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Filing date: **12/22/2005**

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

Proceeding	92044823
Party	Plaintiff M7 AEROSPACE LP
Correspondence Address	TIM HEADLEY GARDERE WYNNE SEWELL, LLP 1000 LOUISIANA, SUITE 3400 HOUSTON, TX 77002-5007 theadley@gardere.com, ggarza@gardere.com, msweeney@gardere.com
Submission	Motion for Summary Judgment
Filer's Name	Tim Headley
Filer's e-mail	theadley@gardere.com
Signature	/Tim Headley/
Date	12/22/2005
Attachments	2005 12 22 Motion for Summary Judgment.pdf (3 pages) 2005 10 18 M7's 1st Set of Requests for Admissions.pdf (8 pages) 2005 10 25 M7's 2nd Set of Requests for Admissions.pdf (7 pages) 2005 12 22 Declaration of Brad Perry.pdf (2 pages)

In The United States Patent And Trademark Office
Before The Trademark Trial And Appeal Board

M7 Aerospace LP	§	
	§	
Petitioner,	§	Cancellation No. 92044823
v.	§	
	§	Mark: VISUAL INTELLIGENCE
Pictometry International Corp.	§	
	§	Registration No. 2,837,858
Registrant	§	

Petitioner's Motion For Summary Judgment

On October 18, 2005, Petitioner served on Registrant's attorney-of-record a first set of requests for admission (attached as Exhibit 1), and on October 25, 2005, a second set of requests for admission (attached as Exhibit 2). Petitioner has still received no objections and/or responses to those requests. Petitioner requests that the TTAB grant summary judgment in view of the admissions that now exist as a result of Registrant's failure to respond, and in view of the attached declaration of Petitioner's President (attached as Exhibit 3). In short, Petitioner's use of "VISUAL INTELLIGENCE" predates any use by Registrant. The examining attorney has rejected Petitioner's application to register "VISUAL INTELLIGENCE". Thus, the TTAB should cancel Registration No. 2,837,858.

On November 16, Registrant's attorney-of-record called the undersigned, and unilaterally stated, as a prelude to more demands, that Registrant was going to voluntarily cancel its registration No. 2,837,858. After waiting for more than a month for

Registrant to fulfill its unilateral promise to cancel its registration, Petitioner sent Registrant's attorney-of-record a voluntary surrender of Registrant's registration, already signed by Petitioner. In response to that email, Registrant's attorney-of-record wrote back, "Thank you but if and when Pictometry files a disclaimer we shall prepare the document." (emphasis added) Thus, in light of Registrant's "change-of-heart" regarding voluntarily canceling its registration, Petitioner has no choice but to move forward with this proceeding, and thus respectfully requests that the TTAB grant summary judgment to Petitioner.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tim Headley".

Tim Headley
Attorney for Petitioner
Texas State Bar No. 09325210
Gardere Wynne Sewell LLP
1000 Louisiana Street, Suite 3400
Houston Texas 77002-5007
Phone: 713-276 5320
Fax: 713-276-6320
Email: theadley@gardere.com

Certificate of Mailing

I certify that Petitioner's Motion For Summary Judgment, in Cancellation No. 92044823, is being filed electronically via ESTTA on December 22, 2005, with:

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451



Tim Headley

Certificate Of Service

On December 22, 2005, I caused a copy of Petitioner's Motion For Summary Judgment, in Cancellation No. 92044823, to be served by first class mail, postage prepaid, on counsel for Registrant, with any noted attachments.



Tim Headley

**In The United States Patent And Trademark Office
Before The Trademark Trial And Appeal Board**

M7 Aerospace LP	§	
	§	
Petitioner,	§	Cancellation No. 92044823
v.	§	
	§	Mark: VISUAL INTELLIGENCE
Pictometry International Corp.	§	
	§	Registration No. 2,837,858
Registrant	§	

M7 Aerospace’s First Set of Requests for Admissions

Definitions

The following definitions and instructions shall apply to the terms specified below, as those terms are used in these requests for admission:

- A. “Person” means individuals, partnerships, joint ventures, divisions, departments, public or private corporations, organizations, proprietorship, trust, or any governmental entity.

- B. “Document” refers to all written, typed, printed, handwritten, sketched, pictorial, recorded (electronic or otherwise), punched, taped, filmed, or graphic instrument of any kind, however produced or reproduced, and all non-identical copies thereof, upon which intelligence or information can be recorded or retrieved, which is in your possession, custody or control. The term “document” includes, but is not limited to, correspondence, memoranda, statements, photographs, reports, books, pamphlets, periodicals, notes invoices, bills, order forms, receipts, medical records, laboratory records, prescriptions, financial statements, accounting entries, diaries, calendars, telexes, telegrams, cables, working

papers, drawings, sketches, graphs, indices, charts, tapes, photographs, checks, labels, microfilm, data sheets, data processing cards, computer records, including data compilations, recordings of telephone or other conversations, interviews, conferences, or other meetings, affidavits, and all things similar to any of the foregoing, however denominated. The term "document" further means, without limiting the above, answers to interrogatories, depositions, or other discovery materials produced, disclosed, or made in response to any discovery conducted in a legal proceeding, statements, pleadings, reports, citations or writings of any nature filed with any person or forwarded by any person to Registrant, and any other writings of any nature, however produced or reproduced, including all drafts and non-identical copies of such documents. Such term also includes all those "documents" in the possession, custody, or control of any attorney or agent of the person or entity from whom discovery is sought. Any copy of any "document", any alterations, notes, comments, or other material not included in the originals, or copies referred to above, shall be deemed a separate document.

- C. "Communication" means every manner of disclosure, transfer or exchange of information or knowledge from one person to another, including, but not limited to, statements, discussions, conversations, meetings, remarks, questions and answers, telephone calls and electronic transmissions.
- D. "Relating to," "regarding", or "referring to" mean concerning, pertaining to, being connected with, mentioning, describing, or reflecting upon a stated subject matter.
- E. "Identify" shall mean:
 - a. when used in reference to an individual, to state such person's full name, present or last known address, present home telephone number, his or her present or last known position and business affiliation, and present business telephone number;

- b. when used in reference to a business entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), its chief executive officer, present telephone and facsimile numbers, and its principal place of business.
- F. "Pictometry" means Pictometry International Corporation, the Registrant in this matter.
- G. "M7 Aerospace" means M7 Aerospace LP., Petitioner in this matter.
- H. "You," "Your," or "Yourself" means Pictometry.
- I. "Registrant" means Pictometry.
- J. "Statement" and "Representation" means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever. The terms include, but are not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and all other understandings between or among two or more persons.
- K. "Or" means and/or.
- L. The "Mark" means the service mark "Visual Intelligence", owned by Pictometry International Corp., for which an application was filed October 4, 2002, and for which a registration issued May 4, 2004.

Instructions

- A. Each objection shall be set forth with specificity and shall include a statement of the grounds for the objection.
- B. If any responsive information, communication or document is withheld on the basis of any claim of privilege, describe generally the substance or subject matter of the information, communication or document withheld, state the privilege being

relied upon or claimed and the basis for the claim, and identify all persons or entities who have had access to such information, communication, or document.

Requests For Admission

M7 Aerospace requests Pictometry to admit the following:

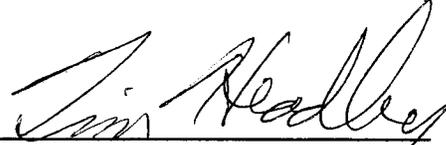
1. Pictometry International Corporation's date of incorporation was November 2, 2000.
2. The document attached as Exhibit 1 is a true and accurate copy of Pictometry's application Serial No. 76/457,578.
3. Pictometry did not use the Mark anywhere before June 30, 2002.
4. Pictometry did not use the Mark anywhere before January 1, 2002.
5. Pictometry did not use the Mark anywhere before January 1, 2001.
6. Pictometry did not use the Mark in commerce before June 30, 2002.
7. Pictometry did not use the Mark in commerce before January 1, 2002.
8. Pictometry did not use the Mark in commerce before January 1, 2001.
9. When Registrant began using the Mark, it was already aware of the existence of the company known as "Visual Intelligence Corporation".
10. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling maps.
11. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of aerial photography.

12. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of mapping.
13. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of aerial photography.
14. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of mapping.
15. When Registrant filed application Serial No. 76/457,578, it was already aware of the existence of the company known as "Visual Intelligence Corporation".
16. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling maps.
17. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of aerial photography.
18. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of mapping.
19. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of aerial photography.
20. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of mapping.

21. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware of the existence of the company known as "Visual Intelligence Corporation".
22. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling maps.
23. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of aerial photography.
24. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of mapping.
25. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of aerial photography.
26. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of mapping.
27. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware of the existence of the company known as "Visual Intelligence Corporation".
28. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling maps.

29. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of aerial photography.
30. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with selling the service of mapping.
31. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of aerial photography.
32. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Corporation" had been using the Mark in connection with advertising the service of mapping.
33. When Registrant decided to begin using the Mark, Mark Frick was an employee of Registrant.
34. When Registrant decided to begin using the Mark, Mark Frick was a Vice President of sales for Registrant.
35. When Registrant decided to begin using the Mark, the Vice Presidents of sales discussed such decision in at least one group meeting.
36. When Registrant decided to begin using the Mark, Richard Kaplan was the CEO of Registrant.
37. When Registrant decided to begin using the Mark, the Vice Presidents of sales discussed such decision, in the presence of Richard Kaplan, in at least one group meeting.

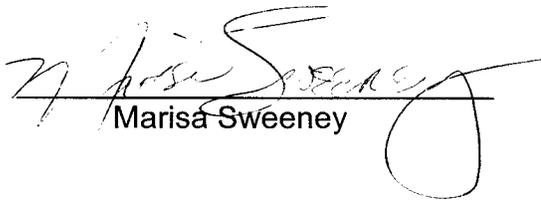
38. The document attached as Exhibit A is a true and correct copy of a page from Registrant's website, <http://www.pictometry.com/companyhistory.asp>.
39. Registrant maintains the website located at <http://www.pictometry.com/>, and maintains the page of that website located at <http://www.pictometry.com/companyhistory.asp>.



Tim Headley
Attorney for Petitioner
Texas State Bar No. 09325210
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, Texas 77002-5007
Phone (713) 276-5320
Fax: (713) 276-6320
Email: theadley@gardere.com

Certificate Of Service

Pursuant to the Federal Rules of Civil Procedure, I certify that a true and correct copy of the foregoing instrument was served by U.S. certified mail, return receipt requested, on October 18, 2005, to the counsel of record.



Marisa Sweeney

In The United States Patent And Trademark Office Before The Trademark Trial And Appeal Board

M7 Aerospace LP	§	
	§	
Petitioner,	§	Cancellation No. 92044823
v.	§	
	§	Mark: VISUAL INTELLIGENCE
Pictometry International Corp.	§	
	§	Registration No. 2,837,858
Registrant	§	

M7 Aerospace’s Second Set of Requests for Admissions

Definitions

The following definitions and instructions shall apply to the terms specified below, as those terms are used in these requests for admission:

- A. “Person” means individuals, partnerships, joint ventures, divisions, departments, public or private corporations, organizations, proprietorship, trust, or any governmental entity.

- B. “Document” refers to all written, typed, printed, handwritten, sketched, pictorial, recorded (electronic or otherwise), punched, taped, filmed, or graphic instrument of any kind, however produced or reproduced, and all non-identical copies thereof, upon which intelligence or information can be recorded or retrieved, which is in your possession, custody or control. The term “document” includes, but is not limited to, correspondence, memoranda, statements, photographs, reports, books, pamphlets, periodicals, notes invoices, bills, order forms, receipts, medical records, laboratory records, prescriptions, financial statements,

papers, drawings, sketches, graphs, indices, charts, tapes, photographs, checks, labels, microfilm, data sheets, data processing cards, computer records, including data compilations, recordings of telephone or other conversations, interviews, conferences, or other meetings, affidavits, and all things similar to any of the foregoing, however denominated. The term "document" further means, without limiting the above, answers to interrogatories, depositions, or other discovery materials produced, disclosed, or made in response to any discovery conducted in a legal proceeding, statements, pleadings, reports, citations or writings of any nature filed with any person or forwarded by any person to Registrant, and any other writings of any nature, however produced or reproduced, including all drafts and non-identical copies of such documents. Such term also includes all those "documents" in the possession, custody, or control of any attorney or agent of the person or entity from whom discovery is sought. Any copy of any "document", any alterations, notes, comments, or other material not included in the originals, or copies referred to above, shall be deemed a separate document.

- C. "Communication" means every manner of disclosure, transfer or exchange of information or knowledge from one person to another, including, but not limited to, statements, discussions, conversations, meetings, remarks, questions and answers, telephone calls and electronic transmissions.
- D. "Relating to," "regarding", or "referring to" mean concerning, pertaining to, being connected with, mentioning, describing, or reflecting upon a stated subject matter.
- E. "Identify" shall mean:
 - a. when used in reference to an individual, to state such person's full name, present or last known address, present home telephone number, his or her present or last known position and business affiliation, and present business telephone number;

- b. when used in reference to a business entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), its chief executive officer, present telephone and facsimile numbers, and its principal place of business.
- F. "Pictometry" means Pictometry International Corporation, the Registrant in this matter.
- G. "M7 Aerospace" means M7 Aerospace LP., Petitioner in this matter.
- H. "You," "Your," or "Yourself" means Pictometry.
- I. "Registrant" means Pictometry.
- J. "Statement" and "Representation" means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever. The terms include, but are not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and all other understandings between or among two or more persons.
- K. "Or" means and/or.
- L. The "Mark" means the service mark "Visual Intelligence", owned by Pictometry International Corp., for which an application was filed October 4, 2002, and for which a registration issued May 4, 2004.

Instructions

- A. Each objection shall be set forth with specificity and shall include a statement of the grounds for the objection.
- B. If any responsive information, communication or document is withheld on the basis of any claim of privilege, describe generally the substance or subject matter of the information, communication or document withheld, state the privilege being

relied upon or claimed and the basis for the claim, and identify all persons or entities who have had access to such information, communication, or document.

Requests For Admission

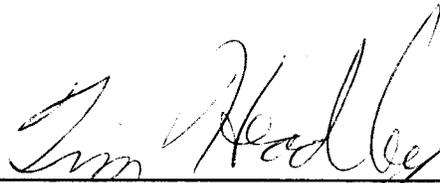
M7 Aerospace requests Pictometry to admit the following:

1. When Registrant began using the Mark, it was already aware of the existence of the company known as "Visual Intelligence Systems, Inc."
2. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling maps.
3. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of aerial photography.
4. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of mapping.
5. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of aerial photography.
6. When Registrant began using the Mark, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of mapping.
7. When Registrant filed application Serial No. 76/457,578, it was already aware of the existence of the company known as "Visual Intelligence Systems, Inc."

8. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling maps.
9. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of aerial photography.
10. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of mapping.
11. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of aerial photography.
12. When Registrant filed application Serial No. 76/457,578, it was already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of mapping.
13. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware of the existence of the company known as "Visual Intelligence Systems, Inc."
14. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling maps.
15. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of aerial photography.

16. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of mapping.
17. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of aerial photography.
18. When Registrant began using the Mark, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of mapping.
19. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware of the existence of the company known as "Visual Intelligence Systems, Inc.".
20. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling maps.
21. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of aerial photography.
22. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with selling the service of mapping.

23. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of aerial photography.
24. When Registrant filed application Serial No. 76/457,578, some of its Vice Presidents of sales were already aware that the company known as "Visual Intelligence Systems, Inc." had been using the Mark in connection with advertising the service of mapping.



Tim Headley
Attorney for Petitioner
Texas State Bar No. 09325210
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, Texas 77002-5007
Phone (713) 276-5320
Fax: (713) 276-6320
Email: theadley@gardere.com

Certificate Of Service

Pursuant to the Federal Rules of Civil Procedure, I certify that a true and correct copy of the foregoing instrument was served by U.S. certified mail, return receipt requested, on October 25, 2005, to the counsel of record.



Marisa Sweeney

**In The United States Patent And Trademark Office
Before The Trademark Trial And Appeal Board**

M7 Aerospace LP	§	
	§	
Petitioner,	§	Cancellation No. 92044823
v.	§	
	§	Mark: VISUAL INTELLIGENCE
Pictometry International Corp.	§	
	§	Registration No. 2,837,858
Registrant	§	

Declaration of R. Bradford Perry

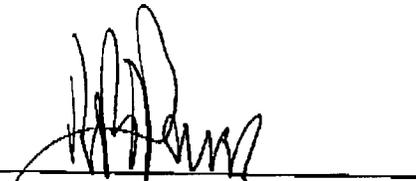
The undersigned, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

In June, 1995, I founded Visual Intelligence Systems, Inc., a Texas corporation, as its President. I was a member of the board of directors of that corporation until M7 Aerospace bought it in August, 2003, and it changed its name to M7 Visual Intelligence LP. I am currently the President of M7 Visual Intelligence LP. Since June, 1995, the mark "VISUAL INTELLIGENCE" has been continuously used in connection with the business of these two companies, including as the dba for Visual Intelligence Systems, Inc., and on the website www.visidata.com, and continues to be used on that website.

After August, 2003, we also began using the mark VISUAL INTELLIGENCE on the website www.m7aero.com in connection with the business of M7 Visual Intelligence LP.

M7 Visual Intelligence LP has continued the products and services of its predecessor company. M7 Visual Intelligence LP is a provider and developer of digital aerial orthophotography, and proprietary aerial-based digital imaging hardware, software and processing technologies. M7 Visual Intelligence LP collects information about the earth's surface using aerial photography as well as other airborne sensors. The company transforms that data into customized GIS products and services. By combining non-traditional photogrammetric services with advanced data collection and processing techniques, M7 Visual Intelligence LP helps its clients solve complex business problems and enhance business processes.

Signed:



R. Bradford Perry

President of M7 Visual Intelligence LP

December 21, 2005