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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91193335
Party	Defendant RStudio, Inc.
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Date	04/20/2011
Attachments	Applicant's Notice of Reliance.pdf (7 pages)(24558 bytes) Exhibit A File on Public Record.pdf (61 pages)(1868674 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EMBARCADERO TECHNOLOGIES, INC.,

Opposer,

v.

RSTUDIO, INC.

Applicant.

Opposition No. 91193335

Applications S.N.

77/691980

77/691984

77/697987

APPLICANT'S NOTICE OF RELIANCE

Pursuant to 37 CFR §§ 2.120(j)(1); 2.120(j)(5); and 2.122(e), Applicant RStudio, Inc. ("Applicant"), by its attorneys, hereby submits through its Notice of Reliance that it will or may rely upon and make of record with this opposition proceeding the items set forth below.

- A. Specified portions of the 30(b)(6) discovery deposition of Opposer Embarcadero Technologies, Inc. ("Opposer"), dated November 4, 2010, as well as any applicable exhibit discussed in the specified portions. Applicant intends to rely on pp. 1-4, 12-27, 40-50, 53-54, 60-67, 70-80, and 93-98 and deposition Exhibit 6. Pursuant to the Board's Standardized Protective Agreement, certain portions of the above referenced excerpts have been designated by Opposer as "Trade Secret/Commercially Sensitive" and, accordingly, have been redacted from the transcript for public filing. A Notice of Reliance without redaction shall be filed concurrently under seal. A true and correct copy of these excerpts from the certified transcript and a copy of the deposition exhibit are attached hereto as Exhibit A.
- B. Opposer's Amended Responses to Applicant's Amended First Set of Interrogatories, specifically, Opposer's Response to Interrogatory No. 14. A true and correct copy is

attached hereto as Exhibit B.

- C. Chapters 19 (pp. 369-372), 20 (pp. 373-433), and 23 (pp. 463-468) of R In a Nutshell: A Desktop Quick Reference by Joseph Adler, released in December 2009 by O'Reilly Media Inc., 1005 Gravenstein Highway North, Sebastopol, CA 95472, upon which applicant intends to rely to demonstrated statistical computing functions inherent in the R computing language. A true and correct copy is attached hereto as Exhibit C.
- D. Applicant's current website (www.rstudio.org) as of April 18, 2011, upon which Applicant intends to rely to demonstrate: (1) Applicant's current use of its RSTUDIO trademark; and (2) Applicant's direct offering of its RSTUDIO statistical computing software. A true and correct copy is attached hereto as Exhibit D.
- E. A collection of fifty (50) web pages which demonstrate that the term "studio" is commonly used in the names of software products which are comparable to products offered by the Opposer or the product offered by the Applicant. For the convenience of the Board, a summary presenting the contents of these voluminous web pages has been included. True and correct copies are attached hereto as Exhibit E.

1. <http://www.activestate.com/activeperl-pro-studio>
2. <http://www.activestate.com/activetcl-pro-studio>
3. <http://www.apтана.com/>
4. <http://www.aquafold.com/>
5. http://www.atmel.com/dyn/products/tools_card.asp?tool_id=2725
6. <http://www.atxtechnologies.co.uk/>
7. http://www.yessoftware.com/products/product_detail.php?product_id=1
8. <http://www-01.ibm.com/software/integration/optimization/cplex-optimization-studio/>
9. <http://www.ivrsoft.com/ct-developer-studio.htm>
10. <http://datafeedstudio.com/>
11. <http://www.devart.com/dbforge/mysql/studio/>

12. <http://www.softwarefx.com/devstudio/>
13. http://www.gadwin.com/cad_programs.htm
14. <http://www.eiffel.com/products/studio/>
15. <http://libre.adacore.com/libre/tools/gps/>
16. <http://usa.autodesk.com/adsk/servlet/pc/index?id=11179508&siteID=123112>
17. <http://www.ohloh.net/p/gtkstudio>
18. <http://www-01.ibm.com/software/data/optim/data-studio/>
19. <http://software.intel.com/en-us/intel-parallel-studio-home/>
20. <http://ironpythonstudio.codeplex.com/>
21. http://www.redhat.com/developer_studio/
22. <http://confluence.atlassian.com/display/JIRASTUDIO>
23. <http://www.thekompany.com/projects/kdestudio/>
24. <http://www.liquid-technologies.com/>
25. <http://www.ufasoft.com/lisp/>
26. <http://lua-studio.luaforge.net/>
27. http://www.enterprisedb.com/products/postgres_plus_as/overview.do#TabOverview
28. <http://www.omnis.net/products/studio/index.html?detail=overview>
29. <http://www-01.ibm.com/software/data/optim/development-studio/>
30. <http://www.oracle.com/technetwork/server-storage/solarisstudio/overview/index.html>
31. <http://www.devert.com/dbforge/oracle/studio/>
32. <http://www.cayoren.com/Perl-Studio/>
33. <http://www.cayoren.com/PHP-Studio/>
34. <http://www.qppstudio.net/documentation.htm>
35. <http://www.realsoftware.com/realstudio/>
36. https://www-304.ibm.com/jct03001c/services/learning/ites.wss/us/en?pageType=course_description&courseCode=B2425
37. <http://www.microsoft.com/robotics/>
<http://www.abb.com/product/seitp327/78fb236cae7e605dc1256f1e002a892c.aspx>
38. [asp](http://www.abb.com/product/seitp327/78fb236cae7e605dc1256f1e002a892c.aspx)
39. <http://support.sas.com/rnd/app/studio/studio.html>
40. <http://www-01.ibm.com/software/data/informix/serverstudio/>
41. <http://www.synsys.com/Products/stStudio/index.html>

42. <http://www.codesegment.com/products.htm>
43. <http://www.sqlstudio.com/>
44. <http://www.sqlmanager.net/products/studio/oracle>
45. <http://susestudio.com/>
46. <http://kakunin.chat.ru/tcldev/>
47. <http://www.pragsoft.com/>
48. http://www.microsoft.com/visualstudio/en-us/visual-studio-2010-launch?WT.mc_id=SEARCH&WT.srch=1
49. <http://www-01.ibm.com/software/integration/wsadie/>
50. <http://shop.zend.com/en/zend-studio-for-eclipse.html?gclid=CLaPucz6aMCFd9n5QodISw92Q>

F. A collection of fifty (50) web pages which demonstrate that the term “ER” as applied to relational databases and database software means “Entity Relationship.” For the convenience of the Board, a summary presenting the contents of these voluminous web pages has been included. True and correct copies are attached hereto as Exhibit F.

1. <http://www.pera.net/Methodologies/ARIS/ARIS.html>
2. http://www.umsl.edu/~sauterv/analysis/er/er_intro.html
3. <http://wofford-ecs.org/DataAndVisualization/ermodel/material.htm>
4. http://www.conceptdraw.com/en/products/cd5/ap_er_diagram.php
5. http://media.visual-paradigm.com/media/documents/dbva40dg/pdf/dbva_designer_guide_chapter_4.pdf
6. <http://databases.about.com/cs/specificproducts/g/er.htm>
7. <http://searchsqlserver.techtarget.com/definition/entity-relationship-model>
8. http://www.worldlingo.com/ma/enwiki/en/Entity-relationship_model
9. http://www.pcmag.com/encyclopedia_term/0,2542,t=entity+relationship+model&i=42662,00.asp
10. <http://www.scribd.com/doc/3053988/ER-Diagram-convention>
11. <http://www.dulcian.com/FAQ/Designer%20FAQ%20page.htm>
12. <http://cisnet.baruch.cuny.edu/holowczak/classes/9440/entityrelationship/>
13. <http://www.downloadatoz.com/toplight/entity+relationship+diagram.html>
14. <http://msdn.microsoft.com/en-us/library/aa224825%28SQL.80%29.aspx>
15. http://www.sethi.org/classes/cet415/lab_notes/lab_03.html

16. <http://www.utexas.edu/its/archive/windows/database/datamodeling/index.html>
17. <http://bit.csc.lsu.edu/~chen/chen.html>
18. <http://www.aquafold.com/er-modeler.html>
19. <http://www.tmssoftware.com/site/tmsdm.asp>
20. <http://www.casestudio.com/enu/products.aspx>
21. http://www.sqlmaestro.com/products/mysql/maestro/tour/database_designer/
22. http://www.sparxsystems.com/enterprise_architect_user_guide/modeling_languages/entity_relationship_diagrams_e.html
23. <http://www.visual-paradigm.com/product/vpuml/provides/dbmodeling.jsp>
24. <http://www.orafaq.com/tools/heraut/dezign.htm>
25. <http://www.information-management.com/infodirect/20030123/6268-1.html>
26. <http://www.devarticles.com/c/a/Development-Cycles/Entity-Relationship-Modeling/>
27. <http://en.allexperts.com/q/Oracle-1451/Entity-Relationship-Diagrammer.htm>
28. <http://bit.csc.lsu.edu/~chen/pdf/english.pdf>
29. http://en.wikipedia.org/wiki/Entity-relationship_model#ER_diagramming_tools
30. <http://www.codewalkers.com/c/a/Database-Code/Relationships-Entities-and-Database-Design/2/>
31. <http://www.amazon.com/dp/3540582177>
32. <http://www.crcpress.com/product/isbn/9780849315480>
33. <http://www.smartdraw.com/resources/tutorials/entity-relationship-diagrams/>
34. <http://www.ncgia.ucsb.edu/giscc/units/u045/u045.html>
35. http://www.techdictionary.com/search_action.lasso
36. http://it.toolbox.com/wiki/index.php/Entity_Relationship_Diagram
37. http://it.toolbox.com/wiki/index.php/Entity_Relationship_Diagram
38. <http://www.computeruser.com/dictionary/>
39. <http://dictionary.reference.com/browse/ER>
40. <http://www.visual-paradigm.com/VPGallery/datamodeling/EntityRelationshipDiagram.html>
41. <http://www.oppapers.com/essays/Journal-Entry-Reversal-Entity-Relationship-Diagram/96308>
42. http://www.computingstudents.com/notes/database_systems/entities_entity_relationship_er_modelling.php
43. <http://www.edrawsoft.com/chen-erd.php>
44. <http://www.datanamic.com/dezign/index.html>
45. <http://searchcrm.techtarget.com/answer/Data-modeling-Dimensional-vs-E-R>
46. <http://dret.net/glossary/er>

47. http://www.ibm.com/developerworks/rational/library/content/03July/2500/2785/2785_uml.pdf
48. http://bit.csc.lsu.edu/~chen/pdf/Chen_Pioneers.pdf
49. http://www.ischool.drexel.edu/faculty/song/publications/p_Jcse-erd.PDF
50. <http://docs.aquafold.com/docs-er-diagram.html>

- G. A portion of Opposer's website (www.embarcadero.com) which lists software products sold by Opposer, including those branded with the ER/STUDIO mark at issue in this proceeding, which demonstrates how Embarcadero categorizes its various products. A true and correct copy is attached hereto as Exhibit G.
- H. A portion of Opposer's website (www.embarcadero.com) which lists the current prices charged as of April 19, 2011 for various ER/STUDIO products. A true and correct copy is attached hereto as Exhibit H.
- I. A Wikipedia article titled "Comparison of Statistical Packages" that lists a number of statistical software packages and their various features and which is demonstrative of the statistical computing software category as it exists in commerce. A true and correct copy is attached hereto as Exhibit I.

Respectfully submitted,

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Attorneys for Applicant

Dated: April 20, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the above-identified Notice of Reliance upon Opposer's attorneys of record:

Martin R. Greenstein
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4820 Harwood Road, 2nd Floor
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via First-Class Mail and e-mail to MRG@TechMark.com and MPV@TechMark.com.

/Anthony E. Rufo/
Anthony E. Rufo

DATED: April 20, 2011

Exhibit A

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EMBARCADERO TECHNOLOGIES,)
INC.,)
)
Opposer,)
)
vs.)
) Opposition No. 91193335
RSTUDIO, INC.,)
)
Applicant.)
)

DEPOSITION OF JASON TIRET

Date: Thursday, November 4, 2010
9:30 a.m.
Place: TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 9524-5273
Reported by: Linda J. Pugliese, C.S.R.
License No. 4764

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A P P E A R A N C E S

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1 JASON TIRET,
2 being first duly sworn by the Certified Shorthand
3 Reporter to tell the truth, the whole truth and nothing
4 but the truth, testified as follows:

5 EXAMINATION BY MR. RUFO

6 Q. Good morning. My name is Anthony Rufo, and I
7 am from the firm of Foley Hoag, representing my client
8 RStudio, Inc., in a trademark registration opposition
9 before the Trademark Trial and Appeal Board that has
10 been brought by your company Embarcadero Technologies,
11 Inc. Can you please state your name?

12 A. My name is Jason Tiret.

13 Q. Tiret is it?

14 A. Tiret.

15 Q. Thank you. May I call you Jason?

16 A. Yes.

17 Q. Have you ever given deposition testimony
18 before today?

19 A. I have not.

20 Q. So in that case, I'll just go over a little
21 bit about what's going to be taking place today.
22 Obviously, I'm going to be asking some questions, that
23 you will be answering. I would ask that you answer
24 everything vocally and not nod or anything because the
25 reporter needs to take everything down.

1 Q. Yes, please.

2 A. (415)834-3131, extension 300.

3 Q. Thank you. So to begin, I guess the best
4 place to start is with ER/Studio. Can you please tell
5 me what ER/Studio is.

6 A. It is a database design and development tool
7 that our users use to create and develop databases,
8 document databases, report on databases. They'll use it
9 for -- it's just about any type of database application
10 type of tool. We also have other tools under that brand
11 that would do process modeling, conceptual modeling,
12 software application development, and modeling.

13 Q. So you mentioned -- sorry, process modeling?

14 A. Yes.

15 Q. Can you explain to me what that is?

16 A. Process modeling is just the exercise of
17 mapping out a business process. That's going to be
18 anything from taking an order to returning an order,
19 whatever it might be. I mean it's pretty arbitrary.

20 Q. And I believe you mentioned conceptual
21 modeling?

22 A. Conceptual modeling. That's, in a business
23 modeling type of thing where you would map out the --
24 put it in layman's terms, in a really -- just a way to
25 map out the technical infrastructure of an organization

1 but it's geared towards a business user.

2 Q. And then software development, I believe, is
3 one of the other things you mentioned?

4 A. Software development and modeling, it's
5 basically, if they are developing a software
6 application, for whatever it might be, they're going to
7 need to have a technical specification for that
8 software. And one of the products that we have under
9 the ER/Studio brand helps with that. It's called
10 ER/Studio Software Architect.

11 Q. So I guess the best place to go next is to
12 actually ask you to list all of the different products
13 that are under the umbrella of the ER/Studio brand.

14 A. Okay.

15 MR. GREENSTEIN: You can refer to some of
16 the materials we've submitted.

17 THE WITNESS: We've put that in terms of
18 the materials that we gave, but it's ER/Studio Data
19 Architect.

20 BY MR. RUFO:

21 Q. Uh-huh.

22 A. ER/Studio Business Architect. ER/Studio
23 Software Architect. ER/Studio Portal. ER/Studio
24 Repository. And ER/Studio Metawizard. And there's an
25 ER/Studio Viewer as well.

1 Q. So starting with Data Architect, is my
2 understanding correct that ER/Studio Data Architect is
3 what was traditionally in the past just referred to as
4 ER/Studio?

5 A. That's correct. That's really our flagship
6 database design, modeling development tool that we've
7 had when we first developed in 1996, and this we grew
8 from there.

9 Q. Can you please explain to me precisely what
10 Data Architect does and how it helps it's users design
11 and develop databases?

12 A. Well, they can actually, within the
13 environment, they can build the database structure, lay
14 it out visually, and then generate code from that that
15 would actually create the database for them.

16 We can also reverse engineer the database
17 structure and grab in a bunch of information for that
18 that would help them then publish to HTML. And that's
19 kind of what the Portal helps with as well, is to
20 distribute that information out to end users.

21 Q. Can you explain to me what you mean by
22 "reverse engineer"?

23 A. Reverse Engineer is the exercise of reading in
24 the database catalog. They have system tables that tell
25 the database what's in there, how everything is laid

1 out. And we can read that information and then visually
2 build a diagram of what that looks like.

3 Q. So is my understanding correct, then, that
4 with reverse engineering that means there's already a
5 database in place and then they are starting to use the
6 ER/Studio, not necessarily to build that database, but
7 to understand that database.

8 A. Understand, develop new objects into the
9 database, make changes to the existing objects in the
10 database. So we have a full and a round-trip
11 engineering where they can develop new parts of that
12 database, change parts of that database, and generate
13 code for that.

14 Q. What do you mean by "generate code"? What is
15 that used for?

16 A. The code would be SQL. It's called DDL, data
17 definition language.

18 MR. GREENSTEIN: Sequel (phonetic) is
19 S-Q-L.

20 THE WITNESS: Sequel is S-Q-L, that's
21 correct.

22 BY MR. RUFO:

23 Q. And this code, is it then used within the
24 ER/Studio Data Architect itself or is it exported and
25 used by another product?

1 A. We can execute it within our environment or we
2 can hand it off as in a script file, just a text file,
3 that would then be used by another product. And we have
4 products for that as well under different brands within
5 the company.

6 Q. Different brands other than ER/Studio?

7 A. Yes.

8 MR. GREENSTEIN: Jason, if you use
9 technical terms like SQL, the court reporter would
10 very much appreciate it if you would spell them out
11 or --

12 THE WITNESS: Okay.

13 MR. RUFO: I would very much appreciate it
14 as well. Thank you.

15 BY MR. RUFO:

16 Q. So I understand that Data Architect is used
17 either to build a new database or reverse engineer an
18 existing database and then generate code. How is it
19 used in a business or an enterprise on an ongoing,
20 long-term basis?

21 A. Well, it's, you know, there's a whole like
22 life cycle of the database. So you need to design that
23 database, you need to develop the database, you need to
24 manage the database. And really, in terms of designing,
25 that's what ER/Studio is going to help to do.

1 And part of that is understanding what's out
2 there, and then being able to leverage that to create
3 new objects in the database.

4 Q. So when you talk about modeling the database,
5 how is that represented for the user? How do they get a
6 representation of what's contained within the database?

7 A. It has entities as relationships. It has
8 other objects like views that would be -- it's just kind
9 of a -- can bring multiple tables together into one
10 object. So it's not like a view where you're looking at
11 something. It's a view that would be used to partition
12 the data a certain way. They might use it in warehouses
13 to present certain information from the tables to end
14 users in reports that could be analytics, statistics,
15 anything that would be reported to the user. If
16 executives want to see financials and that sort of
17 thing, that's what the database is for.

18 Q. And how is this information represented to the
19 user? Is it a visual representation? Is it a textual
20 representation?

21 A. It's a visual representation.

22 Q. So that would just sort of look like a
23 schematic or a diagram?

24 A. That's correct. You'd have boxes, lines,
25 icons.

1 Q. So there would be boxes that would say what
2 data is contained within that box?

3 A. The box would be for a table for a view, for,
4 you know, store procedure that's like a block of code, a
5 trigger, that would -- that triggers an action in the
6 database when data is inserted into a table.

7 So it can be a number of things. And
8 basically, it's separated by logical, which would be
9 kind of platform database diagnostic; and then physical,
10 which would be a picture of the actual database, and the
11 technical specifications of how you're going to create
12 that database or change it.

13 Q. And you mentioned the lines connecting the
14 boxes, does that mean that those boxes interrelate with
15 each other in some manner?

16 A. Yes.

17 Q. And can you explain what that means exactly?

18 A. Well, with relational theory the relational
19 databases that have been built on, you have tables,
20 which would be similar to like an Excel spreadsheet, you
21 have rows that would be the actual data elements,
22 columns, and you have -- I'm sorry, columns and then
23 rows would be the actual data.

24 And within those you have identifiers. You
25 have a primary key, you have a foreign key, and that

1 tells the database that those two sets of data, those
2 two tables, are related to each other.

3 Q. And you mentioned the word "entity"
4 previously. Are those boxes that we were discussing,
5 are those referred to as entities?

6 A. In the logical model, typically you refer to
7 things as entity, attribute, relationship. In the
8 physical model it's going to be table, column, foreign
9 key. That's just -- those are more of the conventions
10 that are used.

11 Q. So where you have the entities, the lines
12 connecting them, that delineates the relationship?

13 A. Yes.

14 Q. So moving on to the next product that you
15 mentioned, Business Architect, what does Business
16 Architect do?

17 A. That's for the process and conceptual
18 modeling. So a physical model or a logical model that's
19 in Data Architect can get very detailed. It's not
20 uncommon for a database to have a thousand tables in it
21 and thousands of views, procedures, that sort of thing.
22 So the logical model is one level of abstraction for
23 that.

24 The conceptual model is going to be another
25 level of abstraction that's going to provide --

1 basically abstract that into a smaller number of objects
2 that then the business can understand and determine the
3 data, the process that's related to each other on a
4 higher level.

5 Q. Correct me if I'm wrong, but what I think I
6 understand you to represent as the conceptual model is
7 that it's sort of taking one of the models from the
8 larger database and then breaking it down into smaller
9 models, that it's almost like mapping the larger model
10 into a smaller database.

11 A. Its doesn't do anything with the database.
12 It's the other way around, actually.

13 So if you have a logical model that has a
14 thousand entities in it, you might have 30 to 40 or so
15 that are the customer -- that's customer data. It could
16 be address data, phone numbers, e-mail, their normal
17 height, weight, e-mail. Whatever they have there.

18 In the conceptual model you may just want to
19 have one box that says this is the customer data so it's
20 abstracting those into a smaller subset of objects, and
21 that's going to be more clearly communicated to the
22 business users.

23 Q. And does Business Architect have any other
24 functions other than to interact with databases?

25 A. No, it actually doesn't interact with

1 databases. It interacts with Data Architect and reads
2 that information. And then you can use the process
3 models and map to the conceptual models.

4 Q. But the ultimate purpose is database driven?

5 A. Yes, it's just another way to document the
6 database at a different level. So I guess in essence,
7 it's still dealing with data. It might be just on a
8 different level.

9 Q. Is this what would be understood in some way
10 as metadata or --

11 A. Actually, everything that's captured is
12 metadata. So Data Architect has metadata, Business
13 Architect has metadata, and Software Architect has
14 metadata.

15 Q. You mentioned Software Architect, which was
16 the next product that you had mentioned. Can you
17 explain to me what Software Architect does?

18 A. That is -- basically does the same thing that
19 Data Architect would do, but for software.

20 So you have software that's going to interact
21 with the database and present a screen to the user, and
22 you want to document that information as well. It uses
23 the UML, which is the unified modeling language, and
24 that can run a lot of analytics on the software, present
25 stats of object counts, how they are related to each

1 other, if you have inaccurate relationships between what
2 they call class diagrams. But it just documents how the
3 software component of the application communicates with
4 itself.

5 Q. Communicates with itself. I'm not sure that I
6 actually understand exactly what you mean. Could you
7 explain that a little further for me?

8 A. It's basically -- it's documenting the
9 software application, and the software application has a
10 lot of different parts to it that would interact with
11 the database but might present screens to the user that
12 might reference other parts of the software application.
13 And the Software Architect is just a specification of
14 that.

15 Q. And so the software that you're referring to
16 is software that's been built to interact with the
17 database.

18 A. Yeah, it's arbitrary. It's whatever the
19 user's building to enter the data, update the data,
20 present the data, whatever that might be.

21 Q. So this is not necessarily software that was
22 developed by Embarcadero. It could be --

23 A. It's developed by the user. And usually it's
24 developed with products in another part of our business,
25 and that would be RAD Studio. That's a software IDE.

1 And we actually have an ER/Studio Developer Edition --
2 sorry, I didn't mention that with the other versions,
3 but it's a version of Data Architect that's embedded
4 with RAD Studio. It's an application development tool.
5 So we bundle that with that so that when people are
6 developing applications, if they need a database, they
7 can use ER/Studio Developer Edition to create that
8 database.

9 Q. And the next one you mentioned was ER/Studio
10 Portal?

11 A. Yes, right.

12 Q. What does that do?

13 A. So that takes the information that's in the
14 ER/Studio Repository and the repository is where all the
15 models are stored. They might be versioned or have
16 security set on them. And the portal is used to
17 distribute that information from a browser. Allow them
18 to run reports on the information.

19 Q. And you mentioned the repository is where all
20 the different models are stored. Does it do anything
21 else?

22 A. No.

23 Q. And the next one that you mentioned was
24 ER/Studio Metawizard.

25 A. The MetaWizard is used to take the information

1 from the logical or physical design and export that to
2 another format that might be a third party tool that we
3 don't do ourselves, so a lot of times they have a data
4 model and they want to export that information to
5 another tool that we are using. Might be a partner of
6 ours, might not be a partner of ours. The MetaWizard
7 helps them translate the model to another format. We
8 actually just OEM that.

9 Q. What is that?

10 A. OEM is -- I don't even know what it stands
11 for. I just use it. It just means --

12 MR. GREENSTEIN: Original equipment
13 manufacturer.

14 THE WITNESS: Yeah, we're not the
15 manufacturer of that, so we actually have a partner.
16 It's called Meta Integration. That's the company
17 name. They build that product, and we just leverage
18 it and resell it.

19 BY MR. RUFO:

20 Q. And can we get again for the record what OEM
21 stands for?

22 MR. GREENSTEIN: Original equipment
23 manufacturer.

24 MR. RUFO: Thank you.

25 MR. GREENSTEIN: It's what the rest of the

1 world calls rebranding and reselling.

2 THE WITNESS: Right.

3 BY MR. RUFO:

4 Q. So Metawizard, we're dealing, then, with
5 metadata; correct?

6 A. Right. So it takes the metadata and would
7 export it out to other formats that -- other tools out
8 there in the industry that are developed by other
9 vendors, they could load that information in and share
10 the metadata across that.

11 Q. And so I understand, the metadata is the data
12 about the database as opposed to the data contained
13 within the database.

14 A. That's correct.

15 Q. And the next product that you mentioned was
16 ER/Studio Viewer.

17 A. Yes.

18 Q. What does that do?

19 A. That is a -- I think it's a pared-down version
20 of Data Architect where they can load the models,
21 navigate them, and print them. So it's like an Adobe
22 Reader for the PDF. Similar to that.

23 Q. So this doesn't actually, like Data Architect,
24 help create a database, but it gives the user an
25 opportunity to see the database.

1 A. That's correct.

2 Q. And Developer Edition, which was the last one
3 that you mentioned, can you explain a little more
4 exactly what that does?

5 A. Yeah, it's a version of Data Architect that
6 has some functionality taken away from it that is
7 embedded with RAD Studio or IDE for Delphi, for C++, and
8 I think they do some dot net development as well.

9 Q. So this is a tool that basically gives a
10 customer of Embarcadero the opportunity to create
11 databases, but also to create software that will
12 interact with the databases?

13 A. Right.

14 Q. Just so I understand a little bit better about
15 the issue of the entity relationship modeling or the
16 data modeling, explain for me generally what the purpose
17 would be for doing this, what the customers need this
18 for.

19 A. Well, the entity relationship modeling, that's
20 typically the logical model. So that's what you have
21 entities, attributes, how they are related to each
22 other.

23 And there's various notations that they can
24 use that would show how the relationships are defined
25 between objects. You might have a customer, you might

1 have an order and then a line item. And a customer can
2 have one or more orders. An order can have one or more
3 line items. And you'd have notations on those
4 relationships that would show that relationship.

5 You might have relationships that are just one
6 to one, so there's different types of relationships that
7 you have under that relational modeling. And they use
8 that to document how the data is related to each other
9 that's in the database.

10 Q. So is my understanding correct that the
11 purpose for entity relationship modeling and why people
12 are using Data Architect is so that they can understand
13 all of the different data that they are using in their
14 organization and have a visual representation of how all
15 that data is stored and how they relate to one another?

16 A. That's correct, yeah.

17 Q. When was the first product branded ER/Studio
18 first sold?

19 A. The product first released in 1996 and was, I
20 believe, rebranded to ER/Studio somewhere around '97 or
21 '98.

22 Q. So what was it called in 1996, if it wasn't
23 called ER/Studio?

24 A. It was called ER/One.

25 Q. Was that with the numeral 1 or "one" spelled

1 BY MR. RUFO:

2 Q. And I apologize for misconstruing what you
3 said.

4 A. No problem.

5 Q. So statistical computing, to what degree are
6 you using statistical computing with the ER/Studio
7 software?

8 A. Well, I mean it's hard to say, because we
9 don't know what our customers are -- what kind of
10 database they are developing. It would be for
11 statistics, it could be for transactions, it could be
12 for a number of things. So we -- I don't know if we
13 have certain statistics in the product that would get
14 some information from the database. Row counts, average
15 row counts, stats on the data itself.

16 I don't know if we can say we do any
17 statistical computing in it, but again, we don't know
18 what our customers are doing with the product, and they
19 could be doing a number of things that the application
20 they are developing could be for statistical analysis.
21 We do a lot of selling to the data warehouse space,
22 which a data warehouse is basically a specialized
23 database that stores a huge number of records and is
24 used to analyze the data that they are capturing. And
25 that's -- a lot of that is based on statistical

1 analysis, average sales, mean sales, total sales,
2 min-max, anything like that.

3 So I don't know if that answers the question,
4 but there's a, to my knowledge, the best I can answer
5 it.

6 Q. Does ER/Studio, any of the products under the
7 ER/Studio umbrella, have a native ability to compute
8 advanced statistical algorithms?

9 MR. GREENSTEIN: If you know what that
10 means.

11 THE WITNESS: Well, yeah, I'm not sure
12 what that means, but I would probably say probably
13 not. I don't know. Yeah.

14 BY MR. RUFO:

15 Q. So, for instance, I'll give you a example of
16 how someone might use statistical computing, and you can
17 let me know if you think ER/Studio our any of its
18 products would be capable of doing it.

19 So for example, a scientist, maybe a
20 seismologist might have lots of data from a hundred
21 different sites around the world, and this data would be
22 collected in a two-dimensional data frame, like a text
23 file or an Excel spreadsheet, and there might be
24 thousands, possibly tens of thousands of points of
25 information that the scientist would use to run

1 regression analysis to allow him to try to predict what
2 might happen in the future seismologically.

3 MR. GREENSTEIN: I'm going to object to
4 hypotheticals based on counsel's description of some
5 function that's not relevant to the application. If
6 you can answer, go ahead.

7 BY MR. RUFO:

8 Q. Would ER/Studio be capable of taking data like
9 that in running a regression analysis that would allow
10 the user to predict what might happen in the future
11 based on the data that they've collected?

12 MR. GREENSTEIN: If you know what a
13 regression analysis is.

14 THE WITNESS: I mean, to the best I can
15 understand it, we wouldn't do any regression
16 analysis there. But then again, we don't know what
17 customers are doing with the data that they are
18 storing. It could be for regression analysis, it
19 could be for inferring information from a bunch of
20 data, which is a lot of times what a data warehouse
21 would do. And that's one of our core audiences is
22 people that are dealing with data and trying to
23 gather information from the data.

24 BY MR. RUFO:

25 Q. But are they using ER/Studio to gather this

1 information?

2 A. They are using it to gather the information
3 about the information.

4 Q. But if they needed to use the data to run
5 advanced statistical computing, is there a native
6 ability within any of the ER/Studio products to do that?

7 A. Well, what ER/Studio or the products within
8 the family would allow them to do is understand how the
9 data is structured. So a lot of the end users would
10 leverage the model or the specification, design,
11 whatever you want to refer to it, and use that to query
12 information.

13 It would be kind of like a blueprint for a
14 building. If you need to do some work on it, know where
15 things are, you need to understand the blueprint, the
16 design.

17 So they are going to be using the model, the
18 design for that purpose of understanding the data, how
19 to query the data, how to analyze the data.

20 Q. And correct me if I'm wrong, but I understand
21 you to be still talking about information about the
22 database as opposed to use of the data within the
23 database. Is that correct?

24 A. Yes.

25 Q. So does ER/Studio have a native ability to

1 perform statistical calculations on the data itself as
2 opposed to the metadata?

3 A. No.

4 Q. In the course of your work with Embarcadero,
5 have you ever had any exposure to the R programming
6 language?

7 A. No.

8 Q. And has -- to the best of your knowledge, do
9 any of your colleagues in their capacity at Embarcadero
10 use the R programming language?

11 A. I can't really answer that because we have
12 developers that do a lot of software development, and
13 developers know a lot of different languages, so I can't
14 speak for them.

15 Q. As far as you are aware, does Embarcadero make
16 any products, ER/Studio or otherwise, aimed at users of
17 the R programming language?

18 A. Not to my knowledge.

19 Q. And have you or are you aware of Embarcadero
20 having ever received customer inquiries about products
21 that use the R programming language?

22 A. I can't really answer that because, again, we
23 have a lot of products on the software development side,
24 we have product managers there, we have sales specific
25 over there, and I don't deal a lot of times with those

1 users.

2 Q. And specific to the ER/Studio products, are
3 you aware of any inquiries about their ability to
4 interface with the R programming language?

5 A. No.

6 Q. And does Embarcadero tout or refer to R or
7 R-like computing capabilities in any of its ads to
8 ER/Studio products?

9 A. No.

10 Q. Can you explain to me how ER/Studio is sold?

11 A. Well, we have direct sales reps, we have
12 telesales that would be based in San Francisco, and we
13 have remote sales reps that would go on site to various
14 customers and sell directly to them. And then we have
15 partners globally that would sell under various regions
16 and countries throughout the world. And we have some
17 websites like Programmers Paradise that specialize in
18 reselling software that sell our site, our software.
19 Then we have an e-commerce site that we have ourselves
20 that we sell products on.

21 Q. And the e-commerce site, is that what would be
22 referred to as the Embarcadero store online?

23 A. It's the shop site.

24 Q. The shop site.

25 MR. RUFO: Exhibit number 4.

1 (WHEREUPON, Exhibit 4 was marked for
2 identification.)

3 MR. GREENSTEIN: Were you asking about the
4 other applications, or did I miss that?

5 MR. RUFO: No.

6 BY MR. RUFO:

7 Q. Sorry to eat up so much time. Okay. So you
8 mentioned third party resellers of your software?

9 A. Uh-huh.

10 Q. Looking at Exhibit number 4, which was
11 supplied as an exhibit to Embarcadero's responses to
12 RStudio's interrogatories, is this the list of third
13 party sellers who sell ER/Studio in the United States?

14 A. As far as I know. I mean -- as far as I know.
15 I'm sure our lawyer probably pulled this stuff together.

16 Q. If you take a look at the different providers
17 on here --

18 MR. GREENSTEIN: I will represent that
19 this just come off the website yesterday. Put in
20 the United States on the website, and this is what
21 pops up.

22 BY MR. RUFO:

23 Q. If you take a look at this list, are you aware
24 of any third party reseller who is currently selling
25 ER/Studio that is not on this list?

1 A. No.

2 Q. And who at your company, if not you, would be
3 the individual who would know whether or not anyone else
4 is selling ER/Studio besides these?

5 A. I don't know if that's a lawyer, in-house
6 counsel, that would have those contracts of who is
7 selling or selling what to what. That's probably who
8 has most knowledge.

9 Q. And what would that person's name be?

10 A. Duncan Sharp.

11 Q. So in terms of these third party sellers, you
12 just mentioned contracts, are these third party sellers
13 engaged via contract by Embarcadero to sell ER/Studio?

14 A. As far as I know, yes.

15 Q. And you mentioned direct sales, both from the
16 website and through a sales force; is that correct?

17 A. Yes.

18 Q. Can you explain to me how a sale through your
19 sales force would take place?

20 A. They would typically get a lead put into the
21 system, and that could come from a variety of different
22 ways. It could come from searching, it could come from
23 a webinar, it could come from a download. And they
24 would try to make contact with that person, see if they
25 want to evaluate the software, and if they are

1 interested they would probably do some discovery in
2 terms of what their needs are and kind of move along the
3 evaluation, do a product demonstration, they validate
4 that the product's going to work for them and suit their
5 needs and they would purchase.

6 Q. And do you have an idea about how long that
7 process might normally take?

8 A. It can take anywhere from a day to a year. I
9 mean it's really -- the sales cycle can vary quite a
10 bit. When you're dealing with ER/Studio and the
11 products underneath that, it's probably one of our, I
12 would say, longer sales cycles. A lot of times they are
13 looking at a replacement type of deal and they want
14 to -- they want to switch to another product, so they
15 would look at our product, and that takes some
16 validation on their part to understand that it's going
17 to suit their needs. So it could take, I would say, you
18 know, someone wants it right now, one day, to quite some
19 time.

20 Q. And how often, in your knowledge, do you have
21 the I-want-it-right-now, one-day sales?

22 A. These days, kind of rare. So I would say it's
23 maybe weeks, months, and then for larger companies that
24 we have to do a lot of work on the legal side, iron out
25 the license agreement, that could take a lot of time.

1 I mean we've had sales cycles go even beyond a
2 year. So -- but, yeah, it's -- for the inside reps,
3 that can be shorter, a week, two weeks, month type of
4 thing, and the outside reps that are trying to work on
5 the larger deals, that's when it might take more time.

6 Q. Can you define for me the difference between
7 inside rep and outside rep?

8 A. Inside rep usually just is based in San
9 Francisco, and it would call people, dial for dollars,
10 on the phone, and the outside rep is going to be more
11 on-site, relationship selling and doing demonstrations
12 and meetings in person.

13 Q. And how does the sales force target the
14 customers that it's trying to sell them ER/Studio to?

15 A. I guess through marketing. We do quite a bit
16 of marketing on trade sites, in trade magazines, that
17 sort of thing. Yeah.

18 Q. Does ER/Studio get sold in any retail settings
19 such as Circuit City? Does someone go in and buy a box
20 with ER/Studio in it?

21 A. No.

22 Q. And are there any plans to sell ER/Studio that
23 way any time in the futures?

24 A. No. We used to have box and media that was
25 shipped out, but we do it electronically now.

1 Q. And the box and media that were shipped out,
2 that was -- those products still were not at a retail
3 location; correct?

4 A. That's right. I mean, I can't remember for
5 sure back in the day if we sold to schools and then put
6 it on shelves there. I know we did that on the
7 application development side with those products, with
8 the Borland set of tools. That's where the tools
9 originated. We acquired all the application development
10 from Borland and they did a lot of selling on -- retail
11 selling with boxes. But we didn't do a lot with the
12 database products in ER/Studio.

13 Q. So when you're talking about the Borland
14 products, those are not ER/Studio branded products?

15 A. That's the RAD Studio product I mentioned
16 before.

17 Q. In your knowledge, does ER/Studio generally
18 get sold directly to individuals?

19 A. Yeah, in some cases. We might sell to
20 consultants that are building databases for people. And
21 we might sell to -- I know we have had some academic
22 type of licenses sold to schools for use there. But
23 yeah, it would probably mainly be self-employed
24 consultants that would buy the product and -- yeah.

25 Q. Is ER/Studio the sort of product that someone

1 it might lead them to our website or something. So I
2 would say it's more on the marketing side. And that's
3 going to be through mainly other third party technical
4 sites. I don't even have a list of those offhand, but
5 it would be industry type of websites that they'd use to
6 go about information for SQL, the programming language,
7 or databases, data management, those type of websites.

8 And there's some Database Trends and
9 Applications, DBTA for short, and I know that's one that
10 we market through.

11 Q. So is there any third party marketing,
12 advertising, or PR firm that Embarcadero uses?

13 A. We don't have a third party advertising or
14 marketing. We have a PR firm that would set up like
15 press interviews around like release times to talk to
16 press people to get the word out of a release or
17 something like that. But that's it.

18 Q. And what's the name of the PR firm that
19 Embarcadero uses?

20 A. It's chase.com. It's just a small operation
21 out of, I think, Colorado. I think it's Chase
22 Communications, actually.

23 Q. Does Embarcadero maintain its own website?

24 A. Yes.

25 Q. And obviously, or not necessarily obviously,

1 but would you agree that the website is one of the main
2 portals in which Embarcadero advertises the ER/Studio
3 products?

4 A. Yes.

5 Q. And so all of the content -- am I correct in
6 understanding that all of the content on the ER/Studio
7 or on the Embarcadero website about ER/Studio is
8 developed and placed on the website directly by
9 Embarcadero?

10 A. That's correct. We might contract out
11 graphics and that sort of thing, but all the messaging
12 is our own.

13 Q. And how -- in your capacity, what part do you
14 play in developing that messaging?

15 A. We have -- marketing usually comes up with the
16 creatives for some of the promotions that we might run,
17 but in terms of the product pages and the information
18 about the product, that's what I would do with the
19 product marketing manager and we would write all that
20 stuff out.

21 Q. And does Embarcadero participate in any trade
22 shows for the ER/Studio product specifically?

23 A. We've downsized quite a bit, but, yeah, we go
24 to an annual -- it's called Enterprise Data World.

25 MR. GREENSTEIN: Are you asking for trade

1 the Enterprise Data World where you got personal
2 knowledge that they were using the R statistical
3 computing language?

4 A. No, I didn't, but that doesn't mean it's not
5 possible.

6 Q. I understand that. But you have no personal
7 knowledge of anyone.

8 A. That's right.

9 MR. GREENSTEIN: I'll interject a
10 continuing objection to attempts to narrow this
11 scope of this inquiry to the R computer language
12 because it's not part of the applications. The
13 goods and services in the applications are without
14 restriction to any one language.

15 BY MR. RUFO:

16 Q. I believe we discussed this a little bit
17 previously, but if I could just get some more
18 information. In regard to the end users of ER/Studio,
19 not necessarily the sorts of organizations that are
20 using it, because as I understand it, you testified
21 earlier that anyone who has data might be using
22 ER/Studio.

23 A. That's correct.

24 Q. So at whatever organization is using
25 ER/Studio, who is the typical end user within that

1 organization?

2 A. Do you want titles? Do you want roles?

3 Q. Both, please.

4 A. Both? It could be data modeler. It could be
5 data analysts. Could be data architect. Could be
6 database developer. Could be database architect, even
7 application developer, application architect would be
8 some roles. Business analyst, business user, if they
9 are doing anything with the data and querying the data,
10 searching the data, they might be using any part of the
11 suite. Database administrator.

12 That's probably, I'd say, most of them. There
13 might be others. There could be software engineers,
14 software developer as well.

15 Q. And when you're talking about these
16 individuals, are you talking about people who might be
17 using any of the products under the ER/Studio umbrella?

18 A. Yes.

19 Q. What do customers pay for ER/Studio?

20 A. Which edition or which product? Because
21 there's different prices for different products within
22 the suite.

23 MR. GREENSTEIN: Let me just interpose,
24 not an objection, but to the extent that these
25 prices you are going to testify to are on the

1 website and public knowledge, that's fine. But if
2 they're confidential, we can designate this part of
3 the transcript as confidential. There is public
4 information, so I don't know what kinds of details
5 you're looking for.

6 THE WITNESS: Do you want a range or do
7 you want like specific prices?

8 BY MR. RUFO:

9 Q. Before I get into that, I will just state for
10 the record that this procedure is covered by the TTAB'S
11 standardized protective order, which I think Marty was
12 just referring to.

13 So if you -- if I asked you to testify about
14 something that you would consider to be confidential,
15 you would just simply need to state so and THEN that
16 information on the record per that protection order
17 would be for attorney eyes only.

18 MR. GREENSTEIN: We'd have to split out
19 this part of the transcript is my only point.

20 MR. RUFO: Sure.

21 THE WITNESS: We have a lot of different
22 prices, so I would say if you're going to buy
23 ER/Studio Data Architect only for a single database
24 platform, it's, I believe, \$1,300 per seat, per
25 user.

1 And if you're going to buy the Data Architect
2 Cross Platform Edition, that would be for multiple
3 databases, that's about 3700 per seat.

4 And if you're going to buy the Enterprise
5 Edition, which would be all the products, that's 5100
6 per seat. And that's cross platform.

7 MR. GREENSTEIN: These are public?

8 THE WITNESS: These are public. This is
9 okay. Business Architect is \$850 per user if you
10 want the standalone.

11 The Viewer is I think, I'm not remembering
12 exactly, but it's under \$500 per seat.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 MR. GREENSTEIN: Today only for you,
17 15 percent off.

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 BY MR. RUFO:

23 Q. [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 A. Yes. And trying to think of other -- we have
2 the XE edition. And we'll treat that as confidential,
3 but it may be public. We haven't released it yet, but
4 that's going to be 5900. 5995, excuse me, for that.

5 [REDACTED]

6 [REDACTED]

7 MR. GREENSTEIN: Just for clarification,
8 5995 is five thousand nine hundred and ninety-five?

9 THE WITNESS: That's correct, yes.

10 MR. RUFO: The low, low price of
11 fifty-nine ninety-five. Call today.

12 THE WITNESS: Five thousand nine hundred
13 ninety-five.

14 BY MR. RUFO:

15 Q. And again, just to preserve it for the record,
16 any mention of the price for XE Edition of ER/Studio is
17 designated as confidential.

18 A. Yes.

19 MR. GREENSTEIN: The actual designation is
20 trade secret, commercial and sensitive, for this
21 type of information.

22 THE WITNESS: Yeah, we freely share with
23 our customers, but we want them to call us, and
24 that's basically it.

25

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

BY MR. RUFO:

25

Q. And so do I understand -- or actually, I'm not

1 sure if I understand this, so let me rephrase the
2 question.

3 Is an initial purchase of a license for one
4 year?

5 A. The initial purchase, you have the license and
6 then you have to purchase the maintenance, the first
7 year maintenance, along with that to get the first year
8 of support and upgrades.

9 And for some products, like on the application
10 development side, that maintenance and support is
11 optional. On the database side, which would be
12 ER/Studio, it would be DB Artisan and Rapid SQL.

13 Q. And are those ER/Studio products?

14 A. Those are not. But they are -- we separate
15 our products by what we call CodeGear, which is
16 application development, and DatabaseGear, which is
17 database development. And ER/Studio is under the
18 DatabaseGear. And on the DatabaseGear, which we have --
19 I don't remember the exact product count, it fluctuates,
20 but that's where the maintenance is required. It's not
21 optional.

22 Q. For the database product?

23 A. For the database products, and ER/Studio
24 included.

25 Q. So it's not possible with the -- is my

1 understanding correct that it's not possible to simply
2 buy a license for ER/Studio Data Architect for the list
3 price and then use it. You would then need to purchase
4 the maintenance as well?

5 A. Yes.

6 Q. And then to continue using it every year, you
7 have to pay whatever that year's maintenance fee would
8 be.

9 A. If you drop maintenance so you don't pay that
10 annual fee, we don't turn off the product. They can
11 still use it, they just can't get any upgrades and they
12 can't call our technical support. So the license is
13 perpetual, forever. But, yeah, they are not going to
14 get any upgrades or technical support.

15 Q. And generally, are you aware whether your
16 customers continue using the license without paying the
17 maintenance?

18 A. I don't know the exact number these days, but
19 we had a very high retention rate. I think it was even
20 in the 90 percent of renewals.

21 Q. And --

22 A. That's for DatabaseGear products. And that --
23 it may have changed. It may be in the 80s now,
24 80 percent of users renew their maintenance. I don't
25 have the exact figure.

1 Q. But the 90 percent figure that you quoted,
2 what is that coming from?

3 A. That I'd say it was accurate even up to three
4 years ago. I think the economic strain the last couple
5 of years forced people not to renew, so it may have gone
6 down a little bit but it was as high as 90 percent.

7 Q. You mentioned this sort of different types of
8 products outside of ER/Studio that Embarcadero sells in
9 total. You mentioned the DatabaseGear and then the --
10 was it development?

11 A. CodeGear.

12 Q. CodeGear?

13 A. Yes.

14 Q. Are those the only two categories of products
15 that Embarcadero is currently selling?

16 A. At the highest level, those are the two, and
17 then each of those has sections underneath it.

18 Q. So in the database bucket, is there any
19 products other than those branded ER/Studio that are
20 being sold?

21 A. Yes.

22 Q. And what would those products be?

23 A. The main brands that we have, one is DB
24 Artisan, and then the other is Rapid SQL. And then we
25 have another brand that's DB Optimizer. And those are

1 probably the main brands that we have.

2 Q. And does DB stand for database?

3 A. Yes. And actually, we have DB Change Manager
4 as well.

5 Q. And is there any plan in the future that
6 you're aware to fold those into the ER/Studio brand
7 or --

8 A. No. They'll be separate. It's quite common
9 for users to use multiple products across brands. So
10 they might have ER/Studio, DB Artisan, and Change
11 Manager. We actually used to sell what we call solution
12 packs that would bundle three products together across
13 those brands.

14 Q. And in the CodeGear side, can you explain to
15 me what the products are that are sold?

16 A. The main flagship product is RAD Studio.
17 That's the application development environment. And
18 under that there's Delphi. There is C++ Builder.
19 There's some products that I'm not sure we sell anymore.
20 There's one for -- Delphi for PHP, which is another --
21 PHP is like for Ruby on Rails. That's a platform for
22 web development.

23 Q. What does PHP stand for?

24 A. I can't tell you actually. It's some
25 scripting web type of language, like a Java script is

1 with RAD Studio, an edition of RAD Studio. So we wanted
2 to kind of cross-pollenate that and allow application
3 developers that want database modeling, development,
4 creation, to be able to leverage ER/Studio.

5 Q. And the product sold under the net gear or --

6 A. CodeGear.

7 Q. CodeGear, thank you -- umbrella, are any of
8 those products sold or advertised with the idea that
9 they perform statistical computing?

10 A. I don't know that. I don't know for sure.

11 Q. Are you aware of whether or not any of those
12 products interface with the R programming language?

13 A. Not to my knowledge. They obviously do
14 software development, and anyone that is doing software
15 development, they would handle that.

16 MR. GREENSTEIN: I have continuing
17 objections to attempts to limit it to R programming
18 language, but it's discovery, so you can answer.

19 BY MR. RUFO:

20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1

[REDACTED]

17 Q. Who do you view as ER/Studio's main
18 competitors?

19 A. The main competitors would be Computer
20 Associates. And do you want product names?

21 Q. Please.

22 A. Their product would be Irwin. And they keep
23 rebranding it, but it's Irwin Data Modeler, but they
24 have a Process Modeler, a Component Modeler, and other
25 things under that Irwin brand that would do anything

1 from data quality assessment to storing the models,
2 similar to kind of the components we have.

3 Then there's Sybase Power Designer. And
4 Sybase actually was just bought by SAP. But I think
5 they are still operating under the Sybase brand. And
6 Power Designer is the main flagship product there. And
7 that's the main product we compete there.

8 Q. And these products you just described for the
9 two competitors, those are database products?

10 A. I would say Irwin is more geared towards
11 database. Power Designer does database development,
12 modeling, management, but they do a lot of other
13 modeling. They've kind of stepped away just from pure
14 data modeling, gone into enterprise architecture, a lot
15 of process management, things that we would do with
16 Business Architect, but they've done more in depth with
17 their product.

18 So they've really kind of broadened it. We've
19 broadened our suite as well under the ER/Studio brand,
20 but they've broadened that Power Designer product into a
21 lot of different I think it's modeling and metadata type
22 of chores.

23 Q. Are there any other competitors that you would
24 identify as your main competitors?

25 A. IBM has an InfoSphere Software Architect and

1 InfoSphere Data Architect. They keep changing the names
2 of the products, so don't quote me -- quote me,
3 obviously, but those might be -- they might be
4 different. But they came from the Rational Software
5 Application Development software company that they
6 purchased. So we have -- IBM has some products. IBM
7 also has a System Architect product that does some data
8 modeling as well as enterprise architecture process
9 modeling. System Architect is the product and
10 enterprise architecture is what they specialize in.

11 And that enterprise architecture is just kind
12 of a general term that can mean anything, architecting
13 software, process data, any type of architecture type of
14 discipline. So it's a broad term. It could be data
15 warehousing, it could be a lot of different things. And
16 then Toad Data Modeler is another product that's by
17 Quest Software. They specifically do just data
18 modeling. They are a smaller, lower end tool that does
19 just data modeling.

20 Q. So data modeling meaning database modeling
21 or --

22 A. Yeah, the -- I think it's physical -- logical
23 and physical modeling. So really -- and they do more of
24 just the physical modeling.

25 Q. Any other competitors that you consider to be

1 A. Well, entity relationship modeling is specific
2 to the logical modeling notation. It's actually used in
3 the physical model as well, but a physical model is not
4 referred to typically as an entity relationship model.
5 It's a physical database design.

6 And I believe back then the product had both
7 logical and physical modeling, but there was no software
8 architecture component, process modeling component, no
9 repository to store the models. The publishing
10 capabilities were pretty limited in terms of
11 distributing the models. And there's just a lot more to
12 the product now.

13 Q. So if you were to describe what you believe
14 the overall commercial impression is of the ER/Studio
15 today, how would you describe that?

16 A. Well, you could probably look on some of the
17 docs that are from our website. I think that would
18 explain it better than I could off the cuff. But I'd
19 say it's more of a --

20 MR. GREENSTEIN: You're welcome to read
21 from the docs.

22 THE WITNESS: I'd say it's more of a data
23 architecture, enterprise architecture, metadata
24 solution than just pure entity relationship
25 modeling, which is probably what it -- even when

1 they first filed it, actually it this was filed in
2 '96, so there was probably a lot more narrow scope
3 of the product and what they intended it to be.

4 BY MR. RUFO:

5 Q. And to your knowledge, does Embarcadero own
6 any other registered trademarks other than the one set
7 before you for the mark ER/Studio?

8 A. The MetaWizard might be a registered
9 trademark. I can't remember.

10 Q. Specifically ER/Studio.

11 A. No. That's -- in terms of -- yeah.

12 Q. But are you aware that Embarcadero owns other
13 trademarks, federally registered trademarks, other than
14 ER/Studio?

15 A. Yes, we have several, I'm sure.

16 Q. So earlier we discussed the term entity
17 relationship. And here in the registration the goods
18 description is for entity relationship modeling. Does
19 ER stand for entity relationship?

20 A. That's where I think it originated from. But,
21 you know, it's now -- people -- it's more of a brand
22 now. And ER is not -- we won't separate that. So it's
23 ER/Studio and that's what people identify the product
24 with and now we're using that brand for software
25 architecture, which is a different notation, or process

1 modeling and conceptual modeling, which is a different
2 notation.

3 So it's -- I think it originated from entity
4 relationship. Obviously, with the description there.
5 But it's evolved into much more than that. It's --

6 Q. But -- I'm sorry. I don't mean to interrupt.

7 A. It's okay.

8 Q. Apart from the ER/Studio trademark, just the
9 term ER itself, do you understand that term in the
10 computer software industry to mean or to stand for
11 entity relationship?

12 A. In the general sense, yes.

13 Q. Does the term ER in software have any other
14 meaning that you're aware of?

15 A. I mean it could. I don't know.

16 Q. But --

17 A. I'm not aware of any.

18 Q. In your opinion, would the average person
19 working with your products, or in databases in general,
20 understand ER to mean entity relationship?

21 A. Yeah, I'd say most of the users probably would
22 think of that. Again, it's one of the core capabilities
23 of the product, but again there's a lot of other
24 capabilities of the product as well.

25 Q. So the other portion of the mark ER/Studio

1 obviously is Studio?

2 MS. VIDOLOVA: I would object that you're
3 suggesting that the mark has portions. It should
4 not be dissected.

5 BY MR. RUFO:

6 Q. I apologize. Objection noted, and another
7 term used within the ER/Studio mark is Studio; correct?

8 A. Yes.

9 Q. What does the term Studio mean?

10 A. That I think is just an environment, a
11 collection of things that people are going to work
12 within. I mean Design Studio, Development Studio,
13 whatever it is. But the environment of where most of
14 the tasks of the modeling, the development, the design
15 is going to be done.

16 Q. Is the term Studio used in any of the other
17 product names that Embarcadero sells?

18 A. We have DT Studio, and that was used for data
19 transformation and moving data between different
20 databases and different sources. So that's the only one
21 that I'm -- it's using RAD Studio for the application
22 development environment, software development
23 environment. So it's used. And that they -- they had
24 that before we acquired them.

25 Q. And do you understand whether or not -- or

1 rather, do you know whether the term Studio is commonly
2 used on software products?

3 A. I mean there's products out there in the
4 industry that use it. I don't know if it's like some
5 brand or whatever, but I've seen it used.

6 Q. So do I understand correctly that you
7 understand that other companies besides Embarcadero use
8 Studio on software products?

9 A. Yes.

10 Q. And does Embarcadero claim any exclusive
11 rights in using the term Studio in regards to its
12 products?

13 A. It's a general term. Again, it's not just
14 Studio, it's ER/Studio together that is the brand.

15 Q. I would like a few minutes to go over my notes
16 but I might be done.

17 MR. GREENSTEIN: Sure.

18 (Brief recess.)

19 BY MR. RUFO:

20 Q. Back on the record. I don't have any more
21 questions at this time for direct examination and would
22 invite your attorneys to do any cross-examination they
23 would like to.

24 MR. GREENSTEIN: No, I have nothing.

25 We're done.

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

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I, LINDA J. PUGLIESE, Certified Shorthand Reporter in and for the State of California, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause, that the foregoing is a full, complete and true record of said testimony, and that the witness was given an opportunity to read and correct said deposition and to subscribe to the same.

I further certify that I am not interested in the outcome of this action, nor connected with, nor related to any of the parties in said action, nor to their respective counsel.

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