1 would it change your opinion regarding the

2 iManage manual as it relates to the '761 patent?

3   A. If it's confidential as you say it

4 is, which I don't know, I'm not trying to argue

5 with you, I'm just saying I don't know, and if

6 iManage hadn't actually disclosed it to anyone,

7 the only -- the question in my mind is when

8 iManage had made it public.

9   It wouldn't change my opinion, it

10 would just change maybe when it was made public

11 so I would need more information to know about

12 the date.

13   Q. I think we're cross talking here.

14   A. Okay.

15   Q. I'm asking a very specific

16 question, not if it's public, I'm asking if it

17 is confidential, if this is a confidential

18 document not available to the public, ever?

19   A. Ever.

20   Q. Would it change your opinion with

21 regard to how the iManage manual relates to the

22 '761 patent?

23   A. Well, it wouldn't change my

24 opinion on how it relates to the '761. It may

1 change my opinion about the date.

2   Q. What do you mean the date?

3   A. Well, because I don't know if and

4 when it was made public.

5   Q. You keep changing my question,

6 Doctor. I don't want to quarrel with you, I

7 just want to make it real simple.

8   A. Just to clarify, do you mean would

9 it change my opinion about how the iManage

10 manual would relate to the '761 patent?

11   Q. You gave an opinion that the

12 iManage manual anticipates the '761 patent

13 because you believe it was a public document

14 published before the patent; correct?

15   A. Uh-huh.

16   Q. If it's a confidential document,

17 it was never published, never made available to

18 the public, would you still have the same

19 opinion that it anticipates the '761 patent?

20   A. Well, insofar as the iManage

21 reference manual actually describes a system

22 that is working, I relied on this particular

23 document to form that opinion, but it's my

24 understanding that a system also existed at the

1 time.

2   Q. Doctor, we're talking about the

3 document. That's all you relied on in this

4 Court, this document. You're not going to tell

5 me, are you, whether you think this is prior art

6 if it's confidential, are you?

7   A. If it is truly confidential, if it

8 wasn't disclosed at all, then I suppose then it

9 wouldn't anticipate. But again, it depends

10 totally on the date and when -- there are just

11 facts I just don't know about at this point.

12   Q. As you sit here right now, like

13 you said, you don't know if Autonomy, the

14 company who provided this in this litigation, if

15 it designated this as confidential, you don't

16 know if they made this public or not, you just

17 don't know?

18   MS. KEEFE: Objection.

19   THE COURT: I'll overrule it.

20 We'll get an answer to this and then we'll move.

21   THE WITNESS: I just don't know.

22 This is not information that I have.

23   THE COURT: Let's move on,

24 Mr. Andre.

1   MR. ANDRE: Thank you, Your Honor.

2   Your Honor, it's not about the

3 data, I just want to do ask one more question

4 about the document itself.

5 BY MR. ANDRE:

6   Q. Now, you testified about this

7 document that someone with ordinary skill who

8 has a bachelor's degree --

9   A. And two years plus.

10   Q. -- and two years of experience,

11 they could take this document and build the

12 system described in the document; right?

13   A. They could take this document and

14 use it as a specification to building certainly

15 the parts of the system that relate to the '761

16 patent.

17   Q. You could reverse engineer from

18 the document?

19   A. I would say so.

20   Q. That would be a good reason to

21 keep it confidential, wouldn't it, if you're

22 disclosing that type of proprietary technology?

23   A. I don't think so. It's a

24 reference manual. It's a user manual. You're

1 asking me things I don't know about. But it's a
2 reference manual. I use this to publicize the
3 document.
4   Q. Fair enough. Let's talk about the
5 manual. Now, you just made reference to the
6 fact that there is a piece of software that this
7 manual refers to. When you formed your opinion,
8 you had not used that software before; correct?
9   A. No, I had not.
10   Q. And if you look at the actual
11 manual itself, there is nowhere in this manual
12 does the word metadata appear, does it?
13   A. There are ideas in there. The
14 word metadata does not appear, but there are
15 ideas that relate to metadata.
16   Q. And the word context does not
17 appear in manual?
18   A. The actual word does not appear.
19   Q. Okay. And if you turn to page 12
20 of this document, and Doctor, would you please
21 refer to page 12 of the document in the
22 three-ring binder up there, DTX 1010, I want to
23 make sure we're using the same document.
24   A. Yes, I have it.

1   Q. I believe you're looking at
2 something else. I believe you're looking at a
3 different version of this document.
4   A. Okay. I'll look up there.
5   Q. There is a three-ring binder up
6 there that has the document in it. I would like
7 you to actually use the exhibit we're using at
8 trial here.
9   A. Sorry. The number was DT?
10   Q. DTX 1010.
11   A. Thank you.
12   And you're talking about the Bates
13 number or the page number?
14   Q. Page number. Bottom right-hand
15 corner.
16   A. Sorry, lots of paper. Okay. I
17 see it.
18   Q. And in the middle of the page it
19 ask the question what is a DMS. Do you see
20 that?
21   A. Yes, I do.
22   Q. Do you have an understanding of
23 what a DMS is?
24   A. Yes, I do.

1   Q. What is DMS?
2   A. It says here software and/or
3 hardware that managed the repositories of
4 millions of documents or hundreds or thousands
5 of users.
6   Q. It's a document management system?
7   A. That's its main function, but it
8 has a lot of other functions also packed in with
9 it as well.
10   Q. If you go to the next page, page
11 13, it actually talks about what is iManage
12 DeskSite. Do you see that?
13   A. I see that.
14   Q. And so it searches millions of
15 documents, it searches for documents based on
16 document content, it shares documents, it
17 searches for open documents, check in and check
18 out documents, create new versions of documents
19 and track document usage and history. Do you
20 see that?
21   A. I do.
22   Q. This is what the iManage system is
23 about?
24   A. It's describes the functions, yes.

1   Q. It's about tracking documents and
2 managing documents; correct?
3   A. Well, it's tracking document
4 usage, right, by people.
5   Q. It doesn't track people, it tracks
6 documents, that's what the document says;
7 correct?
8   A. It says it's tracking document
9 usage and it's showing in the history system,
10 it's certainly tracking people. This is just a
11 high level description of what it does. I have
12 shown previous in the history system that it
13 does track people. It is tracking people using
14 those documents.
15   Q. That's with the document history
16 system; is that correct?
17   A. That's correct.
18   Q. That's on page 83 of the document;
19 correct?
20   A. I'll have to check.
21   Yes, it is.
22   Q. So this is a document history tab
23 and you have document versions, document
24 history, related documents, document profile,

1 this is the manage travel policy. This is the
2 type of document management system that you see
3 in most offices today, right, this type of a
4 document management system, if you go to the
5 office you have this type of system?
6   A. I'm only speaking towards this
7 one, but this is a feature of this particular
8 system. I don't know if every document
9 management system has a management history in
10 it. This is one thing that sets iManage apart.
11   Q. And you can take that down. With
12 the iManage system, do you need to be connected
13 to the Internet to make this system work?
14   A. It has a--
15   Q. I'm just asking a real simple
16 question.
17   A. I'm sorry.
18   Q. Okay. Do you need to be connected
19 to the internet to make this system work?
20   A. When you say the "system", what
21 part of the system are you referring to?
22   Q. The document management system.
23   A. Well, it's a big system. It has a
24 portable mode that I mentioned previously.

1   Q. I'm saying is it possible to
2 operate the iManage system without being
3 connected to the internet?
4   A. There is -- that's not a yes or no
5 question, because there's a part of the system
6 that lets you operate it in disconnect mode.
7 And then as soon as you connect it, it
8 synchronizes with it.
9   Q. So it's possible. The internet is
10 something you could be on a closed system,
11 closed network now, not on the internet and this
12 system works perfectly fine; correct?
13   A. Well, that kind of
14 mischaracterizes it, because what it is, it's a
15 document of repository, which is what iManage
16 holds. And when you go off on the road, you --
17 and I think I showed a quote of that earlier, it
18 will -- you can kind of take certain versions
19 and you can work on it. And then you can --when
20 you reconnect, it will come back.
21   So it's not meant to just operate
22 entirely by itself. It's meant to kind of delay
23 what happens.
24   So like you work off line a bit,

1 so then you can reconnect.
2   Q. It's not an internet website, is
3 it?
4   A. Beg your pardon?
5   Q. It's not an internet website?
6   A. It has internet capability. I'm
7 not sure what you mean.
8   Q. You don't know what website is?
9   A. I do. When you say it, what do
10 you mean?
11   Q. iManage Desktop system.
12   A. Okay.
13   Q. It's not an internet website?
14   A. It has workings that allows you to
15 access the internet within it. Like you're kind
16 of saying a blanket. I can't say it's yes or no
17 because part of it does let you operate with the
18 internet.
19   Q. I'm not asking you that. I'm
20 asking you a very simple question.
21   Is that an internet website?
22   A. So are you -- just to clarify,
23 you're asking me does one normally access
24 iManage via the internet?

1   Q. That's not what I'm asking,
2 Doctor.
3   A. Okay. I just needed to clarify.
4   Q. Do you know what an internet
5 website is?
6   A. Of course.
7   Q. Is the iManage system an internet
8 website?
9   A. I believe that the main way you
10 interact with iManage system is throughout --
11 no, is not via the web.
12   Q. There you go.
13   A. Yes.
14   Q. Let's go to Figure 2.2 on Page 24.
15   A. Page 24?
16   Q. Yeah.
17   A. Okay.
18   Q. You see how the tree frame is set
19 up here?
20   A. I do.
21   Q. Is this how iManage manages its
22 documents in this type of file folder structure?
23   A. Well, certainly. iManage does
24 have a file folder structure that it can use.

11 (Pages 1680 to 1683)

1 Yes.

2 Q. Okay. Can you take that down.

3 Now, you testified on Friday that

4 the iManage DeskSite is a web-based system;

5 right?

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

7 system.

8 Q. And it says -- I believe you

9 testified it could send URL to a document. And,

10 therefore, iManage must be web-based; correct?

11 A. I have to go back and just check

12 my reference because I think I had several up

13 there.

14 Q. Do you recall testifying to that?

15 A. Yes.

16 Q. Okay. Now, in order to send a

17 document URL link, your system must also include

18 the iManage DeskSite web component server?

19 A. I believe that's what the

20 quotation said. Yes.

21 Q. And the web component server is

22 not part of the desk site; is that right? It's

23 a separate product?

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

1 about what iManage Reference Manual discloses.

2 And it discloses that. So it's part -- all part

3 of the same iManage system.

4 Q. So if you go to Page 75 of the

5 document --

6 A. Okay.

7 Q. So actually on the previous page

8 before this is the site you're referencing where

9 you can send an URL link. And that was your

10 basis for a web-based system; correct?

11 A. For web-based capabilities, yes.

12 Q. And if you go to the next page,

13 the top of the page it says, In order to send a

14 document URL link, your system must include an

15 iManage work site web component server; correct?

16 A. That's correct.

17 Q. And that web component server is

18 not part of the desk set itself; right?

19 A. Well, it's part of iManage.

20 Q. Well the entire -- there's 50

21 products in iManage, but you are relying on the

22 DeskSite?

23 A. I'm referring to the disclosure in

24 the manual. And this is part of all -- the

1 software in the iManage disclosure is one of the

2 aspects of the software.

3 So I am --

4 Q. So that's a different product,

5 though; right?

6 A. But it's part of iManage.

7 Q. So, basically your opinion is if

8 the manual is made by iManage, you get the

9 entire iManage portfolio of products?

10 A. Well, what my opinion is is that

11 there's certain disclosures in this manual and

12 it discloses lots of things. And these do map

13 onto the '761 disclosures.

14 Q. Now, you just testified also that

15 you believe this manual would enable someone to

16 go out and build the product that's described in

17 the manual; correct?

18 A. I believe so, yes.

19 Q. And is it your understanding that

20 user manuals normally allow people to go out and

21 reverse engineer and just build the product

22 that's in the user manual?

23 A. Well, in fact, as a computer

24 scientist often we do specifications to

1 engineers and one of the ways we specify things

2 is by giving a detailed user interface, because

3 the interface itself is often one of the most

4 fundamentally important part of the system.

5 It's how do people use it? How do

6 they see it?

7 How do they present themselves?

8 In fact, I train my students with that. The

9 function should be the user interface.

10 Q. Doctor, when you gave your opinion

11 in this case, when you gave your written

12 opinion, you didn't have an opinion whether or

13 not this was an enabling disclosure, did you?

14 A. I can't recall at that point. I'd

15 have to go back and check.

16 Q. You didn't provide it in the

17 written opinion, though, did you?

18 A. I just can't recall. My expert

19 report is several hundred pages long, so I just

20 can't recall. I can go back and check if you'd

21 like.

22 Q. That's okay. If you don't recall,

23 that's fair enough.

24 A. Okay.

1   Q. Now, the next reference that you
2   referred to was the Swartz reference; correct?
3   A. That's correct.
4   Q. Actually before we go to Swartz, I
5   believe we had a conversation Friday about PTX
6   1105. I just want to clarify a point.
7   We talked about how you had broke
8   the claim out into these different subsections;
9   correct?
10 A. That's correct.
11 Q. And you stated that you broke up
12 this clause here, the wherein clause because of
13 the comma; correct?
14 A. Well, you know what -- yes, I did.
15 Q. Okay. Now, there's a comma there
16 in the first paragraph on the context component;
17 correct?
18 A. That's correct.
19 Q. And there's like another comma
20 right here, second comma in the context
21 component as well?
22 A. That's correct.
23 Q. You didn't break those out, did
24 you?

1   software. It does sit between things. Yes.
2   Q. And I believe you showed Figure 2A
3   in your demonstrative slide. Do you have his
4   demonstrative?
5   This figure here.
6   A. That's correct.
7   Q. Now, this is -- the DataDocket is
8   actually Swartz; correct?
9   A. It -- well, Swartz is interacting
10 with the other -- with the applications.
11 Q. And these are third-party
12 applications; right?
13 A. In -- yes, but there is an API
14 that DataDocket uses to communicate with those.
15 Q. I understand. But these are --
16 this could be, for example, Microsoft Word?
17 A. Well, they're much -- Swartz looks
18 at much broader things, but it's a system.
19 Q. Yeah.
20 A. It's a system.
21 Q. It's third parties?
22 A. Yes.
23 Q. Now, you stated the tracking
24 component would reside within Swartz; is that

1   A. Well, actually if you could look
2   at my claim chart, I did break --
3   Q. Doctor, the claim charts are not
4   into evidence. I don't want to talk to this.
5   You didn't break those into
6   separate elements, did you?
7   A. Well, I -- this was presented to
8   me during the deposition because you're talking
9   about my claim charts. And my claim charts do
10 break up all the elements in much the same way
11 that they're talking about right now.
12 Q. You can take down that.
13 All right. Dr. Schwartz -- I
14 mean, Dr. Greenberg, let's go back to Swartz.
15 A. Okay.
16 Q. Now, Swartz is a middleware
17 product; correct?
18 A. Swartz is a product that's
19 primarily middleware, but also interacts with --
20 through the applications with an API.
21 Q. And the middleware sits between
22 two applications; correct?
23 A. Middleware generally is described
24 as a software that interacts with other

1   correct?
2   A. The tracking component resides in
3   the DataDocket Software, which has an API that
4   communicates through all these systems. That's
5   actually also indicated in Swartz.
6   Q. And where is the context component
7   in Swartz, did you say?
8   A. The context component is some of
9   the software that resides on the DataDocket
10 software.
11 Q. So --
12 A. Again, that interacts with an API.
13 Swartz specifically discloses an API that talks
14 with the systems.
15 Q. So, in your opinion, these
16 third-party systems somehow interact and perform
17 the functions of the '761?
18 A. Yes, it's not somehow. It does.
19 It's -- Swartz, it actually describes how it has
20 an API that talks to these third-party systems.
21 This is a standard on the client
22 server type of architecture, so...
23 Q. And this document, this system,
24 the Swartz system, this doesn't rely on the

13 (Pages 1688 to 1691)

1 internet, either, does it?

2   A. Let me try to recall. Can I just

3 do a quick check to my report?

4   Q. If you need to.

5   A. Okay. Thank you.

6   Swartz actually has web-based

7 capabilities and I believe I showed that on --

8   Q. I understand it's web based, but I

9 think we're cross talking again.

10   A. Okay.

11   Q. You don't need to be on the

12 internet to have Swartz working; correct?

13   A. Certain parts of Swartz, you don't

14 have to be on the internet. I think that's fair

15 to say.

16   But other parts do allow you to be

17 on the internet. It discloses what is

18 interacting.

19   Q. I understand. I understand.

20   Now, if you go to Figure 11 of the

21 document, once again, Swartz organizes the data

22 in these tree structures and files them in

23 folders; correct?

24   A. On this figure, it does.

1   Q. Okay. And if you go to -- you

2 mentioned the indexing of Claim 21 and Claim 11.

3 I believe it was in Swartz; correct?

4   And you used Column 3, and you

5 cited Line 6 to 69.

6   Let's go right up here.

7   A. I see that. Yes.

8   Q. This was the part you cited

9 towards -- for the indexing portion of Swartz

10 for the claims; right?

11   A. That's correct.

12   Q. Okay. And the indexing in this

13 particular instance, is not really talking about

14 Swartz at all, is it?

15   A. Well, it's part of the background

16 to Swartz. It talks about all the capabilities

17 that a system like this should have.

18   Q. And actually if you go back to the

19 previous column in Column 2, it's actually

20 talking about another product right down here;

21 correct? It's a continuation?

22   A. Well, in this case.

23   Q. It's FileNet's Foundation. This

24 was a different system that we're talking about

1 index; right, FileNet's Foundation?

2   A. Yes.

3   Q. Not the Swartz system itself;

4 right?

5   A. Correct. The defining is defining

6 the context of this. But indexing is a standard

7 term known to those in the art.

8   Q. But what I am saying, what you

9 relied upon in your opinion is talking about the

10 FileNet's paper, not the Swartz reference, not

11 the Swartz disclosure or --

12   THE COURT: Ms. Keefe.

13   MS. KEEFE: I just want to insert

14 an objection. Please let him answer the

15 question instead of talking over him so many

16 times.

17   THE COURT: Sustained. But let's

18 let him answer this question if he knows what

19 the question is.

20   THE WITNESS: Okay. So, yes, it

21 was introducing the context of this, but it's

22 talking about indexing in a way that's well

23 known to those of ordinary skill in the art.

24   It's talking about database. This

1 is really standard stuff that any second year

2 student would know. It was nothing surprising

3 here.

4   Q. And that's kind of your take on

5 the entire patent. There's nothing surprising

6 about this patent at all, the '761 patent;

7 right?

8   A. Oh, I didn't say that. You know,

9 there is things in the '761 that would be

10 surprising if it was in fact new.

11   Q. All right. Let's go to Hubert

12 real quick.

13   Go to DTX 604.

14   A. Okay.

15   Q. Dr. Greenberg, you're testifying

16 that something called a meta-document is the

17 same thing as the '761 patented technology;

18 correct?

19   A. What I'm saying -- what I said was

20 that the ideas disclosed in this patent

21 discloses the ideas in the '761 patent.

22   Q. And if you go to the figure in

23 this -- I'm sorry. Go back to the previous.

24 It's Figure 2.

1   Page 9 of the document. So this
2   is the meta-document right here; correct?
3   A. It's that inter-component of a
4   source or environment.
5   Q. And so this document travels from
6   source to source to source; correct?
7   A. The meta-document travels from
8   source to source, which contains a document plus
9   metadata plus processing information, which is
10 another type of metadata.
11   Q. And in your opinion, as you sit
12 here today, you believe that that's somehow
13 tracking users on a system? That's your
14 opinion; correct?
15   A. Yes, it is.
16   Q. And the storage component of this
17 system is where?
18   A. Well, there's -- there's a few
19 storage components. There's the storage
20 component on the meta-document itself and
21 there's -- because meta-document is stored and
22 there was a section in Hubert that talks about
23 that.
24   And as well as part of this

1   pollination that I mentioned.
2   Q. I understand. I don't mean to
3   interrupt you. If you just give me where it is
4   in simple terms.
5   THE COURT: You did interrupt him.
6   Let's let him answer the question.
7   THE WITNESS: So what -- a
8   meta-document stores the information. So it's
9   stored on the particular source that it happens
10 to reside on.
11   There's also another storage
12 that's part of this pollination that happens.
13 So as the meta-document travels around, it
14 actually deposits some of the knowledge in
15 those.
16   So the storage can be all
17 throughout the system only if the meta-document
18 it arrives there.
19   Q. And it's your opinion that in a
20 meta-document is the same type of system in the
21 '761 patent?
22   A. Well, as I mentioned, my opinion
23 is that there's concepts disclosed by Hubert
24 that disclose the same concepts in the '761

1   patent. You know, there's parts of Hubert that
2   are different. But the ideas there are
3   disclosed.
4   Q. The ideas there are disclosed.
5   You also mentioned -- you can take
6   that down -- that you believe the patent is
7   obvious; correct?
8   A. That is correct.
9   Q. And you said basically in these
10 references to be combined in any way to cover
11 whatever elements to make it obvious; correct?
12   A. That's correct.
13   Q. You didn't go through and actually
14 say this part of this reference and that part of
15 that reference would make it obvious; correct?
16   A. No, I did not. Although here we
17 are only talking about those three references.
18 We're not talking about Ausems.
19   With Ausems, I did say where it
20 would be combined.
21   Q. You also gave an opinion, Dr.
22 Greenberg, that the provisional patent did not
23 disclose the '761; is that correct?
24   A. That's correct.

1   Q. So --
2   A. Sorry. That it did not disclose
3   certain elements of the '761.
4   Q. So your opinion is that a document
5   management system, a middleware product or
6   meta-document does disclose everything the
7   actual source code that the inventors used to
8   make their product and they put into the
9   provisional did not disclose all the elements;
10 correct?
11   A. Well, there's several questions
12 there. Should I take them -- I'll try.
13   Q. Well, let me just give you a
14 conclusion. It's your opinion that the codes in
15 the back of the provisional application did not
16 disclose the invention of the '761 patent;
17 correct?
18   A. No. My opinion was that it did
19 not disclose the elements of the asserted
20 claims. There are parts of that disclosure that
21 talk about other parts of the patent, the '761
22 patent.
23   In fact, in other claims that
24 aren't to my understanding being asserted in

1 this case, that are there, but not in the
2 asserted claims. That's what I'm saying. It's
3 quite a different thing.
4 　　Q. Right. And you stated that in
5 your presentation that there was no mention of
6 context data in the provisional application;
7 correct?
8 　　A. There's no mention of context
9 information. There is no mention of a context
10 data itself in terms of that phrase.
11 　　Q. You're drawing a distinction
12 between context information and context data?
13 　　A. No, the main thing I'm saying is
14 that there's no context component and there's no
15 tracking component. I think when I was showing
16 those words, I actually said, Here's the words
17 that don't actually appear, but the main
18 argument throughout was that there's no context
19 component. There's no tracking component in the
20 way that's used in the asserted elements.
21 　　Q. You also mentioned the word
22 metadata doesn't appear?
23 　　A. I said it appears once in the
24 background.

1 　　Q. And that meant something to you
2 regarding the provisional; correct?
3 　　A. That's correct.
4 　　Q. But when -- the words metadata
5 didn't appear in iManage and it wasn't a
6 problem, was it?
7 　　A. Well, iManage has distinctly
8 talked about history record.
9 　　Q. Mm-hmm.
10 　　A. It talks about profiles. It talks
11 about all these things, which is really data
12 about data.
13 　　So in there they use different
14 language because -- as user language. They are
15 not using jargon, technical jargon.
16 　　So they use every day language,
17 but or more something more akin to every day
18 language as you can get in computer system.
19 　　But so certainly they're talking
20 about data about data. So it's metadata.
21 That's the definition of it.
22 　　Q. And if we go to the summary of the
23 invention of the provisional application.
24 　　On page -- this is PTX 3 -- Page

1 5. When it talks about in the first, in
2 paragraph 13, it is an objection of the
3 invention to provide a communication tool that
4 seamlessly facilitates comments, compiles, and
5 distributes communication data?
6 　　A. Yes, I see that.
7 　　Q. You wouldn't consider that
8 metadata?
9 　　A. It just says communication data,
10 that's the data, I don't see where the metadata
11 is in that.
12 　　Q. Really, it's your opinion that
13 wouldn't be talking about data about data?
14 　　A. Where is data about data? It says
15 communication data, so if I'm sending, for
16 example, a document, that's the data. It
17 doesn't say anything about metadata in there to
18 me.
19 　　Q. Go down to paragraph 16, where it
20 says it is still a further object of the
21 invention to provide a communication tool that
22 automatically stores contextual information
23 relating to an item of communication and
24 utilizes that contextual in performance of

1 communication tasks?
2 　　A. I see that.
3 　　Q. It's your understanding that the
4 contextual information is not context data?
5 　　A. Well, I didn't say that. What I
6 said, in fact, was that a board actually
7 contains -- I can't actually recall how I
8 defined it on my slide, but the board would
9 contain that kind of data, but it's not done in
10 the way that's described in the asserted claims,
11 elements of the asserted claims.
12 　　Q. In your slide you said there is no
13 mention of context data. You don't think that's
14 a mention of context data?
15 　　A. What I said in my slide, and
16 remember that slide said at a face value here is
17 what we see, that these words are not there, and
18 then I went to talk about the particular ideas,
19 particular context component and tracking
20 component, just to clarify. I just want to
21 clarify.
22 　　Q. Sure. I want your clearest
23 testimony.
24 　　And then go to the next page,

1 paragraph 22. The last sentence of that
2 paragraph, as users create and change their
3 contexts, going from one context to another;
4 right?
5   A. So --
6   Q. I want to make sure, we seem to be
7 talking past each other. I just want to get
8 your understanding. As users create and change
9 their contexts, they're going from one context
10 to another, right? They're changing the
11 context. Do you agree with that?
12   A. Uh-huh.
13   Q. They're going from one to the
14 other, they're moving the files and applications
15 automatically follow, you got that?
16   A. Uh-huh.
17   Q. They're being tracked, they're
18 being followed, dynamically capturing those in
19 context, do you see that?
20   A. I see that, but I don't agree with
21 that.
22   Q. You don't agree that the words say
23 that?
24   A. No. You said tracking. Remember,

1 I showed --
2   Q. I understand you don't agree?
3   THE COURT: Mr. Andre, let him
4 answer the question.
5   THE WITNESS: I actually showed
6 this, this phrase to the jury when I was talking
7 about how the system presents boards and then
8 relationships between boards and the workflow.
9 That's -- and then I showed in the code where
10 this is specified manually.
11   So this is kind of what happened,
12 what people do with that afterwards. So you
13 have a workflow, essentially here is a procedure
14 that you can follow. And that's what I think
15 this thing is saying is that as you follow that
16 procedure, this will happen.
17   But these relationships were not
18 done by tracking people. As I said, there is
19 nothing about tracking people in this or
20 capturing the context as they're doing it, this
21 is an after-the-fact thing.
22   MR. ANDRE: I have no further
23 questions, Your Honor.
24   THE WITNESS: Thank you.

1   MR. ANDRE: Your Honor, may I have
2 a side-bar?
3   THE COURT: Yes.
4   (Side-bar discussion.)
5   MR. ANDRE: Your Honor, I just
6 would like to make an offer of proof regarding
7 the Swartz reference that the substance, purpose
8 and relevance of the following testimony will
9 make clear on the record we expected if
10 permitted to cross-examine Dr. Greenberg would
11 have established the testimony of Facebook's
12 expert that this same examiner who appeared on
13 the face of the '761 also appeared on the Swartz
14 reference. We believe this is relevant because
15 they are going to put into evidence and put it
16 in front of the jury and show the jury the face
17 of the patent on multiple occasions. We did in
18 our request on Friday say that patent office
19 considered that reference. We state that the
20 examiner would likely be aware of the reference.
21   We think that the testimony would
22 provide the jury with valuable information
23 regarding what was actually the process in the
24 patent office and the fact of the matter is that

1 information is factually based, put into
2 evidence by Facebook in this case.
3   THE COURT: Okay.
4   MS. KEEFE: Do you want me to
5 respond?
6   THE COURT: Only if you feel you
7 have to. I have ready already made my ruling.
8   MS. KEEFE: I agree.
9   THE COURT: Fine. Thank you.
10   (End of side-bar.)
11   THE COURT: Redirect.
12   MS. KEEFE: Just two small things,
13 Your Honor.
14 BY MS. KEEFE:
15   Q. Dr. Greenberg, do you have a copy
16 of your report there in front of you?
17   A. Yes, I do.
18   Q. I believe Mr. Andre was asking you
19 whether or not you had actually opined about
20 whether the iManage reference manual was
21 enabling; is that correct?
22   A. Yes, he did.
23   Q. Could I turn your attention to
24 paragraph 48.

1   A. Sorry. Are we looking at my

2 report.

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

4 report.

5   A. Okay.

6   Q. And did you, in fact, express an

7 opinion regarding the enablement of the iManage

8 reference?

9   A. Yes, I did. And thanks for

10 reminding me. It's been a while since I wrote

11 this.

12   MR. ANDRE: Objection, Your Honor.

13 Hearsay.

14   MS. KEEFE: He opened the door,

15 Your Honor.

16   THE COURT: Overruled.

17   A. Paragraph 48, I say it is my

18 opinion that iManage user manual and the system

19 that it describes invalidates every asserted

20 claim of the '761 patent.

21   Q. And regarding --

22   MR. ANDRE: Objection, Your Honor.

23 Move to strike. That's not what was asked.

24   MS. KEEFE: I agree.

1   THE COURT: I'm not going to

2 strike it, but let's move on. I'm overruling

3 the motion, or denying the motion to strike.

4   MS. KEEFE: Thank you.

5 BY MS. KEEFE:

6   Q. Also with respect to the iManage

7 DeskSite user reference manual, Dr. Greenberg,

8 when you were writing your report, did the copy

9 of the manual that you were using contain a

10 confidentiality designation?

11   A. No. I have it right in front of

12 me, this is an exact copy used, and it did not

13 have that confidentiality designation.

14   MS. KEEFE: Your Honor, at this

15 time we would move into evidence Exhibit 925E

16   MR. ANDRE: Objection, Your Honor.

17 This is not the document that he has testified

18 to.

19   THE COURT: I'm overruling the

20 objection. It's admitted.

21   MS. KEEFE: Thank you, Your Honor.

22   Nothing further, Dr. Greenberg.

23 Thank you.

24   THE WITNESS: Thank you very much.

1   THE COURT: Thank you, Professor.

2   THE WITNESS: Thank you.

3   MS. KEEFE: We're about to finish

4 up. At this time Facebook rest its case on

5 invalidity.

6   THE COURT: Okay. Thank you.

7   MR. ANDRE: Your Honor, we would

8 like to do some housekeeping matters at this

9 point. I don't know if it's appropriate to have

10 the jury step out.

11   THE COURT: We can go to the

12 side-bar.

13   MR. ANDRE: It will be a pretty

14 long one. If we can do it at side-bar --

15   THE COURT: And without telling me

16 in front of the jury what the housekeeping is,

17 it's something that needs to be done now I take

18 it?

19   MR. ANDRE: It is. It's

20 essential.

21   THE COURT: Okay. Well, let's

22 start at side-bar and if it's going to take too

23 long, we'll excuse the jury. Let's see if we

24 can get it done.

1   (Discussion at side-bar.)

2   THE COURT: You're here to make a

3 motion.

4   MR. ANDRE: I'm here to make a

5 motion. It's on behalf of Leader Technologies.

6 On behalf of Leader Technologies, we move for

7 judgment as a matter of law with respect to a

8 number of issues presented in the case.

9   THE COURT: As I did with

10 Mr. Rhodes, I'm not going -- I'm going to be

11 reserving judgement on this. Other than just

12 identifying what the issues are, do you feel to

13 you need to make a record at this time?

14   MR. ANDRE: We do, Your Honor. We

15 believe that with the uncertain flux of the

16 appellant courts, I just don't feel comfortable

17 not making a complete record on it. We do have

18 a script to read through each of the claims.

19 It's go to take some time to go through what we

20 believe is the proper procedure.

21   THE COURT: And then you'll recall

22 Dr. Herbsleb?

23   MR. ANDRE: And Dr. Herbsleb will

24 be our last witness.

1   THE COURT: He's going to be
2   approximately how long?
3   MR. ANDRE: Hour, hour-and-a-half.
4   MR. RHODES: May I speak, Your
5   Honor?
6   THE COURT: Yes.
7   MR. RHODES: I don't fundamentally
8   agree with Mr. Andre. There is some confusion
9   at least in my mind, I'm a trial lawyer, not an
10   appellant lawyer. There are some issues in the
11   record. What I would propose for the record, we
12   would want to do the same thing at the same
13   time, but we have more records. Perhaps you
14   could let the jury out and we could each read it
15   in and then we're done.
16   THE COURT: I'll give them their
17   break early.
18   MR. ANDRE: I just know that we
19   want to put it on the record before we begin our
20   rebuttal case.
21   THE COURT: I understand.
22   (End of side-bar discussion.)
23   THE COURT: Ladies and gentlemen,
24   there are some matters that I need to discuss

1   with the lawyers and they are going to take more
2   than just a couple of minutes, so we're going to
3   give you your break early this morning and we'll
4   hope to have you back in about fifteen minutes.
5   But rest assured we'll have you back just as
6   soon as we can.
7   THE CLERK: All rise.
8   (Jury leaving the courtroom at
9   10:14 a.m.)
10   THE COURT: You can be seated.
11   Mr. Andre, come forward and make
12   your motion.
13   MR. ANDRE: Thank you, Your Honor.
14   On behalf of Leader Technologies, we move for
15   judgment as a matter of law with respect to a
16   number of issues presented.
17   On Facebook's claims. Number one,
18   judgment as a matter of law that the asserted
19   claims of U.S. Patent Number 7,139,761 were not
20   anticipated by prior art and are therefore not
21   invalid for that reason.
22   Number two, judgment as a matter
23   of law that the asserted claims of U.S. Patent
24   Number 7,139,761 are not obvious in light of the

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 60/452,255 supports the asserted
24   claims of the U.S. Patent Number 7,139,761 and

1   U.S. Patent Number 7,139,761 Patent properly
2   relies on the December 11th, 2002 priority date
3   of that provisional application.
4   On Leader's claims. Number one,
5   judgment as a matter of law that Facebook
6   literally infringes Claim 1 of United States
7   Patent Number 7,139,761 in violation of 35
8   U.S.C. Sections 271(a), (b), and/or (c).
9   Number two, judgment as a matter
10   of law that Facebook infringes under the
11   Doctrine of Equivalents Claim 1 of U.S. Patent
12   Number 7,139,761 in violation of 35 U.S.C.
13   Sections 271 at (a), (b) and/or (c).
14   Number three, judgment as a matter
15   of law that Facebook literally infringes Claim 4
16   of U.S. Patent Number 7,139,761 in violation of
17   35 U.S.C. Sections 271(a), (b) and/or (c).
18   Number four, judgment as a matter
19   of law that Facebook infringes under the
20   Doctrine of Equivalents Claim 4 of U.S. Patent
21   Number 7,139,761 in violation of 35 U.S.C.
22   Sections 271(a), (b) and/or (c).
23   Number five, judgment as a matter
24   of law that Facebook literally infringes Claim 7

1 of U.S. Patent Number 7,139,761 in violation of
2 35 U.S.C. Sections 271(a), (b) and/or (c).
3   Number six, judgment as a matter
4 of law that Facebook infringes under the
5 Doctrine of Equivalents Claim 7 of U.S. Patent
6 Number 7,139,761 in violation of 35 U.S.C.
7 Sections 271(a), (b) and/or (c).
8   Number seven, judgment as a matter
9 of law that Facebook literally infringes Claim 9
10 of U.S. Patent Number 7,139,761 in violation of
11 35 U.S.C. Sections 271(a), (b) and/or (c).
12   Number eight, judgment as a matter
13 of law that Facebook infringes under the
14 Doctrine of Equivalents Claim 9 of U.S. Patent
15 Number 7,139,761 in violation of 35 U.S.C.
16 Sections 271(a), (b) and/or (c).
17   Number nine, Facebook as a matter
18 of law -- strike that.
19   Number nine, judgment as a matter
20 of law that Facebook literally infringes Claim
21 11 of U.S. Patent Number 7,139,761 in violation
22 of 35 U.S.C. Sections 271(a), (b) and/or (c).
23   Number ten, judgment as a matter
24 of law that Facebook infringes under the

1 Doctrine of Equivalents Claim 11 of U.S. Patent
2 Number 7,139,761 in violation of 35 U.S.C.
3 Sections 271(a), (b) and/or (c).
4   Number eleven, judgment as a
5 matter of law that Facebook clearly infringes
6 Claim 16 of U.S. Patent Number 7,139,761 in
7 violation of 35 U.S.C. Sections 271(a), (b)
8 and/or (c).
9   Number twelve, judgment as a
10 matter of law that Facebook infringes under the
11 Doctrine of Equivalents Claim 16 of U.S. Patent
12 Number 7,139,761 in violation of 35 U.S.C.
13 Sections 271(a), (b) and/or (c).
14   Number thirteen, judgment as a
15 matter of law that Facebook literally infringes
16 Claim 21 of U.S. Patent Number 7,139,761 in
17 violation of 35 U.S.C. Sections 271(a), (b)
18 and/or (c).
19   Number fourteen, judgment as a
20 matter of law that Facebook infringes under the
21 Doctrine of Equivalents Claim 21 of U.S. Patent
22 Number 7,139,761 in violation of 35 U.S.C.
23 Sections 271(a), (b) and/or (c).
24   Number fifteen, judgment as a

1 matter of law that Facebook literally infringes
2 Claim 23 of U.S. Patent Number 7,139,761 in
3 violation of 35 U.S.C. Sections 271(a), (b)
4 and/or (c).
5   Number sixteen, judgment as a
6 matter of law that Facebook infringes under the
7 Doctrine of Equivalents Claim 23 of U.S. Patent
8 Number 7,139,761 in violation of 35 U.S.C.
9 Sections 271(a), (b) and/or (c).
10   Number seventeen, judgment as a
11 matter of law that Facebook literally infringes
12 Claim 25 of U.S. Patent Number 7,139,761 in
13 violation of 35 U.S.C. Sections 271(a), (b)
14 and/or (c).
15   Number eighteen, judgment as a
16 matter of law that Facebook infringes under the
17 Doctrine of Equivalents Claim 25 of U.S. Patent
18 Number 7,139,761 in violation of 35 U.S.C.
19 Sections 271(a), (b) and/or (c).
20   Number nineteen, judgment as a
21 matter of law that Facebook literally infringes
22 Claim 31 of U.S. Patent Number 7,139,761 in
23 violation of 35 U.S.C. Sections 271(a), (b)
24 and/or (c).

1   Number twenty, judgment as a
2 matter of law that Facebook infringes under the
3 Doctrine of Equivalents Claim 31 of U.S. Patent
4 Number 7,139,761 in violation of 35 U.S.C.
5 Sections 271(a), (b) and/or (c).
6   Number twenty-one, judgment as a
7 matter of law that Facebook literally infringes
8 Claim 32 of U.S. Patent Number 7,139,761 in
9 violation of 35 U.S.C. Sections 271(a), (b)
10 and/or (c).
11   Number twenty-two, judgment as a
12 matter of law that Facebook infringes under the
13 Doctrine of Equivalents Claim 32 of U.S. Patent
14 Number 7,139,761 in violation of U.S.C. Sections
15 271(a), (b) and/or (c).
16   I have completed my motion, Your
17 Honor.
18   THE COURT: Okay. I'm going to be
19 reserving judgment on those motions.
20   Is there anything that Facebook
21 would like to say at this time?
22   MR. RHODES: Yes, Your Honor.
23   MR. WEINSTEIN: We also have quite
24 a few more motions, but we were going to go into

1 quite a bit more detail than they were and I
2 realize that -- I don't want to be Jimmy Stewart
3 and Mr. Weinstein goes to Wilmington here, but
4 it will take about thirty-five to forty minutes
5 to read this into the record.
6   THE COURT: Thirty-five to forty
7 minutes?
8   MR. WEINSTEIN: Yes, Your Honor.
9 If Your Honor would like I could outline them
10 and file a written submission that would be
11 deemed submitted at the close of all evidence.
12   THE COURT: That's certainly
13 preferable to making the jury wait for forty
14 more minutes.
15   MR. WEINSTEIN: That's what I
16 thought, Your Honor.
17   THE COURT: So give me the five-
18 to ten-minute version and then we'll deem your
19 written filings submitted as of this point in
20 the presentation.
21   MR. WEINSTEIN: Thank you, Your
22 Honor.
23   Pursuant to Rule 50(a) for the
24 Federal Rules of Civil Procedure, Facebook moves

1 for a judgment as a matter of law as to Leader's
2 first cause of action for infringement of United
3 States Patent Number 7,139,761 and with respect
4 to all asserted claims which include Claims 1,
5 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32. Any
6 reference to these claims shall be referred to
7 as the asserted claims, the claims asserted, or
8 any other variant intended to refer only to
9 those claims that I just mentioned.
10   Initially Facebook seeks judgment
11 as a matter of law with respect to all the other
12 claims on which no evidence was presented at
13 trial which includes Claims 2, 3, 5, 6, 8, 10,
14 12, 13, 14, 15, 17, 18, 19, 20, 22, 24, 26
15 through 30 and 33 through 35 which includes
16 several claims that were previously asserted in
17 this case, but abandoned during discovery and
18 expert discovery.
19   No reasonable jury could find
20 infringement under any of these claims literally
21 or under the Doctrine of Equivalents through any
22 theory based on direct, induced and/or
23 contributory infringement.
24   Facebook seeks judgment as a

1 matter of law of noninfringement on the grounds
2 that Leader has presented no legally sufficient
3 evidentiary basis from which a reasonable jury
4 can find that Facebook exercises direction or
5 control over any user with respect to claim
6 elements that user must satisfy, or claim step
7 that user must perform, as required by the
8 Miniauction and BMC decisions. Each of these
9 independent claims contain at least one claim
10 step or claim element that requires user
11 involvement to satisfy all elements of such
12 claim. I'll detail this more in our written
13 submissions, the specific basis and more of the
14 evidence on which this particular motion is
15 based, Your Honor.
16   Facebook also seeks judgement as a
17 matter of law with respect to Leader's claim for
18 direct patent infringement on the ground that
19 Leader has presented no legally sufficient
20 evidentiary basis from which a reasonable jury
21 could find that Facebook performs each and every
22 element of any asserted claim, literally or
23 under the Doctrine of Equivalents, under the
24 claims as properly construed.

1   There are additional elements that
2 apply to Leader's claims for induced and
3 contributory infringement which I will address
4 separately.
5   With respect to the direct
6 infringement claims, each claim includes either
7 a tracking component of the number, for tracking
8 a change of the user from the first context to a
9 second context and dynamically updating the
10 stored metadata based on the change, wherein the
11 user accesses data from the second context in
12 all four independent claims and I will deal with
13 those claims as set forth in the written
14 submissions.
15   Judge Farnan finds dynamically as
16 automatically in response to preceding event.
17 Judge Farnan's claim construction order, docket
18 entry number 200 further clarified in the
19 preceding event for purposes of clarification of
20 these claims is the user movement from the first
21 context workspace or environment to a second
22 context workspace or environment. With respect
23 to this element, no evidentiary basis was
24 presented at trial whatsoever to establish this,

21 (Pages 1720 to 1723)

1 so infringement can not be established either
2 literally under the Doctrine of Equivalents.
3   Leader has presented no -- Leader
4 has not presented any legally sufficient
5 evidentiary basis from which a reasonable jury
6 could find that the elements of dynamically
7 updating, dynamically associating, or
8 dynamically storing information in the metadata
9 in the second context, environment or workspace
10 are satisfied. And I'll go into more detail in
11 the written submissions with respect to the
12 basis in evidence on which that motion is based,
13 Your Honor.
14   With respect to each of the
15 asserted claims, independent claims, Your Honor,
16 they include additional limitations as well.
17 Facebook, Leader has failed to show legally
18 sufficient evidentiary basis from which a
19 reasonable jury could find that the stored
20 metadata or that metadata is updated, modified,
21 changed, or affected in any way whatsoever let
22 alone based on a change or movement of the user
23 from a first context to a second context,
24 workspace or environment.

1   I will detail the basis of that in
2 the written submission, Your Honor.
3   With respect to the other
4 elements, computer-implemented context component
5 of the network-based system for capturing
6 context information associated with user-defined
7 data created by user interaction of a user in a
8 first context of the network-based system, the
9 context component dynamically storing the
10 context information in metadata associated with
11 the user-defined data, the user-defined data and
12 metadata stored on a storage component of the
13 network-based system.
14   In other claims which I will
15 detail in the written submission, Leader has
16 failed to present a legally sufficient
17 evidentiary basis from which a reasonable jury
18 could find that each aspect of these claims have
19 been satisfied. There has been no evidence
20 submitted as to the creation of user-defined or
21 user-created data in the first context,
22 environment or workspace.
23   Leader has failed to show
24 infringement of any sort of claim of the patent,

1 no reasonable evidentiary basis has been put
2 forth as to any claim of literal infringement as
3 it requires that each and every element of the
4 claim be met by the accused system. Therefore,
5 it cannot be established.
6   With respect to Doctrine of
7 Equivalents, Your Honor, Leader has presented no
8 legally sufficient evidentiary basis for a
9 reasonable jury to find that Facebook infringes
10 any claim under the Doctrine of Equivalents,
11 which requires Leader to show that the
12 differences between that accused product and the
13 allegedly equivalent claim limitations are
14 insubstantial to on of ordinary skill in the
15 art, or that the accused product performs
16 substantially the same function, in
17 substantially the same way to achieve
18 substantially the same result as the claim
19 element. That's DeMartini Sports at 239 Fed
20 3rd, 1314.
21   The evidence presented at trial
22 established no case of Doctrine of Equivalents,
23 no -- I apologize, Your Honor -- evidence in
24 argument of Doctrine of Equivalents was merely

1 subsumed in the literal infringement analysis
2 contrary to PC Connector Solutions LLC at 406
3 Federal 3rd 1359. No differences or a single
4 cause of limitations were identified in a
5 Doctrine of Equivalents analysis at trial.
6   No particularized testimony or
7 linking argument was also provided by Dr. Vigna
8 as to either the insubstantiality of differences
9 or with respect to the function, way and result
10 test as required by Motionless Keyboard versus
11 Microsoft 486 Federal 3rd 1376.
12   With respect to the testimony of
13 Doctrine of Equivalents, to the extent any was
14 given it was tied only to the independent claims
15 and not the dependent claims. There is no
16 legally sufficient evidence presented with
17 respect to the asserted dependent claims
18 whatsoever. No reasonable jury could find for
19 Leader on those claims with respect to the
20 Doctrine of Equivalents.
21   With respect to the Doctrine of
22 Equivalents, Federal Circuit law is clear that
23 may not be employed in a manner the wholly
24 violates a claim limitation. Under Scimed Life

1 Systems, 242 Federal 3rd 1337. The elements
2 missing from the Facebook site cannot be found
3 by equivalent because they are entirely absent.
4 Additionally with respect to the
5 Doctrine of Equivalents, the claim is barred by
6 the doctrine of prosecution history estoppel
7 under Festo at 535 U.S. 722, precludes Doctrine
8 of Equivalents to any claim.
9 The doctrine likewise cannot be
10 applied in a manner suggested by Leader because
11 to do so would ensnare the prior art as
12 explained in the testimony of Professor Kearns.
13 With respect to the inducement
14 claim, which was covered by 35 U.S.C. 271(b),
15 required for a claim of inducement have not been
16 established. These include Facebook knowing of
17 the '761 patent, Facebook's evidence of specific
18 intent, specific intent to induce infringement
19 of any claim. There was failure to present
20 evidence of third parties having directly
21 infringed any claim of the '761 patent, a
22 necessary prerequisite for a claim of inducement
23 under 271(b), under DSU Medical at 471 Federal
24 3rd at 1293.

1 With respect to contributory
2 infringement as governed by 35 U.S.C. 271(c),
3 multiple elements have not been established by
4 the trial evidence. As with the indirect
5 infringement claim, no legally sufficient
6 evidence was presented as to any direct
7 infringement by any third party, a necessary
8 prerequisite to a claim of indirect infringement
9 including contributory infringement under
10 271(c), no third party allegedly infringing has
11 been identified, let alone the manner in which
12 such third party alleged infringement takes
13 place. And no element-by-element analysis has
14 been provided with respect to any third party's
15 performance.
16 THE COURT: Mr. Weinstein, how
17 much more do you think you have?
18 MR. WEINSTEIN: About -- I'm about
19 two-thirds through it. If you would like me to,
20 I can just do this all in a written submission,
21 Your Honor, that would make it easier for you.
22 THE COURT: I'm fine with you just
23 listing for us if there are additional motions.
24 MR. WEINSTEIN: I can do that,

1 Your Honor. I just want to make sure in case I
2 misread one of them. As I understand the rule,
3 as long as I get this in before the submission
4 of the case to the jury, I'm okay.
5 THE COURT: I'm not sure. But
6 we're going to deem -- we've already agreed to
7 deem submitted your written submission at this
8 point in the trial and I do want to bring the
9 jury in in just a couple of minutes.
10 MR. WEINSTEIN: I'll conclude very
11 quickly.
12 With respect to the on sale bar,
13 and the effective filing date, there is no
14 legally sufficient evidentiary basis for a
15 reasonable jury to find or a reasonable jury to
16 refuse to find that the '761 patent is entitled
17 to the filing date of the provisional
18 application.
19 A reasonable jury also could not
20 fail to find that the '761 patent is not
21 entitled to the patent date, regardless which
22 way the burden is, judgment as a matter of law
23 is warranted with respect to the on sale bar,
24 the invention must be the subject of the

1 commercial sale or offered for sale, no jury
2 could fail to find that both these elements were
3 satisfied based on the trial evidence.
4 No reasonable jury could fail to
5 find that the Leader2Leader product embodied the
6 asserted claims of the '761 patent for the
7 reasons discussed in the trial evidence.
8 No reasonable jury could fail to
9 find that Leader2Leader was subject to at least
10 three commercial offers for sale, including to
11 The Limited, Boston Scientific and Wright
12 Patterson Air Force Base, to whom Leader made
13 offers for sale as detailed in the testimony of
14 Mr. McKibben.
15 With respect to anticipation, no
16 reasonable jury could fail to find that U.S.
17 Patent Number 6,236,994 to Swartz, the published
18 European application to Hubert, the issued '349
19 patent to Hubert which contains a disclosure to
20 the European patent and the iManage, each
21 anticipate Claims 1, 4, 7, 9, 11, 21, 23, 25, 31
22 and 32.
23 With respect to Claim 16, it is
24 anticipated by iManage as described by Professor

23 (Pages 1728 to 1731)

1 Greenberg. No reasonable jury could fail to
2 find that each of these references qualifies as
3 a printed publication prior art reference that
4 discloses, either expressly or inherently, each
5 element of these asserted claims as explained in
6 the testimony of Dr. Greenberg. No reasonable
7 jury could fail to find that each of these
8 references provides an enabling disclosure
9 because each is either entitled to a presumption
10 of enablement as an issued U.S. patent that has
11 not been rebutted, or because no reasonable jury
12 could fail to find enablement in light of the
13 evidence presented by Dr. Greenberg and other
14 evidence at trial.
15   Facebook's defense of obviousness
16 under the '761 is governed by 35 U.S.C. 103(a)
17 and the Supreme Court's decision in KSR, 550
18 U.S. 398. Factors to consider include the scope
19 and content of the prior art, the differences
20 between the prior art and the claims of the
21 patent, and the level or ordinary skill in the
22 art.
23   I have three paragraphs left, Your
24 Honor.

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   MR. ANDRE: We'll do the same
2 thing.
3   THE COURT: Okay.
4   THE CLERK: All rise.
5   (Jury entering the courtroom at
6 10:43 a.m.)
7   THE CLERK: Please be seated.
8   THE COURT: All right. Welcome
9 back.
10   We are finally prepared to proceed
11 again. Again, I've done the work I need to do
12 with the lawyers. Turn it over to Ms. Kobialka.
13   MS. KOBIALKA: Thank you, Your
14 Honor. Thank you.
15   We'd like to call Dr. Herbsleb to
16 the stand.
17   THE COURT: That's fine.
18   MS. KOBIALKA: And at this time,
19 we have some jury binders that we'd like to
20 provide, which include the exhibits that were
21 moved into evidence on Friday, as well as one
22 that we'll be using today.
23   THE COURT: Have you shown the
24 defense that?

1   MS. KEEFE: We have no objection,
2 Your Honor.
3   THE COURT: Fine. You may
4 distribute.
5   THE CLERK: Please state and raise
6 your right hand. State and spell your full name
7 for the record.
8   THE WITNESS: James Herbsleb.
9 J-A-M-E-S H-E-R-B-S-L-E-B.
10   THE CLERK: Do you, James
11 Herbsleb, swear the testimony you're about to
12 give to the Court and the jury will be the
13 truth, the whole truth and nothing but the
14 truth?
15   THE WITNESS: Yes, I do.
16   THE CLERK: Thank you. You may be
17 seated.
18   THE COURT: Good morning.
19   THE WITNESS: Hi.
20   MS. KOBIALKA: I'll note there's
21 actually one really long exhibit that's not
22 included in these jury binders from Friday, but
23 that will be provides one set since it's 13
24 binders long.

1   THE COURT: Oh, okay.
2   MS. KOBIALKA: Thank you very
3 much.
4 BY MS. KOBIALKA:
5   Q. Welcome back, Dr. Herbsleb. It's
6 been about a week.
7   Could you just remind the jurors
8 where you currently are working?
9   A. I'm a professor at Carnegie Mellon
10 University, the School of Computer Science.
11   Q. And just briefly, what were your
12 degrees that you have in research areas?
13   A. So my degrees, I had a bachelor's
14 in psychology in economics. I have a Ph.D. in
15 collaborative social psychology.
16   I have a Master's degree in
17 computer science. And my research area is in
18 collaborative technologies, you know, designing
19 collaborative technologies, understanding how
20 people use them, what problems are solved and
21 not solved by collaborative technologies.
22   Q. And are you here today to provide
23 your opinion with respect to the validity of the
24 asserted claims of the '761 patent?

1   A. Yes. Yes, I am.
2   Q. And are you also here today to
3 provide your opinion with respect to what
4 information is disclosed in the provisional
5 application?
6   A. Yes, that's right.
7   Q. What were you asked to do?
8   A. Basically I was asked to respond
9 to Dr. Greenberg's report.
10   Q. Okay. And if we could maybe take
11 a look at the front of the '761 patent.
12   And if we can blow up the prior
13 art references recited. Is there anything that
14 looks familiar here?
15   A. Yes. I see my old colleague,
16 Randy Hackbarth's name, third from the bottom.
17 Randy Hackbarth and myself and Graham Wills are
18 the inventors on this patent.
19   This was a patent that came out of
20 the days when I was leading the Bell Labs
21 collaboratory project. This was one of the
22 patents that came from that.
23   Q. Okay. So you're one of the
24 inventors of the patent?

1   A. That's right. I'm one of the
2 inventors of that patent.
3   MS. KOBIALKA: Okay. At this
4 time, Your Honor, I'd like to tender Dr.
5 Herbsleb as an expert in computer science for
6 his opinions.
7   MS. KEEFE: No objection.
8   THE COURT: Ms. Keefe. Okay.
9 BY MS. KOBIALKA:
10   Q. What is your opinion with respect
11 to whether or not the provisional application
12 discloses all the elements of the asserted
13 claims of the '761 patent?
14   A. That -- my opinion is that the
15 provisional application does disclose all of the
16 elements of the asserted claims of the '761
17 patent.
18   Q. We'll go through that in more
19 detail. What is your opinion with respect to
20 whether the asserted claims of the '761 patent
21 is valid in light of the prior art that Dr.
22 Greenberg relied upon?
23   A. All right. My opinion is all
24 those claims are valid in light of the prior art

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 from the perspective of one of ordinary skill in

2 the art at the time of the '761 patent

3 invention?

4   A. Yes, I did.

5   Q. So let's turn to the provisional

6 application.

7   A. Okay.

8   Q. You can maybe show that up on the

9 screen here. Do you -- this is PTX 3. Do you

10 recognize that document?

11   A. I do.

12   Q. And on the face of it, do you see

13 where the inventors are listed?

14   A. Yes, I do. Michael McKibben and

15 Jeff Lamb.

16   Q. And are those the same inventors

17 listed on the '761 patent?

18   A. Yes, they are.

19   Q. Now, if we turn to the face of the

20 '761 patent, maybe we can enlarge for the jury

21 where the inventors are listed as well as --

22 yes, all of that information.

23   Thank you.

24   And do you see where the inventors

1 are listed on the '761 patent?

2   A. I do. Yes.

3   Q. Does the '761 patent identify the

4 provisional application on the cover?

5   A. Yeah. I believe that's down on

6 Line 60 provisional application, which is the

7 line that you're referring to.

8   Q. And based on your review of the

9 provisional application, does it disclose all of

10 the asserted elements or all of the elements of

11 the asserted claims of the '761 patent?

12   A. Yes. In my opinion, it discloses

13 all of the elements of all the claims.

14   Q. Is it based on anything other than

15 it's just a review of the provisional

16 application?

17   A. Yes. Actually, I have two things

18 that I did to sort of answer that question. One

19 was to review the provisional application.

20   And based upon that, I reached the

21 opinion that it discloses everything that the

22 '761 patent does. So in a way that allows

23 someone to make and use the invention. But to

24 test that, I took another step and I identified

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 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   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 here 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 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 9, 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 is 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

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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 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 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 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.
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. And 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 Cabaldo?
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?