

San Jose Mercury News

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JULY 20, 2005 | WEDNESDAY

THE NEWSPAPER OF SILICON VALLEY

START-UP EXPLOITS MARKET FOR DIGITAL DOCUMENT SEARCH

EVIDENCE RETRIEVAL PROCESS COULD SPEED TECH LAWSUITS

THERESE POLETTI
Mercury News

Silicon Valley's high-profile technology companies always seem to be getting into legal fist-fights. The antitrust lawsuit filed last month by Advanced Micro Devices against chip giant Intel is the latest.

As that case moves forward, attorneys will begin hitting the legal departments of the two chip makers -- and their customers -- with requests for documents in a massive evidence retrieval process.

One small local company that hopes to help the lawyers mine stacks of documents is a start-up in Redwood City called Cataphora. The 60-person company has developed a software service to dig up documents to bolster a case or defend a client. They can plow through thousands of e-mails, company documents, instant messages and other forms of digital data that become the bulk of evidence in most lawsuits today.

In the past decade, as communications have become more electronic through e-mail and other forms of digital correspondence, lawyers have become accustomed to sifting through reams and reams of printed documents retrieved in discovery to find a crucial bit of evidence. In many recent cases, attorneys have tried to use a specific e-mail as a smoking gun, such as former financier Frank Quattrone's brief e-mail to his staff to "clean up" their files, which prosecutors contended was a criminal act of obstruction of justice. Quattrone said he was following a routine policy and he was not aware his staffers had documents sought by investigators.

Many companies exist to perform these searches for law firms. In recent years, this area, known as electronic data discovery (EDD) has become increasingly important and complex.

"It's the biggest thing out there right now," said John Bringardner, news editor at Law Technology, a trade publication in New York. "We haven't had this much hype about something in legal technology since the Internet boom."

The total market for electronic discovery in 2004 was about \$1.3 billion, according to Michael Clark, managing director of EDDix, a research and analysis firm that follows the electronic discovery market in Milford Conn.

Cataphora is one of several start-ups, including Attenex in Seattle, Engenium in Dallas, and established companies like Lexis Nexis targeting the growing electronic discovery arena. Cataphora says its competitive edge is the way it searches documents. Founder and CEO Elizabeth Charnock said Cataphora's approach is part mathematical and part sociology, based on how humans interact.

"We are like high-tech sleuths," she said.

Currently, law firms conduct litigation discovery searches with a set of key words, date ranges, and document authors agreed upon by all parties. These



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Elizabeth Chamock, CEO and founder of Cataphora, discusses linguistics issues with employees.

keyword searches bring up thousands upon thousands of documents that then have to be searched manually, by attorneys who sometimes charge over \$300 an hour. Cataphora's searches further narrow a search, based on the context of the entire document, not just a few words surrounding a keyword, and the documents before and after it.

For example, one of Cataphora's customers, Max Folkenflik, a partner at a small law firm in New York, Folkenflik & McGerity, used Cataphora's service for a big case. He said a first search pulled up 4 terabytes of data, including documents in Flemish and French. Folkenflik sent the 4 terabytes, or 4 trillion bytes, of data to Cataphora, which narrowed the search down to 1 terabyte.

"It produced results that you could not have gotten even if you had 15 people reading e-mails," said Folkenflik. The search retrieved e-mails sent by a secretary on behalf of an attorney believed to be part of a conspiracy in the suit. "We were able to uncover that the secretary was the gate-

HOW THE SEARCH TECHNOLOGY WORKS

DIGITAL EVIDENCE

The bulk of evidence in most lawsuits today is electronic, from company documents to e-mails and instant messages.

THE CHALLENGE

Crucial bits of evidence are often hidden among thousands of digital files. Many electronic data discovery companies exist to perform these searches for law firms.

WHAT CATAPHORA DOES

It narrows law firms' initial searches, which can yield several thousand documents. Cataphora says its approach is part math and part sociology, based on how people interact.

ONE EXAMPLE

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keeper. Unless you had the discussion string, you would not have realized it. We had more evidence than the bigger firms."

Cataphora is a rare company in Silicon Valley in that it was founded without any venture capital.

"When you don't have the money, everything becomes cheaper," Charnock said. Charnock became averse to venture capital when she was CEO of Troba, a software company she co-founded during the dot-com boom to track customer behavior on the Web. Her company was caught in the middle of a fight between its two investors. "Suddenly someone has the power to decide that you don't exist anymore. VCs have the power to do that," she said.

Troba was sold in 2001 to Netusability. After the dot-com bubble burst, when potential buyers were doing their due diligence related to Troba's sale, Charnock came up with the idea for her next company. She was asked many questions about how many meetings they held on certain topics, how did they sign certain partnership deals, etc.



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The atmosphere is casual at Cataphora, where CEO Elizabeth Chamock lets employees bring their dogs to work.

"I spent three days going through this wretched exercise," Charnock recalled. "From that point on, it was in the back of my mind, there is a better way to do this." She noticed that some meetings would be planned on e-mails that weren't even on the same e-mail chain discussion. And that people would respond to an e-mail from someone and discuss something unrelated to the subject line.

Cataphora's searching service, and electronic discovery in general, can also be used by companies complying with Sarbanes-Oxley requirements in the securities industry, and any industry that has regulatory reporting requirements.

"It's a huge market opportunity," said Clark of EDDix. He noted, though, that many law firms are slow at adopting new technology, in particular a technology that could reduce their billable hours by 50 percent. "There has been some foot dragging. . . Law firms don't want to give up the revenue," he said.

