

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT NO.: 6,513,042
ISSUED: January 28, 2003
FOR: INTERNET TEST-MAKING METHOD
SIR or MADAM:

The Electronic Frontier Foundation ("EFF"), a not-for-profit public service organization that works to protect free expression in all forms of electronic media, respectfully requests *ex parte* reexamination ("Request") under 35 U.S.C. § 302 of United States Patent No. 6,513,042, issued January 28, 2003, to John Andersen and Charles Stack ("the '042 Patent") and assigned to Test.com.¹ The '042 Patent claims priority back to an application filed on February 11, 1999, and presently is still enforceable. As discussed below, the '042 Patent is causing significant public harm by restraining academic freedom and innovation and, more importantly, is invalid as rendered obvious under 35 U.S.C. §§ 102 and 103 by various printed prior-art publications and patents.

I. THE '042 PATENT IS CAUSING SIGNIFICANT PUBLIC HARM BY RESTRAINING ACADEMIC FREEDOM AND INNOVATION

The '042 patent is causing significant public harm by impinging on educators' ability to develop online courseware and communicate with students over the Internet. Via its subsidiary, Test Central, Inc., Test.com has threatened several universities, claiming that distance education programs that include online testing infringe the '042

¹ See Appendix A.

patent and demanding payment of licensing fees.² Online testing is a key tool in online education, allowing assessment of student progress and helping educators communicate with students about that progress and general course expectations. Therefore, enforcement of this patent to prevent online testing could directly impinge on academic speech and, by extension, academic freedom, long recognized as "a special concern of the First Amendment."³ And, while Test Central has offered to license the alleged inventive method, cash-strapped institutions that cannot afford the fees may be forced to shut down their distance education programs, harming both the institutions and their students.

By the same token, this patent is restraining innovation by threatening the market for distance learning, online books that include tests, online certification tests, and other forms of Internet-based testing. Given the breadth of the patent, Test.com could seek to enjoin almost any form of online testing. Educators and education tool developers will be reluctant to invest in developing online courseware with any testing component, for fear that a successful course may suddenly be shut down and/or the course purveyor threatened with an exorbitant fee demand.

II. THE SUBSTANTIAL NEW QUESTION OF PATENTABILITY

The substantial new question of patentability raised by this Request is whether the '042 patent is rendered obvious by the various printed publications published by IntraLearn, Inc. together and/or in combination with U.S. Patent No. 6,112,049 to Sonnenfeld. Since at least 1998, IntraLearn (formerly d/b/a as On Tour Media, Inc.) has been marketing, with various printed publications, a system and method for developing,

² See Dan Carneval, *Company Claims to Own Online Testing*, Chron. Higher Ed., Mar 26, 2004, at 31.

³ *Keyeshian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

administering and assessing tests online, maintaining test records, and sharing revenue generated by test-taking ("The IntraLearn System"). U.S. Patent No. 6,112,049, issued to Bruce Sonnenfeld on August 2000 (with a priority date to October 21, 1997) describes an Internet-operable system and method of testing. As described below, these references disclose technology that covers all of the elements of Claims 1-16 of the '042 Patent, and render the '042 Patent obvious pursuant to 103(a). A list of these printed publications is provided as follows:

- (a) November 16, 1998: On Tour IntraLearn Delivers First Internet-based Training and Testing Solution for Online Certification ("*Press Release*")⁴
- (b) 1998: IntraLearn Web-Based Training and Knowledge Management System-Administrator, Instructor and Course Developer Guide ("*Administrator Guide*")⁵
- (c) 1998: IntraLearn Web-Based Training and Knowledge Management System-Student Manual ("*Student Manual*")⁶
- (d) August 2000: U.S. Patent No. 6,112,049 to Sonnenfeld (Priority Date: October 21, 1997) ("*Sonnenfeld Patent*")⁷

A detailed explanation of the pertinence and the manner of applying these printed publications and patent, including how these documents render obvious all of the features and limitations of the '042 patent, is outlined below.

A. The IntraLearn System Documents Render Obvious Claims 1-16 of the '042 Patent

In November of 1998, IntraLearn (then called On Tour Multimedia) published the a Press Release entitled "On Tour IntraLearn Delivers First Internet-based Training and Testing Solution for Online Certification" (i.e., the *Press Release*) that, when combined separately or collectively with the Intralearn *Administrator Guide* or *Student Manual* described below, renders obvious the '042 Patent in whole or in part. The *Press Release*

⁴ See Appendix B.

⁵ See Appendix C.

⁶ See Appendix D.

⁷ See Appendix E.

was circulated to the public through the PR Channel and at COMDEX '98, then the premier annual conference and showcase for new information technology products and discloses an Internet-Based Training and Testing Product ("Product").⁸ As described in the *Press Release*, the product is a hosting platform that allows distance-learning providers to create and post courseware, including exams, over the Internet. Students can access and perform the tests via any standard web browser. Two pricing models were offered, one of which incorporates a royalty program that allowed the hosting provider (IntraLearn) to share in the revenues generate through student registrations.⁹

By the end of 1998, IntraLearn had shipped the above-described Product to numerous customers, along with the "IntraLearn Web-Based Training and Knowledge Management System—Administrator, Instructor and Course Developer Guide" (i.e., the *Administrator Guide*)¹⁰ and the "IntraLearn Web-Based Training and Knowledge Management System—Student Manual" (i.e., the *Student Manual*).¹¹ These documents provide additional details regarding the IntraLearn Product described in the above *Press Release*. As disclosed in these documents, IntraLearn used a Microsoft NT server to host, manage and develop a database of courseware. Course developers and student could access, add and modify the database from remote terminals via web browsers. The IntraLearn Product assisted course development with "Wizards" and drop-down menus that prompted the developer to enter specific information that was compiled into courseware, including tests.

⁸ See Appendix F (Goguen Affidavit).

⁹ In 1998, the Intralearn Product was made available under a standard partnering agreement, the terms of which included a student usage fee of 15% for each course registration. This fee was a mechanism whereby the host system (IntraLearn) could share revenues generated by the test-taker taking the test. See Appendix F.

¹⁰ See *supra* note 5, at 3.

¹¹ See *supra* note 6, at 3.

Thus, the Intralearn *Press Release*, when viewed in light of either of the two other documents – The *Administrator Guide* or the *Student Manual* – or in combination sufficiently discloses a method and system that renders obvious the '042 patent in its entirety. One of ordinary skill in the art would have found a clear suggestion or motivation to combine this prior art in the Intralearn *Press Release* as it specifically mentions application of its royalty method to an online testing system such as the Intralearn System. Moreover, one of ordinary skill in the art would find a suggestion or motivation to combine this prior art inherent in the documents themselves as each pertains to and describes the same product marketed in the same time frame by the same company. A detailed element-by-element analysis of this prior is provided below.

1. The IntraLearn *Press Release* viewed in light of the IntraLearn *Administrator Guide* renders obvious Claims 1-16 of the '042 Patent.

| | '042 Patent | IntraLearn System |
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| Claim 1 | A method of making a test and posting the test on-line for potential test-takers, said method comprising the steps of: | <i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."). |
| | providing a host system and a plurality of remote terminals operatively coupled to the Internet; | <i>Press Release</i> at 2 ("With IntraLearn, students can easily be certified online via a Web browser...."); <i>id.</i> ("IntraLearn creates a structured 'virtual' classroom that enables a student to receive training, perform tests, and communicate with others simply from |

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| | | a standard web browser."). |
| | | <i>Administrator Guide</i> at 5 (graphic disclosing host system that connects to a plurality of terminals via standard Internet Web browsers). |
| | inputting questions at one of the remote terminals; | <i>See generally Administrator Guide</i> at 1-2, 5, 51-54 (e.g., "To install a test, with its questions and answers, the user steps through a series of screens which prompt for the information one question at a time."). |
| | compiling the questions at the host system to make a compiled test; | <i>See generally Administrator Guide</i> at 1-2, 5, 51-54. |
| | posting the test on-line for potential test-takers; | <i>See generally Administrator Guide</i> at 1, 2, 5, 51-54. <i>Press Release</i> at 2 ("IntraLearn creates a structured 'virtual' classroom that enables a student to ... perform tests ... simply from a standard web browser."). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration."). |
| | | <i>Administrator Guide</i> at 7 ("Registration: Student sign-up for courses), <i>id.</i> at 38-42 (disclosing ability for students to register to take a course, including tests encompassed by the course requirements). |
| | wherein the test-maker and the proprietor of the host system share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (discussing growing market for online testing and certification and disclosing payment of "a small royalty percentage per student registration" to IntraLearn from the course instructor/test-maker.). |
| Claim 2 | A method as set forth in Claim 1 including the steps of providing a home page | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 1 obvious. |

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| | that is accessible to both potential test-makers and test-takers and allows users to cast themselves as either a test-maker or test-taker. | In addition, the <i>Administrator Guide</i> discloses providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast as either test-maker or test taker. <i>See Administrator Guide</i> at 7 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses"). |
| Claim 3 | A method as set forth in claim 1 wherein the test-maker is required to input an identifier. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 1 obvious. In addition, the <i>Administrator Guide</i> discloses requiring the test-maker to input an identifier. <i>See Administrator Guide</i> at 7-8. |
| Claim 4 | A method as set forth in claim 1 further including the steps of editing a compiled test. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 1 obvious. In addition, the <i>Administrator Guide</i> discloses the steps of editing a compiled test. <i>See Administrator Guide</i> at 53-54 (disclosing "Modify Test" and "Modify Question" options). |
| Claim 5 | A method as set forth in claim 1 wherein the step of posting the step [sic] includes placing compiled test in a directory for access by potential test-takers. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 1 obvious. In addition, the <i>Administrator Guide</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. Specifically, it discloses the ability to associate a given test with a Lesson, (<i>see Administrator Guide</i> at 52), and the ability for students to select a particular Lesson (and its associated test) from a web page directory. <i>Administrator Guide</i> at 17-19, 43, 51. <i>See also Administrator Guide</i> at 2 (disclosing use of Microsoft SQL Server to store course information "into pre-defined areas for |

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| | | student to get at."). |
| Claim 6 | A method as set forth in Claim 5 wherein the directory has a plurality of categories corresponding to different types of test and wherein the compiled test is place in the appropriate category. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 5 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses an ability to place a compiled test in the appropriate category. Specifically, it discloses the ability to associate a given test with a Lesson and the ability to associate a given test with a specific type of question, i.e. Multiple Choice, Yes/No, True/False, or Essay. <i>Administrator Guide</i> at 52.</p> |
| Claim 7 | A method as set forth in Claim 6 wherein the step of placing the compiled test in a directory includes the steps of placing a just-made test into a temporary category, reviewing the test to determine the appropriate category, and then placing the test into the appropriate category. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 6 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses the ability to modify tests, test questions, and assignments and objectives associated with a particular test immediately after the test is added to the IntraLearn database. <i>Administrator Guide</i> at 53-55. Moreover, it would have been obvious to one of ordinary skill in the art prior to the filing date of the '042 patent that one could first create a test and then assign it to a category.</p> |
| Claim 8 | A method as set forth in claim 7 further comprising the step of receiving input from a test-maker as to the appropriate category. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 7 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses the ability to modify tests, test questions, and assignments and objectives associated with a particular test immediately after the test is added to the IntraLearn database. <i>Administrator Guide</i> at 53-55. Moreover, it would have been obvious to one of ordinary skill in the art prior to the filing date of the '042 patent that one could first create a test and then allow the test-maker to pick a category for it.</p> |

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| Claim 9 | A method as set forth in claim 5 wherein the test-taker chooses a test from the directory. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> renders all elements of Claim 5 obvious. In addition, the <i>Administrator Guide</i> discloses an ability to place a compiled test in the appropriate category. Specifically, it discloses the ability to associate a given test with a Lesson, <i>Administrator Guide</i> at 52, and the ability for students to select a particular Lesson (and its associated test) from a web page directory. <i>Administrator Guide</i> at 17-19, 43, 51. See also <i>Administrator Guide</i> at 2 (disclosing use of Microsoft SQL Server to store course information "into pre-defined areas for student to get at."). |
| Claim 10 | A method as set forth in claim 9 wherein the test taker is allowed to preview the test chosen from the directory. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 9 obvious. Given that it was known how to display a test on a web page, it would have been obvious to one of ordinary skill in the art at the time of the filing of the '042 Patent that one could also preview a test to a user. |
| Claim 11 | A method as set forth in Claim 1 wherein the compiled test is placed in a restricted directory and the test-taker must have know [sic] a password to access the compiled test. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 1 obvious. In addition, the <i>Administrator Guide</i> discloses use of a registration system for students to access the test-taking aspects of IntraLearn. <i>Id.</i> at 7. See also <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification compliance."). |
| Claim 12 | A method of posting a test online for potential test-takers, said method comprising the steps of: | <i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... |

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| | | Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."). |
| | providing a host system and a plurality of remote terminals operatively coupled to the Internet: | <p><i>Press Release</i> at 2 ("With IntraLearn, students can easily be certified online via a Web browser...."); <i>id.</i>("IntraLearn creates a structured 'virtual' classroom that enables a student to receive training, perform tests, and communicate with others simply from a standard web browser.")</p> <p><i>Administrator Guide</i> at 5 (graphic disclosing host system that connects to a plurality of terminals via standard Internet Web browsers).</p> |
| | placing a test in a restricted directory for potential test-takers: | <p><i>See generally Administrator Guide</i> at 1, 2, 5, 51-54 (e.g., "To install a test, with its questions and answers, the user steps through a series of screens which prompt for the information one question at a time."). <i>Press Release</i> at 2 ("IntraLearn creates a structured 'virtual' classroom that enables a student to ... perform tests ... simply from a standard web browser.").</p> <p>In addition, the <i>Administrator Guide</i> discloses use of a registration system for students to access the test-taking aspects of IntraLearn, <i>id.</i> at 7. <i>See also Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification compliance.").</p> |
| | requiring a test-taker to input a password to have access to the restricted directory: | <i>Administrator Guide</i> at 7 (disclosing use of a registration system for students to access the test-taking aspects of IntraLearn); <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification compliance."). |

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| | <p>wherein the restricted directory includes academic practice tests and wherein a school enrolls students at a set cost per year.</p> | <p><i>See generally Administrator Guide</i> at 1-2, 5, 51-54 (e.g., "To install a test, with its questions and answers, the user steps through a series of screens which prompt for the information one question at a time.").</p> <p>Specifically, it discloses the ability to associate a given test with a Lesson, <i>Administrator Guide</i> at 52, and the ability for students to select a particular Lesson (and its associated test) from a web page directory, <i>Administrator Guide</i> at 17-19, 43, 51. <i>See also Administrator Guide</i> at 2 (disclosing use of Microsoft SQL Server to store course information "into pre-defined areas for student to get at.").</p> <p>Thus, the <i>Administrator Guide</i> discloses a method by which particular types of tests can be stored in a restricted directory. Given that the IntraLearn system was marketed to academic institutions, <i>Press Release</i> at 2 (quoting representative of Wisconsin Technical College System), it would have been obvious to one of ordinary skill in the art to put academic practice tests in such a directory.</p> <p><i>See also Press Release</i> at 3 (disclosing the ability to enroll students at a set cost per year, wherein enrolled students would have access to unlimited courses, including exams.).</p> |
| <p>Claim 13</p> | <p>A system for generating and posting an online test, comprising:</p> | <p><i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are . . . Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the</p> |

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| | | Intralearn system is all that is needed for each of these roles."). |
| | a first computer operatively coupled to the Internet, the first computer including software means for generating the test and software means for posting the test on the Internet; and | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> also discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54. |
| | a second computer operatively coupled to the Internet, the second computer operative to allow a user to take the test and received test results, | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to take a test and receive test results. <i>Administrator Guide</i> at 1-2 (disclosing a simple web browsers as the software means for students to take tests and receive the results). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2-3 (disclosing an ability for students to register to take a course, including accessing testing materials); <i>Administrator Guide</i> at 7, 40-42 (disclosing the ability for students to register to take a course, including tests encompassed by the course requirements.). |
| | wherein the test-maker and the proprietor of the first computer share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (disclosing an ability for the test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration). |
| Claim 14 | A system for generating and posting an online test, comprising: | <i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are |

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| | | equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."). |
| | a host computer operatively coupled to a network backbone, the host computer including a means for generating the test and means for posting the test; | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. The Internet uses a network backbone as part of its basic infrastructure. Any of these networked terminals may be used to generate and post a test. The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54. |
| | a first computer operatively coupled to the host computer, the first computer being operative to generate questions for the test; and | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54. |
| | a second computer operatively coupled to the host computer, the second computer operative to allow a user to take the test; | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to take a test and receive test results. <i>Administrator Guide</i> at 1-2 (disclosing a simple web browsers as the software means for students to take tests and receive the results). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2-3 (disclosing an ability for students to pay and register to take a course, including accessing testing materials); <i>Administrator Guide</i> at 7, 40-42 (disclosing the ability for students to register to take a course, including tests |

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| | | encompassed by the course requirements.). |
| | wherein the test-maker and the proprietor of the host computer share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (disclosing an ability for the test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration). |
| Claim 15 | A system for generating and posting an online test, comprising: | <i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."). |
| | host means operatively coupled to a network backbone, for generating the test and means for posting the test; | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. The Internet uses a network backbone as part of its basic infrastructure. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54. |
| | means, operatively coupled to the host means, for generating questions for the test; and | The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54. |
| | means, operatively coupled to the host means, for taking the test; and | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to take a test and |

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| | | receive test results. <i>Administrator Guide</i> at 1-2 (disclosing a simple web browsers as the software means for students to take tests and receive the results). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2-3 (disclosing an ability for students to pay and register to take a course, including accessing testing materials); <i>Administrator Guide</i> at 7, 40-42 (disclosing the ability for students to register to take a course, including tests encompassed by the course requirements.). |
| | wherein the test-maker and the proprietor of the host means share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (disclosing an ability for the test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration). |
| Claim 16 | A method as set forth in claim 1 wherein the host system includes a procedure for opening an account for the test-taker. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> render all elements of Claim 1 obvious. In addition, the <i>Administrator Guide</i> discloses a procedure for students to open an account and sign-up for courses. <i>Administrator Guide</i> at 7. In addition, it discloses the ability to add student (test-taker) profiles. <i>Id.</i> at 38-42. |

2. The IntraLearn *Press Release* viewed in light of the IntraLearn *Student Manual* renders obvious Claims 1-3, 5-6, and 9-16 of the '042 Patent.

| | '042 Patent | IntraLearn System |
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| Claim 1 | A method of making a test and posting the test on-line for potential test-takers, said method comprising the steps of: | <i>Student Manual</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple |

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| | | web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."). |
| | providing a host system and a plurality of remote terminals operatively coupled to the Internet; | <p><i>Press Release</i> at 2 ("With IntraLearn, students can easily be certified online via a Web browser...."); <i>id.</i> ("IntraLearn creates a structured 'virtual' classroom that enables a student to receive training, perform tests, and communicate with others simply from a standard web browser.")</p> <p><i>Student Manual</i> at 5 (graphic disclosing host system that connects to a plurality of terminals via standard Internet Web browsers).</p> |
| | inputting questions at one of the remote terminals; | <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id.</i> at 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | compiling the questions at the host system to make a compiled test; | <i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system |

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| | | <p>is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id.</i> at 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode...), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.")</p> |
| | posting the test on-line for potential test-takers; | <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id.</i> at 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode...), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |

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| | wherein a test-taker is required to pay to take the compiled test; and | <p><i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration.").</p> <p><i>Student Manual</i> at 9 (disclosing an ability for students to pay and register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express.").</p> |
| | wherein the test-maker and the proprietor of the host system share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (discussing growing market for online testing and certification and disclosing payment of "a small royalty percentage per student registration" to IntraLearn from the course instructor/test-maker.) |
| Claim 2 | A method as set forth in Claim 1 including the steps of providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast themselves as either a test-maker or test-taker | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 1 obvious.</p> <p>In addition, the <i>Student Manual</i> discloses providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast as either test-maker or test taker. <i>See Student Manual</i> at 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses").</p> |
| Claim 3 | A method as set forth in claim 1 wherein the test-maker is required to input an identifier. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 1 obvious.</p> <p>In addition, the <i>Student Manual</i> discloses requiring the test-maker to input an identifier. <i>See Student Manual</i> at 6, 10.</p> |
| Claim 4 | A method as set forth in claim 1 further including the steps of editing a compiled test. | N/A |

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| Claim 5 | A method as set forth in claim 1 wherein the step of posting the step [sic] includes placing compiled test in a directory for access by potential test-takers. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 1 obvious. In addition, the <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment). |
| Claim 6 | A method as set forth in Claim 5 wherein the directory has a plurality of categories corresponding to different types of test and wherein the compiled test is place in the appropriate category. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 5 obvious. In addition, the <i>Student Manual</i> discloses an ability to place a compiled test in the appropriate category. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability to designate tests by type (e.g., True/False, Multiple Choice, Yes/No, Essay) or by Topic or Assignment). |
| Claim 7 | A method as set forth in Claim 6 wherein the step of placing the compiled test in a directory includes the steps of placing a just-made test into a temporary category, reviewing the test to determine the appropriate category, and then placing the test into the appropriate category | N/A |
| Claim 8 | A method as set forth in claim 7 further comprising | N/A |

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| | the step of receiving input from a test-maker as to the appropriate category. | |
| Claim 9 | A method as set forth in claim 5 wherein the test-taker chooses a test from the directory | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 5 obvious.</p> <p>In addition, the <i>Student Manual</i> discloses an ability for the test-taker to choose a test from the directory by clicking on an "exam" button on either the Topic Page or Assignment Page. <i>Student Manual</i> at 16-18.</p> |
| Claim 10 | A method as set forth in claim 9 wherein the test taker is allowed to preview the test chosen from the directory | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 5 obvious.</p> <p>In addition, the <i>Student Manual</i> discloses an ability for the test-taker to preview a test from the directory by clicking on an "exam" button on either the Topic Page or Assignment Page. <i>Student Manual</i> at 16-18.</p> |
| Claim 11 | A method as set forth in Claim 1 wherein the compiled test is placed in a restricted directory and the test-taker must have know [sic] a password to access the compiled test. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 5 obvious.</p> <p>In addition, the <i>Student Manual</i> discloses use of a password to access compiled tests in restricted directories. <i>See Student Manual</i> at 5 (student registration and login via username and password required to access course materials including tests), 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses"), 9 (Registration required for student to be assigned password to access course materials including tests), 11 (Course login requires password).</p> <p><i>See also Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control</p> |

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| | | necessary for verifying certification compliance."). |
| Claim 12 | A method of posting a test online for potential test-takers, said method comprising the steps of: | <i>Student Manual</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."). |
| | providing a host system and a plurality of remote terminals operatively coupled to the Internet; | <i>Press Release</i> at 2 ("With IntraLearn, students can easily be certified online via a Web browser...."); <i>id.</i> ("IntraLearn creates a structured 'virtual' classroom that enables a student to receive training, perform tests, and communicate with others simply from a standard web browser."). <i>Student Manual</i> at 5 (graphic disclosing host system that connects to a plurality of terminals via standard Internet Web browsers). |
| | placing a test in a restricted directory for potential test-takers; | <i>Student Manual</i> at 5 (student registration and login via username and password required to access course materials including tests), 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses"), 9 (Registration required for student to be assigned password to access course materials including tests), 11 (Course login requires password). <i>See also Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification). |
| | requiring a test-taker to input a password to have access to | <i>Student Manual</i> at 5 (student registration and login via username and password |

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| | the restricted directory; | <p>required to access course materials including tests), 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses".), 9 (Registration required for student to be assigned password to access course materials including tests), 11 (Course login requires password).</p> <p><i>See also Press Release at 2</i> ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification).</p> |
| | wherein the restricted directory includes academic practice tests and wherein a school enrolls students at a set cost per year. | <p>The <i>Student Manual</i> discloses an ability to place a compiled test in the appropriate category. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability to designate tests by type (e.g., True/False, Multiple Choice, Yes/No, Essay) or by Topic or Assignment).</p> <p>Thus, the <i>Student Manual</i> discloses a method by which particular types of tests can be stored in a restricted directory. Given that the IntraLearn system was marketed to academic institutions, <i>Press Release at 2</i> (quoting representative of Wisconsin Technical College System), it would have been obvious to one of ordinary skill in the art to put academic practice tests in such a directory.</p> <p><i>See also Press Release at 3</i> (disclosing the ability to enroll students at a set cost per year, wherein enrolled students would have access to unlimited courses, including exams.).</p> |
| Claim 13 | A system for generating and posting an online test, comprising: | <i>Student Manual</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their |

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| | | assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."). |
| | a first computer operatively coupled to the Internet, the first computer including software means for generating the test and software means for posting the test on the Internet | <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | a second computer operatively coupled to the Internet, the second computer operative to allow a user to take the test and received test results | The <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and |

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| | | Assignment). The <i>Student Manual</i> also discloses the ability of students to receive test results. <i>Student Manual</i> at 20 (Viewing Exam Results). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration.") <i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express."). |
| | wherein the test-maker and the proprietor of the first computer share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (discussing growing market for online testing and certification and disclosing payment of "a small royalty percentage per student registration" to IntraLearn from the course instructor/test-maker.). |
| Claim 14 | A system for generating and posting an online test, comprising: | <i>Student Manual</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."). |
| | a host computer operatively coupled to a network backbone, the host computer including a means for generating the test and means | <i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system |

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| | for posting the test; | <p>is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals). The Internet inherently includes a network backbone as part of its architecture.</p> <p><i>Press Release at 2</i> (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode...), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | a first computer operatively coupled to the host computer, the first computer being operative to generate questions for the test; | <p><i>Student Manual at 1</i> ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release at 2</i> (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode...), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing</p> |

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| | | via the Internet.") |
| | a second computer operatively coupled to the host computer, the second computer operative to allow a user to take the test; | The <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration."); <i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express."). |
| | wherein the test-maker and the proprietor of the host computer share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (discussing growing market for online testing and certification and disclosing payment of "a small royalty percentage per student registration" to IntraLearn from the course instructor/test-maker.). |
| Claim 15 | A system for generating and posting an online test, comprising: | <i>Student Manual</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for |

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| | | each of these roles."). |
| | a host means operatively coupled to a network backbone, for generating the test and means for posting the test; | <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode...), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | means, operatively coupled to the host means, for generating questions for the test; | <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into</p> |

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| | | the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet."). |
| | means, operatively coupled to the host means, for taking the test; | The <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment). |
| | wherein a test-taker is required to pay to take the compiled test; and | <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration.") <i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express."). |
| | wherein the test-maker and the proprietor of the host means share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (discussing growing market for online testing and certification and disclosing payment of "a small royalty percentage per student registration" to IntraLearn from the course instructor/test-maker.) |
| Claim 16 | A method as set forth in claim 1 wherein the host system includes a procedure for opening an account for the test-taker. | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Student Manual</i> render all elements of Claim 1 obvious. In addition, the <i>Student Manual</i> discloses an ability for an administrator to preassign usernames and passwords for students |

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| | (test-takers) and an ability for students themselves to register for courses. <i>Student Manual</i> at 5-6, 9, and 11. |
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3. The IntraLearn Press Release viewed in light of the IntraLearn Administrator Guide and Student Manual renders obvious Claims 1-16 of the '042 Patent.

| | '042 Patent | IntraLearn System |
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| Claim 1 | A method of making a test and posting the test on-line for potential test-takers, said method comprising the steps of: | <i>Administrator Guide</i> at 1 ("The basic premise of IntraLearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); <i>Student Manual</i> at 1 (same). |
| | providing a host system and a plurality of remote terminals operatively coupled to the Internet; | <i>Press Release</i> at 2 ("With IntraLearn, students can easily be certified online via a Web browser...."); <i>id.</i> ("IntraLearn creates a structured 'virtual' classroom that enables a student to receive training, perform tests, and communicate with others simply from a standard web browser."); <i>Administrator Guide</i> at 5 (graphic disclosing host system that connects to a plurality of terminals via standard Internet Web browsers); <i>Student Manual</i> at 5 (same). |
| | inputting questions at one of the remote terminals; | <i>See generally Administrator Guide</i> at 1-2, 5, 51-54 (e.g., "To install a test, with its questions and answers, the user steps through a series of screens which prompt for the information one question at a time."). |

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| | | <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | <p>compiling the questions at the host system to make a compiled test;</p> | <p><i>See generally Administrator Guide</i> at 1-2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at 16-20</i> (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative</p> |

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| | | <p>Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | <p>posting the test on-line for potential test-takers;</p> | <p><i>See generally Administrator Guide</i> at 1, 2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at</i> 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 ("IntraLearn creates a structured 'virtual' classroom that enables a student to ... perform tests ... simply from a standard web browser.... IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | <p>wherein a test-taker is required to pay to take the compiled test; and</p> | <p><i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id. at</i> 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student</p> |

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| | | <p>registration.")</p> <p><i>Administrator Guide</i> at 7 ("Registration: Student sign-up for courses), 38-42 (disclosing ability for students to register to take a course, including tests encompassed by the course requirements).</p> <p><i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express.").</p> |
| | wherein the test-maker and the proprietor of the host system share the revenues generated by the test-taker taking the test. | <i>Press Release</i> at 3 (discussing growing market for online testing and certification and disclosing payment of "a small royalty percentage per student registration" to IntraLearn from the course instructor/test-maker.). |
| Claim 2 | A method as set forth in Claim 1 including the steps of providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast themselves as either a test-maker or test-taker. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 1 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast as either test-maker or test taker. <i>See Administrator Guide</i> at 7 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses").</p> <p>In addition, the <i>Student Manual</i> discloses providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast as either test-maker or test taker. <i>See Student Manual</i> at 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses").</p> |
| Claim 3 | A method as set forth in | As disclosed above, the <i>Press Release</i> |

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| | claim 1 wherein the test-maker is required to input an identifier. | <p>viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 1 obvious.</p> <p>In addition, the <i>Administrator Guide</i> and <i>Student Manual</i> disclose requiring the test-maker to input an identifier. See <i>Administrator Guide</i> at 7-8; <i>Student Manual</i> at 6, 10.</p> |
| Claim 4 | A method as set forth in claim 1 further including the steps of editing a compiled test. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 1 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses the steps of editing a compiled test. See <i>Administrator Guide</i> at 53-54 (disclosing "Modify Test" and "Modify Question options").</p> |
| Claim 5 | A method as set forth in claim 1 wherein the step of posting the step [sic] includes placing compiled test in a directory for access by potential test-takers. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 1 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. Specifically, it discloses the ability to associate a given test with a Lesson, <i>Administrator Guide</i> at 52, and the ability for students to select a particular Lesson (and its associated test) from a web page directory, <i>Administrator Guide</i> at 17-19, 43, 51. See also <i>Administrator Guide</i> at 2 (disclosing use of Microsoft SQL Server to store course information "into pre-defined areas for student to get at").</p> <p>In addition, the <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system</p> |

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| | | in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment). |
| Claim 6 | A method as set forth in Claim 5 wherein the directory has a plurality of categories corresponding to different types of test and wherein the compiled test is place in the appropriate category. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 5 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses an ability to place a compiled test in the appropriate category. Specifically, it discloses the ability to associate a given test with a Lesson and the ability to associate a given test with a specific type of question, i.e. Multiple Choice, Yes/No, True/False, or Essay. <i>Administrator Guide</i> at 52.</p> <p>In addition, the <i>Student Manual</i> discloses an ability to place a compiled test in the appropriate category. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability to designate tests by type (e.g. True/False, Multiple Choice, Yes/No, Essay) or by Topic or Assignment).</p> |
| Claim 7 | A method as set forth in Claim 6 wherein the step of placing the compiled test in a directory includes the steps of placing a just-made test into a temporary category, reviewing the test to determine the appropriate category, and then placing the test into the appropriate category. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 6 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses the ability to modify tests, test questions, and assignments and objectives associated with a particular test immediately after the test is added to the IntraLearn database. <i>Administrator Guide</i> at 53-55. Moreover, it would have been obvious to one of ordinary skill in the art prior to the filing date of the '042 patent that one could first create a test and then</p> |

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| | | assign it to a category. |
| Claim 8 | A method as set forth in claim 7 further comprising the step of receiving input from a test-maker as to the appropriate category. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 7 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses the ability to modify tests, test questions, and assignments and objectives associated with a particular test immediately after the test is added to the IntraLearn database. <i>Administrator Guide</i> at 53-55. Moreover, it would have been obvious to one of ordinary skill in the art prior to the filing date of the '042 patent that one could first create a test and then allow the test-maker to pick a category for it.</p> |
| Claim 9 | A method as set forth in claim 5 wherein the test-taker chooses a test from the directory. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 5 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses an ability to place a compiled test in the appropriate category. Specifically, it discloses the ability to associate a given test with a Lesson, <i>Administrator Guide</i> at 52, and the ability for students to select a particular Lesson (and its associated test) from a web page directory, <i>Administrator Guide</i> at 17-19, 43, 51. <i>See also Administrator Guide</i> at 2 (disclosing use of Microsoft SQL Server to store course information "into pre-defined areas for student to get at.").</p> <p>In addition, the <i>Student Manual</i> discloses an ability for the test-taker to choose a test from the directory by clicking on an "exam" button on either the Topic Page or Assignment Page. <i>Student Manual</i> at 16-18.</p> |
| Claim 10 | A method as set forth in claim 9 wherein the test taker | As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> |

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| | is allowed to preview the test chosen from the directory. | <p>and <i>Student Manual</i> renders all elements of Claim 9 obvious.</p> <p>In addition, the <i>Student Manual</i> discloses an ability for the test-taker to preview a test from the directory by clicking on an "exam" button on either the Topic Page or Assignment Page. <i>Student Manual</i> at 16-18.</p> <p>Moreover, given that it was known how to display a test on a web page, it would have been obvious to one of ordinary skill in the art at the time of the filing of the '042 Patent that one could also preview a test to a user.</p> |
| Claim 11 | A method as set forth in Claim 1 wherein the compiled test is placed in a restricted directory and the test-taker must have know [sic] a password to access the compiled test. | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 1 obvious.</p> <p>In addition, the <i>Administrator Guide</i> discloses use of a registration system for students to access the test-taking aspects of IntraLearn, <i>id. at 7</i>. See also <i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification compliance.").</p> <p>In addition, the <i>Student Manual</i> discloses use of a password to access compiled tests in restricted directories. See <i>Student Manual</i> at 5 (student registration and login via username and password required to access course materials including tests), 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses"), 9 (Registration required for student to be assigned password to access course materials including tests), 11 (Course login requires password).</p> |
| Claim 12 | A method of posting a test online for potential test- | <i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students |

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| | takers, said method comprising the steps of: | access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."); <i>Student Manual</i> at 1 (same). |
| | providing a host system and a plurality of remote terminals operatively coupled to the Internet; | <i>Press Release</i> at 2 ("With IntraLearn, students can easily be certified online via a Web browser...."); <i>id.</i> ("IntraLearn creates a structured 'virtual' classroom that enables a student to receive training, perform tests, and communicate with others simply from a standard web browser.") <i>Administrator Guide</i> at 5 (graphic disclosing host system that connects to a plurality of terminals via standard Internet Web browsers); <i>Student Manual</i> at 1 (same). |
| | placing a test in a restricted directory for potential test-takers; | <i>See generally Administrator Guide</i> at 1, 2, 5, 51-54. <i>Press Release</i> at 2 ("IntraLearn creates a structured 'virtual' classroom that enables a student to ... perform tests ... simply from a standard web browser."). <i>Student Manual</i> at 5 (student registration and login via username and password required to access course materials including tests), 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses"), 9 (Registration required for student to be assigned password to access course materials including tests), 11 (Course login requires password). In addition, the <i>Administrator Guide</i> discloses use of a registration system for |

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| | | <p>students to access the test-taking aspects of IntraLearn, <i>id. at 7</i>. See also <i>Press Release at 2</i> ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification compliance.").</p> |
| | <p>requiring a test-taker to input a password to have access to the restricted directory;</p> | <p><i>Administrator Guide at 7</i> (disclosing use of a registration system for students to access the test-taking aspects of IntraLearn); <i>Press Release at 2</i> ("With powerful security measures for student identification and authentication, IntraLearn ... offers companies the control necessary for verifying certification compliance.").</p> <p><i>Student Manual at 5</i> (student registration and login via username and password required to access course materials including tests), 6 ("Registration: Student sign-up for courses; Administration: Link to administration area, for administration of courses"), 9 (Registration required for student to be assigned password to access course materials including tests), 11 (Course login requires password).</p> |
| | <p>wherein the restricted directory includes academic practice tests and wherein a school enrolls students at a set cost per year.</p> | <p>See generally <i>Administrator Guide at 1-2, 5, 51-54</i> (e.g., "To install a test, with its questions and answers, the user steps through a series of screens which prompt for the information one question at a time.").</p> <p>Specifically, it discloses the ability to associate a given test with a Lesson, <i>Administrator Guide at 52</i>, and the ability for students to select a particular Lesson (and its associated test) from a web page directory, <i>Administrator Guide at 17-19, 43, 51</i>. See also <i>Administrator Guide at 2</i> (disclosing use of Microsoft SQL Server to store course information "into pre-defined areas for student to get at.").</p> <p>The <i>Student Manual</i> discloses an ability to place a compiled test in the appropriate</p> |

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| | | <p>category. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability to designate tests by type (e.g. True/False, Multiple Choice, Yes/No, Essay) or by Topic or Assignment).</p> <p>Thus, the <i>Administrator Guide</i> and <i>Student Manual</i> disclose methods by which particular types of tests can be stored in a restricted directory. Given that the IntraLearn system was marketed to academic institutions, <i>Press Release</i> at 2 (quoting representative of Wisconsin Technical College System), it would have been obvious to one of ordinary skill in the art to put academic practice tests in such a directory.</p> <p><i>See also Press Release</i> at 3 (disclosing the ability to enroll students at a set cost per year, wherein enrolled students would have access to unlimited courses, including exams.).</p> |
| Claim 13 | A system for generating and posting an online test, comprising: | <p><i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."); <i>Student Manual</i> at 1 (same).</p> |
| | a first computer operatively coupled to the Internet, the first computer including software means for | <p>The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers.</p> |

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| | <p>generating the test and software means for posting the test on the Internet</p> | <p><i>Administrator Guide</i> at 5. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> also discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at</i> 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode...), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.")</p> |
| | <p>a second computer operatively coupled to the Internet, the second computer operative to allow a user to take the test and received test results</p> | <p>The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers.</p> <p><i>Administrator Guide</i> at 5. Any of these terminals may be used to take a test and receive test results. <i>Administrator Guide</i> at 1-2 (disclosing a simple web browsers as the software means for students to take tests and receive the results).</p> <p>The <i>Student Manual</i> discloses an ability to place the compiled test in a directory for</p> |

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| | | <p>access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment).</p> <p>The <i>Student Manual</i> also discloses the ability of students to receive test results. <i>Student Manual</i> at 20 (Viewing Exam Results).</p> |
| | <p>wherein a test-taker is required to pay to take the compiled test; and</p> | <p><i>Administrator Guide</i> at 7, 40-42 (disclosing the ability for students to register to take a course, including tests encompassed by the course requirements.).</p> <p><i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id. at</i> 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration.")</p> <p><i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express.").</p> |
| | <p>wherein the test-maker and the proprietor of the first computer share the revenues generated by the test-taker taking the test.</p> | <p><i>Press Release</i> at 3 (disclosing an ability for the test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration).</p> |
| Claim 14 | <p>A system for generating and posting an online test, comprising:</p> | <p><i>Administrator Guide</i> at 1 ("The basic premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and</p> |

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| | | <p>instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."); <i>Student Manual</i> at 1 (same).</p> |
| | <p>A host computer operatively coupled to a network backbone, the host computer including a means for generating the test and means for posting the test;</p> | <p>The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. The Internet uses a network backbone as part of its basic infrastructure. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at</i> 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals). The Internet inherently includes a network backbone as part of its architecture.</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with</p> |

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| | | powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet."). |
| | a first computer operatively coupled to the host computer, the first computer being operative to generate questions for the test; | <p>The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at</i> 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.").</p> |
| | a second computer operatively coupled to the host computer, the second computer operative to allow | The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. |

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| | a user to take the test; | <p><i>Administrator Guide</i> at 5. Any of these terminals may be used to take a test and receive test results. <i>Administrator Guide</i> at 1-2 (disclosing a simple web browsers as the software means for students to take tests and receive the results).</p> <p>The <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment).</p> |
| | wherein a test-taker is required to pay to take the compiled test; and | <p><i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration.")</p> <p><i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express.").</p> <p><i>Administrator Guide</i> at 7, 40-42 (disclosing the ability for students to register to take a course, including tests encompassed by the course requirements.).</p> |
| | wherein the test-maker and the proprietor of the host computer share the revenues generated by the test-taker taking the test. | <p><i>Press Release</i> at 3 (disclosing an ability for the test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration).</p> |
| Claim 15 | A system for generating and | <i>Administrator Guide</i> at 1 ("The basic |

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| | posting an online test, comprising: | premise of Intralearn is to give students access to knowledge, immediate assessment of their assimilation, certification of what they learned and instructor guidance as required. Students can learn at their own convenience whenever and wherever they are.... Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the Intralearn system is all that is needed for each of these roles."); <i>Student Manual</i> at 1 (same). |
| | a host means operatively coupled to a network backbone, for generating the test and means for posting the test; | <p>The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. The Internet uses a network backbone as part of its basic infrastructure. Any of these terminals may be used to generate and post a test. The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id.</i> at 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into</p> |

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| | | the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.") |
| | means, operatively coupled to the host means, for generating questions for the test; | <p>The <i>Administrator Guide</i> discloses an ability to create tests using drop-down menus and inputting questions via a remote terminal. <i>Administrator Guide</i> at 1-2, 5, 51-54.</p> <p><i>Student Manual</i> at 1 ("Course developers or instructors are equipped with an easy to use mechanism to load knowledge into the system. A simple web browser and appropriate access to the IntraLearn system is all that is needed for each of these roles."); 2 ("Course developers put information into the system in pre-defined areas for students to get at. A student also puts information into the database when they complete a test..."). <i>See also generally id. at</i> 16-20 (disclosing how student take exams that have been entered by instructors via the web browsers on remote terminals).</p> <p><i>Press Release</i> at 2 (IntraLearn's innovative Remote Proctoring feature allows an authorized proctor to register students into the IntraLearn online test mode....), 3 ("On Tour eliminated these drawbacks ... with powerful relational database technologies to create the first turnkey platform for supplying certification training and testing via the Internet.")</p> |
| | means, operatively coupled to the host means, for taking the test; | <p>The <i>Administrator Guide</i> also discloses an ability to provide a host system (a server) that connects to a plurality of terminals via standard Internet Web browsers. <i>Administrator Guide</i> at 5. Any of these terminals may be used to take a test and receive test results. <i>Administrator Guide</i> at 1-2 (disclosing a simple web browsers as</p> |

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| | | <p>the software means for students to take tests and receive the results).</p> <p>The <i>Student Manual</i> discloses an ability to place the compiled test in a directory for access by potential test-takers. <i>Student Manual</i> at 2 (disclosing use of Microsoft SQL server, a sophisticated relational database and that "Course developers put information into the system in pre-defined areas for students to get at."); 15-19 (disclosing the ability of students to access tests via directories organized by Topic and Assignment).</p> |
| | <p>wherein a test-taker is required to pay to take the compiled test; and</p> | <p><i>Press Release</i> at 2 ("With powerful security measures for student identification and authentication, IntraLearn"); <i>id.</i> at 3 (discussing growing market for online testing and certification and disclosing "a small royalty percentage per student registration.")</p> <p><i>Student Manual</i> at 9 (disclosing an ability for students to register to take a course, including tests encompassed by the course requirements, and discloses that the registration includes the step of paying to take the course, e.g. "Payment Method: American Express.").</p> <p><i>Administrator Guide</i> at 7, 40-42 (disclosing the ability for students to register to take a course, including tests encompassed by the course requirements.).</p> |
| | <p>wherein the test-maker and the proprietor of the host means share the revenues generated by the test-taker taking the test.</p> | <p><i>Press Release</i> at 3 (disclosing an ability for the test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration).</p> |
| Claim 16 | <p>A method as set forth in claim 1 wherein the host system includes a procedure for opening an account for the test-taker.</p> | <p>As disclosed above, the <i>Press Release</i> viewed in light of the <i>Administrator Guide</i> and <i>Student Manual</i> renders all elements of Claim 1 obvious.</p> |

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| | | <p>In addition, the <i>Administrator Guide</i> discloses a procedure for students to open an account and sign-up for courses. <i>Administrator Guide</i> at 7. In addition, it discloses the ability to add student (test-taker) profiles. <i>id.</i> at 38-42.</p> <p>In addition, the <i>Student Manual</i> discloses an ability for an administrator to preassign usernames and passwords for students (test-takers) and an ability for students themselves to register for courses. <i>Student Manual</i> at 5-6, 9, and 11.</p> |
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B. The IntraLearn *Press Release*, in view of U.S. Patent No. 6,112,049 to Sonnenfeld Renders Obvious Claims 1-10 of the '042 Patent.

The application history¹² for the '042 patent shows that the Examiner initially rejected claims 1-10 as being anticipated by U.S. Patent No. 6,112,049 ("Sonnenfeld").¹³ *Sonnenfeld* describes an automated testing system and method that is operable over the Internet using standard Web browsers. Claims 1-10 of the '042 patent were ultimately allowed only with the incorporation of a single additional element – the step of the test-maker and proprietor sharing the revenues generated by the test-taker taking the test. It is this sole element that distinguishes the claims of the '042 patent from *Sonnenfeld* and by which the Examiner allowed them to avoid rejection.

As set forth in detail below, the IntraLearn *Press Release* discloses the missing step of sharing revenues between the host system and the testmaker via a royalty system. In combination with *Sonnenfeld*, the *Press Release* renders obvious claims 1-10 of the '042 patent. A suggestion or motivation to combine the documents is disclosed in the

¹² See Appendix G. (pages 3-6).

¹³ See *supra* note 7, at 3.

Press Release, which describes using such a royalty system explicitly with an "Internet-based . . . training and testing management system."¹⁴ This language evokes the title and content of *Sonnenfeld*, which encompasses a "Computer Network Based Testing System." Thus, one of ordinary skill in the art would have had sufficient motivation to combine the *Press Release* with *Sonnenfeld* prior to the filing date of the '042 patent application.

Taken together, these documents disclose a method that renders obvious claims 1-10 of the '042 patent.

| | '042 Patent | <i>Sonnenfeld Patent/IntraLearn Press Release</i> |
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| Claim 1 | <p>A method of making a test and posting the test on-line for potential test-takers, said method comprising the steps of:</p> <p>providing a host system and a plurality of remote terminals operatively coupled to the Internet;</p> <p>inputting questions at one of the remote terminals;</p> <p>compiling the questions at the host system to make a compiled test;</p> <p>posting the test on-line for potential test-takers;</p> | <p>The <i>Sonnenfeld</i> patent discloses a system for generating a test comprising:</p> <p>Providing a host system and a plurality of remote terminals operatively coupled to the Internet. <i>Sonnenfeld</i>, col. 1:5-9, col. 3:12-45;</p> <p>Inputting questions at one of the remote terminals; compiling the questions at the host system to make a compiled test. <i>Id.</i>, col. 12:56-65; July 23, 2002 Detailed Action at 3.</p> <p>Posting the test online for potential test-takers. <i>Sonnenfeld</i>, col. 13:37-42, 15:4-16:7, 66:54-63; July 23, 2002 Detailed Action at 4.</p> |
| | <p>wherein a test-taker is required to pay to take the compiled test; and</p> <p>wherein the test-maker and the</p> | <p>The IntraLearn <i>Press Release</i> discloses an ability for :</p> <p>(a) Test providers (test-makers) to</p> |

¹⁴ See *Press Release* at 1.

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| | <p>proprietor of the host system share the revenues generated by the test-taker taking the test.</p> | <p>"set up existing certificate courses" – i.e. post tests – online;</p> <p>(b) Students to access and take tests via a standard web browser;</p> <p>(c) Students to pay and register to take a course, including accessing testing materials; and</p> <p>(d) The test-maker and the proprietor of the host system (IntraLearn) to share revenues in that the test maker gives the proprietor of the host system a royalty percentage per student registration.</p> <p><i>Press Release at 2-3.</i></p> |
| Claim 2 | <p>A method as set forth in Claim 1 including the steps of providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast themselves as either a test-maker or test-taker.</p> | <p><i>Sonnenfeld</i> also teaches the steps of providing a home page that is accessible to both potential test-makers and test-takers and allows users to cast themselves as either a test-maker or test-taker. <i>Sonnenfeld</i>, col. 13:65-14:10, col. 16:25-35; July 23, 2002 Detailed Action at 3.</p> |
| Claim 3 | <p>A method as set forth in claim 1 wherein the test-maker is required to input and identifier.</p> | <p><i>Sonnenfeld</i> also teaches wherein the test-maker is required to input and identifier. <i>Sonnenfeld</i>, col.17:1-18:3; July 23, 2002 Detailed Action at 3.</p> |
| Claim 4 | <p>A method as set forth in claim 1 further including the steps of editing a compiled test.</p> | <p><i>Sonnenfeld</i> also teaches the step of editing the compiled test. <i>Sonnenfeld</i>, col. 8:13-27; col. 18:58-61; July 23, 2002 Detailed Action at 3-4.</p> |
| Claim 5 | <p>A method as set forth in claim 1 wherein the step of posting the step [sic] includes placing compiled test in a directory for access for potential test-takers.</p> | <p><i>Sonnenfeld</i> also teaches wherein the step of posting the test includes placing compiled test in a directory for access for potential test-takers. <i>Sonnenfeld</i>, col. 13:37-42, col. 15:4-16:7, col. 66:54-63; July 23, 2002 Detailed Action at 3-4.</p> |
| Claim 6 | <p>A method as set forth in Claim 5</p> | <p><i>Sonnenfeld</i> also teaches wherein</p> |

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| | wherein the directory has a plurality of categories corresponding to different types of test and wherein the compiled test is place in the appropriate category. | the directory has a plurality of categories corresponding to different types of test and wherein the compiled test is place in the appropriate category. <i>Sonnenfeld</i> , col. 6:2-3, col. 6:57-58, col. 9:17; July 23, 2002 Detailed Action at 3-4. |
| Claim 7 | A method as set forth in Claim 6 wherein the step of placing the compiled test in a directory includes the steps of placing a just-made test into a temporary category, reviewing the test to determine the appropriate category, and then placing the test into the appropriate category. | <i>Sonnenfeld</i> also teaches wherein the step of placing the compiled test in a directory includes the steps of placing a just-made test into a temporary category, reviewing the test to determine the appropriate category, and then placing the test into the appropriate category. <i>Sonnenfeld</i> , col. 18:24-26; July 23, 2002 Detailed Action at 3-4. |
| Claim 8 | A method as set forth in claim 7 further comprising the step of receiving input from a test-maker as to the appropriate category. | <i>Sonnenfeld</i> also teaches the step of receiving input from a test-maker as to the appropriate category. <i>Sonnenfeld</i> , col. 13:30-56; July 23, 2002 Detailed Action at 3-4. |
| Claim 9 | A method as set forth in claim 5 wherein the test-taker chooses a test from the directory. | <i>Sonnenfeld</i> also teaches wherein the test-taker chooses a test from the directory. <i>Sonnenfeld</i> , col. 14:31-46; July 23, 2002 Detailed Action at 3-4. |
| Claim 10 | A method as set forth in claim 9 wherein the test taker is allowed to preview the test chosen from the directory. | <i>Sonnenfeld</i> also teaches wherein the test taker is allowed to preview the test chosen from the directory. <i>Sonnenfeld</i> , col. 16:36-66; July 23, 2002 Detailed Action at 3-4. |

III. CONCLUSION

For the reasons set forth above, all claims of the '042 Patent is invalid as obvious in light the above referenced publications and patents. EFF respectfully requests that these claims be reexamined and ultimately canceled in their entirety.

Date

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