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BILL & MELINDA GATES FOUNDATION

13 UNITED STATES DISTRICT COURT  
14 WESTERN DISTRICT OF WASHINGTON

15 BILL & MELINDA GATES  
FOUNDATION,

16 Plaintiff,

17 v.

18 TEACHSCAPE, INC.,

19 Defendant.

No. \_\_\_\_\_

**COMPLAINT FOR BREACH OF  
CONTRACT AND CONVERSION**

JURY TRIAL DEMANDED

21 Plaintiff, Bill & Melinda Gates Foundation (the “Gates Foundation”), alleges as  
22 follows:

23 **INTRODUCTION**

24 1. This is an action for breach of contract and conversion, arising under the laws  
25 of the state of Washington. As set forth below, Defendant Teachscape, Inc. has breached  
26 material terms of the Independent Consulting Agreement (“ICA”) between the parties and

COMPLAINT FOR BREACH OF  
CONTRACT AND CONVERSION - 1  
Case No. \_\_\_\_\_

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1 converted the Gates Foundation’s property for its own use by preparing and filing patent  
2 applications claiming sole ownership over project materials developed as part of the Gates  
3 Foundation’s Measures of Effective Teaching project (the “MET project”) without the Gates  
4 Foundation’s prior knowledge or consent. Teachscape’s attempt to acquire exclusive patent  
5 rights over MET project materials also violates the Gates Foundation’s Global Access policy,  
6 which serves as one of the Gates Foundation’s primary means of ensuring that funding  
7 provided to for-profit entities is ultimately used for charitable purposes. Pursuant to the  
8 Global Access policy, the Gates Foundation requires that the knowledge and research gained  
9 from its programmatic investments are promptly shared and the products and technologies  
10 that it funds are affordable, widely available, and accessible for its intended beneficiaries: in  
11 this case, for use by disadvantaged students and the teachers and institutions that serve them.

12 **PARTIES**

13 2. The Bill & Melinda Gates Foundation (“Gates Foundation” or “Plaintiff”) is a  
14 Washington charitable trust. The Gates Foundation conducts a substantial amount of business  
15 in the state of Washington through its office located at 500 5th Avenue N, Seattle,  
16 Washington.

17 3. Defendant Teachscape, Inc. (“Teachscape” or “Defendant”) is a Delaware  
18 corporation with a principal place of business located at 71 Stevenson, San Francisco,  
19 California.

20 **JURISDICTION AND VENUE**

21 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332  
22 because the parties are diverse and the amount in controversy exceeds \$75,000. The Gates  
23 Foundation is a citizen of Washington. The Gates Foundation has three trustees. Two of the  
24 trustees are citizens of Washington, and the third is a citizen of Nebraska. Teachscape is a  
25 citizen of either Delaware or California.



1 Corporation, and the New Teacher Center; and for-profit contractors such as defendant  
2 Teachscape.

3 9. The MET project used nearly 3,000 teacher-volunteers across six  
4 predominantly urban school districts to develop the MET project platform: Charlotte-  
5 Mecklenburg Schools, Dallas Independent School District, Denver Public Schools,  
6 Hillsborough County Public Schools, Memphis City Schools, and the New York City  
7 Department of Education. Participating teachers taught mathematics, language arts, and high  
8 school biology.

9 10. In order to measure teacher effectiveness, the MET project used in-classroom  
10 evaluation of teacher performance, compiled direct student feedback, and compared teachers'  
11 pedagogical content knowledge with student achievement so as to identify the teaching skills  
12 that are the most successful in achieving and improving student learning.

13 11. A cornerstone of the Gates Foundation's philanthropic mission is "Global  
14 Access." Global Access requires that (a) the knowledge and information gained from any  
15 development funded by the Gates Foundation be promptly and broadly disseminated and (b)  
16 that such funded developments be made available and accessible for free or at an affordable  
17 price in a manner that will benefit the people most in need.

18 12. Consistent with its Global Access policy, the Gates Foundation required that  
19 the lessons learned from the MET project, including the technologies and teacher observation  
20 and evaluation methods developed during the MET project, would be readily available to  
21 educational institutions—particularly those in low-income or impoverished areas in the  
22 United States.

23 13. The Gates Foundation not only envisioned identifying effective teaching skills  
24 to improve student outcomes, but the creation of a thriving and competitive marketplace to  
25 increase the availability of affordable and effective solutions to evaluate and improve teacher  
26 effectiveness, particularly in low resource settings. To help achieve that goal, the Gates

1 Foundation included specific Global Access terms in its agreements with defendant  
2 Teachscope to ensure that MET project materials (including the information, results, and  
3 technologies resulting from the project) were made broadly available and accessible in  
4 accordance with its charitable mission, including a restriction against filing for patent  
5 protection on MET project materials.

6 14. The Gates Foundation retained defendant Teachscope in April 2009 as a paid  
7 consultant to perform certain services relating to in-classroom evaluation of participating  
8 teachers as part of the MET project. The parties entered into the ICA, which served as a  
9 master agreement between the parties. The ICA provided for subsequent “Work Orders” that  
10 would specifically describe the services to be performed by Teachscope and the payment for  
11 those services.

12 15. To ensure Global Access to MET project materials, the ICA broadly specified:  
13 “[A]ll deliverables and copyrighted and patentable materials, processes, techniques and data,  
14 including any and all intellectual property made or conceived or reduced to practice or learned  
15 by Consultant, either alone or jointly with others, as a direct result of performing the Services  
16 . . . will be owned by the Gates Foundation.” (ICA, p. 2, ¶ 5.) The ICA defined these  
17 deliverables as “Project Materials.” (Id.) Further, in the ICA, Teachscope agreed to assign to  
18 the Gates Foundation all “right, title, and interest” in any such deliverables or intellectual  
19 property. (Id.)

20 16. During the term of the ICA, the parties agreed to three Work Orders, the first  
21 two of which are relevant here. Work Order No. 1, “WO-1” was entered into on April 15,  
22 2009. Work Order No. 2, “WO-2” was entered into on October 1, 2009. Generally, WO-1  
23 tasked Teachscope with developing a targeted pilot study to determine which of four video  
24 capture models provided the most efficient and effective way to capture video for the  
25 Foundation’s Measures of Effective Teaching study. Generally, WO-2 tasked Teachscope  
26 with developing a scalable video data collection system for capturing in-class teacher

1 practices and creating a production version of the software systems to capture, compress,  
2 upload, view, and rate digitally-recorded lessons. The Gates Foundation paid Teachscape in  
3 excess of \$15 million between these two Work Orders. The Work Orders also provided for  
4 joint ownership for certain aspects of the Project Materials.

5 17. To ensure broad access to the intellectual property rights embodied in the  
6 Project Materials as required by Global Access and to mitigate any private benefit to the  
7 Defendant that may have been conferred by permitting joint ownership of the Project  
8 Materials, WO-2 expressly provides: “Company [Teachscape] shall have no right to prepare  
9 or file a patent application in the USA and foreign countries for inventions embodied in  
10 Project Materials without the prior written consent of the Foundation.” (WO-2, p. 7, §10, ¶  
11 2.)

12 18. WO-2 further expressly provided:

13 Consultant understands and acknowledges that the Foundation is  
14 entering this Agreement in furtherance of its charitable purposes and, as a  
15 condition, Consultant agrees to use good faith efforts to conduct and manage  
16 the Study, and Study technologies and information, in a manner that enables  
17 (a) the knowledge gained during the Study to be promptly and broadly  
18 disseminated, as well as all data necessary as part of the Study is delivered  
19 and accessible to Authorized Users for a minimum of ninety (90) days post  
20 Study Completion; and (b) the Project Materials (but not the Consultant  
21 Property), including but not limited to the process and tools for capture,  
22 upload, view, coding, and relating of video, to be made available and  
23 accessible at reasonable cost to the educational community including but not  
24 limited to state educational agencies, school districts, institutions of higher  
25 education, or other public and private school systems, and public libraries.”

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20 Notwithstanding any of the points above, at its sole discretion at any  
21 time, the Foundation may make available and disseminate any or all of the  
22 Project Materials, including but not limited to the requirements for a capture,  
23 upload, view, coding, and rating toolset to the broader marketplace.

24 (WO-2, p. 8, § 11.)

25 19. Embodied in the Project Materials according to the ICA and related Work  
26 Orders is the concept of providing a comment field for an evaluator to enter free-form  
comments related to an observation of a teacher being evaluated.

1           20.     Embodied in the Project Materials according to the ICA and related Work  
2 Orders is the concept of storing free-form comments entered by an evaluator into a computer  
3 memory that would be accessible by others.

4           21.     Embodied in the Project Materials according to the ICA and related Work  
5 Orders is the concept of displaying a list of content items to an evaluator which relate to  
6 observations of the teacher performing a task which include at least two of the following:  
7 video recording, audio recording or image of the task, comment from the evaluator, and text  
8 document relating to the task.

9           22.     Embodied in the Project Materials according to the ICA and related Work  
10 Orders is the concept of receiving a video recording of the teacher performing a task to be  
11 evaluated.

12           23.     Embodied in the Project Materials according to the ICA and related Work  
13 Orders is the concept of storing a video recording of the teacher performing a task to be  
14 evaluated.

15           24.     Embodied in the Project Materials according to the ICA and related Work  
16 Orders is the concept of appending an artifact to a video recording of the teacher performing a  
17 task to be evaluated wherein the artifact is one or more of a time stamped comment, test  
18 document, or photograph.

19           25.     Embodied in the Project Materials according to the ICA and related Work  
20 Orders is the concept of receiving a comment or a selection of a comment from a second  
21 evaluator relating to the performance of a task by the teacher being evaluated.

22           26.     Embodied in the Project Materials according to the ICA and related Work  
23 Orders is the concept of outputting first level identifiers to a second evaluator in response to a  
24 selection of a comment.

1           27.     Embodied in the Project Materials according to the ICA and related Work  
2 Orders is the concept of receiving a selection of a first level identifier from an second  
3 evaluator.

4           28.     Embodied in the Project Materials according to the ICA and related Work  
5 Orders is the concept of outputting a subset of lower level identifiers.

6           29.     Embodied in the Project Materials according to the ICA and related Work  
7 Orders is the concept of assigning a comment to a selected second level identifier.

8           30.     Embodied in the Project Materials according to the ICA and related Work  
9 Orders is the concept of outputting comments associated with a selected lower level with a  
10 scoring interface to allow a second evaluator to assign a score to the lower level based on the  
11 comments.

12           31.     Embodied in the Project Materials according to the ICA and related Work  
13 Orders is the concept of outputting multiple rubrics for display to an evaluator, each rubric  
14 having first level identifiers, second level identifiers and nodes.

15           32.     Embodied in the Project Materials according to the ICA and related Work  
16 Orders is the concept of receiving a selection of a rubric and first level identifier.

17           33.     Embodied in the Project Materials according to the ICA and related Work  
18 Orders is the concept of receiving multiple comments from a second evaluator related to the  
19 observation of a task performed by a teacher being evaluated.

20           34.     Embodied in the Project Materials according to the ICA and related Work  
21 Orders is the concept of outputting multiple first level identifiers in response to a comment  
22 selection.

23           35.     Embodied in the Project Materials according to the ICA and related Work  
24 Orders is the concept of receiving a selection of a first level identifier from a second  
25 evaluator.  
26



1           36.     Embodied in the Project Materials according to the ICA and related Work  
2 Orders is the concept of providing a subset of second level identifiers.

3           37.     Embodied in the Project Materials according to the ICA and related Work  
4 Orders is the concept of receiving a selection of a second level identifier.

5           38.     Embodied in the Project Materials according to the ICA and related Work  
6 Orders is the concept of creating and storing an observation workflow associated with  
7 performance of a task by a teacher being evaluated.

8           39.     Embodied in the Project Materials according to the ICA and related Work  
9 Orders is the concept of associating an observation to a workflow.

10          40.     Embodied in the Project Materials according to the ICA and related Work  
11 Orders is the concept of allowing a video observation to be assigned to a workflow via a user  
12 interface.

13          41.     Embodied in the Project Materials according to the ICA and related Work  
14 Orders is the concept of associating different performance rubrics to the evaluation of a  
15 teacher being evaluated.

16          42.     Embodied in the Project Materials according to the ICA and related Work  
17 Orders is the concept of displaying rubric nodes to an evaluator, each node corresponding to a  
18 characteristic of task, the task being teaching students by a teacher.

19          43.     Embodied in the Project Materials according to the ICA and related Work  
20 Orders is the concept of receiving a node selection from an evaluator.

21          44.     Embodied in the Project Materials according to the ICA and related Work  
22 Orders is the concept of displaying scores for the selected node to the evaluator, each score  
23 defining performance level.

24          45.     Embodied in the Project Materials according to the ICA and related Work  
25 Orders is the concept of receiving a performance score from the evaluator.

1 46. Embodied in the Project Materials according to the ICA and related Work  
2 Orders is the concept of providing a user interface to allow entry of multimedia captured  
3 observation of a task being performed by a teacher.

4 47. Embodied in the Project Materials according to the ICA and related Work  
5 Orders is the concept of receiving a video observation score.

6 48. Embodied in the Project Materials according to the ICA and related Work  
7 Orders is the concept of receiving reaction data scores (e.g., scores from students).

8 49. Embodied in the Project Materials according to the ICA and related Work  
9 Orders is the concept of receiving user (evaluator) selection of components associated with an  
10 evaluation framework.

11 50. Embodied in the Project Materials according to the ICA and related Work  
12 Orders is the concept of storing the association of selected components and items of evidence.

13 51. Embodied in the Project Materials according to the ICA and related Work  
14 Orders is the concept of displaying evaluation workflow including assessments wherein each  
15 assessment includes items of information associated with an assessment and needed for  
16 completion of the assessment.

17 52. Embodied in the Project Materials according to the ICA and related Work  
18 Orders is the concept of allowing an evaluator to associate items of information to parts of an  
19 assessment wherein the items of information include live observation information, recorded  
20 observation, document file, and filled form.

21 53. Fundamental to its charitable goals, the Gates Foundation insists through its  
22 contracts that for-profit contractors do not use its name or trademarks for marketing or  
23 promotional purposes, or to trade off the Gates Foundation's reputation and goodwill.  
24 Specifically, the ICA between the Gates Foundation and Teachscape provides in § 7.2:

25 Consultant will have no right to use the Foundation's name or marks in any  
26 publicly available materials, nor will it make any written or verbal reference to  
the Foundation's name or marks for business development purposes or

1 otherwise, without the Foundation's prior written consent. Consultant  
2 acknowledges that the Foundation will have no adequate remedy at law if it  
3 breaches the terms of this Section 7. . . . The provision of this Section 7 will  
4 remain in force after completion of termination of this Agreement and all Work  
5 Orders.

6  
7 54. On or about October 10, 2010, Teachscope requested written permission from  
8 the Gates Foundation to file a United States patent application covering Project Materials.  
9 The Gates Foundation did not give its consent, explaining to Teachscope that it would be  
10 contrary to The Gates Foundation's Global Access policy and charitable mission. Teachscope  
11 informed the Gates Foundation that it intended to file a patent application anyway, and on  
12 October 11, 2010, in breach of the parties' contract, Teachscope prepared and filed U.S.  
13 provisional patent application serial number 61/392,017 ("the '017 application") entitled  
14 "Method and Systems for Capturing and Evaluating Multimedia Content Including Panoramic  
15 Video Content in an Educational Environment." Teachscope made this filing without the  
16 Gates Foundation's prior written consent, naming only Teachscope employees as inventors  
17 and Teachscope as the sole owner. The application, as originally filed, contained no claims;  
18 however, the disclosure embodied the Gates Foundation's Project Materials.

19 55. On or about October 12, 2010, the Gates Foundation insisted that Teachscope  
20 abandon the '017 application, again explaining that it was contrary to the Gates Foundation's  
21 Global Access policy and charitable mission. On October 13, 2010, Teachscope filed a  
22 Notice of Express Abandonment for the '017 application. On or about October 13, 2010,  
23 Teachscope advised the Gates Foundation that it had abandoned the '017 application.  
24 Teachscope sent a copy of the express abandonment documentation to the Gates Foundation.

25 56. On December 23, 2010, Teachscope sent a letter to the Gates Foundation  
26 urging the Gates Foundation to allow Teachscope to file patent applications on Project  
Materials as a defensive mechanism to prevent others from patenting the same ideas and thus,  
block free access to the technology. The Gates Foundation responded that if such protection  
was needed, it could be obtained by filing a Statutory Invention Registration, which would

1 effectively dedicate the invention to the public while not granting any patent rights to  
2 Teachscope. The Gates Foundation again did not consent to the preparation or filing of patent  
3 applications.

4 57. On or about October 11, 2011, without prior notice or consent from the Gates  
5 Foundation, Teachscope again breached the parties' contract by preparing and filing  
6 additional non-provisional U.S. patent applications and an international (PCT) application, US  
7 13/317,232, US 13/317,231, US 13/317,225, US 13/271,224, US 13/317,226, and  
8 PCT/US2011/055851, that claimed priority to the abandoned '017 application (the "Project  
9 Materials Patent Applications"). The Project Materials Patent Applications disclose and  
10 claim the same Project Materials subject matter as disclosed in the abandoned '017  
11 application and identify Teachscope employees as the sole inventors and Teachscope as the  
12 sole owner.

13 58. On March 15, 2013, Teachscope again breached the parties' contract by  
14 preparing and filing two additional non-provisional U.S. patent applications, US 13/843,989  
15 and US 13/844,060, (also referred to as "Project Materials Patent Applications") that claimed  
16 priority to the abandoned '017 application. These additional Project Materials Patent  
17 Applications disclose and claim the same Project Materials subject matter as in the abandoned  
18 '017 application and identify Teachscope employees as the sole inventors and Teachscope as  
19 the sole owner.

20 59. Teachscope did not consult with the Gates Foundation regarding the  
21 preparation and filing of the Project Materials Patent Applications and the Gates Foundation  
22 did not consent to the filing of these patent applications. The Gates Foundation only learned  
23 of Teachscope's Project Materials Patent Applications after the fact. After learning of the  
24 Project Materials Patent Applications, the Gates Foundation made repeated demands that  
25 Teachscope abandon all the Project Materials Patent Applications. Teachscope has refused  
26

1 the Gates Foundation’s repeated demands to abandon all of the Project Materials Patent  
2 Applications.

3 60. U.S. Patent Application No. 13/317,232, published as US 2012/0240061 (“the  
4 ’232 application”), is directed to methods and systems for sharing content items relating to  
5 multimedia captured and/or direct observations of persons performing a task for evaluation.  
6 As originally filed, the ’232 application contains two independent claims.

7 61. During the prosecution of the ’232 application, the applicants presented at least  
8 one claim containing the language “providing a comment field on a display device for a first  
9 user to enter free-form comments related to an observation of one or more observed persons  
10 performing a task to be evaluated” which describes MET “Project Materials” according to the  
11 ICA and related Work Orders.

12 62. During the prosecution of the ’232 application, the applicants presented at least  
13 one claim containing the language providing a “list of content items for display to a first user  
14 on a user interface of a computer device, the content items relating to an observation of the  
15 one or more observed persons performing a task to be evaluated, the content items stored on a  
16 memory device accessible by multiple users to a first user, where in the content items  
17 comprise at least two of a video recording segment, an audio segment, a still image, observer  
18 comments and a text document, wherein the video recording segment, the audio segment and  
19 the still image are captured from the one or more observed persons performing the task,  
20 wherein the observer comments are from one or more observers of the one or more observed  
21 persons, and wherein a content of the test document corresponds to the performance of the  
22 task” which describes MET “Project Materials” according to the ICA and related Work  
23 Orders.

24 63. During the prosecution of the ’232 application, the applicants presented at least  
25 one claim containing the language “receiving a video recording of the one or more person  
26 performing the task to be evaluated by one or more remote persons; storing the video

1 recording on a memory device accessible by multiple users; appending at least one artifact to  
2 the video recording, at least one artifact comprising one or more of a time stamped comment,  
3 a text document, and a photograph” which describes MET “Project Materials” according to  
4 the ICA and related Work Orders.

5 64. U.S. Patent Application No. 13/317,226, published as US 2012/0208167 (“the  
6 ’226 application”), is directed to methods and systems for management of evaluation metrics  
7 and evaluation of persons performing a task based on multimedia captured and/or direct  
8 observations. As originally filed, the ’226 application contains three independent claims.

9 65. During the prosecution of the ’226 application, the applicants presented at least  
10 one claim containing the language “providing a user interface for display on a computer  
11 device and for allowing entry of at least a portion of a custom performance rubric by a first  
12 user” which describes MET “Project Materials” according to the ICA and related Work  
13 Orders.

14 66. During the prosecution of the ’226 application, the applicants presented at least  
15 one claim containing the language “receiving, via the user interface, a plurality of first level  
16 identifiers belonging to a first hierarchical level of a custom performance rubric being  
17 implemented to evaluate the performance of the task by the one or more observed persons  
18 based at least on an observation of the performance of the task” which describes MET  
19 “Project Materials” according to the ICA and related Work Orders.

20 67. During the prosecution of the ’226 application, the applicants presented at least  
21 one claim containing the language “storing the plurality of first level identifiers” which  
22 describes MET “Project Materials” according to the ICA and related Work Orders.

23 68. During the prosecution of the ’226 application, the applicants presented at least  
24 one claim containing the language “receiving, via the user interface, one or more lower level  
25 identifiers belonging to one or more lower hierarchical levels of the custom performance  
26 rubric, wherein each lower level identifier is associated with at least one of the plurality of

1 first level identifiers or at least one other lower level identifier, wherein the first level  
2 identifiers and the lower identifiers of the custom performance rubric correspond to a set of  
3 desired performance characteristics specifically associated with the performance of the task”  
4 which describes MET “Project Materials” according to the ICA and related Work Orders.

5 69. During the prosecution of the ’226 application, the applicants presented at least  
6 one claim containing the language “storing the one or more lower level identifiers” which  
7 describes MET “Project Materials” according to the ICA and related Work Orders.

8 70. During the prosecution of the ’226 application, the applicants presented at least  
9 one claim containing the language “outputting a plurality of rubrics for display on a user  
10 interface of a computer device, each rubric comprising a plurality of first level identifiers;  
11 each of the plurality first level identifiers comprising a plurality of second level identifiers,  
12 wherein each of the plurality of rubrics comprise a plurality of nodes and each node  
13 corresponds to a pre-defined desired performance characteristic associated with performance  
14 of the task, the task to be performed by the one or more observed persons based at least on an  
15 observation of the performance of the task” which describes MET “Project Materials”  
16 according to the ICA and related Work Orders.

17 71. During the prosecution of the ’226 application, the applicants presented at least  
18 one claim containing the language “providing a user interface for display on a computer  
19 device and for allowing entry of at least a portion of a custom performance rubric by a first  
20 user” which describes MET “Project Materials” according to the ICA and related Work  
21 Orders.

22 72. During the prosecution of the ’226 application, the applicants presented at least  
23 one claim containing the language “receiving a plurality of comments related to the  
24 observation of the performance of the task by the one or more observed person; receiving a  
25 selection of a comment from the plurality of comments from a second user; outputting a  
26 plurality of first level identifiers for display to the second user for selection in response to the

1 receiving of the selection of the comment; receiving a selected first level identifier from the  
2 second user; providing a subset of second level identifiers associated with the selected first  
3 level identifier from the plurality of second level identifiers to the second user for selection;  
4 and receiving a selected second level identifier ” which describes MET “Project Materials”  
5 according to the ICA and related Work Orders.

6 73. U.S. Patent Application No. 13/317,225, published as US 2012/0210252 (“the  
7 ’225 application”), is directed to methods and systems for using management of evaluation  
8 processes based on multiple observations of and data relating to persons performing a task to  
9 be evaluated. As originally filed, the ’225 application contains three independent claims.

10 74. During the prosecution of the ’225 application, the applicants presented at least  
11 one claim containing the language “creating an observation workflow associated with the  
12 performance evaluation of the task by the one or more observed persons and stored on a  
13 memory device” which describes MET “Project Materials” according to the ICA and related  
14 Work Orders.

15 75. During the prosecution of the ’225 application, the applicants presented at least  
16 one claim containing the language “allowing, via the user interface, a video observation to be  
17 assigned to a workflow, the video observation comprising a video recording of the task being  
18 performed by the one or more observed persons” which describes MET “Project Materials”  
19 according to the ICA and related Work Orders.

20 76. During the prosecution of the ’225 application, the applicants presented at least  
21 one claim containing the language “associating, via the user interface, a plurality of  
22 observations of the one or more observed persons performing the task to an evaluation of the  
23 task, wherein each of the plurality of observations is a different type of observation” which  
24 describes MET “Project Materials” according to the ICA and related Work Orders.

25 77. U.S. Patent Application No. 13/271,224, published as US 2012/0206566 (“the  
26 ’224 application”), is directed to methods and systems for relating to the capture of



1 multimedia content of observed persons performing a task for evaluation. As originally filed,  
2 the '224 application contains two independent claims.

3 78. During the prosecution of the '224 application, the applicants presented at least  
4 one claim containing the language “receiving a first audio input from a first microphone  
5 recording the one or more observed persons performing the task ” which describes MET  
6 “Project Materials” according to the ICA and related Work Orders.

7 79. During the prosecution of the '224 application, the applicants presented at least  
8 one claim containing the language “receiving a second audio input from a second microphone  
9 recording one or more persons reacting to the performance of the task” which describes MET  
10 “Project Materials” according to the ICA and related Work Orders.

11 80. During the prosecution of the '224 application, the applicants presented at least  
12 one claim containing the language “outputting, for display on a display device, a first sound  
13 meter corresponding to the volume of the first audio input” which describes MET “Project  
14 Materials” according to the ICA and related Work Orders.

15 81. During the prosecution of the '224 application, the applicants presented at least  
16 one claim containing the language “outputting, for display on a display device, a second  
17 sound meter corresponding to the volume of the second audio input ” which describes MET  
18 “Project Materials” according to the ICA and related Work Orders.

19 82. During the prosecution of the '224 application, the applicants presented at least  
20 one claim containing the language “providing a first volume control for controlling an  
21 amplification level of the first audio input and a second volume control for controlling an  
22 amplification level of the second audio input” which describes MET “Project Materials”  
23 according to the ICA and related Work Orders.

24 83. U.S. Patent Application No. 13/317,231, published as US 2012/0208168 (“the  
25 '231 application”), is directed to methods and systems relating to coding and/or scoring of  
26

1 observations and content observed persons performing a task to be evaluated. As originally  
2 filed, the '231 application contains four independent claims.

3 84. During the prosecution of the '231 application, the applicants presented at least  
4 one claim containing the language “outputting for display through a user interface on a  
5 display device, a plurality of rubric nodes to a first user for selection, wherein each rubric  
6 node corresponds to a desired characteristic for the performance of the task performed by the  
7 one or more observed persons” which describes MET “Project Materials” according to the  
8 ICA and related Work Orders.

9 85. During the prosecution of the '231 application, the applicants presented at least  
10 one claim containing the language “receiving, through an input device, a selected rubric node  
11 of the plurality of rubric nodes from the first user” which describes MET “Project Materials”  
12 according to the ICA and related Work Orders.

13 86. During the prosecution of the '231 application, the applicants presented at least  
14 one claim containing the language “outputting for display on the display device, a plurality of  
15 scores for the selected rubric nodes to the first user for selection, wherein each of the plurality  
16 of scores corresponds to a level at which the task performed satisfies the desired  
17 characteristics” which describes MET “Project Materials” according to the ICA and related  
18 Work Orders.

19 87. During the prosecution of the '231 application, the applicants presented at least  
20 one claim containing the language “ providing a professional development resource  
21 suggestion related to the performance of the task based at least on the score” which describes  
22 MET “Project Materials” according to the ICA and related Work Orders.

23 88. During the prosecution of the '231 application, the applicants presented at least  
24 one claim containing the language “providing a computer user interface for entry of  
25 multimedia captured observation scores, direct observation scores, and walkthrough survey  
26

1 scores” which describes MET “Project Materials” according to the ICA and related Work  
2 Orders.

3 89. U.S. Patent Application No. 13/843,989, published as US 2013/0212521 (“the  
4 ’989 application”), is directed to methods and systems for aligning items of evidence to an  
5 evaluation framework. As originally filed, the ’989 application contains three independent  
6 claims.

7 90. During the prosecution of the ’989 application, the applicants presented at least  
8 one claim containing the language “at least one processor and at least one memory storing  
9 executable program instructions and configured, through execution of the executable program  
10 instructions, to provide a user interface displayable to a user to: allow the user to define the  
11 evaluation workflow and store the evaluation workflow in a database” which describes MET  
12 “Project Materials” according to the ICA and related Work Orders.

13 91. During the prosecution of the ’989 application, the applicants presented at least  
14 one claim containing the language “allow the user to add a plurality of assessments to the  
15 evaluation workflow and store the plurality of assessments in association with the evaluation  
16 workflow in the database” which describes MET “Project Materials” according to the ICA  
17 and related Work Orders.

18 92. During the prosecution of the ’989 application, the applicants presented at least  
19 one claim containing the language “allow the user to add one or more parts to each of the  
20 plurality of assessments and store the one or more parts in association with the plurality of  
21 assessments in the database” which describes MET “Project Materials” according to the ICA  
22 and related Work Orders.

23 93. During the prosecution of the ’989 application, the applicants presented at least  
24 one claim containing the language “display the evaluation workflow including a plurality of  
25 assessments each defining an evaluation event at a given point in time to be assessed as part  
26

1 of an evaluation process spanning a evaluation period of time” which describes MET “Project  
2 Materials” according to the ICA and related Work Orders.

3 94. During the prosecution of the ’989 application, the applicants presented at least  
4 one claim containing the language “wherein each assessment includes one or more parts”  
5 which describes MET “Project Materials” according to the ICA and related Work Orders.

6 95. During the prosecution of the ’989 application, the applicants presented at least  
7 one claim containing the language “wherein at least one part defines one or more items of  
8 information to be associated with an assessment and needed for completion of the  
9 assessment” which describes MET “Project Materials” according to the ICA and related Work  
10 Orders.

11 96. During the prosecution of the ’989 application, the applicants presented at least  
12 one claim containing the language “allow one or more users to associate the one or more  
13 items of information to at least one part of at least one assessment, the one or more items of  
14 information including two or more of: live observation-related information, a recorded  
15 observation; a document file, a populated fillable form, and an external measurement  
16 imported from a source external to the evaluation workflow” which describes MET “Project  
17 Materials” according to the ICA and related Work Orders.

18 97. During the prosecution of the ’989 application, the applicants presented at least  
19 one claim containing the language “allow the one or more users to view the one or more items  
20 of information once associated with the at least one part of at least one assessment” which  
21 describes MET “Project Materials” according to the ICA and related Work Orders.

22 98. U.S. Patent Application No. 13/844,060, published as US 2013/0212507 (“the  
23 ’060 application”) is directed to methods and systems for use with an evaluation workflow for  
24 an evidence-based evaluation. As originally filed, the ’060 application contains four  
25 independent claims.  
26

1           99.     During the prosecution of the '060 application, the applicants presented at least  
2 one claim containing the language “receiving, through the evidence tagging interface, a user  
3 selection of one or more selected components” which describes MET “Project Materials”  
4 according to the ICA and related Work Orders.

5           100.    During the prosecution of the '060 application, the applicants presented at least  
6 one claim containing the language “storing an association of the one or more selected  
7 components and the given item of evidence” which describes MET “Project Materials”  
8 according to the ICA and related Work Orders.

9           101.    International Application No. PCT/US2011/055851, published as WO  
10 2012/051224 (“the '851 application”) is directed toward methods and systems for capturing,  
11 processing, managing and/or evaluating multimedia content of observed persons performing a  
12 task. As originally filed, the '851 application contains eleven independent claims.

13           102.    During the prosecution of the '851 application, the applicants presented at least  
14 one claim containing the language “providing a comment field on a display device for a first  
15 user to enter free form comments related to an observation of one or more observed persons  
16 performing a task to be evaluated” which describes MET “Project Materials” according to the  
17 ICA and related Work Orders.

18           103.    During the prosecution of the '851 application, the applicants presented at least  
19 one claim containing the language “receiving a free-form comment entered by the first user in  
20 the comment field and relating to the observation” which describes MET “Project Materials”  
21 according to the ICA and related Work Orders.

22           104.    During the prosecution of the '851 application, the applicants presented at least  
23 one claim containing the language “storing the free-form comment entered by the first user on  
24 a computer readable medium accessible by multiple users” which describes MET “Project  
25 Materials” according to the ICA and related Work Orders.  
26

1 105. During the prosecution of the '851 application, the applicants presented at least  
2 one claim containing the language "receiving a video recording of the one or more persons  
3 performing the task to be evaluated by one or more remote persons" which describes MET  
4 "Project Materials" according to the ICA and related Work Orders.

5 106. During the prosecution of the '851 application, the applicants presented at least  
6 one claim containing the language "storing the video recording on a memory device  
7 assessable by multiple users" which describes MET "Project Materials" according to the ICA  
8 and related Work Orders.

9 107. During the prosecution of the '851 application, the applicants presented at least  
10 one claim containing the language "appending at least one artifact to the video recording, at  
11 least one artifact comprising one or more of a time-stamped comment, a text document, and a  
12 photograph" which describes MET "Project Materials" according to the ICA and related  
13 Work Orders.

14 108. In spite of repeated demands by the Gates Foundation that all the Project  
15 Materials Patent Applications be abandoned, Teachscope has refused to abandon all the  
16 Project Materials Patent Applications and has continued to prosecute the Project Materials  
17 Patent Applications in an attempt to obtain their allowance and issuance as United States  
18 patents.

19 109. In further breach of the ICA, Teachscope has used the Gates Foundation's  
20 name and marks in publicly available materials for business development and other purposes  
21 without the Gates Foundation's prior written consent. Teachscope has promoted the Gates  
22 Foundation as a Teachscope "business partner" in its business development and promotional  
23 materials. See, e.g., Teachscope Hosts Charlotte Danielson Webinar on The Framework for  
24 Teaching (Feb. 3, 2011), Teachscope.com,  
25 [http://www.teachscope.com/binaries/content/assets/teachscope-marketing-  
website/about/press-releases/press-releases/danielson-webinar-final.pdf](http://www.teachscope.com/binaries/content/assets/teachscope-marketing-<br/>26 website/about/press-releases/press-releases/danielson-webinar-final.pdf); Teachscope and ETS

1 Join Forces to Develop Online Observer Training and Testing System for Teacher  
2 Evaluations (Sept. 13, 2011), Teachscape.com,  
3 [http://www.teachscape.com/binaries/content/assets/teachscape-marketing-  
5 website/about/press-releases/press-releases/ets-partnership-final.pdf](http://www.teachscape.com/binaries/content/assets/teachscape-marketing-<br/>4 website/about/press-releases/press-releases/ets-partnership-final.pdf); Teachscape's New  
6 Offerings Help Teachers Understand and Use Charlotte Danielson's Widely-Adopted  
7 Framework for Teaching (Feb. 8, 2012), Teachscape.com,  
8 [http://www.teachscape.com/binaries/content/assets/teachscape-marketing-  
10 website/about/press-releases/2012/fftes-and-pls\\_fft-final.pdf](http://www.teachscape.com/binaries/content/assets/teachscape-marketing-<br/>9 website/about/press-releases/2012/fftes-and-pls_fft-final.pdf). Teachscape has continued its  
11 unauthorized use after the Gates Foundation expressly told Teachscape to discontinue any  
12 such use.

11 110. The existence of dominant patents owned by Teachscape on MET Project  
12 Materials could prevent the access of the funded technology to other non-profits and  
13 companies that are dedicated to developing educational technology designed to help teachers  
14 provide quality education throughout the United States for low-income or impoverished  
15 school districts. Teachscape's actions interfere with the Gates Foundation's charitable  
16 objective of Global Access, and will prevent the competitive marketplace sought by the Gates  
17 Foundation's funding.

18 **Count 1**

19 **Breach of Contract**

20 111. The Gates Foundation repeats and re-alleges each of the foregoing allegations  
21 as though fully set forth herein.

22 112. The parties, for valuable consideration, entered into a valid and enforceable  
23 contract on April 15, 2009 (with subsequent Work Orders as set forth above) for the  
24 performance of services by Teachscape in return for money payments by the Gates  
25 Foundation.

1 113. Pursuant to the contract, Project Materials, including all materials, processes,  
2 techniques, and data, including any and all intellectual property made or conceived or reduced  
3 to practice or learned by Teachscope, were either owned alone by the Gates Foundation or  
4 jointly with Teachscope.

5 114. Pursuant to the contract, Teachscope was prohibited from preparing or filing  
6 any patent applications embodied in Project Materials without the prior written consent of the  
7 Gates Foundation.

8 115. In breach of the express terms of the parties' contract, Teachscope has prepared  
9 and filed patent applications, US 13/317,232, US 13/317,231, US 13/317,225, US 13/271,224,  
10 US 13/317,226, PCT/US2011/055851, US 13/843,989, and US 13/844,060, without  
11 obtaining prior written consent from the Gates Foundation. These Project Materials Patent  
12 Applications describe and claim Project Materials as the sole invention of Teachscope  
13 employees, and list Teachscope as the sole owner of the patent rights.

14 116. Teachscope has refused repeated demands by the Gates Foundation to abandon  
15 all the Project Materials Patent Applications, and, in continuing breach of the contract,  
16 Teachscope has continued to prosecute the Project Materials Patent Applications.

17 117. The Gates Foundation is the owner of United States Trademark Registration  
18 Nos. 4480104 and 4483838 for the trademark BILL & MELINDA GATES FOUNDATION  
19 in addition to all common law rights to the name and logo. The contract between the parties  
20 prohibited Teachscope from using the Gates Foundation's name or marks in any publicly  
21 available materials for business development purposes or otherwise without the Gates  
22 Foundation's prior written consent. In breach of the contract, Teachscope has used the Gates  
23 Foundation's name and marks in publicly available materials without the Gates Foundation's  
24 prior written consent.

25 118. Teachscope's breach of contract has damaged the Gates Foundation in an  
26 amount exceeding \$75,000.



1 **Count 2**

2 **Conversion**

3 119. The Gates Foundation repeats and re-alleges each of the foregoing allegations  
4 as though fully set forth herein.

5 120. Teachscope's United States Patent Application Nos. US 13/317,232, US  
6 13/317,231, US 13/317,225, US 13/271,224, US 13/317,226, PCT/US2011/055851, US  
7 13/843,989, and US 13/844,060, provide that Teachscope employees are the inventors and  
8 Teachscope is the sole owner of the subject matter disclosed and claimed in the Project  
9 Materials Patent Applications.

10 121. Teachscope's United States Patent Application Nos. US 13/317,232, US  
11 13/317,231, US 13/317,225, US 13/271,224, US 13/317,226, PCT/US2011/055851, US  
12 13/843,989, and US 13/844,060 disclose and claim Project Materials that are either solely  
13 owned by the Gates Foundation or are jointly owned by the Gates Foundation and  
14 Teachscope.

15 122. By filing United States Patent Application Nos. US 13/317,232, US  
16 13/317,231, US 13/317,225, US 13/271,224, US 13/317,226, PCT/US2011/055851, US  
17 13/843,989, and US 13/844,060, Teachscope has willfully and without lawful justification  
18 appropriated Gates Foundation's property as Teachscope's sole property without the consent  
19 of the Gates Foundation.

20 123. Teachscope's unlawful misappropriation has damaged the Gates Foundation in  
21 an amount exceeding \$75,000.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, the Gates Foundation prays for the following:

- 24 A. An order requiring Teachscope to abandon its Project Materials Patent  
25 Applications and prohibiting a future breach of the parties' contract by the  
26 filing of any similar patent application;

- 1 B. An order requiring Teachscape to cease any unauthorized use of the Bill &  
2 Melinda Gates Foundation name on its website and in any of its marketing  
3 and promotional material;  
4 C. An award of damages;  
5 D. Interest and costs; and  
6 E. Such further relief as this Court may deem just and equitable.

7  
8 DATED this 1st day of May, 2015.

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