

EXHIBIT 26 PART 4

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

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

8 Q. And was he able to do that?

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

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

14 A. Okay.

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

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

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

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

1 code like this.

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

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

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

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

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

24 And I asked him later and he said

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

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

5 A. Mm-hmm.

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

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

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

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

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

1 construct something like that.

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

6 No. It's back. There we go.

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

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

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

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

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

1 do it.

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

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

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

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

24 So you have the things that you

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

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

9 So that's basically what a
10 workspace is.

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

14 A. Right.

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

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

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

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

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

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

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

21 A. All right.

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

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

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

11 A. Yes, I do.

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

15 A. Yes. Okay.

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

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

1 A. Okay. Good.

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

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

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

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

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

1 metadata.

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

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

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

15 A. Okay.

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

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

24 Q. So right now we'll just go through

1 a few examples of that. Does that sound right?

2 A. Yes.

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

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

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

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

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

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

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

1 A. Right. All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 A. Mm-hmm.

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

16 Thank you.

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

23 So this is storing basically
24 relations between workspaces and information

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

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

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

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

9 Q. Okay.

10 A. I just forgot about it. Yeah.

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

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

23 Q. Can you give me some examples?

24 Well, so what we've just talked about, does that

1 really relate to the context component of Claim
2 1.

3 A. Yes, that relates to the context
4 component.

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

7 A. Sure. Let me get another.

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

11 A. Right.

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

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

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

24 Q. Okay. And I believe there's one

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

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

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

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

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

5 A. Yes.

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

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

15 And then we have another location
16 in the code.

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

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

21 Thank you.

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

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

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

7 A. I think all the elements of Claim
8 1 are disclosed here.

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

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

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

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

1 skill could then use this to actually make
2 something.

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

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

8 Q. Okay. Let's turn to Claim 4 and
9 7.

10 A. Okay.

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

14 A. Right.

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

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

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

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

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

7 Q. Okay. All right.

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

10 A. Mm-hmm.

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

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

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

22 A. Mm-hmm.

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

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

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

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

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

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

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

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

6 A. Okay.

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

14 Do you see that after the comma?

15 A. Yes, I do.

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

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

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

1 A. Sure.

2 Q. -- 9?

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

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

8 Q. -- or how would you do that?

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

12 A. Right.

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

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

20 A. Mm-hmm. Yes.

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

23 A. Yes. Yes.

24 Q. And can we refer to that also as

1 the tracking component of Claim 9?

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

4 Q. How is Claim 9 different than
5 Claim 1?

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

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

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

18 Q. And it continues throughout Claim
19 9, this web based --

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

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

1 provisional application?

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

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

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

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

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

16 Q. Okay.

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

19 Q. Can we turn to the code at LTI
20 756?

21 A. 756?

22 Q. Six. Yes.

23 A. That's 46. Fifty-six.

24 There we go.

1 Q. And then it goes on to 57?

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

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

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

14 Q. Why don't we turn to then Claims
15 11 and 16. Is it your understanding that Claims
16 11 and 16 are dependent on Claim 9?

17 A. Yes. That's my understanding.

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

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

23 Q. And how about Claim 16?

24 A. So Claim 16 talks mainly -- the

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

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

6 A. Yes. I think they are fully
7 disclosed.

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

11 A. So --

12 Q. And can you explain how this
13 relates to your opinion with respect to Claim
14 11?

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

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

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

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

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

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

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

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

4 A. Okay.

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

10 A. Sure. I think we go to.

11 Q. PTX 3, please.

12 A. I think we go to LTI 747.

13 Q. You said 747?

14 A. I believe so. Yes.

15 Q. Okay.

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

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

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

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

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

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

24 A. Yes. It's my opinion it discloses

1 every element of those claims.

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

4 A. All right.

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

8 A. Mm-hmm.

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

13 A. Correct.

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

18 Do you see that?

19 A. Yes.

20 Q. That will be element two.

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

1 A. Right.

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

6 A. Mm-hmm.

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

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

13 So I'll refer to that as element
14 five.

15 A. Okay.

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

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

1 It describes a context component.

2 It describes a tracking component.

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

7 Q. With respect to indexing the
8 data, --

9 A. Mm-hmm.

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

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

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

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

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

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

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

10 A. Okay.

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

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

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

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

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

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

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

16 Q. Okay. So we can refer to Claim
17 23, the two elements. The first element being
18 the context component that would be the entirety
19 of the element and the second element being the
20 tracking component, meaning the remainder of the
21 claim; is that fair?

22 A. Yes, that makes sense.

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

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

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

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

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

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

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

1 provisional application?

2 A. Yes, it's my opinion.

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

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

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

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

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

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

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

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

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

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

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

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

1 automatically follow dynamically capturing those
2 shifts in context.

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

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

10 A. Sure.

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

13 What does this tell you?

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

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

1 workspaces because they share the same content.

2 Q. Okay. Why don't we turn to Claim
3 31.

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

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

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

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

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

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

1 that's what is supposed to be happening there.

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

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

9 Q. Okay. Very good.

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

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

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

24 So here we're seeing that the

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

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

10 A. Yes, that is my opinion.

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

16 A. Yes, it is. It is my opinion that
17 using both the text and the code, one could --
18 one of ordinary skill in the art could do that.

19 Q. An is that opinion based on your
20 review of the provisional application and the
21 '761 patent as well as the work that was done by
22 Mr. Marcello Caltaldo?

23 A. Yes. Those are the two bases.

24 One is my own review. The other

1 is actually handing it to a person of ordinary
2 skill in the art and saying, Please make one of
3 these, and he made one. So I assumed that one
4 could do that.

5 Q. And just to make sure I didn't
6 miss any claim, I want to make sure that we got
7 that. It is your opinion that each and every
8 element of the asserted claims we've talked
9 about for all the reasons we've discussed today
10 is, in fact, disclosed in the provisional
11 application?

12 A. It is my opinion each and every
13 element of every claim is disclosed.

14 Q. Okay. Let's turn to now the prior
15 arts references.

16 Did you have a chance to review
17 Dr. Greenberg's report?

18 A. I did. I reviewed his report.

19 Q. And do you understand that he's
20 asserting certain references as prior art to the
21 asserted claims of the '761 patent?

22 A. Right. I do understand that.

23 Q. Okay. What is your understanding
24 of what constitutes prior art?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,)	Trial Day 7
INC., a Delaware)	
corporation,)	
)	
PLAINTIFF,)	
)	
v.)	C.A. No. 08-862-JJF-LPS
)	
FACEBOOK, INC., a)	
Delaware corporation,)	
)	
DEFENDANT.)	

Tuesday, July 27, 2010
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK,
United States District Court Magistrate

APPEARANCES:

POTTER ANDERSON & CORROON, LLP
BY: PHILIP ROVNER, ESQ.

-and-

KING & SPALDING LLP
BY: PAUL ANDRE, ESQ.
BY: JAMES HANNAH, ESQ.

Counsel for Plaintiff

1 in the world is practicing today, Facebook does
2 not infringe it. And why? Because Facebook
3 never updates the stored metadata. The stored
4 metadata. We'll talk about that.

5 And then these three claims here
6 have a unique defense to them. These are the
7 ones that require one of the Facebook users to
8 do something, to practice one of the necessary
9 steps, and the question is whether we control or
10 direct the Facebook users, and I'm going walk
11 you through that.

12 And then I'm going walk you
13 through the invalidity arguments, and then I'm
14 going to end with this whole discussion that
15 we've been having in this case about whether
16 they sold or offered to sell something. That
17 touches on a pretty important point of
18 credibility that I want to come back to.

19 This is our position. Obviously
20 we do not infringe. Remember the relationship
21 of independent claims to dependent claims. The
22 dependent claims simply are everything in the
23 independent claim plus something else. You add
24 one more step to it, so if you find that there's

1 quality we've seen in this courtroom, the
2 experts, the Facebook folks, would they have
3 thought to make this wirelessly? If you think
4 they would have, it's obvious.

5 Then for obviousness we can
6 combine their summary of the invention,
7 wireless, be able to access data remotely via
8 wireless. This is the last piece of the story.

9 The piece I want to focus on for a
10 minute, this is the piece of the story that's
11 really a classical jury issue because you have
12 to believe somebody on this one. This is the
13 story that involves what people are really good
14 at, ordinary people. Is someone's story true?

15 So let me explain what the issue
16 is. The law says that you can't jump the gun.
17 If you're going to file for a patent, the law
18 says that you can't jump the gun. If you need
19 to file a patent, then you need to file it, and
20 for one year beforehand you're given a grace
21 period, but if more than one year before the
22 filing you're out in the market trying to offer
23 it for sale or demonstrating it, all bets are
24 off. The inventor is completely in control of

1 provisional and map it to the final, what does
2 it look like? This is what's missing from the
3 provisional. What I'm showing you is the final.
4 That's not full disclosure, and it's a
5 requirement because you're asking the federal
6 government to give you the monopoly of a patent,
7 so you have to disclose it fully.

8 Now there's a timeline. This
9 becomes the effective date because now that's
10 one year before they actually filed the
11 application because the provisional is gone.
12 Look at all this activity right up to the
13 deadline here, so now the story is, we weren't
14 offering to sell the thing that had the special
15 sauce in it. We weren't offering to sell
16 Leader2Leader that had the invention in it. We
17 were offering to sell something else.

18 Mr. McKibben was on the stand
19 twice, and twice he did not put before you the
20 versions of the product. He never showed you
21 the product, did he? And he didn't say it has
22 this one or this one or this one. It's just
23 sort of on December 11, 2002, the very moment in
24 time they filed the provisional, that's the

1 copyrighted it. And the date. What does he say
2 that he's selling? What's the goal? To
3 implement a Leader2Leader to
4 enterprise-collaboration environment. Okay.
5 Never offered to sell.

6 He has an extensive body of
7 financial information. He's going to try to get
8 \$8.5 million of the government's money based on
9 that change? DTX 184 at the bottom. He's
10 saying he didn't offer to sell a product that
11 has the product in it because if you believe he
12 sold it on December 10th or 9th or 8th of 2002,
13 this lawsuit that he brought isn't going to fly,
14 but look what he's saying at the time, not when
15 he's in trial, but eight years ago. In writing,
16 people.

17 This is October 10th. We have
18 verbally committed to selling a system. What
19 system was he trying to sell? So based on that
20 change two months before the invention is
21 completed, is he selling last year's Corvette or
22 the one with the Bluetooth, the secret sauce?
23 Do you really believe he would be trying to sell
24 these guys the system that doesn't have this

1 great invention? Does that make sense to you?

2 It's your call. You make the
3 decision, but nonsense he invented this thing in
4 1999 and he's invested \$10 million into it, and
5 we're right on the cusp of the invention, and
6 he's not talking about the one with the patented
7 technology in it. He's selling last year's
8 model without the Bluetooth. That what he says.

9 The Limited. This is the -- this
10 is an interesting one. He needs
11 Mr. Schlessinger to confirm that they've got a
12 deal so he can go over the to the VC and get the
13 deal and then he'll get money. Investment
14 money. That's what he's doing with this one.
15 This one is getting closer to the strike of
16 midnight, when this lawsuit turns into a
17 pumpkin. November 21st.

18 And, Your Honor, I'll finish
19 within ten minutes.

20 I'd like to offer the sweetheart
21 deal. Sweetheart deal. That's an offer. Only
22 question is, what is the offer?

23 And there was a lot of effort to
24 separate out Leader2Leader to LeaderPhone, but

1 we had a good meeting. But again I
2 don't know who my audience because I
3 don't remember who this person is."

4 Do you get my point? When he has
5 a purpose, a commercial purpose, he sometimes
6 uses something called hyperbole, which is an
7 overstatement to make a point. He has every
8 reason to thread this needle, ladies and
9 gentlemen, because if he doesn't, the lawsuit he
10 brought against Facebook, that dog won't hunt.

11 And this jury instruction, I'd ask
12 that you look at this because this is the
13 instruction you have to look at to assess
14 credibility. What it tells you is if there are
15 parts of the story that are contradictory and
16 inconsistent, you can ask yourself whether you
17 want to leave the whole story. That's what it
18 says. That's 1.7.

19 So I'll leave you with this. This
20 is a very serious case to Facebook. This is an
21 invention which counsel says solved everything
22 which nobody else is using. Facebook is not
23 using. Facebook does not infringe. This patent
24 -- this patent is invalid, and Facebook takes it