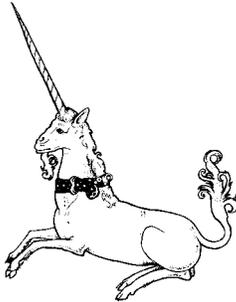


Tuesday, May 15, 2007  
Vol. 23, No. 09

# Soft•letter

BUSINESS INSIGHTS FOR SOFTWARE DEVELOPERS & PUBLISHERS



*Blogging may be all the rage, but our Business Blogging survey excerpts indicate that software companies are finding the promised benefits somewhat mythical. See pages 4-5.*

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## Why Every Presentation You're Doing Today S\*\*\*Ks

*by Paul Leroux, coauthor of Visual Selling: Capture the Eye and the Customer Will Follow*

*Like everyone else in the universe, we use PowerPoint for our presentations and like everyone else in the universe, the basic rules we follow when standing in front of a group or an audience include:*

- *Creating slides that bullet point out my key points so as to keep ourselves and our audiences on track. We recently held a webinar on the impact of SaaS on software product management (the link is up at [www.softwaresuccess.com](http://www.softwaresuccess.com)) with slides that adhered to just this practice.*
- *Preparing handouts/decks as a leave behind.*
- *Placing our screen (if it's not already placed there) in the middle of the room.*
- *Turning the lights down low (or off) during the presentation so everyone can see our slides more clearly.*
- *Standing to the right of the presentation screen (like most righties).*
- *Using a laser pointer if in a room of any size.*

*Actually, we can't think of a presentation we've seen over the last several years that **doesn't** follow the above sequence. And Paul Leroux, CEO of Twain Associates and coauthor of Visual Selling, is here to tell all of you the above is wrong, wrong, and wrong. We asked him why.*

**What's wrong with the presentation principles above? We were taught things like "keep your bullet points to no more than three per slide" by business experts!**

Let's discuss why anyone gives a presentation in the first place, particularly in a selling situation. The only reason for a presentation is to persuade someone to take or change their actions. And only people can persuade other people of anything; all a presentation can do is assist in the process.

Therefore, a presentation that draws the eye and attention of the audience away from the presenter is bad by *(continued on page three)*

## The Supreme Court Changes the Patent Playing Field (Again), Part II of II

by David Fox, Fulbright & Jaworski L.L.P.

In my last article, I made the point that SanDisk/Medimmune is a loaded gun pointed at the heads of smaller companies. Here's why.

In addition to allowing patent licensees to sue licensors regardless of whether both parties have agreed to arrive at a licensing arrangement, the loss of the safe haven the Federal Circuit enacted to prevent lawsuits during patent licensing negotiations means it is completely unclear as to what actions a potential licensor can take that will not trigger a suit for a declaratory judgment against a patent. The following is a quote from Federal Circuit Judge Bryson's concurring opinion in *SanDisk* (emphasis added):

"If a patentee offers a license for a fee, the offer typically will be accompanied by a suggestion that the other party's conduct is within the scope of the patentee's patent rights, or it will be apparent that the patentee believes that to be the case. Offers to license are not requests for gratuitous contributions to the patentee; the rationale underlying a license offer is the patentee's express or implied suggestion that the other party's current or planned conduct falls within the scope of the patent. Therefore, it would appear that under the court's standard **virtually any invitation to take a paid license relating to the prospective licensee's activities would give rise to an Article III case** or controversy if the prospective licensee elects to assert that its conduct does not fall within the scope of the patent. Indeed, as the court makes clear, **even a representation by the patentee that it does not propose to file suit against the prospective licensee will not suffice to avoid the risk the patentee will face a declaratory judgment action.** And if there is any uncertainty on that score, all the prospective licensee has to do in order to dispel any doubt is to inquire of the patentee whether the patentee believes its activities are within the scope of the patent. If the patentee says "no," it will have made a damaging admission that will make it very hard ever to litigate the issue, and thus will effectively end its licensing efforts. If it says "yes" or equivocates, it will have satisfied the court's test and will have set itself up for a declaratory judgment lawsuit."

Thus, small patentees are truly in a bind, especially when trying to license their patents to "large" companies that can easily handle the cost of litigation. In such situations, small patentees appear to be virtually unable to license their patents for fear of losing them in a declaratory action or being ground down by ongoing legal costs.

What can a small company with a valid patent do to protect itself? One possibility, mentioned by the Federal Circuit itself, is to shield patent discussions under a nondisclosure or confidentiality agreement. The problem with this suggestion is that it would normally work only when it was not needed. A party that contemplates bringing a declaratory judgment action or at least keeping that option open would have no incentive to enter into such an agreement. The other option is to avoid any mention of legal action or infringement during preliminary contact with a potential licensee; this may, though it is by no means certain, allow a smaller firm to avoid an early declaratory action.

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definition. If all you are doing is reading from a presentation, exactly why are you needed? Send your presentation via E-mail and follow up with a phone call to find out if anyone bothered to look at it.

### **What's wrong with bullet points?**

Images are much more effective. People remember images far longer than text. In one study I reference in *Visual Selling*, participants in a study shown 2,560 images over several days were able to recall 90% of them. Also, when you read a slide, your visual and auditory streams are out of synch. An **average** reader can move through text at 250 to 300 word per minute; the fastest talker can't exceed 160 WPM. When you're reading aloud, prospects hear the presenter while their eyes are racing ahead; it's very distracting.

**“PowerPoint text is like an outdoor light that attracts moths and then destroys them.”**

—Paul Leroux  
co-author, *Visual Selling*

### **Are you saying most PowerPoint presentations should consist mostly of images?**

Yes. I'd advocate the typical 30 minute presentation consist of approximately 10 slides, with six to eight of them consisting of striking images germane to the subject being presented. Reserve the use of text for appropriate topics such as balance sheets, quotes, etc.

**“Nothing you do will mutilate your message more than having prospects leaf through a handout deck while you try to sell.”**

—Paul Leroux  
co-author, *Visual Selling*

Let me give an example of what I mean. A software/biotech company had developed the ability to track “biomarkers,” chemicals in the human body that serve as early warning signals of an impending disease. Their initial presentations to investors and prospective buyers were loaded, as you can imagine, with lots of facts and figures; so many that people were confused and bored by their presentations. They began to move to the use of visual images to support their sales pitch. One of their most successful images consisted of putting up a picture of the night sky with the constellations outlined; this supported their sales pitch that biomarkers formed patterns that, like constellations, few people could see and point out (without their software).

### **What's the presenter supposed to do while these striking images are being displayed?**

Do what they're supposed to do; engage and talk to the audience. Sell.

### **What are you supposed to do if you can't find the images you need?**

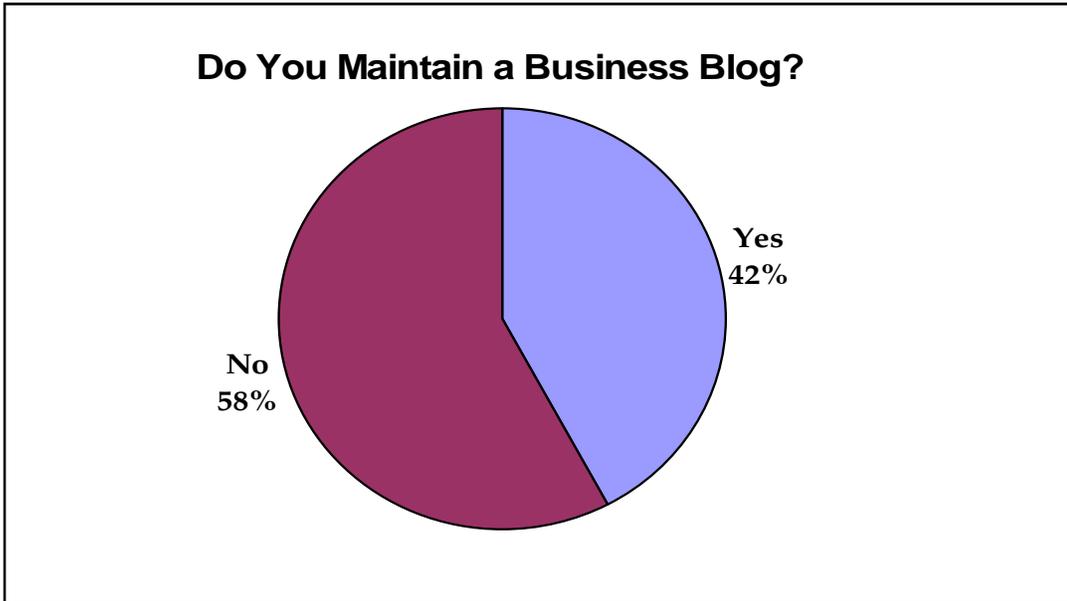
Create them yourself or have a designer create them for you. In terms of doing it yourself, it's amazing what you can accomplish with a digital camera and Adobe Elements these days. This carries over to having them designed; costs are way down. (*Editor's note: We've been able to have impressive images designed by local college interns looking for hands-on experience for between \$25 to \$75 per piece.*)

### **OK, what's wrong with handouts? Everyone expects them.**

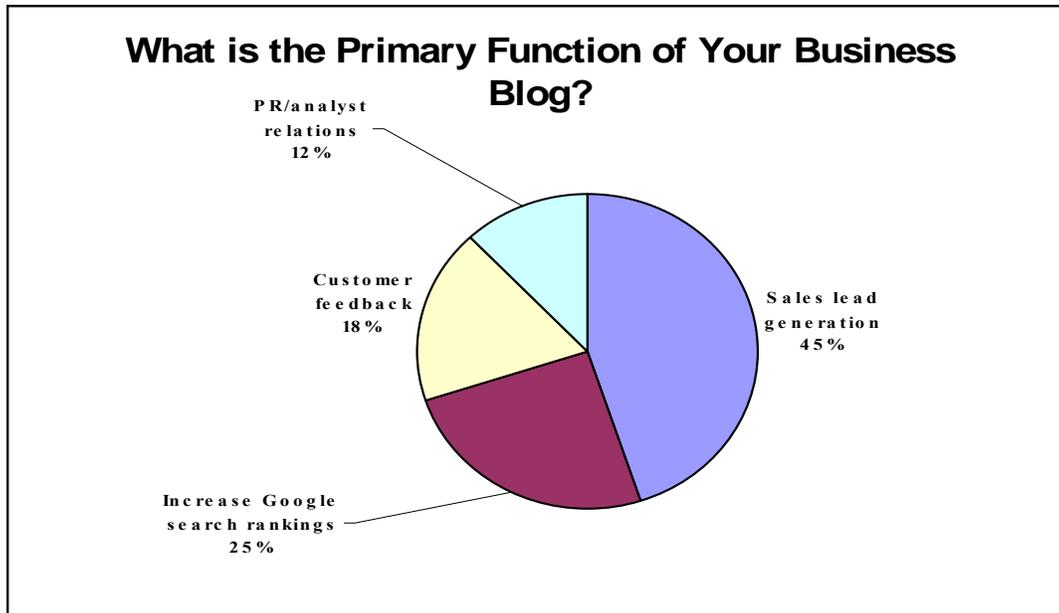
*(continued on page six)*

## Benchmarks: Software Companies and Business Blogging

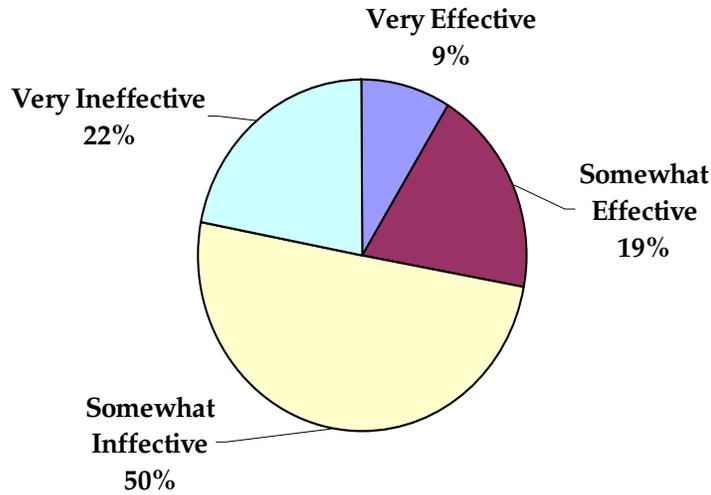
The information in these charts and tables was derived from the forthcoming *Softletter Marketing Effectiveness* report. The data in these charts and figures report was derived from 239 respondents reporting on their use of business blogs to support their ongoing marketing and sales efforts.



We were somewhat surprised by the high number of respondents who indicated that they are maintaining a business blog. While setting up a blog is not a difficult operation, writing well and regularly, a necessity for maintaining an effective blog, is not easy. However, as Joel Spolsky of Fog Creek Software has demonstrated, a popular business blog can be a powerful sales driver.

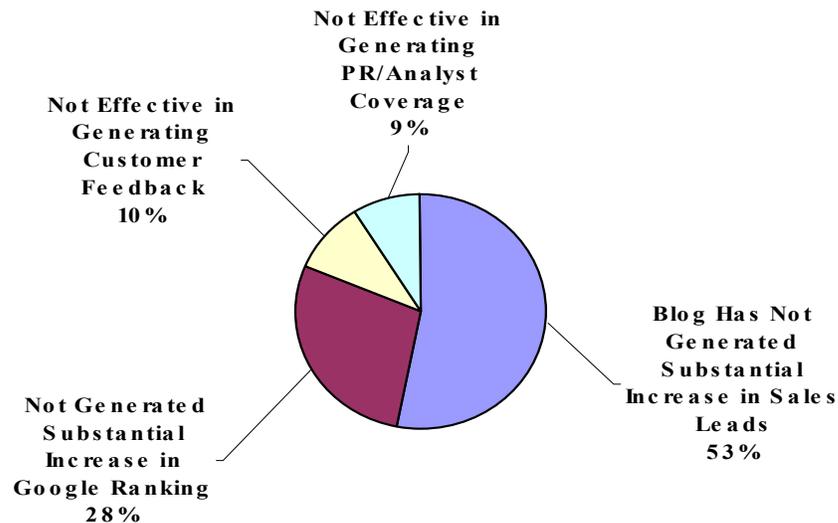


## How Effective is Your Business Blog?



As the numbers above illustrate, 72% of our survey respondents are unimpressed by the results they're obtaining from their blogging activities.

## If You Answered "Very Ineffective" or "Somewhat Ineffective," Please Indicate Why



One possible reason for the poor results our respondents are reporting is that 66% also report they are updating their blogs once a month or less often; most blogging students believe a blog needs to be updated at least weekly to be effective over the long term.

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**“If you can control it, avoid using oversized screens; they diminish the presenter. For a presentation aimed at two to 15 people, the ideal equipment is a portable 4’ x 4” screen.”**

—Paul Leroux  
co-author, *Visual Selling*

**“Gestures are a powerful and effective way to connect with an audience. They also help you control nervous fiddling with pointers, hair pushing, wedding ring twisting, and sticking your hand in your pocket and jiggling change, an action which can and has been misinterpreted time and time again.”**

—Paul Leroux  
co-author, *Visual Selling*

Again, if they’ve got your handouts, why do they need you? Better still, could you please step into that little empty conference room down the hall while we read your slides? We’ll call you back in the room if/when we have questions.

If your audience insists on handouts, give them a skeleton deck, one they can use for notes. In many cases, I recommend providing them with a handout after the presentation (in conjunction with the skeleton deck) with key points you made during your presentation to your audience.

**OK, laser pointers? Everyone uses them.**

Everyone misuses them. If you need to call out a significant graphic detail in a slide, such as a topographical feature in a picture, it’s OK to use a laser pointer. Otherwise, if you hold something in your hands you will inevitably play with it. If you want to channel your nervous energy or need to point, use your hands. Laser pointers also encourage you to wander away from the screen and force people to either watch you or the screen; this creates a “split” presentation and is distracting.

Instead of fiddling with remotes and pointers, focus on developing and using powerful and effective gestures to connect “physically” with your audience, pace your presentation, burn off nervous energy and look professional. Far too many presenters have been taught to “stand straight” and not “fidget” in order to not draw attention away from a presentation; this is exactly wrong.

This is also why you should stand next to the screen (or position the lectern next to it), not several feet away. If you don’t, people have to look at you, then the screen, then back to you. Again, very distracting. You want to be “one” with your presentation and your images. And you want to be standing on the left because in English, we read and scan from left to right. Standing on the left ensures the audience first looks at you, then when their eyes have traversed the image or text up on the screen, returns their eyes **back** to you.

Also, avoid centering the screen in a room; the center of the room is the “power spot” and you want to dominate it. Instead, place yourself in the center of the room and angle the screen about 25 degrees towards yourself.

**Why not turn down the lights? Most presenters do; it makes the screen easier to see.**

Who is doing the selling? You or the screen? Dimming the lights also tends to put people to sleep. It’s good enough to dim the lights enough to make seeing the screen easy. Consider having a designer help you design slides with color combinations that work well with higher light levels.

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## Capitalization of Software R&D Choices

By Nat Burgess, Corum Group

Dressed in black from head to toe, the veteran software CFO stands on your right shoulder and says "Write it off. Expense all development costs incurred." Meanwhile your accountant is perched on your left shoulder whispering, "Capitalize your R&D. You will look more profitable, and anyway, FAS 86 says you **have to**."

What is a software CEO to do? Simple: expense it. Here is why. FAS 86 gives software companies a lot of leeway in how they account for expenses incurred in developing software "To Be Sold, Leased, or Otherwise Marketed." The conservative approach is to expense development costs as part of the R&D budget. Doing so sends a message to your audience (acquirers, financial analysts, CPAs and investors) that you run the financial aspects of your company prudently with no financial reporting slight of hand. When I read in the footnotes that a company expenses its software development costs, my confidence in their forecast is boosted.

Of course, you can also capitalize a portion of your development costs. How much? That is discretionary. For some reason, mildly unprofitable software companies often capitalize just enough to push their earnings into the black. And how do you account for the portion you capitalize? Some companies capitalize these costs and record them in the investing section of their cash flow statement. Great for operating income, but a good financial analyst will move it back to the operation section, or reverse it entirely.

Although not directly relevant to CEOs of small software companies, the bias of Wall Street analysts becomes important when you are looking to be acquired by a public company, and their attitude is simple: they find capitalization of development costs to be inconsistently applied and often misleading.

The traditional bias of industry veterans against capitalization of development costs may yield over time to the resurgence of SaaS business models. In a SaaS world, part of the R&D budget may be spent on a product that already has customers locked in for a period of years, which means that an intelligent allocation can be made against earnings over time. But unless you follow this model, the conservative approach will save you time and boost your credibility.

Nat Burgess, executive vice president, Corum Group, 10500 NE Eighth St., Bellevue, Wash. 98004; 425/455-8281. E-mail: nburgess@corumgroup.com.

Company/Description	Acquired by	Price/Terms	Revenues	Multiple
<b>Castelle (CSTL)</b> • Document-centric business process management	Captaris (CAPA)	\$18,800,000 Terms: Cash	\$10,600,000	1.77
<b>Bisys Group (BSG)</b> • Financial outsourcing services	Citigroup (C)	\$1,450,000,000 Terms: Cash	\$862,700,000	1.68
<b>CIMNET (CIMK)</b> • Manufacturing intelligence software	Invensys Systems	\$23,200,000 Terms: Cash	\$5,300,000	4.38
<b>Inter-Tel (INTL)</b> • IP communications	Mitel Networks	\$723,000,000 Terms: Cash	\$460,900,000	1.57

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## Twitter Resources

What is Twitter? An online service designed primarily for cell phone use, though it can be used on a computer. Twitter messages are limited to 140 characters (and are called "Tweets"), forcing communications to be succinct. Your Twitter home page keeps a history of your messages and functions as a sort of mini-me blog. The service is currently free. We will be examining the marketing impact of Twitter and similar "social" services on software marketing in an upcoming issue of *Softletter*.

- **iStalkr** ([www.istalkr.com](http://www.istalkr.com)): Site allows users to aggregate RSS and feeds from services such as Twitter to create a highly detailed personal profile. The product name is unfortunate.
- **Twitter.com** ([www.twitter.com](http://www.twitter.com)): Home site of the Twitter service.
- **Twitterlex** ([http://www.apple.com/downloads/dashboard/email\\_messaging/twitterlex.html](http://www.apple.com/downloads/dashboard/email_messaging/twitterlex.html)): Macintosh widget for Twitter.
- **Twitter Submitter** (<http://simplify3.wordpress.com/2006/12/10/hello-world/>): Submit utility for the Twitter service.

### WEBSITE APPSCOUT ON A NEW CONCEPT IN IP LAWSUITS:

"The way a suit usually works, however, is that Company A sues Company B for "infringing" upon its technology, or using it illegally. On Friday, however, a startup sent a number of cease-and-desist letters to several tech bigwigs (Microsoft, Adobe, Real Networks and Apple) accusing them of not using their technology. This could be a first." (Quoted on [http://www.appscout.com/2007/05/is\\_a\\_200\\_billion\\_suit\\_headed\\_m.php#more](http://www.appscout.com/2007/05/is_a_200_billion_suit_headed_m.php#more), 05/11/2007)

### GARTNER ANALYST THOMAS BITTMAN ON

**VIRTUALIZATION:** "There aren't many good virtualization vendors out there at the moment, and virtualization is still expensive" (Quoted in *Computerworld*, 05/09/2007)

### APPLE CEO STEVE JOBS ON THE ROLE OF APPLE BOARD DIRECTORS DURING STOCKHOLDER'S MEETINGS: "Guests."

Quoted on <http://valleywag.com/tech/steve-jobs/silence-shareholders-259509.php>, 05/10/2007)

### BLOGGER ROGER MCLAWS ON MICROSOFT'S OPEN SOURCE PATENT CLAIMS: "Let's face it. In the world of software development,

everyone copies everyone. And Linux is, at it's heart, a decentralized operation to build software that competes against Windows by mimicking it, directly or indirectly. It may even have been done accidentally, which isn't terribly farfetched. Accident or not, it happened, and that's all well and good. But if you're an open source developer, and you think that duplicating someone else's technology doesn't open you or your organization up to liability, then you're an idiot." Quoted on <http://www.windows-now.com/blogs/robert/archive/2007/05/14/microsoft-is-not-suing-oss-so-relax.aspx>, 05/14/2007)

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