

SPESCOM SOFTWARE INC

Form POS AM

January 22, 2007

As filed with the Securities and Exchange Commission on January 19, 2007

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1

TO

FORM S-1

REGISTRATION STATEMENT

**Under
THE SECURITIES ACT OF 1933**

SPESCOM SOFTWARE INC.

(Exact Name of Registrant as Specified in Its Charter)

California

7373

95-3634089

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(State or Other Jurisdiction of
Incorporation or Organization)

(Primary Standard Industrial
Classification Code Number)

(IRS Employer Identification
Number)

**10052 Mesa Ridge Court, Suite 100
San Diego, California 92121
(858) 625-3000**

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(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Agent for Service:

Copy to:

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John W. Low
Chief Financial Officer and Secretary
Spescom Software Inc.
10052 Mesa Ridge Court, Suite 100
San Diego, California 92121
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(Name and address, including zip code, and telephone number, including area code, of agent for service)

Approximate Date of Commencement of Proposed Sale to the Public: As soon as practicable after the Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act), check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

CALCULATION OF REGISTRATION FEE

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Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Shares, no par value	34,139,903	\$ 0.11	\$ 3,755,389(1)	\$ 401.83(3)
Common Shares, no par value, underlying certain of selling shareholders warrants	1,851,852	\$ 0.27	\$ 500,000(2)	\$ 53.50(3)
Common Shares, no par value, underlying certain of selling shareholders warrants	300,000	\$ 0.11	\$ 33,000(2)	\$ 3.53(3)
Total	36,291,755		\$	458.86

-
- (1) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended. The average of the high and low prices as of June 16, 2006 was \$0.11 per share.
- (2) In accordance with Rule 457(g), the proposed maximum aggregate offering price of shares issuable upon the exercise of warrants is based on a proposed maximum offering price per unit equal to the higher of (i) the exercise price of the warrants, (ii) the offering price of the common shares in the registration statement, or (iii) the average sales price of the common shares as determined by 457(c).
- (3) Previously paid.
-

This registration statement contains a combined prospectus under Rule 429 under the Securities Act, which relates to the 36,291,755 shares reflected in the calculation of registration fee table and to 7,044,583 shares previously registered under the Securities Act on the registration statement on Form S-2, as amended, bearing File No. 333-121038. Accordingly, upon effectiveness, this registration statement shall act as a post-effective amendment to such registration statement on Form S-2.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated January 19, 2007

PROSPECTUS

43,336,338 Common Shares
Spescom Software Inc.

The selling shareholders named in this prospectus are offering up to 43,336,338 of our common shares, including up to 33,793,103 common shares to be issued upon conversion of Series I Preferred Stock and 6,726,852 common shares issuable upon the exercise of certain warrants. We will not receive any of the proceeds from their sale of our shares, but if the selling shareholders pay the exercise price under any of the warrants in cash, we will use those proceeds for general corporate purposes, including working capital.

Our common shares are currently listed on the Over the Counter Bulletin Board (OTCBB). Our trading symbol is SPCO.OB.

Investing in our shares involves a high degree of risk. See Risk Factors beginning on page 5 of this prospectus to read about the risks you should consider before buying our shares.

The selling shareholders are offering these common shares. The selling shareholders may sell all or a portion of these shares from time to time in market transactions through any market on which our common shares are then traded, in negotiated transactions or otherwise, and at prices and on terms that will be determined by the then prevailing market price or at negotiated prices directly or through a broker or brokers, who may act as agent or as principal or by a combination of such methods of sale. The selling shareholders will receive all proceeds from the sale of the common shares. For additional information on the methods of sale, you should refer to the section entitled Plan of Distribution.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is January 19, 2007

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You may only rely on the information contained in this prospectus or that we have referred you to. We have not authorized anyone to provide you with different information. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the common shares offered by this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any common shares in any circumstances in which such offer or solicitation is unlawful. Neither the delivery of this prospectus nor any sale made in connection with this prospectus shall, under any circumstances, create any implication that there has been no change in our affairs since the date of this prospectus or that the information contained by reference to this prospectus is correct as of any time after its date.

PROSPECTUS SUMMARY

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This summary highlights information contained elsewhere in this prospectus. Because it is a summary, it does not contain all of the information that you should consider before investing in us. You should read the entire prospectus carefully before making an investment decision. The sections entitled Risk Factors, and Information Regarding Forward-Looking Statements should be read together with the more detailed information in the financial statements and the accompanying notes in the section entitled Financial Statements and Certain Other Financial Information. In this prospectus, references to the Company, we, us or our refer to Spescom Software Inc., except where the context otherwise requires.

Our Company

Overview

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Spescom Software Inc. (the Company) was founded and incorporated as a California corporation in 1981 and is headquartered in San Diego, California with an international sales and support subsidiary in London, United Kingdom. The Company develops, markets and supports eB, its integrated suite of collaborative document, configuration and records management software solutions. The Company's eB suite is a set of software technologies that support, improve and enable collaboration among legacy enterprise solutions. The eB suite enables the efficient capture, management and distribution of all types of information across an enterprise. The Company believes eB's integration of document, configuration and records management functionality onto a single platform is a major differentiator and significant competitive advantage that allows the Company to address the information management needs of an enterprise in a more holistic manner than solutions provided by other vendors.

In 2000, the Company acquired the rights to certain configuration management technology and skills from Spescom Ltd. (Spescom Ltd.), which at the same time acquired a controlling interest in the Company. From this combination of document and configuration management technologies and skills, the Company began doing business as Spescom Software Inc. on October 1, 2001. As of January 16, 2007, Spescom Ltd. owned approximately 56% of the outstanding common shares of the Company after giving effect to the conversion of the shares of the Company's Series F Preferred Stock held by Spescom Ltd.

The document/content management technology developed by the Company and integrated with the configuration management technology developed by Spescom Ltd. provides a powerful solution to the business and information management challenges faced by enterprises that design, build, manage and operate complex products and assets. The combined document and configuration management capabilities of the eB software suite enables it to provide full IDM functionality together with PDM functionality at price points that satisfy a broad range of user needs. The eB suite enables the management of all unstructured information (documents/content) as well as structured information (product/asset/process) on a single platform, thereby enabling change to be managed across both environments.

The Company's integrated document, configuration and records management (iDCR) solutions enable all requirements (design, safety, environmental, etc.), all documents, structured and unstructured, within an enterprise (including office documents, emails, CAD drawings, images, voice and computer print outs), and all data on products, assets, processes, projects and people to be captured, identified and inter-linked. This results in a unified and structured view of all enterprise information and promotes rapid access to relevant information by authorized users in context to their tasks and functions. eB's collaborative workspace environment provides an automated closed-loop change management process that ensures information integrity throughout the enterprise and compliance with legal, regulatory, corporate, audit and quality requirements.

The Company is building its business strategies around two core strengths. First, the Company's software and related services solve critical and recurring problems for companies operating in complex, asset-intensive industries. Second, the Company's software solutions have clear and significant architectural advantages that enable the Company to offer high value solutions to the Company's users as well as to distinguish itself from its competitors. To capitalize on these strengths, the Company has instituted the following strategic initiatives:

Continue to develop and position eB as a critical but complementary enterprise platform.

Continue direct sales in the Company's vertical markets.

Form product strategic partnering agreements to be able to provide more enhanced solutions

Enter new markets through increased investment in and expansion of strategic partnerships.

Outsource non-core operations.

Increase the Company's market presence.

The Company intends to continue to extend its position as a technology leader in developing and marketing integrated document, configuration and records management solutions. The Company intends to do this by continuing to enhance the features and functionality of its eB product suite using industry best practices, customer input and feedback and current technologies, including tools to allow users to tailor the look and feel of the product, administrative tools to enable systems operators to easily setup and make changes to the system and add tighter integration with other third party enterprise products. Through this enhanced functionality and integration the Company's products can provide even faster deployment and greater management control of enterprise information. The Company also plans to introduce new products and product extensions which are complementary to its existing suite of products and which address both existing and emerging market needs.

During 2005, the Company released a major update to eB 14 which is the Company's flagship platform based on the Microsoft .NET architecture. This platform has over two years of proven production use in high-volume / high-usage environments. Existing customers continue to migrate to eB Version 14, generating service revenue and new license opportunities. The Company expects that the migration of existing customers will take place over the next 18 months. In 2005, the eB product was certified by the Institute of Configuration Management, to be compliant with their CMII standard. The Company is developing specific applications for the vertical markets on which the Company has focused, providing additional license and services revenue from existing customers, as well as new marketing and sales opportunities into the selected vertical markets. The Company obtained Gold Partner status from Microsoft during 2005 and is currently participating in Microsoft beta and new product launch programs, which allows the Company to properly plan for support of the latest and soon to be released computing environments. In December 2006, the Company announced the ability of eB to manage the integrity of documents stored in a Microsoft Office 2007 Server (SharePoint), making it even easier to deploy eB solutions within an enterprise.

The Company's principal executive offices are located at 10052 Mesa Ridge Court, Suite 100, San Diego, California 92121 and the Company's general telephone number is (858) 625-3000.

This Offering

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Shares offered by the selling shareholders	43,336,338, including 33,793,103 shares of common stock issuable upon conversion of the Company's Series I Preferred Stock and 6,726,852 shares of common stock issuable upon exercise of warrants (collectively, the Warrants).
Use of proceeds	We will not receive any proceeds from the sale of common shares by the selling shareholders. The proceeds from this offering are solely for the account of the selling shareholders. We may receive proceeds from any exercise of the Warrants. Any net proceeds that we receive from any exercise of the Warrants will be used for general corporate purposes, including working capital for our business.
Risk factors	The purchase of our common stock involves a high degree of risk. You should carefully review and consider Risk Factors beginning on page 5.
OTC Bulletin Board Trading Symbol	SPCO.OB

RISK FACTORS

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An investment in our shares involves a high degree of risk. Before making an investment decision, you should carefully consider all of the risks described in this prospectus. If any of the risks discussed in this prospectus actually occur, our business, financial condition and results of operations could be materially and adversely affected. If this were to happen, the price of our shares could decline significantly and you may lose all or a part of your investment. The risk factors described below are not the only ones that may affect us. Additional risks and uncertainties that we do not currently know about or that we currently deem immaterial may also adversely affect our business, financial condition and results of operations. Our forward-looking statements in this prospectus are subject to the following risks and uncertainties. Our actual results could differ materially from those anticipated by our forward-looking statements as a result of the risk factors below. See Information Regarding Forward-Looking Statements.

The Company has a history of significant losses. If we do not sustain profitability, our financial condition and stock price could suffer.

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The Company has a history of losses and may incur losses in the foreseeable future. We incurred net losses of \$2,376,000, \$6,049,000 and \$223,000 for the fiscal years 2006, 2005 and 2004, respectively. As of September 30, 2006, our accumulated deficit was \$92,313,000. If revenues do not reach the levels the Company anticipates, or if operating expenses exceed the Company's expectations, the Company may not be able to achieve or sustain profitability in the near future or at all. If the Company is unable to achieve and sustain profitability at satisfactory levels, its financial condition and stock price could be materially adversely affected.

The Company will be controlled by Spescom Ltd. and its subsidiaries as long as they are entitled to a majority of the votes eligible to be cast in the election of directors.

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As of January 16, 2007, Spescom Ltd. (together with its subsidiaries), by virtue of its ownership of common stock and Series F Preferred Stock, was entitled to 27,408,249, or 56%, of the total number of votes eligible to be cast in the election of directors. Spescom Ltd. therefore currently has the ability to elect a majority of the Company's board of directors and to remove the entire board of directors, with or without cause, without calling a special meeting. Moreover, even if the above-referenced percentage were to drop below 50%, it is likely that Spescom Ltd. would have sufficient votes to retain control of the Company. As a result, Spescom Ltd. will likely continue to control all matters affecting the Company, including but not limited to:

the composition of the Company's board of directors and, through it, any determination with respect to the Company's business direction and policies, including the appointment and removal of officers;

the allocation of business opportunities that may be suitable for the Company and Spescom Ltd.;

any determinations with respect to mergers or other business combinations or extraordinary transactions;

the Company's acquisition or disposition of assets; and

the Company's financing.

Spescom Ltd. is not prohibited from selling a controlling interest in us to a third party.

Upon a liquidation of the Company, sale of all or substantially all of the Company's assets, or merger of the Company, the Company's preferred shareholders would be entitled to receive substantial payments prior to any distribution to the common shareholders.

Upon a liquidation of the Company, the holders of Series F Convertible Preferred Stock would be entitled to receive, prior to any distribution to the holders of common stock, an aggregate amount equal to \$5,291,000 plus accrued but unpaid dividends per share and interest on all such dividends, which as of December 31, 2006 totaled \$971,000. Upon a liquidation of the Company, sale of all or substantially all of the Company's assets, or merger of the Company, prior to any distribution or payment of merger consideration to the holders of common stock, the holders of Series I Convertible Preferred Stock would be entitled to receive an aggregate amount equal to the higher of (i) \$2,450,000 plus declared but unpaid dividends per share, which as of December 31, 2006 totaled \$46,000 and (ii) the amount such holders would be entitled to receive had such holders' shares of Series I Preferred Stock been converted into shares of common stock immediately prior to the liquidation, sale of assets or merger in accordance with the terms of the Series I Preferred Stock.

The Company has borrowed funds from Spescom Ltd., which debts are secured by all of the Company's assets, and the Company may become insolvent if repayment of such debt is due prior to the Company's ability to obtain funds to repay such debt or if the Company fails to restructure such debt.

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At December 31, 2006, the Company owed, including accrued but unpaid interest, an aggregate amount of \$873,000 to Spescom Ltd. Interest accrues on such debt at an annual interest rate of 10%, and such debt is secured by a security interest in favor of Spescom Ltd. on all of the Company's assets. In January 2007 the Company paid \$200,000 on the debt to Spescom Ltd. For the balance of the debt Spescom Ltd. has agreed to extend the maturity date until October 1, 2007. If the Company is unable to generate sufficient cash flow from its operations, secure funds from the capital markets or lenders or restructure its debt to Spescom Ltd., the Company will become insolvent.

The Company will likely not be able to rely on Spescom Ltd. to fund its future capital requirements, and financing from other sources may not be available on favorable terms or at all.

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The Company may need financing in the future and such financing may not be available on favorable terms or at all from any source. Although the Company in the past has received funding from Spescom Ltd. for working capital purposes, the Company believes that, due to Spescom Ltd. s current financial condition, it is unlikely that Spescom Ltd. would provide additional financing. In addition, if Spescom Ltd. were able to provide additional loans on terms acceptable to the Company, the funding of such loans could be delayed or prevented by currency exchange regulations of the Republic of South Africa, under which Spescom Ltd. is required to apply for and obtain the approval of the South African Reserve Bank before providing any funds to the Company.

The Company believes its capital requirements will vary greatly from quarter to quarter, depending on, among other things, capital expenditures, fluctuations in its operating results, financing activities, and investments and third party products and receivables management. The Company s future liquidity will depend on its ability to generate new system sales of its eB product suite in the near term, which cannot be assured. Failure to generate sufficient system sales to meet the Company s cash flow needs can be expected to have a material adverse effect on the Company s business, results of operations, and financial condition. Management believes that the Company s current cash and receivables, as well as additional cash that may be generated from operations, will be sufficient to meet its short-term needs for working capital. However, the Company may not be able to obtain sufficient orders to enable the Company to achieve a sustained break-even level of cash flow, which would be necessary to continue operations in the absence of further financing. Future equity financings would be dilutive to the existing holders of the Company s common stock. Future debt financings could involve restrictive covenants. Moreover, the Company may not be able to attract equity or debt financing at all.

The Company is dependent on sales to a relatively small number of new customers each quarter, so any failure to close a sale to any customer could have a material adverse effect on its quarterly operating results.

A small number of customers has typically accounted, and will continue in the future to account, for a large percentage of the Company's annual revenues. Constellation Energy Group accounted for 13% of revenue for fiscal 2006. Network Rail accounted 16% of the Company's revenues in fiscal 2005. Network Rail and Constellation Energy Group accounted for 23% and 15%, respectively, of revenues for fiscal 2004. Because of the Company's reliance on sales to relatively few customers, the loss of any sale could have a material adverse effect on the results of its operations on any given quarter. Additionally, a significant portion of the Company's revenues has historically been, and is expected in the future to be, derived from the sale of systems to new customers. The Company generally incurs significant marketing and sales expense prior to entering into a contract with a new customer that generates revenues. The length of time it takes to establish a new customer relationship typically ranges from 6 to 12 months. As such, the Company may incur significant expenses associated with its sales efforts directed to prospective customers in any particular period before any associated revenues stream begins. If the Company is not successful at obtaining significant new customers or if a small number of customers cancel or delay their orders for its products, then its business and its prospects could be harmed which may cause the price of the Company's common stock to decline.

The Company has granted a source code license in the eB product suite to Aveva Solutions Limited and could face competition from the offering by that company or one of its sublicensees of products with substantially the same functionality as the eB product suite.

On October 2, 2006, the Company entered into a \$2 million licensing contract with an engineering IT solutions and services company, Aveva Solutions Limited (AVEVA), by which the Company granted to AVEVA a non-exclusive perpetual license to use and sublicense (subject to certain restrictions described below) the technology underlying the Company's eB product suite, including the source code of the eB product suite. However, prior to October 2, 2007, AVEVA may not actively offer a product that includes substantial functionality from the eB product suite to specified customers of the Company, which comprise substantially all of the Company's customers. In addition, prior to March 31, 2008, AVEVA may not (1) sublicense the source code of the eB product suite or any derivative of it (except to third party contractors under limited circumstances) or (2) sublicense the eB product suite or any derivative of it when such technology is not included with other products (except to existing customers of AVEVA's parent company, Aveva Group plc, and certain of its affiliates). Nevertheless, subject to the foregoing restrictions, AVEVA or a party to whom AVEVA grants a sublicense could offer products using the Company's source code and providing substantially the same functionality as the eB product suite, which could have a material adverse impact on the Company's business, results of operations, and financial condition. The Company is not aware, however, that AVEVA has undertaken or intends to undertake any activities using the licensed technology that are in direct competition with the Company's business. Furthermore, the Company believes, based on communications with AVEVA, that AVEVA intends to use the licensed technology only in products designed for use in and offered to business segments that the Company does not currently serve or intend to serve.

The Company's operating results are difficult to predict and fluctuate substantially from quarter to quarter and year to year, which may increase the difficulty of financial planning and forecasting and may result in declines in the Company's stock price.

The Company's future operating results may vary from the Company's past operating results, are difficult to predict and may vary from year to year due to a number of factors. Many of these factors are beyond the Company's control. These factors include:

the potential delay in recognizing revenue from license transactions due to revenue recognition rules which the Company must follow;

the tendency to realize a substantial amount of revenue in the last weeks, or even days, of each quarter due to the tendency of some of the Company's customers to wait until quarter or year end in the hope of obtaining more favorable terms;

customer decisions to delay implementation of the Company's products;

the size and complexity of the Company's license transactions;

any seasonality of technology purchases;

demand for the Company's products, which can fluctuate significantly;

the timing of new product introductions and product enhancements by both the Company and its competitors;

changes in the Company's pricing policy;

the publication of opinions concerning us, the Company's products or technology by industry analysts;

changes in foreign currency exchange rates; and

domestic and international economic and political conditions.

One or more of these factors may cause the Company's operating expenses to be disproportionately high or the Company's gross revenues to be disproportionately low during any given period, which could cause the Company's net revenue and operating results to fluctuate significantly. The Company's operating results have fluctuated significantly in the past. You should not rely on the Company's annual operating results to predict its future results because of the significant fluctuations to which the Company's results are subject.

As a result of these and other factors, operating results for any fiscal year are subject to significant variation, and the Company believes that period-to-period comparisons of its results of operations are not necessarily meaningful in terms of their relation to future performance. You should not rely upon these comparisons as indications of future performance. It is likely that the Company's future quarterly and annual operating results from time to time will not meet the expectations of public market analysts or investors, which could cause a drop in the price of its common stock.

The Company's market is subject to rapid technological change and if the Company fails to continually enhance its products and services in a timely manner, its revenue and business would be harmed.

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The Company must continue to enhance and improve the performance, functionality and reliability of its products and services in a timely manner. The software industry is characterized by rapid technological change, changes in user requirements and preferences, frequent new product and services introductions embodying new technologies, and the emergence of new industry standards and practices that could render the Company's products and services obsolete. The Company has experienced product development delays in the past, and may experience delays in the future. The Company's failure to continually enhance its products and services in a timely manner would adversely impact its business and prospects. In the past, the Company has also discovered that some of its customers desire additional performance and functionality not currently offered by its products. The Company's success will depend, in part, on its ability to internally develop and license leading technologies to enhance its existing products and services, to develop new products and services that address the increasingly sophisticated and varied needs of its customers, and to respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis. The Company's product development efforts with respect to its eB product suite are expected to continue to require substantial investments by the Company, and the Company may not have sufficient resources to make the necessary investments. If the Company is unable to adapt its products and services to changing market conditions, customer requirements or emerging industry standards, it may not be able to maintain or increase its revenue and expand its business.

The Company's lack of product diversification means that any decline in price or demand for its products and services would seriously harm its business.

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The eB product suite and related services have accounted for substantially all of the Company's revenue and this situation is expected to continue for the foreseeable future. Consequently, a decline in the price of, or demand for, the eB product suite or related services, or their failure to achieve broad market acceptance, would seriously harm the Company's business.

Significant unauthorized use of the Company's products would result in material loss of potential revenues and the Company's pursuit of protection for its intellectual property rights could result in substantial costs to it.

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The Company's software is licensed to customers under license agreements containing provisions prohibiting the unauthorized use, copying and transfer of the licensed program. Policing unauthorized use of the Company's products is difficult and, while the Company is unable to determine the extent to which piracy of its software products exists, any significant piracy of its products could materially and adversely affect the Company's business, results of operations and financial condition. In addition, the laws of some foreign countries do not protect the Company's proprietary rights to as great an extent as do the laws of the United States and the Company's means of protecting its proprietary rights may not be adequate.

The Company relies on third party software products incorporated in its products. Any loss of use to such third party software could result in delays in the Company's product shipments.

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The Company relies on certain software that it licenses from third parties, including software that is integrated with internally developed software and used in the Company's products to perform key functions. There can be no assurances that the developers of such software will remain in business, that they will continue to support their products, that their products will otherwise continue to be available to the Company on commercially reasonable terms or that their products are free from bugs or defects. The loss of or inability to maintain any of these software licenses could result in delays or reductions in product shipments until equivalent software can be developed, identified, licensed and integrated, which could adversely affect the Company's business, operating results and financial condition.

If third parties claim that the Company infringes on their patents, trademarks, or other intellectual property rights, it may result in costly litigation or require the Company to make royalty payments.

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The Company is not aware that any of its software products infringe the proprietary rights of third parties. There can be no assurance, however, that third parties will not claim infringement by the Company with respect to its current or future products. The Company expects that software product developers will increasingly be subject to infringement claims. Any such claims, with or without merit, could be time-consuming, result in costly litigation, cause product shipment delays, consume significant management time or require the Company to enter into royalty or licensing agreements. Such royalty or licensing agreements, if required, may not be available on terms acceptable to the Company or at all, which could have a material adverse effect on the Company's business, results of operations and financial condition.

The Company may face product liability claims from its customers.

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The Company's license agreements with its customers usually contain provisions designed to limit its exposure to potential product liability claims. It is possible, however, that the limitation of liability provisions contained in the Company's license agreements may not be effective under the laws of some jurisdictions. A successful product liability claim brought against the Company could result in payment by the Company of substantial damages, which would harm its business, operating results and financial condition and cause the price of its common stock to fall.

If the Company loses key personnel, or is unable to attract and retain additional key personnel, the Company may not be able to successfully grow and manage its business.

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The Company believes that its future success will depend upon its ability to attract and retain its key technical and management personnel. These employees are not subject to employment contracts. The Company may not be successful in retaining its key employees in the future or in attracting and assimilating replacement or additional key personnel. Any failure in retaining and attracting management personnel may impair its ability to rapidly grow and manage its business.

The Company faces intense competition from several competitors and may be unable to compete successfully.

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The market for the Company's products is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. The Company currently encounters competition from a number of public and private companies, including Electronic Document Management System/Enterprise Content Management vendors such as EMC (formerly Documentum), FileNet, OpenText, Sword and Hummingbird; Enterprise Asset Management vendors such as Indus and MRO/Maximo; and to a lesser extent Product Data Management/Product Lifecycle Management vendors such as Matrix I, PTC and EDS. Many of these direct competitors have significantly greater financial, technical, marketing and other resources than the Company. The Company also expects that direct competition will increase as a result of recent consolidation in the software industry.

The Company also faces indirect competition from systems integrators and VARs. The Company relies on a number of systems consulting and systems integration firms for implementation and other customer support services, as well as for recommendation of its products to potential purchasers. Although the Company seeks to maintain close relationships with these service providers, many of these third parties have similar, and often more established, relationships with the Company's principal competitors. If the Company were unable to develop and retain effective, long-term relationships with these third parties, the Company's competitive position would be materially and adversely affected. Further, these third parties may market software products in competition with the Company in the future and may otherwise reduce or discontinue their relationship with, or support of, the Company and its products.

In addition, database vendors, such as Oracle, IBM and Microsoft are potential competitors in the future if they acquire competitive technology or otherwise expand their current product offerings. Like the Company's current competitors, these companies have longer operating histories, significantly greater financial, technical, marketing and other resources and name recognition and a larger installed base of customers than the Company. Several of these companies, including Oracle, Microsoft, IBM and others, have well-established relationships with the Company's current and potential customers and strategic partners, as well as extensive resources and knowledge of the enterprise software industry that may enable them to offer a single-vendor solution more easily than the Company can. In addition, the Company's competitors may be able to respond more quickly to new or emerging technologies and changes in customer requirements, or to devote greater resources to the development, promotion and sale of their products than the Company can. If the Company cannot respond to its competitors adequately and in a timely manner, then it may be required to reduce prices for its products and could suffer reduced gross margins and loss of market share, any of which could harm its business, prospects, financial condition and operating results, causing the price of its common stock to decline. In addition, the Company's past financial losses and customer uncertainty regarding the Company's financial condition are likely to have a material adverse effect on the Company's ability to sell its products in the future against competitors.

The Company's common stock is deemed to be penny stock, which may make it more difficult for investors to sell their shares due to suitability requirements.

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The Company's common stock is deemed to be penny stock as that term is defined in Rule 3a51-1 promulgated under the Securities Exchange Act of 1934. These requirements may reduce the potential market for the Company's common stock by reducing the number of potential investors. This may make it more difficult for investors in the Company's common stock to sell shares to third parties or to otherwise dispose of them. This could cause the Company's stock price to decline. Penny stock is stock:

With a price of less than \$5.00 per share;

That is not traded on a recognized national exchange;

Whose prices are not quoted on the NASDAQ automated quotation system (NASDAQ listed stock must still have a price of not less than \$5.00 per share); or

In issuers with net tangible assets less than or equal to \$2.0 million (if the issuer has been in continuous operation for at least three years) or \$5.0 million (if in continuous operation for less than three years), or with average revenues of less than \$6.0 million for the last three years.

Broker/dealers dealing in penny stocks are required to provide potential investors with a document disclosing the risks of penny stock. Moreover, broker/dealers are required to determine whether an investment in a penny stock is a suitable investment for a prospective investor.

The Company's common stock trades sporadically; the market price of the Company's common stock may be volatile.

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The Company's common stock currently trades sporadically on the OTC Bulletin Board. The market for the Company's common stock may continue to be an inactive market, and the market price of the Company's common stock may experience significant volatility.&nb