ESTTA Tracking number: **ESTTA501399**

Filing date: **10/22/2012**

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

Proceeding	91207553
Party	Defendant Apple Inc.
Correspondence Address	THOMAS R LA PERLE APPLE INC 1 INFINITE LOOP CUPERTINO, CA 95014-2083 UNITED STATES
Submission	Answer
Filer's Name	Glenn A. Gundersen
Filer's e-mail	trademarks@dechert.com, glenn.gundersen@dechert.com, christine.hernandez@dechert.com
Signature	/Glenn A. Gundersen/
Date	10/22/2012
Attachments	ICLOUD Answer 91207553.pdf (17 pages)(1415093 bytes)

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

In re the matter of Application Serial No. 85/335,817

Mark: ICLOUD

Published in the *Official Gazette* on June 19, 2012

ICLOUD INC.	:	
	:	
Opposer	:	
	:	
v.	:	Opposition No. 91207553
	:	
APPLE INC.	:	
	:	
Applicant.	:	

ANSWER

Applicant Apple Inc., by its attorneys, hereby answers the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first numbered paragraph and they are therefore denied.

2. Applicant denies the allegation in the second numbered paragraph that "Opposer has been developing its ICLOUD technology service over the last decade." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second numbered paragraph and they are therefore denied.

3. Applicant denies the allegation in the third numbered paragraph that "Opposer has been developing their [sic] ICLOUD service over the last decade." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the third numbered paragraph and they are therefore denied.

4. Applicant admits that it uses it ICLOUD mark in connection with services that work with applications on the iPhone, iPad and iPod touch devices as well as Mac and PC computers to automatically and wirelessly store content and automatically and wirelessly push it to all of the user's devices.

5. Applicant denies the allegations of the fifth numbered paragraph.

6. Applicant admits that its ICLOUD products and services are widely recognized in the marketplace and known by consumers as associated with Applicant. Applicant denies the allegation in the second numbered paragraph that Applicant's use of its ICLOUD mark "has confused and mislead [sic] the public." The remaining allegations in the second numbered paragraph constitute conclusions of law to which no response is required, and they are therefore denied.

7. Applicant admits that its Application Serial No. 85/335,817 seeks to register the mark ICLOUD in International Class 45, and that the Application was assigned U.S. Classes 100 and 101 by the U.S. Patent and Trademark Office. Applicant is without knowledge or information sufficient to form a belief as to the nature of Opposer's alleged ICLOUD service, and therefore denies the remaining allegations of the seventh numbered paragraph.

8. Applicant denies the allegation in the eighth numbered paragraph that Opposer's use of ICLOUD "has been established over the last decade." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the eighth numbered paragraph and they are therefore denied.

9. Applicant denies the allegation in the ninth numbered paragraph that Opposer is the "first to use the mark ICLOUD." The remaining allegations in the ninth numbered paragraph constitute conclusions of law to which no response is required, and they are therefore denied.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the tenth numbered paragraph that Opposer "will suffer substantial damage" and they are therefore denied. The remaining allegations in the tenth numbered paragraph constitute conclusions of law to which no response is required, and they are therefore denied.

AFFIRMATIVE DEFENSE

Fraud

1. Opposer's claims are barred by fraud, as Opposer did not adopt its alleged ICLOUD mark until well after the December 7, 2010 priority date of Apple's Application Serial No. 85/335,817, and after Apple's June 6, 2011 announcement of its ICLOUD products and services.

2. Opposer was incorporated in 2000 under the name "Exclusive Aviation 2000 Inc.", and its corporate charter was voided and revoked in 2002. It filed to renew and revive the charter on June 15, 2011, and then filed on June 17, 2011 to change its name to iCloud Inc. *See* Ex. A (certified records from the Secretary of State of Delaware).

3. No online evidence of iCloud Inc.'s alleged use of ICLOUD prior to Apple's use exists. To the contrary, Opposer's website, www.i-cloudinc.com, was not registered until June 13, 2011. *See* Ex. B (WhoIs record for www.i-cloudinc.com). Opposer's first use of its "iCloud Inc." Twitter account is dated June 29, 2011, and it did not join Facebook until August 16, 2011. *See* Exs. C, D.

WHEREFORE, Applicant prays that this Opposition be dismissed with prejudice and that the registration of the mark shown in Application Serial No. 85/335,817 be granted.

Date: October 22, 2012

Glenn A. Gundersen
Christine M. Hernandez
Dechert LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104-2808
Telephone: 215-994-2183

Attorneys for Applicant
Apple Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer has been duly served by mailing such copy first class, postage prepaid to Raj Ouellet, iCloud Inc., 566-533 West Roulette Street, Pembina, ND 58271, on October 22, 2012.

Christine M. Hernandez

EXHIBIT A

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "ICLOUD INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE NINTH DAY OF JUNE, A.D. 2000, AT 2:30 O'CLOCK P.M.

CERTIFICATE OF RENEWAL, FILED THE FIFTEENTH DAY OF JUNE, A.D. 2011, AT 5:01 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "EXCLUSIVE AVIATION 2000 INC." TO "ICLOUD INC.", FILED THE SEVENTEENTH DAY OF JUNE, A.D. 2011, AT 10:01 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "ICLOUD INC.".

Jeffrey W. Bullock, Secretary of State

3241940 8100H

AUTHENTICATION: 9565923

120546526

DATE: 05-11-12

You may verify this certificate online at corp.delaware.gov/authver.shtml

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 02:30 PM 06/09/2000
001294521 - 3241940

CERTIFICATE OF INCORPORATION

OF

EXCLUSIVE AVIATION 2000 INC.

* * * * *

1. The name of the corporation is EXCLUSIVE AVIATION 2000 INC.

2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

3. The nature of the business or purpose to be conducted or promoted is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

4. The total number of shares of stock which the corporation shall have authority to issue is one thousand (1,000) shares with a par value of $.01 per share.

5. The name and mailing address of the sole incorporator is:

Stephen A. Allison
225 West Wacker Drive, Suite 2800
Chicago, Illinois 60606

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 9th day of June, 2000.

/s/ Stephen A. Allison
Stephen A. Allison, Sole Incorporator

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:04 PM 06/15/2011
FILED 05:01 PM 06/15/2011
SRV 110727081 - 3241940 FILE

CERTIFICATE FOR RENEWAL AND REVIVAL OF CHARTER OF EXCLUSIVE AVIATION 2000 INC.

EXCLUSIVE AVIATION 2000 INC. , a corporation organized under the laws of the State of Delaware, the charter of which was voided for non-payment of taxes and/or for failure to file a complete annual report, now desires to procure a restoration, renewal and revival of its charter, and hereby certifies as follows:

FIRST: The name of this corporation is: EXCLUSIVE AVIATION 2000 INC. .

SECOND: Its registered office in the State of Delaware is located at 16192 Coastal Highway, Lewes, DE 19958, County of Sussex. The name of its registered agent is Harvard Business Services, Inc.

THIRD: The date of filing of the original Certificate of Incorporation in Delaware was June 9, 2000.

FOURTH: The date when the restoration, renewal, and revival of the charter of this company is to commence is the Twenty-ninth day of February, 2002 same being prior to the date of the expiration of the charter. This renewal and revival of the charter of this corporation is to be perpetual.

FIFTH: This corporation was duly organized and carried on the business authorized by its charter until the First day of March, 2002. This certificate for renewal and revival is filed by authority of the duly elected directors of the corporation in accordance with the laws of the State of Delaware.

IN TESTIMONY WHEREOF, and in compliance with the provisions of Section 312 of the General Corporation Law of the State of Delaware, as amended, providing for the renewal, extension and restoration of charter of EXCLUSIVE AVIATION 2000 INC. , have hereunto signed by the last and acting authorized officer, to this certificate this 6 day of June, 2011.

BY: _____ -Signature

Name: Raj Daellet -please print

Title: V.P. /Director -please print

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:35 PM 06/17/2011
FILED 10:01 AM 06/17/2011
SRV 110733492 - 3241940 FILE

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
EXCLUSIVE AVIATION 2000 INC.

EXCLUSIVE AVIATION 2000 INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of EXCLUSIVE AVIATION 2000 INC. resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "FIRST" so that, as amended said Article shall be and read as follows:

FIRST: The name of the corporation is iCloud Inc.

SECOND: That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said EXCLUSIVE AVIATION 2000 INC. has caused this certificate to be signed by its Authorized Officer this 6 day of June, 2011.

BY: _____-Signature

Name: Raj Duellet -please print

Title: VP / Director -please print

EXHIBIT B

Whois
Identity for everyone

Whois Lookup

i-cloudinc.com Registry Whois

Updated 1 second ago - Refresh

Domain Name: I-CLOUDINC.COM
Registrar: GODADDY.COM, LLC
Whois Server: whois.godaddy.com
Referral URL: http://registrar.godaddy.com
Name Server: NS925.WEBSITEWELCOME.COM
Name Server: NS926.WEBSITEWELCOME.COM
Status: clientDeleteProhibited
Status: clientRenewProhibited
Status: clientTransferProhibited
Status: clientUpdateProhibited
Updated Date: 14-jun-2012
Creation Date: 13-jun-2011
Expiration Date: 13-jun-2013

i-cloudinc.com Registrar Whois

Updated 1 second ago

The data contained in GoDaddy.com, LLC's WhoIs database,
while believed by the company to be reliable, is provided "as is"
with no guarantee or warranties regarding its accuracy. This
information is provided for the sole purpose of assisting you
in obtaining information about domain name registration records.
Any use of this data for any other purpose is expressly forbidden without the prior written
permission of GoDaddy.com, LLC. By submitting an inquiry,
you agree to these terms of usage and limitations of warranty. In particular,
you agree not to use this data to allow, enable, or otherwise make possible,
dissemination or collection of this data, in part or in its entirety, for any
purpose, such as the transmission of unsolicited advertising and
and solicitations of any kind, including spam. You further agree
not to use this data to enable high volume, automated or robotic electronic
processes designed to collect or compile this data for any purpose,
including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified
in the "registrant" field. In most cases, GoDaddy.com, LLC
is not the registrant of domain names listed in this database.

Registered through: GoDaddy.com, LLC (http://www.godaddy.com)
Domain Name: I-CLOUDINC.COM
Created on: 13-Jun-11
Expires on: 13-Jun-13
Last Updated on: 14-Jun-12

Registrant:
Domains By Proxy, LLC
DomainsByProxy.com
14747 N Northsight Blvd Suite 111, PMB 309
Scottsdale, Arizona 85260
United States

Administrative Contact:
Private, Registration I-CLOUDINC.COM@domainsbyproxy.com
Domains By Proxy, LLC
DomainsByProxy.com
14747 N Northsight Blvd Suite 111, PMB 309
Scottsdale, Arizona 85260
United States
(480) 624-2599 Fax -- (480) 624-2598

Technical Contact:
Private, Registration I-CLOUDINC.COM@domainsbyproxy.com
Domains By Proxy, LLC
DomainsByProxy.com
14747 N Northsight Blvd Suite 111, PMB 309
Scottsdale, Arizona 85260
United States
(480) 624-2599 Fax -- (480) 624-2598

Domain servers in listed order:
NS925.WEBSITEWELCOME.COM
NS926.WEBSITEWELCOME.COM

****
See Business Registration Listing
****
Copy and paste the link below to view additional details:
http://who.godaddy.com/whoischeck.aspx?domain=I-CLOUDINC.COM

Hot Deals!

.pro

.PRO @ $3.88 $16.88

Web Hosting
Host Unlimited Domains
Starts @ $7.88 per month
Unlimited Disk Space
Unlimited Data transfer
Unlimited Databases
Unlimited Email Accounts
30 Day Money Back Guarantee
View Plan

SSL Digital Certs
Secure your Website!

Register Domain Name
Domain Transfer
View Domain Pricing
Bulk Domain Registration
Bulk Domain Transfer
Whois Lookup
Name Suggestion Tool
FREE Services

Linux Hosting
Windows Hosting
Reseller Hosting
Website Builder
Email
SSL

Datacenter Details
Hosting Security
24 x 7 Servers Monitoring
Backup and Recovery

View Knowledge Base
Contact Support

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EXHIBIT C

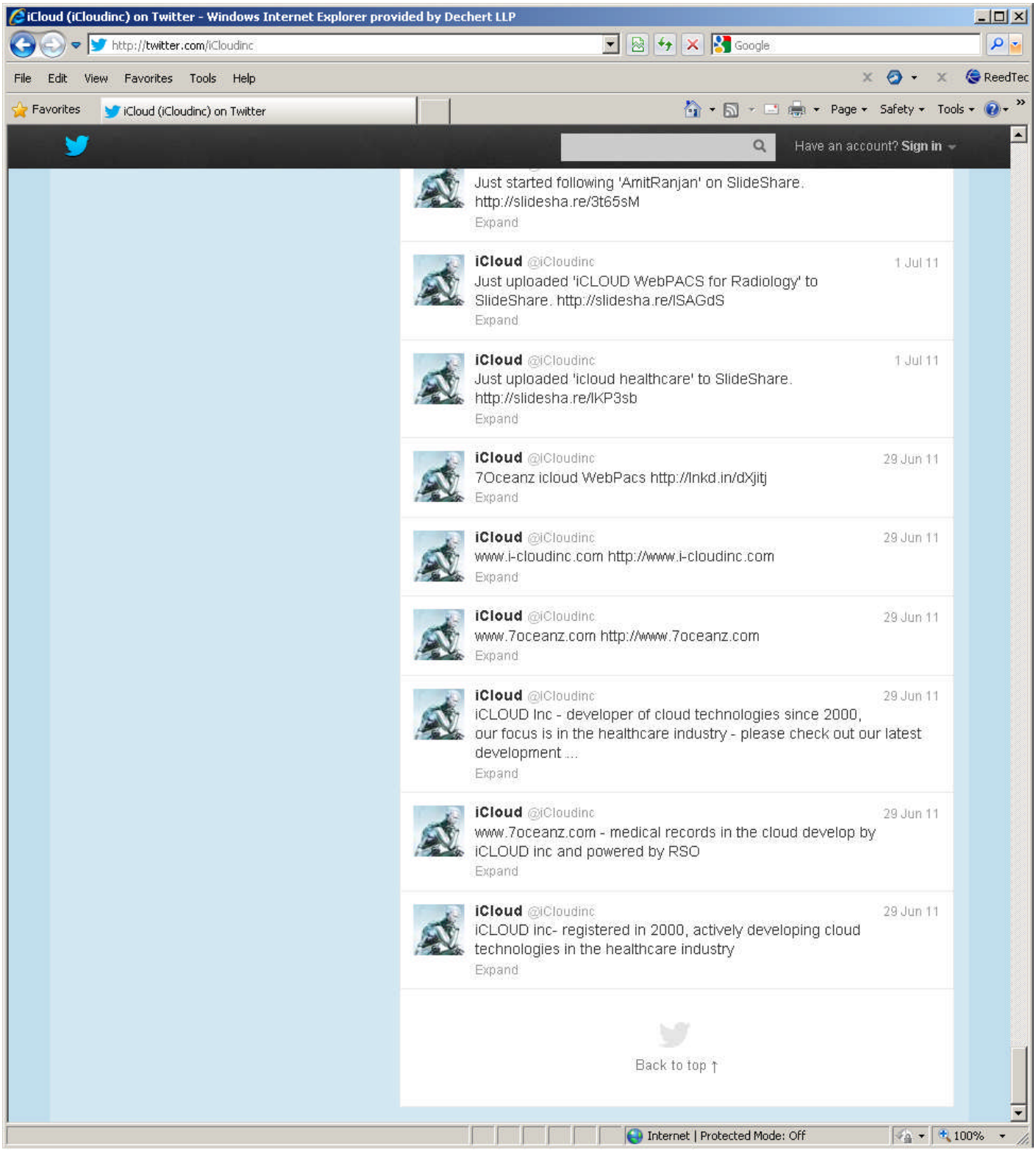
iCloud (iCloudinc) on Twitter - Windows Internet Explorer provided by Dechert LLP
http://twitter.com/iCloudinc
Google
File Edit View Favorites Tools Help
ReedTec
Favorites
iCloud (iCloudinc) on Twitter
Page Safety Tools
Have an account? Sign in
Just started following 'AmitRanjan' on SlideShare. http://slidesha.re/3t65sM
Expand
iCloud @iCloudinc 1 Jul 11
Just uploaded 'iCLOUD WebPACS for Radiology' to SlideShare. http://slidesha.re/lSAGdS
Expand
iCloud @iCloudinc 1 Jul 11
Just uploaded 'icloud healthcare' to SlideShare. http://slidesha.re/lKP3sb
Expand
iCloud @iCloudinc 29 Jun 11
7Oceanz icloud WebPacs http://lnkd.in/dXjitj
Expand
iCloud @iCloudinc 29 Jun 11
www.i-cloudinc.com http://www.i-cloudinc.com
Expand
iCloud @iCloudinc 29 Jun 11
www.7oceanz.com http://www.7oceanz.com
Expand
iCloud @iCloudinc 29 Jun 11
iCLOUD Inc - developer of cloud technologies since 2000, our focus is in the healthcare industry - please check out our latest development ...
Expand
iCloud @iCloudinc 29 Jun 11
www.7oceanz.com - medical records in the cloud develop by iCLOUD inc and powered by RSO
Expand
iCloud @iCloudinc 29 Jun 11
iCLOUD inc- registered in 2000, actively developing cloud technologies in the healthcare industry
Expand
Back to top ↑
Internet | Protected Mode: Off
100%

EXHIBIT D

iCloud - Timeline | Facebook - Windows Internet Explorer provided by Dechert LLP
http://www.facebook.com/pages/iCloud/152698401478569?sk=photos_stream
File Edit View Favorites Tools Help
Favorites
iCloud - Timeline | Facebook
Page Safety Tools
facebook
Email or Phone
Log In
Keep me logged in
iCloud
is on Facebook.
To connect with iCloud, sign up for Facebook today.
Sign Up
Log In
iCloud
17 likes
Like
Health/Medical/Pharmaceuticals
Founded in 2000, together with our partner companies and team of developers we launched medical imaging iCloud WebPACS. iCloud offers a high performing affordable diagnostic imaging solution that enables healthcare providers to unite globally
About
Photos
17
Likes
Highlights
Also On
http://www.i-cloudinc.com
Earlier in 2012
iCloud shared a link.
May 18
iCloud Releases Free Trial with Unlimited Bandwidth iCloudDrive Service
For all your computers, works on any mobile digital device, simple and hassle-free and only $29.95 USD/year
Internet | Protected Mode: Off
100%

iCloud - Timeline | Facebook - Windows Internet Explorer provided by Dechert LLP

http://www.facebook.com/pages/iCloud/152698401478569?sk=photos_stream

File Edit View Favorites Tools Help

Favorites iCloud - Timeline | Facebook

Page Safety Tools

-speed processors enabling large amounts of information to be handled simultaneously making the system noticeably more powerful.

Like · Comment · Share

Like · Comment · Share

Joined Facebook

August 16, 2011

Founded

Founded in 2000

Internet | Protected Mode: Off 100%