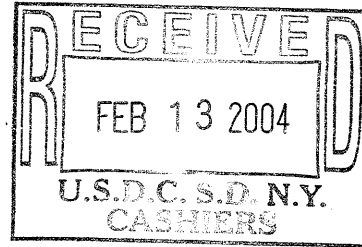


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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE COTE

04 CV 1201

G5 TECHNOLOGIES, INC.,

Plaintiff,

04 CV _____ ()

-against-

COMPLAINT WITH JURY
DEMAND

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Plaintiff G5 Technologies, Inc., through its attorneys, Garvey Schubert Barer,
alleges as follows:

PARTIES

1. Plaintiff G5 Technologies, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business at Cherry Hill, New Jersey.
2. Defendant International Business Machines Corporation ("IBM") is a corporation organized under the laws of the State of New York. Defendant has offices within this District and is subject to personal jurisdiction in this District.

COPY

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§1332 because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different States.

4. Personal jurisdiction and venue are proper in this District pursuant to 28 U.S.C. §1391(a) because IBM is a resident of this District.

FACTS COMMON TO ALL CLAIMS

5. In 1996 Bill Adams became President and CEO of AgileWeb, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania. In May 1999, AgileWeb spun off G5 LLC, a limited liability corporation. In February 2000, G5 LLC became G5 Technologies, Inc. In November 2000 G5 Technologies, Inc., and AgileWeb, Inc., completed a reverse subsidiary merger by which G5 Technologies Inc. acquired all of the stock of AgileWeb, Inc. In this complaint G5 Technologies, Inc., AgileWeb, Inc., and their predecessors are referred to collectively as “G5”.

6. Between 1996 and 1999, G5 developed a system enabled by the Internet through which companies and/or individuals would be able to form collaborative communities for conducting commerce. G5 called its system the “Virtual Corporation Management System”, or “VCMS”.

7. The VCMS was a novel and unique advance in business-to-business e-commerce. The VCMS constituted a detailed system for the creation and management of “Agile Virtual Enterprises” by providing an Internet-enabled infrastructure through which previously unaffiliated companies and individuals could form business

communities that would collaborate to respond to specific opportunities or markets. The VCMS solved infrastructure problems ignored by previous collaborative commerce systems and provided a system that was independent of real-world underlying business structures, allowing it to be applied to a wide variety of business sectors.

8. The VCMS business model envisioned companies and/or individuals forming collaborative organizations, called “Business Area Collaboratives”, through a process of identifying core competencies and populating a core competency database of capabilities. These capabilities can then be organized into “Agile Virtual Enterprises”, combinations of capabilities gathered from various members of the business area collaborative that then function together as a new, virtual enterprise capable of providing goods or services in response to market opportunities. Real world individuals and companies can join multiple Business Area Collaboratives appropriate to their core competencies. Each Business Area Collaborative contracts with a “Certified Business Network” (“CBN”) for marketing and management services. Certified Business Networks can be technology, market, industry, or customer focused. The Certified Business Network acts as the marketplace for providers of goods and services and their potential customers. The Certified Business Network is responsible for finding opportunities the Certified Business Network can win, for forming the Agile Virtual Enterprise needed to win the opportunity, and for providing program management services to manage the contractual obligations of the Agile Virtual Enterprise. The Certified Business Network is also responsible for creating and managing the opportunities database for the Business Area Collaborative, allowing either human or autonomous agents to identify opportunities and corresponding capabilities and assisting

in the formation of the appropriate Agile Virtual Enterprise to respond to the opportunity. Each Certified Business Network, in turn, is registered with a Global Business Services provider that provides the support services the Certified Business Network will need to conduct commerce and register virtual companies. The Global Business Services provider interfaces with support service providers for insurance, bonding, registration, risk scoring, and business certification and/or licensing functions. After the completion of the project for which it was created, the Agile Virtual Enterprise can dissolve, freeing the capabilities of its individual member companies or individuals for use in another Agile Virtual Enterprise directed to another specific market opportunity identified by the CBN.

9. The VCMS constituted a novel and original way of organizing business activities to maximize the potential of Internet-enabled collaborative commerce. In addition to providing new opportunities to businesses providing goods and services through Agile Virtual Enterprises, the VCMS created a unique opportunity for middleware software and infrastructure vendors, like IBM, by providing new software and services markets and opportunities through the creation of Certified Business Networks, the sale of software and hardware to companies and individuals wishing to participate in those networks, the management of capabilities and opportunities databases, the provision of Certified Business Network services, and the provision of the services of the Global Business Services provider.

10. Upon information and belief, in 1999 IBM realized that its existing business model for Internet-enabled business-to-business commerce was flawed. While IBM possessed the tools for building e-market and collaborative commerce

infrastructures, providing infrastructure tool sets alone would not meet the needs of IBM's customers and would not foster the rapid development of an e-commerce market into which IBM could sell its infrastructure tools. IBM's product line did not address the inter-company business integration issues that had to be resolved before customers would readily adopt Internet-enabled business-to-business commerce methods. In order to implement their own Internet-enabled business-to-business activities, IBM's customers and potential customers needed the appropriate trading partner processes and methodologies to complement IBM's infrastructure tools. To address this shortcoming, IBM set out to find new business models that could extend IBM's existing business-to-business technologies and allow IBM to provide value-added services to purchasers of its infrastructure tools.

11. In March of 1999, G5 was under contract to Ingersoll-Rand to provide strategic consulting services to assist Ingersoll-Rand in developing a business growth plan. IBM also was under contract to Ingersoll-Rand on an unrelated matter and, having heard positive comments about the concepts Adams had presented to Ingersoll-Rand concerning virtual entities, approached Adams to have a discussion regarding G5's work. G5 and IBM executed a non-disclosure agreement and Adams was invited to IBM's Watson Lab to meet with senior scientists and to discuss virtual entities and IBM's activity with learning agents.

12. Upon information and belief, IBM realized that G5's approach to collaborative commerce was unique and could be used to make business-to-business ("B2B") Internet infrastructures more productive and drive customers to IBM's infrastructure tools and services. IBM representatives suggested that G5 and IBM form a

consortium of interested companies – including Ingersoll-Rand, Lockheed Martin, Cadence Design, IBM and G5 – in order to explore the possibility of commercializing G5’s VCMS.

13. G5 made a proposal to the Department of Commercial and Economic Development of the Commonwealth of Pennsylvania (“DCED”) to obtain funding for the activities of the consortium to be formed by G5 with Ingersoll-Rand, Lockheed Martin, Cadence Design, and IBM. In June 1999, in response to the G5 proposal, the DCED agreed to provide initial funding of \$400,000.00.

14. On June 26, 1999, Adams met with IBM representatives to discuss design requirements for the VCMS. Adams presented a high-level abstraction of the VCMS method and IBM personnel involved in global consulting considered how IBM’s hardware and software infrastructures might be used to implement the VCMS. Upon information and belief, IBM recognized the enormous potential commercial value of G5’s VCMS method for collaborative commerce. Accordingly, IBM’s representatives initiated discussions with G5 concerning a strategic alliance for the commercialization of G5’s VCMS method using hardware and software infrastructure components that IBM already had developed or would develop with G5’s assistance. At the June 26 meeting, Ajay Kadakia, IBM Global Electronics Industries Engineering Segment Executive, told Adams that IBM would make the VCMS a profitable endeavor for G5. Shortly after this meeting, IBM designated the VCMS project as a “first of its kind” project, recognizing the originality and novelty of G5’s VCMS method for collaborative commerce.

15. In July 1999, G5, IBM, Lockheed-Martin, Cadence Design and Ingersoll-Rand formed the Virtual Corporation Management System Consortium (the “VCMSC”

or the “Consortium”). The Document of Understanding executed by the Consortium members recognized that G5 had intellectual property rights in the VCMS and stated that one of the purposes of the Consortium was to align pre-existing IBM Technologies to the VCMSC vision. Each Consortium member signed an addendum to the Document of Understanding acknowledging that the documents exchanged between Consortium members in pursuit of the Consortium’s goals were confidential. The Document of Understanding was executed by the Consortium’s members in August 1999.

16. On August 11, 1999, the Consortium’s members met at G5’s offices in Cherry Hill, New Jersey, to discuss each member’s responsibilities in connection with the creation of the VCMS based on G5’s intellectual property. At this meeting, IBM’s Kadakia told Adams that IBM saw great potential value in G5’s VCMS and that G5 would be best served by allowing only IBM to work on the infrastructure of the VCMS, to the exclusion of other Consortium members. Kadakia told Adams that IBM would “make him rich” and that Adams should “trust” IBM.

17. On August 17, 1999, Kadakia sent an email to Adams again encouraging Adams to make an arrangement with IBM exclusive of the other Consortium members:

IBM and G5 would like to engage in a contractual obligation as soon as possible to further develop the scope and nature of the relationship between both companies. It is likely that G5 and IBM may be able to work out some revenue & risk sharing (28/72%) arrangement to compensate for their intellectual property reuse in VCMS and successful launch at first few customers....It is IBM's intent to appoint G5 as the key stake holder of VCMS outside their role as a [sic] active member of VCMS consortium.

18. In August 1999, G5 began to negotiate directly with IBM for development of the software infrastructure necessary to implement the VCMS. IBM drafted an Interim Negotiation Letter setting forth the terms under which IBM and G5 would conduct

“preliminary discussions concerning the Virtual Corporation Management System (VCMS) project and how our companies may engage in business opportunities in the future.”

19. G5 signed IBM’s Interim Negotiation Letter on September 22, 1999. Kadakia signed the Interim Negotiation Letter on behalf of IBM on October 13, 1999.

20. While G5 and IBM continued to discuss the terms of a strategic alliance for the development and commercialization of VCMS, G5 pursued funding for the initial demonstration phase of the VCMS project, as agreed with the members of the Consortium. On September 17, 1999, the Commonwealth of Pennsylvania agreed to provide up to \$2.7 million in funding to G5 for a “Phase 0” project to develop a non-functional demonstration version of the infrastructure for the VCMS. Of that amount, \$2 million was earmarked for payment to IBM for development of the VCMS software architecture and beta code.

21. IBM insisted that G5 execute limited agreements directed to specific aspects of the services to be performed by IBM in connection with the initial phase of the VCMS project funded by the DCED. Therefore, at the end of September and beginning of October 1999, G5 executed IBM’s form Customer Agreement in connection with the payment by G5 to IBM of \$2 million for a limited duration license for fifteen beta copies of the VCMS infrastructure software to be coded by IBM. As agreed by G5, IBM and the Commonwealth of Pennsylvania, the license purchased for \$2 million would last for only one year and the contemplated beta software would not be functional for conducting commerce on the Internet. The Customer Agreement, limited in scope to the purchase of

a one-year software license for beta software, was not intended by G5 or by IBM to govern all aspects of the relationship between them.

22. In October 1999, G5 and IBM executed IBM's form Agreement for Exchange of Confidential Information. This agreement purported to govern the terms under which G5 would disclose to IBM information that G5 considered proprietary, including the details of G5's proprietary VCMS.

23. Under the Agreement for Exchange of Confidential Information, IBM agreed that it would protect G5's confidential information with the same care that it uses "with its own similar information that it does not wish to disclose, publish or disseminate". IBM also agreed that it would only use G5's confidential information "for the purpose for which it was disclosed or otherwise for the benefit of" G5.

24. IBM and G5 continued to discuss a strategic alliance related to the VCMS. In mid-November, IBM sent to G5 a proposed supplement to its previous Interim Negotiation Letter. In the proposed supplement, IBM stated:

IBM sees potential value in G5's ability to organize business area communities or to develop networks of similar business or CBN's. Our companies agree that these CBN's or business area communities would benefit from a VCMS infrastructure and that by combining our competencies, IBM and G5 can deliver first-rate VCMS solution [sic] for our customers.

In the proposed supplement and in its discussions with G5, IBM repeatedly acknowledged the value of G5's know how. In the proposed supplement, IBM sought to obtain a royalty free license to use that know how in the VCMS infrastructure software which IBM planned to claim as its own:

IBM has expressed interest in incorporating some or all of that intellectual property into the VCMS infrastructure software IBM is going to create,

with the understanding that IBM's current plans are for IBM to own all VCMS infrastructure software and for G5 to provide a world-wide, perpetual and royalty free license to any preexisting G5 materials that IBM might incorporate into the VCMS infrastructure software.

G5, however, would not agree to give away its know how to IBM. G5 and IBM proceeded to develop the VCMS and continued to discuss the terms of a possible strategic alliance.

25. In an effort to move forward the negotiations with IBM concerning a strategic alliance, Adams, on behalf of G5, sent to IBM a term sheet outlining possible revenue sharing arrangements for the various business areas that would arise from the commercialization of the VCMS, as G5 and IBM personnel had discussed in the previous months. These business areas included Hardware/Software sell through, Web hosting, sale of IBM products, registration system storage and throughput, CBN development, CBN operations, training, and education.

26. In response to Adams, Kadakia stated that he was not in a position “today to reach agreement on all the activities listed”; instead, Kadakia suggested that “to move the ball forward,” IBM and G5 should address the various aspects of their potential alliance step-by-step, focusing initially on lead generation fees for VCMS web hosting opportunities. G5 continued to deal with IBM in good faith, believing that IBM intended to move forward with the contemplated strategic alliance.

27. On December 13, 14 and 15, 1999, G5 held a formal “workshop” at its offices in New Jersey for the purpose of disclosing to IBM the specific details of the VCMS collaborative business method so that IBM could begin to build the software infrastructure necessary to implement that method. Nitin Nayak, Sugato Bagchi, Jeff Soo

Hoo and David Lee attended the workshop from IBM. Nayak was an Enterprise Solutions Research scientist at IBM's T.J. Watson Research Center and was the lead scientist for IBM on the VCMS project.

28. G5 and IBM prepared "workshop notes" after each meeting day. Those workshop notes were designated as G5 Confidential Information under the terms of the Agreement for Exchange of Confidential Information when G5 and IBM executed an IBM "Supplement for Disclosure" form listing those documents as confidential information disclosed to IBM by G5 ("AECI Supplement No. 1").

29. AECI Supplement No. 1 also designated as G5 Confidential Information an attachment to an email sent by Adams to Soo Hoo prior to the workshop entitled "VCMS Processes" and a third document called "the VCMS Collaborative database".

30. AECI Supplement No. 1 provides that the "Final Disclosure Date" for the G5 confidential information detailed in that document was June 30, 2000. Under the terms of the Agreement for Confidential Information, IBM was required to maintain the confidentiality of G5's information and to use that information only for the benefit of G5 for two years following the Final Disclosure Date.

31. Through discussions and demonstrations at the December workshop and through the three documents designated as G5 Confidential Information in AECI Supplement No. 1, G5 disclosed the concepts, procedures, process flows, and software architecture requirements of the VCMS to IBM and instructed IBM in a method for creating collaborative business networks based on IBM's existing software infrastructure. That method combined a number of components into a unique form of Internet-enabled business organization previously unknown to IBM.

32. After the December workshop, Kadakia, following up on his earlier suggestion that G5 and IBM approach a strategic alliance step-by-step, sent to Adams a proposed “Lead Passing Agreement for Virtual Corporation Management System Services”. Kadakia suggested that the Lead Passing Agreement could form a base for determining fee percentages for the other business areas of an overall strategic alliance.

33. In the proposed Lead Passing Agreement, IBM again sought an irrevocable, nonexclusive, worldwide, perpetual, paid-up license to all of G5’s know-how. G5 refused to grant such a license.

34. Utilizing the detailed procedures and processes disclosed by G5 at the December workshop, G5 and IBM began to develop the software infrastructure for the VCMS. Through confidential information disclosed to IBM by G5 at the December workshop and in subsequent meetings and communications between G5 and IBM, G5 educated IBM on the meanings and required functionality of collaborative commerce, coalition formation, the creation of collaborative business networks, and the process requirements of the creation, operation, and dissolution of such networks. This information was novel and original and not previously known to IBM.

35. In January 2000, IBM invited Adams to attend FOCUS 2000, the IBM Industrial Sector Executive Conference in Orlando, Florida.

36. Upon information and belief, FOCUS 2000 was an important marketing tool for IBM. IBM invited its top Fortune 500 customers to FOCUS 2000 to tell them about the programs and technology IBM was then working on and to generate customer interest in those products. One hundred companies were represented at the conference. Speakers chosen by IBM, including Adams and Pennsylvania’s then Governor Tom

Ridge, promoted the benefits of the virtual company business model to the conference attendees. Governor Ridge gave a presentation describing how VCMS would benefit Pennsylvania companies and communities. IBM General Manager, Patrick Toole, disclosed in his presentation that the VCMS development program at IBM was projected to be important for the success of future B2B exchanges and practices. Toole described what was clearly a change in focus in IBM's Internet business-to-business strategy. Instead of merely providing infrastructure tools to other B2B players, IBM announced its intention to launch tens of industry-specific VCMS-based exchanges before the end of 2000 and hundreds of such exchanges in the future, reflecting a new concentration on collaborative commerce.

37. At the end of the FOCUS 2000 conference, Ray Wallace, Chief Operating Officer of G5, met with IBM's Kadakia to continue negotiations regarding an alliance agreement between G5 and IBM. While no agreement was reached, Kadakia continued to represent to G5 that IBM was interested in entering into an alliance with G5 for the commercialization of the VCMS. On that basis, G5 continued to work with IBM to develop the VCMS.

38. In March 2000, Adams met with Jay Ennesser of IBM. At that time Ennesser was Kadakia's boss and his title at IBM was Director, Industry Solutions, Industrial Sector. Adams expressed concern to Ennesser that G5 and IBM had not finalized a strategic alliance agreement while G5 continued to assist IBM in the creation of the VCMS infrastructure. Ennesser assured Adams that G5 and IBM were still on track for a strategic alliance and that IBM would respect G5's intellectual property and

would pay G5 for any reuse of VCMS-based technology. Based on this assurance, G5 continued to work with IBM on the VCMS infrastructure.

39. In May 2000, IBM again acknowledged that the combination of its capabilities with G5's abilities in the virtual corporation arena "will revolutionize the e-Business concept." In response to G5's requests that the parties move forward with a formal alliance agreement, however, IBM changed its previous position and advised G5 that it "did not see a need to enter into an alliance agreement with G5 at this time".

40. Between April and December 2000, G5 and IBM continued to work together to complete the DCED contract. By December 28, 2000, with the assistance of G5 and based on the confidential information disclosed by G5, IBM had determined how to construct a viable collaborative commerce system built on IBM infrastructure tools. IBM delivered 15 beta copies of VCMS infrastructure software to G5 and the DCED in 2001.

41. On July 6, 2001, in response to an inquiry from G5, IBM advised G5 that it had no current plan to commercialize the VCMS.

42. In fact, prior to July 6, 2001, and without the knowledge of G5, IBM used the know-how, trade secrets and intellectual property disclosed to it by G5 to develop and commercialize its own version of the VCMS, now known as Business Integrator Connect, one of the products in IBM's WebSphere product line.

43. Unknown to G5, on February 13, 2001, Nitin Nayak, the lead IBM scientist on G5's VCMS project, and Annap Derabail filed United States Patent Application Serial No. 781279 for a "Method and system for forming dynamic vendor coalitions in collaborative e-commerce." Upon information and belief, the "Annap

Derabail” referred to in the 781279 application is Annap Derebail, who was or is currently employed by IBM.

44. In the 781279 application, Nayak and Derabail claim as their invention “a method and system. . .used for the formation of dynamic alliances between vendors with complementary capabilities to jointly pursue specific market opportunities. Such alliances are created primarily for the purpose of satisfying a market opportunity and disbanded after the opportunity has been satisfied. Although most alliances will be short-term in nature, traditional long-term business relationships can also evolve in some cases.”

45. The method and system described by Nayak and Derabail’s 781279 application is essentially the VCMS method disclosed to IBM by G5. Nayak and Derabail based the method and system they describe in the 781279 application on the disclosures made by G5 to IBM.

46. In May 2001, IBM announced an e-business initiative to help businesses dynamically connect multiple enterprise applications and systems using a standards-based Web services architecture. Two parts of that initiative were WebSphere Business Integrator and WebSphere Business Connection. In Fall 2002, IBM re-introduced WebSphere Business Integrator and WebSphere Business Connection under a single product name, WebSphere Business Integration Connect. WebSphere Business Integration Connect is IBM’s business-to-business collaborative commerce software. WebSphere Business Integration Connect is based on G5’s VCMS and incorporates the combination of elements previously unknown to IBM that was disclosed to IBM by G5.

47. Since its introduction, WebSphere Business Integration Connect has come to dominate the collaborative commerce software market and has provided IBM with millions of dollars of revenue through software licensing and related services.

FIRST CLAIM

BREACH OF CONTRACT

48. Plaintiff G5 repeats and realleges the allegations in the preceding paragraphs.

49. G5 has performed each of its obligations under the terms of the AECI and the supplements thereto.

50. Pursuant to the terms of the AECI, G5 disclosed to IBM confidential information including novel and original ideas previously unknown to IBM.

51. In breach of the terms of the AECI and the supplements thereto, prior to June 30, 2002, IBM used for its own benefit the confidential information disclosed to it by G5.

52. As a result of the breach of the terms of the AECI, G5 has been damaged in an amount to be determined at trial and believed to be in excess of \$2,000,000.00.

SECOND CLAIM

THEFT OF TRADE SECRETS BY BREACH OF CONFIDENCE

53. Plaintiff G5 repeats and realleges the allegations in the preceding paragraphs.

54. In and before 1999, G5 possessed trade secrets consisting of information concerning methods for collaborative commerce enabled by the Internet, collectively

known as the VCMS. The VCMS was sufficiently valuable and secret to afford an actual or potential economic advantage over others.

55. IBM knew or had reason to know that the disclosures made to it by G5 were intended to be in confidence.

56. G5 reasonably inferred that IBM consented to the obligation of confidentiality in connection with G5's disclosure to IBM of its trade secrets.

57. In breach of the confidence reasonably reposed in IBM by G5, IBM has used G5's trade secrets for its own benefit and to the detriment of G5.

58. As a result of the theft of G5's trade secrets by IBM, G5 has been damaged in an amount to be determined at trial and believed to be in excess of \$2,000,000.00.

THIRD CLAIM

THEFT OF TRADE SECRETS BY BREACH OF AGREEMENT

59. Plaintiff G5 repeats and realleges the allegations in the preceding paragraphs.

60. G5 disclosed its trade secrets to IBM under an express promise of confidentiality.

61. In breach of its express promise of confidentiality, IBM has used G5's trade secrets for its own benefit and to the detriment of G5.

62. As a result of the theft of G5's trade secrets by IBM, G5 has been damaged in an amount to be determined at trial and believed to be in excess of \$2,000,000.00.

FOURTH CLAIM

BREACH OF CONTRACT IMPLIED IN FACT

63. Plaintiff G5 repeats and realleges the allegations in the preceding paragraphs.

64. G5 disclosed to IBM its know-how and confidential information concerning collaborative commerce.

65. G5 assisted IBM in the development of a software infrastructure to support the VCMS and other Internet-enabled collaborative commerce systems.

66. G5 obtained and provided to IBM funding sufficient to develop an e-business infrastructure and technology demonstration intended to web-enable key business to business e-commerce processes required to operate a collaborative commerce business model.

67. In consideration for the disclosure, the assistance, and the funding provided to IBM by G5, IBM agreed to compensate G5 for the commercialization of G5's VCMS.

68. IBM has commercialized G5's VCMS as embodied in IBM's Websphere Business Integration Connect products and related services.

69. In breach of the contract implied in fact between G5 and IBM, IBM has failed and refuses to compensate G5 for the commercialization of G5's VCMS.

70. As a result of the breach by IBM of the contract implied in fact, G5 has been damaged in an amount to be determined at trial and believed to be in excess of \$2,000,000.00.

FIFTH CLAIM

QUANTUM MERUIT

71. Plaintiff G5 repeats and realleges the allegations in the preceding paragraphs.

72. G5 disclosed to IBM its know-how and confidential information concerning collaborative commerce.

73. G5 assisted IBM in the development of a software infrastructure to support the VCMS and other Internet-enabled collaborative commerce systems.

74. G5 obtained and provided to IBM funding sufficient to develop an e-business infrastructure and technology demonstration intended to web-enable key business to business e-commerce processes required to operate a collaborative commerce business model.

75. G5 provided these services to IBM with the expectation that it would be compensated for those services.

76. IBM accepted the services rendered to it by G5 with the understanding that G5 expected to be compensated for those services.

77. The services rendered by G5 to IBM are reasonably valued at an amount to be determined at trial and believed to be in excess of \$2,000,000.00.

78. IBM has retained the benefit of the services rendered to it by G5 without paying any compensation for those services.

79. IBM has been unjustly enriched and G5 has been damaged in an amount to be determined at trial and believed to be in excess of \$2,000,000.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff G5 requests that this Court grant the following relief:

- A. Compensatory damages in an amount to be determined at trial and believed to be in excess of \$2,000,000.00; and
- B. Exemplary damages in an amount to be determined at trial; and
- C. For such additional relief as the Court deems just and equitable.

Dated: New York, New York
February 13, 2004

GARVEY SCHUBERT BARER

By 

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