

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

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PERSEPHONE, GMBH,	:	
Application No., 15/368221,	:	
Petitioner,	:	
v.	:	
GOLDMAN, SACHS & CO.,	:	Case DER2017-00004
Application 14/726,075,	:	
Respondent.	:	

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Amended Petition for Institution of Derivation Proceeding under 35 U.S.C. § 135

Mail Stop Patent Board

Patent Trial and Appeal Board

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Pursuant to the provisions of 35 U.S.C. §135, Persephone GmbH (hereinafter "Petitioner" or "Persephone") hereby petitions the Patent Trial and Appeal Board to institute derivation proceedings relating to claims 1-16 in United States Patent Application No. 14/726,075 ("the Broder Application," Exhibit A) published on December 3, 2015 under publication number US 2015/0348192 A1, naming Jason Broder as inventor. According to USPTO records, the Broder Application is currently assigned to Goldman, Sachs & Co., the Respondent herein.

Derivation Fee under 37 CFR § 42.404

Petitioner herewith is submitting the \$400 fee under 37 CFR § 42.15(c)(1) either via the Petitioner's credit card or via the undersigned's Deposit Account No. 505232. No additional fees are believed necessary. Should any additional fees be necessary to maintain this petition and obtain a filing date, the Board is respectfully directed to charge same (or credit any overpayments) to the undersigned's Deposit Account No. 505232.

Governing Law, Rules and Precedent

Derivation proceedings are provided for under 35 USC §135.

The "Leahy-Smith America Invents Technical Corrections" was signed into law on January 14, 2013 (Public Law 112-274, at 126 STAT 2456) to correct certain technical defects in the America Invents Act. Section 1, ¶ (k) amends 35 USC § 135(a) and establishes the times for the filing of a petition for a derivation proceeding, as follows:

(2) TIME FOR FILING. — A petition under this section with respect to an invention that is the same or substantially the same invention as a claim contained in a patent issued on an earlier application, or contained in an earlier application when published or deemed published under section 122(b), may not be filed unless such petition is filed during the 1-year period following the date on which the patent containing such claim was granted or

the earlier application containing such claim was published, whichever is earlier.

Since the instant petition is being filed during the one-year period following the publication of the Broder Application, the instant petition is timely, as appears more fully below.

Mandatory Notices under 37 CFR § 42.8

Pursuant to 37 CFR § 42.8, Petitioner is filing, as part of the instant petition, the following notices.

(1) Real Party-in-Interest

The real party-in-interest for Petitioner is the owner of United States Patent Application No. 15/368221 of Christian Gunther, Persephone GmbH, having an address at St. Johannis-Ring 79, 4056 Basel, SWITZERLAND.

The real party-in-interest for Respondent is believed to be Goldman, Sachs & Co., 200 West St., New York, NY. [Goldman, Sachs & Co. is the Assignee of the Broder Application, as recorded at reel 040035, frame 0893.)

(2) Related Matters

None.

(3) Lead and Back-up Counsel

Lead Counsel: Anthony H. Handal, Reg. No. 26,275; Handal & Morofsky LLC, 83 East Avenue, Norwalk, Connecticut 06851; T. 917-880-0811 (direct);

(no facsimile number); email: Handal@HandalGlobal.com.

Back-up Counsel: Mona Roy, Reg. No. _____; Handal & Morofsky LLC, 83 East Avenue, Norwalk, Connecticut 06851; T. 781 354-2686 (direct);

(no facsimile number); email mroy@HandalGlobal.com.

(4) Service Information

(a) Service of the instant petition is being made via Express Mail on the following address:

Docket clerk-GOLD

P.O. Drawer 800889

Dallas TX 75380

(b) The last attorney of record for the Broder Application was: Sean Grygiel, Esq., Perkins Coie, 30 Rockefeller Plaza, 22nd Floor, New York, New York 10112-0085 -T: +1.212.262.6900; Fax: unknown; e-mail: sgrygiel@perkinscoie.com

Parties

1. Petitioner Persephone, GmbH is a corporation duly existing and created under the laws of Switzerland (hereafter “Persephone” or “Petitioner”). Petitioner is the owner, by assignment from the inventor, of United States Patent Application No. 15/368221 (Exhibit B) directed to Electronic Platform for Managing Investment Products, and filed on December 1, 2016 naming Christian Gunther (hereafter “Gunther”) as sole inventor (hereafter the “Gunther Application”).

2. Goldman, Sachs & Co., is, upon information and belief, a corporation duly incorporated and existing under the laws of Delaware (hereafter “Goldman” or “Respondent”) and is in the business of providing investment services. Respondent is the owner, by assignment from the inventor, of United States Patent Application No. 14/726, 075 (Exhibit A) directed to Electronic Platform for Managing Investment Products, and filed on May 29, 2015 naming Jason Broder (hereafter “Broder”) as sole inventor (hereafter the “Broder Application”).

Standing

3. Petitioner has standing insofar as it is in compliance with §§ 42.402 and 42.403 because the Gunther Application has at least one claim that is (i) the same or substantially the same as the Respondent’s claimed invention; and (ii) the same or substantially the same as the invention disclosed to Broder and Respondent, as will be detailed more fully below.

Compliance with § 42.402

4. Petitioner is the applicant in and owner of the Gunther Application, United States Patent Application No. 15/368221.

Compliance with § 42.403

5. The subject derivation proceeding is sought in the Broder Application, 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. Exhibit A.

6. The Broder Application was first published on December 3, 2015. This petition is being filed within the one year period beginning on the date of the first publication of a claim in the Broder Application that is the same or substantially the same as the invention claimed in at least one claim of the Gunther Application, in conformity with the requirements of 37 CFR §42.403.

7. More particularly, claims 1-16 of the Gunther Application correspond and are the same or substantially the same as compared, respectively, to claims 1-16 of the Broder Application published on December 3, 2015.

**The Respondent's Claimed Invention Is the Same or Substantially the Same As
the Invention Claimed in at Least One Claim of the Gunther Application**

8. The Gunther Application discloses substantially the same invention as the Broder Application.

9. Petitioner's claimed invention is the same or substantially the same as the Respondent's claimed invention, insofar as claims 1-16 of the Gunther Application correspond and are the same or substantially the same as compared, respectively, to claims 1-16 of the Broder Application, and, interpreted in view of their respective supporting disclosures, the above-noted claims in the Gunther application have the same meaning as their respective claims in the Broder Application identified above, because they are supported by substantially identical disclosures.

**The Respondent's Claimed Invention Is the Same or Substantially the Same As
the Invention Disclosed to the Respondent**

10. The invention claimed in claims 1-16 of the Gunther Application is substantially the same as the invention that was disclosed to the Respondent, as will be detailed below.

Conception of the Invention Disclosed to Respondent

11. In or about May of 2011 (prior to Broder's having possession of the invention disclosed and claimed in the Broder application), while a student at the University of Zürich, Gunther conceived a web-based trading platform for direct trading by ordinary (i.e. non-professional) investors of structured investment

products where the products comprise derivatives, and wherein the products are structured by the platform, 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 enabling implementation of congruent investment objectives. The inventive platform had a principal objective of dramatically driving down costs for the bank or other company providing structured products.

12. More particularly, in accordance with Gunther's conception in May 2011, Gunther 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. As then conceived, 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. As then conceived, the electronic trading platform would receive 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 Gunther to provide online educational courses associated with the tradable investment products to the user of the electronic platform. The educational system, as conceived by Gunther, would operate by presenting a test to the user to verify the effectiveness of the product education system. Gunther further conceived at that time that the system would enable one user to gain information from other users 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. As then conceived, the structured investment product would be 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 was conceived to be based on a variety of different deal terms and to be pre-fetched, from pricing information on server databases located on an information exchange network that

includes the electronic platform. As then conceived, 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 and prices for the newly generated structured investment products 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. The details respecting this and other aspects of the conception, which all occurred in May of 2011 and communication of the invention are set forth below stated in the accompanying declaration of Christian Gunther and the Gunther Application, the contents of which are incorporated herein by reference.

Activities at the University of Zürich

13. 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” University of Zürich students to come up with ideas applicable in the banking and other industries within which Accenture worked, develop them and present them to Accenture.

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

15. At that time, Gunther described Gunther’s concept to Mr. Winzenried. Mr. Winzenried was interested in working on an implementation study for a course at the University of Zürich which Gunther and Winzenried were taking, centering on Gunther’s technology.

16. Later in March 2012, Gunther met with Patrick Winzenried and two other student team members from the course at the University of Zürich at Starbucks in Zürich during which Gunther described Gunther’s technology and made it clear that the same was proprietary and was not to be discussed with anyone outside the

group, which included Mr. Winzenried and Gunther, as well as the two other student team members.

17. At this meeting it was agreed to make Gunther's technology the subject of an implementation study, with Gunther being responsible for the technology details, one of Gunther's student colleagues, Olivier Grossman, being responsible for selecting existing software products such as Internet Explorer and the like as the infrastructure for interfacing the technology on the existing financial house information technology system, another one of Gunther's student colleagues, Maximillian Steinbach responsible for the details of regulatory compliance, and Patrick Winzenried exploring the steps for introduction of the technology in the various departments throughout the financial institution.

18. In accordance with the structure of the course at the University of Zürich, the 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 of students in the course. 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 dealing with such products commercially.

19. Initially, there was a meeting during which Dr. Unseld learned about Gunther's technology with the objective of involving someone from industry as a coach to the group.

Disclosure to Accenture's Bastian Barthelmann

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

21. The first task in the implementation study was the preparation of a document, which in part was to overview the technology. Notwithstanding the nominal involvement of three other students, all of the work of creating this document relating to Gunther's novel derivative product structuring technology was done by Gunther.

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

23. The work which Gunther 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 Exhibit D, and include a detailed introduction including the aim of the technology and the assumptions underlying Gunther's

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 Gunther's proposed technology (Exhibit D). Gunther also prepared portions of a PowerPoint presentation dealing with Gunther's technology. Exhibit E.

24. 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

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

26. On April 4, 2012, Gunther received an email **from** Daniel Bruchatz, 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

27. After the fact, on April 11, 2012, Gunther 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. Gunther learned of this in an email string sent to Gunther on April 11, 2012. The April 5 email (included in the email chain of Exhibit G) was sent to Karin Buissink without Gunther’s permission and in violation of the confidentiality understandings. This email described Gunther’s 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.”

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

29. Without Gunther or Petitioner being aware of or having consented to the same, in the following days, descriptions of Gunther’s technology had been 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.

30. 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.

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

32. On April 11, when Gunther spoke with Mr. Winzenried about his disclosures to Credit Suisse, Gunther further asked him to cancel the meeting with Mr. Imhalsy.

33. However, on April 12, 2012, again without Gunther’s permission and in direct violation of the instruction to him, Mr. Winzenried met with Mr. Thomas Imhasly of Credit Suisse and discussed Gunther’s online derivative product structuring technology.

34. On April 12, 2012, Gunther checked Gunther's email and discovered an email sent earlier in the day which included a detailed summary of the meeting between Mr. Winzenried (an intern at Credit Suisse, as noted above) and Thomas Imhasly of Credit Suisse. Exhibit H. Exhibit H is admissible as corroborating evidence under Federal Rule of Evidence 804(b)(3) as an admission against interest, insofar as Mr. Winzenried's conducting of the interview with Credit Suisse was a violation of his obligation of confidentiality and was actionable by way of civil action. In any case, Mr. Winzenried has executed a declaration, Exhibit R, which is being filed concurrently with this Amended Petition.

35. 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.

36. Gunther was surprised to see both of these communications from Mr. Winzenried, insofar as Gunther 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 on March 30, 2012 and on May 4, 2012 with Dr. Unseld and the Accenture

people where Gunther also stressed the confidential nature of Gunther's work on the customized derivative product structuring platform.

More Accenture Executives at May 2012 Meeting

37. A closing meeting, as part of the above course at the University of Zürich, was scheduled for May 4, 2012 in connection with the course at the University of Zürich.

38. Prior to the above meeting of May 4, 2012, Gunther sent copies of a PowerPoint presentation of Gunther's technology (Exhibit I, a somewhat revised version of Exhibit E) to Dr. Unseld and Accenture executive Barthelmann.

Accenture Introduces Executives from Its Client Credit Suisse

39. The May 4 meeting was attended by Gunther, Mr. Winzenried, the two other student team members, Olivier Grossman and Maximilian Steinbach, and Dr. Sigrid Unseld.

40. Mr. Barthelmann was also present, along with Accenture executives Daniel Bruchatz, Dirk Marko, Sebastian Faessler and Joscha Milinski, who stepped into the meeting on account of the growing enthusiasm and interest about Gunther's technology.

41. If there were any doubt that Gunther's technology represented an important step in the evolution of financial systems, such doubt was dispelled by

the further unexpected appearance of a large number of Accenture people. Mr. Gunther also learned that this meeting that another one of his student team members was employed by Credit Suisse. This accounts for a mistaken recollection in Gunther's original declaration (now corrected with a second declaration) that additional Credit Suisse people appeared.

42. This accounts for a mistaken recollection in Gunther's original declaration that additional Credit Suisse people appeared.

43. This mistaken recollection came to light as Mr. Gunther's recollection was refreshed during discussions with Mr. Winzenreid.

44. This mistaken recollection in Gunther's original declaration has now been corrected in a second declaration submitted herewith.

45. At the May 4 meeting, Gunther explained the substance of his technology as detailed above, and presented the PowerPoint presentation (Exhibit I), in which the electronic trading platform which Gunther had invented was shown as an illustrative product known as "My Structuring".

46. 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 Gunther's technology in detail), the Accenture employees

followed the lead of Mr. Bruchatz, criticizing the technology as impractical and not cost-effective and based on too many assumptions.

47. The criticisms made by Accenture were particularly mystifying, given the fact that they, no doubt, were given detailed information on Gunther's technology by the other Accenture people present at the previous meeting.

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

49. During the presentations in connection with the seminar course at the University of Zürich, Gunther suggested that the Swiss bank known as Bank Vontobel would be an ideal candidate to implement Gunther's technology.

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

Credit Suisse Implements the Inventive Technology

51. In December 2013, Gunther saw that Credit Suisse had implemented the trading platform proposed by Gunther to the members of the student group in 2012. Such implementation used the product name “My Solutions” mimicking the “My Structuring” trademark used by Gunther in Gunther’s exemplary embodiment of the technology, which Gunther generated during the University of Zürich course. As is detailed above, it is clear that Credit Suisse received the technology invented by Mr. Gunther through Mr. Winzenreid. Then Credit Suisse implemented the technology and published the same on the Internet, making it available to Broder and Goldman Sachs for inclusion in the Broder Application. Moreover, upon information and belief, the invention was in the possession of Accenture which, apparently, wanted to the attention of various clients resulting in wide implementation of the technology invented by Mr. Gunther.

The Information Machine

52. More particularly, 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 (a client of Accenture), etc. regularly monitor the Internet to keep abreast of competitive developments. In addition, the major players both sponsor and attend 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. Mr. Jason Broder inventor in the Broder Application has been present at numerous conferences including one conference held in June 2013 about the time when Credit Suisse must have been working to prepare its release of Gunther's technology as a commercial product. See Exhibits S and T, which constitute photographs of Mr. Broder at that meeting. Moreover, note the presence of a name tag on Mr. Broder confirming his identity in Exhibit S. These photographs are available at

<https://plus.google.com/photos/116595027524834007904/album/6005054031078952497/6005059605105778258> and

<https://plus.google.com/photos/116595027524834007904/album/6005054031078952497/6005059921744860130>

53. For example, and relevant to this Petition, see Exhibit K, a brochure from Banking Technology Magazine relating to an awards dinner is sponsored held on November 1, 2013 giving an award to Credit Suisse for implementing Gunther's technology, identified as "My Solutions". Goldman Sachs was present at this dinner, and, in fact, received an award for the "Best Use of IT in Investment Banking." This

exhibit was obtained on the Internet and is routinely accepted as evidence by the courts.¹

54. 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.

55. Similarly, see 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

56. At the awards dinner evidenced by Exhibit K, prior to being given their award for “My Solutions”, the Credit Suisse version of Gunther’s My Structuring technology, Credit Suisse made a detailed presentation of the technology which Gunther conceived and communicated to Credit Suisse both at the May 4, 2012 meeting and which Gunther indirectly and unwittingly communicated to Credit

¹ The Board may take judicial notice of materials on the Internet to ascertain the facts where the circumstances suggest the reliability of the same. See, e.g., *Vox Amplification, Ltd. v. Meussdorffer*, No. 13-cv-4922, 2014 U.S. Dist. LEXIS 21577, *21-*22 (E.D.N.Y. Feb. 11, 2014) (Brown, M.J.) (in trademark action, taking judicial notice based on Internet searches that “a teardrop-shaped body on a stringed instrument could not imaginably be deemed distinctive”); see also, e.g., *United States v. Bari*, 599 F.3d 176, 180 (2d Cir. 2010) (affirming judicial notice of Internet materials).

Suisse through Patrick Winzenried, when Mr. Winzenried met with Mr. Imhasly of Credit Suisse on April 12, 2012. Upon information and belief, Mr. Jason Broder was at that awards dinner and received a disclosure of the technology at least at that time. In addition, Bank Vontobel, following the suggestion to Accenture by Christian Gunther that his technology would be ideal for that bank, was upon information and belief given to Bank Vontobel by Accenture resulting in the publication of a virtually identical system in a video posted by Bank Vontobel and available at <https://www.youtube.com/watch?v=0rtTmc-mEjE>. Published on Oct 29, 2013. This video was published on published on Oct 29, 2013, well before Broder filed his provisional patent application, and was clearly available to him. Most importantly, the remarkable identity in features between Gunther's work, the Vontobel platform, Credit Suisse's My Solutions and the Broder Application (consumer use, investment criteria inputs, graphical controls, educational component, etc.) is strong evidence of the common origin of these features with Gunther.

57. More particularly, 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 Credit Suisse My Solutions Brochure of Exhibit N. Upon information and belief, Broder and Goldman learned

of the technology developed by Gunther at least from the Exhibit N Credit Suisse brochure and, upon information believed, direct communication of the invention of Gunther to Goldman by Accenture prior to filing the Broder Application and incorporated the same into the Broder Application.

58. 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 at which Goldman was present.

Goldman Immersed in Credit Suisse Activities Implementing Technology

59. 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.

60. It is thus clear that Goldman Sachs and Jason Broder were aware of Gunther’s technology through the publication of Exhibit N (having been alerted by the award given at the dinner evidenced by Exhibit K) and, no doubt, Goldman Sachs and Broder were as impressed by Gunther’s 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.

61. Details of Gunther's 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".

62. 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 Gunther's 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 Gunther's technology, insofar as it empowers ordinary investors to intuitively deal with investment decisions.

Moreover, as shown by the video at <https://www.credit-suisse.com/microsites/mysolutions/en/videos.html> , which states "Welcome to the video tutorial series for Credit Suisse's flagship cross asset trading platform My Solutions" and then proceeds with educational content. Moreover, in the Credit Suisse brochure of Exhibit O, education is provided to the consumer.

Other Information on Gunther's Technology Available to Goldman Sachs

63. Upon information and belief, Accenture made information relating to Gunther's technology available to its clients, including Bank Vontobel, a Swiss bank. Indeed, it was suggested by Gunther at the meetings at the University of Zürich that Bank Vontobel would be an ideal candidate for implementation of Gunther's technology. Later, Bank Vontobel published information on Gunther's 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.

64. Referring to the Bank Vontobel video Exhibit P, the same constitutes communication to Brody of the same or substantially the same= invention claimed in the Brody Application. Namely, the Vontobel video speaks of "interactive online issuing platform," tailor structure products," "[m] your selection from an extensive universe of underlyings and structures," "tailor structure products," [y]ou set the

parameters you want and so customize the structured product,” “simulate various possibilities in real time,” and “[c]hange the parameters and get real time prices within a matter of seconds.”

65. The activity which was triggered by Gunther’s 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 Gunther directly and through Accenture, Accenture client Bank Vontobel, a Swiss bank suggested by Gunther at the March 30 meeting to be an ideal candidate for the technology.

66. The above Bank Vontobel video was available to Jason Broder and Goldman Sachs before the filing of their provisional patent application the priority of which is claimed in the patent application derived in this derivation proceeding. Upon information and belief Jason Broder and Goldman Sachs saw the Bank Vontobel video and other information from Bank Vontobel prior to filing the Broder Application and incorporated information in the same into the Broder Application.

67. 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 Gunther 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 Gunther’s term paper and PowerPoint presentation two years earlier, communicated by Accenture and Credit Suisse to others and made the subject of the Broder Application by Goldman Sachs.

68. The above publications and communications of the subject technology, and upon information and belief other communications made directly and/or indirectly to Goldman Sachs and Jason Broder, clearly communicated the subject technology which Gunther invented to Jason Broder, who incorporated the same into the Broder Application and was named as the inventor in the Goldman Sachs’ Broder 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.

69. On every occasion at which Gunther disclosed his technology which forms the subject of his pending patent application, Gunther 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, neither inventor, Christian Gunther, nor successor of the inventor nor any person acting under his or its authority ever authorized the filing of any patent application or

other document related to the subject invention of an electronic platform for managing investment products and for user customization of the same, as claimed in the claims of Petitioner's pending patent application showing Gunther as sole inventor of the invention therein.

70. At no time did Christian Gunther or Petitioner ever authorize the filing of any patent application by Goldman Sachs & Co., Or authorize the filing of any patent application directed to the invention invented by Christian Gunther as detailed above.

Claimed Invention Is Same or Substantially Same As the Invention

Disclosed to Respondent

71. Annexed hereto as Attachment 1, and hereby incorporated by reference, is a claim chart analyzing claims 1-16 of the invention claimed in the Broder Application, and for each element thereof showing the same or substantially the same subject matter as is claimed in the various documents communicated to Goldman and Jason Broder. The substantial similarity of the meaning of the cited sections of the communicated documents to the meaning of the claim language is apparent on the face of the language of the claims as compared to the language in the communicated documents.

Claim Construction

72. The construction of the various elements of claims 1-16 in the Broder Application is set forth with respect to the various claim elements in Attachment 1.

Relief Requested

Petitioner requests that, pursuant to 35 USC §135 (b), the Patent Trial and Appeal Board correct the inventorship in the Broder Application at issue to name Christian Gunther as inventor in the Broder Application, at issue herein, and/or to delete the inventors currently listed in the Broder Application, as the Patent Trial and Appeal Board may deem appropriate under the circumstances. Petitioner further respectfully request that the assignment recorded at Reel 040035, Frame 0893 be voided, and that the Board grant such other and further relief as the Board may deem just and appropriate.

Favorable consideration is respectfully requested.

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Respectfully submitted:

By: /Anthony H. Handal/
Anthony H. Handal
Reg. No. 26,275
Handal & Morofsky, LLC
Attorneys for Petitioner
83 East Avenue
Norwalk, CT 06851
Telephone: 917-880-0811
email:
Handal@HandalGlobal.com