

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Volume 2
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

Tuesday, July 20, 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.

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1 wouldn't know to contradict that, but that
2 sounds about right.

3 Q. And nothing you said in that
4 deposition was incorrect; right? In fact, you
5 stand by the testimony you gave during that
6 deposition?

7 A. I made a few one-word
8 clarifications in that deposition, but the
9 deposition I gave was accurate. It's just a
10 little bit more clear about those one-word
11 additions.

12 Q. But those one-word additions
13 didn't change the substance of your deposition
14 or your testimony?

15 A. I don't believe they changed the
16 substance, they just clarified and narrowed it a
17 little bit.

18 MS. KEEFE: Thank you very much
19 for your time, Mr. Lamb.

20 THE WITNESS: You're welcome.

21 THE COURT: Redirect.

22 MS. KOBIALKA: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. KOBIALKA:

1 time period are you referring to?

2 A. I don't know when the term
3 Leader2Leader first came into existence, but
4 essentially from that moment until the day I
5 left.

6 Q. Which was in 2005?

7 A. 2005.

8 Q. You mentioned there was a
9 collection of technologies. What are you
10 referring to?

11 A. So we had underlying technology
12 concept that was kind of the big thing that
13 solved it, solved the data burden issue, but
14 then we felt like we had to come to specific
15 applications the users were going to need as an
16 entry point to have it be useful.

17 So things like, you know, an email
18 tool, a task tool, a project management tool,
19 calendaring, file upload, you know, put files
20 into a shared space, any kind of file load is
21 kind of cool, that collection, that was -- there
22 were several of those applications that had to
23 be part, we thought had to be part of the
24 technology.

1 And that changed over time, too,
2 as we came up with other applications that we
3 built into that, we added that to the mental
4 pictures of what Leader2Leader was in the
5 product.

6 Q. Sometimes when you talked about
7 Leader2Leader during your time at Leader, did
8 that include things like LeaderPhone?

9 A. Yeah, so LeaderPhone was one of
10 the products I developed, helped develop, led
11 the team in developing at Leader Technologies.

12 Q. Is there any other names that come
13 to mind that would have --

14 MS. KEEFE: Objection. Beyond the
15 scope.

16 THE COURT: Overruled.

17 THE WITNESS: Smart Camera was
18 another application that stood out as something
19 that we didn't conceive of when we originally
20 started, but then later on, hey, this would be a
21 cool addition to throw that in.

22 Q. Turning to the technology that you
23 developed that you understand is the invention
24 of the '761 patent, when you implemented it, did

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Volume 4
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

July 22, 2010
9:00 a.m.

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

APPEARANCES:

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-and-

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1 Q. Okay. Is there anything in the
2 code that is included with the provisional
3 application that implements tracking a change of
4 a user from one board to another board?

5 A. I would have to have a lot more
6 time to review it to definitively say so. But
7 based on a short review, it does not appear that
8 there is code present in these pages that tracks
9 when a user switches from one board to another
10 board of interest.

11 Q. Or from one web to another web,
12 the same answer?

13 A. There is an assumption in the
14 question that I don't think is accurate. To my
15 recollection, there isn't an event where a user
16 switches from one web to another. So when -- so
17 the question falls apart.

18 Q. Is there anything in the code
19 attached to the provisional that implements
20 associating metadata with user created data?

21 A. Could you repeat the question?

22 Q. Sure.

23 Is there anything in the code
24 attached to the provisional application that

1 implements associating metadata with user
2 created data?

3 A. In my cursory review of this code,
4 I have run across a couple of instances in which
5 the association of metadata with user created
6 data is called, but the implementation is in the
7 methodology being called, not in the code that's
8 listed here.

9 Q. So the implementation of
10 associating metadata with user created data is
11 not contained in the code that you've reviewed;
12 correct?

13 A. In a cursory review I've done, I
14 haven't run across one of those instances yet.

15 Q. Okay. And did you -- you reviewed
16 the code all the way up to Page 19?

17 A. Yeah. You said all the code, so I
18 looked at all of it.

19 Q. I'd like to go back just to Page
20 2. Trust me, we're almost done with this
21 document.

22 Looking at the textual description
23 between Pages 2 and 8, can you identify anything
24 in that text that discloses tracking movement of

1 a user from one board to another board?

2 A. I'd have to spend a lot of time
3 reviewing it to know for sure, but I -- I feel
4 confident deducing from what I do know and
5 remember that tracking a user from -- tracking a
6 user changing from one board to another board as
7 a result of that user expressing interest in
8 that other board is not something that we had
9 implemented in the technology that I think this
10 section refers to.

11 Would -- would you like me to take
12 the time to review the whole thing to --

13 Q. That may not be necessary. So the
14 paragraph that we reviewed earlier and you're
15 free to go back to any of them, did you see
16 anything in those paragraphs that disclosed
17 tracking movement of a user from one board to
18 another board?

19 A. While reading this in our time
20 together, I don't remember running across
21 anything that was -- that said to me there was
22 an indication of tracking a user switching from
23 one board to another board.

24 Q. Was the ability to track movement

1 of a user from one board to another board
2 something that Leader did not implement, to the
3 best of your knowledge?

4 A. I -- the technologies that I
5 remember building did not track the -- did not
6 track a user switching from -- simply switching
7 from one board to another board.

8 Q. You said simply switching. Is --
9 did it track movement at all?

10 A. I don't remember anything like
11 that.

12 Q. Okay. Last section, I promise.
13 If you could go to Page 16.

14 Towards the middle of the page,
15 there is a line of code that begins with
16 `action.addActionListener`
17 `(RemoveWebRelationshipActionListener.GLOBAL)`.

18 Do you see that?

19 A. I do.

20 Q. And then go down maybe about a
21 dozen or so lines, the end of that section
22 begins with -- ends with `return form`. Do you
23 see that?

24 A. Mm-hmm.

1 Q. If you look at the code between
2 those two sections and including those two
3 lines, if you could review that and let me know
4 when you're finished.

5 A. Okay. I'm done.

6 Q. Does this code implement a user
7 interface for the user?

8 A. What a member of the technology
9 team would have said to another member of the
10 technology team at that point in time is that
11 this code does create the object that contains
12 the data necessary for the construction of a
13 form that the user could use to interact with
14 the system.

15 Q. I understand. Is there anything
16 in -- in this code, the code we've been talking
17 about on Page 16, that implements tracking
18 movement of a user from one board to another
19 board?

20 A. No.

21 Q. Okay.

22 (Conclusion of videotape
23 deposition excerpt of Mr. Lamb.)

24 THE COURT: Okay. That's the end

1 conceptual design, I can point -- I can remember
2 probably in the seven -- or '98, '98 time frame
3 when we were fairly confident we knew how to do
4 it. But there again, we were still iterating,
5 so '98 feels like the right time.

6 Q. At some point there came a time
7 when you had a product implemented; correct?

8 A. Well, as was -- software is never
9 finished, so even version one of a product is
10 not implemented in the sense that it's perfect.
11 But we were confident of a fairly stable design
12 by '98 and then we started coding and -- now
13 these are rough time frames, but I would say we
14 were coding -- well, we haven't stopped coding,
15 so a fairly stable collaborative environment was
16 working by I'm going to say 2001/2002 time
17 frame.

18 Q. Did you write any of the Java code
19 for this technology?

20 A. No, I hired people to do that.

21 Q. Did you write any of the C code
22 for this technology?

23 A. We had different people do that.

24 Q. Were you among them?

1 A. In terms of writing the code?

2 Q. Yes, sir.

3 A. I did not write the code. I hired
4 people to write that code.

5 Q. And the HTML code, did you write
6 any of that code for the technology?

7 A. I may have. I don't recall
8 whether -- I mean, I was more involved with that
9 side of it, but I don't know whether they used
10 any of my code or not, but I was definitely very
11 involved in that part of it.

12 Q. What technology of Leader, if any,
13 implements what's being claimed in the '761
14 patent?

15 A. Okay. Well, I can't answer any of
16 the -- respond to any of the legal issues
17 involved with the '761 patent, but as far as I'm
18 concerned, that is what Leader2Leader is using.

19 Q. Your answer is from an engineering
20 standpoint; correct?

21 A. As one of the inventors, yes.

22 Q. Are there any other products of
23 Leader that implements what's claimed in the '
24 '761 patent?

1 A. I do.

2 Q. Was that an accurate statement as
3 of November 3rd, 2002?

4 A. Again, I don't know who I'm
5 communicating with here. I don't recall this
6 person. And I don't recall specifically writing
7 this, but it's referring to we met with their
8 COO, CIO and CTO. And I do have some memory of
9 that meeting. And in that meeting the COO, and
10 I believe that would be Len Schlesinger that we
11 talked about earlier, came in the meeting and in
12 a strategic sense committed to moving forward
13 with a relationship with us regarding Leader's
14 company, Leader's products. And so I was
15 probably giving more detail to this person based
16 on a positive meeting.

17 Q. So the sentence that says, "The
18 Limited just committed to contracting with
19 Leader for LeaderPhone and Leader2Leader," was
20 that sentence accurate when it was written on
21 November 3rd, 2002?

22 A. I would say accurate in the sense
23 it was hyperbole.

24 Q. Which portion of it was hyperbole?

1 A. The entire statement.

2 Q. And by hyperbole, what do you mean
3 by that?

4 A. Well, I would have to get a
5 definition, or get a dictionary to define
6 hyperbole, but in general it means an
7 overstatement to make a point that we had a good
8 meeting. But again, I don't know my audience,
9 because I don't remember who this person is.

10 Q. Could he have been a potential
11 investor in Leader?

12 A. I can't speculate who he is
13 because I don't remember him.

14 Q. So at the time this email was
15 sent, November 3rd, 2002, did Leader have a
16 commitment with The Limited to contract for
17 Leader2Leader?

18 A. We had a very positive indication
19 from Len Schlesinger that he was going to do
20 something, but it was a strategic visionary
21 commitment at that stage.

22 Q. By do something, he was going to
23 contract for the purpose of Leader2Leader;
24 correct?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Volume 5
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

Friday, July 23, 2010
9:00 a.m.

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

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
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1 meetings and demos." Do you see that?

2 A. I do.

3 Q. Now, let's just take for a moment
4 the date of December 10, 2003, when the final
5 patent application was filed. Are you with me?

6 A. I'm listening.

7 Q. Before that time, you made many
8 presentations about Leader to Leader to many
9 people; right?

10 A. I made numerous presentations
11 about Leader to Leader, yes.

12 Q. And many of those were under
13 confidentiality agreements; correct?

14 A. All of them were under
15 confidentiality agreements.

16 Q. And indeed you had literally
17 hundreds of confidentiality agreements before
18 December 2003.

19 A. Probably more than that.

20 Q. Thousands?

21 A. Probably over a thousand.

22 Q. So over -- and they were all with
23 different people and entities?

24 A. Yes, usually.

1 Q. So before the patent application
2 was filed, you had over 1,000 different times
3 that you met with over 1,000 different folks to
4 talk about Leader to Leader; is that right?

5 A. Whenever we were speaking with
6 investors or potential suppliers or potential
7 customers, when we finished the product, prior
8 to those meetings, we would always get a
9 confidentiality agreement from them before we
10 disclosed any business trade secrets.

11 Q. Always?

12 A. Always.

13 Q. And always before the meeting?

14 A. That's correct.

15 Q. Never happened after the meeting?

16 A. Never.

17 Q. The purpose of these thousand
18 different meetings with 1,000 different parties
19 with 1,000 different contracts was to discuss
20 business opportunities for Leader to Leader;
21 right?

22 A. Well, you made some very broad
23 statements there. There weren't thousands of
24 contracts, and the way you characterize it is

1 probably incorrect, but we did have a lot of
2 presentations to potential investors, potential
3 suppliers or vendors, some developers that we
4 were talking to, and whenever we -- to build the
5 company, and whenever we did that, to protect
6 our trade secrets, we always had them enter a
7 confidentiality agreement so that we properly
8 protected our business trade secrets.

9 Q. Thank you. And many of those were
10 before December 1st of 2002, weren't they?

11 A. Yes.

12 Q. And many of those instances
13 involved discussions about someone buying or
14 licensing Leader2Leader; correct?

15 A. Well, those were prospective
16 discussions, and we couldn't have sold
17 Leader2Leader because it wasn't ready yet.

18 Q. Take a look at the -- if we go
19 down to the section that's says L2L. I think
20 it's two asterisks.

21 MR. RHODES: At the bottom, Ken.

22 BY MR. RHODES:

23 Q. Now, I take it where we see L2L,
24 that's a reference to the product Leader2Leader?

1 right?

2 A. That is correct.

3 Q. Okay. Take a look at --

4 MR. RHODES: Start. Stop, Ken.

5 BY MR. RHODES:

6 Q. The date is -- Monday, 11/25 is
7 the day before the day of the email, which is
8 November 26th. Do you see that?

9 A. Yes, I do.

10 Q. Okay. So he's writing it on the
11 Tuesday, but he's talking about what happened
12 the day before the Monday. Are you with me?

13 A. I am.

14 Q. Okay. So, now let's go to the
15 body of the document and the first very part
16 under general. Just the first few lines.

17 MR. RHODES: Ken, thank you.

18 BY MR. RHODES:

19 Q. And it says, yesterday, so that
20 would be November 25th; right, the Monday?

21 A. That's right.

22 Q. Okay. So where we see yesterday,
23 we know that's Monday 11/25. Mike, that's you;
24 right?

1 A. Yes.

2 Q. You met with Boston Scientific;
3 right?

4 A. I remember that meeting. Yes.

5 Q. And he says you were demoing.
6 That means demonstrating; correct?

7 A. I believe that would mean
8 demonstrating, yes.

9 Q. And you were demonstrating the
10 Leader2Leader functionality for senior staff
11 members; correct?

12 A. Yes.

13 Q. And senior staff members refers to
14 the folks that are at Boston Scientific;
15 correct?

16 A. That meeting was with information
17 technology people within Boston Scientific.

18 Q. Okay. Now, let's take --

19 MR. RHODES: I'm sorry. Your
20 Honor, I'll move into evidence DTX 0776.

21 MS. KOBIALKA: No objection.

22 THE COURT: It's admitted.

23 BY MR. RHODES:

24 Q. Let's now take a look at DTX 0736.

1 MR. RHODES: Just blow up the
2 first paragraph -- or yeah, that's fine, Ken.

3 BY MR. RHODES:

4 Q. Have you had a chance to look at
5 that one?

6 A. Yes, I have.

7 Q. All right. So this is a document
8 that's entitled Boston Scientific Confidential
9 Disclosure Agreement. Do you see that?

10 A. I do.

11 Q. What's the effective date?

12 A. November 26, 2002.

13 Q. That's the day after November 25;
14 right?

15 A. Generally.

16 Q. Yeah. And November 25 is the day
17 you gave the demonstration?

18 A. Yes, that's right. It was on a
19 Monday.

20 Q. So this document wasn't in place
21 in the point in time that you made the
22 demonstration, was it?

23 A. Well, this was the second
24 confidentiality agreement we had with them.

1 BY MR. RHODES:

2 Q. Let's take a look at DTX 766,
3 please. And again, Ken, start with the invented
4 e-mail first. This one is dated Sunday
5 December 8, 2002, and I'm sorry. These are
6 pedantic questions, but I have to ask them.

7 You agree with me that's one year
8 before the final patent application was filed?

9 A. I do.

10 Q. And it's from you, of course?

11 A. This is an e-mail to one of my
12 shareholders and a supplier of some of our
13 hardware.

14 Q. From you?

15 A. From me to John.

16 Q. When we see, "Hi, John,"
17 everything after that is your words; correct?

18 A. Let me check here. That is
19 correct, except for the response from John.

20 Q. Right, and John was one of the
21 shareholders in your company?

22 A. He is a shareholder and a supplier
23 of hardware.

24 Q. You were writing to him

1 essentially a status report?

2 A. That's what this appears to be,
3 yes.

4 Q. May I ask that you look to the
5 paragraph that's entitled The Limited.

6 It says -- now, The Limited is the
7 company that has this man named Len
8 Schlessinger; is that right?

9 A. Len Schlessinger is former
10 associate dean at Harvard Business School,
11 became chief operating officer at The Limited in
12 Columbus, yes.

13 Q. That's the name that we see in the
14 -- you say The Limited. We have confirmation
15 now from both the CEO, Len Schlessinger. Do you
16 see that?

17 A. I do.

18 Q. You say confirmation. Now, that
19 means the present tense as of December 8, 2002?

20 A. Yeah, I'm following up a meeting
21 we had with Len Schlessinger and John Richter,
22 chief information officer at the executive
23 level, so they decided to move forward with us
24 to try to do something with our suite of

1 technologies.

2 Q. And it says in the next sentence
3 the contract -- it sounds like you're saying we
4 will acquire a contract in January for the
5 implementation of Leader2Leader; right?

6 A. That was one of the decisions that
7 came out of that meeting.

8 Q. You say that meeting. Which
9 meeting? The one before December 8th?

10 A. The one I just spoke about.

11 Q. Before December 8th?

12 A. Before this e-mail, yes.

13 Q. So before December 8th, you had
14 made an offer to sell Leader2Leader to The
15 Limited.

16 A. That would have been impossible.
17 We didn't have it done yet.

18 MR. RHODES: I move into evidence
19 DTX 0766.

20 MS. KOBIALKA: No objection.

21 THE COURT: Admitted.

22 MR. RHODES: Let's look at DTX
23 185. Please blow up the header.

24 THE WITNESS: What's the number of

1 to get set up.

2 Mr. McKibben, you've been asked a
3 lot of questions yesterday and today about
4 Leader2Leader. And there was one very important
5 question that hadn't been asked yet which is:
6 Is Leader2Leader exactly the same thing as the
7 technology of the '761 patent?

8 MR. RHODES: Objection, Your
9 Honor. Leading.

10 MS. KOBIALKA: This is
11 cross-examination.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MS. KOBIALKA:

15 Q. Okay. So we probably need to
16 discuss a little bit about what, in fact,
17 Leader2Leader is and then how that plays with
18 respect to the technology in the '761 patent; is
19 that right?

20 A. That is correct.

21 Q. Okay. I believe you mentioned
22 that Leader2Leader is a suite of technologies
23 that falls under a brand; is that right?

24 A. That is correct.

1 friendly witness.

2 THE COURT: It's
3 cross-examination. Overruled.

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

6 THE WITNESS: I'm sorry. Can you
7 repeat the question?

8 BY MS. KOBIALKA:

9 Q. When you're talking about the
10 suite of technologies, LeaderPhone is just one
11 of those technologies as an example?

12 A. That's correct.

13 Q. Okay.

14 A. You could put them together any
15 way you wanted to.

16 Q. Okay. Now, was LeaderPhone, could
17 that be sold just separately and apart from
18 Leader2Leader?

19 A. Yes, it could. And it is.

20 Q. Okay. At some point, you had the
21 technology of the '761 patent; correct?

22 A. On December 11th, 2002, we did.
23 Yes.

24 Q. Okay. And then you had a product

1 that embodied the technology of the '761 patent;
2 correct?

3 A. We could -- we could use that as a
4 plug in for any of those technologies.

5 Q. Okay. But you did get some sort
6 of other technology at some point; right?

7 A. Yes.

8 Q. Okay. So then that was a plug in,
9 so it would be another just -- just another part
10 of the --

11 A. Leader2Leader. Right. It could
12 be a plug in for Leader2Leader, for all of them,
13 or it could be a plug in for any one of them.

14 Q. So we can't equate Leader2Leader
15 with the technology of the '761 patent; right?

16 A. No, we can't.

17 Q. You've got to actually be specific
18 about what we're talking about when we're
19 talking about Leader2Leader; correct?

20 A. Exactly.

21 Q. Now, why did you just use
22 Leader2Leader as a name, then, in documents or
23 in talking to people?

24 A. Well, as we developed our

1 right.

2 So you founded the company
3 sometime in 1997; is that right?

4 A. Yes, that's correct.

5 Q. And when did the patent issue for
6 the -- we'll find it. It will be on there at
7 some point. There it is.

8 And when did the patent issue?
9 The 761 patent.

10 A. November 23rd, 2006.

11 Q. So November 2006. And when did
12 you file the provisional patent application?

13 A. On December 11, 2002.

14 Q. Okay. There was reference earlier
15 in questions about the final patent application.
16 The final application was in connection with the
17 filing that occurred after, I believe, it was
18 December 10, 2003.

19 Do you believe that the
20 December 11, 2002, wasn't the filing of the
21 patent application that led to the 761 patent?

22 A. We never thought of it that way.

23 Q. So prior December 11, 2002, when
24 you referred to Leader2Leader, did that include

1 the 761 technology that's a plug-in to
2 Leader2Leader?

3 A. No, it couldn't have because that
4 technology wasn't done until days before the
5 December 11, 2002, filing.

6 Q. How do you know that?

7 A. I vividly remember that because
8 this had been a long R and D cycle, and we had
9 been struggling during 2002 to get the code
10 ready, and we ran into some more difficulties,
11 so we were working into the fall.

12 And within days of actually
13 getting the code working, the technology
14 working, we actually pulled a section of that
15 code out of the working code and put it into the
16 provisional patent, and we went to the patent
17 office.

18 Q. That's all the pages of code we've
19 been seeing on that provisional patent
20 application?

21 A. Yes.

22 Q. You wanted to make sure you had
23 your code before you did the filing?

24 A. So that would tell a computer

1 under the hood.

2 Q. Okay. So prior to December 11,
3 2002, was there any technology in Leader2Leader
4 that could permit someone to move from one work
5 space to another work space?

6 A. No, it wasn't done yet.

7 Q. Or move from board to board within
8 the system?

9 A. No, that technology was not done
10 until a few days before December 11, 2002.

11 Q. You couldn't track any movement
12 obviously since you didn't have that movement;
13 right?

14 A. It was not finished until right
15 before 2002. That is correct.

16 Q. At some point, you had a version
17 of the software; right? Is that correct?

18 A. Yeah, right around that time
19 December 11th.

20 Q. Okay. And you started to do some
21 beta testing of that software; right?

22 A. Yeah, what happens after that is
23 we had an experimental version then, so we
24 started doing experimental testing first inside

1 order just to get one connection.

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

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

9 MS. KOBIALKA: May I approach?

10 THE COURT: You may.

11 BY MS. KOBIALKA:

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

14 A. Yes, I do.

15 Q. And what is the document?

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

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

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

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

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

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

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

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

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

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

1 completeness, start at Line 9. And where did
2 you want to end it, Mr. Rhodes?

3 MR. RHODES: Line 21.

4 THE COURT: Okay. You can go
5 ahead and play that. Nine through 21, please.

6 (Beginning of videotape deposition
7 excerpt of Mr. McKibben:)

8 Q. Did you have any technique for
9 identifying differences between various
10 iterations of Leader2Leader product?

11 A. As I'm speaking here today, I
12 believe that our developers kept track of that.
13 But the name they gave to it, I don't remember.

14 Q. Can you identify any iteration of
15 the Leader2Leader product that, in your opinion,
16 did not implement what's claimed in the '761
17 patent?

18 A. That was a long time ago. I -- I
19 can't point back to a specific point.

20 (Conclusion of videotape
21 deposition excerpt of Mr. McKibben.)

22 BY MR. RHODES:

23 Q. Now, Mr. McKibben, at some point
24 in time, you had the Leader2Leader product

1 Q. I thought you conceived them in
2 1999; right?

3 A. Is the question did Jeff and I
4 conceive of 761 sometime in 1999? The answer is
5 yes.

6 Q. And whatever Leader2Leader was at
7 the time, you were proposing to install and
8 implement that within the first quarter of 2002
9 in this document; correct?

10 A. As I've explained, Leader2Leader
11 discussions vary depending on who it is that we
12 are discussing it with, and at that time the
13 specific components of Leader2Leader that we
14 were discussing with Wright-Patterson Air Force
15 Base weren't working and weren't included in
16 that reference.

17 Q. Weren't working?

18 A. They were working and were
19 included in that reference, but it couldn't have
20 been the 761 technology because it didn't exist
21 until a few days before November 11, 2002.
22 December 11, 2002.

23 Q. Did Leader Technologies ever
24 create marketing materials before 2002 in which

1 Q. Were you asked to perform another
2 task?

3 A. Yes.

4 Q. What was that?

5 A. The second task was to take the
6 761 and essentially to judge its novelty. That
7 is, to compare each and every asserted element
8 in the asserted claims of the 761 patent against
9 several references. That is, several
10 publications or systems that appeared before the
11 filing of the -- either the provisional and 761
12 patent.

13 And if in fact the ideas in the
14 761 patent appeared earlier, then it's not
15 novel, so that in the words, it means that the
16 patent would be invalid.

17 Q. Did you prepare a slide to show
18 the two things that you were asked to do?

19 A. Yes, I did.

20 Q. I believe you already testified
21 the first task. That's what's under the first
22 number there; is that right?

23 A. That's right. So my first opinion
24 is the provisional patent application did not

1 disclose every element of the asserted claims of
2 the 761 patent.

3 Q. And did you come to an opinion
4 regarding your second task, whether or not the
5 patent was valid?

6 A. Yes, I did.

7 Q. What was that?

8 A. As you can see here, I compared
9 each asserted claim of the 761 patent to a
10 variety of references, and for the first three
11 there, we see U.S. patent 6236994. I'll call
12 this Swartz from now on. Swartz is the inventor
13 assigned to.

14 Everything in the asserted claims
15 was in Swartz, and the iManage 6.0 reference
16 manual, and I again found all the ideas in the
17 asserted claims in each and every element of the
18 asserted claims in the iManage system.

19 And I also looked at the European
20 patent application, EP 10873067 AT, which I'll
21 call Hubert, and I found each and every element
22 of the asserted claims in the Hubert patent were
23 in the 761 patent -- I should correct myself.
24 For Swartz and Hubert. That's each and every

1 that definition when they were there.

2 If the Court did not construe or
3 define any terms, I went to the patent itself to
4 see if they provided a definition.

5 If they did not provide a
6 definition, I used the definition that would be
7 known to one skilled in the art.

8 These slides are bit of evidence
9 back up.

10 Q. I think you were saying if there
11 wasn't a definition provided by the Court, you
12 used the patent itself to find the definition or
13 you used what one of ordinary skill in the art
14 would use.

15 A. That's correct.

16 Q. What is one of ordinary skill in
17 the art in computer science in this case?

18 A. One of ordinary skill in the art,
19 as I believe, is somebody with a bachelor of
20 science in computing science or computer
21 engineering or equivalent and a couple years of
22 experience.

23 I kind of know what students can
24 do as soon as they graduate, and you need a

1 couple years experience to mature and understand
2 what you do and how to build products within
3 that.

4 Because of the nature of the 761
5 patent, they would have to have background in
6 networking, in distributed systems, in
7 weapon-based platforms, and a little groupware.
8 Doesn't have to be extensive.

9 Q. When you were doing your analysis
10 regarding the other pieces of prior art Swartz
11 and iManage and Hubert, did you use a different
12 definition or different process for the claim
13 terms?

14 A. No, I used exactly what was
15 construed by the Court then what the patent said
16 and then failing that, what one of ordinary
17 skill in the art would understand those words to
18 mean.

19 Q. So right now, Dr. Greenberg, I'd
20 like to step us through your first opinion, the
21 one regarding the provisional application, and
22 whether or not the provisional application
23 contains a disclosure of each and every element
24 of the issued claims.

1 A. Yes.

2 Q. I think you have an exhibit in
3 your binder, PTX 3. Can you turn to that.

4 A. I see it.

5 Q. What is that?

6 A. This is the provisional
7 application.

8 Q. And again just for clarity, when
9 you were doing your analysis comparing the
10 claims of the issued patent to the provisional
11 application, did you confine yourself to just
12 those two pieces of paper?

13 A. Yes, I did.

14 Q. Why did you do that?

15 A. My understanding of patent law is
16 that for a patent to be entitled to the date of
17 provisional application, the provisional
18 application by itself has to disclose each and
19 every element of the claim, and if it doesn't,
20 the patent is not allowed to use the filing date
21 of provisional application.

22 Q. And so why didn't you look to
23 anything else that was in existence at the same
24 time?

1 A. Well, as I mentioned, the law
2 states that I have to confine myself to the
3 provisional application. I am, of course,
4 allowed to apply my understanding as one skilled
5 in the art or as I would interpret one skilled
6 in the art at the time of the filing, how they
7 would understand the terms in the provisional
8 application. As a matter of law, that's how it
9 is.

10 Q. What conclusion did you make when
11 you started this analysis?

12 A. The provisional application -- I
13 have a graphic on this.

14 The provisional application
15 defines a whole variety of -- defines ideas in
16 it. There is some stuff in it. When I compared
17 it to the 761 patent, the 761 patent has
18 substantially more material in it, and it's not
19 just more words, but it has substantially new
20 ideas, new parts of invention, that just don't
21 appear in the provisional anywhere.

22 Q. Doctor, before we move on, I
23 notice you have claim numbers up there. Why did
24 you choose those claims?

1 A. Yes, because when you look at the
2 ideas that are in the claims, those ideas are
3 covered by the material added to the 761 patent,
4 and they're not in the provisional application.
5 The provisional application does overlap with
6 what's in the patent, but not in the ideas that
7 are in the claims. That's all the new stuff
8 that was added.

9 Q. And why did you pick these
10 particular claims?

11 A. Well, my understanding is that
12 these are the claims being asserted in the case,
13 and that's where I focused my attention. Other
14 claims may talk about what's in the provisional
15 application, but that's not what's at issue
16 here.

17 Q. Did you analyze each and every one
18 of these claims and compare it to what was
19 disclosed in the provisional application?

20 A. Yes, I did.

21 Q. And what did you -- you said that
22 there was some things in these claims that was
23 not in the provisional application. What do you
24 mean by that?

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

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

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

12 So that's how I did my comparison.

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

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

18 A. Right.

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

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

1 In the first, we see a
2 "computer-implemented context component for
3 capturing context information associated with
4 user defined data." One of the things I looked
5 for a was a context component in the provisional
6 that captures context information. Is there
7 something there that's associated with user
8 defined data?

9 The second paragraph says there's
10 a computer-implemented tracking component for
11 tracking of change of the users from the first
12 context to the second context. I looked at the
13 provisional to see is there anything there that
14 tracks a user moving from one context to
15 another.

16 And the third thing, dynamically
17 updating the stored metadata based on the
18 change. I looked to see, first, is there any
19 notion of metadata and any notion of dynamically
20 updating the metadata on change.

21 Q. Is there anything in the patent
22 that talks about these things you're mentioning?

23 A. Absolutely. I believe the figure
24 on the face of the patent, that is Figure 1,

1 which is a little figure we see clearly.

2 So this is obviously important.

3 It's on the very front of the patent, and
4 there's -- on the left side we see this thing
5 called a context component and this thing called
6 a tracking component. This is part of the 761
7 patent.

8 Q. Are those figures in the
9 provisional patent?

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

13 Q. Are there more figures in the
14 issued patent?

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

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

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

1 Q. Did you prepare a slide?

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

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

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

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

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

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

1 described thoroughly in the specification.

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

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

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

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

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

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

1 slides for that as well.

2 A. Sure.

3 Q. Column 6.

4 A. Well --

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

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

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

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

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

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

23 A. That's correct.

24 Q. Before we dive into the

1 provisional, I'd like you to walk us through a
2 little bit of how those elements are described
3 in the final patent application.

4 A. Sure.

5 Q. So I think you actually had some
6 slides that showed some portions of the patent
7 that describe these elements; is that right?

8 A. There is columns from the patent,
9 yes.

10 MS. KEEFFE: Can you bring up
11 Columns 6 and 7?

12 BY MS. KEEFFE:

13 Q. Does this look familiar?

14 A. Yeah. Yeah, it does.

15 Q. What is this?

16 A. So this is from Column 6 of the
17 patent. So here -- here we see it clearly says,
18 The system 100 also includes a context component
19 in association with the figures context to
20 monitor and generate context data associated
21 with data operations of the user in the first
22 context.

23 Essentially what this means is
24 that there, context component is monitoring what

1 people are doing with their data and it's
2 generated context data captioning that
3 information.

4 Q. And is the same true with respect
5 to the tracking component you were mentioning in
6 the claims?

7 A. Yes, it is.

8 Q. Can we look at Column 7?

9 A. Yeah. So here's another excerpt.

10 And here at the bottom we see --
11 let's see. So such user activities and data
12 operations in the one or more context of the
13 system 100 and movement of the user between
14 context are tracked using a tracking component.

15 So what this is talking about here
16 is that we have a tracking component in a bit of
17 the software that's actually watching what's
18 going on, that's watching how the user moves
19 from one context to another. And it's
20 captioning that as information.

21 Q. And is it your opinion that either
22 of these concepts, which are in all of the
23 claims, do they appear anywhere in the
24 provisional application?

1 A. No. They don't appear whatsoever.
2 And again, I have to stress, and I think this is
3 really important, it's not just that the words
4 don't appear, but the concept itself just isn't
5 there in the provisional.

6 Q. Is the process of moving between
7 contexts, so moving from one context to another,
8 discussed in the later -- in the later patent
9 application, just that idea of movement, not
10 just tracking?

11 A. It's discussed in the patent.
12 Yes.

13 Q. Could you show Figure 2 again,
14 please? How does Figure 2 show that?

15 A. Well, there's also some associated
16 text with this. I don't know if you can bring
17 this side by side.

18 Q. Column 7.

19 A. That may be a bit -- can everybody
20 see that?

21 So here this -- this essentially
22 describes the basic process that's handled by
23 pretty well all of the asserted independent
24 claims of the patent.

1 We have at the beginning here, you
2 know, it starts user is associated with a first
3 context. They do some stuff. You know, user
4 sends application. They may perform data
5 operations.

6 That is the notion of context
7 component. You know, watching what's going on
8 and actually looking at this.

9 But then we see the step 206,
10 where it says the user changes context, and
11 there's a text that describes it. It says at
12 206, the user changes context from the first
13 context to a second context. So there's the
14 movement there.

15 And then at 208, it says the data
16 and applications are then automatically
17 associated with the second context. So there's
18 a consequence there.

19 But we see this idea of user
20 changing context is part of the general flow
21 that's described in the '761 patent. And this
22 is pretty well what happened with all of the
23 independent claims being asserted.

24 Q. And does a description like

1 this -- actually the first question: Does this
2 language appear in the provisional application,
3 the language that you were just describing?

4 A. No, it does not.

5 Q. And does Figure 2 appear in the
6 provisional application that you've been
7 describing?

8 A. They're -- not only does Figure 2
9 not appear, there's nothing in the provisional
10 application that even textually describes what's
11 in Figure 2.

12 Q. Aside from the exact language, is
13 there any description using any language of the
14 concepts that are disclosed in the paragraph
15 that you've been talking about here?

16 A. No, it's not. It's not in the
17 description.

18 It's not in the examples given,
19 nor is it in the code that was provided.

20 Q. So I think you've actually
21 mentioned three things, if I remember right.
22 You mentioned that the provisional application
23 did not have any concept of metadata storage or
24 updating; is that right?

1 A. That's correct.

2 Q. In fact, can I get a --

3 MS. KEEFE: Your Honor, may I
4 approach behind to write on a white board? To
5 put a white board up and write on it?

6 THE COURT: You may.

7 MS. KEEFE: So I apologize already
8 for speaking from here. I'll be very loud
9 before I go back over there.

10 BY MS. KEEFE:

11 Q. So I believe that you actually
12 said that the first thing that you couldn't
13 find -- and by the way, I'm only doing this
14 because Dr. Greenberg says his handwriting is
15 very bad.

16 A. It's really bad.

17 Q. I think you said the first concept
18 that's all throughout all of the claims as well
19 as the specification of the patent was the idea
20 of metadata storage and updating; is that right?

21 A. That's correct.

22 Q. And then if I remember right --

23 MR. ANDRE: Your Honor, objection.

24 Counsel is leading. He can tell her what to

1 write.

2 THE COURT: Sure. Sustained.

3 BY MR. RHODES:

4 Q. What were the other two concepts
5 that you did not find from the claims of the
6 patent in the provisional application?

7 A. Okay. So the other -- I am just
8 going to bring the patent, just use the right
9 language in front of me. So this is '761 here.

10 So essentially the context
11 component for captioning context. For caption
12 context information.

13 Q. Okay. And another?

14 A. And the third one is tracking
15 component for tracking a change of the user from
16 the first context to a second context.

17 Q. Does that look right?

18 A. That's correct.

19 Q. Okay. So I'd like to go through
20 these with you one by one.

21 A. Sure.

22 Q. So why don't we take the first one
23 first.

24 Why do you think that there is no

1 description of metadata storage or update in the
2 provisional application?

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

7 And the way it's used is in a
8 different way from the way it's described in the
9 '761 patent.

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

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

14 A. That's not --

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

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

20 Where does metadata and storage
21 appear in Claim 1?

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

24 So if we look at the first

1 paragraph right at the middle, we see the word
2 metadata. If we can highlight that.

3 There it is. So we see the
4 context component dynamically storing the
5 context information in metadata associated with
6 the user-defined data. So that is the first
7 place it appears.

8 Essentially the context component
9 is taking this information and it's storing
10 it. And metadata, by the way, is just data
11 about data. That's the Court's construction.
12 That's the everyday use of the Court's
13 construction, I believe.

14 The second paragraph says metadata
15 based on the change. So what this is talking
16 about is that the tracking component is watching
17 the person moving from one context to another.
18 And as part of that, it takes that metadata, the
19 stuff that was stored in the first context and
20 is updating it again. Essentially is adding
21 new.

22 It's either changing the
23 information or adding things associated with
24 that information.

1 Q. Is this an important context in
2 the claim?

3 A. Well, absolutely. It appears in
4 every -- as I mentioned, it appears in every one
5 of the asserted independent claims.

6 And it's talked about extensively
7 throughout the patent. Essentially it says in
8 computer science terms, it says, this is a
9 method by which we will take this information
10 and we'll structure it and store it for later
11 access and use.

12 Q. Can you show us where the concept
13 of metadata is in Claim 9, please?

14 A. Sure. Let's move to Claim 9.

15 It's -- we'll see that there's --
16 it's all very similar, although the wording
17 around it is somewhat different. So, again, in
18 the middle, we see dynamically -- well,
19 beginning of the second paragraph, we see
20 dynamically associating metadata with the data.
21 So it appears there again.

22 And then it says the data and
23 metadata stored on a storage component. We see
24 even later on, the metadata -- what the metadata

1 consists of, what it includes. So information
2 related to the user, the data, the application
3 and the user environment.

4 In the last paragraph, we see
5 dynamically updating the stored metadata. And
6 again, it gives a bit of a description of what
7 it's doing. So there it is in Claim 9.

8 Q. And is the concept in Claim 21?

9 A. Let's look at Claim 21, and we see
10 something very similar. We see in the second
11 paragraph, again dynamically associating
12 metadata with the data. And again, the data,
13 metadata stored, in this case, on a web-based
14 computing platform.

15 There we see the metadata includes
16 information and it says what's in it.

17 We see in the one, two, three,
18 fourth paragraph dynamically associating the
19 data and the application with the second user
20 workspace in the metadata.

21 And then final paragraph, we see
22 starting near the bottom that we see a plurality
23 of different users can access the data via the
24 metadata from a corresponding plurality of

1 different user workspaces.

2 So, again, we see it's littered
3 throughout this claim.

4 Q. And finally, is it also -- the
5 concept of metadata also in Claim 23?

6 A. Yes, it is. So, again, something
7 very similar. Let me just search for this.

8 Here -- it's somewhere in the
9 middle of the first paragraph. It says for
10 dynamically -- just a little bit below, for
11 dynamically storing the context data as metadata
12 on a storage component.

13 And a little bit right after that,
14 it says which metadata. It says that's
15 dynamically associated with data.

16 And then in the second paragraph,
17 we have again near the bottom, it says
18 dynamically storing the change information on
19 the storage component as part of the metadata.
20 So again, it's throughout these claims. It's a
21 fundamental component of many of the elements of
22 these claims.

23 Q. And what's the basis for your
24 opinion that these elements are not disclosed in

1 the provisional application?

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

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

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

13 So is this the paragraph that
14 describes metadata?

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

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

19 Q. How about Paragraph 11?

20 A. Yeah, keep going.

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

24 So this is in the background of

1 the invention in the provisional. And so what
2 they're talking about here is what existed at
3 the time of the filing of this provisional
4 application.

5 And here we see, the second line,
6 it says Current processes. So this is what
7 exists. Then designed to add context to files
8 such as the metadata tagging approach, involve
9 having a knowledge officer view files after they
10 have been stored and create metadata tags.

11 So here they're saying that at the
12 time of this filing, the one approach was to use
13 metadata where some person would manually assign
14 essentially this information to the file so they
15 can later search for it.

16 And then immediately following it,
17 it says -- it actually says, Well, this isn't
18 good enough. It says, Notwithstanding the
19 usefulness of the above-described methods, a
20 need still exists for a communications tool that
21 associates files generated by applications with
22 individual groups and topical context.

23 So really here they're talking
24 about metadata as here's what existed before.

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

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

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

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

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

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

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

24 So these are things like, Well,

1 you know, we have Microsoft Word and we have a
2 document prepared with it. And it's all the
3 stuff that -- essentially all the data and later
4 applications, stuff that can happen on the
5 board. So it's just a collection.

6 It knows that there could be a
7 word file, for example, with the document
8 associated with it.

9 The next thing it does, if you go
10 to the next slide, is that -- and this is a
11 quote from the provisional -- it says "the
12 present invention automates workflow processes."

13 The workflow is a sequence of
14 steps. It's usually designed -- workflow is
15 usually for office automation where it tries to
16 automate some kind of procedure that documents
17 will follow or that people have to follow.

18 So for example, like, if you
19 wanted to buy something, you filled out a form,
20 and that form would go to this place first and
21 that place next and that place next. It's a
22 sequence of steps.

23 Q. Dr. Greenberg, when you have your
24 quotes up there, I wanted to help. If anyone

1 wanted to follow, what is the paragraph number?
2 What does that mean?

3 A. That means this is an excerpt from
4 paragraph twenty-two in the provisional
5 application.

6 The provisional application says
7 we can relate these boards together in a
8 sequence of steps, and the next thing the
9 provisional says -- this is a quote from page
10 six, paragraph three. The numbering is a little
11 different because the provisional looks like two
12 different documents stuck together. The way the
13 provisional numbers their paragraphs isn't
14 consistent.

15 It says the workflow process may
16 be readily reorganized by making a change to one
17 or more of the webs and boards. Imagine that.
18 Somehow we've created a sequence, maybe
19 manually, that there's a sequence or process
20 that goes from board A to board B to board C and
21 then D.

22 We can shuffle around that
23 sequence. The invention says we can change that
24 sequence and reorganize those boards, so we can

1 go from board B to board D to board A. All that
2 stuff will be on those boards.

3 Q. Why would someone want to do that?

4 A. Workflow processes essentially, as
5 I said, describe a sequence of steps, and these
6 steps could change over time.

7 One of the problems around -- I
8 shouldn't say major problem. One of the issues
9 that we wanted workflow systems to be, for
10 example, so a site administrator could say,
11 let's change the sequence of steps we're going
12 to do things in without having to do a massive
13 amount of rewrite of code.

14 Essentially what this invention
15 says, we can change the sequence of steps. I
16 think we have a few more animations to show
17 that.

18 We could do this, and this is
19 captured by this quote, and this is what's meant
20 in the provisional. The user changes the
21 context, the files, and applications
22 automatically follow dynamically capturing those
23 shifts in context, so this is automated.

24 When they go from one board to the

1 next, these things will be in the right place.
2 This is not about tracking movements, capturing
3 contexts. It is about, here's the boards,
4 here's the relationships, and we keep juggling
5 those relationships and boards around to define
6 different sequences of steps and different
7 relationships.

8 Q. Say as a user changes their
9 context. Why doesn't that mean when a user goes
10 from board D to board C?

11 A. Here they are going from board D
12 to board C. This is an after-the-fact thing.

13 What the invention describes is we
14 can take the boards and change the
15 relationships. Here we're talk about a person
16 can go from one board to the next, and the stuff
17 will be there. There is no capturing of the
18 context of what the person is doing as they do
19 that, nor is there any tracking of the movements
20 nor updating of metadata. That is not in there.

21 Q. You mentioned there's two
22 documents pushed together to make up this
23 provisional application; is that right?

24 A. That's correct.

1 Q. What are those two documents?

2 A. If I look at the provisional, so
3 there's one that looks like an -- essentially a
4 description, and it's -- they have paragraphs
5 numbers one through twenty-five and then there's
6 an attachment. It's labeled attachment two.

7 So I'm not sure. There's no
8 attachment one. I could see it just seems
9 something gathered from someplace else which
10 contained another description, and there's code
11 associated with it.

12 Q. Did you study that portion of
13 application as well?

14 A. Yes, I did.

15 Q. Does the code included in that
16 portion of the application change your opinion
17 regarding what's disclosed in that provisional
18 application?

19 A. No, if anything, it reenforces
20 what I found in the description.

21 The code is all about here's a
22 board and here's a relationship between boards,
23 and one is simply form filling essentially
24 manually what the relationships between the

1 boards are.

2 Q. Can you pull up the code,
3 Dr. Greenberg. Do you see the import statements
4 here?

5 A. Yes, I do.

6 Q. Are these in the provisional?

7 A. Yes, they are at the beginning of
8 the code section.

9 Q. What's the purpose of an import
10 statement?

11 A. So an import statement is, as the
12 name suggests, is a way for the computer program
13 to import code that's somewhere else, so
14 essentially it says it's a way for us to manage
15 code. It says that there's code somewhere else,
16 and I want to bring it into the program so the
17 program can actually use it.

18 Q. If we take the -- one of the first
19 ones, for example, the import com.leader.util.
20 What would that mean?

21 A. Not much because one thing that is
22 not in the provisional is what's in these
23 external files. All this tells me is that --
24 and I'm just guessing now, so this is an

1 educated guess -- that because it starts with
2 com.leader, this is some code that Leader may
3 have or may not have written yet or may plan to
4 write that does some stuff.

5 Essentially it just says that
6 whatever is there is intrinsic to Leader, so I
7 would be guessing. It's like, we have this box,
8 and we have stuff in it, and the company
9 holds the box, but I won't tell you what's in
10 it.

11 Q. Can you determine in any way from
12 the import statements what the code looks like?

13 A. First, I have to say I don't know
14 if the code exists. I can't tell if this code
15 is working code. Is it actually code that they've
16 actually compiled to run? I don't know. I
17 can't tell from this because that's not
18 complete.

19 The second thing I can tell is
20 this code or pseudocode is stuff intended to run
21 compiled by systems to be run eventually, or
22 it's more of a sketch. And looking at it, it
23 looks more like code. Again I don't know.

24 The third thing I can't tell is

1 whether these files com.leader.util or debug,
2 whether they exist or not. I have no idea
3 whether these are just place holders or if they
4 have stuff there. It's not in the provisional.

5 If I look at any particular one of
6 them, I can make a guess. Com.leader.util,
7 maybe that means there's a utility program in
8 it, but there's another one called
9 asp.facebook.util, so I don't know what's in it.
10 I just make a wild guess.

11 Q. These are part of what's been
12 described as the code for this program?

13 A. Well, it's part of the code that
14 was produced in the provisional, but it's the
15 actual stuff in these things designated by the
16 import isn't there. They did not deliver that.

17 I've read other patent
18 applications, other things, before and sometimes
19 they come with a floppy or CD that says, here's
20 our stuff.

21 For one, this is all I have to
22 work with. I would be guessing.

23 Q. Can I direct your attention to a
24 particular part of the code attached here, the

1 sixteenth page of the provisional. There should
2 be something called tool code. Tool code equals
3 get contact?

4 A. I think you want to see more than
5 that. The bottom one. Keep going right to the
6 bottom, to where it says return form.

7 Two more lines.

8 Q. And in here in particular, I'd
9 like to point your attention to the middle of
10 the page where it says action.addactionlistener.
11 Do you see that code?

12 A. I do.

13 Q. What does that code do?

14 A. So remember before I said that
15 what the provisional allows it to reset the
16 relationship between these boards. I believe in
17 looking at this and using my knowledge of
18 programming that what this essentially does is
19 really the user interface part for somebody to
20 manually set the relationship of one board to
21 another.

22 If I could highlight, it says the
23 fourth, fifth line down, add new relationship
24 subform. So it's using the word "form," and we

1 have sub equal new concrete sub form create
2 relationship sub form. So that would probably
3 be the title of the window you would see as the
4 user and creator.

5 New relationship would be
6 instruction, and the rest of the code -- go a
7 little below it -- says sub.addboarddropdown.
8 It says sub.addboarddropdown, and following
9 that, it talks about the board drop down.

10 I think this is a drop down form
11 or guideline, something that you've probably
12 seen before on computer systems, but it brings
13 up this form that lets you set the relationship
14 of one board to another, and this is a manual
15 thing.

16 Q. Does anything in this disclose
17 tracking a user's movement from one board to
18 another board?

19 A. Neither is it in this code and
20 nowhere else in the code.

21 Q. Does anything in this code
22 disclose tracking a user's movement from one
23 context to a separate context?

24 A. No.

1 Q. There was a deposition taken in
2 this case of Mr. Lamb. Are you aware of that?

3 A. Yes, I am.

4 Q. Did you read Mr. Lamb's
5 deposition?

6 A. I did.

7 Q. Did you base your opinion on
8 Mr. Lamb's testimony in his deposition?

9 A. No, I did not.

10 Q. When you reviewed Mr. Lamb's
11 testimony about what he thought was in the
12 provisional application, did it change your
13 opinion as to whether or not the provisional
14 disclosed each and every element of the claim?

15 A. It enforced my position. He said
16 several times that no tracking was done in the
17 provisional application.

18 MR. ANDRE: I'm going to object to
19 the characterization of the witness's testimony,
20 and he testified to that.

21 THE COURT: Overruled. He's
22 testifying to his interpretation of that.

23 BY MS. KEEFE:

24 Q. Dr. Greenberg, one of the terms we

1 hear a lot of in patent law is enabling. Do you
2 know what that means?

3 A. Yes, I do.

4 Q. What does it mean to be enabled or
5 enabling technology?

6 A. It mean that is -- this
7 description has to be enough that somebody of
8 ordinary skill in the art could go and build it.
9 It doesn't have to say everything, but it should
10 be rich enough that you can say, here's what it
11 says, and you can do something about it.

12 Q. And in your opinion, was the text
13 and code in the back of the provisional
14 application enabling technology?

15 A. It was enabling in the sense that
16 I understood enough to determine it's about
17 creating boards and setting the relationships
18 between those boards. In that sense, it's
19 enabling.

20 But it's not a full specification.
21 There's a lot of stuff missing, such as in those
22 import files. I could tell from the code in the
23 description that it matches the description I
24 told you, but in terms of enabling what's in the

1 761 patent, I would say it's not.

2 Q. So the -- in your -- in your
3 opinion, did the disclosure from the provisional
4 application, including the code at the back,
5 enable one of skill in the art to build or
6 understand what was in the claims of the 761?

7 A. No.

8 Q. In your opinion, does the
9 provisional patent application disclose each and
10 every element fully of the asserted claims of
11 the 761 patent?

12 A. No, they do not.

13 MS. KEEFE: This is a good place
14 for a break, Your Honor, or we can go to the
15 next topic.

16 THE COURT: I know the next topic
17 will take more than six minutes.

18 MS. KEEFE: I promise it will.

19 THE COURT: Based on that promise,
20 we'll start our lunch a little early today and
21 have the jurors back in time to start again at
22 1:30.

23 THE CLERK: All rise.

24 (The jury exited the courtroom at

1 things I had to take care of and I apologize for
2 keeping you waiting. And welcome back and let
3 me keep you waiting no longer.

4 Ms. Keefe.

5 MS. KEEFE: Dr. Greenberg.

6 Go ahead and put up the summary
7 slide.

8 BY MS. KEEFE:

9 Q. Good afternoon, Dr. Greenberg.

10 A. Hi.

11 Q. So before lunch, I think we were
12 talking about your first opinion; is that
13 correct?

14 A. That's correct.

15 Q. And what was your first opinion,
16 again?

17 A. So just to summarize, the
18 provisional patent application does not disclose
19 every element of each asserted claim of the '761
20 patent.

21 Q. Thank you.

22 I'd like for us now to move on to
23 your second opinion. Now, before we dive into
24 that, I think one of the terms that we keep

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Day 6
INC.,)
)
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

1 prior art and are therefore not invalid for that
2 reason.

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

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

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

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

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

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

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

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

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

19 We'll see you in five minutes.

20 (A brief recess was taken.)

21 THE CLERK: All rise.

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

24 MR. ANDRE: Your Honor, before the

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

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

7 MR. ANDRE: Thank you.

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

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

12 THE COURT: That's fine.

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

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

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

1 that is in Dr. Greenberg's report.

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

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

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

10 And I think that completes the
11 list.

12 Q. And you reviewed the provisional
13 application?

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

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

20 A. Yes, I did.

21 Q. Who would that person be?

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

1 field, and/or perhaps several years of
2 experience.

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

6 A. Sure. I think so.

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

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

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

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

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

1 Q. But you also have testified before
2 that the code attached to the provisional
3 application is just pseudo code; correct?

4 A. Yes. Well, that goes along with
5 the idea that it's mainly a communication device
6 for other people who might want to make and use
7 this invention. It's not really a full
8 implementation as I said, but it is designed to
9 be helpful, you know, to give information and
10 hints to someone who might want to actually make
11 this invention.

12 Q. To make hints, that is what you
13 just said?

14 A. For someone practicing the art, it
15 would give strong indications of how to
16 implement, make and use this invention.

17 Q. And pseudo code would not actually
18 function if you were to compile it into an
19 executable program; right?

20 A. Pseudo code would not, right.

21 Q. And that's because it's not a real
22 programing language; right?

23 A. So pseudo code is not a real
24 programing language, but there is really kind of

1 a fine line here that I would like to clarify.

2 So the language that appears here
3 looks very much like Java, although I didn't
4 really try to compile it and test it and see if
5 it actually runs. But the purpose of that code
6 that looks a lot like Java is to provide
7 information to someone skilled in the art so you
8 know what kind of glasses had been imported, you
9 would know how data was being stored, you would
10 know where to go to access information about
11 users, and so on.

12 Q. You mentioned a lot of things in
13 that last answer that I would like to go
14 through.

15 A. Okay.

16 Q. Can we actually see the import
17 statement section of the provisional, please.
18 So you mentioned these import statements quite a
19 few times; is that correct?

20 A. That's right.

21 Q. And, in fact, the ones that we
22 pointed to most frequently were the import.com.
23 Leader.persist.vbsf, and the very last import,
24 com.leader.osapplication.sessionstate; is that

1 correct?

2 A. That's correct.

3 Q. You just mentioned that an import
4 statement imports classes that are defined
5 elsewhere; is that right?

6 A. That's right.

7 Q. What is a class?

8 A. It is a unit of code.

9 Q. So an import statement is used to
10 bring in code that lives somewhere else into the
11 code without having to repeat that code right
12 here; is that correct?

13 A. Yeah, it's used for, you know,
14 very common sort of utilities and boiler plate
15 sort of code that's used very frequently. And
16 every Java program and most programming language
17 these days import things like that.

18 Q. But with respect to the import
19 statements that we have highlighted here, you
20 can't really know what is in those classes
21 unless you actually have access to the
22 underlying source code that's being imported;
23 isn't that correct?

24 A. I would say that's not correct. I

1 would say that anyone skilled in the art knows,
2 you know, you don't know every single detail of
3 exactly what is within those classes, but you
4 know that VBSF is middleware that allows you to
5 store information in a database, you know, that
6 session statement is there to sort of capture
7 and hold information about a session because web
8 protocols are stateless and they can't catch a
9 state, so you know that kind of stuff from just
10 looking at the names of these things because
11 those are very common names in the industry.

12 MS. KEEFE: Your Honor, I would
13 like to play from the deposition at page 132,
14 lines 19 through 22.

15 MS. KOBIALKA: I'll object.
16 That's an incomplete clip. We need to continue
17 on to --

18 THE COURT: Which lines do you
19 propose in addition?

20 MS. KOBIALKA: At least page 133
21 through line one.

22 THE COURT: 133, one.

23 MS. KEEFE: That's fine, Your
24 Honor.

1 THE COURT: Okay.

2 (Videotape:)

3 Q. You can't really know what's in
4 these classes unless you actually have access to
5 the underlying code. Correct?

6 A. So, that's correct -- except
7 someone with skill in the art would be able to
8 make reasonable guesses based on the names, I
9 would maintain.

10 BY MS. KEEFFE:

11 Q. And, in fact, the best you could
12 do is guess as to what's in the code referred to
13 in an import statement; isn't that correct?

14 A. Not in the sense of a wild guess,
15 no. So as I said before, you don't know the
16 details of how each one of those is implemented
17 because you don't see the code. But VBSF are
18 very common well understood terms so that anyone
19 knowledgeable in the art would know basically
20 what they're doing and they would tell you that
21 if you are trying to make and use this
22 invention, certain kinds of information are
23 going to be stored in a relational database and
24 certain kinds of information are going to be

1 stored in a session state. That would be clear.

2 MS. KEEFE: Your Honor, I would
3 like to play page 133 lines, two through six.

4 MS. KOBIALKA: I'll object as
5 incomplete. If it goes through line 13 on page.

6 THE COURT: No objection through
7 line 13?

8 MS. KOBIALKA: Yes.

9 THE COURT: Ms. Keefe.

10 MS. KEEFE: I actually disagree, I
11 literally asked the question directly and then
12 the answer, but if that helps then we can go
13 ahead and play it.

14 THE COURT: It helps. Let's go
15 ahead and play it then, the whole portion.

16 (Videotape:)

17 Q. But that's the most they could
18 make, is reasonable guesses?

19 A. Yes. But someone, you know,
20 skilled in the art could make reasonable
21 guesses, I think.

22 Yes. But someone, you know,
23 skilled in the art could make reasonable
24 guesses, I think.

1 Q. So let's talk about VBSF for a
2 minute. What is VBSF?

3 A. Sort of a middleware that matches
4 up object-oriented programs with relational
5 databases so that it does the translation from
6 the object model to a relational model, makes it
7 much easier to use in a relational database.

8 BY MS. KEEFE:

9 Q. And, in fact, with respect to the
10 sessions state classes, you were, in fact,
11 speculating as to what was contained within
12 them; isn't that correct?

13 A. So, are you talking about this
14 clip? This clip is talking about VBSF.

15 Q. No, I'm talking about session
16 state classes.

17 A. Session state classes.

18 Q. That were imported.

19 A. So, as I mentioned, you can't see
20 the details of what is session state because the
21 source code is not here. But it is sort of
22 boiler plate type code. Session state is
23 something that if you're writing a web and you
24 have to maintain session state, it's usually the

1 same for almost every application, a set of
2 things that you're doing in web protocols, they
3 don't know that you have logged in, they don't
4 know that you have seen this page but not that
5 page. But session state captures that sort of
6 information and holds it.

7 It is well-known that this is the
8 purpose of session state libraries.

9 Q. But you agree that with respect to
10 the session state, you were speculating as to
11 what it contained?

12 A. I think that when something is
13 well understood by people versed in the art it's
14 not really quite speculation. It is a very
15 informed inference.

16 MS. KEEFE: Your Honor, I would
17 like to play from page 132, line five through
18 line 18.

19 MS. KOBIALKA: Object, Your Honor.
20 This isn't impeachment.

21 THE COURT: Pass up a copy, please
22 of the transcript. 132, line five through 18?

23 MS. KEEFE: Yes, sir, Your Honor.

24 THE COURT: The objection is

1 overruled. You can play it.

2 MS. KEEFE: Thank you, Your Honor.

3 (Videotape:)

4 Q. So you would not know how to
5 locate those classes. Correct?

6 A. So there are session state classes
7 in Java, for example, that may be very similar
8 to this, so the functionality of these kinds of
9 classes -- the reason -- well, I'm speculating.
10 But the reason they're not fully reproduced here
11 is simply because they're fairly common kinds of
12 things that you wouldn't need to look at.

13 Q. But you are speculating. I mean,
14 you can't --

15 A. I am.

16 (End of videotape.)

17 A. So if I may clarify what I was
18 speculating about is the reason they don't
19 appear here, if you go back and carefully read
20 that, I'm not speculating about what the classes
21 mean, I'm saying I'm speculating the reason they
22 don't appear here is because they're very common
23 and they don't need to appear here.

24 Q. When you hired doctor -- you hired

1 Dr. Caltaldo to actually attempt an experiment,
2 is that correct, using the provisional
3 application?

4 A. I'm not sure if hire is the
5 correct word. I'm the one that gave him the
6 task, I did not pay him, someone else paid him,
7 but yes, I gave him that task.

8 Q. And you agree that a person of
9 ordinary skill in the art in this case can have
10 as little as a bachelor of science in computer
11 science according to your testimony; is that
12 right?

13 A. Yes, that's right.

14 Q. But Dr. Caltaldo actually has a
15 Ph.D.?

16 A. He does.

17 Q. And Dr. Caltaldo has more than ten
18 years of experience in the field of computer
19 science?

20 A. That's correct.

21 Q. And you consider him to be very
22 talented; right?

23 A. He's talented, yes, but then on
24 the other hand, as I said before, having a Ph.D.

1 does not necessarily enhance somebody's ability
2 to create a web application. Having a Ph.D.
3 you're doing research that takes you into an
4 extremely specialized area and since I was his
5 thesis supervisor, I can tell you it had
6 absolutely nothing to do with web applications
7 or even applications.

8 I think ten years of experience
9 is, you know, probably fairly average for
10 someone in industry, so I think if you put all
11 that together, he was someone, you know, that
12 would be a representative of someone who was
13 well versed in the art.

14 Q. And other than assigning him this
15 task, you didn't actually oversee Dr. Caltaldo
16 in any way during the project; is that right?

17 A. Not in any way having to do with
18 this, no.

19 Q. And you don't know if Dr. Caltaldo
20 referenced any outside materials in coming up
21 with the pseudo code that he developed; isn't
22 that correct?

23 A. All I know is what he told me, and
24 he told me he did not, when I asked him.

1 is that at some point in the deposition, I think
2 it was at lunchtime or perhaps a break, I called
3 Dr. Caltaldo and asked him some of these
4 questions. So I didn't know during the first
5 half, I knew some of the answers during the
6 second half. There were some things I didn't
7 think to ask him which I asked him yet later, so
8 there are several different points in time here.

9 Q. Could we pull up the pseudo code,
10 please. I think it's the new exhibit, 1125.
11 1125, please. Can you highlight just the title.

12 Dr. Herbsleb, is this the title of
13 the report that Dr. Caltaldo gave you?

14 A. Yes, it is.

15 Q. And the terms at the end here,
16 context and tracking components. Those are
17 phrases used in the patent; isn't that correct?

18 A. That's correct, they are used in
19 the patent.

20 Q. In fact, it's -- you testified
21 earlier that it was possible that Dr. Caltaldo
22 actually had a copy of the final patent when he
23 was performing his analysis, didn't you?

24 A. I believe what I said is that it's

1 public information, that anybody can access
2 that, so of course he had access to it as does
3 everyone.

4 Q. Dr. Herbsleb, what Dr. Caltaldo
5 built was actually pseudo code, wasn't it?

6 A. Well, again, it appears to be
7 Java. It is very, very close to Java, but since
8 I didn't compile it, I don't know if it really
9 runs, so we could call it pseudo code. It looks
10 just like Java.

11 Q. You testified before that
12 Dr. Caltaldo did not build any actual working
13 system in connection with his work with the
14 provisional; isn't that correct?

15 A. That's correct, because it does
16 make calls into the code, you know, provided in
17 the provisional patent application which we
18 didn't have in code form, so it couldn't run
19 because it makes those calls to the code that's
20 in the system.

21 Q. And the fact that it is pseudo
22 code indicates to you that the code Dr. Caltaldo
23 developed could not be used to create a working
24 application; is that correct, by itself?

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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 THE CLERK: All rise. Court is
2 now in session, the Honorable Leonard P. Stark
3 now presiding.

4 THE COURT: Good morning.
5 (Everyone said, Good morning, Your
6 Honor.)

7 THE CLERK: Please be seated.

8 THE COURT: Anything we need to
9 take up before the jury comes in?

10 MR. ANDRE: Just real quick, Your
11 Honor. I'm a little paranoid. I saw that
12 Facebook made a filing this morning on Rule 58.
13 Some objections. I just want to make sure our
14 objections to the jury are noted and the Rule 58
15 motion can come in sometime after the jury
16 verdict, perhaps within ten days. Is that
17 acceptable, Your Honor?

18 THE COURT: That's all acceptable
19 with me. Thank you very much.

20 MR. RHODES: Your Honor, we forgot
21 to move into evidence DTX 278 and 280.

22 THE COURT: It is admitted.

23 MR. RHODES: I appreciate that,
24 Your Honor.