AMERICAN ARBITRATION ASSOCIATION

BLUEBERRY SOFTWARE INC.	)	
	)	
Claimant,	)	AAA No: 54 180 Y 01325 06
v.	)	Case Manager: Hannah R. Cook
	)	Arbitrator: Kathryn J. Humphrey
PARAMETRIC TECHNOLOGY CORP.	)	
	)	
Respondent.	)	
	)	

BLUEBERRY SOFTWARE INC.'S RESPONSE TO PARAMETRIC TECHNOLOGY'S MOTION TO DISMISS

Blueberry Software, Inc. ("Blueberry") requests that Parametric Technology Corporation's ("Parametric") Motion to Dismiss be denied because of Fraudulent Concealment and Fraudulent Misrepresentation.

INTRODUCTION

Parametric's Motion to Dismiss states that all claims filed by Blueberry should be dismissed due to a Limitation of Liability contained in the contract which states:

No action arising out of or in connection with this Agreement may be brought

by Arbortext or Blueberry more than twelve (12) months after the occurrence of

the event giving rise to the cause of action.

Blueberry believes that the nature of its dispute with Parametric/Arbortext is not characterized by a single wrongful action but rather an ongoing and continuous series of wrongful actions. Parametric's attempt to dismiss all of Blueberry's claims without any examination as to the merit of the claims, constitutes Fraudulent Concealment.

FACTUAL BACKGROUND

The entire history of the relationship between Blueberry Software and Arbortext is characterized by repeated, ongoing and continuous fraudulent concealment and fraudulent misrepresentation of the true facts of their royalty reporting obligations to Blueberry. Blueberry has continuously attempted to ascertain these true facts. Arbortext has made fraudulent statements, misrepresentations and has issued fraudulent royalty reports. Additionally, Arbortext has imposed royalty calculations without any basis in the contract or the September 25, 2002 email modification, and has unilaterally and arbitrarily imposed these calculations without Blueberry's knowledge or consent. In fact, the cumulative royalty report that exists to this day has no basis in the contract or in the email.

The history of Arbortext's wrongful acts and Blueberry's attempts to discover and address these actions are as follows:

(1) On September 25, 2000, there was an email exchange between Arbortext and Blueberry which addressed the issue of Arbortext changing the way they were going to pay for Royalties on one of the Arbortext Products which contained Blueberry's technology. The email states:

Rather than configure the Interchange capability (which makes use of your Blueberry technology) as a $10,000 optional module of E3 (Epic E-Content Engine), our new plan is to bundle it into E3 by default and allow customers to delete it if they don't want the capability. In the new configuration, E3 will sell for $50,000. If a customer chooses to delete the Interchange capability, then we will charge them $40,000. So for each E3

where the customer chooses not to delete the Interchange capability, we will credit you for a $10,000 Interchange sale and pay you a royalty against the $10,000 according to the schedule we agreed upon in our contract.

Blueberry responds to this statement with the understanding that this modification will be beneficial for Blueberry.

Jim, the above is in accord with what you described on the phone, and clarifies our written agreement. As you pointed out, since including the filters will now be the default, rather than requiring the user to opt-in, it will likely have the effect of increasing sales, and our royalty. [SEE EXHIBIT 1]

(2) On January 2001, Arbortext's Controller sent the first royalty report to Blueberry which stated, "There were zero invoices for this time period." Blueberry Software subsequently complained about this to Arbortext because Blueberry was aware of the fact that indeed there were sales involving Blueberry's technology.

(3) On February 26, 2001, Arbortext's Controller sent a letter and another report and apologized and said they finally had the report working and would send reports in the future on a "more timely" basis. This report however, was still incorrect because it did not include credits for sales that had occurred during the previous year of 2000. Another report, dated March 26, 2001 was sent to Blueberry, this time for some sales which occurred in December 2000.

(4) In November of 2001, according to the contract, Arbortext paid Blueberry the minimum $7,500 guarantee but did not provide a royalty report. When Blueberry asked

for the royalty report to be sent, Arbortext responded that they would draw one up, which meant to Blueberry that Arbortext had paid the minimum without even bothering to check the actual amount due. This report was eventually provided to Blueberry over two months later.

(5) In January of 2002, a different Blueberry employee took over the job of handling the Arbortext account and it was discovered that there were computation errors in the royalty spreadsheet report which went back to the beginning of the contract period. Additionally, it was discovered that there were missing sales and sales for zero dollar amounts. It was also at this time that a dialogue ensued between Arbortext and Blueberry regarding the interpretation of cumulative royalties as stated in the contract.

Arbortext gave Blueberry its interpretation of this issue and went on to say in an email dated February 15, 2002, "The whole philosophy here was that we expected Arbortext sales to increase over the years, and that we wanted to limit future payments to Blueberry, although we agreed not to completely cap them by dropping the royalty percentage down to zero at some point and only paying maintenance."

(6) Arbortext assured Blueberry verbally and in writing that despite Blueberry's claims, the royalty reports were accurate. Blueberry finally received an email on March 14, 2002, stating that Arbortext had updated reports for Blueberry. Blueberry received this report via fax on March 19, 2002. which included two entire quarters of previously unreported royalty credits and also contained additional missing sales and credits for previously reported zero dollar sales. Arbortext then sent Blueberry a check for royalties pertaining to these previously unreported sales.

(7) In July of 2002, Arbortext imposed a new royalty calculation scheme, the effect of which retroactively altered the entire history of the Blueberry royalties. The net result of this new calculation was that Arbortext subsequently did not pay a contractual minimum guarantee nor the actual royalties of over $11,000 for the second quarter of 2002 because according to them, they overpaid us and they now claimed that we owed them money.

(8) In September of 2002, Blueberry met with Arbortext to discuss Blueberry's royalty concerns and Arbortext's non payment of maintenance/upgrade royalties. Arbortext did not agree with Blueberry's point of view and once again assured Blueberry that the royalty reports were automatic versus manual, and accurate.

(9) In November of 2003, Blueberry requested a face to face meeting with Arbortext to once again discuss the continuous ongoing issues of missing sales and royalty underpayments. Arbortext declined to have this face-to-face meeting and instead suggested that there should be a conference call between the parties. During this call, Arbortext offered to pay Blueberry $100,000 for a life-time royalty free license allowing them to use Blueberry's technology in perpetuity. Blueberry declined this offer and instead mentioned that Blueberry intended to perform an Audit as allowed by contract.

(10) Within minutes of this conference call, Arbortext contacted a former Blueberry partner, who had been involved in drafting the initial contract between the parties, despite the fact that Arbortext was aware that this individual, subsequent to a Federal Court trial, was no longer affiliated with Blueberry Software. It was later revealed to Blueberry that Arbortext was attempting to encourage this ex-partner through a Court Appointed Receiver to force Blueberry to accept the $100.000 buyout.

(11) During the next six months Blueberry successfully defeated attempts to force this buyout. In May of 2004, Blueberry retained Kessler International to exercise its contractual right to perform an Audit. Arbortext refused to allow Kessler International to perform this audit. The Arbortext-Blueberry contract states **Section 6.3 Records and Reports:**

Arbortext's records shall be open to examination and copying by

Blueberry or its independent auditors upon reasonable notice.

Arbortext's rationale for not allowing Kessler to perform an audit had no basis in the language of the contract. Kessler International performs Forensic audits. Arbortext stated that they believed that Kessler was not independent nor was he a CPA. Blueberry pointed out to Arbortext that Mr. Kessler was a certified Forensic Auditor and his team of CPA's would be involved in the Audit process. Arbortext stated that they would accept a Top-Ten auditing firm. Rather than fight them on this issue, even though Blueberry had already incurred considerable expense with Kessler International, Blueberry suggested Plante & Moran and Arbortext agreed.

(12) In October of 2004, Plante & Moran began the Arbortext Audit. After the first draft report was issued in December, 2004, Blueberry provided information to Plante & Moran and requested that Plante & Moran return to Arbortext and investigate the concerns Blueberry had presented. Arbortext did not respond to Plante & Moran's request to come back to Arbortext for further investigation. Afer three months time, Blueberry's attorney sent a demand to Arbortext to allow Plante & Moran to finish the audit and Arbortext finally complied. The Audit was completed in March of 2005

(13) In July of 2005, Blueberry's attorney sent a demand letter to Arbortext requesting payment for underpayment and unreported royalties. Arbortext sent the demand letter to Parametric Technology Corporation who had recently acquired Arbortext without Blueberry's knowledge as required by the Arbortext-Blueberry Contract.

(14) Parametric responded to Blueberry's demand and offered $100,000. which reflected the same amount that had been offered to Blueberry in the past.

(15) Subsequent to receiving Parametric's offer, in November 2005, Blueberry received its first royalty from Parametric. This report raised new concerns about royalty payments to Blueberry. Over the next several months Blueberry's attorney attempted to contact Parametric to discuss Blueberry's concerns and previous issues that were addressed in the Demand Letter. Parametric did not respond.

(16) In January and April of 2006, Blueberry received two more royalty reports from Parametric. These reports raised new concerns. There were royalty payments for products which had never been previously reported. Additionally, Parametric seemed to be using a lower royalty calculation method.

(17) In early September 2006, Blueberry's attorney succeeded in contacting Parametric to inform them of Blueberry's intention to file for Arbitration. Parametric responded with the same offer of $100,000 directly to Blueberry's Attorney and on a later date before the Arbitration was filed, directly to Blueberry. Blueberry filed for Arbitration on September 25, 2006

Parametric states that Blueberry denies that the email modified the contract. However, Blueberry stated during the Arbitration Conference call prior to the filing of

Parametric's motion, that Blueberry stipulates that under Michigan Law the contract can be modified via email without the signatures called for in the contract.

Blueberry however, disagrees that the email modifies all types of E3 sales. The email says that E3, containing Blueberry "will sell for $50,000" and Blueberry "will be credited $10,000, for each of these sales" This email conceals from Blueberry the fact that E3 often sells for less than $50,000 and for these types of sales, Blueberry is not credited for a royalty against the promised $10,000. As Blueberry subsequently discovered, Arbortext uses the email figures to produce a value ratio of 20% and it uses this ratio for all of these types of sales, no matter what the actual sale price is. Additionally, Arbortext sells multiple CPU configurations of E3 with declining percentage values for Blueberry's royalty calculations. This also is not addressed in the email and was never discussed, nor agreed to by Blueberry. It was simply imposed by Arbortext. Since the parties have no agreement concerning them, Blueberry contends that all of these other types of E3 sales should be governed by the Contract.

Parametric claims that the Limited Liability clause in the contract precludes Blueberry from any and all claims against Arbortext, even if Arbortext were guilty of breach of contract. The practical implication of this claim would require Blueberry to perform an audit and possibly file for Arbitration and incur the prohibitive expenses involved in these two processes at least once every twelve months in order to protect itself from wrongful acts which are known or unknown to Blueberry

Blueberry's claims are not over six years old as stated in Parametric's motion. Additionally all of the claims did not arise one year before filing for Arbitration. Blueberry Software has continuously raised these claims to the degree possible

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throughout the life of the contract which is still in existence. The amounts mentioned in the demand letter did not address any amounts owed past the Audited period of Quarter 3, 2004. Blueberry's Arbitration claim however, states that Blueberry requests and reserves the right to change its claim amount to include amounts due past the Audited period of Quarter 3, 2004, until such amounts could be discovered.

Arbortext failed to inform Blueberry of a pending acquisition by Parametric per the contract. **Section 15.1 Assignment:**

> Neither party shall assign, transfer or sell any of its rights, or delegate any
> of its responsibilities under this Agreement without the other's prior
> written consent, which shall not be unreasonably withheld.

This failure of Arbortext to inform Blueberry prevented Blueberry from discussing these outstanding issues with Parametric. During the course of the now ongoing contract between Blueberry and Parametric, Blueberry asserts that Parametric failed to learn the true facts of Blueberry's claims and they themselves have also paid Blueberry royalties that do not reflect the agreed upon language contained in the contract and the email modification.

ARGUMENT

I. THE STATUTE OF LIMITATIONS SHOULD BE TOLLED DUE TO PARAMETRIC'S FRAUDULENT CONCEALMENT OF THE EXISTING CLAIM.

In the context of a statute of limitations claim under Michigan law, the acts constituting concealment are: (1) wrongful concealment of their actions by the defendants; (2) the failure of the plaintiff to discover the operative facts that are the basis of his cause of action within the limitations period; and (3) plaintiff's due diligence until

the discovery of the facts. See *Evans v Pearson Enterprises, Inc.,* 434 F.3d 839 (CA6 Mich 2006). [1]

Parametric states that it is aware of the long history of the disputes between Arbortext and Blueberry, and it considers Blueberry's claims to be irrelevant and non arbitratable. As successor to the contract, Parametric is now responsible for paying Blueberry royalties in accordance to the contract and the email modification. Parametric's royalty payments, to date, reflect the wrongful royalty calculations previously introduced and imposed by Arbortext.

Michigan statute, MCL § 600.5855 allows a person two years after discovery of the fraudulent concealment to bring a cause of action. § 600.5855 provide:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

Parametric cites Nielson v Barnett, 440 Mich 1 (1992) for the proposition that an arbitrator must abide within the terms of the arbitration agreement, Parametric making the point that the arbitrator must uphold Parametric's and Blueberry's one-year statute of limitations agreement. However, Nielsen also goes on to state that, "Just as the arbitrators were authorized to determine whether the defendants owed a duty to the plaintiffs, whether the defendants breached the standard of care, whether any breach of the standard of care was a proximate result of the plaintiffs' injury, and the amount, if any, of the plaintiffs' damages, Blueberry believes that the broad grant of authority also empowered the arbitrators to determine whether, in the first instance, the plaintiffs' claim was stale." Id. Because the statute of limitations should be tolled due to Parametrc's fraudulent concealment and fraudulent misrepresentation, the claim is arbitratable. Due to *Nielson's* language, the arbitrator has the authority to address the timeliness of Blueberry's claim.
[1]

The fraudulent concealment statute is applied both to cases where fraud is the ground of action and to cases where some other cause of action has been fraudulently concealed. When the basis of an action is a wrong other than a fraud, the fraudulent concealment of the cause of action that will work a postponement of the statute of limitations must be concealment by affirmative acts or misrepresentations, unless the parties stand in a fiduciary relationship. See *Lumber Village, Inc. v Siegler,* 135 Mich App 685 (1984)). In *Morganroth & Morganroth v DeLorean,* 123 F3d 374 (CA6, Mich 1997) the court held that the award of damages for events occurring outside the six-year limitations period, in attorney's action against former client for fraud and breach of contract in relation to fee dispute, did not amount to plain error, in view of attorney's arguments that statute of limitations was either tolled or was not available as defense due to client's fraudulent concealment, false representations or concealments, acknowledgement of past obligations in signed writings, and voluntary payments." *Id.,* at 385. See also, *Barrett v Breault,* 275 Mich 482 (1936) in an action to recover money invested by plaintiff upon false representations of defendants, the court held that the plaintiff's suit was timely brought because defendants concealed their fraud, and thus the statute of limitations for fraudulent concealment applied.

Due to the misrepresentations, concealment of facts and figures and interminable delays and roadblocks Blueberry has encountered in its continuous efforts to ascertain the truth regarding its royalty payments, it has not been possible for Blueberry to discover the operative facts behind its claims.

In fact, the Plante & Moran Audit and the Working Papers associated with it, at last, substantiate some of Blueberry's suspicions. Facts and discrepancies revealed by the Audit and Working Papers include the following:

(1) At Blueberry's request, Plante & Moran examined the License Key Database which revealed that a significant number of Arbortext customers have licenses to use Blueberry's technology despite the fact that there have been no corresponding sales reported to Blueberry. **SEE EXHIBIT 2 [Audit Working Papers WP-19]**

Blueberry is left to wonder if all of these licenses were given away for free, which would be in violation of the contract, or are these licenses indicative of unreported sales.

The Audit Report does not address the issue of why these licenses exist. Rather on Page 9 and 10 [of the report, the only issue addressed is regarding additional licenses being available to certain customers that have already appeared on Blueberry's royalty reports. **SEE EXHIBIT 3 [Audit Report]**

Arbortext's response to the Auditors questions involves only ten (10) particular companies which have licenses available to them in a different amount than is reflected on Blueberry's royalty reports. **SEE EXHIBIT 4 [Audit Working Papers WP-19]**

(2) A new royalty calculation was instituted by Arbortext immediately following the Audit period ending with the 3rd Quarter of 2004 which further reduced Blueberry's royalties. This new calculation is also being used by Parametric to calculate Blueberry's royalties. **SEE EXHIBIT 5 [Audit Working Papers WP-2].**

(3) For several years, Blueberry has had questions about an Arbortext product called Epic Intermarket. Whenever Blueberry inquired about this product, Arbortext always stated that the product was never developed

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A few years ago, Blueberry discovered that Intermarket was released according to Arbortext's website, on January 1, 2001. Additionally, Blueberry located a snap-shot of an old page from Arbortext's web site which clearly showed that Intermarket was listed for sale on their website product pages, along with a list of other Arbortext Epic products. **SEE EXHIBIT 6 [Web Pages]**

Blueberry asked the Auditor to locate information regarding the Intermarket product. When the Auditor inquired about the product, the Director of Finance and Corporate Controller from Arbortext responded with the following statement:

> Epic Intermarket was a new product that was to be developed some years ago, however it never was developed. There have never been any sales of this product. **SEE EXHIBIT 7 [Audit Working Papers WP-16]**

After this email statement, Blueberry provided Plante & Moran with an SKU product part number for Intermarket (E-Catalog Application). Plante & Moran queried the sales database for this product part number and discovered that MRO Software Inc. had purchased this product which was in fact sold. Verification of this sale is evidenced by a copy of an Invoice and a Wire Transfer Credit Notice from Silcon Valley Bank, dated April 26, 2001. **SEE EXHIBIT 8 [Audit Working Papers WP-10]**

Furthermore, the working papers contain the Contract between MRO and Arbortext. The contract states that Arbortext will perform some custom engineering work for MRO. Listed in Exhibit B of this contract, it is clear that Arbortext products include Intermarket. **SEE EXHIBIT 9 [Audit Working Papers WP-10]**.

Plante & Moran states on page 8 and 9 of the Audit Report:

Arbortext was developing a product called Content Manager by extending the functionality of Arbortext programs and integrating them with MRO's Intermat product.

The Audit report also states that soon after the agreement and some licensing of Software to MRO in September 2000, the joint development effort was abandoned. These statements were provided to Plante & Moran by Arbortext after the discovery of the Intermarket E-Catalog sale. Whether or not the joint development agreement between MRO and Arbortext was abandoned does not address the issue that Intermarket was developed by Arbortext, was sold and according to Arbortext's own statements on their web pages and press releases, a minimum Intermarkent installation includes E3 which contains Blueberry's technology.

(4) The Auditor states in the report that he believes there are some potential discrepancies pertaining to how royalties are paid for E3 sales. He also points out a potential discrepancy regarding the non-payment of royalties pertaining to maintenance/upgrade sales. **SEE EXHIBIT 10 [Audit Report]**

The Blueberry Software-Arbortext Contract states in **6.1 Royalties and Other Fees:**

> Royalties are due and payable to Blueberry for Blueberry Software delivered by Arbortext to both existing Arbortext Customers, whether provided on an upgrade or other basis, and to new Arbortext customers.

The contract further states in **Exhibit C – Section 1 (Royalties):**

> If Blueberry software is offered to current or past users of Arbortext products, or any users other than new users, at some charge, then revenue

from such sales will be included in the computation of Arbortext product

sales. Arbortext shall not provide Blueberry Software to others without

payment of royalty, except upon the advance written approval of

Blueberry.

The Discoveries listed above reveal Parametric/Arbortext's fraudulent statements,

fraudulent misrepresentations and wrongful actions and their attempts to conceal this

information from Blueberry. These discoveries were accomplished by the Plante &

Moran audit completed in March of 2005 and further discovery was made from the Audit

Working Papers which Blueberry received on February 26, 2007. Both of these dates fall

within the two (2) year Michigan statute, MCL § 600.5855.

II. DUE TO PARAMETRIC'S FRAUDLENT CONCEALMENT OF THE NECESSARY INFORMATION FOR A CAUSE OF ACTION, THE "DISCOVERY RULE" SHOULD APPLY, DELAYING THE RUNNING OF THE STATUTE OF LIMITATIONS:

Parametric cites the case of *Scherer v Hellstrom,* 270 Mich App 458, 463 (2006)

for the proposition that a breach of contract claim accrues when the alleged breach of

contract occurred.

Parametric also uses *Scherer* to argue that the statute of limitations began to run in

2000 even if Blueberry was not aware of the claim at the time. However, the "discovery

rule" is applied to prevent unjust results when a plaintiff would otherwise be denied a

reasonable opportunity to bring suit due to the latent nature of the injury or the inability

to discover the casual connection between the injury and the defendant's action. See

Brennan v Edward D Jones & Co., 245 Mich App 156, 157 (2001).

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In *EQ Financial Consultants, Inc. v Blackward,* 1998 WL 1989710 (Mich App) the court rejected defendant, securities brokerage firm argument that the six year eligibility period accrued only on the date that the relevant securities were purchased. In *Agristor Financial Corp. v Van Sickle,* 967 F.2d 233, 238 (CA6 Mich 1992) the court held that the discovery rule applied to determine when dairy farm owner's fraud claim accrued against manufacturer of "oxygen-free" silo, rather than date alleged misrepresentations were made, since owners could not have asserted cause of action until they knew or should have known of injury and damage allegedly caused by silos and since damages tended to develop, rather than disappear, with passage of time.

Blueberry Software has continually tried to ascertain the true facts behind its claims. During the course of time, Blueberry partially discovered some facts and methods which Parametric/Arbortext used to effectively limit the amount of money Blueberry could receive which is a breach of the contract and the email modification. Bits and pieces of information could only be confirmed or revealed by the performance of an Audit. Additionally, new discoveries were made as recently as February 26th of this year from the contents of the Audit Working Papers.

Blueberry is uncertain if there are more discoveries to be made from the Plante & Moran working papers. [Parametric objected to the Auditor releasing copies of communications between Arbortext and Plante & Moran. Yesterday, (March 7, 2007) Blueberry received from Parametric a document entitled "Stipulated Protective Order" which requires Blueberry's signature prior to authorizing the Auditor to release these documents. Blueberry has not had time to review the Stipulation Agreement. In any case,

even if Blueberry were to sign the Stipulation, the Auditor would not have time to get the documents to Blueberry prior to responding to Parametric's motion.]

Parametric has a duty to accurately report and pay all software royalties per the Contract between the parties. Additionally, Parametric is obliged to discover the true facts of Blueberry's claims. Instead, Parametric seeks with its motion to conceal all evidence in this case and to prevent this Panel from hearing the evidence and arriving at a decision regarding its merits

RELIEF REQUESTED

Blueberry requests that Parametric's motion to dismiss be denied and its subsequent request for reimbursement of costs and fees be dismissed and that the matter proceed to hearing.

Respectfully submitted,
Blueberry Software, Inc.

Mary M. Tarantino
Representing Blueberry Software, Inc
P.O. Box 271235
Concord, CA 94527
(925) 798-4376

Dated: March 8, 2007

Exhibit 1

Dave Peralta

From: Jim Sterken [Jim Sterken/DTW/ATI@ArborText]
Sent: Monday, June 21, 2004 9:44 PM
To: Dave Peralta; Ray Schiavone
Subject: Blueberry royalties

Dave and Ray,
    Here is the exchange I had with Kevin in September, 2000 with Kevin
Dwan about E3/Interchange royalties. Note that he sent his response
to Steve Beigel as well as to me.
    Jim

---- Forwarded by Jim Sterken/DTW/ATI on 06/21/2004 09:40 PM ----

> Kevin Dwan <kevin@blueberry.com>
> 09/25/2000 04:34 PM

To   jsterken@arbortext.com

cc   swbeigel@value.net

Subject   Re: Understanding about royalties

At 11:32 AM 9/25/2000, you wrote:
>Hi Kevin,
>   This email is to confirm our conversation of a few
>minutes ago.
>
>   Rather than configure the Interchange capability (which makes
>use of your Blueberry technology) as a $10,000 optional
>module of E3 (Epic E-Content Engine), our new plan
>is to bundle it into E3 by default and allow customers
>to delete it if they don't want the capability.
>
>   In the new configuration, E3 will sell for $50,000. If a
>customer chooses to delete the Interchange capability,
>then we will charge them $40,000.
>
>   So, for each E3 where the customer chooses not to
>delete the Interchange capability, we will credit you
>for a $10,000 Interchange sale and pay you a royalty
>against the $10,000 according to the schedule we
>agreed upon in our contract.
>
>   Please respond with your agreement to this change
>in the way which we'll be paying you for E3 sales.
>
>   Thanks,

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Exhibit 1

> Jim Sterken

Jim, the above is in accord with what you described on the phone, and clarifies our written agreement. As you pointed out, since including the filters will now be the default, rather than requiring the user to opt-in, it will likely have the effect of increasing sales, and our royalty.

Thank you for reviewing it with me.

Kevin Dwan
Blueberry Software

voice: 707-829-5443
fax: 707-829-5380

<http://www.blueberry.com>http://www.blueberry.com

Exhibit 2
Sample

ID	Company	Product Code	License	Qty	Date
7175	State of [C]orms (Secretary of State)	1737liwic000pues	Epic Interchange Cnc License	1	12/31/1999
3953	Sun Mfk ... ems Computer Corp.	1733iswif000pues	Epic Interchange Fxd Lic	1	12/31/1999
9039	Taisho Pharmaceutical Co. Ltd.	1946iit31500pues	E3 Print/Web/Int Lic 5.0 1 CPU	1	12/31/1999
7933	Tansco - Warner Robins	1737liwic000pues	Epic Interchange Cnc License	1	12/31/1999
7103	Teradyne Inc. MFD	1737liwic000pues	Epic Interchange Cnc License	1	12/31/1999
8988	Thales Communications	1733irwif000pues	Epic Interchange Fxd Lic	1	12/31/1999
6577	The Rockley Group	1733iswif000pues	Epic Interchange Fxd Lic	1	12/31/1999
6577	The Rockley Group	1733liwif000pues	Epic Interchange Fxd Lic	1	12/31/1999
7449	Thomson Learning	1733liwif000pues	Epic Interchange Fxd Lic	1	12/31/1999
8632	Toyota Motor Sales USA Inc.	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	12/31/1999
8632	Toyota Motor Sales USA Inc.	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	2	12/31/1999
8632	Toyota Motor Sales USA Inc.	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	12/31/1999
7116	Transware	1733liwif000pues	Epic Interchange Fxd Lic	1	12/31/1999
5281	United Technologies / Carrier Corporation	1733iswif000pues	Epic Interchange Fxd Lic	1	12/31/1999
8096	University of New England	1737liwic000pues	Epic Interchange Cnc License	1	12/31/1999
8456	USA AMCOM	1974iiv32400pues	E3 w Print/Int/rtg Lic 2 CPU	1	12/31/1999
6758	Vital Source Technologies	1733liwif000pues	Epic Interchange Fxd Lic	1	12/31/1999
6758	Vital Source Technologies	1733liwif000puet	Epic Interchange Fxd Lic	1	12/31/1999
6758	Vital Source Technologies	1733iswif000pues	Epic Interchange Fxd Lic	1	12/31/1999
2880	Volvo IT	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	12/31/1999
6864	W R Systems, Ltd.	1737liwic000pues	Epic Interchange Cnc License	1	12/31/1999
7440	Wind River	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	12/31/1999
7723	Wolters Kluwer	1946iit31500pues	E3 w Prf/W/i Annual Lic 1 CPU	8	12/31/1999
7331	Wolters Kluwer Deutschland GmbH	1733liwif000pues	Epic Interchange Fxd Lic	1	2/9/2000
3573	IBM Corp/TJ Watson Research Ctr.	1733iswif000pues	Epic Interchange Fxd Lic	1	2/28/2000
6630	Qtea	1737liwic000pues	Epic Interchange Cnc License	1	3/6/2000
6812	Bloomberg Financial Markets	1733liwif000pues	Epic Interchange Fxd Lic	1	3/13/2000
6840	Litton Systems Inc.	1733liwif000puet	Epic Interchange Fxd Lic	1	3/16/2000
6766	ACP-ASIM	1733liwif000pues	Epic Interchange Fxd Lic	1	6/28/2000
1168	University of Illinois	1733liwif000pues	Epic Interchange Fxd Lic	1	7/19/2000
7050	Modem Technologies	1733iswif000pues	Epic Interchange Cnc License	36	8/3/2000
6612	American Century	1737liwic000pues	Epic Interchange Fxd Lic	1	8/16/2000
6975	Kohler Co.	1733liwif000pues	Epic Interchange Fxd Lic	2	8/31/2000
6914	Marconi Communications	1737liwic000pues	Epic Interchange Cnc License	1	9/8/2000
7099	GE Transportation Systems	1733iswif000pues	Epic Interchange Fxd Lic	1	10/3/2000
6894	Retail Wisdom (formerly Raymark Integrated Retail)	1733iswif000pues	Epic Interchange Fxd Lic	1	10/7/2000
6978	Nimble Technology	1733liwif000pues	Epic Interchange Fxd Lic	1	10/10/2000
5818	John Wiley & Sons, Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	10/23/2000
5018	Nokia Networks Oy	1733liwif000pues	Epic Interchange Fxd Lic	25	11/1/2000
5993	Vanguard Group Inc	1733liwif000pues	Epic Interchange Fxd Lic	9	11/3/2000
4255	Ameritech Networks	1733liwif000pues	Epic Interchange Fxd Lic	10	11/14/2000
5252	LexisNexis SA	1733liwif000pues	Epic Interchange Fxd Lic	1	11/29/2000
6236	Mediamatic	1733liwif000pues	Epic Interchange Fxd Lic	1	12/14/2000
6602	CMI Competitive Solutions, Inc.	1733liwif000pues	Epic Interchange Cnc License	1	12/20/2000
7326	Maris MultiMedia LTD.	1737liwic000pues	Epic Interchange Cnc License	1	12/27/2000
7235	Enmed, Inc.	1733liwif000pues	Epic Interchange Fxd Lic	45	1/4/2001

No.	Company	Code	Description	Qty	Date
7297	GE Pow... ...ems	1946liti31400pues	E3 Print/W... ic 4.0 1 CPU	1	1/8/2002
7625	Office of ... gement and Budget	1733liwif000pues	Epic Interch... xd Lic	1	1/8/2002
7441	Novant Health	1737liwic000pues	Epic Interchange Cnc License	1	1/18/2002
6969	Blueberry Software	1733liwif000pues	Epic Interchange Fxd Lic	1	1/23/2002
5818	John Wiley & Sons, Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	1/31/2002
7386	Prosoft Training Solutions for the Internet Age	1946liti31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	1/31/2002
7850	International Translation & Services, Co., Ltd.	1733liwif000pues	Epic Interchange Fxd Lic	1	2/1/2002
7441	Novant Health	1950liti32400pues	E3 w Print/Web/Int Lic 2 CPU	1	2/1/2002
7499	Fleming	1946liti31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	2/12/2002
7819	Dynegy Inc.	1950liti32400pues	E3 w Print/Web/Int Lic 2 CPU	1	2/13/2002
7880	Lockheed Martin Corporation	1733liwif000pues	Epic Interchange Fxd Lic	1	2/14/2002
7828	Blue Cross Blue Shield of Michigan	1954liti33400pues	E3 w Print/Web/Int- 3 CPU	1	2/19/2002
6788	BMW AG	1733liwif000pues	Epic Interchange Fxd Lic	1	2/25/2002
6624	empolis UK Ltd.	1737liwic000pues	Epic Interchange Cnc License	1	2/27/2002
7811	Infotech Enterprises Limited	1733liwif000pues	Epic Interchange Fxd Lic	1	2/28/2002
4826	PeopleSoft	1733liwif000pues	Epic Interchange Fxd Lic	10	3/1/2002
6963	IBM (Rational Software Corporation)	1737liwic000pues	Epic Interchange Cnc License	1	3/6/2002
6963	IBM (Rational Software Corporation)	1737liwic000pues	Epic Interchange Cnc License	1	3/11/2002
7414	Nortel Networks	1733liwif000pues	Epic Interchange Fxd Lic	1	3/18/2002
4929	Adobe Systems, Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	3/21/2002
7940	Appendix Technical Publications Group	1733liwif000pues	Epic Interchange Fxd Lic	1	3/25/2002
7878	Conwegys Corporation	1737liwic000pues	Epic Interchange Cnc License	1	3/27/2002
6693	Editions WEKA	1733liwif000pues	Epic Interchange Fxd Lic	1	3/28/2002
5578	Hamilton Sundstrand Aerospace	1737liwic000pues	Epic Interchange Cnc License	2	4/1/2002
6576	Council of Europe / EDQM	1737liwic000pues	Epic Interchange Cnc License	1	4/2/2002
3984	MBDAM (EADS Bourges)	1733liwif000pues	Epic Interchange Fxd Lic	1	4/8/2002
7249	Practitioners Publishing Company	1737liwic000pues	Epic Interchange Cnc License	1	4/8/2002
6879	Philips Lighting B.V	1733liwif000pues	Epic Interchange Fxd Lic	1	4/9/2002
7184	Horizons Technology Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	4/26/2002
5818	John Wiley & Sons, Inc.	1737liwic000pues	Epic Interchange Cnc License	12	5/7/2002
7978	Eurofly S.p.A.	1733liwif000pues	Epic Interchange Fxd Lic	1	5/15/2002
6782	GE Power Systems	1733liwif000pues	Epic Interchange Fxd Lic	1	5/24/2002
7331	Wolters Kluwer Deutschland GmbH	1733liwif000pues	Epic Interchange Fxd Lic	1	6/3/2002
7828	Blue Cross Blue Shield of Michigan	1950liti32400pues	E3 w Print/Web/Int Lic 2 CPU	1	6/7/2002
7982	Amgen Corporation (formerly Immunex)	1733liwif000pues	Epic Interchange Fxd Lic	1	6/11/2002
7982	Amgen Corporation (formerly Immunex)	1733liwif000pues	Epic Interchange Fxd Lic	1	6/12/2002
7836	Mitsui Mutual Life Insurance Co Sys. Planning Gr.	1950liti32400pues	E3 w Print/Web/Int Lic 2 CPU	1	6/20/2002
7836	Mitsui Mutual Life Insurance Co Sys. Planning Gr.	1950liti32400pues	E3 w Print/Web/Int Lic 2 CPU	1	7/9/2002
5009	Lockheed Martin	1737liwic000pues	Epic Interchange Cnc License	1	7/16/2002
7723	Wolters Kluwer	1954liti33400pues	E3 w Print/Web/Int- 3 CPU	1	7/25/2002
1046	Maryland Procurement / National Security Agency	1946liti31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	7/29/2002
7828	Blue Cross Blue Shield of Michigan	1950liti32400pues	E3 w Print/Web/Int Lic 2 CPU	1	8/13/2002
7220	Alldata	1733liwif000pues	Epic Interchange Fxd Lic	1	8/16/2002
7748	Reward Health Sciences	1733liwif000pues	Epic Interchange Fxd Lic	1	8/21/2002
3811	Solar Turbines	1733liwif000pues	Epic Interchange Fxd Lic	2	8/23/2002
5339	Lexis-Nexis / Michie-Co (Reed Elsevier)	1737liwic000pues	Epic Interchange Cnc License	1	8/26/2002
6437	Traduction Scientifiques-Techna SA	1733liwif000pues	Epic Interchange Fxd Lic	1	8/26/2002

Exhibit 2
Sample

ID	Company	Code	Description	Qty	Date
4296	Internat... Truck and Engine	1733ltwif000pucs	Epic Interch... Fxd Lic	1	9/5/2002
3750	AstraZe... & D Lund (Pharma)	1737ltwic000pucs	Epic Interch... 2nc License	1	9/17/2002
1670	Missile & Space Intelligence Center (DIA/MSIC)	1946lit31400pucs	E3 Print/Web/int Lic 4.0 1 CPU	1	10/7/2002
7878	Cervergys Corporation	1950lit32400pucs	E3 w Print/Web/fat Lic 2 CPU	1	10/9/2002
3983	General Dynamics Land Systems - Canada	3970ltv31400pucs	E3 w Print/Inscbg Lic 1 CPU	1	10/22/2002
7370	Beneismann Media Systems	1733ltwif000pucs	Epic Interchange Fxd Lic	1	10/24/2002
4142	AstraZeneca (Pharma)	1950lit32400pucs	E3 w Print/Web/fat Lic 2 CPU	1	11/7/2002
7498	Autodesk Canada Inc. (Discreet Logic)	1946lit31400pucs	E3 Print/Web/fat Lic 4.0 1 CPU	1	11/7/2002
6693	Editions WEKA	1733ltwif000pucs	Epic Interchange Fxd Lic	1	11/7/2002
4142	AstraZeneca (Pharma)	2102lit34400pucs	E3 w Print/Web/Inscbg Lic 4CPU	1	11/13/2002
5219	Depository Trust Company	1733ltwif000pucs	Epic Interchange Fxd Lic	3	11/26/2002
7284	ITT Industries Systems Division	1737lwic000pucs	Epic Interchange Cnc License	1	12/3/2002
7863	Siemens Building Technologies, Inc.	1733ltwif000pucs	Epic Interchange Fxd Lic	1	12/4/2002
8203	Creo, Inc.	1737lwic000pucs	Epic Interchange Cnc License	1	12/6/2002
7483	Continental Data Graphics	1733ltwif000pucs	Epic Interchange Fxd Lic	1	12/12/2002
6693	Editions WEKA	1733ltwif000pucs	Epic Interchange Fxd Lic	1	1/13/2003
4106	Boeing Commercial Airplane Group	1950lit32400pucs	E3 w Print/Web/fnt Lic 2 CPU	1	1/14/2003
2213	University of New Brunswick	1733ltwif000pucs	Epic Interchange Fxd Lic	1	1/21/2003
8014	UCB Pharma	1733ltwif000pucs	Epic Interchange Fxd Lic	1	1/28/2003
7449	Thomson Learning	1733ltwif000pucs	Epic Interchange Fxd Lic	1	1/29/2003
8158	Albalia S.p.a	1733ltwif000pucs	Epic Interchange Fxd Lic	1	1/30/2003
8222	Kepler Systems D'information	1733ltwif000pucs	Epic Interchange Fxd Lic	1	2/3/2003
6910	CACI Federal INC	1737lwic000pucs	Epic Interchange Cnc License	1	2/10/2003
3996	Pfizer (Pharma)	1733ltwif000pucs	Epic Interchange Fxd Lic	1	2/10/2003
8252	CCMSA	1737lwic000pucs	Epic Interchange Cnc License	1	2/12/2003
5123	Sweet & Maxwell Group	1733ltwif000pucs	Epic Interchange Fxd Lic	1	2/17/2003
7376	NFPA (National Fire Protection Association)	1733lwif000pucs	Epic Interchange Fxd Lic	1	2/24/2003
7415	L-3 Communications	1733ltwif000pucs	Epic Interchange Fxd Lic	1	3/3/2003
7952	Volvo Car Corporation VCC/Semcon	1946lit31400pucs	E3 Print/Web/fat Lic 4.0 1 CPU	1	3/4/2003
6887	MatiWorks Inc.	1737lwic000pucs	Epic Interchange Cnc License	1	3/14/2003
5685	Naval Surface Warfare Center	1733ltwif000pucs	Epic Interchange Fxd Lic	1	3/17/2003
7167	EDF Pole Industric	1733ltwif000pucs	Epic Interchange Fxd Lic	1	3/19/2003
7167	EDF Pole Industric	1737lwic000pucs	Epic Interchange Cnc License	5	3/19/2003
7666	GlaxoSmithKline/ GSK (Pharma)	1946lit31400pucs	E3 Prin/Web/int Lic 4.0 1 CPU	1	3/27/2003
7984	Star Mountain Inc.	1737lwic000pucs	Epic Interchange Cnc License	1	3/27/2003
7661	Eli Lilly and Company - Manufacturing	1950lit32400pucs	E3 w Print/Web/fat Lic 2 CPU	1	3/28/2003
7666	GlaxoSmithKline/ GSK (Pharma)	1946lit31400pucs	E3 Print/Web/fat Lic 4.0 1 CPU	1	3/28/2003
6996	O'Reilly & Associates Inc	1737lwic000pucs	Epic Interchange Cnc License	1	4/2/2003
7666	GlaxoSmithKline/ GSK (Pharma)	1946lit31400pucs	E3 Print/Web/int Lic 4.0 1 CPU	1	4/8/2003
7766	Northcup Grumman	1737ltwic000pucs	Epic Interchange Cnc License	1	4/10/2003
6007	AllRegs (Formerly Mortgage Resource Center, Inc.)	1733ltwif000pucs	Epic Interchange Fxd Lic	1	4/15/2003
8374	Pfizer, Inc.	1950lit32400pucs	E3 w Print/Web/fat Lic 2 CPU	1	4/21/2003
8154	Chestetec International Graphics	1733ltwif000pucs	Epic Interchange Fxd Lic	1	4/22/2003
7449	Thomson Learning	1733ltwif000pucs	Epic Interchange Fxd Lic	1	4/28/2003
5788	GE Medical Systems	1733ltwif000pucs	Epic Interchange Fxd Lic	1	5/9/2003
7227	General Dynamics ATS	1737ltwic000pucs	Epic Interchange Cnc License	1	5/12/2003
8139	Federal Aviation Administration (FAA)	1733ltwif000pucs	Epic Interchange Fxd Lic	1	5/19/2003

Exhibit 2
Sample

ID	Company	SKU	Description	Qty	Date
7449	Thomson...mSing	1737liwic000pues	Epic Interchange Cnc License	1	5/27/2003
4052	Canadian ...macists Association	1950lit32400pues	E3 w Print/...t Lic 2 CPU	1	5/28/2003
8367	Graphic Composition Inc	1733liwif000pues	Epic Interchange Fxd Lic	1	6/3/2003
7108	Pearson Education	1733liwif000pues	Epic Interchange Fxd Lic	1	6/3/2003
5383	Lockheed Martin Skunkworks	1737liwic000pues	Epic Interchange Cnc License	27	6/4/2003
8220	Paul Flynn	1733liwif000pues	Epic Interchange Fxd Lic	1	6/4/2003
7661	Eli Lilly and Company - Manufacturing	1950lit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	6/10/2003
4562	ITP Nelson (formerly Nelson CANADA)(Thomson site)	1733liwif000pues	Epic Interchange Fxd Lic	1	6/25/2003
8403	CCH Australia	1737liwic000pues	Epic Interchange Cnc License	1	6/26/2003
7948	Daidaioe B.V.	1733liwif000pues	Epic Interchange Fxd Lic	1	6/26/2003
8199	NNC Limited	1733liwif000pues	Epic Interchange Fxd Lic	1	6/27/2003
8374	Pfizer, Inc.	2102lit34400pues	E3 w Print/Web/Intchg Lic 4CPU	1	6/30/2003
6479	Akzuel CIT	1737liwic000pues	Epic Interchange Cnc License	1	7/2/2003
7179	Cisco Systems, Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	7/9/2003
8364	Computer Science Corp - Journeyman (CSC)	1946lit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	7/9/2003
8199	NNC Limited	1946lit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	7/10/2003
8264	American Bible Society	1950lit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	7/11/2003
3442	Kimberly-Clark Corporation	1737liwic000pues	Epic Interchange Cnc License	1	7/31/2003
8247	DaimlerChrysler Motors Company LLC	1946lit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	7/31/2003
5009	Lockheed Martin	1946lit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	8/27/2003
3671	Gale Research (Thomson site)	1733liwif000pues	Epic Interchange Fxd Lic	6	9/8/2003
8506	Lockheed Martin Technical Operations	1733liwif000pues	Epic Interchange Fxd Lic	1	9/15/2003
8362	IDX Systems Corporation	1737liwic000pues	Epic Interchange Cnc License	2	9/17/2003
8415	MTR Corporation Limited	1737liwic000pues	Epic Interchange Cnc License	1	9/17/2003
7515	SAP Germany (EPF)	1950lit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	10/1/2003
4297	Boeing Company - BMOD	1950lit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	10/13/2003
7449	Thomson Learning	1733liwif000pues	Epic Interchange Fxd Lic	1	10/15/2003
3985	EMC Software Group / Documentum, Inc.	1946lit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	10/21/2003
6963	IBM (Rational Software Corporation)	1737liwic000pues	Epic Interchange Cnc License	1	10/22/2003
7714	Maine State Legislature	1733liwif000pues	Epic Interchange Fxd Lic	1,053	10/24/2003
7661	Eli Lilly and Company - Manufacturing	1733liwif000pues	Epic Interchange Fxd Lic	1	10/30/2003
7341	Merck Sharp & Dohme, Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	10/30/2003
7982	Amgen Corporation (formerly Immunex)	1737liwic000pues	Epic Interchange Cnc License	2	11/6/2003
1745	Lockheed Martin, KAPL (Knolls Atomic Power Lab)	1737liwic000pues	Epic Interchange Cnc License	1	11/7/2003
4744	Thomson Legal & Regulatory Limited	1737liwic000pues	Epic Interchange Cnc License	1	11/7/2003
4220	Honeywell Inc	1737liwic000pues	Epic Interchange Cnc License	1	11/10/2003
7208	Services Techniques Schlumberger	1946lit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	11/13/2003
1006	Ford Motor Company	1950lit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	11/14/2003
7924	Contact International Co.	1733liwif000pues	Epic Interchange Fxd Lic	1	11/17/2003
5873	Bombardier	1737liwic000pues	Epic Interchange Cnc License	1	11/17/2003

Exhibit 2
Sample

ID	Company	Code	Description	Qty	Date
6069	Hewle...rd	1733liwif000pues	Epic Inter... Fxd Lic	1	12/16/2003
8068	Classwe... jing Group	1733liwif000pues	Epic Interch... xd Lic	1	1/8/2004
4826	PeopleSoft	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	1/12/2004
4826	PeopleSoft	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	1/12/2004
7723	Wolters Kluwer	1733liwif008pues	Epic Interchange Fxd Lic	1	1/12/2004
2880	Volvo IT	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	1/13/2004
2972	Lexis-Nexis	1911iit32400pues	E3 w Intchg Lic 2 CPU	1	1/15/2004
7723	Wolters Kluwer	1946iit31400pues	E3 w P/W/I Annual Lic 1 CPU	1	1/15/2004
3750	AstraZeneca R & D Lund (Pharma)	1737liwic000pues	Epic Interchange Cnc License	7	1/19/2004
7415	L3 Communications	1733liwif000pues	Epic Interchange Fxd Lic	1	1/19/2004
7791	Naval Engineering Test Establishment Centre	1733liwif000pues	Epic Interchange Fxd Lic	1	1/20/2004
5337	CITEC Information Technology	1733liwif000pues	Epic Interchange Fxd Lic	1	1/21/2004
7171	Milliman Care Guidelines	1733liwif000pues	Epic Interchange Fxd Lic	1	1/23/2004
7756	North Dakota Legislative Council	1970liw31400pues	E3 w Print/Intchg Lic 1 CPU	1	2/12/2004
8516	Horizon Interactive	1737liwic000pues	Epic Interchange Cnc License	1	2/19/2004
8313	SAP AG (XDP Project)	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	2/23/2004
5181	DEW Engineering & Development Limited	1733liwif000pues	Epic Interchange Fxd Lic	1	2/25/2004
8487	Guidant/Pacemaker Tec Corp	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	3/5/2004
8515	NCCI Holdings, Inc.	1954iit33400pues	E3 w Print/Web/Int - 3 CPU	1	3/9/2004
8270	Province of BC Ministry of Management Services	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	3/10/2004
8137	Northrup Grumman	1733liwif000pues	Epic Interchange Fxd Lic	1	3/11/2004
7449	Thomson Learning	1733liwif000pues	Epic Interchange Fxd Lic	1	3/15/2004
4324	Jeane Aviation Solutions	1907liw31400pues	E3 w Intchg Lic 1 CPU	1	3/18/2004
8431	Constella Group Inc.	1733liwif000pues	Epic Interchange Fxd Lic	1	3/22/2004
3782	HEBCO Inc	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	3/24/2004
8487	Guidant/Pacemaker Tec Corp	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	3/29/2004
7661	Eli Lilly and Company – Manufacturing	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	3/30/2004
7635	McDougal Littell	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	3/30/2004
4052	Canadian Pharmacists Association	1733liwif000pues	Epic Interchange Fxd Lic	1	4/5/2004
8541	Unisys Corporation	1733liwif000pues	Epic Interchange Fxd Lic	1	4/6/2004
6577	The Rockley Group	1733liwif000pues	Epic Interchange Fxd Lic	1	4/8/2004
4736	Piper Group plc	1733liwif000pues	Epic Interchange Fxd Lic	1	4/14/2004
8475	Pfizer, Inc.	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	4/15/2004
7974	Avantis Corporation	1733liwif000pues	Epic Interchange Fxd Lic	1	4/21/2004
8304	Eli Lilly - Regulatory Group	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	4/21/2004
8637	The Toro Company	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	4/21/2004
8637	The Toro Company	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	4/26/2004
8098	Heidelberger Druckmaschinen AG	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	4/27/2004
8278	Continental DataGraphics	1733liwif000pues	Epic Interchange Fxd Lic	1	4/29/2004
7166	Northrup Grumman	1946iit31400pues	E3 Print/Web/Int Lic 4.0 1 CPU	1	4/29/2004
7166	Northrup Grumman	1733liwif000pues	Epic Interchange Fxd Lic	1	5/3/2004
5415	EDO PSD (AERA-VA)	2102iit34400pues	E3 w Print/Web/Inetchg Lic 4CPU	1	5/3/2004
7854	General Atomics Aeronautical Systems, Inc.	1950iit32400pues	E3 w Print/Web/Int Lic 2 CPU	1	5/4/2004
7510	Beckman Coulter	1733liwif000pues	Epic Interchange Fxd Lic	1	5/4/2004
6645	EDF/DER	1737liwic000pues	Epic Interchange Cnc License	1	5/4/2004
6645	EDF/DER	1733liwif000pues	Epic Interchange Fxd Lic	1	5/4/2004
2387	Northrup Grumman Mission Systems	1733liwif000pues	Epic Interchange Fxd Lic	1	5/5/2004

software to MRO in September 2000, the joint development effort was abandoned. The total revenue that Arbortext received that was related to E-Catalog and Site License was obtained from MRO.com (refer to Exhibit D for amounts).

The Partner Program and Technology Partner fees shown on Exhibit D are related to the various Partner relationships Arbortext has established. On occasion, Arbortext has collected a fee from a Partner. This practice has usually been an area of negotiation with the Partner and Arbortext has typically not received a fee.

Arbortext Partners

We selected 15 Arbortext Partners in order to examine the quantity of software that was distributed to those Partners. The Partners that were reviewed and the type of relationship to Arbortext are as follows:

Armedia – Reseller	OmniLingua – Marketing Alliance
Dakota Systems – Subcontractor	Thomas Technology - Reseller
DMSi – Marketing Alliance	Valley Forge Technical – Subcontractor
Documentum – Technology partner	Absolute Data – Sales Agent
First Consulting Group – Integrator	Sogitec – Value Added Distributor
Inmedius / Vektas	Kyoshinsha - Reseller
2BSmart – Reseller	Global Technology – Sales Agent
Kontentsu – Integrator	

Exhibit E shows the quantity and type of software that has been distributed as demos to each Partner as well as any software sales. In the two cases where a Partner purchased the software, we verified that software purchase in the Cumulative Royalty Report sent to Blueberry, Exhibit A.

Distribution

In order to review the software distribution and the recording of sales, we reviewed the customers listed in Exhibit F. Exhibit F shows all products that were distributed to the particular customer as well as the associated revenue. We verified that the Active Licenses identified in the "Key Database" (WP-19) had revenue associated with them in the Total Arbortext Sales Database (WP-1). We also verified the number of Active Licenses with the number of licenses reported in the Cumulative Royalty Report sent to Blueberry, Exhibit A.

During our preliminary review of the "Key Database" we found several instances where a customer had additional licenses available to them as compared to purchased licenses. This discrepancy was mainly attributable to poor record keeping practices at Arbortext prior

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to 2003. The current key distribution system is linked with the current product sales and is automated versus manual and is less prone to errors.

After our initial findings Arbortext performed a review of the "Key Database" to fix these errors. We reviewed the corrections to the key database with a sample of customers that had been recorded in error. Testing included matching active license keys to purchased license keys for the sample (WP-19).

In reviewing the revised active license keys database (WP-19) related to Blueberry software, we identified a total of 2,245 active licenses through Q3 2004. Based on the Blueberry royalty report (Exhibit A) there were a total of 2,284 purchased licenses through Q3 2004. The discrepancies from purchased licenses to active licenses are mainly attributable to customers not utilizing all products purchased (one specific customer accounts for a substantial portion of this difference). Additionally, Arbortext has put procedures in place to review purchased licenses to active licenses as each renewal maintenance occurs.

Specific Companies

Exhibit G lists five specific customers that are believed to have Blueberry software based upon references found by Blueberry on the internet. Exhibit G also shows the results of our comparison of the Key Database, the Total Arbortext Sales Database, and the Cumulative Royalty Report.

- LRN – The Internet reference suggests that LRN has Interchange. The Key Database, the Total Arbortext Sales Database, and the Cumulative Royalty Report are in agreement that LRN purchased Interchange and Blueberry was paid a royalty (WP-15).

- Planetgarden - In a description contained on Arbortext's website under "Our Customers," it is suggested that Planetgarden.com has the ability to achieve results that are the same as what is accomplished with Interchange. From a review of the Key Database, there are no active licenses with Planetgarden.com for a Blueberry product. The Total Arbortext Sales Database shows that they did, however, purchase Adept Editor, Epic Editor, training, and consulting services from Arbortext (WP-16).

- U.S. Coast Guard – A solicitation notice from the U.S. Coast Guard requests maintenance on 2 E3 single processor licenses and 2 E3 quad processor licenses (WP-18). Our review of the Key Database and the Total Arbortext Sales Database both agree that only one E3 single processor license and 1 E3 quad processor license were ever sold to the U.S. Coast Guard. This finding agrees with the Cumulative Royalty Report as well.

- DFAS SB/FPA (Hill AFB) – This was another customer that was serviced by the same distributor that handled the U.S. Coast Guard order. Our review of the Key Database and the Total Arbortext Sales Database both agree that only one E3 Print/Web/Interchange license was sold. This finding agrees with the Cumulative Royalty Report states as well.

- Trellis Neutech S. Pte Ltd (Singapore) – The internet reference suggests that Trellis Neutech has E3. Our review of the Key Database and the Total Arbortext Sales Database both agree that Trellis Neutech has never been a customer of Arbortext. It is uncertain as to how Trellis Neutech may have obtained E3.

plante
moran

Exhibit 4

Responses to License Questions:

1. Customer #7103 – Teradyne

    Q: Has active interchange license but does not have a purchase associated with the product, only maintenance renewals.

    A: One interchange license was provided free of charge so the customer could pilot the interchange product, which would hopefully lead to future sales of the product.

2. Customer #6524 – Nokia

    Q: Has 63 interchange licenses but has only purchased an epic author license

    A: The customer exchanged 63 Epic Editors for some Fixed Editors and Print Composers. The exchange was incorrectly booked to Interchange License. Later on, when a correction was made to take the interchange licenses out of the system, only the interchange *maintenance* SKU was credited, and not the interchange *license* SKU. The customer has never used these licenses and we have now removed the licenses from our system.

3. Customer #3783 – Lloyds Register

    Q: Has a 2 cpu license and only purchased a 1 cpu license

    A: The customer is using a single CPU for E3 but has it installed on a machine that has 2 CPUs. Therefore the 2 CPU key reflects the machine on which it's installed. We did not charge the customer extra for using the single E3 CPU on its 2 CPU hardware.

4. Customer #3996 – Pfizer

    Q: Has 6 active licenses and only purchased 3 licenses

    A: The customer exchanged one of its three concurrent interchange licenses for two fixed licenses, but the exchange was incorrectly entered twice in the licensing system (see note after question number 10 below). (Four fixed licenses were reflected in the system instead of two.) The additional two fixed licenses were never in use, and we have now removed the licenses from our system. The system now correctly reflects two concurrent interchange licenses and two fixed interchange licenses.

5. Customer #4052 – Canadian Pharmacists

    Q: Has active interchange but no purchases.   + 1 FREE CONCURRENT INTER CHANGE

    A: A single license of interchange was provided free of charge to the customer due to the customer's inability to use E3 interchange capability in their own application of E3. A royalty was paid on the customer's purchase of the E3.

Exhibit 4

6. Customer #6766 – ACP-ASIM
   Q: Has 2 active interchange licenses and purchased only 1

   A: The customer only purchased one interchange license and only one interchange was ever licensed and used by the customer. One additional license was incorrectly posted in our system (see note after question number 10 below), and has now been removed.

7. Customer #6812 – Bloomberg Financial
   Q: Has 2 active interchange licenses and purchased only 1

   A: The customer only purchased one interchange license and only one interchange was ever licensed and used by the customer. One additional license was incorrectly posted in our system (see note after question number 10 below), and has now been removed.

8. Customer #6840 – Litton Systems
   Q: Has 4 active interchange licenses and purchased only 2

   A: The customer purchased two interchange licenses and only two interchange licenses were ever licensed and used by the customer. Two additional licenses were incorrectly posted in our system (see note after question number 10 below), and have now been removed.

9. Customer #6910 – CACI Federal INC
   Q: Has 3 active interchange licenses and purchased only 2

   A: The customer purchased two interchange licenses. Only two licenses were ever in use by the customer. One additional license was incorrectly posted in our system (see note after question number 10 below), and has now been removed.

10. Customer #7167 – EDF Pole
    Q: Has 6 active interchange licenses and purchased only 5

    A: The customer purchased five interchange licenses. A Fixed Epic Publisher was also converted to 1 Epic Editor, 1 Interchange, and 1 Print Composer at no charge to the customer. Therefore, the customer has a total of six active interchange licenses.

    NOTE: All duplication errors occurred prior to 2003, largely due to the initial manual population of data within our Vantive system. The system is now self-monitoring.

Exhibit 5

```
if Mid ({INVDET.INVD_PART_NO},7,2) = 'o3' and {INVDET.INVDTYP_MSTRSST}="c"
and totext({INVOICE.INV_DT},'yyyyMMdd') > '20040930' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(40000 + (25000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* -{INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 'o3'
and totext({INVOICE.INV_DT},'yyyyMMdd') > '20040930' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(40000 + (25000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* {INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) in ['u3','v3'] and {INVDET.INVDTYP_MSTRSST}="c"
and totext({INVOICE.INV_DT},'yyyyMMdd') > '20040930' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(50000 + (27500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* -{INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) in ['u3','v3']
and totext({INVOICE.INV_DT},'yyyyMMdd') > '20040930' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(50000 + (27500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* {INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 't3' and {INVDET.INVDTYP_MSTRSST}="c"
and totext({INVOICE.INV_DT},'yyyyMMdd') > '20040930' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(60000 + (30000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* -{INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 't3'
and totext({INVOICE.INV_DT},'yyyyMMdd') > '20040930' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(60000 + (30000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* {INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 'o3' and {INVDET.INVDTYP_MSTRSST}="c" then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(30000 + (20000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* -{INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 'o3' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(30000 + (20000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* {INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) in ['u3','v3'] and {INVDET.INVDTYP_MSTRSST}="c" then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(40000 + (22500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* -{INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) in ['u3','v3'] then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(40000 + (22500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* {INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 't3' and {INVDET.INVDTYP_MSTRSST}="c" then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
```

Exhibit 5

```
(50000 + (25000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* -{INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if Mid ({INVDET.INVD_PART_NO},7,2) = 't3' then
((10000 + (2500 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1)))/
(50000 + (25000 * (tonumber(mid({INVDET.INVD_PART_NO},9,1)) - 1))))
* {INVDET.INVD_COST_EXT} *{EXCHANGE_RATE.EXCHANGE_RATE}
else
if {INVDET.INVDTYP_MSTRSST}="c" then
-{INVDET.INVD_COST_EXT}*{EXCHANGE_RATE.EXCHANGE_RATE} else
{INVDET.INVD_COST_EXT}*{EXCHANGE_RATE.EXCHANGE_RATE}
```

Exhibit 6

Pricing

100% Pure XML

North American/Asia-Pacific Pricing

- All prices are quoted in US Dollars.
- Prices are subject to change without notice.
- Prices apply to orders originating from North America, South America and Asia / Pacific only. For orders from Europe, please see our

- Prices do not include shipping, taxes, customs, duties, or similar charges.
- Refer to the Supported Platforms page to find out which versions of Arbortext products, product options, or development tools are compatible with your platform(s).
- Global versions are those that support Unicode for languages that use double-byte characters. Our Global product currently supports Japanese, Korean, Simplified Chinese and Traditional Chinese.
- UNIX versions of Epic are available *only* as concurrent licenses.
- To order Arbortext products,   for your region.

Server Products

	Standard Version		Global Version	
	License	Maint.	License	Maint.
Epic E-Content Engine (E3)				
Epic Intermarket				

All prices are quoted in US Dollars

Editor Products

	Standard Version		Global Version	
	License	Maint.	License	Maint.
Epic Editor LE				
Fixed	550	95		
Epic Editor				
Fixed	1,350	230	1,620	275
Concurrent	2,700	460	3,240	550

All prices are quoted in US Dollars

Editor Options

	Standard Version		Global Version	
	License	Maint.	License	Maint.
Print Composer				
Fixed	1,200	205	1,440	245
Concurrent	2,400	410	2,880	490

Exhibit 6

Arbortext

The E-Content Power Hour

User/Group Manager

Exhibit 6

Entire Site

Find It!

Advanced Search | Tips

Home
Become a Member
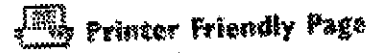
• Market Trends
• Press Releases

Library
Community
Resource Directory
Events & Broadcast
Workforce

Edit My Profile
FAQ
Sponsorship
About Us
About Us Advertise

CRM Community
EA Community
Portal Community
DCI Events
DCI NetSessions
DCI eClasses

Arbortext Announces Launch of Epic Intermarket, an XML Based B2B Commerce Solution

🖨 Printer Friendly Page

ANN ARBOR, Mich., November 13, 2000- Arbortext, Inc., a leading provider of content management integration software and business-to-business commerce solutions, today announced the availability of Epic Intermarket, a solution that enables suppliers and net marketplaces to deploy catalog applications that offer more extensive, more personalized and more usable content. A leading marketplace for industrial parts that publishes an online catalog with millions of parts from thousands of suppliers is among the first e-businesses to utilize Epic Intermarket for its online marketplace.

Epic Intermarket is a solution built on XML, the new Web language for e-commerce and a standard that Arbortext helped develop. Epic Intermarket helps organizations differentiate themselves from their online competitors by providing more extensive and more usable content to drive a superior product selection and customer self-service experience. An online marketplace driven by enriched content enables e-marketplaces to create online catalogs that offer more information than typical line item catalogs, which allows prospects to find, compare and select products much more easily than before – improving the product selection experience and attracting more customers and more purchases to their site.

Epic Intermarket is built upon Arbortext's pioneering Epic E-Content Engine (E3), a Web-based system for aggregating, storing, assembling and distributing enriched content.

—> **Content aggregation.** Epic Intermarket leverages the power of E3 to gather content from multiple sources including Word, FrameMaker and Interleaf, and convert that content into reusable XML components. E3 also works with Arbortext's Epic Editor and Epic Editor LE, both of which enable direct creation of XML content.

Content management. Epic Intermarket integrates with repositories from Oracle, Documentum and others to enable seamless creation and management of reusable and intelligent XML information components.

Content distribution. Through E3, Epic Intermarket extracts content from the repository, assembles it according to individual

Products

Intermarket Features

Intermarket Datasheet

Business Benefits

Intermarket
Catalog content management solution

Deliver product information on multiple media and to multiple marketplaces

Current Version: 1.0

First Release: January 2001

Latest Release: January 2001

Compatible Products: Intermarket leverages the power of Epic Editor and the Epic E-Content Engine (E3), both of which are included in a minimum Intermarket installation

O/S Compatibility: Microsoft IIS Web server running on NT Server 4.0/SP5 or later or Netscape's iPlanet Web server running on Sun Solaris 7; Oracle 8/FS; Java Runtime Engine 1.1.8 or later

Minimum System Requirements: Server: Dual Pentium III (or Solaris equivalent), 700 MHz, 1G RAM, 2GB disk space

Product Focus: Server-based software for capturing, managing, formatting and distributing catalog content

Description

Intermarket includes software and services to keep all of your product information current and consistent across all media – Web, print and CD-ROM. Designed for both suppliers and marketplaces, Intermarket helps you create content-rich catalogs for print, Web and CD-ROM from a single-source.

Intermarket provides capabilities typically needed by medium and large multinational companies with complex organizational structures, multiple product lines, high volume and diverse customers. These capabilities include Intermarket's support for multiple user groups, multiple catalogs, multiple taxonomies (product classification schemes), and global languages.

Intermarket's capabilities fall into five broad areas, each of which is explained in detail below:

Content Capture, Aggregation and Maintenance: conversion of catalog content and service information from other sources into XML; interfaces and access controls so that multiple workgroups, departments, divisions or suppliers can maintain their content separately

- **Content Sources:** XML databases, Excel spreadsheets, CSV files, Word documents, FrameMaker documents, Interleaf documents, relational databases, Web forms, Ariba, Commerce One, direct XML
- **Content Maintenance:** create and maintain content in three ways: 1) through a separate installation of Intermarket; 2) through the browser-based Content Manager; 3) through submitting files in existing formats (see "Content Sources" above)

Exhibit 7

Mark,

1-Planetgarden.com did not purchase an E3. Below is summary of all of their orders with us. Can you please send me the URL that says they purchased an E3, so that I can have our marketing team correct this?

Date							
4/12/00	33026	6949	Planetgarden.com	Consulting	1,840	1,840	
4/12/00	33026	6949	Planetgarden.com	Consulting	1,840	1,840	
4/12/00	33026	6949	Planetgarden.com	Consulting	1,840	1,840	
4/12/00	33026	6949	Planetgarden.com	Consulting	525	525	
4/12/00	33043	6949	Planetgarden.com	Adept Editor LE Fxd Lic 9.0	595	595	
4/12/00	33043	6949	Planetgarden.com	Adept Editor LE Fxd Mnt 9.0 04/01/00 -03/31/01	100	100	
8/09/00	34968	6949	Planetgarden.com	Epic Editor Fxd Lic 3.0	1,350	1,350	
8/09/00	34968	6949	Planetgarden.com	Epic Editor Fxd Mnt 3.0 09/01/00 -08/31/01	230	230	
8/17/00	35067	6949	Planetgarden.com	Training Course Books	300	300	
8/17/00	35067	6949	Planetgarden.com	Training Course Books	300	300	
						8,920	

2-Epic Intermarket was a new product that was to be developed some years ago, however it never was developed. There have never been any sales of this product. Can you please send me the URL's on this, so our marketing team can look into this?

Thanks,
Karen

-----Original Message-----
From: Mark Robinson [mailto:Mark.Robinson@plantemoran.com]
Sent: Tuesday, December 07, 2004 6:55 PM
To: Karen Sharplin
Cc: Dave Peralta; crast@psedlaw.com
Subject: Questions and Report

Karen -

I have two last questions:

1) I notice on your web site that Planetgarden.com is a client that purchased E3. Where would this sale show up in the data?

2) I have seen on a few web sites the mention of an Arbortext product called Epic Intermarket which sounds like an extension of E3. Why don't I see any sales of Epic Intermarket?

Document1

Exhibit 7

If you could call me regarding these two questions, I would appreciate it.

I am planning on releasing a draft of my report to both sides once we have resolved these two points.

Mark A. Robinson
Plante & Moran, PLLC
27400 Northwestern Hwy.
Southfield, MI   48037-0307
Tel: 248.223.3730
Cell: 248-943-6280
Fax: 248.603.5854
Email: Mark.Robinson@plantemoran.com

Exhibit 8

Date   Time FAX Requested
04/26/01   13:16:50

From: Silicon Valley Bank
        3003 Tasman Drive
        Mail Sort NC...
        Santa Clara, CA 95054

                                        (408) 654-7792
                                FAX (408) 496-2401

To: ARBORTEXT INC
        1000 VICTORS WAY
        ANN ARBOR, MI 48108

RE : CREDIT ADVICE

Date Received   04/26/01

Time Received From FED   13:16:45

Sending ABA   011500010

Receiving ABA   121140399

FED Reference Number   010426033302

Amount $100,000.00

Receiving Account   003300097340 DDA   *Prepay*

Sender Text--
FLEET PROV   /ORG=PROJECT SOFTWARE & DEVELOPMENT INC BEDFORD MA
01730-1402;

Receiver Text--
SIL VLY BK SJ   /CTR/BNF=ARBORTEXT INC/AC-3300097340;OBI=INV AB0232;

                                        WH 786-1000

OMAD Sequence No   000786
IMAD Sequence No   007715

Arbortext, Inc.
1000 Victors Way
Ann Arbor MI 48108
734.997.0200 Fax:734.997.0201

Remit to: Dept. CH10746
             Palatine IL 60055-0746

Bill To:	MRO Software, Inc. Accounts Payable 100 Crosby Dr. Bedford, MA 01730	Ship To:	MRO.com Richard Burns 100 Crosby Dr. Bedford, MA 01730

MRO Software, Inc.

Customer Number	P.O. Number	Ship Via	F.O.B. Point	Ship Date
7213	Prepaid	fedx 2day	n/a	

Terms	Order Number	Salesperson	Due Date	Payment	Payment Number	
30 days	41243	54	30-May-2001	wt	786-1000	

Part No./Description	Ordered	Shipped	Backordered	Price	Disc.%	Tax	Extended
19276oa0000pues / E-Catalog Application License	1.00	1.00	0.00	100,000.00	0.00	t	100,000.00

Prepaid on w/t 786-1000.

Checks: Drawn on U.S. Branch (New York)

Wire Transfer:

    ABA: 121140399 A/C: 3300097340

    Silicon Valley Bank Palatine IL 60055-0746

Subtotal	$	100,000.00
	$	
Sales Tax		0.00
Total Due	$	100,000.00

All Funds in US Dollars

ORDER ENTRY CONTROL

Exhibit 9

EXHIBIT B

ATI PROGRAMS

1. Epic Editor
2. Epic Architect
3. E3
4. Oracle Adapter
5. Forms Input Engine
6. Broadvision Adapter
7. E-Catalog Application

Exhibit 9

MRO.com Bookings Allocation

Original Proposal Pricing

Product		Unit	Qty		Extended		Suggested Bookings
Epic Editor	$	1,400	75	$	105,000	$	90,684
Annual Maintenance	$	240	75	$	18,000	$	15,546
Epic Architect	$	4,950	1	$	4,950	$	4,275
Annual Maintenance	$	840	1	$	840	$	725
E3 *from invoice, only print web*	$	35,000	1	$	35,000	$	30,228
Annual Maintenance	$	5,950	1	$	5,950	$	5,139
Oracle Adapter	$	400	75	$	30,000	$	25,910
Annual Maintenance	$	70	75	$	5,250	$	4,534
Forms Input Engine	$	10,000	1	$	10,000	$	8,637
Annual Maintenance	$	1,700	1	$	1,700	$	1,468
Broadvision Adapter *(7) - consulting*	$	7,500	1	$	7,500	$	6,477
Annual Maintenance	$	2,170	1	$	2,170	$	1,874
E-Catalog Application *- will be a product..*	$	95,000	1	$	95,000	$	82,047
Annual Maintenance	$	16,150	1	$	16,150	$	13,948
Software Subtotal				$	337,510		$291,492

Services

Phase I				$	63,000	$	54,410
Specifications Development							
Phase II							
Data Modeling and Catalog Application Configuration				$	60,000	$	51,819
Data Burst and Data Load				$	90,000	$	77,729
Phase III							
E3 Configuration				$	120,000	$	103,638
Internet Connection Tool				$	90,000	$	77,729
Phase IV							
Forms Creation and Forms Input Engine Configuration				$	50,000	$	43,183
Services Subtotal				$	473,000	$	408,508
Discount				$	(110,510)	$	-
Total				$	700,000	$	700,000

MRO Allocation

6. Conclusion

There are three areas that I believe are <u>potential</u> discrepancies regarding the Arbortext / Blueberry SPA. As noted earlier in this report, Plante & Moran will need to defer to Arbortext, Blueberry, and their respective legal counsel to interpret the agreement on these points.

1. Allocation of E3 Revenue - If it is determined that Arbortext's treatment of revenue associated with E3 sales is found to be in accordance with the terms of the SPA, Plante & Moran did not find any exceptions in Arbortext's calculation of royalties in this regard. If Arbortext's treatment of revenue associated with E3 is found to not be in accordance with the terms of the SPA, then Arbortext has understated their royalty payments

2. Maintenance Revenue - If it is determined that Arbortext's treatment of maintenance revenue is found to be in accordance with the terms of the SPA, Plante & Moran did not find any exceptions in Arbortext's calculation of royalties in this regard. If Arbortext's treatment of maintenance revenue is found to not be in accordance with the terms of the SPA, then Arbortext has understated their royalty payments

3. MRO.com Relationship – As detailed in Exhibit D, Arbortext received revenue from E-Catalog and a Site License. It is unclear as to what software components are contained in E-Catalog or are part of a Site License. Plante & Moran has certain documentation regarding this relationship and sales revenue (WP-10) but will defer to Arbortext as to what information can be provided to Blueberry.

This report is intended solely for the information and use of the specified users listed above and is not intended to be and should not be used by anyone other than these specified users.

Sincerely,

Plante & Moran, PLLC

Mark A. Robinson

plante
moran

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am a citizen of the United States and over the age of eighteen years. I am not a party to this action. I am employed in the county where the delivery described below occurs and my business address is 1300 Clay Street, Suite 1000, Oakland, California 94612.

On the date indicated below, I caused to be served the following document(s):

BLUEBERRY'S SOFTWARE INC.'S RESPONSE TO PARAMETRIC'S TECHNOLOGY'S MOTION TO DISMISS
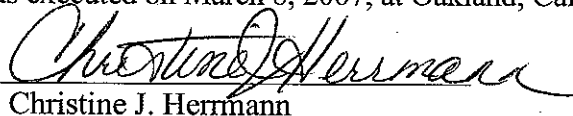
On the following party(ies) in this action:

A. Michael Palizzi, Esq.   Hannah R. Cook
Miller, Canfield, Paddock & Stone, PLC   American Arbitration Association-Northeast
150 West Jefferson, Ste. 2500   Case Management Center
Detroit, MI 48226   950 Warren Avenue
                                      East Providence, RI 02914

As follows:

☒	**BY MAIL (CCP §§ 1013A, *et seq.*)** I am readily familiar with the practice of my employer for the collection and processing of correspondence for mailing with the United States Postal Service, by which correspondence is placed, in a sealed envelope, postage prepaid, in the designated station for outgoing mail, and is the same day delivered to the United States Postal Service. I served such envelopes following this practice.
☐	**BY HAND DELIVERY/PERSONAL SERVICE (CCP §§ 1011, *et seq.*)** I caused said envelopes to be personally served.
☐	**BY EXPRESS SERVICE (CCP §§ 1913 (c)(d), *et seq.*)** I caused said envelopes to be deposited with an express service carrier or Express Mail in accordance with the carrier's designated practice.
☐	**BY TELECOPY/FACSIMILE (CCP §§ 1912.5, *et seq.*)** I caused said document(s) to be sent by telecopier to the facsimile numbers indicated.
☒	By Electronic Transmission

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 8, 2007, at Oakland, California.

Christine J. Herrmann

[\POS]

PROOF OF SERVICE