.

Where does metadata and storage appear in Claim 1?

A. Okay. So it appears in -- let's take a look at this.

So if we look at the first

the provisional application?

A. Well, as I mentioned, the word metadata appears only once and it appears in a completely different context. In fact, as part of the background of the invention.

And there's -- there's nothing else in the -- in the provisional that actually has any concept of metadata, nor is there anything in the code, nor is there anything in the examples. I didn't see it.

Q. Can you please pull up the background of the provisional.

So is this the paragraph that describes metadata?

A. Yes. So let me just see where it is, if it's this particular part.

Maybe it's the next paragraph. I'm not sure.

Q. How about Paragraph 11?

A. Yeah, keep going.

There we go. In fact, if you include Paragraph 12 as well, that would be good.

So this is in the background of

They're talking about it as, Oh, it was done manually and we can do better than that.

But that's it. That's the only use of the word metadata in this entire provisional is to say, Here's what's been done before.

And it's wrong or it's not wrong, but it's not enough.

Q. If the provisional doesn't describe metadata storage and updating, what does it describe?

A. So I prepared a series of slides on power point to try to illustrate this. If we could bring that up. There we go.

So the provisional application describes this idea -- describes here a lot of the ideas in it. So there is stuff in there. It's just not the stuff that's in the asserted claims.

So the first thing it does, it describes these things called boards. And boards are essentially a collection of data and application functions.

So these are things like, Well,

captured and put in the knowledge repository.

If we go on. And, in fact, even in the claims of Swartz, Swartz actually says that his system generates this audit trail to represent the flow of data. So, again, we have this notion of tracking in one of the claims.

And in Claim 5, he actually says that all this is dy -- that the system dynamically stores information about these transactions. So this is all happening as people are doing their work.

Q. Now, how do these features that you've just described compare to the claims of the '761 patent?

A. Well, they pretty well -- well, not pretty well. They describe using Claim 1 as an example. This describes what Claim 1 is doing.

Q. Can we go through the animation again and have you use the language of Claim 1?

A. Okay. I just want to get the language of Claim 1 in front of me to see.

Q. Why don't you put it up on the white board to the side of you, so we can have

it at both places at the same time.

A. Okay. That would be helpful.

Q. Just make sure it's clean for us. So Dr. Greenberg, I'm going to have you help us step through the Swartz patent and what it discloses with each and every one of the limitations from Claim 1.

A. Sure. But let's back up one more step, because -- and even again remember that I'm talking about the data docket software is kind of watching what's going on, and the data docket software actually has software that's equivalent to the -- what we'll see here is a context component and also the tracking component. So now we can move through that.

Later I'll talk about it being a network-based system. But here we have the data docket context software is a context component and it captures the context information associated with the user-defined data.

So if we step through this, again we see here at the bottom, it's talking about a captured metadata associated with the information. So it's characterized in context.

So there we go, we're characterizing context.

And then it says, the context component dynamically storing the context information in metadata. And that's mentioned. That quote also captures that.

We see the captures metadata and so it's there.

Q. So Dr. Greenberg, I'm sorry. Just to slow down one second.

A. Yeah.

Q. So which portions of Claim 1 are you saying map to the quote that we have here on the screen?

A. Okay. Right now I'm looking at the first element of Claim 1.

Q. So is that 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 the first context of the network-based system?

A. That's correct.

Q. Okay.

A. And then I went on to talk about

the context component dynamically storing the context information metadata. And we see the metadata over there.

Q. And which -- which portion of this language -- seems a little obvious, but which portion of this language tells you that?

A. Well, captures metadata associated with the information shared, stored and accessed by the users of the data.

Q. So is that just generic metadata or is that a specific type of metadata?

A. No, this is -- well, it's very specific, because it says below, so as to characterize the contents. Right.

This is all about what are people doing in a context? What exactly is happening? As in this case, they're using that customer data analysis software system.

Q. Thank you. Please go on.

A. Okay. Can I see the next animation just to -- okay.

So we have in the second claim, we have a computer-implemented tracking component of the network-based system for tracking a

change of the user from the first context to a second context of the system and then dynamically updating the stored metadata based on the change.

Now, here in this quote, he says we have this knowledge integration middleware, so that does some of the tracking that's preferably employed to identify, including tracking, monitoring and analyzing the context in which information is employed.

So, again, we have the tracking coming into play, which is what that claim is all about. And if we keep on going.

And here we see in the claim, it generates an audit trail. And that's part of the storage functionality. Right.

As people are doing what they're doing, it's being stored. And we see that in Claim 5 as well. That is the dynamically stored. Right.

So we're dynamically storing information about these transactions as people are doing them.

Q. How do we know that it's the same

metadata that's being updated?

A. Well, this is a whole point of the system. Right.

It's about capturing this knowledge path, which I mentioned before. It's about what is it that people are doing and can we actually create that as a knowledge path.

So it's all related. It's not just different stuff. It's related from what happens within a context.

How do we track what people are doing as they move from one context to the other? How do we store what happens in the second context? How do we store all that as metadata?

So it presents this knowledge path.

Q. And where was Mr. Swartz when he wrote this patent?

A. I'm not sure where he went to. I do know that the patent was assigned to -- was assigned to Xerox. So I can assume that he was working for Xerox at the time or he had some relationship with them.

But I don't know that for sure. All I know is that Xerox is, in fact, the actual assignee.

Q. And when was this, again?

A. I'll have to look back on that first page, but I said it was late '90s.

Could I just have it right in front of me?

Q. That's okay. So when was that filed again?

A. So he filed it in 1998, and I think this is, what, five years before the '761. So quite a long time before the '761 patent.

Q. Dr. Greenberg, what is your opinion as to whether or not Swartz discloses each and every element of Claim 1 of the '761 patent?

A. My opinion is that it does disclose each and every element of the -- of Claim 1 of the '761 patent.

Q. And what does that mean?

A. Well, what it means is essentially -- well, what it means is that the ideas that are presented in the '761 patent

appear in the Swartz patent. So -- so and I should be more specific.

The ideas that are present in each and every element of Claim 1 are presented in Swartz. Swartz actually had these ideas well before that and published it.

Q. And do you have an opinion as to whether or not that affects the validity of the '761 patent, Claim 1?

A. Yes. My understanding of patent law is that prior art essentially discloses each and every element in the claim and that that claim would be invalid.

Q. Have you also applied the teachings from the Swartz patent to the other claims of the '761 patent?

A. Yes, I have.

Q. And can we go through those now?

A. Sure.

Q. Put up Claim 4.

A. I think before that, I had something that actually looked at the language of Claim 1.

Q. Absolutely.

A. Yeah, because I think -- I don't think I finished with Claim 1 because there's another point that I -- well.

Q. Oh, no. Thank you very much.

Sorry if I missed a step.

A. So what I wanted to say, these are -- on the left, we see excerpts from Claim 1 from the elements of Claim 1. On the right, we see language from Swartz.

And I think you've seen some of this before. But I really want to stress that not only are the ideas that Swartz talks about essentially or they disclose what's in those claims, but he uses almost exactly the same language. So we have -- it's not just, oh, Here's an idea. There's debates about it.

But the language in it is very, very similar language. So in the '761 patent, the element -- one of the elements talks about dynamically storing the context information and in metadata associated with the user-defined data, the user-defined data metadata stored, and a storage component.

And we look at Swartz, and he says such a system also preferably captures metadata associated with the information shared, stored and accessed by users of the data, so as characterized the context in which information is being used.

So we see the words are the same. Well, the ideas are the same and the words are the same.

If we can keep on going here in the '761 patent element in the of Claim 1, we see the tracking component of a network-based system for tracking a change of the user from the first context to a second context. And you see in the quotes on the right where he talks about his knowledge integration middleware that is employed to identify.

And here he talks about including tracking the context so as to enable the use of such context in the management of knowledge. So, again, we see the idea of tracking context and other things in the Swartz.

Furthermore, in the '761, it talks about dynamically updating metadata on the

database.

On a change in Swartz, he says the recording of the data should be done automatically, electronically, with dynamic linkages to the source information, so all this is happening as things occur.

I believe there's one more at the end of claim one. It says "wherein the user accesses the data from the second context," and in Swartz, Swartz says "such a system also

> preferably captures metadata associated with the system changed, stored, and accessed by the users of the data so as to characterize the context in which the information is being used."

Very similar words. There's many ways to describe the invention. What I found compelling about Swartz is not only does he have the same ideas, the words he uses are identical to what the 761 patent had five years later.

Q. Thank you. Can we move on to claim four.

A. Sure, I think that's it on that.

Q. Here's claim four. Are you

familiar with claim four?

A. Yes.

Q. And do you have an opinion as to whether or not the Swartz patent discloses as prior art the information claimed in claim four?

A. Yes, they do, and my opinion is that it does disclose it.

Q. Why is that?

A. Well, claim four adds that the context information includes a relationship between the users and at least one of an application, application data user, and environment.

I've already spoken about how Swartz defines a knowledge path. That captures everything that's going on. We showed a quote that says this is the user information and the application data. That's satisfied here.

Q. What is your opinion about claim four?

A. That Swartz essentially discloses what's in claim four.

Q. Essentially or --

A. It does. Sorry. It does disclose

what's in claim four.

Q. Do you have an opinion regarding claim seven?

A. Yes, I do.

Q. Is this claim seven?

A. Yes.

Q. What does claim seven add?

A. Claim seven adds that data created in the first context is associated with data created in the second context.

I addressed this with the tracking and by Swartz's use of language like "knowledge path," that essentially it's not just recapturing what happens here, and they're disconnected.

He really is interested in the whole path of knowledge as a sequence over time. We already saw terms like audit trails. All these things are to take the data and relate them together across all these contexts.

Q. What is your opinion regarding Swartz and claim seven?

A. Swartz anticipates claim seven.

Q. When you say anticipate, what do

you mean?

A. It means it discloses the idea in claim seven.

Q. Do you have an opinion as to claim nine?

A. I do.

Q. What is your opinion regarding claim nine?

A. So claim nine is a variation of claim one. In claim one it -- so here we have -- in claim nine -- instead of --

So we talk about a computer-implemented method. Now, Swartz is describing a system, so it's obviously a computer-implemented method, and it comprises computer-executable acts. We're talking about a computer system, so it does that.

Creating data within a user environment. Now, this is one of the differences. In claim one, it talks about context. In claim seven, it talks about user environment. The Court has actually construed context to be the same as environment. That's how it defines it. In one sense, that's

satisfied.

More generally, Swartz is describing all the stuff people are doing in a system, so that's their environment for doing their work, so that's all satisfied by Swartz.

Then it says of a web-based computing platform. And this is also another difference from claim one, and I identified parts in the patent that shows Swartz discloses the web-based computing platform.

Q. This one of those?

A. Yes, it is. Here's an excerpt from Swartz.

He says, "Knowledge management level also includes data docket web-based knowledge reporter." So clearly this is a web-based system or it has capabilities of a web-based system, so this is a web-based platform.

At the bottom we see the data docket being accessed by the web browser. Clearly this is a web-based platform.

Q. What about the other elements of claim nine?

A. So okay. So the rest of claim one is pretty well -- the rest of the first element of claim one is what we've seen before in a user interaction with the user environment or context by user using an application. The data and form and files and documents. We talked about this.

The second paragraph says "dynamically associates metadata with the data and the data and metadata stored on a storage component of the web-based computing platform." We've already seen it's web based.

Q. Is it stored?

A. Yes.

Q. And is the metadata dynamically associated with the data?

A. We -- all that before when I talked about dynamic, the bottom part says the information includes -- metadata includes the information related to the user, the data, the application, and the user environment.

The third element says tracking movement of the user from the user environment of the web-based computing platform to a second user environment of the web-based computer

platform, and we talked about that in claim one, except here it's web based, and we showed that's web based.

Finally, dynamically updating stored metadata with an association of the data to the application and the second user environment. For this entire claim, we've already covered -- we talked about dynamically updated stored metadata.

Q. For the very last portion?

A. Remember that this is all about users being able to review their decisions and to see all the things that have happened, so this is where a person can employ at least one application from the data to the second environment, second context in fact, at any time.

Q. What does that mean to you? The user employed one of the applications and the data?

A. It means they can look at the data at a later time. It's not just stored in the system for nobody to look at it. This is something for people to use and review.

Q. What is your opinion regarding claim nine and the Swartz patent?

A. That claim nine anticipates the 761 patent. That is, it discloses each and every element.

Sorry. Said that wrong. Swartz discloses each and every element of claim nine of the 761 patent.

Q. Thank you.

Do you have an opinion regarding claim eleven of the 761 patent regarding the Swartz reference?

A. Claim eleven essentially adds comprising indexing contents of the user environment such that a plurality of users can access the content from an associate plurality of user environments.

Q. Let's start from the --

A. Okay.

Q. -- very beginning --

A. Claim nine.

Q. -- claim eleven.

A. Sorry. Claim eleven adds the method of claim nine further comprising indexing

content of the user environment subset of plurality of users can access the content from an associated plurality of user environments.

Q. From a plurality of user --

A. Plurality of users can access the content from an associated plurality of user environments.

Q. What does that mean?

A. Essentially this means that the content is indexed, so an index is created so that one or more people can access it from one or more user environments.

Q. Is that disclosed in the Swartz patent?

A. Yes, it is. I believe I identified the part. Here it is.

Here's an example. This is something that's fairly familiar to most people, is part of searching. So the ability to initiate and retrieve information that indexes documents across the enterprise by accessing industry standard databases and presenting the results ins an easy-to-use and read format.

Q. What is your opinion regarding

claim eleven and the Swartz patent as it relates to the 761 patent?

A. My opinion is that Swartz anticipates or discloses claim eleven of the 761 patent.

Q. Do you have ran opinion regarding claim twenty-one --

A. Yes, I do.

Q. -- of the 761 patent as it relates to Swartz?

A. Yes, my opinion as before is that Swartz discloses each and every element of claim twenty-one.

Q. How is that?

A. Again there's a lot of similarities between this and the previous claims. I'm going to highlight the differences.

We're talking about a computer-readable medium for storing computer-executable instructions. Essentially this means we have a computer program that's stored somewhere.

And again Swartz describes a computer-based system, so anyone skilled in the

art knows that would be on a computer-readable medium.

And the first element, he talks now about the user workspace instead of a context or user environment. There's parts of the patent where the 761 patent talks about a user workspace as being the same as an environment or context, but it's safe to say that Swartz is describing a system where people are working within that system, so that's their using workspace, so whether or not we look at the definitions, that this is what Swartz is all about as well.

Then he talks about a web-based computing platform. We talked about that. We talked about dynamically associating metadata with data. We talked about everything in that second element before. We talk about tracking movement, and I've talked about web-based computing platform.

In the third element, we have tracking movement from the user workspace to the second user workspace of the web-based computing platform. Swartz talks about tracking movement.

Essentially the systems are using workspaces, and it's a web-based computing platform.

Then the fourth element says dynamically associated with data and the application of the second user workspace and the metadata such that the user employed the application and data from the second user workspace --

I remember to slow down.

-- and again we've seen all that before. This is just done in the context of a user workspace instead of environment.

And the final one, he adds indexing the data creating the user workspace such that a plurality of different users can access the data via the metadata from a corresponding plurality of the different user workspaces. It's just bringing what is -- I think it was claim eleven that talks about indexing, so I've already spoken about how Swartz discloses that.

Q. What is your opinion regarding claim twenty-one of the 761 patent vis-a-vis Swartz?

A. My opinion is that Swartz discloses each and every element of claim twenty-one of the 761 patent.

Q. Do you have an opinion regarding claim twenty-three?

A. This is very much the same with some minor differences. I know it seems tedious.

Here he talks about a computer-implemented system, and again Swartz is talking about a computer system, so it's a computer-implemented system.

Now he's talking about a computer-implemented context component. Swartz is talking about the data docket system, which is software, computer-implemented context component.

Now, a web-based server instead of a web-based platform, I believe, and we saw how we can access this system via the web, so this would give it the functionality of a web-based server for defining, first, user work space of the web-based server assigning one or more applications to the first user work space

capturing context data associated with user interaction of the user while in the first user workspace.

Essentially I've already spoken about that in terms of how Swartz says we try to capture everything people are doing. Within the system context user workspace, this includes applications and other things and then it says for dynamically storing the context data as metadata on a storage component of a web-based server.

Again I addressed all this before. We talked about how it's dynamically stored. We talked about how this is a web-based server, and it says metadata which is dynamically associated with data created in the first user workspace. That's all things I mentioned before.

The second element is very similar to what was previously seen. You have a computer-implemented tracking component, and again the data docket software includes the computer software, so it's computer implemented and does tracking.

We talked about the server aspect

and tracking change information associated with the change in access from the first user workspace to a second user workspace, and we talked about storage component as part of the metadata and the user accessing that data from the second workspace.

Q. What is your opinion regarding twenty-three?

A. That Swartz discloses each and every element of the twenty-three.

Q. Do you have an opinion regarding claim twenty-five?

A. Sure.

So claim twenty-five adds on to claim twenty-three where he says the context component captures relationship data associated with the relationship between the first user workspace and at least one other workspace.

I spoke about this earlier when I talked about the knowledge path. It's capturing the relationship within a context or system or user workspace and how they move to the next one over the knowledge path, what happens over time.

Q. Do you have an opinion regarding

claim twenty-three?

A. Yes, that, Swartz anticipates.

Q. I'm sorry. Twenty-five. I said it wrong.

With respect to claim twenty-five, do you have an opinion?

A. Yes, Swartz anticipates or discloses claim twenty-five of the 761 patent.

Q. Do you have an opinion regarding claim thirty-one?

A. Sure. Claim thirty-one says essentially -- takes -- I have to stop using essentially.

Takes claim twenty-three and adds that the storage component stores the data and the metadata according to at least one other relational and object storage methodology, so it has to do at least one or the other.

Q. What is a relational storage methodology?

A. Well, a relational storage method is a relational database. It's a method used for many decades in the industry to store data on tables for later retrieval.

Q. Does Swartz disclose this?

A. Yes, I believe what he discloses specifically is the second part of that, where there's an object.

Can we go back to the claim. Just go back one.

So what he disclosed specifically is an object storage methodology, although relational storage would be known to one skilled in the art as well.

If we go back, we see Swartz says another aspect of the present invention visualizes objects and linkages maintained in the integration knowledge base, so here he talks about objects being maintained in the knowledge base.

Q. Do you have an opinion regarding thirty-one?

A. Yes.

Q. What is that?

A. That Swartz anticipates or discloses the claim.

Q. Thirty-one?

A. Thirty-one.

Q. Do you also have an opinion regarding, finally, claim thirty-two?

A. Yes. So Claim 32 adds onto Claim 23 where it says storing of the metadata in the storage component in association with data facilitates many-to-many functionality of the data via the metadata.

Q. What does that mean?

A. Well, what the Court has construed is that many to many means that essentially two or more people can access -- I'm trying to remember what the Court's construction was.

Q. You used --

A. Two or more people. I used the Court's. Essentially it means that two or more people can access two or more things in here.

And what we're really getting at is that this isn't just a system for one person to access one thing. It's for many people to access many things from many different places.

I think that's the essence of it. Now, just to remind you what Swartz is all about is about this knowledge path.

Right. He's talked about this big

system where people from a whole bunch of different places can query to find out what is it that people did? What is it that they did in this context and that context? Where were decisions made? How can I understand what's happened over time?

So -- so this is exactly what Swartz is about. This isn't a single user system. It's an enterprise-wide system that allows multiple people to access data from multiple places.

Q. So what is your opinion regarding Claim 32?

A. That Swartz anticipates Claim 32 of the '761 patent.

Q. Can we pull up the face page of the '761 patent, please? Can we highlight the box that's titled References Cited, please?

Dr. Greenberg, do you see the Swartz patent mentioned here?

A. No, I do not.

Q. So just in sum, what is your opinion as it relates to how the prior art Swartz patent applies to the asserted claims of

of activity is actually captured and stored. And here's an example from Page 828 to 83.

Some of the things that may be captured, things like opening a document, editing the document's profile, checking out, copying or checking in a document, whether somebody viewed it or whether somebody created a new version.

This is just a system sampling of the content information that can be tracked. And now if we go on. I think there's one more.

The person can access that information from any time. We saw them accessing their history record from the history window. But I believe there's also means to access the document itself.

Q. Are there particular features -- so are the particular features of the system you just described applicable to the claims of the '761 patent?

A. Well, yes.

Q. Can you use Claim 1 as an example and walk us through it?

A. Sure. So here's Claim 1.

And we saw in the first part here -- well, first it says a computer-implemented network-based system. IManage -- first, it should say that iManage is network based and I believe I've identified a part of the manual that shows that.

Do we have that? Yes, there it is.

So here -- here's the way that iManage shows itself. We see a client-server relationship which is vernacular for -- for one application talking to another kind of -- sorry, one system using -- usually on a PC talking to another system called the server or the network.

And we see that -- that we have all -- all these things are networked together. Essentially these little lightning bolts that says that we can access those stored across different cities or places. So the network-based system.

Q. Just so the record is clear, where is this in the document?

A. Well, this is Figure 1.1.

Q. Thank you.

Does the iManage documentation include other elements from Claim 1?

A. Yes. So we then have in the first element, it says the computer-implemented context component. I've already described how the history system can capture information that happens within a certain application setting of the document. That is, people are using with this that setting or from particular locations.

We already talked about how it's network based. And I've shown you how it captures context information. We saw that in that history window.

That is associated with user-defined data which is the third line. When the user-defined data -- in this case, the documents they're working on, we saw that Microsoft Window document.

Clearly the user is interacting in a first context of a network-based system in this case. iManage actually has many different contexts that you could use. It talks about the location the computer's using it on and the things you're doing on that computer is one