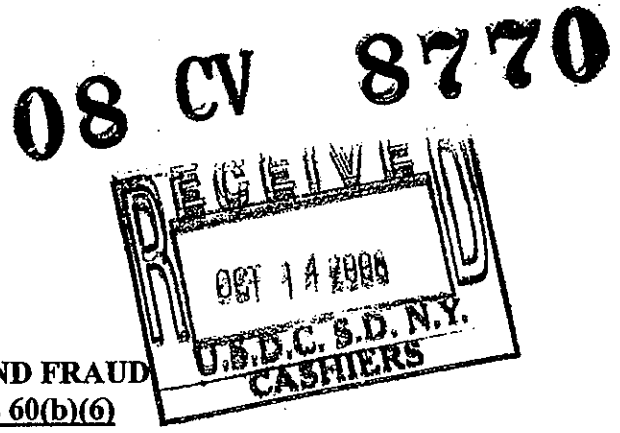


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LINKCO, INC., a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
NAOYUKI AKIKUSA, an individual, and)
FUJITSU LIMITED, a Japanese corporation,)
)
Defendants.)



**COMPLAINT IN EQUITY AND FRAUD
and PURSUANT TO RULE 60(b)(6)**

Plaintiff LinkCo, Inc. ("LinkCo"), by its attorneys, Peter T. Shapiro, Linda E. Unger and Siobhán M. Murphy of Lewis Brisbois Bisgaard & Smith LLP, hereby submits its Complaint against Defendants Fujitsu Limited ("Fujitsu"), and Mr. Naoyuki Akikusa ("Akikusa") (collectively, the "Defendants"). In support of its Complaint, LinkCo states as follows:

NATURE OF THE ACTION

Fujitsu and Akikusa conducted a brazen, international scheme to defraud the plaintiff and to commit fraud on this Court.¹ Fujitsu's scheme was so massive and tightly woven as to be nearly impenetrable. Through single-minded tenacity that could only be found in persons whose lives' work was stolen from them, Plaintiff has begun to unravel the threads of this scheme and cover-up. What Plaintiff has found is an astounding web of suppression of documents and witnesses, tampering with evidence and witnesses, and employing technological trickery. These acts were

¹ U.S. District Court for the Southern District of New York, Case 00 Civ. 7242 SAS *LinkCo, Inc. v. Fujitsu Limited*, presided over by the Honorable Shira A. Scheindlin. Fujitsu also committed fraud on the court in the United States District Court for the Northern District of Illinois in Case No. 99 C 7774, *LinkCo, Inc. v. Fujitsu Limited*, presided over by Judge William J. Hibbler, a predecessor case in which Fujitsu contested venue, resulting in the proceedings being conducted in the Southern District of New York.

intended to manipulate the Court and, through fraud, to enable Fujitsu to avoid the true damages for its misappropriation of LinkCo's proprietary and commercially valuable information. That information is now the cornerstone of billions of dollar of business for Fujitsu and its subsidiaries. The process of uncovering the fraud has been costly and painstaking, requiring tens of thousands of hours over several years by two persons, neither of whom speak Japanese, driven by the injustice they suffered. During discovery and trial, Fujitsu created a fiction to support a seemingly plausible defense that the trade secrets it stole from LinkCo was used in only one product, which it sold only in Japan, and which was unprofitable. Fujitsu bolstered its lies with doctored documents, the withholding of critical contrary evidence and witnesses, and false witness testimony, that was fully coordinated by Fujitsu, its CEO, its Board of Directors, its attorneys, and even its outside litigation support personnel. In fact, in a blatant display of utter disregard for the oath it took in this Court, during the very trial itself, Fujitsu was aggressively developing several international products using LinkCo's proprietary and commercially valuable information. Plaintiff must be given an opportunity to expose this fraud. No one, not a powerful global corporation, nor its board of members, nor its CEO, should be allowed to circumvent justice with such arrogant indifference to the rule of law.

REQUEST FOR REDRESS

This suit asks the Court for redress in equity or by means of a 60(b)(6) Fraud on the Court action to set aside the voluntary dismissal pursuant to settlement, reinstate the jury verdict of liability and set a further trial on damages due to misappropriation of trade secrets. In that trial, the fraudulently concealed evidence will finally be put before a jury. In addition, this suit seeks damages for fraud, fraudulent inducement to settle, and unjust enrichment obtained by Defendants through their massive tortious misconduct.

THE PARTIES

1. LinkCo is a Delaware corporation with its corporate headquarters and principal place of business located in Glencoe, Illinois. LinkCo was the plaintiff in Case No. 00 Civ. 7242, which was tried before the Honorable Shira A. Scheindlin of this Court in October and November 2002, to a liability verdict finding that defendant Fujitsu had misappropriated LinkCo's trade secrets.

2. Fujitsu (also known as 富士通株式会社 or "Fujitsu Kabushiki-kaisha") is a Japanese corporation headquartered in Tokyo, Japan. Fujitsu was the defendant in Case No. 00 Civ. 7242 and was found by the jury in that case to have misappropriated LinkCo's trade secrets.

3. Akikusa is the former chairman and is a current member of the board of directors of Fujitsu, and is a citizen of Japan and was the head of the Unit that planned and ultimately developed @DisclosureVision. At relevant times, he was also an officer of Fujitsu.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2) because this is an action between a citizen of a State and subjects of a foreign state, and the amount in controversy is in excess of \$75,000, exclusive of interests and costs.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

6. This Court has personal jurisdiction over defendants pursuant to New York CPLR 302 because they committed tortious acts within this State and also conspired with non-parties to create and further a fraud on this Court, as alleged more fully hereafter.

FACTS COMMON TO ALL COUNTS

7. On September 25, 2000, LinkCo commenced an action against Fujitsu in the United States District Court for the Southern District of New York, No. 00 Civ 7242, alleging conversion, misappropriation of trade secrets, unfair competition, and other claims resulting from Fujitsu's actions.

8. On November 6, 2002, the jury returned a verdict in favor of LinkCo, finding that Fujitsu unfairly competed with LinkCo by stealing and using its proprietary and commercially valuable information. Further, the jury awarded LinkCo damages of \$3,500,000, based on the date that the technology was supposedly misappropriated – November 20, 1997.

9. On April 1, 2003, based entirely upon the evidence submitted by Fujitsu at trial, and its continued representations that LinkCo's proprietary and valuable information was used only in a single product which was sold only in Japan, and which had been unsuccessful, LinkCo entered into a settlement agreement with Fujitsu.

10. Through a long, tedious, continuous and painstaking process, LinkCo has uncovered a massive scheme of fraud and misrepresentations by Fujitsu, its CEO, and others in collusion with them that led to the findings by this court and the jury, and that later induced LinkCo into settlement. Fujitsu's defense was based entirely upon fiction, creating an alternate reality it carefully controlled through discovery, trial, and in the years following the settlement. This deception still goes on today.

11. Fujitsu's key misrepresentations were:

- a. That the LinkCo technology was exclusively developed in Japan solely for the Japanese market. **Exhibit 1; Exhibit 2; Exhibit 3.** For example, a 30(b)(6) deposition of Fujitsu was conducted on June 4, 2001 under aggressive

confidentiality at which business plans and other “domestic only” documents were made available to “prove” this claim. The documents were “Attorneys’ Eyes Only”.

- b. That @DisclosureVision, i.e., the alleged sole product line based on LinkCo’s technology, was unsuccessful, and therefore, discontinued. Ex. 3 at ¶13; **Exhibit 4** at Akikusa Answer to Interrogatory #17; **Exhibit 5**, TR Vol. 3, 10.7.02 p. 267-270; **Exhibit 5A**, TR 2739.
 - c. That the misappropriation took place on November 20, 1997, rather than on January 20, 1998, in order to avoid Fujitsu’s projections on sales. **Exhibit 6**; Summation of Mr. O’Brien at p. 2923, LX 048092; **Exhibit 7**.
12. As eventually discovered by LinkCo, the truth was:
- a. That Fujitsu’s use of LinkCo’s proprietary and commercially valuable information was from inception conceived and planned as an international business with integrated projections for sales in China Mainland, Korea, Hong Kong, and elsewhere. **Exhibit 8** (B34); **Exhibit 9** (B32); **Exhibit 10** Ajit Kambil and Kiyoto Kanda.
 - b. That LinkCo’s proprietary and commercially valuable information was used by Fujitsu during the trial and continuously to today not only as @DisclosureVision, but also under many other names, including "System Integration for IR", "IR-ASP", "WebSERVE/Disclosure", elements of: @NIFTY, InfoPro, G-Search, Freedom Of Information, Glovia, & other software packages such as CA-Driver, superCompact and others. Fujitsu and its affiliates, subsidiaries, and/or divisions, including but not limited to Fujitsu System Co., Ltd. (“Fsol”), Glovia, @NIFTY, InfoPro, G-Search, and Fujitsu Okayama Engineering, and third parties working with Fujitsu, such as Corporate Solutions, marketed the above products throughout the trial and thereafter. Each of the subsidiaries utilizing LinkCo’s proprietary and valuable information are connected to Fujitsu through interlocking directorships.² **Exhibits 11-15**.
 - c. The sole basis on which Fujitsu established the misappropriation was the date printed on a document Ex. 7 (FL000801-FL00080 which was November 20, 1997). Fujitsu represented that on the same date, Kiyoto Kanda and Ito made a presentation as part of a full day seminar to Fujitsu management (500 managers and assistant managers in Tennouzu section of Shinagawa, Tokyo, Japan)

² Fujitsu has more than 430 consolidated subsidiaries, as of 2007. It is not possible for LinkCo to know, without further discovery, which subsidiaries were involved and profiting from LinkCo’s proprietary and valuable information in their product lines, and which may be proper party defendants herein.

introducing LinkCo's technology. However, Kiyoto Kanda, the alleged author and presenter, directly refuted this date in a previously undisclosed email dated May 26, 2002 to Fujitsu's counsel by stating that the date of that document was March 6, 1997. **Exhibit 16**. Despite knowing the real date of the document was in March, Fujitsu maintained that the date of the document was November 20, 1997, and thus the misappropriation took place on November 20, 1997. This was done in order to "time stamp" the misappropriation date to a time period before Fujitsu's initial presentation of their own multi-billion dollar sales projections. **Exhibit 17** at p. 2. Actually on November 20, 1997, and during the week leading to that point, Kiyoto Kanda was hosting Bruce Temkin (a LinkCo officer) in Tokyo; he was not in Tennouzu.

LinkCo's Sequential Journey to the Truth

13. The tools of Fujitsu's Fraud on the Court were complex. By controlling witnesses, coordinating electronic and physical document productions, suppressing documents, suppressing the identities of witnesses, using technological tricks to hide data and make it inaccessible, forging documents, and fabricating evidence, Fujitsu and its agents hid the true extent of the damage it did to LinkCo, making its discovery extraordinarily difficult. However, through enormous effort and over time, LinkCo began to peel away the cover-up, and expose the truth.

14. First, in December, 2003, a key employee of Bowne Business Solutions, Mr. Daniel R. Rizzolo, told LinkCo's principal, Mr. David Israel-Rosen, in an apologetic and inebriated encounter at a social party, that he (Daniel Rizzolo) and Bowne had been involved as litigation support for Fujitsu from the first, despite his own belief that this involvement presented some kind of conflict or was improper. **Exhibit 18**, Affidavit of David Israel-Rosen.

15. After learning that Daniel Rizzolo apparently viewed Bowne's conduct as improper, Mr. Israel-Rosen started on the road that led to the discovery of the Bowne-Fujitsu collusion. The next step on that road was possible only after many months of searching, when, in late 2004, Mr. Israel-Rosen discovered a document, **Exhibit 19** (Japanese) **Exhibit 19A** (English), that was on a Fujitsu web site. According to its metadata, Ex. 19 was created on February 20, 2001. **Exhibit 20**.

The document launches a product using the @DisclosureVision concept and architecture under a new name, WebSERVE/Disclosure. That document revealed the use of LinkCo's technology by subsidiaries of Fujitsu.

16. Through further investigation triggered by learning of Ex. 19, Mr. Israel-Rosen learned that Fujitsu, while this Court was in session and during discovery, had transferred a product Fujitsu testified as discontinued to a third party, Corporate Solutions, on January 24, 2001, only to immediately transfer it back (in the form of a sham license) immediately upon the conclusion of the trial. **Exhibit 21.**

17. Mr. Israel-Rosen discovered, serendipitously, when he literally fell asleep at the keyboard and inadvertently highlighted English language translations of data on the Fujitsu web site, that key incriminating text was displayed on the site as white text on a white background, if it was e-translated from Japanese into English. When highlighted, however, the missing text became visible, reflecting the true nature and extent of Fujitsu's product development and promotions. Fujitsu employed these devices on the internet to impede discovery by non-Japanese language readers. When the text color matches the background, the text cannot be read. LinkCo experienced this time and again as white text on white background (hereinafter "white-on-white"). Exhibit 18. Telling examples of white-on-white camouflaging are shown in Exhibits 13 and 15.

18. LinkCo conducted an analysis of the HTML code used by Fujitsu to create the page and isolated the cause of the white-on-white phenomenon. Once the offending code was removed, the English text displayed normally, black-on-white. LinkCo also tested the Fujitsu HTML code using Fujitsu's WebInspector tool that confirmed that LinkCo's analysis was correct. LinkCo engaged Google's translation group and, after a few hours of discussion and testing, they determined that Google was not the source of this offense. See Ex. 15.

19. Another Fujitsu trick was to hide information in cursor tags, which are not translated, and so are undiscoverable except when viewed directly in Japanese. One such page divulged that a forum on Glovia (one of Fujitsu's products using LinkCo's proprietary and valuable information) was held in July of 2002 while the litigation was ongoing. Further investigation uncovered a series of a dozen such forums all contradicting Fujitsu's testimony that it had abandoned the product lines that used LinkCo's technology. Examples of hidden text in cursor tags are also included in Exhibit 15.

20. Fujitsu also used image files that were unsearchable to replace key words in text, misspelled key words (such as "disk rose" for "disclose"), joined key words together (such as WebSERVE/Disclosure) in such a way that a search for each word separately would not disclose either word, and salting pages to impair their ranking (appending a hundred renditions of the Japanese character for "truth" in order to lower the search ranking and thereby burying the ranking of web page in the search inquiry listing). **Exhibit 35**.

21. Fujitsu applied the fraud enabling technology described above on a large scale, in order to fool LinkCo, as well as non-Japanese speaking persons Fujitsu wanted to deceive by its business practices. In one Fujitsu internet directory alone, <http://Glovia.fujitsu.com/jp/cybersmr/>, LinkCo found 374 web pages of which 279 pages contained instances of white-on-white translation. That is, more than 82% of the pages in the directory of a relevant product line were designed to impede discovery. **Exhibit 18** and **Exhibit 34**.

22. On September 22, 2005, LinkCo's founders met with Fujitsu outside director, Ikujiro Nonaka ("Nonaka"). At this meeting, LinkCo presented evidence of the technological tricks discussed above. A copy of the evidence can be found at: <http://linkcoinc.com/nonaka.ppt>. **Exhibit 36**, Powerpoint presentation regarding LinkCo's presentation to Mr. Nonaka.

23. At Nonaka's suggestion, LinkCo also sent the data to Akikusa via Federal Express, received in Tokyo on September 26, 2005. **Exhibit 37.** (Materials provided by LinkCo to Akikusa via Federal Express). Akikusa's reply, through counsel, was that Fujitsu had engaged in no wrongdoing. At the same time, however, Fujitsu removed the tampered information from its websites. **Exhibit 18.**

24. On April 16, 2006, Kiyoto Kanda, an estranged and former employee and officer of LinkCo who at all relevant times was cooperating with Fujitsu and who had planned to testify for Fujitsu in order to "restore" his relationship with Fujitsu, returned LinkCo's computer equipment to LinkCo, in an inoperable state. **Exhibits 18, 22 and 23.**

25. With great difficulty, LinkCo's computer forensics experts, Forensicon, Inc. in Chicago, resurrected and restored some of the deleted files (more than 100,000 were recovered). The documents found on the hard drive, but never before produced to LinkCo, contained thousands of files, often in Japanese, and included evidence of fraud, fabrication, and misrepresentations made to this Court regarding the true scope of Fujitsu's misappropriation and evidence of the true date on which that misappropriation occurred.

26. These documents included:

- a. Email correspondence Bates numbered KK 000104 – KK 000107 between Ms. Lisa DiMeglio, who had not been named as a witness and Mr. Taniguchi, an undisclosed Fujitsu witness, with copies to various other witnesses. See **Exhibit 23.** For proof of failure to identify Lisa DiMeglio and Shozo Taniguchi. See **Exhibit 24.** These two witnesses were key people with regard to the Bowne – Fujitsu relationship.
- b. An English language PowerPoint presentation to a prospective client, Nasdaq Japan, dated July 19, 1999, promoting @DisclosureVision as well as reflecting an international scope, which was never produced in the underlying case and was the only Fujitsu PowerPoint document in English found. Years later, Mr. Kanda admitted in an affidavit that he was shown this document by Fujitsu's counsel in 2002, before trial itself began. See **Exhibit 25.** Kanda was given this document by Fujitsu. See authenticating Affidavit dated February 6, 2007. **Exhibit 26.**

- c. The Fujitsu PowerPoint presentation dated August 3, 1998 showing the plan to have an international business in Mainland China, Hong Kong, and Korea **Exhibit 27**, authenticated per Exhibit 26. During the litigation, Fujitsu produced a redacted version of the same document, dated in July, 1998, but which omitted international plans (as PX148 which consisted of FL016846-FL016852 dated in July 1998). See **Exhibit 28**.
- d. An email exchange between Mr. Kanda and Fujitsu's counsel that reflects Kanda's initial reaction that the November 20, 1997 date sounded "strange" to him. A later exchange (two hours later) in which Kanda states explicitly that it is a confidential communication with "no CC's or Blind CC's" reveals that Mr. Kanda was quite willing to give an explanation that would help Fujitsu's case by agreeing to replace the actual date, January 20, 1998 with a false date, November 20, 1997. **Exhibit 16**. This e-mail made it clear to Fujitsu that the seminar was hosted by Mr. Ito to 500 people and that it occurred in Tennozu, Japan. This 500 person seminar is wholly inconsistent with the supposed small presentation purportedly occurring in November. The truth was that there was a January 20, 1998 presentation, and there was no November 20, 1997 presentation. **Exhibit 29**.
- e. The PowerPoint presentation by Ajit Kambil and Kiyoto Kanda dated July 22, 1998 with the page that had been omitted describing the "Partnership with FutureInfo in China, Bowne/HKU in Hong Kong". **Exhibit 10**. In contrast, at trial, Fujitsu produced a 27 page presentation redacting the last page, thus concealing evidence of specific prospective partners in its international business. **Exhibit 30**.
- f. E-mail correspondence between two former LinkCo employees seeking to curry favor with Fujitsu, by ensuring that "every person's talk is same, which means 'truth is one thing.'" **Exhibit 22**.

27. When LinkCo sought discovery from Bowne in a factually related case, Bowne produced Exhibits 8 and 9, using Bates numbers suggesting that they were produced in the Fujitsu case. Bowne then cross-examined LinkCo's principal on his testimony that the documents had not been produced. Bowne's cross-examination first confirmed compliance with the Protective Order (which required LinkCo to destroy documents after trial), then baldly asserted that LinkCo could no longer prove whether the two documents had been previously produced, because LinkCo had

complied with the Court's Order. **Exhibit 31**, January 27, 2006 deposition of David Israel-Rosen, at 307:19-23, 312:11-21, 318:2-4 and 319:1-10.

28. In July 23, 2007, Bowne admitted in court to having suppressed Exhibits 8 and 9 in the Fujitsu case, which evidenced that "Fujitsu is planning to introduce Japanese Stock Exchange system to Hong Kong market as well as other places in Asia" (Exhibit 8) and that Fujitsu collaborated with Bowne in the misappropriation of LinkCo's technology. Bowne's admission is attached as **Exhibit 32** at Answer to Paragraph 5.

29. Also on July 23, 2007, by a separate admission, **Exhibit 33** at p. 2, Bowne acknowledged that it had not produced numerous documents that had been reclaimed from the Kiyoto Kanda hard drive, including Exhibit 23.

30. In April 2008, Google translated Fujitsu's market projection as it appears in Fujitsu's August 3, 1998 PowerPoint presentation, as "market size (two to five years): 100 million yen to several hundreds of billion yen." The first two characters after the colon are ignored, resulting in a great change in magnitude from the November, 2006 projections, which was translated as "Market scale (2-5 years): Several 10,000,000,000 yen – several 1000,000,000,000 Yen." Engagement of Google caused the original correct translation to be restored. LinkCo then learned that Google invites users (such as Fujitsu) to override Google's translations, which may have been the cause of the discrepancy. In other words, it appears that Fujitsu likely introduced an error into the English translation of its earlier claim to billions in revenue relating to LinkCo's technology – rendering the figure into mere millions. **Exhibit 15**.

31. At the settlement conference, LinkCo offered Fujitsu a free license to its product, hoping that would help LinkCo's marketing efforts with other companies. Fujitsu refused the offer, and insisted on a non-recourse settlement, for supposed tax reasons. With a license from LinkCo.,

Fujitsu's fraudulent misrepresentations regarding the success and geography of LinkCo's product would likely have been revealed.

32. Fujitsu's and Akikusa's misrepresentations and concealment of evidence continued after the verdict through settlement discussions and beyond. This fraud induced LinkCo to enter into a settlement agreement, dated April 1, 2003, prior to the entry of judgment ("Settlement Agreement"). (The Settlement Agreement, dated April 1, 2003, is available, but not attached hereto, in compliance with the confidentiality provisions set forth therein). The Court thereupon dismissed the case.

33. As alleged above, based on the misrepresentations of Fujitsu and Akikusa, LinkCo, the Court and jury were deceived into determining incorrectly that Fujitsu's misappropriation occurred at a November 20, 1997 meeting. As a result, damage calculations based on Fujitsu's projections dated as of January 20, 1998 were excluded, thereby restricting drastically (by over a half billion dollars) the evidence of damages available to that jury, thus inducing LinkCo to enter into the Settlement Agreement on a fraudulent basis. Further actual, extensive, and profitable use of LinkCo's technology was kept hidden.

34. Following the settlement, Fujitsu and Akikusa continued to conceal the actual facts underlying the Lawsuit as alleged above, which was designed to prevent LinkCo from realizing the true extent and impact of the fraud.

35. To this day, on Fujitsu's website at:
jp.fujitsu.com/group/fsol/downloads/services/aplserve/g0000-10-downloads-remote-service.pdf
(at page 11), Fujitsu claims to have launched IR-ASP and WebSERVE/Disclosure in December 2002 and December 2003, respectively. **Exhibit 12**. Meta data reveals that the truth is that both products were launched in the beginning of 2001. **Exhibits 19, 19a and 20**.

COUNT I
INDEPENDENT ACTION IN EQUITY

36. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 35 as if fully set forth herein.

37. This action in equity is brought pursuant to this Court's authority to entertain an independent action in equity for relief from judgment. *Weldon v. United States*, 70 F.3d 1, 5 (2d Cir., 1995)

38. This action is based upon extraordinary circumstances, including Defendants coordinating a broad range of frauds, retaining and working with witnesses and third parties in a deliberately planned and carefully executed plan to submit a wide range of falsehoods to the Court, hide witnesses, coordinate the suppression of documents, and to suppress and interfere with the translation of data. The use of substantial and deliberate technological tricks and tricks in translation were a significant factor in the initial fraud and the ongoing concealment to prevent the discovery of evidence of the fraud. Due to the nature and extent of the fraud, Plaintiff has only been able to put together evidence to support this action through extraordinary devotion of time and resources.

39. In consequence of the broad and complex fraud committed by Defendants, the Court relied on false and fraudulent information in key rulings as to the date and extent of Defendant's misappropriation of Plaintiff's trade secrets, and therefore as to admissible evidence of damages, which constitutes a wrong against the institutions set up to protect and safeguard the public, and against Plaintiff, who relied on false and fraudulent information in preparing the case for trial and in reaching a later settlement.

40. The fraud committed by Defendants denied Plaintiff a fair trial on the merits and further fraudulently induced Plaintiff to reach a settlement, which resulted in an order of voluntary dismissal.

41. Absent recognition of an action in this Court allowing the settlement agreement that was fraudulently induced to be set aside along with the consequent agreed dismissal, Plaintiff's past injuries and ongoing injuries are and will be substantial. Those injuries have been suffered through no fault of LinkCo's. Further, absent relief from this Court, LinkCo has no other available or adequate remedy for the complex frauds committed by Defendants.

WHEREFORE, Plaintiff respectfully prays that this Court enter an order:

- a. voiding the settlement reached in this matter;
- b. setting aside the voluntary dismissal pursuant to settlement,
- c. reinstating the jury verdict of liability and
- d. granting a new trial on damages due to misappropriation of trade secrets.

COUNT II
RELIEF PURSUANT TO RULE 60(b)(6)

42. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 35 as if fully set forth herein.

43. This action is brought pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, which was intended to allow either a motion or an independent action to obtain relief from judgments. James Wm. Moore & Elizabeth B.A. Rogers, *Federal Relief from Civil Judgments*, 55 Yale L.J. 623 (1946)(citing Fed. R. Civ. P. 60(b) advisory committee's note of 1946); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) (overruled on other grounds by *Standard Oil v. United States*, 429 U.S. 17 (1976), holding that courts possess an inherent power to reverse judgments in cases of after-discovered fraud.

44. This suit has been brought within a reasonable time, given the broad nature of the complex fraud at issue, the use of substantial and deliberate technological tricks and tricks in translation designed to conceal the fraud and to prevent discovery of evidence that would support a 60(b)(6) action by proof, the international and multi-lingual evidence and the fact that plaintiff has only been able to put together this evidence in a comprehensible and supported way though extraordinary devotion of time and resources.

45. In consequence of the broad and complex fraud committed by Defendants, the Court relied on false and fraudulent information in key rulings as to the date and extent of Defendant's misappropriation of Plaintiff's trade secrets, and therefore as to admissible evidence of damages, which constitutes a wrong against the institutions set up to protect and safeguard the public, and against Plaintiff, who relied on false and fraudulent information in preparing the case for trial and in reaching a later settlement.

46. The fraud committed by Defendants denied Plaintiff a fair trial on the merits and further fraudulently induced Plaintiff to reach a settlement, which resulted in an order of voluntary dismissal.

WHEREFORE, Plaintiff respectfully prays that this Court enter an order:

- a. voiding the settlement reached in this matter;
- b. setting aside the voluntary dismissal pursuant to settlement,
- c. reinstating the jury verdict of liability and
- d. granting a new trial on damages due to misappropriation of trade secrets.

COUNT III
COMMON LAW FRAUD

47. The Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 35 as if fully set forth herein.

48. The Defendants made the foregoing misrepresentations and omissions of material fact, including but not limited to the following:

49. The date of the first presentation by Kanda to Fujitsu managers occurred on November 20, 1997, as opposed to January 20, 1998 and/or thereafter; and

50. Fujitsu intended at all times to market and sell Fujitsu's Disclosure products and services utilizing LinkCo's technology, including but not limited to DisclosureVision, to markets outside of Japan, including, but not limited to the United States and Eastern Asia.

51. When the Defendants made the foregoing misrepresentations and omissions of material fact to LinkCo and the Court, they knew that the misrepresentations and omissions were false and fraudulent because each of them agreed to, and participated in, the foregoing scheme to defraud LinkCo and the Court.

52. At the time that the Defendants made the foregoing misrepresentations and omissions of material fact to LinkCo and the Court, they intended that LinkCo and the Court rely upon them by deeming the date of misappropriation as November 20, 1997, thereby limiting LinkCo's use of Fujitsu's own January 20, 1998 projections in LinkCo's damages calculations and the admissibility of Levko's report, which relied on Fujitsu's January 20, 1998 projections.

53. LinkCo – and the Court – reasonably relied on the foregoing false and fraudulent misrepresentations about the date of the first misappropriation, in particular, and omissions when LinkCo executed the Settlement Agreement. LinkCo's reliance was reasonable because the Defendants deliberately, comprehensively, consistently and successfully concealed from LinkCo the existence, nature and extent of the false and fraudulent misrepresentations and omissions. As a direct and proximate result of LinkCo's reasonable reliance on the Defendants' false and fraudulent misrepresentations and omissions, LinkCo has suffered substantial financial injury.

54. The Defendants acted willfully, in bad faith, and with reckless indifference to the rights of Plaintiffs and are subject to punitive damages.

55. As a result of Defendants' intentional and malicious conduct as alleged above, LinkCo is entitled to compensatory and punitive damages.

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

- a. Order the Defendant to pay LinkCo compensatory damages in an amount to be determined at trial, but not less than five hundred fifty million six hundred thousand dollars (\$550,600,000) for domestic Japanese gains;
- b. Order the Defendants to pay LinkCo compensatory damages in an amount to be determined at trial, but not less than three hundred million dollars (\$300,000,000) for non-domestic Japanese gains;
- c. Order the Defendants to pay LinkCo punitive damages in an amount to be determined at trial; and
- d. Order any such other and further relief as this Court deems necessary and just, including prejudgment interest.

COUNT IV
UNJUST ENRICHMENT

56. The Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through 35 as if fully set forth herein.

57. As set forth above, the Defendants perpetrated a fraud against LinkCo and benefited therefrom.

58. As set forth above, the Defendants participated in a civil conspiracy against LinkCo and benefited therefrom.

59. By reason of the above-alleged wrongful and fraudulent acts, the Defendants have been unjustly enriched at LinkCo's expense.

60. The Defendants' continued retention of such benefits violates fundamental principles of justice, equity, and good conscience.

61. For the reasons set forth above, LinkCo has a claim that is superior to that of the Defendants to all benefits that the Defendants received as a result of their fraudulent acts.

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

- a. Order that the Defendants make restitution to LinkCo in an amount to be determined at trial; and
- b. Order any such other and further relief as this Court deems necessary and just, including prejudgment interest.

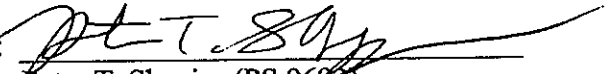
Plaintiff demands trial by jury.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: October 14, 2008

By:


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ATTORNEYS FOR PLAINTIFF

³ Linda E. Unger and Siobhán M. Murphy are members of the Illinois Bar and Northern District of Illinois Bar who will seek admission *pro hac vice* to the Southern District of New York.