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"Competition is Going to Be More Intense"

John Yochelson, President of the US Council on Competitiveness Says "We Can't Rest on Our Laurels"

Karen Roller

Keynote Speaker John Yochelson, President of the US Council on Competitiveness, commended Austin for its technology leadership and reminded Texas Software Symposium attendees that "outcomes in Washington are going to affect your success and your ability to create wealth." Yochelson also challenged the city to pay closer attention to innovation because compared to other world contenders the US is slipping in its capacity to innovate.

Competition has truly changed over the last years Yochelson said. "Competition is a lot more intense than it used to be, and we can't rest on our laurels. We can't take our leadership for granted."

The US no longer needs to keep its eye on just Japan; Finland, Sweden, Singapore and others are coming on strong. "In recent years Taiwan and South Korea have registered more profitable IP patents than the United States and Great Britain," Yochelson said.

With the speed of technology increasing and "churning," more countries can get into the game. More churning means more opportunities, Yochelson noted, pointing out the evidence locally—the growing number of technology companies in and around Austin.

"Demand is growing a lot quicker outside the United States than inside," he said. "We are 6% of the world's population and 20% of the world's economy. So taking the long view of things, the growth opportunities are outside."

Continued on page 19



Texas Software Symposium

Software—The Pervasive Technology

Karen Roller

On September 9, 1999—a day many anticipated to be rocked by tremors from Y2K fallout—Austin leaders gathered to hear experts discuss the far-reaching impact of software in today's business and domestic arenas.

While September 9 passed quietly on the Y2K front, it was a banner day for technology executives and service providers who attended the Texas Software Symposium sponsored by the Austin Software Council. Mayor Kirk Watson kicked off the event with a spirited view of technology in Austin including ways he'd like to see the city grow in its international reach. "Because of your work, we are the envy of the world," he said. Watson then introduced John Yochelson, president of the US

Council on Competitiveness, who offered an insightful take on the United States' positioning in the technological world order.

Yochelson was followed by an impressive line-up of national and local speakers. The panel on e-business tackled present and future concerns as seen by Steve Brown, Palm Computing; Greg Hemstreet, Pervasive Software; Andy Martin, garden.com; and David Sikora, Ventix. This information-packed session was moderated by Bob Kruger, BMC Software.

The marriage of software and hardware in "Co-design" was introduced by Jeff S. Smith, IBM Austin,

Continued on page 22



Lara Whitfill, The Don Cox Company, hands Amy Warmke, Ernst & Young, a registration packet.



Message from the Chair

Betty Otter-Nickerson,
BMC Software

Connect, learn, and grow . . . highlights of key activities for August, September and October show how we continue to strengthen Austin Software Council and its offerings:

Our monthly programs continue to be entertaining and informative. In August we chased the summertime blues away with fantastic music and an excellent top ten list. In September we scratched the surface of the merger itch . . . have you experienced it?

Our peer group gatherings plus activities of the legal, international and software development departments of ASC "U" offer other avenues of vital information.

Our annual Texas Software Symposium (TSS) on 9/9/99 was a great success! Everyone had plenty of opportunity to learn just how pervasive that thing called software is. How many microprocessors do you have on you now? TSS couldn't have happened without our sponsors. Thanks to our GOLD sponsors: the Austin *American-Statesman*; Brobeck Phleger & Harrison LLP; The Don Cox Company; Horizon Film & Video; Networker.com; Oracle; Pervasive Software; PricewaterhouseCoopers; and Silicon Valley Bank. Also thanks to our SILVER sponsors: Arnold, White & Durkee LLP; Austin Business Journal; Dazel; DMR Consulting Group; Imperial Bank; KJFK FM 98.9; Murphree & Co; New England Financial; Resource Financial Group; SBC Technology Resources; Technical Business Network; Thompson & Knight LLP; University of Texas; Office of Industry Relations; and Woodruff Sawyer & Co.

We unveiled a new look with our new logo. Thanks to all who participated in the project especially to Chris Greta from The Ad Ranch.

Our website continues to evolve. Check it out at www.austinsoftwarecouncil.org.

In August I was fortunate to represent the Council at the semi-annual Council of

Regional Information Technology Associations (CRITA) meeting in Montreal. CRITA provides a forum for fostering and facilitating communication and cooperation among regional IT associations. The purpose is to share information, resources and support thereby strengthening regional associations and programs. The majority of the program centered on running an effective regional IT association. Groups represented included Austin, Maine, Pennsylvania, New Jersey, Northern Virginia, North Carolina, Indiana, Ohio, New Orleans, New Mexico, Quebec, Arizona, San Diego, Oregon, San Jose, Utah and Washington. Lots of great ideas for strengthening membership and programs were shared. Presentations included Colin Powell's program, America's Promise, for reaching out and mentoring students by technology professionals and Microsoft's ideas on working effectively with regional associations.

ASC has kicked off a program to reach out, mentor and expose high school students in Austin to the technology profession. Thanks to Bob Martin of Trilogy and Paul Toprac of PSW Technologies for their time and commitment on this workforce development effort.

The time, effort and dedication of the staff, committee chairs and volunteers continue to amaze me. Thanks again to everybody for what you are doing to help Austin's technology community to connect, learn and grow.

Betty Otter-Nickerson is ASC Chair; VP of Operations, Product Management and Development; and Austin Site Manager, BMC Software.

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Coordinated Cooperation

Les Belady,
 Austin Software Council

Last year when I returned to Austin to start my third retirement, I found the city full of energy, openness and cooperative spirit—not a place to retire. So after putting my house in order and establishing a few consulting jobs, I felt I owed the city of my choice more involvement. Luckily the opportunity came and I became the executive director of the Austin Software Council early this year.

The Austin scene changed significantly from the 80's when I first came here. At that time Austin was attracting big technology companies and research organizations such as MCC and SEMATECH. But now Austin is characterized by small enterprises driven by the opportunities the Internet provides. Clearly the infrastructure and the many organizations involved must reflect this profound change.

Since early this year the Austin Software Council—in addition to its role as a forum for exchanging information relevant to the software business—has been a part of many noble efforts by distinguished organizations. An example is the focus on the number one problem facing the software business: the shortage of qualified people. However many uncoordinated efforts are not the most efficient way to achieve goals.

Clearly industry, academia and government must work in a coordinated way. To this end ASC has taken several steps. Our Board now has as a member the VP for research of UT-Austin. We are in the process of creating

a new Software Executive Group representing both ASC and the Greater Austin Chamber of Commerce to increase our influence on important issues such as workforce development. ASC was instrumental in creating the Austin Coalition for Workforce in Software Technologies (ACWS), combining the efforts of city government, education (Austin Community College, K-12), ASC and others. We are involved with Pass-It-On, a federal program to help the handicapped enter the workforce. And beyond workforce issues we keep building strong ties with other high tech organizations such as ICC of the business school of UT and its Austin Technology Incubator as well as the new E-Commerce Association: Witness our joint sponsorship of the November monthly meeting.

In summary our goal is coordinated cooperation—alliances on equal bases—to further our shared goal: to make Austin the world capital of software.

[Editor's Note: For additional information on the Council's efforts to coordinate workforce development, see "Unique Training Program Passes on the Torch of Opportunity" and "Cupid Aims At Austin" in this issue of *The Leader*.]

Les Belady is executive director, Austin Software Council. He can be reached at les@austinsoftwarecouncil.org or 305-0032.



Be a Part of the Solution

Brent Davis, New England Financial

You need to join the Austin Software Council. Faster than you can say Internet startup, you need to log on to this website www.austinsoftwarecouncil.org, download the application form to become a part of one of the most dynamic associations in the industry. (Better yet, call me at 637-6247.) Your business will benefit from it. Period. Whether a year from now you're celebrating an IPO that would make the CEO of Red Hat blush, or whether you're cursing a cash position that has drained every ounce of your life savings and available credit, you'll be better off associating with people who are experiencing the same highs and lows you're going through, and who are, more importantly, doing something about it.

The Austin Software Council has a core set of programs and services that provides businesses with the tools to succeed and the resources to regroup. If I've said it once I've said it a thousand times: our Peer Groups are outstanding, our Monthly Meetings are incredible and our ASC "University" seminars just flat out rock—well, actually, so did our August monthly meeting with folks like Hank Jones singing the blues! Be a part of the Council and instantly benefit from the key contacts and ideas that will help you and your business grow. We didn't set up these programs overnight. It's been an evolution of almost a decade of entrepreneurs and business leaders like yourself wanting to create a forum for interaction, education and development to help them succeed. So take advantage of it.

And don't just join for yourself. Do it for all of us. While I applaud the selfishness that seems to drive the "modern" economy, occasional lapses of community involvement actually seem to improve business conditions and benefit all of us. Which means you benefit anyway. So get over it.

No other association makes such a collective effort as effectively as the Austin Software

Council. Our collaborations with the Texas e-Comm, AEA, TBN and the Greater Austin Chamber of Commerce embody this ethic. We recognize that we can't realize our mission alone and that other groups want to improve business conditions as desperately as we do. For each of the four major issues confronting ASC members and the software industry as a whole, we're combining talents and efforts with others to enhance effectiveness. Workforce development, internationalization, technology innovation and community outreach conditions won't improve if we single-handedly try to champion these initiatives.

In the same sense, you shouldn't try to address all of the issues confronting your business. You should join and contribute to the leadership position assumed by the Austin Software Council and have more impact on your business, your career and your industry.

And don't tell me that you don't have enough time. For one, you could be more original. And secondly, your lack of time is exactly why you need to join. Because, if you don't make the time, you'll never have any of it until it's too late—at which point you'll have more time than you ever wanted. So for the love of whatever, sign up. And if you don't want to sign up, either a) let us know why or b) join and fix what you perceive to be broken. You're either part of the problem or the solution. Be a part of the solution.

Brent Davis is chair of the Membership Committee and a financial representative with New England Financial. He can be reached at bdavis@austin.nefn.com or 637-6247.

If I've said it once I've said it a thousand times. . . .

Cupid Aims At Austin

Bob Martin,
Trilogy

Although Valentine's Day won't be here until the next millenium, Cupid's arrow is already striking the Austin community. We have already received over two dozen responses from companies interested in the High School/Software Company "dating service." This new program matches qualified high school students with local software companies for paid and non-paid internships.

Thanks to Austin Independent School District Superintendent Larry Lewis, co-sponsor of this initiative, we are tracking information on over 250 interested students and screening them based on company profiles.

What's in it for Council member companies? They can take advantage of this new source for finding good people. The benefit to students is exposure to the fastest growing and most exciting industry in the area.

The High School/Software Company dating service is just one example of how the Austin Software Council is helping our member companies grow and prosper.

For more information on this endeavor, contact Craig Eissler, who is coordinating this program at the Capital Area Training Foundation at 223-7412, Catherine Bartlett at the Council at 305-0010 or Bob Martin at 633-4038.

Bob Martin is the director of E-Commerce at Trilogy Software and the Chair of the Austin Software Council's Endowment Committee. He can be reached at 633-4038 or robert_martin@post.harvard.edu or bob.martin@trilogy.com.



ASC Member News

Bill Herring, Tivoli Systems

Agillion

In October Agillion announced integration with Microsoft Outlook and integrated email functionality, enabling users to send email from an application without having to switch to their usual email package. Agillion was also discussed in the October 11 issue of *Fortune*.

Boundless Technologies

Thin client/thin crust? Boundless Technologies installed its Viewpoint TC thin clients in Mr. Gatti's Pizza outlets in Austin, Tennessee, Louisiana, Kansas, Kentucky and the Carolinas. Boundless thin clients are Windows-based terminals that call up applications that reside on a server. Boundless also announced in October the expansion of its sales channels in Europe with the signing of a strategic OEM and distribution agreement with COMPAREX Informationssysteme and eSeSIX.

ClearCommerce

ClearCommerce announced that E-Stamp Corp., the first company to sell postage over the Internet, selected the ClearCommerce Merchant Engine to help manage the nation's first e-commerce postage site. Through E-Stamp, Internet users can purchase US postage in the form of a digital stamp and print it directly onto envelopes or labels. ClearCommerce also announced in October that HP Shopping Village, Hewlett-Packard's direct-to-consumer e-commerce store, selected the Merchant Engine to process the fast growing number of sales from its website.

Ventix Systems

Ventix Systems Inc., provider of self-support solutions, announced the availability of the Ventix AnswerWeb for e-Business, a new self-support technology that improves online customer service. Ventix AnswerWeb for e-Business understands who the customers are and what they are doing to answer questions at the click of a button. The solution tracks customer context, delivers targeted answers and captures customer service dialog to build

and maintain a powerful answerbase. It can help companies boost sales and customer loyalty while dramatically reducing support costs.

Seedstage.com

Seedstage.com, an Austin-based venture catalyst, announced two new online features that aim to further connect entrepreneurs, venture investors, mentors and other professionals in the Austin high tech community. The new recruiting and local events areas of the Seedstage.com website will supplement other online services already offered by Seedstage.com that help match entrepreneurs with prospective angel and venture capital investors. Seedstage Recruiting is a resource for job seekers and potential mentor candidates looking for a role with an early-stage Texas startup. Through the new recruiting service candidates for mentor, executive, management, technical or intern positions can securely submit their resume information directly to the Seedstage.com team. Seedstage Recruiting can be found on the Internet at www.seedstage.com/recruiting/recruiting.html. A second addition to the Seedstage.com website is an online listing of local events, offering the ability for organizations and businesses to post upcoming events of interest to the high tech community. The local events area can be found at www.seedstage.com/community/community.html.

Bill Herring recently joined Tivoli Systems to support worldwide PR campaigns. Member companies may submit product or company news for the next issue of the Austin Software Leader by emailing them to billherring@worldnet.att.net.

Legislative Committee Formed

Paul Fox,
Bracewell & Patterson, LLP

A poll of ASC members earlier this year showed widespread interest in the Council becoming more involved in state legislative issues. Thanks to the efforts of Dick Moeller of VTEL, an organizational meeting of the Software Council's Legislative Committee was held on October 28.

At that meeting Paul Fox and Mindy Ellmer of Bracewell & Patterson, LLP, ASC's general counsel, discussed the expected focus on high tech issues in the upcoming 2001 Session of the Texas Legislature, the Council's ability to participate in political activities and different approaches and initiatives that the Council might undertake. As a result of the meeting

- ▶ Paula DeWitte of Export Management Services, Inc. and Robert O'Donnell have volunteered to be co-chairs of the Legislative Committee.
- ▶ Paul Fox of Bracewell & Patterson will serve as the ASC Executive Committee member for state and local governmental affairs.
- ▶ The Council will work to develop a "white paper" on legislative issues and will coordinate its state efforts with other organizations such as the American Electronics Association.

Since the meeting, Dick Moeller has been appointed to serve as the Council's representative on Lt. Governor Perry's special panel on high tech issues (including Internet taxation, privacy and telecommunications). Betty Otter-Nickerson of BMC Software now serves on the Texas Higher Education Coordinating Board's Task Force on the Development of the Technology Work Force. These appointments will give ASC two important seats at the table when the legislative process starts.

The Council will also be developing means to advise members on state and local issues of importance and to educate the membership on the legislative process. High tech issues are expected to be a major area of attention in the next Session and ASC is gearing up accordingly.



Trouble at Home?

Conflicts Between the Telecommuting Workforce and Employment Law

Laura Merritt, Bracewell & Patterson, LLP

For many companies telecommuting solves workforce issues such as space constraints and equipment costs and provides non-traditional options for maximizing productivity and job satisfaction. However telecommuting creates legal issues that do not arise—or are dealt with more easily—in the conventional workplace where employees perform their job duties on site. Fortunately many employment law pitfalls are mitigated or avoided by early identification and proactive preventive strategies. Although specific issues are unique to each workforce and telecommuting arrangement, the following examples illustrate the most common potential legal traps.

My Mouse Bit Me— Here's the Doctor's Bill

Workplace injury laws are activated once an employer allows job duties to be performed at home. A company may be held liable for all work-related injuries, regardless of where they occurred. Therefore it is prudent to ensure telecommuting employees have safe workplaces. Companies must continue to comply with Occupational Health and Safety Act (OSHA) standards even when employees work at home. For telecommuters, repetitive motion injuries from using a keyboard and mouse are most common; therefore, employers should ensure these employees have safe desks, chairs, keyboards and telephones. Additionally OSHA has specific rules about workplace cleanliness and safety. Companies should require employees to complete a safety checklist assuring that the home work area complies with these standards.

The Systems Guy Asked Me Out . . . Again

Sexual harassment, assault, workplace violence, theft—these issues are among every employer's worst-case scenarios. However they do not vanish when an employee works from home. Prudent employers will consider

performing criminal history checks on any individual sent on company business to an employee's home, limiting or prohibiting third-party access to home work areas and carefully monitoring any personal interaction at the telecommuter's home. Additionally, federal and state employment laws require certain notices and policies to be posted in the workplace; if telecommuting employees spend a majority of their work time at home, companies should provide access to these required notices, as well as personnel policies such as the company's harassment policy and equal employment opportunity policies through a database or company intranet. Employees should sign an acknowledgment that they are aware of the policy/posting access.

My Wife Saw the Top Secret Product Specs: Did I Mention She Works for Megaware?

In addition to the practical dangers of allowing sensitive information to leave company premises, unsupervised access to company documents can destroy legal protection of the information. A company's otherwise enforceable nondisclosure or trade secret agreements with employees may be compromised if it does not take reasonable steps to ensure their confidentiality. Information an employee needs to perform job duties generally fall within the company's definition of confidential business information; customer lists, operation manuals and product specs are only a few items an employee may need to telecommute effectively. Therefore a prudent employer will, at a minimum, limit home access to essential materials and obtain the telecommuting employee's agreement to maintain the materials in a secure area.

Overtime? What Overtime?

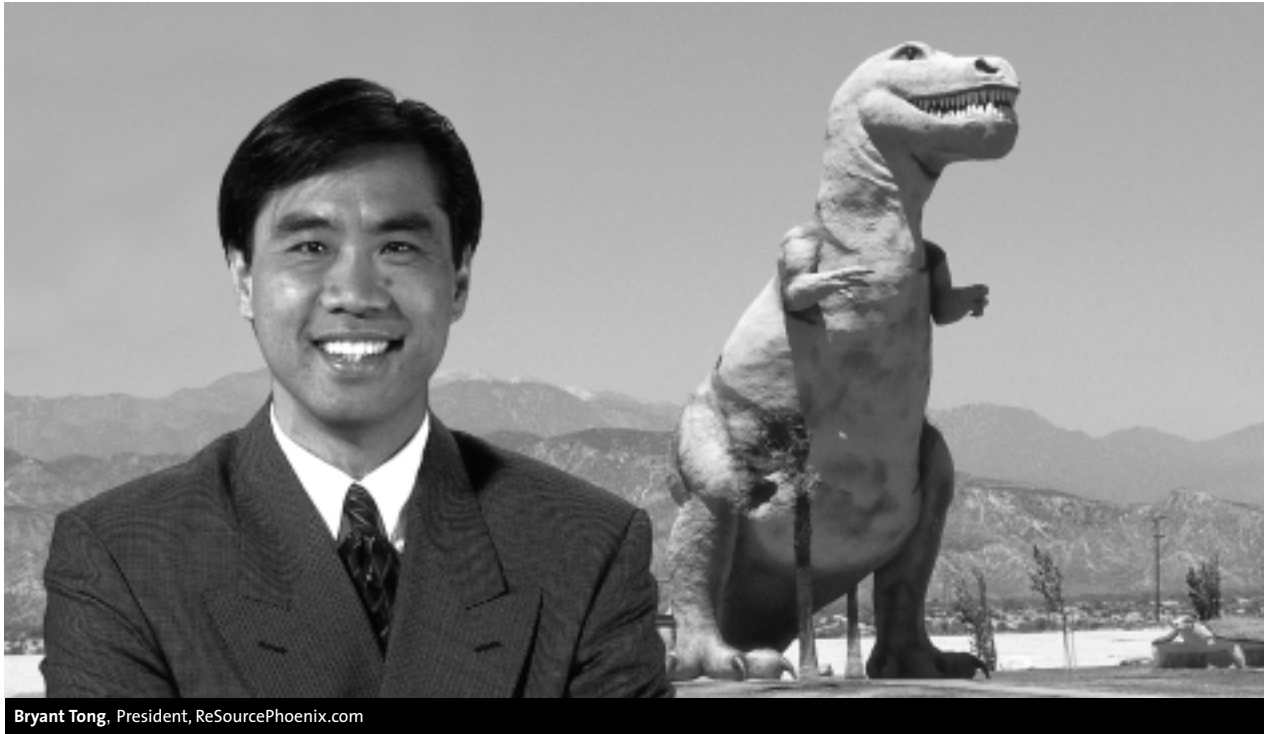
The Fair Labor Standards Act (FLSA) requires employers to pay time-and-a-half for any hour worked over 40 hours per week to

any employee not exempt from its overtime provisions. Monitoring the hours of employees who work off-premises or on a non-traditional schedule is difficult, requiring an employer to depend on the employee's representation of hours worked. The company should require any non-exempt telecommuting employee to represent with each weekly time sheet or login report that the hours reported are the actual hours worked. Other potential FLSA pitfalls include liability for workday travel time between home and office, meal breaks and "stand-by" or "on-call" time.

Additionally telecommuting may implicate other statutes and common law principles, such as land use restrictions, insurance coverage, invasion of privacy, software licensing, employer liability for an employee's acts, drug- and alcohol-free workplace laws and anti-discrimination laws. A good overall strategic approach to telecommuting includes a corporate recognition that employment laws still exist even when an employee has left the building. It is advisable to conduct an internal audit of your company's employment policies and unique management issues as they apply to telecommuting before problems arise (and preferably before a telecommuting program is implemented), thereby heading off any legal snafus at the stage when they are most manageable and least expensive to resolve.

Laura M. Merritt is an attorney in the Austin office of Bracewell & Patterson, LLP, where she represents management in all areas of labor and employment law. Bracewell & Patterson, Austin Software Council's general counsel, has one of the largest labor and employment sections in Texas and eight offices globally. You can reach Laura at lmerritt@bracepatt.com

Bryant Tong on the future of expensive internal information processing systems.



Bryant Tong, President, ReSourcePhoenix.com

“Extinct.”

Massive. Powerful. Inflexible. And ultimately, doomed—just like the companies that depend on them, perhaps.

In-house information management systems—accounting departments, transaction processing, data warehouses, and so on—have long ruled the earth. Or the business world, at least.

Clumsy, bureaucratic monsters that eat up revenue, and too often spit out useless, outdated information. And the complex, unwieldy ERP systems that were supposed to replace them haven't fared much better.

Fortunately, we have an alternative.

Our revolutionary new model for business information management is designed to provide just the level of support you need, and grow—seamlessly and

effortlessly—right along with you. And we've coupled it with advanced, Web-enabled technology to deliver exactly the information you need, anytime. And anyplace.

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Executive Interview: Jeff Smith, NCSD/IBM-Austin

Emily Sopensky, The Iris Company

Earlier this year, IBM-Austin's Networking Computing Software Division (NCSD) became an active member of the Austin Software Council. Jeff Smith, NCSD's vice president of development, is young, dynamic, energetic—hardly the image of the controlling bureaucrat that once personified an IBM executive. But the massive whiteboard across his office wall is a clue to Smith's background. He's an engineer—with a lot of ideas. After graduating from Vanderbilt University with a double major in electrical engineering and computer science, Jeff has spent his entire professional career “here in Austin with IBM.” Jeff talked to me about IBM's organization, e-business and the role of the Software Council.

Q: You came to IBM Austin in 1984. What's different now?

A: The city was a lot different. And so was IBM. For example, today IBM is 100% research and development. In 1984, it was close to half manufacturing which included making the boards that go inside a PC. Forget the chips. We made the actual board with sheets of copper and fiberglass, punching holes in the board, putting circuits in it. We did all the RISC 6000 box manufacturing, too. None of this [manufacturing] is here now.

I joined IBM to do what they called “I S.” It wasn't even product development; it was support for that big wealth of manufacturing. Over the years, manufacturing has either been moved to other places or sold. It's been replaced by hardware development, software development, research and smatterings of solutions service units. The big players here are the server group that does RS6000 and all the hardware and software development for the RS6000.

R&D is here for the RS6000 hardware and AIX software, OS/2 and the bulk of Java (including browsers and xml). A product line called Websphere is here, and another line called SecureWay—think of it as directory and

security infrastructure technology—is growing tremendously. Of course all of Tivoli is here, which is part of the Software Group.

IBM has six major groups: one for software; one for hardware, which does all of the non-PC hardware technology for building computers; the PC Group that includes network stations; the Technology Group, which does components that go inside a lot of things. For example, we did a huge deal with Dell where IBM is going to sell them a bunch of components, such as memory, chips and disks, that go in their box. The Global Services Group continues to be a rapidly growing part of IBM. And then there's sales and marketing. NCSD is responsible for Java, OS/2 and SecureWay products.

Over 50% of IBM-Austin is in the Software Group. Add to that the AIX software development that's located in the Hardware Group with the RS6000. Together, you're talking 4000 of the 7000 [employees]. So fundamentally IBM-Austin is a software company. That's why I was so interested in re-engaging with the Software Council. This was not the case in 1984. I would be willing to bet that IBM is the largest software company in Austin. But I'll also bet that if you were polling the technology companies in town about who's the largest software company, no one would name IBM. What makes it difficult to talk about IBM and software is that we're not working on one thing. We're not just embedded databases like Pervasive is.

Q: Is one of your key goals in the community to do alliances?

A: Absolutely. Alliances are very important. But another thing that is true: Because they are operating systems, you can think of AIX and OS/2 a little differently from Java,

SecureWay, Tivoli and Websphere. [The latter] are really intertwined, specifically because they are all components of an application framework for e-business. That is IBM's definition of the technologies we think are needed to build an e-business operation. With customers we talk about these technologies all together. They can be deployed on a variety of platforms—AIX, OS/2, Windows and Solaris. There's a wide range of industry platforms. But they're all thought of as middleware; AIX and OS/2 are operating systems.

Q: How do you talk to customers about them?

A: E-business includes business-to-business as well as business-to-consumer transactions. It's as much about transforming a business process as it is about using more technology to execute it. So a lot of our business with customers is helping them transform their business processes as well as buy and deploy technology.

The key thing about the application framework is if you explore our vision, the interfaces that you can use are all industry standard. We don't lock you into a particular platform that we deploy. It's exactly the opposite of the old IBM and the new Microsoft way of doing business. Microsoft says if you use our stuff like Back Office and Internet Explorer, that mandates that you use Windows. We say use our stuff—DB2, Tivoli, SecureWay, Websphere and Lotus—and you can pick your platform because we support them all.

The opening technology/architectural play for us is the application framework for e-business, and our value proposition is heterogeneous end-to-end architecture that covers the entire range of computers you might want to use in your enterprise. E-business we view as revolutionary to the

E-business. . . opens up opportunities businesses have never been able to do before. They have to think and behave differently.

Continued on page 26



ASC's International Expansion

Deirdre Mendez,
International Project Coordinator

The international committee has been hard at work developing international programs for our membership. We'd like your suggestions and comments and, of course, your participation if you have some time to devote. Following are the projects currently under way:

International Peer Group

A group of experienced international managers meets monthly to discuss international challenges for technology companies. In the past several months, the group has helped local companies solve problems and plan strategy for international expansion. It has also served as a focus group, making recommendations for international projects in the community. Visit the International Peer Group's bulletin board on the Council's website, where we can post questions and useful sources of information and exchange ideas. Contact me for a user name and password.

International Events

The August seminar on software globalization featured speakers from top local companies as well as leaders in the globalization industry. Interest in this topic was so great that we're planning a seminar series on software globalization, which will include strategic, business, financial, technical and legal aspects of the process. This series will be hosted by the new international department of ASC "University." If you're interested in working on this series, we'd be delighted to include you. The excellent presentation by Curt Porritt of J&A Associates on calculating the return on investment of internationalization is available to all who are interested. Contact me for a copy.

Two additional events are being scheduled. A seminar on outsourcing software development services will feature speakers from local companies that currently outsource and industry spokespeople (date to be determined). Our February 16 International Trade Fair will connect technology companies with representatives of overseas trade and economic development organizations that provide services to US companies doing business abroad.

Website

We're going to be adding to the international page of the ASC website soon. If you have an international visitor, event or source of information you'd like to share please let me know. If you have experience managing website content, we could use your help.

Branching Out

In November I traveled to Japan where I represented the Council in meetings with members of the Japanese government and industry organizations to form alliances with IT membership organizations.

If you'd like more information about any of the above programs or projects, please contact me; I look forward to hearing from you.

Deirdre Mendez is the Austin Software Council's International Program Coordinator. She can be reached at 338-1177 or [dlb-fbmc@worldnet.att.net](mailto:d1b-fbmc@worldnet.att.net).

IBB/BABC Offer US Southwest High Tech Mission to the UK in February, 2000

Emily Sopensky,
The Iris Company

Recognizing the huge benefits of expanding into Europe, many US companies feel most comfortable with investing in the UK first. In fact 40% of all US investments in the European Union (EU) take place in the UK. To help technology companies take advantage of the tremendous global opportunities for knowledge-based companies involved in software, the Internet, electronics, e-business, telecommunications and biosciences, the British American Business Council (BABC) and the Invest in Britain Bureau (IBB) are offering a trade mission to England for Texas high tech companies.

The mission is scheduled for the week of February 7-11, 2000. Company executives can see first-hand the most advanced technology infrastructure in the EU and meet with major US companies such as Dell, Enron, Microsoft, Oracle, Cisco and Pfizer. The mission itinerary is planned for London, Thames Valley and Cambridge. Airfare on British Airways is being subsidized (business class seats are available for the price of coach) as are hotel rates in London.

Content of the mission includes the following:

- ▶ **Economic and sectoral briefings** from representatives of the IBB, Department of Trade & Industry and leading private sector corporations highlight opportunities in the UK and Europe. Briefings include a strategic focus on infrastructure, business opportunities, strengths, investment and technology trends by relevant UK economic development agencies such as *London First Centre*, *South East Development*, *Thames Valley Economic Partnership*, and *the East of England Investment*. British Telecom's technology presentation will take place in London's Millennium Dome to be followed by a tour of the venue.
- ▶ **In-depth discussions on accounting, legal, banking, tax and venture capital issues** with Bracewell & Patterson, PricewaterhouseCoopers, Barclays Bank and Rauscher Pierce Clark.

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The Curtain Goes Up: Your Product Launch

Sally Ann Draper,
Market Reach International, Inc.

Thus far you have executed almost flawlessly. You've completed the market studies, found the users' pain and now are putting the finishing touches on a brilliant and needed product. The product launch should be the easy part, right? Wrong!

Launching a product is like staging an opera. First you have many characters: the product/marketing director, marcom manager, sales manager, outside marketing consultants, advertising agents, PR firms, lawyers, webmaster, international and channel organizations and executive management, all of whom need a single point of coordination. Like many great productions, product launches can be expensive. You need a realistic budget with a cushion for emergencies and last-minute changes. And you need a well-written internal and external launch plan with realistic deadlines. Most companies form a launch team of staff and outsourced experts, which starts executing the written plan approximately three months before the product formally debuts.

Planning begins long before the launch plan is put on paper. It starts by identifying the strategic objectives of the launch, defining product positioning and messages, determining the marketing plan and budget and choosing the launch date. Your launch manager or product manager, who usually develops the final plan, will use this information as a basis for the written plan.

As in any good performance, your cast needs a dress rehearsal. Internal launch communications and deliverables should be completed in time to educate employees before the external launch. The sales organization and customer-support staff—and occasionally channel partners—will get more customized materials. Smart companies, like yours, take internal marketing seriously and focus everyone on the same goal and message.

External launch plans put your product on center stage. The launch team's first step is to coordinate the advertising with the launch date. The team will also test and produce print and electronic collateral, create a com-

PELLING product box and product demos and organize a crackerjack media and analyst tour. When the curtain goes up, your early customers should be giving you rave reviews throughout the announcing press release.

With all this planning, could anything possibly go wrong? You bet: late deliverables—the sales team has no print collaterals; vaporware—announced product features and functions don't exist yet; and the insidious competitive end-run—your competitor announces its product the day before your press release date!

You can turn this competitive threat into an opportunity however. Analyze your competitor's announcement and quickly reposition your product in your announcing press release. Proven methods are to show how your product is superior and to use their entry to validate that you have a viable market and product. If your collateral has already been created, draft bulletins for your employees and indirect channels and especially warn your sales team.

Product launches have a powerful effect on your bottom line. To create a winning performance, invest the time and money to plan and execute a successful launch. It will give you the means to overcome your competitors and provide you with direct returns for many years to come.

Sally Ann Draper is principal of Market Reach International, Inc., which provides marketing for software and websites. Email her at sdraper@userinfo.com.

Launching a product is like staging an opera.

ASC "University" Hundreds Learn from the Pros

Karen Roller

From startups to veteran businesses, hundreds of professionals in software companies have taken advantage of seminars offered this year through the Austin Software Council "University." As the educational arm of the Council, the "University" offers seminars covering software development, business and finance, human resources, marketing and law throughout the year. In 2000 the seminars will also include leadership development.

November 9: Marketing and Sales Strategies that Drive Success

ASC "University" recently held another in a series of valuable educational events for software startups. As part of the ASC Software Startup Series, the half-day seminar entitled Marketing and Sales Strategies that Drive Success featured Dell-veteran John Ellet and other executives from local software startups such as Infracore, Liaison Technologies and Ventix. The course featured high-impact strategies for marketing software products and breakout sessions addressing topics such as Internet Branding and Web Marketing, Building a Brand from the Seed State to IPO through Public Relations, and the Venture Services Industry. Attendees also received a copy of the book *Technology Marketing—75 Strategies and Tactics that Drive Success*. ASC members that would like a copy of this book should send a request to pam@austinupstarts.com.

November 16: Best Practices for Building Responsible and Productive Relationships at Work

In this seminar aimed at human resource professionals, Christopher Avery offered his vision for collaborative leadership and technical professional success that is required now and into the future. He addressed common and dangerous misperceptions about teams and team-building and showed how smart people can work together most successfully in competitive, fast-moving and changing environments. Through his company Partnerwerks, Avery

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Unique Training Program Passes on the Torch of Opportunity

Shannon Clapsaddle,
Pass-It-On Grant Coordinator,
Austin Software Council

Austin Software Council, Community Options, Inc. and Austin Community College are collaborating to develop a program to increase access to long-term quality employment through education and community and industry outreach: Pass-It-On! The goal of the Plan for Achieving Self-Support with Information Technology Opportunities Nationwide is to provide training services and employment opportunities in the information technology industry for eligible candidates with severe disabilities.

Pass-It-On is a one-year renewable grant awarded by the US Department of Labor, Employment and Training Administration to Community Options, Inc. and the Information Technology Association of America (ITAA). The grant is designed to matriculate disabled people into quality jobs in the high tech industry. It is modeled after the extremely successful Computer Training for People with Disabilities project in Denver, Colorado. Test sites include New Jersey, Northern Virginia and Austin, Texas.

Pass-It-On can successfully train students challenged with developmental disabilities, blindness, visual impairment, deafness, hearing impairment, orthopedic injuries, epilepsy, cancer, alcoholism, heart condition, arthritis, depression, tendinitis, organ transplant, multiple sclerosis, neuromuscular conditions, spinal cord injuries, paraplegia, quadriplegia and dyslexia.

You can become involved in this unique opportunity by

- ▶ Becoming a member of the Business Advisory Council (BAC)
- ▶ Mentoring a student in the Pass-It-On program
- ▶ Donating software or hardware to the program
- ▶ Developing internships for Pass-It-On graduates.

Contact Shannon at shannon@austinsoftware-council.org or 305-0023. Other contacts are Joe Baranauskas, Community Options, at (512) 236-8757 and Sue Pardue, Austin Community College, at (512) 223-7739.

The Pitfalls of Provisional Patent Applications

Gail Taylor Russell,
Taylor Russell & Russell, PC



Clients often ask about the benefits and drawbacks of filing provisional patent applications. They are usually interested in provisional patents in two situations: they want to save time and file an application quickly, often just before a public disclosure or sale of their invention, or they want to save money by not filing a regular utility patent application.

Provisional patent applications were added to the US patent laws through the General Agreement on Tariffs and Trade (GATT) legislation. Their purpose is to provide a low-cost mechanism for inventors to secure rights to their invention without having to fulfill the requirements of the formal patent application process.

A provisional patent application differs from a utility patent in that it need not contain patent claims. It must still contain a specification which is a detailed disclosure and discussion of the invention. It should also contain drawings.

The provisional patent application is abandoned one year after it is filed. To keep protected the owner must file a regular application based on the disclosure in the provisional patent application before the end of the one-year. Within that year any foreign country patent applications under the Patent Cooperation Treaty (PCT) must also be filed.

A benefit of a provisional application is that although it starts the clock rolling on the one-year period to file a regular US application, it does not start the clock rolling on the 20-year patent term. Thus the provisional patent application filer may get an extra year on the term of the patent.

However these applications introduce possible pitfalls. The most serious is often considered one of its benefits: it does not contain patent claims. The claims are the most important part of the patent application and the issued patent. They define the novel

and unobvious part of the invention that the inventor considers his or her own property. The rest of the patent application exists solely to support the claims.

If the claims and the scope of protection for the invention are not given sufficient consideration, its specification and drawings may not contain enough information on which to base the regular US application filing. Information that is not already included in the provisional application may not be added to the regular application. To do so jeopardizes the earlier filing date.

Why does an early filing date matter? Since many provisional applications are filed because a public disclosure or sale of the invention is imminent, adding new matter later can sacrifice foreign patent rights. Most foreign countries do not have a one-year grace period, as does the US, for filing a patent application after a public disclosure, sale or offer for sale of the invention. In addition even though the US allows one year after such an event, the earlier filing date is always beneficial in case someone else files a patent on the same or similar invention during that one-year period. Otherwise the opportunity to obtain a patent on the invention may be lost.

Another pitfall is that provisional applications are not examined; therefore, the patent application is not examined until after the regular application is filed.

Especially in the software and e-commerce areas where technology is rapidly changing, the patent owner usually wants to obtain an issued patent as soon as possible. It may help secure venture funding or add to the value of the business during an IPO or buyout. The

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In some situations a provisional application can be advantageous.

Entrepreneurial Leadership Program To Launch

Norm Kaderlan,
Austin Technology Incubator

Starting a new venture is a challenge—it requires daring and determination, innovation and insight. Successfully growing a new venture requires preparation, skill, resources . . . and the right tools. Currently scheduled to launch in late February, the Entrepreneurial Leadership Program (ELP) is specifically designed for entrepreneurs who have a core technology and concept who want to grow their new venture. ELP is an action-oriented, intellectually stimulating forum in which participants learn the latest techniques of new venture creation and growth. Participants also gain access to potential funding, networking and other related entrepreneurial resources.

The program will enable participants to refine their business model and plan to position themselves for moving to the next step of early stage financing. It is designed for individuals and startup teams who are serious about starting and growing their ventures, people who want to move from idea to business plan or take their venture to the next level or who are launching a new product within a larger company.

This is a 20-week program with weekday business plan coaching sessions, mentors and presentations. During the six Saturday sessions participants will hear from a wide range of speakers who have the rare combination of superior teaching skills and extensive “real-world” practical experience as entrepreneurs, investors or service providers. Participants will receive personalized instruction and guidance from several sources including a business plan coach, an entrepreneur mentor and specialized mentors in specific areas such as financial decision-making models. Participants will have the opportunity to present their plan to outside panelists who will provide valuable feedback. The tentative price is \$6500 per person with discounts for more than one person on the same team.

The Entrepreneurial Leadership Program will be conducted in Austin, Dallas and San Antonio. Participants will gather in Austin for the Saturday sessions; coaching, mentoring and presentations will occur in each city.

ELP is a program of IC² Institute’s Non-Degree Education Programs. Partners in Austin include the Austin Software Council “University”; in Dallas, STARTech and the School of Management at UT-Dallas; in San Antonio, the Management of Technology Program at UT-San Antonio, TEKSA Innovations, and the Greater San Antonio Chamber of Commerce. For further information check the ELP link on the IC² website.

ASC “University”

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consults with organizations on teamwork, team-building, and executive strategy and coaching.

In this November 16 seminar aimed at human resource professionals, Christopher Avery offered his vision for collaborative leadership and technical professional success that is required now and into the future. He addressed common and dangerous misperceptions about teams and team-building and showed how smart people can work together most successfully in competitive, fast-moving and changing environments. Through his company Partnerwerks, Avery consults with organizations on teamwork, team-building, and executive strategy and coaching.

Upcoming Seminars and Activities

The popular Software Startup 101 is slated for February 24, 2000. In 1999, this standing-room-only seminar received such positive feedback that ASC felt compelled to offer a similar extensive session covering all areas related to startups—software development, business and finance, human resources, marketing, legal issues and leadership development—in the new millennium.

The tentative schedule in 2000 for ASC“U” seminars is as follows:

Jan 12	Leadership
Feb 24	Software Startup 101
March 15	HR
April 13	Software
May 17	Legal
June 15	Finance
July 13	Marketing
Aug 10	Leadership
Aug 24	Software
Sept 14	HR
Oct 26	Legal
Nov 9	Marketing

For information on upcoming “University” seminars and activities, visit www.austinsoftwarecouncil.org or call 305-0023.

Norm Kaderlan is executive director of the Austin Technology Incubator (ATI). The 10-year-old organization has created over 1900 jobs and graduated 49 companies. In addition ATI’s clients are frequently winners of national awards as incubator companies, such as the National Incubator Client of the Year Award, the National Incubator Graduate Company of the Year Award and Outstanding Technology Client of the Year Award. For more information go to www.ic2-ati.org. Norm can be reached at nk@ati.utexas.edu or at 305-00??.

“University” Deans

If you have ideas for an upcoming seminar or would like to volunteer for an activity, please contact the dean in the appropriate department:

Finance

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Karen Roller heads up publicity for the ASC “University.” She also provides marketing communications and public relations services to Austin technology companies. She can be reached at 918-0445.



ASC Establishes Annual Awards

Emily Sopensky,
The Iris Company

Paul Fox, managing partner of Bracewell & Patterson, LLP, ASC's legal counsel, presented the first Austin Software Council Connector Award to Earl Maxwell, Chair of the Greater Austin Chamber of Commerce. "Earl connects with people in all walks of life, in all sorts of ways," said Fox. As founder of Maxwell, Locke & Ritter, the largest independent accounting firm in Austin, Maxwell "helps connect Austin to the rest of the world through his efforts to attract high tech business from the other coasts and to help build Austin's infrastructure. He helps connect the new and old Austin business communities, serving as a bridge between the Chamber and high tech businesses."

Recognizing the importance of the media to bring us the most current information about Austin's high technology companies, the Council also presented two other first-time awards. The first Voice of Technology Award went to the *Austin American-Statesman* for its consistent reporting on technology. Its Tech Monday section is the undoubtedly the most read and referenced source of information about what's going on in Austin. The *Statesman's* tech team tells the inside stories of homegrown companies as well as those who have adopted Central Texas as home. In this, the section's sixth year, the

Statesman recently broadened and expanded its coverage providing a stronger voice for the area's high technology business world.

The first Tuned into Technology Award was given to the *Austin Business Journal* because of the paper's ability to see deeper than large manufacturing plants to the innovators, financiers and giants-in-the-making. After the chip industry downturn hatched so many Chicken Littles warning that the end was near, it was the *Business Journal* that calmly examination how embedded software and e-commerce had become in our economy, insulating Austin from a total reliance on just one sector of technology. While the *Business Journal* helps us keep focused on Austin's technology successes, it also looks at the mistakes of technology companies to help others avoid repeating those mistakes in the future.

Above: Austin American-Statesman *Business Editor* Becky Bisbee receiving the first Voice of Technology Award.

Below: Austin Business Journal *Managing Editor* Rickie Windle receiving the first Tuned into Technology Award.

(See page 23 for a picture of Earl Maxwell, The Connector Award winner.)



Texas High Tech Leaders Share Views on E-Business

Karen Jonson

- ▶ **What is e-business really all about?**
- ▶ **How are companies being forced to advance their e-commerce strategies?**
- ▶ **In what directions are e-business devices evolving?**

Five of Texas's leading high tech executives answered these questions and others during the first panel discussion at the 9/9/99 Texas Software Symposium. E-commerce panel members included Steve Brown, Director of Business Development at Palm Computing; Greg Hemstreet, Tango General Manager at Pervasive Software; Andy Martin, PhD, Chief Technology Officer at garden.com; and David Sikora, President and CEO of Ventix. The panel moderator was Bob Kruger, Vice President of E-business and Windows NT solutions for BMC Software.

Q: What does e-business mean to your company?

Steve Brown: E-business plays to our strength because people need mobile access to information, wherever that information may reside and wherever they are. We're in the business of delivering handheld solutions, so from a platform perspective there's going to be a proliferation of devices to accommodate whatever the prevailing software applications are such as smart phones and smart pagers.

Greg Hemstreet: E-business means opportunity. We provide businesses with a software platform on which they can build

their e-commerce solutions. We're providing companies the opportunity to create applications for everyone everywhere.

Dick Sikora: The complexity of business processes will dramatically increase in the next three to five years. We've aimed our development at infrastructures for corporate intranets to help companies connect to their customers and suppliers. We see this as one of the most significant opportunities.

Andy Martin: Everything we do is web-based, from enticing customers, to delivering orders to suppliers, to fulfillment with Federal Express. We have an opportunity to help change the way gardening is done in this country. The gardener we're trying to entice, they want it now and they want to get beautiful products. E-business helps us do that.

Q: As the digital economy deepens its impact, how is it forcing companies to advance their e-commerce strategies?

Dick Sikora: An example is one of our customers who now offers its suppliers the ability to access immediate information over the web in areas such as inventory production and delivery times. This is having significant



impact on the whole supply chain for the company and its customers. The implications of this model, used in industry after industry, indicate that this form of e-business will be pervasive worldwide. Companies will be setting up their own communities of suppliers and customers essentially.

Andy Martin: Retail shopping is not always a pleasant experience. I think we'll see that the whole retail industry will have to shape up as e-commerce grows.

Steve Brown: Companies will be looking for ways to provide more and more access tools to all of the information that's available.

Greg Hemstreet: Rather than cannibalizing the traditional channel sales, companies are finding that they can adopt e-commerce strategies to actually augment channel sales.

Q: As customers demand more rapid information online, how are software tools advancing to support these new business needs?

Greg Hemstreet: Not only is it important to develop high speed, scaleable application server tools to support the demand of physical load, but companies also need to look at how they're actually building their systems. They need to develop systems with tools that provide a very rapid turnaround time, from first deployment through modifications.

Dick Sikora: Personalization is the key for companies as they build out their e-business strategies. Today, next-generation companies are thinking through how they can completely enhance their customers' experiences, includ-



Left: Andrew Martin being interviewed by Bob Sechler, Dow Jones News Service.
Above: Steve Brown, Palm Computing.

ing matching information delivery to the demographics and characteristics of one.

Andy Martin: Today there's so much more information available to companies. And if you don't have data mining tools, you're missing a great opportunity. With data mining you can recognize a customer the second they enter your store.

Q: How do you see devices evolving to accommodate e-business?

Steve Brown: There will be an increasingly wide range of devices versus one universal



Upper Right: *Bob Kruger, VP, BMC Software*
 Above: *Executive Kruger does double time while waiting to moderate the E-Business panel.*
 Right: *Andrew Martin, garden.com and Dave Sikora, Ventix.*



way to access web content. We do think there are optimal features, such as small size, efficiency and low battery use. However these devices are personal by nature. People have different preferences and needs with regard to styles, content, access, security, cost and

size. What we see happening is a direction toward highly customized devices to fill this wide variety of needs.

Karen Jonson is an Austin-based freelance marketing communications writer, specializing in writing dynamic, results-oriented communication tools for high-tech companies. She can be reached at kjonson@onr.com.



Putting Co-Design into Perspective

Karen Jonson



While the concept sounds simple, the practice is anything but. Nonetheless competitive market forces are driving more and more high tech developers in one very specific direction—toward hardware and software co-design.

At the 9/9/99 Texas Software Symposium Jerry Sullivan, General Partner with Adams Capital Management, discussed the current state of co-design including its necessity and challenges, its role in the development process, co-verification and research that will enable its full potential. Robert France, Managing Director of the Global Software Division of Motorola, provided a perspective on the tangible elements of co-designing products. Jeff S. Smith, Vice President of Network Computer Services Division of IBM-Austin, introduced the topic and the panelists.

Among the issues Sullivan explored were the importance of co-design and the challenges to its widespread implementation. “Co-design is important because of time-to-market issues. Today product lifecycles are 3 to 6, maybe 9 months. So companies can’t spend 12 to 15 months developing products. To recoup the development costs, they’ll have to accelerate the development process to 2 to 3 months to match the amount of time they will be in the marketplace.” Co-design will eliminate some steps, combine others and speed up the development process.

It is also important, says France, because “there is an expanding customer demand for products that use embedded technology, both in the workplace and in the home. This area is exploding.”

However co-design is still in its infancy, notes Sullivan. Among the top challenges to its widespread implementation are

► The traditional boundaries between hardware and software development, including different development tools and design methodologies.

► The gulf between hardware and software developers’ career specialization.

► The cultural differences including hardware’s physics foundation and software’s mathematical foundation.

► The contrasting design styles including hardware design’s focus on issues such as bandwidth and bus speeds and software design’s focus on computation.

Sullivan predicts that companies will meet these challenges and integrate software and hardware design as the appropriate tools develop.

France discussed how Motorola is implementing seamless co-design and what is and is not feasible. “This is a topic that has been



Upper Left: *Jeff Smith.*
Left: *Heidi Johnson preps Bob France for a video premiere.*
Below: *Bob France.*



What's to Come?

Marc Raibert and Brad Fregger Offer "Visions of the Future"

Karen Roller

hugely important to the developments at our company over the past 2 years. Motorola's recent re-organizations and changes in our product lines all reflect underlying changes in the technologies we use to develop solutions for our customers."

"Today we have hundreds of product lines and each of the different platforms require a different amount of system engineering," explains Sullivan. "We don't have the luxury of taking a traditional hardware design methodology and approach to our products. Today in our new products you see a huge difference from just 5 years ago in the amount of engineering that's gone into these devices. It's mostly gone upfront in the system design and co-design area. We would never keep up with the volume of products if we tried to make these on a product-by-product basis."

A slide presentation from this panel is available in pdf format on the ASC website.

Karen Jonson is an Austin-based freelance marketing communications writer, specializing in writing dynamic, results-oriented communication tools for high-tech companies. She can be reached at jonsonk@aol.com.

While no one holds a crystal ball, many people have definite ideas about what the future will bring. Marc Raibert, president of Boston Dynamics, and Brad Fregger, vice president of product development with Dryken Technologies, offered TSS attendees their ideas about the shape of things to come in technology.

Raibert's company offers computer simulations of people that are used primarily for training and analysis. Realistic animations require an intense amount of work, he said, and a "brew of algorithms" that translate instructions into what the characters should do in the simulation. From his early work with one-legged robots to his work today, Raibert has always looked ahead.

"Software is like air—you can't live without out," he remarked. "It's everywhere."

Fregger, the inventor of computer Solitaire who is now with Dryken, said the challenge is knowing how to do things differently, especially in reaching the significant number of people who don't use computers.

"We still need an Internet appliance that's easy to use," he said. "The iMac is getting closer, and WebTV is easier but doesn't offer enough flexibility. But we'll get there within the next couple of years. Consumers need a screen, a keyboard—we're not going to have speech recognition for quite a while—lots of memory, and the potential to do a broad range of applications in an easy-to-use package."

Both panelists agreed there's a need for face-to-face time within a company and yet room for virtual companies to work successfully. They speculated

about computers in the future—"What happens when computers are free?" Raibert asked—and bounced around ideas regarding software's profitability. "The critical difference is an organization's creativity and the ability to stay ahead," Fregger said. "By the time your competitors copy version one, you have version two—so you'll stay profitable."

What's to come for software? "All of the action is in the application," said Raibert. "If you can figure out what application folks need and a design for it that's workable, that's what



matters—at least in our space. We're not waiting for the next generation of computers."

"We're always trying to push the envelope one step further," Fregger added. "Software is always hard, and technical risk is a major issue. We're always trying to do new things."

Above: Marc Raibert and Hank Jones.
Below: Betty with board member Bill Bock.
Left: Brad Fregger.





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One of Yochelson's formative experiences with "doing your best" took place in his late 20s when he worked for Henry Kissinger, then Secretary of State for President Nixon. Kissinger was brilliant and extremely demanding, Yochelson said. Kissinger wanted to know everything and know it immediately; he was famous for asking "Is this the best you can do?" It was then that Yochelson decided upon the perfect response: "Sir, if it can be done, it can be done superficially."

These days, Yochelson said, it is imperative that the US "do its best" competitively, especially in technological innovation.

Texas Software Symposium

Continued from cover

"Our projection is, in per-capita terms, that we're going to slip down more toward the middle of the pack in a very short period of time," said Yochelson of the critical need for innovation. "If we don't do better, we're headed in the wrong direction."

The keys to improving our position are strengthening our R&D base—"R&D was about 3% of our economy a decade ago and now it's down to 2%"—and discovering new knowledge. "The other thing that has to be turned around is our nation's talent pool," Yochelson said. Support in Washington for "technical literacy" is very important, as is the push for undergraduates to study technical fields.

Yochelson added that he was interested in understanding more about what works in Austin and how this city can increase its wealth. Austin is one of six high tech regional clusters receiving attention from Yochelson's board of high caliber national experts in competitiveness.

The Pitfalls of Provisional Patent Applications

Continued from page 11

patent owner may also want to use the issued patent to keep competitors out of the technology area, but cannot assert the patent against potential infringers until it is issued. Delaying examination in turn delays receiving office actions or search reports that may shed light on the patentability of the invention.

In some situations a provisional application can be advantageous. For example, in the pharmaceutical industry where FDA approval for drugs may take many years, extending the patent term by even one year can be very lucrative. In other technology areas where it takes a long time to commercialize an invention, provisionals may also be appropriate to extend the patent term. However in these situations a regular US patent application with claims and a complete disclosure is usually prepared and then filed without claims as a provisional. One year later a regular patent application is filed that is exactly the same as the provisional except for the claims. The earlier filing date of the provisional application is therefore preserved.

Preparing a provisional application with a complete disclosure may not save much time and money in the patent application process. However filing a provisional that does not adequately support a later filed US regular or foreign application is no bargain if it results in the inability to patent the invention in the US or abroad.

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Gail Taylor Russell is a patent and trademark attorney with Taylor Russell & Russell, PC in Austin specializing in the electrical and computer software technology fields. Gail has over ten years experience in private industry developing real-time software. In addition to her law degree, she has a Master of Electrical Engineering in Computer Engineering. You may contact her at 512-338-4601 or email her at gail@russell-law.com.



Legal counsel to the
Austin Software Council. . .

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Understanding Mergers and Acquisitions in the Software Industry

October Meeting Summary

John A. Menchaca,
Jenkins & Gilchrist, PC

The October monthly meeting panelists focused on mergers and acquisitions (M&A) particularly the use of M&A transactions as an exit strategy for emerging growth companies. Issues addressed included the astronomical valuations of software and e-commerce companies, the “.com phenomenon” and its effect on M&A transactions, and structuring issues.

Panelists included Peter Bershatsky, Broadview Associates; Marshall Warwaruk, Corum Group; Bill Willis, an Austin-based CPA/attorney and business consultant; Steve Vandegrift, former Chair and CEO of Activerse and moderator Hank Jones of Arnold, White & Durkee.

The panel members initially addressed the M&A prospects for software companies, principally in the way such transactions are affected by the “.com” companies and the new economies they have spawned. Panelists noted prevalent trends—dramatic increases in both the number of deals and the valuations. Increased valuations enable acquiring companies to pay much higher prices and to purchase companies at 20 to 40 times their revenue numbers. Even though the stock values eventually decline, M&A deals will continue to flourish, the panelists predict, because of the need for companies to improve their technology. Companies are using inflated stock prices (i.e., cheap money, not borrowed funds) to purchase companies at sky-high valuations to rapidly increase critical mass.

Panelists agreed that, generally, an acquisition is a better exit strategy than an IPO. The competitive need to stay in front of the market often precipitates an M&A transaction to capture leading-edge technology, which in turn, drives a public company’s stock price up after a key acquisition.

So what do you need to do to be bought out? According to the panelists, each founder and/or management team must build value. Any target company must know the buyer (and its market). The founders however, must not expect to be acquired, but operate each business as a stand-alone entity. Each company also should review its option plan and financing documents (such as a preferred stock or venture capital financing) to analyze the impact of an acquisition. One of the panelists noted the importance of allowing a “net exercise” or “cashless exercise” for acquiring stock (i.e., an optionee uses shares to be

acquired upon exercise of the option to pay the exercise price instead of paying cash).

In any transaction, the involvement of professional service providers (i.e., lawyers, accountants and other business consultants) in the due diligence process is absolutely essential. Once this aspect of a transaction has been given attention, the founders (or management team) must communicate with the appropriate people within the company’s workforce to alleviate any concerns about the potential acquisition.

Options and/or bonus incentive programs are critical to the continued viability and retention of valued employees. The management team (or human resources department) will need to explain the options to each employee and what will happen upon acquisition. Each panelist agreed that communication and education are paramount to a successful transition.

In discussing valuation issues, the panel agreed that financial and investment advisors are able to provide buyers and sellers with

Panelists agreed that, generally, an acquisition is a better exit strategy than an IPO.

comparable companies and comparable transactions that can either enhance or reduce the value of a proposed M&A transaction. In recent years companies have been valued based on future growth, not past revenues.

Valuations are now based on future revenue streams and, with the explosion of web-based companies, the number of unique users on the web. The bottom line however, is how the target company compares to others in a similar market space.

Once a target company and a potential acquirer have agreed on the business terms, several variables must be addressed, including earn-outs, type of purchase price considerations (e.g., stock for stock, cash, stock for assets), compensation, bonus packages and options.

The panelists also warned of the pitfalls of creating a bidding war to drive up acquisition prices. Sometimes conservative projections might adversely impact the value of the transaction. Letting emotion (or greed) enter the equation might taint an otherwise fair deal. Omitting bonuses and other forms of compensation on the target’s balance sheet could result

in no bonuses after the closing. Mentors can be very helpful in analyzing and understanding the dynamics of a transaction; likewise, experienced outside legal counsel and accountants can help view a transaction objectively. Political issues often can crater a deal, but if these issues are addressed early in the process, most can be settled before they escalate.

During Q&A the panelists addressed such issues as change of control provisions in employment agreements and the difference between product and service companies on the Internet. Traditionally software product companies have higher valuations, but now such companies as AOL and Yahoo!, both service companies with recurring revenue streams, have experienced tremendous growth and high valuations.

Lastly the audience and panelists discussed “pooling of accounting,” which permits the target company and acquiring company to report combined financials. However the SEC has turned a critical eye towards using pooling, stating publicly that it is an artificial inflation of numbers.

John A. Menchaca is a corporate/securities lawyer, with an emphasis on representing emerging high growth companies in M&A transactions, venture capital transactions, software licensing agreements and other Internet and e-commerce issue at Jenkins & Gilchrist, PC. He can be reached at jmenchaca@jenkens.com.

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The E-Business Lifecycle— Business Models for Building a Successful Internet Company

November Monthly Meeting

Scott Thomas,
Arnold, White & Durkee, LLP

As the Internet economy continues to evolve, companies are faced with a new suite of strategic decisions critical to their success. The “E-Business Lifecycle” is extremely short and the competition is fierce. The success of an Internet startup may depend on its ability to rethink traditional software business models in this highly competitive and volatile market.

The November meeting, co-hosted by the Austin Software Council and Texas eComm, featured a panel that discussed issues faced by companies in this environment. The panel included four leading Internet executives whose companies impact various components of the eBusiness lifecycle. Pete Fernandez, Vice President of Corporate Strategy and Marketing for PSW Technologies, a leading provider of consulting and systems integration services, moderated the panel. The other panel members were Andrew Busey, Co-Founder and Chief Web Officer of living.com, which sells home furnishings and provides design ideas over the Internet; Jayram Bhat, Vice President of Marketing at Mercury Interactive, which provides Internet application testing and performance management tools; and Neil Webber, Co-Founder and CTO of Vignette, the leading e-Relationships management software provider.

Fernandez set forth the key elements for any website: 1) give them what they want, when they want it; 2) provide quality solutions (i.e., no buggy software); and 3) provide acceptable response times (according to Fernandez, research shows that delays beyond 8 seconds will drive away customers).

Using Amazon.com as an example, Busey emphasized the importance of building a “brand” early for any e-business. Busey stressed the importance of giving the customer a great experience and of differentiating a website from its competitors. At living.com, for example, the company has used off-the-shelf software technology, but differentiated itself by providing unique software features such as the ability for a customer to interactively view different fabrics on different sofa frames. Finally Busey underscored the importance of scalability. Once an Internet company becomes successful, it is important to be able to quickly add new capacity.

Bhat added insight into the importance of software testing and using management tools during the e-business lifecycle. Although traditional software product lifecycles have not emphasized product testing, Bhat believes that software testing should play an important role in any website development effort. If the software associated with a website does not work or has bugs that lead to significant downtime, an e-business will stop generating revenue. According to Bhat, stress-testing tools are an important example of the tools a website developer needs.

The final panelist, Neil Webber, emphasized two important thoughts. First an e-business lifecycle must take into account that “the competition is always one click away.” Companies must revise and update their websites to stay ahead of the competition. Second the ability to capture market share is key because the real asset of any Internet retail provider is its customer base.

The meeting concluded with a Q&A session which included a discussion of the effect of software patents on e-business and the recent patent litigation between Amazon.com and Barnesandnoble.com. In that lawsuit Amazon claims that its competitor has

... research shows that delays beyond 8 seconds will drive away customers. . . .

improperly used its patented technology for allowing a customer to visit a website and make a purchase without having to reenter shipping and billing information. Although the panelists acknowledged the existence and concern over such patents, they emphasized the importance of reading the details of these patents. According to Webber, such patents are often narrower than a company’s press releases would indicate.

Scott Thomas is a patent attorney with the IP law firm of Arnold White & Durkee. He specializes in patent litigation and patent prosecution involving complex electrical, computer and telecommunications technology. He has a Master of Electrical Engineering from Rice University and worked for Bell Laboratories and Teas Instruments as an engineer. He may be reached at 512-418-5622 or at sthomas@awd.com.



Author Bruce Sterling.

Texas Software Symposium

Continued from cover

and deftly discussed by Jerry Sullivan, Adams Capital and Robert France, Motorola-Austin.

With “Visions of the Future,” technology was set on fast-forward, receiving attention from Marc Raibert, Boston Dynamics and Brad Fregger, Dryken Technologies. Hank Jones with Arnold, White & Durkee moderated the lively exchange.

The Austin Software Council took advantage of the high-visibility seminar to present special awards to Earl Maxwell, Chair of the Greater Austin Chamber of Commerce for connecting the Council with their new legal counsel, Bracewell & Patterson. Awards for their coverage of technology issues went to the Austin *American-Statesman* and the Austin *Business Journal*. The popular science-fiction author Bruce Sterling wrapped up the event with an affirmation of the city and a call for renewed environmental consciousness.

[Editor’s Note: Read more about the panel discussions in “Putting Co-Design into Perspective” and “What’s to Come?—Marc Raibert and Brad Fregger Offer ‘Visions of the Future’” in this issue of *The Leader*.]



Bracewell & Patterson— Platinum Sponsor

The Austin Software Council is proud to announce Bracewell & Patterson, LLP's major contribution to the Capital Endowment Fund making this Houston-based firm a Platinum Sponsor. One of the 10 largest firms in Texas, Bracewell & Patterson has extensive experience with startups and emerging companies and has been a long-time sponsor of the Texas Investment Forum. It is also one of the first law firms in the country to form a multi-disciplinary Internet and e-commerce practice group. Clients include software companies, Internet companies, communications firms, venture capital funds and financial institutions (including a virtual bank) and major energy companies. B&P also has the largest labor and employment law section in Texas.

Congratulations to the 1999 ATI Graduates!

The Austin Software Council congratulates the recent graduates of the Austin Technology Incubator. These companies, who are Council members, currently employ 264 people and have raised more than \$53 million in capital.

Aim Technologies, Inc.
Exterprise, Inc.
InfoGlide Corporation
Infoplex
Premise.Net, Inc.
Silicon Metrics Corporation
TManage, Inc.

Flanked by Les Belady and Betty Otter-Nickerson, Paul Fox, Austin office managing partner, Bracewell & Patterson is ready to present Earl Maxwell with the first Council "Connector" Award. (See page 13 for story.)

IBB/BABC Offer

Continued from page 9

- ▶ **Visits to key business and science parks and laboratories** such as Rutherford Appleton, Cambridge and Oxford Science Parks, Sanger Centre, Surrey Research Park.
- ▶ **Discussions with major universities and US investors on skills and talent** availability for knowledge-based industries.
- ▶ **Two days for independent meetings** with potential strategic partners and customers. IBB personnel in London can arrange meetings targeted to individual technology sectors and requirements.

For more information contact Martin Hunt, Bracewell & Patterson, Houston (713) 221-1106 or locally, Emily Sopensky, The Iris Company, 452-2448; Eugene Sepulveda, PricewaterhouseCooper, 320-7238.

New and Renewing Members

The Austin Software Council welcomes new members (in boldface) and thanks those who have renewed their membership during August 1 to October 31, 1999.

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Barbara Glover

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Humphrey Marr

E-Commerce Technology Austin
Randy Hankamer

Electric Lightwave
Douglas Forte

Engineering Spectrum, Inc.
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 Sam Williams

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Siemens
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Executive Profile: Jeff Smith

Continued from page 8

entire business world. It opens up opportunities businesses have never been able to do before. They have to think and behave differently. That's what starts every conversation with every IBM customer.

Q: It's definitely true of your ads.

A: In 15 years with IBM, I have not viewed its marketing prowess to be overwhelmingly awesome. A couple of shining examples: the PC campaign with Charlie Chaplin was very clever, successful and effective. That was an example of something we did very, very well. Since then you can wrack your brain about what really catchy marketing thing IBM has done since. But the e-business campaign is one of those. It has a really cool logo that you immediately understand. It's simple, contemporary. And for the first time since I've been with the company, every single line, every single business group at IBM, is lined up behind a single corporate strategy. Which is why I have great hopes for IBM to capitalize on this success because I really see this 290,000-person company lining up behind a single vision.

Q: The Austin Software Council is pretty tiny compared to that huge picture you just painted.

A: Yes. But if you look at the dynamics of what's going on in the software industry, a lot of changes are due to catalysts who are little players and who change the way people think about technology in business. IBM is clearly trying to capitalize on that marketplace. But we are no longer able or willing to change the entire industry by ourselves like we might have been able to 20 to 30 years ago. The success of e-business is going to depend more on not only whether IBM can capitalize on it but whether we all can. We believe that partnerships and alliances are central to making it happen. A lot of those players are in Austin.

Q: Is it difficult for a very large corporation to scent out those [smaller companies/opportunities]?

A: If you were to total all the software dollars in Austin, IBM would probably be zero since we're headquartered in Armonk, NY. The point is, as Lou Gerstner likes to say, "Every little company's goal is to become a big company." The guys who started Tivoli, Bob Fabbio and Todd Smith, were my friends from AIX development days. That's what happened with Tivoli. It started out little and became big. I think that IBM has a pretty good track record of wanting to help highlight and foster little guys with really great ideas.

Just purchased a company called Dascom in California. A small company that does security technology. Over the last few years, we formed a partnership with them using some of their technology. It was similar to the Tivoli story. It was significant overall in the industry that we wanted to make sure we had something we could continue to leverage.

We're always looking for opportunities like that. It used to be that IBM had to make all its own stuff. Now we are much more focused on alliances, partnerships, and in some cases, acquisitions to help achieve our goals in e-business. So that's why I think something like the Austin Software Council is a great environment to bring players together who can help each other. I'm not sure what other forum really does that.

NCSA is primarily responsible for providing an "infrastructure-free business." It includes security and directory componentry, an operating system called OS/2 as well as a Java component. With SecureWay we have been focusing on pulling together pieces you can buy separately from lots of different places and putting them into integrated packages or "solutions." FirstSecure, our first attempt at a total security solution, includes a firewall, a certificate dispenser and an engine that manages the policy. We did that by pulling together pieces of technology that we already had. I guarantee you're going to see more of these packages that include both IBM and non-IBM componentry to provide a total solution to a particular customer site. That approach is pervasive across the IBM software group. Lotus does it. Tivoli does it. NCSA does it. The database guys do it to a certain extent.

Q: What kind of problems do you want to solve?

A: Security is clearly a big investment area. One of the most important barriers to e-business—perception and/or reality—is the security of the resulting environment. Not to be too anecdotal my mom, who is almost 70, recently got a computer. She is going the Joe Average consumer route—America On Line, recipes, stuff like that. We were talking about Christmas. It's always the same question: what does everyone want? Since she doesn't get around that well I said, "Just sit down and shop online." "How will I pay for it?" she asked. "Just pay for it online," I told her. "Oh. I could never do that. I can't give my credit card number over the Internet." "Mom, would you do it over the telephone?" I asked her. "Well yeah. But that's different."

So there's that perception that there's a security barrier to doing business online. I think this is a real barrier to e-business. However, it is frankly a business opportunity. We have a long track record of providing highly secure environments that are trusted by the governments and large corporations worldwide. Let's not forget that this isn't security in the area that we've necessarily done business in; this is security in a lot of different types of technology. The web, digital certificates, lots of things that we didn't invent 20 years ago. We have to partner to build a good story.

Although it's not talked about as much, directory is another one. It simply is a method for and place where you store relevant information about people, applications, physical resources, maybe security policy—and

where this information can be accessed by a variety of different programs from a variety of different places. Most big customers will tell you they have a 100 different directories in their enterprise and a lot of times they need to get information from one directory to another to put together a directory to get a particular solution. We approach that problem in IBM with a "metadirectory," a layered technology that allows you to assimilate information from multiple directories. This is monumental enough that you can't do it by yourself. You really have to partner, not only with the providers of the physical directories, but also with other players.

Java's a funny one because it is primarily a technology invented by Sun, now licensed to everybody in the industry. It's important in IBM's cross-platform story. The emergence of xml is going to be interesting. A lot of people are building things using xml that will be right for partnering with. For NCSA those are our primary investment and interest areas.

Q: How can the Software Council help you?

A: Despite our size, we face some of the same issues as smaller companies. This came out when I participated in the CEO Peer Group. For example, access to and retention of key talent. One might argue that a company like IBM with 5% of its total software development located in Austin is handicapped in its ability to compete with other players in Austin for top skills. That sounds funny, but if you think about the things you do to recruit and retain top talent, they're done through the initiatives at the top of the company. The top of IBM is in New York—not Austin.

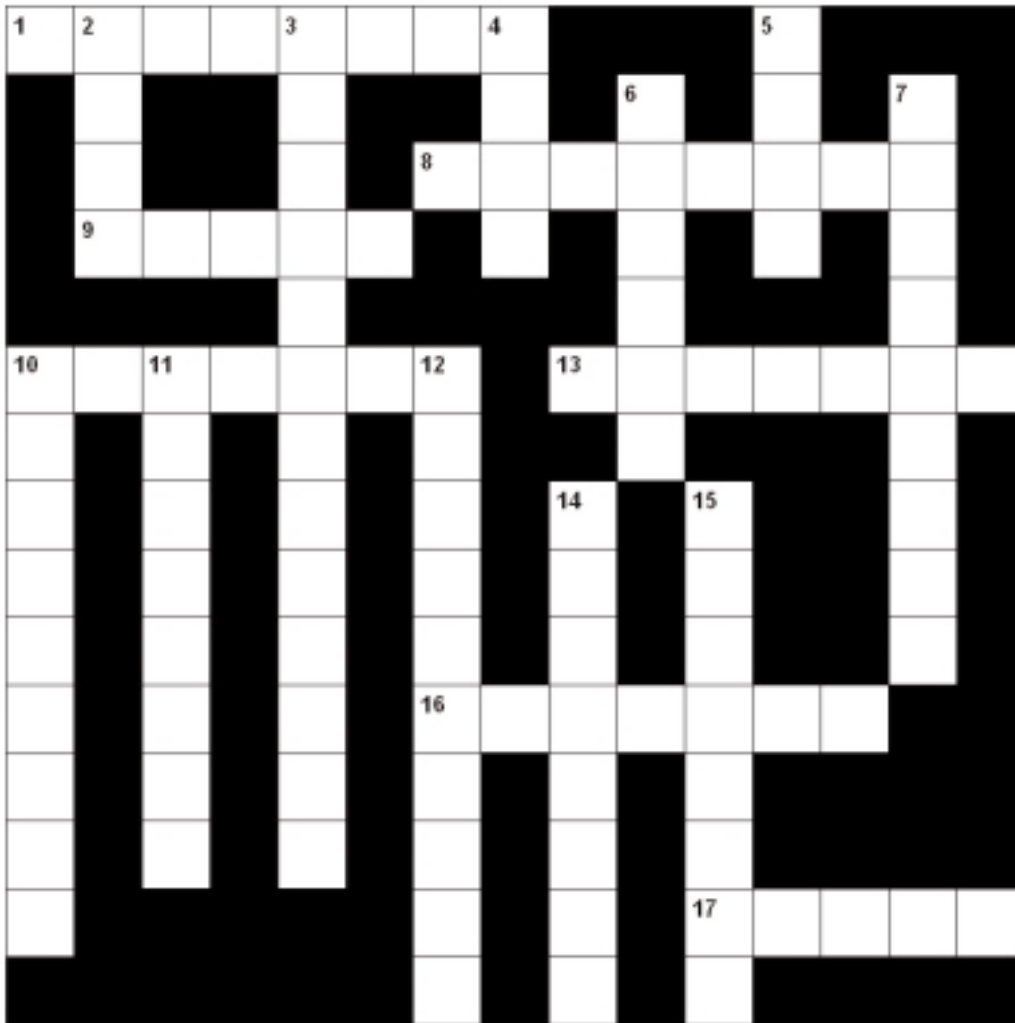
I think it's important in IBM to be a visible, relevant player in Austin's software community and

to compete on an equal basis for top talent. Being part of the Software Council is important because I'm competing for skills and talent just like everyone else in this town. Also relationships and alliances can be formed by knowing who the other players are.

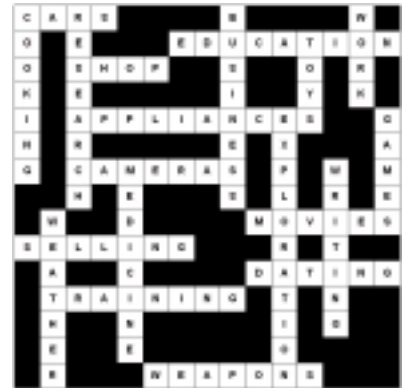
If I can work with a company in the same city as opposed to someone across the country, gosh that's a much better deal for me. Finally, I believe that visibility and recognition as an active member of Austin's software community bolsters morale. People love to see what they're working on get recognized. To the degree that IBM can have a continuing presence, it makes people feel good about working for this company.

But if you look at the dynamics of what's going on in the software industry, a lot of changes are due to catalysts who are little players and who change the way people think about technology in business.

Crossword Puzzle



3Q99 Puzzle Solution



When not creating crossword puzzles for The Leader, Russell Wilson specializes in object-oriented software development using Java and is president of ALVE, a computer telephony company.

Points of Interest in Austin

Across

1. The wildflower center
8. A collapsed cave used for swimming
9. A famous street
10. An Austin blues bar
13. Perfect for bikers and rollerbladers
16. Austin, the Texas _____
17. Home of Tex-Mex and Elvis sightings

Down

2. They make a great “Frosted”!
3. Home of a unique salamander
4. A stretch of Guadalupe street next to campus
5. They hideout under the Congress Avenue bridge
6. Adjacent to Barton Springs
7. A huge batholith
10. Upscale shopping on the northwest side of town
11. Not really a lake; more like a river
12. Hotspot for frisbee golf
14. A not-so-deep spring-fed swimming hole
15. An Austin favorite for barbecue

Free Admission

The first ASC member to complete the crossword puzzle correctly and fax it to Catherine at ASC (305-0220) will be admitted to one ASC meeting free of charge. We'll announce the winner at the next ASC meeting. Please include your name, company, email address, phone number and type of membership—corporate or individual—on your fax. Good luck!

ASC Calendar

November 2
Monthly Meeting

November 9
ASC“U” Marketing Seminar

November 16
ASC“U” Human Resources Seminar
CTO/VP of R&D Peer Group

November 18
Human Resources Peer Group

November 19
Marketing Peer Group

November 23
International Program Committee

December 7
Monthly Meeting

December 14
Peer Group Mixer

December 17
Marketing Peer Group

December 21
CTO/VP of R&D Peer Group

December 28
International Program Committee

January 4
Monthly Meeting

January 12
ASC“U” Leadership Seminar

January 18
CTO/VP of R&D Peer Group

January 20
Human Resources Peer Group

January 21
Marketing Peer Group

January 25
International Program Committee

February 1
Monthly Meeting

February 24
Software Startup 101

Meeting, event, and workshop announcements are posted on the ASC website and circulated via email to ASC members.

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