

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF DELAWARE

COMPUTING RESOURCE TECHNOLOGY LLC))
Plaintiff,))
v.)) Civil Action No. 1:19-cv-1237-MN
FORBIDDEN TECHNOLOGIES INC.)) JURY TRIAL DEMANDED
Defendant.))
_____))

AMENDED COMPLAINT

For its Complaint, Plaintiff Computing Resource Technology LLC ("Computing Resource Technology"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Computing Resource Technology is a Delaware limited liability company with a place of business located at 3511 Silverside Road, Suite 105, Wilmington, Delaware 19810.
2. Defendant Forbidden Technologies Inc. is a Delaware company.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
5. Upon information and belief, Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.
6. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b).

THE PATENT-IN-SUIT

7. On August 28, 2012, U.S. Patent No. 8,255,805 (the "'805 patent"), entitled "System and Method for Permitting a Software Routine Having Restricted Local Access to Utilize Remote Resources to Generate Locally Usable Data Structure," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '805 patent is attached hereto as Exhibit A.

8. Computing Resource Technology is the assignee and owner of the right, title and interest in and to the '805 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,255,805

9. Computing Resource Technology repeats and realleges the allegations of paragraphs 1 through 8 as if fully set forth herein.

10. Without license or authorization and in violation of 35 U.S.C. § 271, Defendant is liable for infringement of at least claim 3 of the '805 patent by making, using, importing, offering for sale, and/or selling systems and methods for facilitating and expanding the functionality of secure program routines running on a local client computing system by permitting such routines to interact with resources located at a remote server, including, but not limited to Blackbird ("Blackbird"), because each and every element is met either literally or equivalently.

11. Upon information and belief, Defendant used Blackbird via its internal use and testing in the United States, directly infringing one or more claims of the '805 patent.

12. More specifically, Blackbird utilizes a method receiving an initial multimedia file at a local computer from a remote computer system, the initial multimedia file comprising at least audio or video.

Lightning-fast speed delivers a workstation experience in the cloud

Blackbird is very fast – its patented super low-latency codec allows you to access and edit video content within the cloud that delivers a truly workstation-like experience. Enjoy hyper fast frame-accurate navigation, playback and viewing of video in the cloud without any delays using bandwidth as low as 2Mb per second.



<https://www.blackbird.video/overview/>.

Seamless video editing, clipping and distribution

Engage audiences by easily creating and enriching highlight clips and close captions of live and non-live video for any event and rapidly publish to any platform online.



Id.

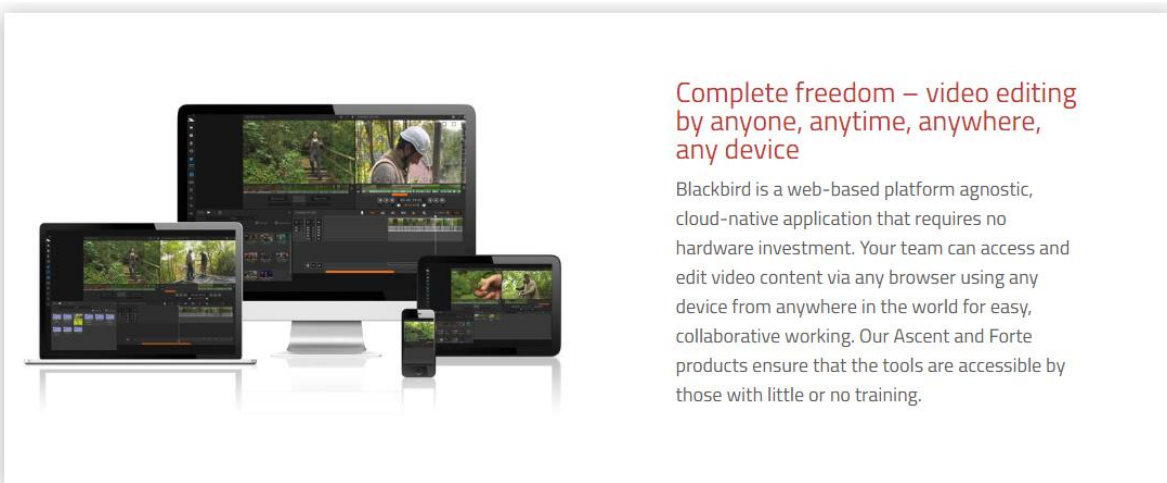
Forscene is now part of our Blackbird platform



In March 2018 Forbidden Technologies plc officially elevated Blackbird to be the master brand and name of our signature Blackbird Cloud video platform.

Whilst Blackbird is not new, it is the name of our wholly owned and patented codec which makes up the 'DNA' of Forbidden Technologies products. It is responsible for the unique power, responsiveness and fluidity of the Forscene platform you know so well. It is a key point of differentiation and sets us apart from other cloud platforms.

<https://www.blackbird.video/forscene-is-now-part-of-our-blackbird-platform/>.



Id.

FORscene provides professional tools for logging, review, rough-cut editing, off-line editing and, in near real time situations, finishing to broadcast standard in a Software as a Service (SaaS) package. **FORscene** works perfectly in all professional video environments but is particularly valuable in long-form Broadcast Post Production, News, Sports and Corporate Professional environments.

FORscene User Manual ("User Manual") at p. 3 (available at http://info.forscene.net/support/forscene/printed_manual/Forscene_manual_20140407.pdf).

FORscene is Cloud-based

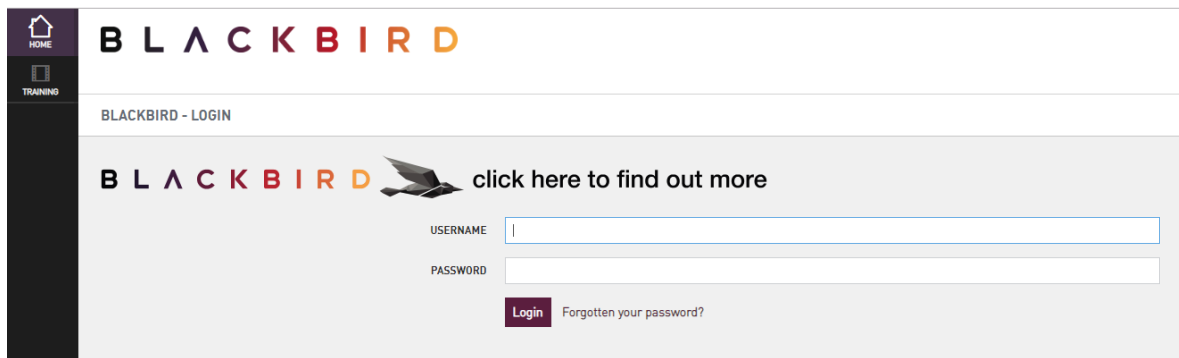
Original raw material is stored at full quality on a local machine. A lower resolution ('browse quality') copy is loaded into the Cloud. This is accessible through **FORscene** from virtually any device with internet access, including PCs, Macs, tablets and smartphones. The lower resolution is perfect for editing, referencing, reviewing and manipulation purposes and ensures that access is speedy, even over lower speed internet connections. At any stage in the editing process, as required, **FORscene** can access the original source material and output a version of the edited material at the same resolution as the original. **FORscene's** sophisticated technology ensures a highly reliable Cloud experience.

Id. at p. 4.

This is the first key concept of working with Forscene the fact that you'll be working in the cloud. Forscene is cloud based software, which means that it's not installed on your computer and your project's video is not stored on your hard disc, but in the cloud. This gives you access to your projects from anywhere in the world through your web browser's internet connection.

Browsing to [forscene.net](https://www.forscene.net) takes you to the login page where you type in your user name and password. Your start page will now open.

<https://www.blackbird.video/archive/tutorials/introduction-to-forscene/>.



<https://cloud.blackbird.video/login?from=Forscene>.

FORscene is responsive

Material accessed by **FORscene** is stored in the Cloud, though **FORscene** itself runs on the machine where the user is logged on. Edits and other changes to the material are implemented on the machine as they are made so can be viewed immediately. There is no delay arising from the need to communicate with the Cloud server. Further, once a file is first selected for editing only a small proportion of the frames are downloaded. This allows the user to begin work immediately by shuttling to the required point in the clip. **FORscene** selectively downloads other frames around the selected edit point, as required. There is no need to download the full clip before work can begin.

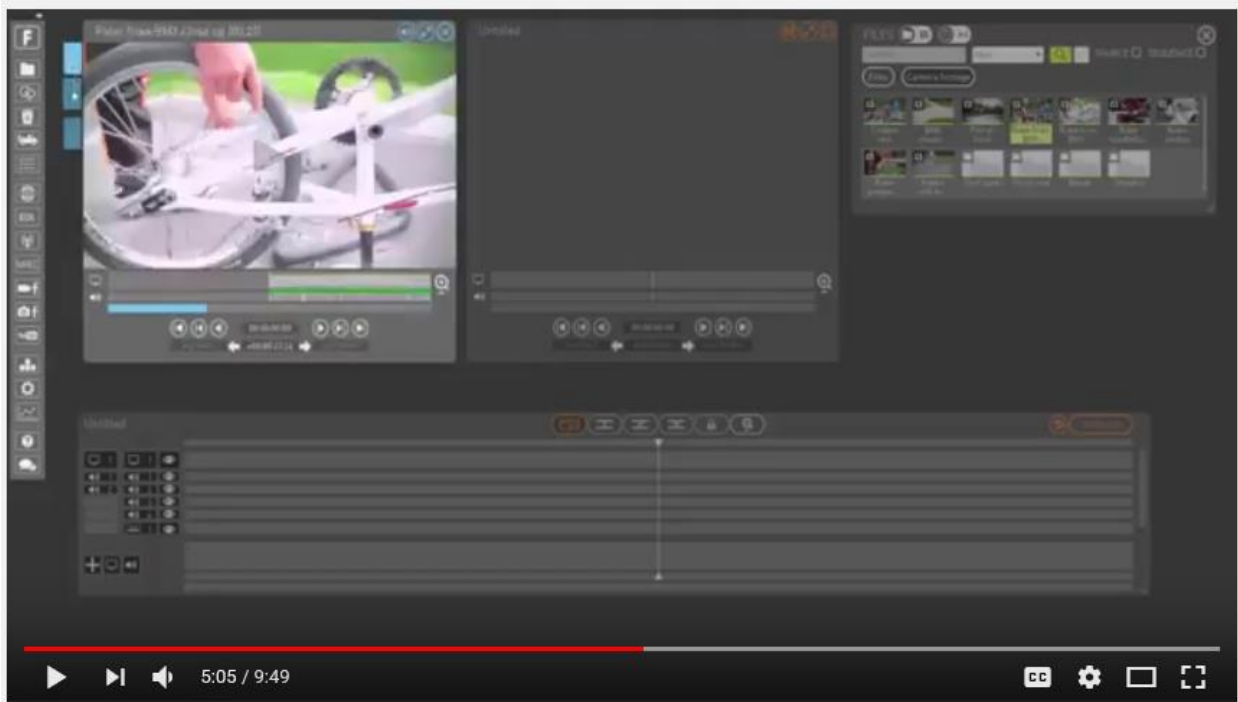
User Manual at p. 4.

5.1 Loading media into the Play Window

A Play Window is opened automatically when **FORscene** is launched.

- To open a rush in the Play Window, double click the file icon or drag it from the File Window and drop it into the Play Window. The name and duration of the file will be displayed in the title bar of the Play Window.
- It is possible to work with multiple Play Windows simultaneously.
- To open an additional Play Window, drag a file icon onto the background of the interface.
- To open separate Play Windows for multiple files, double right click on each file icon.
- To load a folder's media into the Play Window, drag the folder icon from the File Window and drop it into the Play Window. You will be prompted to select whether to organise the clips alphabetically, by date or in timecode order. In this case the name and duration of the folder will be displayed in the title bar of the Play Window.

Id. at p. 21.



<https://youtu.be/tS7pijR2LVA?t=305>.



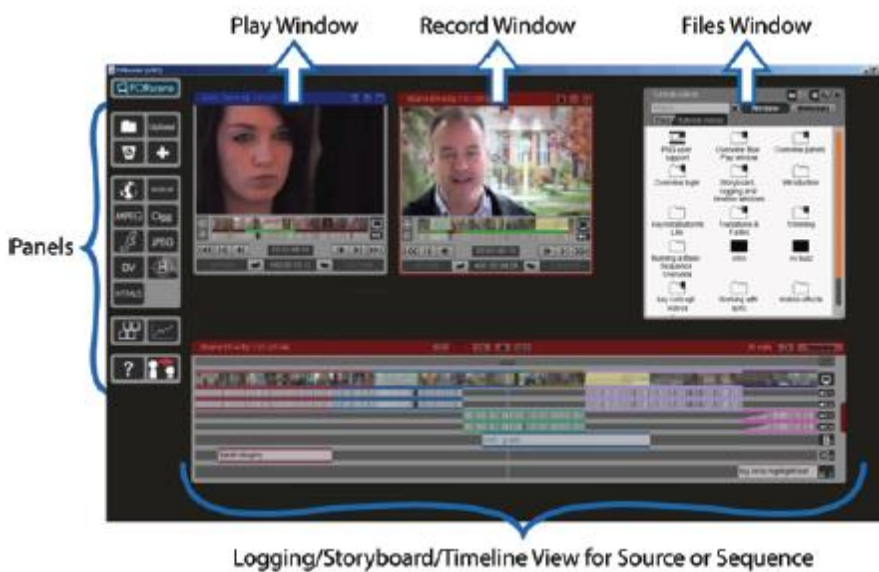
User Manual at p. 9.

13. Blackbird receives modifications to the initial multimedia file at the local computer to create a modified multimedia file at the local computer to create a modified multimedia file with a program comprising a Java-based applet and executing on the local computer.

FORscene is secure

FORscene accounts are protected by unique username and password access. **FORscene** runs in the memory (RAM) of the user's local machine. **FORscene** doesn't store information on the local hard drive. When closed, **FORscene** does not store any data locally. Source material and saved edits are saved and backed up in the Cloud in three separate geographical locations.

User Manual at p. 4.



Id. at p. 9.

The Play Window is used to view uploaded (or source) material. Source material can include video clips, audio clips, photographs, graphics and animations.

Id. at p. 20.

4.4.2 Restoring autosaved files

FORscene automatically saves edits that are not saved manually. These can be viewed in the Autosaved Files Window.

Id. at p. 19.

Record Window

View and edit sequences here.

Id. at p. 9.

- Once the in and out points have been marked, the section of video can be:
 - Logged by typing in metadata relevant to the clip in the Logging Window and/or
 - Edited by dragging the selection into the Record Window
 - Saved by dragging the selection into the File Window
 - Published by dragging the selection onto a publishing button.

Id. at p. 27.

9.16.1 Colour correction tools

Colour Levels:

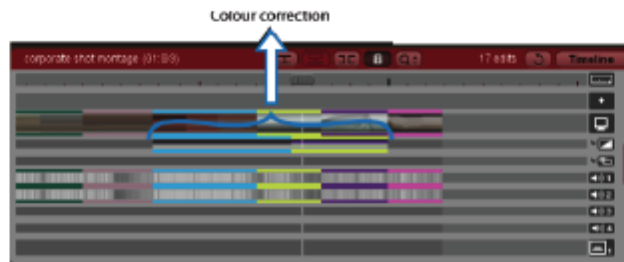
1. To change the colour levels, right click on an area in the Record Window and drag vertically to increase or decrease.
2. The colour level change is dependent on which colour is selected in the Record Window. For example if you right click on a black area in the frame, the dark levels will be adjusted, and if you right click on a white area in the frame, the light levels will be adjusted.

Saturation:

1. To adjust saturation, right click on an area in the Record Window and drag horizontally.
2. Dragging to the left will reduce the saturation and give your video a greyscale appearance. Dragging to the right will increase the saturation.

White balance:

1. To set white balance, place your cursor over a section of the video in the Record Window that you want to use to set the white balance and hold down the right mouse button for 2 seconds.



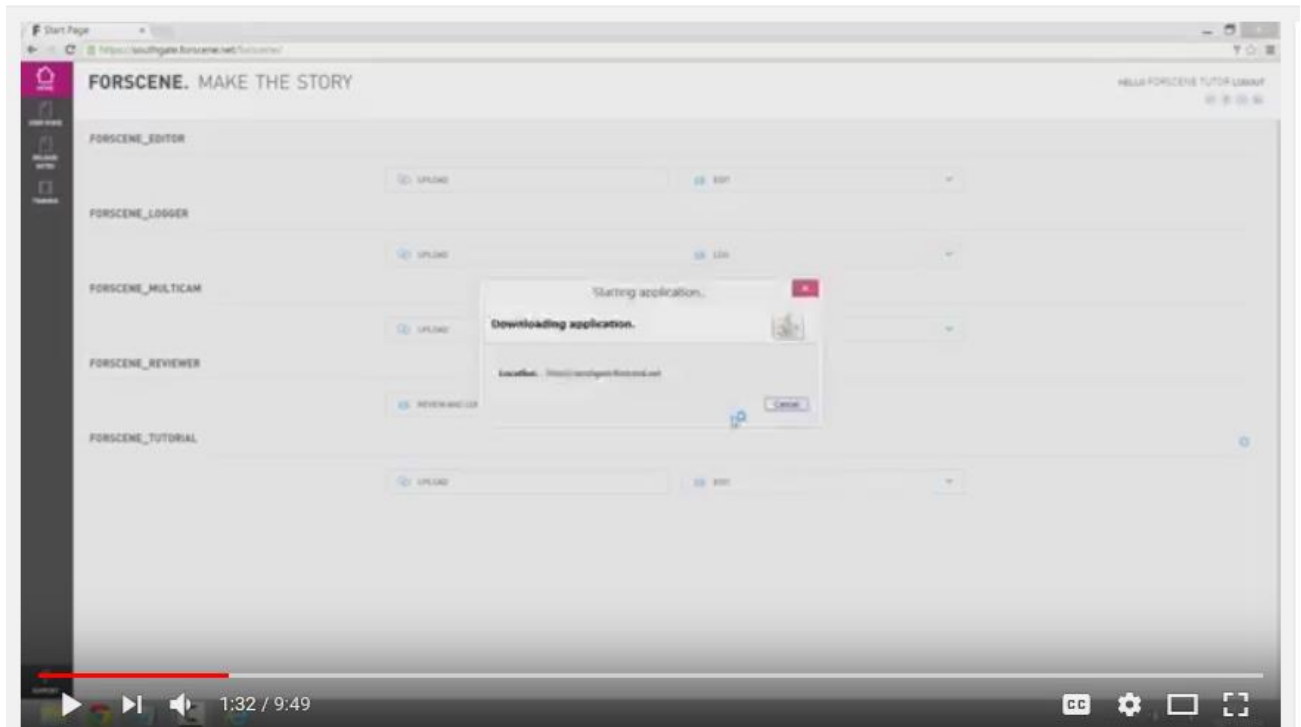
Id. at p. 84.

Depending on your account setup, your start page may include a variety of different options. You could have access to one or many accounts and, within each, you may be able to perform a variety of functions like logging, editing and review.

Every Forscene user's account looks slightly different as menus and buttons are tailored according to your user permissions.

The next thing we want to introduce you to is the typical screen layout in Forscene, so let's open up an edit screen by clicking on edit and that takes us to the edit interface.

<https://www.blackbird.video/archive/tutorials/introduction-to-forscene/>.



<https://youtu.be/tS7pijR2LVA?t=92>.

14. The program is unable to store the modified multimedia file in file systems of the local computer due to restrictions.

This is the first key concept of working with Forscene the fact that you'll be working in the cloud. Forscene is cloud based software, which means that it's not installed on your computer and your project's video is not stored on your hard disc, but in the cloud. This gives you access to your projects from anywhere in the world through your web browser's internet connection.

<https://www.blackbird.video/archive/tutorials/introduction-to-forscene/>.

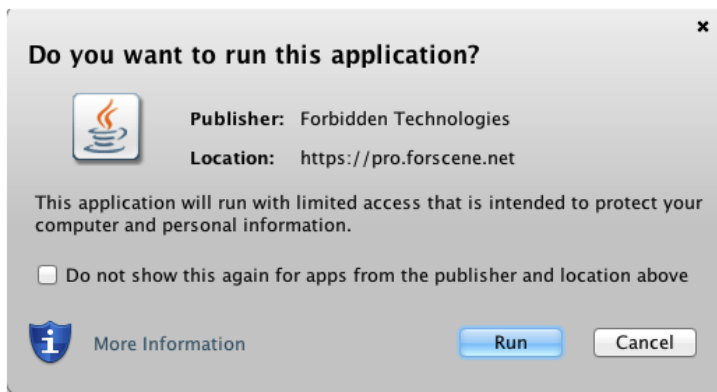
FORscene is secure

FORscene accounts are protected by unique username and password access.

FORscene runs in the memory (RAM) of the user's local machine. **FORscene** doesn't store information on the local hard drive. When closed, **FORscene** does not store any data locally. Source material and saved edits are saved and backed up in the Cloud in three separate geographical locations.

User Manual at p. 4.

Forscene, the world's most sophisticated cloud video post production platform, makes full use of Java for its logging and editing front end. Launched from any browser, Forscene allows full frame rate, frame accurate video editing with up to 18 camera multicams, as well as HD or 4K publishing and dissemination.



<https://www.blackbird.video/archive/technology/java-forscene-cloud/>.


15. In response to receiving a user signal to store the modified multimedia file, Blackbird transmits the modified multimedia file to the remote computer.

9.1 The Record Window and saving sequences

The Record Window is used to view edited sequences and has most of the same buttons and functionality as the Play Window (see 'Viewing media in the Play Window').



User Manual at p. 58.

5. To name the sequence, click the 'Untitled' text and type a name in the box.
6. To save the named sequence, drag from the Record Window into the File Window (or into a specific folder or subfolder).
7. Once the sequence has been dragged into the file or folder, it can be saved subsequently by clicking the Save Button in the Record Window title bar . The latest version of the sequence will replace the original saved sequence.

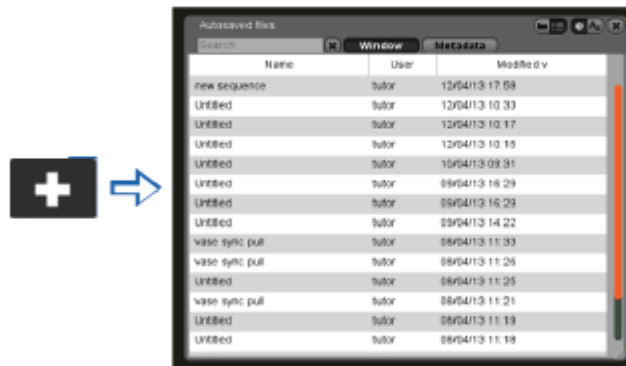
Id. at p. 59.

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Id. at p. 4.

FORscene automatically saves edits that are not saved manually. These can be viewed in the Autosaved Files Window.



Id. at p. 19.



<https://youtu.be/k7vWIMWA004?t=51>.

This is the first key concept of working with FORscene the fact that you'll be working in the cloud. FORscene is cloud based software, which means that it's not installed on your computer and your project's video is not stored on your hard disc, but in the cloud. This gives you access to your projects from anywhere in the world through your web browser's internet connection.

<https://www.blackbird.video/archive/tutorials/introduction-to-forscene/>.

16. After transmitting the modified multimedia file, Blackbird downloads the modified multimedia file to the local computer from the remote computer system for use by a second program different from the program executing on the local computer, resulting in the local computer storing the modified multimedia file in the file systems of the local computer.

EDL - Edit decision list

FORscene generates the standard EDL format: CMX3600. This file can be used to import a sequence into an off-line or on-line editing system such as CMX3600 for Final Cut Pro. The EDL contains the sequence of clips exactly as they were saved in the timeline from FORscene. 'CMX3600 with ALE fudges' accounts for potential issues (i.e. edit points being too close to timecode breaks) and adjusts accordingly.

User Manual at p. 94.

10.3 Exporting EDLs

You can export rough cuts or shot selections to an off-line or on-line editing suite. To export your work from FORscene, drop your file on to the export icon. Once this appears as 'Published' in the export folder, double click on the file and it will appear in a separate browser window (make sure you have pop-ups enabled). There will be a list of different files available to download dependent on the use required.

To download the EDL file onto your computer:

1. Right click on the specific link.
2. Select 'Save link/target as'.
3. Select a location and click 'Save'.

FORscene is able to export to AAF, EDL, ALE, XML and HTML formats.

Id.

Creating an FCPX EDL button in Forscene:

1. Go to the publishing menu from your Forscene account homepage.
2. Click "New publishing button".
3. A publishing module menu will appear. Select "Publish to cloud" or "Publish to local folder" from the scroll menu and click OK.
4. Select "Formats" and change TYPE to "FCPX EDL"
5. Toggle settings if necessary then click "create".

You only have to create this button once! You won't have to repeat those steps in the future.

Distributing to Premiere from Forscene:

1. Open a new Forscene Edit window.
2. Drag and drop your sequence to the newly created FCPX button.
3. Click the FCPX button, to open the FCPX publishing window.
4. Double click on your sequence once published. This will open a download window.
5. Click the hyperlink for your sequence, and download it to your chosen folder.
6. Open Final Cut Pro X and import the FCPXML to reveal the sequence.

That's it! Your video has now been distributed to Final Cut Pro X from your Forscene account!

Did you find this helpful? If you have any trouble exporting your video from Forscene, contact our [support team](#).

<https://www.blackbird.video/archive/tutorials/distribute-forscene-final-cut-pro-x/>.

EDL export

Forbidden's editing and publishing tool, **FORscene**, has been upgraded to export standard format Edit Decision Lists (EDLs). Videos edited in FORscene could already be published on the web and on mobile phones; with this latest upgrade, videos can now be exported to high end editing systems for output at broadcast quality.

<https://www.blackbird.video/news-articles/edl-export/>.

17. Computing Resource Technology is entitled to recover from Defendant the damages sustained by Computing Resource Technology as a result of Defendant's infringement of the '805 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

WILLFULNESS AND INDIRECT INFRINGEMENT

18. Computing Resource Technology repeats and realleges the allegations of paragraphs 1 through 17 as if fully set forth herein.

19. Computing Resource Technology's initial complaint was filed on June 28, 2019.

20. Defendant was served the Complaint on July 2, 2019.

21. Defendant has been on notice of the '805 patent since, at the latest, its receipt of the Complaint.

22. Thus, Defendant has been on notice of the '805 patent since, at the latest, the date it was served the Complaint.

23. Upon information and belief, Defendant has not altered its infringing conduct after receiving the initial complaint.

24. Upon information and belief, Defendant's continued infringement despite its knowledge of the '805 patent and the accusations of infringement has been objectively reckless and willful.

25. In particular, Defendant's customers' and end-users' use of Defendant's systems and methods for facilitating and expanding the functionality of secure program routines running on a local client computing system by permitting such routines to interact with resources located at a remote server, including, but not limited to Blackbird, that is facilitated by the use of the technology patented under the '805 patent. Thus, Defendant's customers and end-users are able to use and benefit from secure program routines running on a local client computing system by permitting such routines to interact with resources located at a remote server.

26. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its websites, advertising and sales personnel, the use of its products that infringe the '805 patent when used as intended by Defendant's customers and end-users. Defendant's customers and end-users use such products (including, e.g., Blackbird). Defendant further instructs its customers and end-users how to use such products in a manner that infringe the '805 patents (e.g., through on-line technical documentation, instructions, and technical support). Defendant further instructs its customers and end-users to infringe the '805 patent through the products themselves, e.g., through instructions.

27. In particular, Defendant instructs its customers and end-users through at least on-line support instructions and documentation over the Internet how to use Blackbird.

28. Defendant still further makes such products accessible to its customers and end-users via the Internet, thus enabling and encouraging its customers and end-users to use such products to infringe the '805 patent.

29. On information and belief, even though Defendant has been aware of the '805 patent and that its customers and end-users infringe the '805 patent since no later than the date it was served the Complaint and Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such products to avoid infringing the '805 patent nor informed its customers or end-users how to avoid infringing the '805 patent. To date, Defendant has not identified a single action that it has taken to avoid infringement (e.g., by designing around or notifying its customers or end-users how to avoid infringement) by itself or its customers or end-users since it became aware of the '805 patent.

30. On information and belief, Defendant itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its customers and end-users, do not constitute direct or indirect infringement of the '805 patent. To date, Defendant has not produced any opinion of counsel, request for opinion of counsel relating to the scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '805 patent. In addition, Defendant has not produced any complete evaluation, analysis, or investigation relating to the validity of the '805 patent.

31. As such, on information and belief, despite the information Defendant obtained from the original complaint in this action, Defendant continues to specifically intend for and encourage its customers and end-users to use its products in a manner that infringes the claims of the '805 patent. In addition, since at least the filing of the original complaint in this action, Defendant has deliberately avoided taking any actions (e.g., designing around, or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers and end-users to use their products in a manner that infringes the claims of the '805 patent.

32. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such products constitute an objectively high likelihood of infringement of the '805 patent, which was duly issued by the United States Patent and Trademark Office and are presumed valid. Since at least the filing of the original complaint, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '805 patent and that the '805 patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any changes to the relevant operation of its accused products and has not provided its users and/or customers with instructions on how to avoid infringement of the '805 patent. Instead, Defendant has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell products and/or services patented under the '805 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '805 patent in disregard of Computing Resource Technology's rights under the '805 patent.

JURY DEMAND

Computing Resource Technology hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Computing Resource Technology requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '805 patent;
- B. A judgment that Defendant has induced infringement of the '805 patent;
- C. An award of damages to be paid by Defendant adequate to compensate Computing Resource Technology for Defendant's past infringement of the '805 patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses

and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

D. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '805 patent subsequent to the date of its notice of the '805 patent;

E. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Computing Resource Technology's reasonable attorneys' fees; and

F. An award to Computing Resource Technology of such further relief at law or in equity as the Court deems just and proper.

Dated: November 8, 2019

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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