

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

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PERSEPHONE, GMBH, :
Application 15/_____, :
Petitioner, :
v. :
GOLDMAN, SACHS & CO., : Case DER2016-_____
Application 14/726,075, :
Respondent. :
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Declaration of Christian Gunther

1. My name is Christian Gunther and I make this declaration in support of the petition filed substantially concurrently herewith under 37 CFR 42.405 filed by Persephone GmbH in the above identified matter. In this declaration, all references to exhibits are to the exhibits attached to the petition filed substantially concurrently herewith by Persephone in the derivation proceeding.

2. I am named as inventor in United States Patent Application No. 15/368221. I have assigned my rates to the petitioner, Persephone GmbH (hereafter "Persephone")

3. The subject derivation proceeding is sought by Persephone in United States Patent Application No. 14/726, 075 filed by Goldman Sachs, as applicant, in the name of Jason Broder as inventor on May 29, 2015 for an invention entitled Electronic Platform for Managing Investment Products.

Conception

4. During the period starting in August 2008 and continuing through February 2014, I was a student at the University of Zürich.

5. In or about May of 2011, while a student at the University of Zürich, I conceived a web-based trading platform for direct trading by consumers of structured investment products where the products consist of derivatives, and wherein the products are structured, using an algorithm, to match various criteria of an individual investor, and further in which consumers were to be educated (in basic and selected advanced topics) and certified as having successfully completed such education prior to being allowed to structure products on their own using the inventive platform, and which trading platform yet further provided for a unique set of inputs specifically constructed to generate information reliably tied to retail customer investor needs and/or desires, and enabling implementation of congruent investment objectives. The inventive platform had the principal objective of dramatically driving down costs for the bank or other company providing structured products, and is described in greater detail below.

6. In accordance with my conception in May 2011, I envisioned an electronic trading platform comprising, for example, software located on one or more servers and available over the Internet to a plurality of retail investment customers, such as ordinary blue-collar and white-collar employees in various industries, for example industries other than finance banking and investment. This electronic trading platform provided retail investment clients with the opportunity to connect to the platform using a PC, smart phone, tablet or other computing device. The electronic trading platform would comprise receiving a request from a user to trade an investment product; a product generation system that generates customized tradable investment products in response to product request information received from a retail customer user of the electronic platform. A product education system was conceived by me to provide online educational courses associated with the tradable investment products to the user of the electronic platform. The educational system, as conceived by me, would operate by presenting a test to the user to verify the effectiveness of the product education system. I further conceived that the system would enable one user to gain information from other uses of the system by providing a product exchange system that establishes an information exchange environment between the user of the electronic platform and other users of the electronic platform. In putting together customized investment products, the system would take into account information associated with a user's investment criteria, risk tolerance, investment horizon, desired investment market and/or level of

investment protection. The above platform would operate using actual or real-time or near real-time conditions in the relevant investment market. In response to these inputs from the user, the system would select one or more structured investment products based on investor preferences. The structured investment product is decomposed into two or more priced components of the structured investment product. Pricing tables are generated for each of the two or more priced components of the structured investment product. Pricing information for the two or more priced components is based on a variety of different deal terms and is pre-fetched, from pricing servers located on an information exchange network that includes the electronic platform. An input from the user of the electronic platform that identifies a set of deal terms to be applied to the two or more priced components is received, via the interface provided by the electronic platform when performing the trade of a structured investment product. Prices for the newly generated structured investment products are generated by interpolating pricing tables based on the set of deal terms associated with the two or more priced components and provided by the user of the electronic platform. A price is then determined for the structured investment product based on the interpolated pricing tables for the two or more priced components. This enables and results in the presentation, via the interface of the electronic platform, of information identifying the structured investment product and information identifying the determined price for the structured investment product.

7. I am a voracious daily reader of the Suisse financial newspapers. In addition, I studied computer science and finance at the University of Zurich from 2008 through 2014. Additionally I had my own private experience in dealing, trading and investing in structured products in Switzerland. I came up with the idea for an online platform for structured products and derivatives accessible to retail customers who would use mobile devices, personal computers and the like to communicate with the computer servers of an investment house to structure and make investments in about of May 2011, as detailed more fully herein. At the time my thinking was that an app could serve as a platform and could be put on mobile devices or standard computers and this would allow the client or private or small investor to type in and fixate their personal investment criteria such as risk tolerance, investment horizon, desired investment market, level of investment protection. I conceived that this would be done by going through a customizing and tailoring process covering the whole product lifecycle and would be communicated by client devices associated with the users of the electronic platform. In response to this product request information received from the client operating on the electronic platform, the software on the servers put together the product designed by the retail client, make information respecting the same available and execute the trade. Recognizing that it was highly desirable that the client have some level of sophistication, I further conceived that the servers would provide product education to clients having the app and certify successful completion of online courses related

to the tradable investment products which would be available to certified users of the inventive electronic platform. I also further envisaged that after one retail customer user of the inventive platform had created an instrument, that instrument would be available to other users. I can see that this might occur, for example, when the software constituting the platform determined that other investment products managed by the electronic platform shared characteristics with the product generated in response to the user's criteria. The result was a product exchange system and the establishment of an information exchange environment between users of the electronic platform. As alluded to above, I conceived that the investments being designed by users would result from a combination of one or more selected investment products based on the information received from the user and based on the real-time conditions of the investment market. I conceived that particularly for a client using a bigger screen, there would be an option to drag and drop investment criteria on a payoff diagram, thus interactively and instantly displaying changing product characteristics. I also conceived the use of a heat map to graphically simplify the customizing process. Such a heat map would effectively act as a number of pricing tables for each of the two or more priced components of the structured investment product. Such a heat map was conceived by me as being generated by interpolating pricing information for multiple sets of deal terms associated with the two or more priced components in response to information provided by the user of the electronic platform. I also envisaged presenting almost

finished or already issued and traded products in an overview. The overall result of these aspects of my invention is, that the client/user defines the investment criteria himself via the online platform and does not necessarily need the help of a bank employee or financial advisor. Therefore cost can be reduced.

Activities at the University of Zürich

8. The University of Zürich had an active program interacting with local banking organizations and other companies in the banking field. For example, Accenture, the well-known consulting firm, had a program known as the "Campus Challenge" which had as its objective "challenging" students to come up with ideas applicable in the banking and other industries within which Accenture worked, develop them and present them to Accenture.

9. In or about March 17, 2012, I communicated my idea, in the form of a memorandum (Exhibit C) sent by email to Patrick Winzenried, a fellow student in a seminar where we were tasked with forming groups and presenting business models in the online business field. Mr. Winzenried was explicitly cautioned by me at that time respecting the confidentiality of the information he was receiving and explicitly directed not to disclose the same outside of our project. He indicated to me that he would respect the obligations of confidentiality and nonuse.

10. At that time, I described to him my concept and he was interested in doing a presentation on it to the other students in the class as our part of a contribution to

the seminar class. After that, the students in the seminar broke into groups, with each group planning to do a presentation in its chosen area.

11. Later in March 2012, I met with Patrick Winzenried and our two other team members at Starbucks in Zürich during which I described my technology and made it clear that the same was proprietary and was not to be discussed with anyone outside our group, which included Mr. Winzenried and myself, as well as the two other students.

12. In accordance with the structure of the course at the University of Zürich, our group's project would be monitored and commented upon by a mentor, Dr. Sigrid Unseld, who was engaged by the university for the seminar and was responsible for all the groups. The objective of the course was for students to go through the process of dealing with innovative and novel products and processes and gain the experience of implementing such new products commercially.

13. Initially, there was a meeting during which Dr. Unseld learned about my technology with the objective of involving someone from industry as a coach to our group.

Involvement of Accenture's Bastian Barthelmann

14. Thus, in addition to Dr. Sigrid Unseld, my group had Mr. Bastian Barthelmann, an executive with Accenture's derivative financial products group assigned to it as its own coach.

15. The first task in the seminar was the preparation of a document overviewing the technology. Notwithstanding the nominal involvement of three other students, all of the work of creating this document relating to my novel derivative product structuring technology was done by me.

16. Documents prepared for the seminar were electronically accessible to all and were created jointly. Communication was done by means of group emails.

17. The work which I performed at this initial stage included putting together a detailed set of spreadsheets which, alone, took many weeks to create. These spreadsheets are attached as Exhibits D, and include a detailed introduction including the aim of the technology and the assumptions underlying my planned online platform (Exhibit D), best case, average case and worst case cost savings calculations (Exhibit D), and an analysis of professional salaries for implementing my proposed technology (Exhibit D). I also prepared portions of a PowerPoint presentation dealing with my technology. Exhibit E.

18. The spreadsheets and the PowerPoint were sent to Dr. Sigrid Unseld and Mr. Barthelmann by email.

Unauthorized Introduction of Additional Accenture People at March Meeting

19. In or about March 30, 2012, our group had another meeting with Dr. Unseld. At this meeting Mr. Barthelmann of Accenture was also present. To my great surprise, Mr. Barthelmann brought along two other Accenture executives, Daniel Bruchatz and David Asal to the meeting. I presented my ideas for the technology together with the cost analysis reflected by Exhibits D. Mr. Bruchatz, a Technology Architect who worked, along with the other Accenture representatives at the meeting, at Accenture Management Consulting Financial Services expressed skepticism about my technology, noting that the expected cost savings were laughable and not at all credible, and generally poked fun at my idea for a direct to consumer platform for creating customized structured derivative products.

20. On April 4, 2012, I received an email **from** Daniel Bruchatz of Accenture, which was copied to Mr. Barthelmann, David Asal and Dr. Sigrid Unseld. This email (Exhibit F) generally noted the “great idea” embodied in the technology, but suggested that in order for the technology to be sold, some more details should be presented.

Unauthorized Disclosure to Credit Suisse

21. After the fact, on April 11, 2012, I learned for the first time (in a “gruppe1” group email) that on April 5, 2012 Patrick Winzenried (who, at that time, was an intern at Credit Suisse) sent an email to a number of individuals at Credit Suisse. I

learned all of this in an email string sent to me on April 11, 2012. The April 5 email (included in the email chain of Exhibit G) was sent to Karin Buissink without my permission and in violation of our confidentiality understandings. This email described my technology for a “trading platform for ‘structured products’ ”, which would enable ordinary everyday people to have access to the market and even generate their own “new structured products.”

22. Insofar as Mr. Winzenried was an intern at Credit Suisse he had full access to Credit Suisse employees and, upon information and belief, had other communications with Credit Suisse employees which included discussions respecting my technology.

23. Without my being aware of or having consented to the same, in the following days, descriptions of my technology were circulated within Credit Suisse, with information going to Stefan Reinholz, Sandra Nisandzic, Sergej Huber, Thomas Imhalsy and Ralf Schnellinger, all of Credit Suisse and working in Switzerland.

24. On April 10, 2012, Mr. Winzenried received an email from Thomas Imhalsy of Credit Suisse, stating that Mr. Imhalsy was “responsible for structured products” and further was familiar with Spirit, a non-publicly available system which assisted Credit Suisse employees who dealt with consumers in product tailoring.

25. On April 11, I spoke to Mr. Winzenried and told him that he had violated our agreement and that he should not communicate with anyone with respect to our project outside of our student/mentor/coach group. He did not make the slightest protest to my demand, and his silence acknowledged this serious breach of our confidentiality agreement.

26. On April 11, when I spoke with Mr. Winzenried about his disclosures to Credit Suisse, I further asked him to cancel the meeting with Mr. Imhasly.

27. However, on April 12, 2012, again without my permission and in direct violation of by instruction to him, Mr. Winzenried met with Mr. Thomas Imhasly of Credit Suisse and discussed my online derivative product structuring technology. I did not learn of this until after the fact when Mr. Winzenried sent me an email (included in the email chain of Exhibit G).

28. On April 12, 2012, I checked my email and discovered an email sent earlier in the day which included what appeared to be a very detailed summary of the meeting between Mr. Winzenried (an intern at Credit Suisse, as noted above) and Thomas Imhasly of Credit Suisse. Exhibit H.

29. During this meeting between Mr. Winzenried and Thomas Imhasly, Imhasly stated that he thought the idea of presenting a direct trading opportunity to retail customers was “great,” to quote Mr. Winzenried’s report, though he saw more

value in that aspect of the invention which involved the collection of information from those retail customers.

30. I was most surprised to see both of these communications from Mr. Winzenried, insofar as I had repeatedly stressed to Mr. Winzenried, both for weeks before April 11 and on April 11, that this project was confidential and was not to be discussed with anybody. Moreover, Mr. Winzenried was present at the meetings with Dr. Unseld and the Accenture people where I also stressed the confidential nature of my work on a customized derivative product structuring platform.

More Accenture Executives at May 2012 Meeting

31. A closing meeting was scheduled for May 4, 2012 in connection with our seminar class.

32. Prior to the above meeting of May 4, 2012, I sent copies of a PowerPoint presentation of my technology (Exhibit I a somewhat revised version of Exhibit E) to Dr. Unseld and Accenture executive Barthelmann. We also sent copies of these documents to the other Accenture executives Dirk Marko, Daniel Bruchatz, Sebastian Faessler and Joscha Milinski who were coaching other groups in the University of Zürich course in which I was enrolled.

Accenture Introduces Executives from Its Client Credit Suisse

33. The May 4 meeting was attended by myself, Mr. Winzenried, our two other student team members, Olivier Grossman and Maximilian Steinbach, and Dr. Sigrid Unseld. Mr. Barthelmann was also present, and surprised me once again by bringing along not only Accenture executive Daniel Bruchatz who was present at the previous meeting, but also additional Accenture executives Dirk Marko, Sebastian Faessler and Joscha Milinski.

34. Clearly, the return of previously critical Daniel Bruchatz of Accenture signaled a change in heart toward my technology. The endorsement of the same was certainly made apparent by the presence of the three additional Accenture executives, Dirk Marko, Sebastian Faessler and Joscha Milinski.

35. If there were any doubt that my technology represented an important step in the evolution of financial systems, such doubt was dispelled by the further uninvited appearance of two or three executives from Credit Suisse. Mr. Marco indicated, at the meeting that the two or three executives from Credit Suisse were invited by Accenture.

36. Most oddly, neither Mr. Marco, nor the two or three executives from Credit Suisse nor anyone else in the room identified these two or three executives from Credit Suisse, who simply listened silently and took notes during the discussions.

37. Also most oddly, Patrick Winzenried (who had boldly broken our agreements on confidentiality and disclosed my technology to numerous people at Credit Suisse, where, as noted above, he was an intern) did not approach or speak to any of the Credit Suisse executives at or around the time of the meeting.

38. Moreover, I was astonished at the presence of the Credit Suisse executives because I had reprimanded Patrick Winzenried for disclosing my technology to Credit Suisse. Nevertheless, Winzenried had offered me no excuse, disclaimer or explanation relating to the presence of the Credit Suisse executives.

39. At the May 4 meeting, I discussed the PowerPoint presentation (Exhibit I), in which the electronic trading platform which I had invented was shown as an illustrative product known as “My Structuring”.

40. Remarkably, even though the Credit Suisse employees were invited by Accenture, and Accenture had beefed up its attendance at the May 4 meeting (which was expected to go over my technology in detail), the Credit Suisse employees followed the lead of Mr. Bruchatz, criticizing the technology as impractical and not cost-effective and based on too many assumptions.

41. The criticisms made by Credit Suisse were particularly mystifying, given the fact that they, no doubt, were given detailed information on my technology by Accenture, not to mention by their own internal people as a result of the meeting

between our team member and confidant Winzenried and Credit Suisse's Thomas Imhalsy.

42. Following the presentation at the meeting on May 4, we completed the term paper (Exhibit J), detailing all the concepts which we had previously discussed with Dr. Unseld and all the others involved in the University of Zürich course which we attended, and sent the same to Dr. Sigrid Unseld on May 11, 2012.

43. During our presentations in connection with the seminar course at the University of Zürich, I suggested that the Swiss bank known as Bank Vontobel would be an ideal candidate to implement my technology.

44. Overall, at the end of the course, I was confident that my technology was viable and valuable, but decided that I did not want to engage in the Campus Challenge, because under the conditions of this program, I would have to give up my technology to Accenture with the only compensation being a licensed copy of Microsoft Office, and then only if we won the "Campus Challenge".

Credit Suisse Implements the Inventive Technology

45. In December 2013, I saw that Credit Suisse had implemented the trading platform proposed by me to the members of our student group in 2012. However, I was most surprised that they chose to name this product "My Solutions" mimicking

the “My Structuring” trademark used by me in my exemplary embodiment of the technology, which I generated during the University of Zürich course.

The Information Machine

46. Successful operation of a business within the investment space is dependent upon maintaining up-to-date knowledge on business trends and competitor activities. Accordingly, competitors in that space, such as Goldman Sachs, Credit Suisse, Bank Vontobel, etc. regularly monitor the Internet to keep abreast of competitive developments. In addition, the major players sponsor conferences at which competitors showcase their latest products and get awards. These conferences constitute an important part of information gathering efforts, insofar as numerous individuals from many different competing organizations attend and speak with each other, providing much information to potential clients and competitors.

47. For example, see Exhibit K, a brochure from Banking Technology Magazine relating to an awards dinner held on November 1, 2013 giving an award to Credit Suisse for implementing my technology. This dinner was sponsored by Banking Technology Magazine. Goldman Sachs was present at this dinner, and, in fact, received an award for the “Best Use of IT in Investment Banking.”

48. See also Exhibit L, a brochure for the 2013 IFR Awards, which are given once a year at an awards dinner sponsored by Commerzbank, Credit Suisse,

Goldman Sachs and others. At this dinner, Goldman Sachs was given an award for structured products and Credit Suisse was given an award for its structured finance house in the Americas.

49. Similarly, Exhibit M, a 2013 ACN Newswire report relating to awards given by the Association known as Private Banker International, and sponsored by AG Delta, a consulting firm which numbers Goldman Sachs among its clients. The report states that Credit Suisse is being given an award.

Credit Suisse Communicates Subject Technology to Goldman Sachs

50. At the awards dinner evidenced by Exhibit K, prior to being given their award, Credit Suisse made a detailed presentation of the technology which I conceived and communicated to them both at the May 4, 2012 meeting and which I indirectly and unwillingly communicated to them through Patrick Winzenried, when Mr. Winzenried met with Mr. Imhasly of Credit Suisse on April 12, 2012.

51. In or about March 2014, Credit Suisse published details on its “my Solutions” product in a brochure (Exhibit N). Such brochures are intensely monitored by competitors such as Goldman Sachs who devote substantial assets to monitoring the activities of competitors. These competitors have full access to many documents on the Internet, including the my Solutions Brochure of Exhibit N.

52. Indeed, Exhibit N explicitly mentions that “my Solutions” was given the banking technology award issued by Banking Technology, the leading United Kingdom industry magazine at a sponsored dinner in November 2013.

Goldman Immersed in Credit Suisse Activities Implementing Technology

53. The award to Credit Suisse for “my Solutions” is announced in a brochure (Exhibit K), which also notes that Goldman Sachs is also being given an award at the same dinner. The award given to Goldman Sachs related generally to information technology.

54. It is thus clear that Goldman Sachs and Jason Broder were aware of my technology through the publication of Exhibit N, and, no doubt, Goldman Sachs and Broder were as impressed by my technology as were Credit Suisse and Accenture. After the award mentioned in Exhibit K, Goldman Sachs and Jason Broder would have been on the lookout for Exhibit N and similar documents describing the Credit Suisse platform.

55. Details of my original work are described in Exhibit N, which describes “my Solutions” as relating to “Customized Structured Products and Options”, and including recommended minimum investment size of “CHF 20,000”, allowing the consumer “to design, price and trade structured products”, allowing the consumer to “calculate and compare product offerings”, allow the consumer to “solve for coupon, strike or barrier”, reference to term sheets with “marketing and legal

documentation”, reference to the use of previously designed products enabled by allowing users to “save or share... pricing”, graphically presented investment information using a heat map and “real-time pricing”. These admitted features of Credit Suisse’s “my Solutions” structured derivatives consumer customizing platform are virtually identical to the features documented originally as part of my technology, which explicitly mention “CHF 20’000 – 50’000” (Exhibit H, memorandum of Winzenried’s meeting with Credit Suisse), “customizing of structured products” (Exhibit E-March 30, 2012 presentation) by allowing the “client [to] type in and fixate ‘step-by-step’ one wish, requirement and investment criterion” (Exhibit J, the term paper, translation at page 5), “platform should help, advise and customize a product just for a [particular customer]” (Exhibit J, the term paper), saving or sharing pricing by “proposing an existing [product]” (Exhibit J, the term paper), inputting “wished barriers, strike-prices et cetera” (Exhibit J, the term paper), allowing the consumer to calculate and compare products by presenting “a payoff diagram” (Exhibit J, the term paper). Use of such graphics is an important aspect of my technology, insofar as it empowers ordinary investors to intuitively deal with investment decisions.

Other Information Available to Goldman Sachs

56. Upon information and belief, Accenture made information relating to my technology available to its clients, including Bank Vontobel, a Swiss bank. Indeed, it

was suggested by me at the meetings at the University of Zürich that Bank Vontobel would be an ideal candidate for implementation of my technology. Later, Bank Vontobel published my technology in a video available at <https://www.youtube.com/watch?v=0rtTmc-mEjE>. A transcript of that video is annexed hereto as Exhibit P.

57. The activity which was triggered by my invention of the subject technology has been recognized in the press as having originated in the Swiss financial community. Not surprisingly, the leaders in the commercialization of the subject technology are Accenture client Credit Suisse, which received the technology from me directly and through Accenture, Accenture client Bank Vontobel, a Swiss bank suggested by me at the March 30 meeting to be an ideal candidate for the technology.

58. The above Bank Vontobel video was available to Jason Broder and Goldman Sachs for the filing of their provisional patent application the priority of which is claimed in the patent application derived in this derivation proceeding.

59. More particularly, in an article dated May 29, 2014 (Exhibit Q), the web portal SRP reported that “[t]he Swiss structured products industry continues to lead the way in the development of online structured products”. The same article praised the technology I developed stating that this technology which “allow[s] private investors to build their own products and gain access to greater liquidity and

transparency... was a significant development that put clients at the center of product distribution... Allow[ing] issuers to increase their efficiency and lower their cost,” all as outlined in my term paper and PowerPoint presentation two years earlier.

16. The above publications and communications of the subject technology, and upon information and belief other communications made directly to Goldman Sachs and Jason Broder, clearly made the subject technology which I invented available to Jason Broder, who was then named as the inventor in the Goldman Sachs patent application at issue in this proceeding. Moreover, such communications were supplemented by Accenture in its provision of services to Goldman Sachs as a client of Accenture.

61. To be clear, on every occasion on which I disclosed my technology which forms the subject of my pending patent application I made clear to all persons receiving such disclosure that the same was confidential and that they were not permitted to disclose to others or make use of the same. Furthermore, I never authorized the filing of any patent application or other document related to my subject invention of an electronic platform for managing investment products and for user customization of the same, as claimed in the claims of my pending patent application showing me as sole inventor of the invention therein.

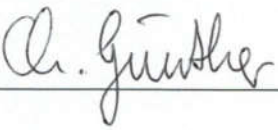
62. At no time did I authorize the filing of the Broder Application or any application directed to my technology.

63. I affirm that I have read that Petition filed by Persephone GmbH and that I am familiar with its contents, and that the statements made therein are true and correct.

64. With respect to Exhibits including translations above, I state that I am familiar with the English and German languages and that the English translations, appearing at the end of the German language document and provided herewith, are true and correct translations of the original German language documents. I further note that, in the case of some exhibits, only relevant parts of the document were translated into English, and other parts of the document were left in the original German.

65. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further declare that all of the documents attached as exhibits annexed hereto are true and complete copies of the originals; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of my applications and petition or any patent or patents issued thereon.

Further declarant sayeth not.



Christian Gunther