

1 Exhibits 1-29 Vol. 1, Pgs. 1-192

2 COMMONWEALTH OF MASSACHUSETTS

3 Suffolk, ss. Superior Court

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6 NETEZZA CORPORATION

7 Plaintiff

8 v. CA No. 09-4961-BLS1

9 INTELLIGENT INTEGRATION SYSTEMS, INC.

10 Defendant

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13 VIDEO DEPOSITION of RICHARD ZIMMERMAN

14 Monday, April 12, 2010 - 1:14 p.m.

15 Wilmer Cutler Pickering Hale and Dorr LLP

16 Boston, Massachusetts

17

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20 - - - Reporter: Jill K. Ruggieri, RMR/CRR - - -

21 Farmer Arsenault Brock LLC

22 REPORTING ON BEHALF OF :

23 Westlaw Deposition Services

24 San Francisco, California

25 800-548-3668

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1 MR. KALER: Just a couple of questions,  
 2 since we have five minutes left.  
 3 EXAMINATION  
 4 BY MR. KALER:  
 5 Q At the time that you wrote the email on the  
 6 bottom of Exhibit Z28, the one on October 7th, at  
 7 that time, had IISi yet determined definitively  
 8 whether it would provide spatial on TwinFin to  
 9 Netezza and add it to Exhibit 1 to the  
 10 specifications?  
 11 MR. CULTICE: Objection. Lack of  
 12 foundation.  
 13 Q You can answer.  
 14 MR. CULTICE: There's also no basis in the  
 15 record for a question of that type.  
 16 Q You can answer.  
 17 **A No. I don't -- in fact, I think it was our**  
 18 **intention at that point that it would be a separate**  
 19 **product.**  
 20 Q Okay.  
 21 And you were asked a series of questions  
 22 about all the emails that you wrote, and you were  
 23 asked repeatedly did you tell Netezza that you were  
 24 evaluating whether you were going to develop  
 25 spatial on TwinFin rather than doing it.

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1 Do you recall those questions?  
 2 **A Eval -- I'm sorry, say that again?**  
 3 Q Do you recall being asked during your  
 4 examination repeatedly with respect to the emails  
 5 that you were shown from August of '09 whether you  
 6 had ever told Netezza that you were evaluating  
 7 whether to develop spatial for TwinFin?  
 8 **A I -- I recall those, yes.**  
 9 Q And at that time, those emails were being  
 10 generated, was Netezza aware that IISi was not  
 11 obligated to create spatial for TwinFin?  
 12 MR. CULTICE: Objection to the question.  
 13 Lacks foundation. It also calls for a legal  
 14 conclusion.  
 15 Q You can answer.  
 16 MR. CULTICE: Subject to the objection,  
 17 you can.  
 18 **A Was Netezza aware?**  
 19 **I assume Netezza was aware. I mean,**  
 20 **Netezza definitely knew that there were things**  
 21 **that -- that roadmap functionality was not part of**  
 22 **this agreement.**  
 23 **We had a long conversation with Jim Baum**  
 24 **and myself during negotiation of that where roadmap**  
 25 **functionality was specifically taken out.**

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1 **They continuously asked us for new**  
 2 **functionality in the context of a roadmap, a**  
 3 **spatial port was asked -- was -- was -- or spatial**  
 4 **port.**  
 5 **Spatial running on TwinFin was one of the**  
 6 **things that was in the roadmap at some particular**  
 7 **point, and it was always clear that that was not**  
 8 **subject to this agreement and was at our discretion**  
 9 **as far as whether or not we would actually**  
 10 **implement it.**  
 11 **And most of the things in the roadmap, we**  
 12 **had no intentions of implementing.**  
 13 MR. CULTICE: Motion to -- excuse me.  
 14 Q In the fall --  
 15 MR. CULTICE: Excuse me.  
 16 Q In the fall --  
 17 MR. CULTICE: Excuse me. Motion to  
 18 strike.  
 19 MR. KALER: Motions to strike are  
 20 reserved.  
 21 MR. CULTICE: The testimony is  
 22 nonresponsive. And also the question again lacks  
 23 foundation.  
 24 BY MR. KALER:  
 25 Q In the fall of 2009, though, did you spend some

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1 time in August and September and early October  
 2 trying to explore the possibility of developing a  
 3 version of spatial that would run on TwinFin by  
 4 doing these tests and doing this work on the proof  
 5 of concept that you discussed?  
 6 MR. CULTICE: Objection. You're now  
 7 leading the witness.  
 8 Q You can answer --  
 9 MR. CULTICE: You're also asking a  
 10 question that lacks foundation.  
 11 Q You can answer.  
 12 **A I mean, I think that was -- I hope that was**  
 13 **clear in my testimony, that -- that everyone**  
 14 **involved here, Netezza's side and our side, knew**  
 15 **that we weren't evaluating spatial. It was -- we**  
 16 **were evaluating the TwinFin.**  
 17 **At the same time they were asking us to do**  
 18 **a proof of concept, which we had agreed to intend**  
 19 **to support. And, you know, we were going to look**  
 20 **into things once we actually got a development**  
 21 **environment and get them some estimates as far as**  
 22 **when we thought that potentially a port -- a new**  
 23 **product that would be Netezza spatial for TwinFin**  
 24 **might be able to be available.**  
 25 Q Did there come a time --

1 MR. CULTICE: Move to strike the answer as  
 2 nonresponsive.  
 3 MR. KALER: It's perfectly responsive.  
 4 Q Did there come a time after October 7th of 2009  
 5 when you gave your estimate in Exhibit Z28 when  
 6 Netezza told you that they wanted you to -- this  
 7 was a national security situation and they wanted  
 8 you to deliver whatever software you could deliver,  
 9 but they didn't care whether it ran at the customer  
 10 site and that they wanted you to do it because it  
 11 was needed for national security operations in  
 12 Afghanistan?  
 13 MR. CULTICE: Objection, leading.  
 14 Q You can answer.  
 15 **A Jon Shepherd called me immediately before that,**  
 16 **he called me on the phone. I was in my car --**  
 17 Q Was that on or about October 10th?  
 18 **A I believe it was October 9th, the day before.**  
 19 Q The 2009?  
 20 **A Yes. It was the Friday before, if that's**  
 21 **October 9th.**  
 22 Q Was that a couple of days after the email that  
 23 Mr. Cultice showed you on the bottom of Z28?  
 24 **A It was.**  
 25 Q And what did Mr. Shepherd say to you at that

1 time?  
 2 **A He basically told me the CIA -- he had just**  
 3 **been informed that the CIA was using -- wanted to**  
 4 **use spatial to target predator drones in**  
 5 **Afghanistan and that, quote/unquote, it was our**  
 6 **patriotic duty to work with them to try to get**  
 7 **spatial ported to the TwinFin as fast as possible**  
 8 **and that we needed to have a phone conversation the**  
 9 **next day to discuss that.**  
 10 Q Did you have the phone conversation the next  
 11 day?  
 12 **A We did.**  
 13 Q And who was on the call?  
 14 **A Jim Baum was on the call. Jim Baum led the**  
 15 **call, myself, Paul Davis. Marshall was on the**  
 16 **call. Jon Shepherd was on the call. There may**  
 17 **have been others.**  
 18 Q And what did the Netezza representative at an  
 19 say to you at that time?  
 20 MR. CULTICE: Objection. Lack of  
 21 foundation. Please identify -- please identify the  
 22 people you're talking about.  
 23 Q That's all right. You can answer in the way I  
 24 phrased it, sir, he's just making --  
 25 MR. CULTICE: It's an improper question.

1 **A Jim Baum reiterated many of the statements --**  
 2 **Jim Baum reiterated that the CIA -- that he didn't**  
 3 **even have visibility of this, that the CIA called**  
 4 **them on the phone, said we need this to target**  
 5 **predator drones in Afghanistan, that this is a**  
 6 **national security matter. We need spatial up and**  
 7 **running immediately.**  
 8 **And then we proceeded to talk about**  
 9 **different ways we might work together to, you know,**  
 10 **solve this imminent national security matter.**  
 11 Q And did Mr. Shepherd or any other Netezza  
 12 representative say anything about how complete the  
 13 software needed to be --  
 14 **A Yes.**  
 15 Q -- in their view that you were being asked to  
 16 deliver?  
 17 **A Jon Shepherd made a comment somewhere along the**  
 18 **way that -- just give us anything. We don't**  
 19 **need -- we can derive a set of functions that maybe**  
 20 **they can -- that maybe they can run.**  
 21 **But honestly, we just need something on**  
 22 **the machine that runs spatial. We need it right**  
 23 **now.**  
 24 Q Did you have any concerns at that time about  
 25 being asked to deliver something, anything that

1 would work, incremental software or otherwise, that  
 2 was going to be used on -- in an application that  
 3 was mission-critical like that?  
 4 **A On the call, I can't say that my -- that was my**  
 5 **immediate reaction once I had time to digest, and**  
 6 **especially after talking to Marshall. My reaction**  
 7 **was one of stun, amazement that they want to kill**  
 8 **people with my software that doesn't work.**  
 9 Q At that time, did you have an understanding as  
 10 to whether IISi was even required under the  
 11 existing Purchase and Distribution Agreement to  
 12 develop a version of spatial to run on TwinFin?  
 13 MR. CULTICE: Objection. Lack of  
 14 foundation, and it calls for a legal conclusion  
 15 from this layperson witness.  
 16 Q You can answer, sir.  
 17 **A I'm sorry, could you say that one more time?**  
 18 Q Did you have an understanding at that time on  
 19 October 10th as to whether IISi was or was not  
 20 required to develop a version of spatial to run on  
 21 TwinFin?  
 22 MR. CULTICE: Same objection.  
 23 **A Well --**  
 24 MR. CULTICE: Same grounds.  
 25 Q Answer. Just answer.

1 **A I think I've answered that many times.**  
 2 Q Answer it again.  
 3 **A No, we absolutely had no requirement to develop**  
 4 **spatial on the TwinFin platform.**  
 5 Q And had you specifically communicated with  
 6 Mr. Baum years earlier -- or the previous year  
 7 during the negotiation of the Purchase and  
 8 Distribution Agreement about whether or not you  
 9 would be required to do that kind of roadmap  
 10 functionality?  
 11 **A Very specifically. Many conversations. A very**  
 12 **specific email in which Jim Baum's response to me**  
 13 **was I agree with you 100 percent. When we**  
 14 **specifically took out roadmap functionality, that**  
 15 **spatial was what was in the specification and that**  
 16 **additions to the specification would be evaluated**  
 17 **by IISi, and new products would not be part of**  
 18 **the -- the agreement.**  
 19 Q And at the time of that October 10, 2009  
 20 conversation where Mr. Baum and Mr. Shepherd were  
 21 telling you you had to produce that software  
 22 immediately, did you know that Mr. Baum wanted to  
 23 book the revenue on the sale of the TwinFin by  
 24 October 31, 2009, the end of that quarter?  
 25 MR. CULTICE: Objection. Lack of

1 foundation.  
 2 MR. KALER: The foundation is in the  
 3 exhibits I showed to Mr. Baum where he says that.  
 4 MR. CULTICE: Objection. Lacks of  
 5 foundation for this witness.  
 6 BY MR. KALER:  
 7 Q You can answer. You can answer.  
 8 **A I -- I didn't know that at the time. I found**  
 9 **that out in reviewing the discovery and was**  
 10 **mortified that Jim Baum, the CEO of a major**  
 11 **corporation, would use national security as an**  
 12 **excuse for booking revenue and for saving face with**  
 13 **a customer.**  
 14 Q Did he say anything in that October 10, 2009  
 15 conversation, Mr. Baum, about how the reason he  
 16 wanted you folks to do this was so that we could  
 17 book the revenue on the sale of the TwinFin at the  
 18 time?  
 19 MR. CULTICE: Objection. Asked and  
 20 answered. And you're now leading him.  
 21 Q You can answer.  
 22 **A Of course not.**  
 23 **The only reason why they needed TwinFin**  
 24 **based on that call was because they needed to**  
 25 **support the CIA in a national security matter.**

1 Q At some point, were you aware as of October 10,  
 2 2009 that Netezza had sold what they called spatial  
 3 on TwinFin to the government the previous  
 4 September, on or about September 15th?  
 5 **A I believe our first indication of that was**  
 6 **October 1st, that was the email.**  
 7 Q And at the time that you had the conversation  
 8 on October 10th when they tried to get to do this,  
 9 how long had you had a TwinFin machine in your  
 10 facility -- how long had you had access to an  
 11 actual TwinFin machine to begin to look at a  
 12 development possibly?  
 13 **A Five or six days -- five -- five days, maybe.**  
 14 Q And ultimately, did IISi communicate to Netezza  
 15 after the October 10th conference call that it  
 16 would not do what Netezza wanted it do to, produce  
 17 incremental versions of the software in the way  
 18 they had been requested, at least without other  
 19 terms and conditions?  
 20 **A Absolutely not. I think our -- our message**  
 21 **said that your proposal is not -- we're not going**  
 22 **to do that without additional terms about --**  
 23 **You know, again, coming back to Paul's**  
 24 **desire not to have IISi code out there that hasn't**  
 25 **been certified and whatnot, without having some**

1 **sort of terms around that that indemnifies us in**  
 2 **case that code kills people, so...**  
 3 Q Okay.  
 4 **A And this seemed very reasonable to have that.**  
 5 Q If IISi had chosen to add any specifications to  
 6 Exhibit 1 for new software, was it your  
 7 understanding under the Purchase and Distribution  
 8 Agreement that there were any warranties that would  
 9 be -- have to be given by IISi with respect to such  
 10 additional code?  
 11 MR. CULTICE: Objection. It's  
 12 hypothetical, and it calls for a legal conclusion  
 13 by this layperson witness.  
 14 Q You can answer.  
 15 **A If -- if we added stuff to the spec would we**  
 16 **have to warranty it?**  
 17 Q Yes, yes.  
 18 **A Oh, yes.**  
 19 Q And before you would warrant code, would you  
 20 need to do more than just issue an initial version  
 21 of it --  
 22 MR. CULTICE: I think we're at the end of  
 23 our time, by the way.  
 24 MR. KALER: Oh, are we? Are we at the end  
 25 of our time? Then that's all I have. Thank you.

1 MR. CULTICE: Actually, we went over our  
 2 time, but I didn't want to interrupt you.  
 3 MR. KALER: I didn't intend to. Okay.  
 4 (Discussion off the record.)  
 5 (Proceedings adjourned at 5:59 p.m.)  
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1 I N D E X  
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 3 WITNESS:  
 4 RICHARD ZIMMERMAN  
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 8 E X H I B I T S  
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 14 Exhibit 3 Email string beginning 42  
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 18 Exhibit 5 Email, 5/5/2009 71  
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 20 7/27/09  
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 22 Exhibit 8 Email string beginning 92  
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 24 Exhibit 9 Email string beginning 96  
 25 8/11/09

1 C E R T I F I C A T E  
 2  
 3 I, Jill K. Ruggieri, Registered  
 4 Merit Reporter and Certified Realtime Reporter, do  
 5 certify that the deposition of RICHARD ZIMMERMAN,  
 6 in the matter of Netezza v. IISi , on April 12,  
 7 2010, was stenographically recorded by me; that the  
 8 witness provided satisfactory evidence of  
 9 identification, as prescribed by Executive Order  
 10 455 (03-13) issued by the Governor of the  
 11 Commonwealth of Massachusetts, before being sworn  
 12 by me, a Notary Public in and for the Commonwealth  
 13 of Massachusetts; that the transcript produced by  
 14 me is a true record and accurate record of the  
 15 proceedings to the best of my ability; that I am  
 16 neither counsel for, related to, nor employed by  
 17 any of the parties to the above action; and further  
 18 that I am not a relative or employee of any  
 19 attorney or counsel employed by the parties  
 20 thereto, nor financially or otherwise interested in  
 21 the outcome of the action.  
 22  
 23  
 24  
 25  
 \_\_\_\_\_  
 Jill K. Ruggieri

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 20 Exhibit 21 Email string beginning 143  
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1  
2 RICHARD ZIMMERMAN  
3 SIGNATURE PAGE / ERRATA SHEET INFORMATION  
4 For deposition taken on: April 12, 2009  
5 NETEZZA CORPORATION v.  
6 INTELLIGENT INTEGRATION SYSTEMS, INC.  
7  
8 SIGNATURE INFORMATION FOR COUNSEL  
9 The original signature page/errata sheet has been  
10 sent to Robert J. Kaler, Esq., to obtain signature  
11 from the deponent. When complete, please send  
12 original to Robert D. Cultice, Esq. A copy of any  
13 errata should be sent to each party of record  
14 present at the deposition.  
15  
16 WITNESS INSTRUCTIONS  
17 After reading the transcript of your deposition,  
18 please note any change or correction and the reason  
19 on the errata/signature page. DO NOT make any  
20 notations on the transcript itself. If necessary,  
21 continue the format on a separate page.  
22 PLEASE SIGN AND DATE (before a notary if requested)  
23 the errata sheet.  
24  
25

1 WITNESS: RICHARD ZIMMERMAN  
2 CASE: NETEZZA CORPORATION v.  
3 INTELLIGENT INTEGRATION SYSTEMS, INC.  
4 SIGNATURE PAGE/ERRATA SHEET  
5 PAGE LINE CHANGE OR CORRECTION AND REASON  
6  
7  
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10  
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12  
13 I have read the transcript of my deposition taken April 12,2010.  
14 Except for any corrections or changes noted above I hereby  
15 subscribe to the transcript as an accurate record of the  
16 statements made by me.  
17 Signed under the pains and penalties of perjury.  
18  
19 \_\_\_\_\_ DATE \_\_\_\_\_  
20 Deponent, RICHARD ZIMMERMAN  
21 On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the  
22 undersigned notary public, personally appeared RICHARD ZIMMERMAN,  
23 who presented satisfactory evidence of identification, to wit,  
24 \_\_\_\_\_, and signed this document in my  
25 presence.  
\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires \_\_\_\_\_