

Surviving Smear

By Kendall Jones

The owners of xG Technology could become poster boys for Sarasota's growing high-tech industry...if they can overcome recent vilification

Rick Mooers is nervous.

He is sitting on perhaps the most revolutionary advance communications technology since Alexander Graham Bell rang that first telephone. It will change everything.

The technology, called "xG Technology," is protected by patents, endorsed by technology industry leaders worldwide, and cheered on by major funding institutions like Bear Stearns. Heck, Rick Mooers could be the next Bill Gates—maybe bigger.

So why in the world is he nervous? Because his company is headquartered in Sarasota, home to odious ghosts that haunt Rick Mooers and his business partner Roger Branton.

In the last two years, Mooers and Branton have been painted in the local press as scam artists who set up complex Ponzi schemes to defraud investors around the world out of millions of dollars. In the first eight months of 2002, at least 10 stories ran in the *Sarasota Herald-Tribune* about the partners and none of those were complimentary.

The stories centered around lawsuits relating to the partners' previous business venture, iDigi Communications. The articles included accusations that the men had "pilfered," "siphoned," and "pirated"

company assets, distributed intentionally falsified financial statements, and otherwise deliberately defrauded and misled investors.

Because Mooers and Branton heeded their attorneys' advice not to speak to the press while the litigation was pending, they did not defend themselves in the press resulting in decidedly lopsided media accounts.

The rampant bad press infected every part of the men's lives—from damage to their professional reputations to the way neighbors eyed them suspiciously. Mooers ultimately moved his family to Connecticut.

Understandably, Mooers and Branton are still reeling from the experience, but these men are clearly fighters not quitters. The ugliness behind them, they are ready to launch their newest technological advance, and it's The Big One.

With an anxious deep breath, they say that they want to launch this project out of Sarasota, but they are gun shy about doing so as the result of their recent experience. If they do go forward in Sarasota their company and product would become Sarasota's golden child, the model for the kind of business Sarasota wants to attract in its economic development plans.

But will Sarasota give them the chance?

When Rick Mooers and Roger Branton saw what Joe Bobier had created in Parkersburg, West Virginia in 1999, They knew they were looking at a potential goldmine. Local telephone lines did not handle Internet traffic well, so Bobier had set up essentially a wireless network, with a wireless last-mile solution to connect the network into the home. It was a precursor to the now much-lauded "WiFi" systems.

Mooers merchant bank bought all of it—the technology, the system, even Bobier himself, whom Mooers recognized as a technology genius with a brain overflowing with revolutionary ideas. Over time, Bobier himself would become the real asset. Mooers set Bobier up in a private lab in Florida where he could spend his days doing what he does best—invent. Bobier's Florida set-up was incorporated as a separate entity owned by the merchant bank called "Island Labs, LLC."

Mooers planned to copy the West Virginia model and expand it into other cities all over the world. He and Branton set up iDigi, headquartered in Sarasota, to own and market the system. They focused on Nordic countries, which are generally highly

advanced in communications technology. By the fall of 2000, they had a deal to set up the system in Gothenburg, Sweden. Only a few months later, they got a deal to install the system in Reykjavik, Iceland. By all contemporaneous media accounts, the system was well received. Mooers says that the company was profitable in its first year.

They were in the process of building a system in Sarasota, and already had test clients, when tragedy struck.

Despite the fact that iDigi was building a high-capital, high-tech business with four locations in three countries, it had managed to keep its expenditures surprisingly low. Wireless companies can spend billions setting up networks, but iDigi spent less than \$30 Million by the end of 2001. They were ready to take the

company to the next level and they were hoping for permanent institutional funding from GE Capital in September 2001 toward that end. Pending the approval process from GE, iDigi got a bridge loan from one of its major European investors, Lífeyrissjóður Nordulands (“LN”), Iceland’s largest private pension fund, run by well educated, experienced investments expert Kari Karason. Karason had \$5 million of LN’s money invested in iDigi, and gave the company another \$5 million for the bridge loan. A bridge loan, a loan to “tie a company over” while it awaits expected institutional funding, is inherently risky because the expected funding may not come through. Accordingly, bridge loans tend to carry higher interest rates and heavier security requirements, and this was no exception.

What is a Merchant Bank?

Mooers Branton & Company is a merchant bank, a term more familiar to Europeans than Americans.

Merchant banks do not provide normal banking services to the public. Most are more like institutional investors, providing companies with financing, long-term loans, and underwriting, especially in early stages of the business. Their knowledge of international finance makes most merchant bankers specialists in dealing with multinational corporations.

Like Mooers Branton, most merchant bankers make the investments with their own money and their own accounts,

unlike venture capitalists, who typically invest with a fund composed of other investors’ money. Mooers Branton finances young businesses through merger and acquisition, so they actually own the businesses, giving them more control and personal involvement than a more arm’s-length investor might receive.

Explains Mooers: “We are like a venture capitalist or an investment banker, except it’s our own money; our own money is at risk, which keeps us honest. We acquire a company, get it in shape, then bring in angel investors, then maybe do an institutional or venture

capital round, then maybe sell it or go public with Wall Street underwriters. But we hold on to majority control of the company through each of those rounds without being squeezed out. Because of this structure, we are on the same side of the tables as the original entrepreneur—it’s in our best interest to put the business on a pedestal and do what it takes to make it succeed. Venture capitalists know they will lose 80% or more of the time, but the successes make it worth the risk. Because we are leading with our money, we have a completely different perspective.”

“THEY TOOK A SHOTGUN APPROACH,” SAYS STEVE CHASE, THE LITIGATION ATTORNEY AT ABEL, BAND, RUSSELL, COLLIER, PITCHFORD AND GORDON WHO REPRESENTED IDIGI IN THE LAWSUIT”

But this seemed like a pretty good risk. GE Capital was expected to approve the iDigi funding on September 13; it was all systems go. Everyone thought the bridge loan would be repaid in 90 days or less.

Then the unthinkable happened. The terrorist attacks of September 11, 2001, paralyzed GE Capital, who lost billions on airplanes and reinsurance costs, among other things. GE Capital put all current and future investments on hold. The bridge loan was in serious jeopardy of default, and iDigi would have to start over in its search for the next stage of financing.

locate replacement funding. In November 2001, they took Karason to Island Labs to show him Bobier’s latest work. Bobier was in the process of inventing xG Technology, a new technology unrelated to iDigi’s product and system. The partners were trying to bolster Karason’s faith in them, showing him that LN’s investment in them was worthwhile.

But that trip marked the disintegration of the once-positive relationship between Karason and iDigi. Several sources opined that Karason saw xG technology and immediately coveted it. At first, Karason agreed to have the bridge loan satisfied with additional shares in iDigi that could be transferred into xG shares should xG become as valuable as expected. Indeed, the parties had reached that business resolution with some degree of certainty in early 2002 when Karason suddenly changed his tack.

Ultimately, instead of cashing in the bridge loan for an increase or transfer of LN’s investment in

officers siphoned off large portions of that money for their own use. It asserted that Bobier’s ongoing inventions at Island Labs really belonged to iDigi, but that Mooers and Branton unlawfully and secretly stole it from iDigi and moved it into Island Labs to further defraud iDigi investors and keep the most valuable assets for themselves. In order to satisfy the defaulted bridge loan and compensate for the alleged fraud, Karason asked the court to give him all of iDigi, all of Island Labs and all of anything else he could get.

“They took a shotgun approach,” says Steve Chase, the litigation attorney at Abel, Band, Russell, Collier, Pitchford & Gordon who represented iDigi in the lawsuit. “They tried to get information on everything Rick Mooers had, including assets that were totally unrelated to iDigi.”

The claims in the lawsuit rely heavily upon the testimony of a Sarasota resident named Kevin

XG IS LAUNCHING ITS SYSTEM IN STOCKHOLM, SWEDEN, ONE OF THE MOST TECHNOLOGICALLY ADVANCED CITIES IN THE WORLD. IT IS LOOKING FOR ITS NORTH AMERICAN TEST SITE, WITH TENTATIVE PLANS TO LAUNCH IN SARASOTA. BUT FIRST THEY WANT TO CLEAR ANY REMAINING HURDLES OF NEGATIVE PUBLIC PERCEPTION.

“We could have just shut it all down after 9/11, using that as an excuse,” says Mooers. “A lot of companies out there did that. But we said no, we are going to take the high road. We are not willing to let people lose their money. We had lost our own money in investments in the past, but not when there were investors in it. We always lead with our own money because we are honestly afraid of losing other people’s money.”

In the next three months, Mooers and Branton worked overtime to placate Karason and

iDigi, Karason attempted a vicious corporate raid of sorts, using the American legal system as his weapon.

On April 23, 2002, Karason filed a 139-page lawsuit against iDigi and all of its related players and executives; he filed it in federal court in Tampa. The lawsuit alleged that Mooers and others had defrauded LN and its related Icelandic entity, Nordica, essentially tricking LN and Nordica to pay iDigi about \$12 million in exchange for nothing of real value. The lawsuit alleged that the iDigi

Flessner, who had served as an executive at iDigi until he left around October 2001, ostensibly to set up a real estate fund for investors. But before his business relationship with Mooers and Branton officially dissolved, Flessner asked them to buy him out of the merchant bank for \$150,000, even though he had made no initial investment in it. When Mooers and Branton refused, Flessner went to Karason and offered him fodder for the lawsuit. Essentially all of that fodder, say Mooers and Chase, was utterly untrue and directly

contradicted by voluminous documentation, including other documented statements by Flessner himself.

The complaint filed by LN to start the lawsuit is a dense legal maze, highly redundant and full of factual allegations that seem unrelated to the claims of the lawsuit. The judge threw it out and told LN's attorneys to redraft it in a manner that followed the proper legal format. In the meantime he sent the parties to mediation, encouraging them to seek a business resolution to their dispute.

But the damage was already partially done. "When they couldn't try us in court, they decided to try us in the press," says Mooers.

The inflammatory complaint and the many denunciatory affidavits attached to it (including Flessner's) titillated the press. Between May 1 and May 11, 2002, the *Sarasota Herald-Tribune* ran five separate stories about the lawsuit and its claims; most included inflammatory quotes about Mooers and Branton from Karason's Tampa attorney. iDigi's sole contributions to the stories were general denials from attorney Chase.

"The lawsuit was really just a means for them (Karason, LN, and Nordica) to acquire the technology, almost like a hostile takeover," says Chase. "I told the *Herald-Tribune* that they were being used (to propagate Karason's agenda), but they just didn't believe it."

In fact a close look at the lawsuit reveals some curious contradictions, indicative, perhaps, of the intent with which it was brought. For example, a large section of the lawsuit is devoted to touting the education and investment expertise of Karason, as

well as the enormity, power, and success of LN, the pension fund Karason runs. But many times later in the same complaint, Karason claims that he failed to do adequate investigation and due diligence into iDigi before he invested the pension fund's money. He asserts that he had no experience with this type of investment, and he had no practical understanding of bridge loans when he made one on behalf of thousands of blue-collar workers in Iceland. He claims that he had significant concerns about iDigi and its management all along, making one wonder why he would still invest in the company—more than once.

It's a bit incredible that Karason with his self-proclaimed expertise would have been so careless with the pension fund's dollars. It's unlikely the pension fund could have become so large and powerful without assurances at every turn that its investments were well researched and managed with prudence.

As another example, the lawsuit repeatedly claims that the iDigi systems in Europe were hack jobs—improperly installed, inadequate for their purposes, and composed of cheap, off-the-rack products not suited for the use. The lawsuit claims that iDigi executives essentially faked system demonstrations for investors, showing them a system that could not be replicated in the real world.

And yet, the plaintiffs also called the systems "valuable" and they wanted to have them all. Indeed, Karason accepted about \$5 million cash and ownership of the iDigi systems that he had so maligned as full settlement of the case. Karason became Chairman of the Board of eMax, the company

that still runs the successful Icelandic system.

Karason did not end up with any of the intellectual property. Mooers and Branton ended up with all of it. The lawsuit was closed in February 2003; Karason has been paid in full.

Mooers and Branton licked their wounds and turned their focus to xG.

X G Technology, Bobier's Island Lab creation, is truly mind-blowing. Indicative of the incredible complexity of this technology. Bobier says he came up with the idea while reading a book about quantum mechanics. Bobier has figured out how to send data transmission 20 times faster than any current method through pretty much any existing source—cable, DSL, wireless, phone lines, and so on. xG uses radio modulation and encoding technology to squash more data into a bandwidth and send it faster, vastly improving the efficiency of all wired and wireless radio communication systems.

xG is a big improvement over current WiFi systems. A WiFi system is set up with "hot spots"—small areas with a transmittal box that enables wireless connectivity for up to 150 feet in any direction from the box. But current WiFi transmission goes only in a straight, direct line out from the box; it doesn't go around corners or through buildings. Because xG uses radio waves, it works like the radio works, with transmissions

able to go through buildings and for much longer distances.

“This is disruptive technology,” says Mooers, meaning that the launch and introduction of xG into the market will seriously disrupt the current efforts of all other communications systems. Companies marketing DSL, cable and WiFi as the newest best thing may soon find their products obsolete. As a result, Mooers and Branton are bracing for fierce resistance from current communications industry leaders who may not want xG to take hold.

The Gartner Group, an international research agency, identified xG Technology in its July 2003 report as one of the leaders in the field of alternatives to wireless technology. International investment firm Bear Stearns has a close watch on xG, supporting and pushing Mooers and Branton along, and admittedly waiting in the wings to give the company its first round of institutional financing when the time comes. Most entrepreneurs will tell you that kind of anxious support from an international firm is rare.

It is also indicative of Mooers’ and Branton’s true character as individuals and as businessmen. “You can be sure that Bear Stearns thoroughly checked us out before getting involved with us,” says Mooers. “They would have stayed away had there been any truth to the allegations in the lawsuit and in the press, and they aren’t the first. Our advisory board includes some of the most highly regarded experts in the high-tech and wireless industries from all over the world including former executives from Microsoft, Silicon Valley consultants and other industry leaders. None of

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them would be involved with us if there were any question that those allegations were true.”

xG is launching its system in Stockholm, Sweden, one of the most technologically advanced cities in the world. It is looking for its North American test site, with tentative plans to launch in Sarasota. But first they want to clear any remaining hurdles of negative public perception.

“We want to tell our story now to help the Sarasota community,” says Mooers. “We don’t want another business, especially a fledgling company, to get caught up in anything like this.”

Paul Marshall, managing director of Bear Stearns in its Atlanta and Sarasota offices, agrees: “I have been around both Rick and Roger for some time now, and I do think that they are good guys. I think they will serve the community well. We need companies like this to survive if we are ever to pass the ‘Oh Sarasota is just a tourist town with a real estate wrapper’ mentality.”