FREEDOM OF INFORMATION APPEAL OF
PRIVACY ACT INQUIRY RESPONSE

February 7, 2013

Per USPTO Letter Jan. 29, 2013—Req. No. F-13-00064

General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
efoia@uspto.gov

Kathryn Siehndel
USPTO FOIA Officer
Office of General Law
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
efoia@uspto.gov

Dear General Counsel:

Re: Request No. F-13-00064 Appeal, timely filed / Facebook & Leader Technologies

I received an initial response to my Freedom of Information Act Request No. F-13-00064 on Feb. 4, 2013. I wish to appeal this response because the redactions made any meaningful evaluation impossible. ***All*** substantive contents in the material were blacked out. The only substantive, un-redacted information were two documents from the Examiner's wrapper which are publicly available.

Since the rest of the publicly available Examiner's wrapper was not reproduced (which would be a box full of documents), it is evident that those few documents that were included were placed there to give the *appearance* of substance.

FREEDOM OF INFORMATION APPEAL OF PRIVACY ACT INQUIRY RESPONSE

As case in point, permit me to summarize the entire contents of the disclosure, other than the two Examiner documents:

Irem Yucel
Janie Cooksey
James T. Moore
Daniel J. Ryman
Dana Colarulli
Office of Governmental Affairs Contact Information
Brian Hanlon
Sanny
Jay
Remy
Kimberly R. Jordan (BPAI)
Quita Gould
Sonja Despertt
Andrew Kellogg
Allen MacDonald
Stephen Siu
Meredith Petravick, Administrative Patent Judge
Lawrence J. Banks
PTAB Trial Team
Subject: Congressional Inquiry
EDMS Folder 17230
USS Kyl
FW: fd2012-009270 circ Siu/Petravick/MacDonald
"first time we have prepared such text"
Re: 2012-003975 (90/010,591 and 95/001,261) Remand mailed (Apr. 16, 2012)
TC REQUEST REMAND
CRU
SPE
Mini Brief Review
S:\Appeals Processing\Opinion Processing\0 – Appeals Administrator\4 Mini Appeal Review

All substantive contents of the communications were blacked out. The FOIA Officer then provided five (5) legal cases to justify the decision to obscure the contents. Such a (lack of full) disclosure is not reasonable. Therefore, I renew my request to review these, and any other documents that may have been found since my original request.

In addition to the un-redacted version of the materials provided, please forward to me all communications, including staff notes and records of internal communications, with Senator John Kyl ("USS Kyl") and any other Congressional Inquiry documents. Please also provide the contents of the "EDMS Folder 17230" and the contents of the "4 Mini Appeal Review" folder. Also, reference is made to the acronyms "CRU," "SPE," "BPAI" and the "PTAB Trial Team;" please explain the meaning of these acronyms and provide all documents associated with those entities or projects.

I also request all communications between the FOIA Officer, any of the individuals cited above, and any individuals and/or entities identified in my original request.

The withholding of this information prevents a meaningful evaluation of the facts as to whether inappropriate conduct is occurring within the USPTO regarding Facebook and Leader Technologies. Wrongdoers will always redact. That is a foregone conclusion.

My original complaint highlighted specific public facts that indicate the strong possibility of wrongdoing. The USPTO records can go a long way to showing whether or not wrongdoing has occurred. **If no wrongdoing has occurred, then why has the Officer blacked out of the entire substance of the communications?** This *obstruction* of the facts makes it appear that USPTO officials are hiding something.

It behooves the Patent Office to practice transparency in order to "**avoid the appearance of impropriety.**" Indeed, the Code of Conduct for United States Judges demands such conduct of Administrative Patent Judges and employees. See Code of Conduct Canon 2 ("A judge should avoid impropriety and the appearance of impropriety in all activities.")

In closing, I believe the redactions (and thus disclosure denials) are unconstructive. They do nothing to shed the light of public accountability on the actions of the USPTO in the Facebook-Leader matter. The denials are therefore in error, and my request for a full disclosure of all requested information is renewed.

In closing, the number of USPTO individuals who have touched this subject begs the question: "Why are so many USPTO salaries being paid to handle just one patent case? Is it really that complicated?" By my count 13 different names appear on these communications as well as two and maybe four different administrative groups.

Sincerely,

/s/

[redacted]

SWORN TO AND SUBSCRIBED

Before me this ____ date of _____, 2012

_____

Notary Public

cc.

The Honorable Jim Jordan (4th Dist. OH)
3121 West Elm Plaza
Lima, OH 45805
T (419) 999-6455
F (419) 999-4238

Rebecca M. Blank, Acting Secretary of Commerce and Deputy Secretary of Commerce,
Department of Commerce
1401 Constitution Ave, N.W.
Herbert C. Hoover Bldg, Room 5838
Washington, D.C. 20230
(202) 482-8376 | (202) 482-2308 FAX | rblank@doc.gov

Enclosures: Original [redacted] Request, USPTO Response Letter

UNITED STATES PATENT AND TRADEMARK OFFICE
OFFICE OF THE GENERAL COUNSEL

2/4/13

January 29, 2013

U.S. MAIL

[redacted]

Re: Freedom of Information Act (FOIA) Request No. F-13-00064

Dear [redacted]

The United States Patent and Trademark Office (USPTO) FOIA Office received your letter dated Tuesday, December 18, 2012 in which you requested, under the provisions of the Freedom of Information Act,[1] 5 U.S.C. § 552, a copy of:

> Any and all communications regarding 95/001,261 *(In re.* McKibben *et al Inter partes* Reexamination Proceeding) and 90/010,591 *(In re.* McKibben *et al. Ex Parte* Reexamination Proceeding) among:
>
> a. BPAI;
> b. Office of the USPTO Director, David J. Kappos;
> c. Designates of the Office of the USPTO Director;
> d. Representatives and/or designates of The White House;
> e. Microsoft, IBM, The Federal Circuit Bar Association, The Federal Circuit, Clerk of Court Jan Horbaly, Judge Alan D. Lourie, Judge Randall R Rader, Judge Evan J. Wallach, Judge Kimberly A. Moore, Thomas G. Hungar, Gibson Dunn LLP, Orrick Herrington LLP, Weil Gotshal LLP, Mark Zuckerberg, Marc Andreessen, James W. Breyer, Lawrence Summers, Gordon K. Davidson, Facebook PAC; Facebook, Inc., Attorney General, US Justice Department; and
> f. Facebook USPTO counsels:
> 1. Heidi L. Keefe, Reg. No. 40,673;
> 2. Christopher-Charles King aka Christopher P. King, Reg. No. 60,985;
> 3. Robert A. Hulse, Reg. No. 48,473;
> 4. Cooley Godward Kronish LLP;

[1] In your letter, you requested records under the Privacy Act of 1974, however, the types of records you requested are more appropriately processed under the Freedom of Information Act.

[redacted]

5. White & Case LLP;
6. Fenwick & West LLP; and
7. Other Facebook USPTO law firm(s) and counsel(s).

The USPTO has identified 53 pages of documents that are responsive to your request and are releasable. Portions of these documents, however, have been redacted pursuant to Exemption (b)(5) of the FOIA.

Exemption (b)(5) of the FOIA, 5 U.S.C. 552(b)(5), authorizes agencies to withhold inter-agency or intra-agency letters or memoranda that would otherwise be privileged. Exemption (b)(5) protects an agency's deliberative process privilege. See Mapother v. Dep't of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993). This privilege applies to documents, which reflect "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." See Nat'l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975), quoting Carl Zeiss Stiftung & Co. v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318, 324 (D.D.C. 1966).

Here, the withheld information consists of the opinions and recommendations regarding proposed agency actions. They are predecisional, i.e., antecedent to the adoption of an agency position, see Jordan v. Dep't of Justice, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc), and deliberative, i.e., a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters, see Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). Accordingly, this information was withheld pursuant to Exemption (b)(5).

The processing fee for this FOIA request has been waived. See 37 C.F.R. § 102.11(c)(1)(iv).

You have the right to appeal this initial decision to the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 30 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,

Kathryn Siehndel

Kathryn Siehndel
USPTO FOIA Officer
Office of General Law

Enclosure

[redacted]

Seldon, Karon

From: Yucel, Irem
Sent: Thursday, May 03, 2012 2:00 PM
To: Cooksey, Janie
Cc: Hanlon, Brian; Moore, James T; Ryman, Daniel J.; Yucel, Irem
Subject: Congressional Inquiry

Importance: High

Janie,

Please find below our proposed draft (blue text). Both OPLA and the BPAI were consulted and have also vetted this draft. This is the first time we have prepared such text so if there is anything else or different needed please let us know.

I hope that you all can take the text below and put it into appropriate format, etc....as per whatever protocol may exist.

Thanks,

Remy

(b)(5)

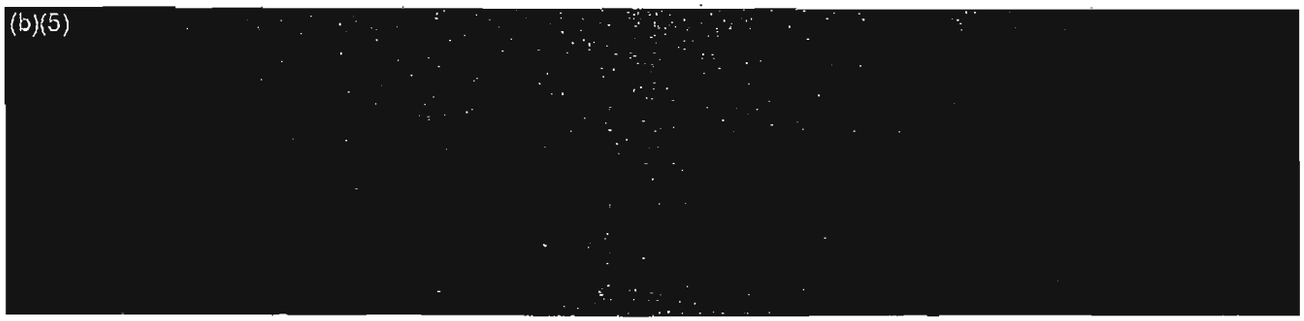
[redacted]

From: Cooksey, Janie
Sent: Thursday, April 26, 2012 11:46 AM
To: Yucel, Irem
Cc: Colarulli, Dana
Subject: CONGRESSIONAL - EDMS Folder 17230
Importance: High

Remy -

[redacted]

(b)(5)



In advance, that you for your assistance in this matter!!

Regards,

Janie Cooksey
Congressional Affairs Specialist
Office of Governmental Affairs
United States Patent and Trademark Office
U.S. Department of Commerce
Office number: (571) 272-7300
Direct number: (571) 272-8466

Seldon, Karon

From: Yucel, Irem
Sent: Thursday, April 26, 2012 3:31 PM
To: Moore, James T
Cc: Hanlon, Brian
Subject: RE: CONGRESSIONAL - EDMS Folder 17230

Ok. [redacted] (b)(5)

I will have Sanny set something up early next week...possibly Tuesday...

Many thanks.

Remy

From: Moore, James T
Sent: Thursday, April 26, 2012 2:05 PM
To: Yucel, Irem
Cc: Hanlon, Brian
Subject: RE: CONGRESSIONAL - EDMS Folder 17230

Me.

From: Yucel, Irem
Sent: Thursday, April 26, 2012 1:45 PM
To: Moore, James T
Cc: Yucel, Irem; Hanlon, Brian
Subject: FW: CONGRESSIONAL - EDMS Folder 17230
Importance: High

Jay,

(b)(5) [redacted]

Thanks,

Remy

From: Cooksey, Janie
Sent: Thursday, April 26, 2012 11:46 AM
To: Yucel, Irem
Cc: Colarulli, Dana
Subject: CONGRESSIONAL - EDMS Folder 17230
Importance: High

Remy -

[redacted]

(b)(5)

[redacted]

In advance, that you for your assistance in this matter!!

Regards,

Janie Cooksey
Congressional Affairs Specialist
Office of Governmental Affairs
United States Patent and Trademark Office
U.S. Department of Commerce
Office number: (571) 272-7300
Direct number: (571) 272-8466

[redacted]

Seldon, Karon

From: Jordan, Kimberly R. (PTAB)
Sent: Monday, April 16, 2012 2:45 PM
To: Moore, James T
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Remand mailed, but will have tomorrow's date as it was mailed after 1 PM today.

From: Moore, James T
Sent: Monday, April 16, 2012 10:50 AM
To: Jordan, Kimberly R. (BPAI)
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Kimberly –

Please remand this merged reexam to the CRU for further processing.

Thanks,

Jay

From: Yucel, Irem
Sent: Friday, April 13, 2012 10:29 AM
To: Moore, James T
Cc: Ryman, Daniel J.
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Jay,

Sorry it took a bit to get back to you....yes, we will take the case back to address the claims/issues that were not covered.

Dan Ryman is the SPE and will work with you to make this happen.

Thanks for bringing it to our attention,

Remy

From: Moore, James T
Sent: Tuesday, April 10, 2012 4:10 PM
To: Yucel, Irem
Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

[redacted]

(b)(5)

Please let me know.

Thanks,

Jay

[redacted]

Seldon, Karon

From: Yucel, Irem
Sent: Friday, April 27, 2012 4:47 PM
To: Moore, James T
Cc: Hanlon, Brian
Subject: RE: CONGRESSIONAL - EDMS Folder 17230

(b)(5) [redacted]

From: Moore, James T
Sent: Friday, April 27, 2012 4:10 PM
To: Yucel, Irem
Cc: Hanlon, Brian
Subject: RE: CONGRESSIONAL - EDMS Folder 17230

Seems pretty straightforward to me.

(b)(5) [redacted]

From: Yucel, Irem
Sent: Thursday, April 26, 2012 3:31 PM
To: Moore, James T
Cc: Hanlon, Brian
Subject: RE: CONGRESSIONAL - EDMS Folder 17230

Ok. (b)(5) [redacted]

I will have Sanny set something up early next week...possibly Tuesday...

Many thanks.

Remy

From: Moore, James T
Sent: Thursday, April 26, 2012 2:05 PM
To: Yucel, Irem
Cc: Hanlon, Brian
Subject: RE: CONGRESSIONAL - EDMS Folder 17230

Me.

From: Yucel, Irem
Sent: Thursday, April 26, 2012 1:45 PM

[redacted]

To: Moore, James T
Cc: Yucel, Irem; Hanlon, Brian
Subject: FW: CONGRESSIONAL - EDMS Folder 17230
Importance: High

Jay,

(b)(5) [redacted]

Thanks,

Remy

From: Cooksey, Janie
Sent: Thursday, April 26, 2012 11:46 AM
To: Yucel, Irem
Cc: Colarulli, Dana
Subject: CONGRESSIONAL - EDMS Folder 17230
Importance: High

Remy -

(b)(5) [redacted]

In advance, that you for your assistance in this matter!!

Regards,

Janie Cooksey
Congressional Affairs Specialist
Office of Governmental Affairs
United States Patent and Trademark Office
U.S. Department of Commerce
Office number: (571) 272-7300
Direct number: (571) 272-8466

[redacted]

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Subject: RE: CONGRESSIONAL - EDMS Folder 17230

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Cc: Yucel, Irem; Hanlon, Brian
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Importance: High

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(b)(5) [redacted]

Thanks,

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Importance: High

Remy -

(b)(5) [redacted]

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Regards,

Janie Cooksey

[redacted]

Congressional Affairs Specialist
Office of Governmental Affairs
United States Patent and Trademark Office
U.S. Department of Commerce
Office number: (571) 272-7300
Direct number: (571) 272-8466

[redacted]

Seldon, Karon

From: Moore, James T
Sent: Monday, April 16, 2012 10:50 AM
To: Jordan, Kimberly R. (PTAB)
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

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From: Moore, James T
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Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

(b)(5) [redacted]

[redacted]

(b)(5)

Please let me know.

Thanks,

Jay

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To: Moore, James T
Cc: Yucel, Irem; Hanlon, Brian
Subject: FW: CONGRESSIONAL - EDMS Folder 17230
Importance: High

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[redacted]

(b)(5)

Thanks,

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Cc: Colarulli, Dana
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Importance: High

Remy -

(b)(5)

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Regards,

Janie Cooksey
Congressional Affairs Specialist
Office of Governmental Affairs
United States Patent and Trademark Office
U.S. Department of Commerce
Office number: (571) 272-7300
Direct number: (571) 272-8466

[redacted]

Seldon, Karon

From: Yucel, Irem
Sent: Thursday, April 26, 2012 1:45 PM
To: Moore, James T
Cc: Yucel, Irem; Hanlon, Brian
Subject: FW: CONGRESSIONAL - EDMS Folder 17230
Attachments: EDMS Folder 17230 - USS Kyl - McKibben - Reexam.pdf

Importance: High

Jay,

(b)(5) [redacted]

Thanks,

Remy

From: Cooksey, Janie
Sent: Thursday, April 26, 2012 11:46 AM
To: Yucel, Irem
Cc: Colarulli, Dana
Subject: CONGRESSIONAL - EDMS Folder 17230
Importance: High

Remy -

(b)(5) [redacted]

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Regards,

Janie Cooksey
Congressional Affairs Specialist
Office of Governmental Affairs
United States Patent and Trademark Office
U.S. Department of Commerce
Office number: (571) 272-7300
Direct number: (571) 272-8466

[redacted]

Seldon, Karon

From: Yucel, Irem
Sent: Friday, April 13, 2012 10:29 AM
To: Moore, James T
Cc: Ryman, Daniel J.
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Jay,

Sorry it took a bit to get back to you....yes, we will take the case back to address the claims/issues that were not covered.

Dan Ryman is the SPE and will work with you to make this happen.

Thanks for bringing it to our attention,

Remy

From: Moore, James T
Sent: Tuesday, April 10, 2012 4:10 PM
To: Yucel, Irem
Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

(b)(5)

(b)(5)

[redacted]

Please let me know.

Thanks,

Jay

[redacted]

Seldon, Karon

From: Gould, Quita
Sent: Monday, April 16, 2012 1:24 PM
To: Kellogg, Andrew
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Andrew,

Please prepare this remand for Kimberly.

Thanks,
Quita

From: Jordan, Kimberly R. (BPAI)
Sent: Monday, April 16, 2012 11:57 AM
To: Gould, Quita
Cc: Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Quita,
Please have a contested case paralegal prepare a remand for the merged proceedings under my signature. Thanks. There is a template for a remand to the TC at the request of the TC in the Mini Brief Review folder on the s drive: S:\Appeals Processing\Opinion Processing\0 - Appeals Administrator\4 Mini Appeal Review. The title is TC REQUESTED REMAND.
Kimberly

From: Moore, James T
Sent: Monday, April 16, 2012 10:50 AM
To: Jordan, Kimberly R. (BPAI)
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Kimberly –

Please remand this merged reexam to the CRU for further processing.

Thanks,

Jay

From: Yucel, Irem
Sent: Friday, April 13, 2012 10:29 AM
To: Moore, James T
Cc: Ryman, Daniel J.
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

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[redacted]

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Remy

From: Moore, James T
Sent: Tuesday, April 10, 2012 4:10 PM
To: Yucel, Irem
Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

(b)(5)

Please let me know.

Thanks,

Jay

Seldon, Karon

From: Jordan, Kimberly R. (BPAI)
Sent: Monday, April 16, 2012 2:16 PM
To: Kellogg, Andrew; Gould, Quita
Cc: Despertt, Sonja
Subject: RE: 2012-003975 (90/010,591 and 95/001,261) READY FOR MAILING

Andrew,
The remand is approved and is in the ready for mailing folder. Thanks.
Kimberly

From: Kellogg, Andrew
Sent: Monday, April 16, 2012 1:43 PM
To: Gould, Quita
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

The remand is saved on the S: drive in is appeals administrator drafts folder

---

From: Gould, Quita
Sent: Monday, April 16, 2012 1:24 PM
To: Kellogg, Andrew
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Andrew,

Please prepare this remand for Kimberly.

Thanks,
Quita

From: Jordan, Kimberly R. (BPAI)
Sent: Monday, April 16, 2012 11:57 AM
To: Gould, Quita
Cc: Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Quita,
Please have a contested case paralegal prepare a remand for the merged proceedings under my signature. Thanks. There is a template for a remand to the TC at the request of the TC in the Mini Brief Review folder on the s drive: S:\Appeals Processing\Opinion Processing\0 - Appeals Administrator\4 Mini Appeal Review. The title is TC REQUESTED REMAND.
Kimberly

From: Moore, James T
Sent: Monday, April 16, 2012 10:50 AM
To: Jordan, Kimberly R. (BPAI)
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

[redacted]

Kimberly –

Please remand this merged reexam to the CRU for further processing.

Thanks,

Jay

From: Yucel, Irem
Sent: Friday, April 13, 2012 10:29 AM
To: Moore, James T
Cc: Ryman, Daniel J.
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Jay,

Sorry it took a bit to get back to you....yes, we will take the case back to address the claims/issues that were not covered.

Dan Ryman is the SPE and will work with you to make this happen.

Thanks for bringing it to our attention,

Remy

From: Moore, James T
Sent: Tuesday, April 10, 2012 4:10 PM
To: Yucel, Irem
Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

(b)(5)

[redacted]

(b)(5) [redacted]

Please let me know.

Thanks,

Jay

[redacted]

Seldon, Karon

From: Johnson, Helen on behalf of BPAI Print
Sent: Monday, April 16, 2012 2:48 PM
To: Kellogg, Andrew
Subject: RE: 4 page remand - mailed

mailed

From: Kellogg, Andrew
Sent: Monday, April 16, 2012 2:31 PM
To: BPAI Print
Subject: 4 page remand

95001261

[redacted]

Seldon, Karon

From: Kellogg, Andrew
Sent: Monday, April 16, 2012 2:31 PM
To: Jordan, Kimberly R. (BPAI); Gould, Quita
Cc: Despertt, Sonja
Subject: RE: 2012-003975 (90/010,591 and 95/001,261) mailed

The remand has been mailed

From: Jordan, Kimberly R. (BPAI)
Sent: Monday, April 16, 2012 2:16 PM
To: Kellogg, Andrew; Gould, Quita
Cc: Despertt, Sonja
Subject: RE: 2012-003975 (90/010,591 and 95/001,261) READY FOR MAILING

Andrew,
The remand is approved and is in the ready for mailing folder. Thanks.
Kimberly

From: Kellogg, Andrew
Sent: Monday, April 16, 2012 1:43 PM
To: Gould, Quita
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

The remand is saved on the S: drive in is appeals administrator drafts folder

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From: Gould, Quita
Sent: Monday, April 16, 2012 1:24 PM
To: Kellogg, Andrew
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

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Please prepare this remand for Kimberly.

Thanks,
Quita

From: Jordan, Kimberly R. (BPAI)
Sent: Monday, April 16, 2012 11:57 AM
To: Gould, Quita
Cc: Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Quita,
Please have a contested case paralegal prepare a remand for the merged proceedings under my signature. Thanks. There is a template for a remand to the TC at the request of the TC in the Mini Brief Review

[redacted]

folder on the s drive: S:\Appeals Processing\Opinion Processing\0 - Appeals Administrator\4 Mini Appeal Review. The title is TC REQUESTED REMAND.
Kimberly

From: Moore, James T
Sent: Monday, April 16, 2012 10:50 AM
To: Jordan, Kimberly R. (BPAI)
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Kimberly –

Please remand this merged reexam to the CRU for further processing.

Thanks,

Jay

From: Yucel, Irem
Sent: Friday, April 13, 2012 10:29 AM
To: Moore, James T
Cc: Ryman, Daniel J.
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

Jay,

Sorry it took a bit to get back to you....yes, we will take the case back to address the claims/issues that were not covered.

Dan Ryman is the SPE and will work with you to make this happen.

Thanks for bringing it to our attention,

Remy

From: Moore, James T
Sent: Tuesday, April 10, 2012 4:10 PM
To: Yucel, Irem
Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

(b)(5)

[redacted]

(b)(5)

Please let me know.

Thanks,

Jay

[redacted]

Seldon, Karon

From: Kellogg, Andrew
Sent: Monday, April 16, 2012 1:43 PM
To: Gould, Quita
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

The remand is saved on the S: drive in is appeals administrator drafts folder

---

From: Gould, Quita
Sent: Monday, April 16, 2012 1:24 PM
To: Kellogg, Andrew
Cc: Jordan, Kimberly R. (BPAI); Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Andrew,

Please prepare this remand for Kimberly.

Thanks,
Quita

From: Jordan, Kimberly R. (BPAI)
Sent: Monday, April 16, 2012 11:57 AM
To: Gould, Quita
Cc: Despertt, Sonja
Subject: FW: 2012-003975 (90/010,591 and 95/001,261)

Quita,
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Kimberly

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Sent: Monday, April 16, 2012 10:50 AM
To: Jordan, Kimberly R. (BPAI)
Cc: Ryman, Daniel J.; Yucel, Irem
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

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Please remand this merged reexam to the CRU for further processing.

Thanks,

Jay

[redacted]

From: Yucel, Irem
Sent: Friday, April 13, 2012 10:29 AM
To: Moore, James T
Cc: Ryman, Daniel J.
Subject: RE: 2012-003975 (90/010,591 and 95/001,261)

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To: Yucel, Irem
Subject: 2012-003975 (90/010,591 and 95/001,261)

Remy -

(b)(5)

[redacted]

Seldon, Karon

From: Kellogg, Andrew
Sent: Monday, April 16, 2012 2:31 PM
To: BPAI Print
Subject: 4 page remand

95001261

[redacted]

Seldon, Karon

From: Petravick, Meredith
Sent: Thursday, October 11, 2012 3:48 PM
To: MacDonald, Allen
Cc: Siu, Stephen
Subject: FW: fd2012-009270 circ Siu/Petravick/MacDonald

I authorize for mailing.

Meredith Petravick
Administrative Patent Judge
Patent Trial and Appeal Board
Madison East 9D65
571-272-6695 phone
571-273-6995 fax

From: Siu, Stephen
Sent: Wednesday, October 10, 2012 2:48 PM
To: Petravick, Meredith
Subject: FW: fd2012-009270 circ Siu/Petravick/MacDonald

Ready for your review.

From: Banks, Lawrence J.
Sent: Wednesday, October 10, 2012 2:38 PM
To: Siu, Stephen
Cc: Despertt, Sonja; PTAB Trial Team
Subject: RE: fd2012-009270 circ Siu/Petravick/MacDonald

Please circulate. Thanks-LB

From: Despertt, Sonja
Sent: Wednesday, October 10, 2012 11:27 AM
To: Banks, Lawrence J.
Cc: Siu, Stephen; PTAB Trial Team
Subject: FW: fd2012-009270 draft Siu/Petravick/MacDonald

Lawrence, please process for Judge Siu.

Thanks for your assistance,
Sonja

From: Siu, Stephen
Sent: Wednesday, October 10, 2012 11:06 AM
To: PTAB Trial Team
Cc: Despertt, Sonja
Subject: fd2012-009270 draft Siu/Petravick/MacDonald

95/001,261
Ready for processing. Thanks.

[redacted]

Seldon, Karon

From: Siu, Stephen
Sent: Wednesday, October 10, 2012 2:48 PM
To: Petravick, Meredith
Subject: FW: fd2012-009270 circ Siu/Petravick/MacDonald

Ready for your review.

From: Banks, Lawrence J.
Sent: Wednesday, October 10, 2012 2:38 PM
To: Siu, Stephen
Cc: Despertt, Sonja; PTAB Trial Team
Subject: RE: fd2012-009270 circ Siu/Petravick/MacDonald

Please circulate. Thanks-LB

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From: Siu, Stephen
Sent: Wednesday, October 10, 2012 11:06 AM
To: PTAB Trial Team
Cc: Despertt, Sonja
Subject: fd2012-009270 draft Siu/Petravick/MacDonald

95/001,281
Ready for processing. Thanks.

[redacted]

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,261	11/13/2009	7,139,761 B2	LTI0002-RXM	5286

74877 7590 10/17/2012

King and Spalding LLP
1700 Pennsylvania Ave, NW
Suite 200
Washington, DC 20006

EXAMINER	
HUGHES, DEANDRA M	

ART UNIT	PAPER NUMBER
3992	

MAIL DATE	DELIVERY MODE
10/17/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

[redacted]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.
Requester and Appellant

v.

LEADER TECHNOLOGIES, INC.
Patent Owner and Respondent

Appeal 2012-009270
Reexamination Control 95/001,261
Patent 7,139,761 B2
Technology Center 3900

Before ALLEN R. MACDONALD, STEPHEN C. SIU, and MEREDITH C. PETRAVICK, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*

DECISION ON APPEAL

[redacted]

Third Party Requester and Appellant Facebook, Inc. appeals under 35 U.S.C. §§ 134(c) and 315(b) the Examiner's decision not to reject claims 2, 3, 5, 6, 8, 10, 12-15, 24, 26, 29, 33, and 34 over various prior art references.[1] We have jurisdiction under 35 U.S.C. §§ 134(c) and 315(b).

STATEMENT OF THE CASE

This proceeding (Reexamination Proceeding 95/001,261) arose from a request by Facebook, Inc. for an inter partes reexamination of U.S. Patent 7,139,761 B2, titled "Dynamic Association of Electronically Stored Information with Iterative Workflow Changes," and issued to Michael T. McKibben and Jeffrey R. Lamb on November 21, 2006 (the '761 patent). Claims 1-16, 21, 23-26, 29, and 31-34 were subject to inter partes reexamination (see, e.g., Request for *Inter Partes* Reexamination, dated November 13, 2009, pp. 5-6).

Appellant and Requester Facebook, Inc. also filed a separate request for ex parte reexamination of claims 1, 2, 4-16, 21-29, and 31-35 of the '761 patent (Reexamination Proceeding 90/010,591) (see, e.g., Request for *Ex Parte* Reexamination, dated July 2, 2009, pp. 9-10), which was subsequently merged with inter partes reexamination proceeding 95/001,261 (see Decision, *Sua Sponte*, to Merge Reexamination Proceedings, dated April 26, 2010).

In a Decision Dissolving Merger of Reexamination Proceedings dated May 15, 2012, the merger of ex parte reexamination proceeding 90/010,591

[1] As described below, claims 1, 4, 7, 9, 11, 16, 21-23, 25, 27, 28, 31, 32, and 35 are not subject to appeal in this inter partes reexamination proceeding.

and inter partes reexamination proceeding 95/001,261 was dissolved and each of the proceedings was reconstituted as a separate proceeding.

In view of the dissolution of ex parte reexamination proceeding 90/010,591 and inter partes reexamination proceeding 95/001,261, the current appeal is directed solely to claims subject to reexamination in inter partes reexamination proceeding 95/001,261 (i.e., claims 1-16, 21, 23-26, 29, and 31-34) and does not include issues pertaining to claims reexamined in ex parte reexamination proceeding 90/010,591 (e.g., issues pertaining to claims 22, 27, 28, and 35).

The '761 patent describes a data management tool (col. 3, l. 17). Claim 2 (which depends from Claim 1) on appeal reads as follows:

1. A computer-implemented network-based system that facilitates management of data, comprising:

a computer-implemented context component of the network-based system for capturing context information associated with user-defined data created by user interaction of a user in a first context of the network-based system, the context component dynamically storing the context information in metadata associated with the user-defined data, the user-defined data and metadata stored on a storage component of the network-based system; and

a computer implemented tracking component of the network-based system for tracking a change of the user from the first context to a second context of the network-based system and dynamically updating the stored metadata based on the change, wherein the user accesses the data from the second context.

2. The system of claim 1, the context component is associated with a workspace, which is a collection of data and application functionality related to the user-defined data.

[redacted]

The Examiner confirms patentability of the claims over the following proposed rejections:

Claims 1-13, 16, 21, 23-26, 29, and 31-34 under § 102(b) as anticipated by Christopher K. Hess and Roy H. Campbell, "A Context File System for Ubiquitous Computing Environments," July 2002 ("Hess").

Claims 1-15, 21, 23-26, 29, and 31-34 under § 102(b) as anticipated by EP 1087306A2, March 28, 2001 ("Hubert").

Claims 1, 2, 4-15, 21, 23-26, 29, and 32-34 under § 102(b) as anticipated by iManage DeskSite 6.0, User Reference Manual, 1999 ("iManage").

Claims 1-16, 21, 23-26, 29, and 31-34 under § 103(a) as unpatentable over Hess and U.S. Patent 6,430,575 B1, August 6, 2002 ("Dourish").

Claims 9-15, 21, 23-26, and 31-34 under § 103(a) as unpatentable over Hess and Microsoft Corporation, "Computer Dictionary," 3rd Edition, 1997 ("Microsoft").

Claim 16 under § 103(a) as unpatentable over Hubert and U.S. Patent No. 6,434,403 B1, August 13, 2002 ("Ausems").

Claims 1-15, 21, 23-26, 29, and 31-34 under § 103(a) as unpatentable over Hubert and U.S. Patent Publication No. 2003/0120660 A1, June, 26, 2003 ("Maritzen").

Claim 3 under § 102(b) as anticipated by U.S. Patent No. 6,236,994 B1, May 22, 2001 ("Swartz").

Claims 1, 2, 4-16, 21, 23-26, 29, 31, and 33 under § 103(a) as unpatentable over Hess and Maritzen.

[redacted]

Judicial Proceedings

We are informed that the '761 Patent was the subject of litigation styled "*LEADER TECHNOLOGIES, INC. v. FACEBOOK, INC.,* Case No. 1:08-CV-00862 LPS, filed in the U.S. District Court for the District of Delaware (App. Br. 1), in which the jury found each asserted claim (i.e., claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32) invalid under 35 U.S.C. §102(b) as being on sale and in public use more than one year before the priority date to which it was entitled.

A Decision affirming the District Court's final judgment of the invalidity of claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32 under 35 U.S.C. § 102(b) was issued by the United States Court of Appeals for the Federal Circuit on May 8, 2012 (No. 2011-1366).[2]

ISSUE

Did the Examiner err in refusing to reject claims 2, 3, 5, 6, 8, 10, 12-15, 24, 26, 29, 33, and 34?

[2] In view of the final judgment of invalidity of claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32 by the United States Court of Appeals for the Federal Circuit, we will not consider issues of invalidity in this appeal pertaining to these claims. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1429 (Fed. Cir. 1988)("if a court finds a patent invalid, and that decision is either upheld on appeal or not appealed, the PTO may discontinue its reexamination"). Claims subject to this appeal are therefore claims 2, 3, 5, 6, 8, 10, 12-15, 24, 26, 29, 33, and 34.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

ANALYSIS

Ex parte reexamination proceeding 90/010,591

Appellant argues that "[t]he Examiner did not address the four SNQs and several prior art references that were presented in the *Ex Parte* Request" (App. Br. 8). This issue is moot because, as indicated above, the merger of ex parte reexamination proceeding 90/010,591 and inter partes reexamination proceeding 95/001,261 was dissolved (see Decision Dissolving Merger of Reexamination Proceedings dated May 15, 2012).

[redacted]

Hess Reference

The Examiner refuses to adopt the proposed rejection of claims 2, 3, 5, 6, and 8 as anticipated by Hess. The Examiner states that Hess "does not disclose computer implemented tracking of this physical movement of the user" (Action Closing Prosecution 46-47) because, according to the Examiner, Hess merely discloses that "the context is set manually (*pg. 10, 2nd ¶*)" (Action Closing Prosecution 47). Claim 2, which depends from claim 1, recites a component "for tracking a change of the user from the first context to a second context." Hence, the Examiner appears to take the following position:

1) Claim 2 requires setting the context in a *non-manual* fashion.
2) Hess fails to disclose setting the context in a non-manual fashion (in contradistinction with this "requirement" of claim 2).
3) Therefore (and as a consequence of Hess failing to disclose setting a context non-manually), Hess fails to disclose tracking movement of the user.

We do not agree with the Examiner. First, the Examiner does not indicate how claim 2 requires setting the context in a "non-manual" fashion (point 1 above). Instead, claim 2 appears to merely recite "capturing context information," storing context information in metadata," and "updating the stored metadata" but does not appear to require that any of these activities are performed "non-manually" (or, presumably, "automatically"). Since the Examiner has not demonstrated that claim 2 requires setting the context non-manually (or "automatically"), we cannot agree with the Examiner of the relevance to claim 2 of whether Hess fails to disclose setting the context non-manually/automatically or not (point 2 above).

[redacted]

Even assuming that claim 2 requires that context information is captured "automatically" as the Examiner appears to assume, Hess discloses "the physical location of the user triggers the automatic configuration of the user's environment" (Request for Inter Partes Reexamination dated November 13, 2009, p. 14, citing Hess, § 1, page 4). Since a user's location or "context" is automatically configured (i.e., captured or updated) in Hess, we disagree with the Examiner's statement that Hess fails to disclose that context information is captured or updated "automatically" at least because Hess explicitly discloses that the context is configured automatically.

Second, still assuming that claim 2 requires setting the context in a non-manual or automatic fashion and further assuming that Hess fails to disclose the "automatic" feature as the Examiner appears to assume, the Examiner does not demonstrate how such a finding indicates that Hess also fails to disclose "tracking movement of the user" (point 3 above) since whether "capturing context information" is performed manually or automatically does not appear to impact the separate action of tracking a user.

As Appellant points out, Hess discloses that "[u]sers can move between spaces and their environment (i.e., applications, state, data, etc.) can move with them" (Request for Inter Partes Reexamination dated November 13, 2009, p. 31, citing Hess, § 1, page 3) and "personal mount points may be . . . automatically retrieved from a home server and merged into the current environment" (App. Br. 10; Hess, p. 5, § 2.1). The Examiner has not demonstrated a difference between these disclosures in Hess, for example, and "tracking a change of the user" as recited in claim 2. We do not

[redacted]

independently identify any differences because in both cases, the user's location is being tracked.

The Examiner also states that Hess fails to disclose a "component" for capturing context information and a "component" for tracking a user because "the mount server [of Hess] cannot be both the claimed context component and the claimed tracking component" (see, e.g., Action Closing Prosecution 47). However, as Appellant points out, "'components' can reside within a single computer or single program" (App. Br. 12, citing the '761 patent at col. 5, ll. 54-65). Hess discloses a server computer that one of ordinary skill in the art would have understood to execute computer algorithms with "components" for performing the disclosed functions of, for example, capturing context information (i.e., "the automatic configuration of the user's environment" (Hess, § 1, page 4)) and tracking a change of the user (e.g., "[u]sers can move between spaces and their environment (i.e., applications, state, data, etc.) can move with them" (Hess, § 1, page 3)).

We disagree with the Examiner that the "mount server" of Hess cannot contain a component for capturing context information and a component for tracking a user because, as described above, Hess discloses each of these functions being performed by a computer system. One of ordinary skill in the art would have understood that if the computer system of Hess performs specific functions, then the computer system of Hess contains "components" that perform the specified functions because otherwise, the specified functions would not be performed as disclosed by Hess.

[redacted]

The Examiner also refuses to adopt the rejection of claims 2, 3, 5, 6, and 8 as obvious over the combination of Hess and Dourish because, according to the Examiner, the proposed rejection "makes the conclusion [of obviousness] . . . without pointing to any specific teachings as to how this combination meets the claim limitations" (Action Closing Prosecution 47). With the exception of the issues already discussed above, the Examiner does not point to any additional specific elements that the combination of Hess and Dourish does not disclose or suggest. In addition, Appellant/Requester appears to provide sufficient reasons with supporting factual underpinnings to support the conclusion that the combination would have been obvious.[3] The Examiner does not point out any specific flaws in Appellant's/ Requester's rationale. In the absence of any specifically identified flaws in Appellant's rationale, we cannot agree with the Examiner.

The Examiner provides the same rationale(s) for refusing to adopt the rejection under 35 U.S.C. § 102(b) of claims 10, 12, and 13 as anticipated by

[3] Appellant states, for example, that "[i]t would also have been obvious to one of ordinary skill in the art to combine Hess and Dourish to provide the systems and methods claimed in claims 1-16, 21, 23-26, 29, 31-34. Both Hess and Dourish provide solutions to the same problems purportedly addressed in the '761 patent, which would lead a skilled artisan to look to both references for possible solutions to the problem. Both Hess and Dourish describe techniques for managing and organizing a user's data (including through using stored metadata), and both references disclose the ability of a user to move to a new context, workspace, or user environment in which the user accesses that data. A person of ordinary skill in the art could easily have combined the elements of both systems by known methods, with no change in their respective functions and yielding nothing more than results which would have been predictable at the time the '761 patent was filed" (Request for *Inter Partes* Reexamination dated November 13, 2009, p. 138)

[redacted]

Hess and the rejection under 35 U.S.C. § 103(a) of claims 10, 12-15, 24, 26, 29, 33, and 34 as unpatentable over Hess and Dourish and does not provide additional reasons for not adopting the rejection of claims 10, 12-15, 24, 26, 33, and 34 as unpatentable over Hess and Microsoft. We disagree with the Examiner's refusal to adopt the rejection of claims 10, 12-15, 24, 26, 29, 33, and 34 for at least the reasons set forth above.

Respondent agrees with the Examiner that "'the mount server [of Hess] cannot be both the claimed context component and the claimed tracking component'," that Hess fails to disclose "the '761 Patent's 'tracking component'," and that there is no discussion of "***how*** combining Hess and Dourish renders any claim obvious" (Respondent Br. 6). We disagree with Respondent for at least the reasons set forth above.

The Examiner erred in refusing to maintain the rejection of claims under 35 U.S.C. § 102(b) as anticipated by Hess; claims 2, 3, 5, 6, 8, 10, 12-15, 24, 26, 29, 33, and 34 under 35 U.S.C. § 103(a) as unpatentable over Hess and Dourish; and claims 10, 12-15, 24, 26, 33 and 34 under 35 U.S.C. § 103(a) as unpatentable over Hess and Microsoft.

Hubert, iManage, and Swartz references

Affirmance of the rejection for the above-referenced claims based on Hess renders it unnecessary to reach the propriety of the Examiner's decision to refuse to adopt the rejection of those claims on a different basis. *Cf. In re Gleave*, 560 F.3d 1331, 1338 (Fed. Cir. 2009). As such, we need not decide the propriety of the Examiner's refusal to adopt the additional proposed rejections of those claims over Hess, Hubert, iManage,

[redacted]

or Swartz, alone or in combination with any of Ausems, Maritzen, or Microsoft.

CONCLUSION

Issues pertaining to the propriety of proposed rejections in the corresponding ex parte reexamination proceeding are moot and not properly subject to appeal for review by the Board.

The Examiner erred in refusing to reject claims 2, 3, 5, 6, 8, 10, 12-15, 24, 26, 29, 33, and 34.

DECISION

We reverse the Examiner's decision not to maintain the rejection of claims 2, 3, 5, 6, 8, 10, 12, and 13 under 35 U.S.C. § 102(b) as anticipated by Hess; claims 2, 3, 5, 6, 8, 10, 12-15, 24, 26, 29, 33, and 34 under 35 U.S.C. § 103(a) as unpatentable over Hess and Dourish; and claims 10, 12-15, 24, 26, 33 and 34 under 35 U.S.C. § 103(a) as unpatentable over Hess and Microsoft.

Pursuant to 37 C.F.R. § 41.77(a), the above-noted reversal constitutes a new ground of rejection and is hereby designated as such. Section 41.77(b) provides that "[a] new ground of rejection . . . shall not be considered final for judicial review." That section also provides that Patent Owner, WITHIN ONE MONTH FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal proceeding as to the rejected claims:

> (1) *Reopen prosecution.* The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so rejected or new evidence relating to the claims so rejected, or both.
>
> (2) *Request rehearing.* The owner may request that the proceeding be reheard under § 41.79 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

In accordance with 37 C.F.R. § 41.79(a)(1), the "[p]arties to the appeal may file a request for rehearing of the decision within one month of the date of: . . . [t]he original decision of the Board under § 41.77(a)." A request for rehearing must be in compliance with 37 C.F.R. § 41.79(b). Comments in opposition to the request and additional requests for rehearing must be in accordance with 37 C.F.R. § 41.79(c) & (d), respectively. Under 37 C.F.R. § 41.79(e), the times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (d) of this section, and for submitting comments under paragraph (c) of this section may not be extended.

An appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. §§ 141-144 and 315 and 37 C.F.R. § 1.983 for an *inter partes* reexamination proceeding "commenced" on or after November 2, 2002 may not be taken "until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board is final and

appealable by any party to the appeal to the Board." 37 C.F.R. § 41.81. *See also* MPEP § 2682 (8th ed., Rev. 8, July 2010).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REVERSED
37 C.F.R. § 41.77(b)

PATENT OWNER:

KING AND SPALDING LLP
1700 PENNSYLVANIA AVE, NW
SUITE 200
WASHINGTON, DC 20006

THIRD PARTY REQUESTER:

COOLEY GODWARD KRONISH LLP
777 6TH STREET, NW
SUITE 1100
WASHINGTON, DC 20001

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/010,591	07/02/2009	7,139,761	LTI0001-RXM	6253

74877 7590 04/17/2012

King and Spalding LLP
1700 Pennsylvania Ave, NW
Suite 200
Washington, DC 20006

EXAMINER	
HUGHES, DEANDRA M	
ART UNIT	**PAPER NUMBER**
3992	

MAIL DATE	DELIVERY MODE
04/17/2012	PAPER

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PTOL-9[redacted]

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,261	11/13/2009	7,139,761 B2	LTI0002-RXM	5286

74877 7590 04/17/2012

King and Spalding LLP
1700 Pennsylvania Ave, NW
Suite 200
Washington, DC 20006

EXAMINER	
HUGHES, DEANDRA M	

ART UNIT	PAPER NUMBER
3992	

MAIL DATE	DELIVERY MODE
04/17/2012	PAPER

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PTOL-90

[redacted]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

LEADER
Patent Owner and Respondent

v.

FACEBOOK, INC
Requestor and Appellant

Appeal 2012-003975
Reexamination Control Nos. 95/001,261 & 90/010,591
United States Patent 7,139,761 B1
Technology Center 3900

Before KIMBERLY R. JORDAN, *Division 1 Support Administrator.*

ORDER REMANDING APPEAL TO EXAMINER

The Office of the Group Director of Technology Center 3900, on behalf of the Director of the United States Patent and Trademark Office (USPTO), has requested that the application be remanded to the examiner for further consideration.

Accordingly, it is hereby ORDERED that the application is remanded to the Examiner for further consideration.

cc:

Patent Owner
King and Spalding, LLP
170 Pennsylvania Ave., NW
Suite 200
Washington, DC 20006

Third Party Requester (95/001,261):
Cooley, LLP
777 6th Street, N.W.
Suite 1100
Washington, DC 20001

Third Party Requester (90/010,591):
White & Case, LLP
Patent Department
1155 Avenue of the Americas
New York, NY 10036

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

LEADER
Patent Owner, Respondent

v.

FACEBOOK, INC
Requestor and Appellant

Appeal 2012-003975
Reexamination Control Nos. 95/001,261 & 90/010,591
United States Patent 7,139,761 B1
Technology Center 3900

Before KIMBERLY R. JORDAN, *Division 1 Support Administrator.*

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777 6th Street, N.W.
Suite 1100
Washington, DC 20001

Third Party Requester (90/010,591):
White & Case, LLP
Patent Department
1155 Avenue of the Americas
New York, NY 10036

[redacted]

Organization: FOIA Bldg/Room: MDW8C45

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PRIVACY ACT INQUIRY

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DEC 21 2012

[redacted]

December 18, 2012

Per USPTO Website:[1]

USPTO FOIA Officer
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
efoia@uspto.gov

Per § 102.23(a)
Privacy Officer
United States Patent and Trademark Office
Washington DC 20231

USPTO
Crystal Park Two
2121 Crystal Park Drive
Suite 714
Arlington, Virginia 22202

Dear USPTO FOIA Officer:

I am a citizen of the United States submitting this inquiry to the USPTO pursuant to §102.23(a). I have marked this request as "**PRIVACY ACT INQUIRY**" pursuant to §102.23(b) at the top of this letter and on the face of the envelope. Pursuant to §102.23(b) my request is with regard to:

(1) Name of the individual whose record is sought:

Facebook, Inc.
and USPTO counsels of record,
Cooley Godward Kronish LLP,
White & Case LLP,
Fenwick & West LLP.

(2) To the best of my knowledge and belief Facebook, Inc. and its counsels are U.S. citizens.

(3) Identifying data that will help locate the record:

Application No.	**95/001,261**
Application No.	**90/010,591**
Attorney Docket No.	**LTI0002-RXM**
Attorney Firm:	**Cooley Godward Kronish LLP**
Attorney Firm:	**White & Case LLP**[2]

[1] "FOIA Request: How to Submit." USPTO.gov <http://www.uspto.gov/ip/boards/foia_rr/submit.jsp>.

[redacted]

PRIVACY ACT INQUIRY

Attorney Firm:	**Fenwick & West LLP**[3]
Attorney:	**Heidi L. Keefe, Reg. No. 40,673**[4]
Attorney:	**Christopher P. King**, *aka* **Christopher-Charles King, Reg. No. 60,985**[5]
Attorney:	**Robert A. Hulse, Reg. No. 48,473**[6]

(4) Record sought:

Any and all communications regarding **95/001,261** (*In re.* McKibben *et al. Inter partes* Reexamination Proceeding) and **90/010,591** (*In re.* McKibben *et al. Ex Parte* Reexamination Proceeding) among:

a. BPAI;
b. Office of the USPTO Director, David J. Kappos;
c. Designates of the Office of the USPTO Director;
d. Representatives and/or designates of The White House;
e. Microsoft, IBM, The Federal Circuit Bar Association, The Federal Circuit, Clerk of Court Jan Horbaly, Judge Alan D. Lourie, Judge Randall R. Rader, Judge Evan J. Wallach, Judge Kimberly A. Moore, Thomas G. Hungar, Gibson Dunn LLP, Orrick Herrington LLP, Weil Gotshal LLP, Mark Zuckerberg, Marc Andreessen, James W. Breyer, Lawrence Summers, Gordon K. Davidson, Facebook PAC; Facebook, Inc., Attorney General, US Justice Department; and
f. Facebook USPTO counsels:
    1. Heidi L. Keefe, Reg. No. 40,673;
    2. Christopher-Charles King aka Christopher P. King, Reg. No. 60,985;
    3. Robert A. Hulse, Reg. No. 48,473;
    4. Cooley Godward Kronish LLP;
    5. White & Case LLP;
    6. Fenwick & West LLP; and
    7. Other Facebook USPTO law firm(s) and counsel(s).

(Kindly exclude all public contents of the Examiner's wrappers.)

---

[2] White & Case, LLP. *See* "Reexam Certificate of Service." App. No. 95/001,261, 07-08-2010.

[3] Fenwick & West LLP. See Pat. No. 7,669,123, Attorney/Agent Information; *See* also "Notice of Acceptance of Power Of Attorney, 03-03-2009."

[4] Cooley Godward LLP, Heidi L. Keefe. *See* "Reexam Certificate of Service." App. No. 95/001,261, 11-13-2009; *See* also "Notice Of Appeal From The Examiner To The Board Of Patent Appeals And Interferences." App. No. 95/001,261, 02-04-2011.

[5] *See* Christopher King, Christopher P. King, Reg. No. 60,985. App. No. 11/213,309, Aug. 26, 2005, Examiner's Wrapper summarized at <http://www.scribd.com/doc/86515684/USPTO-Patent-Wrapper-for-Andreessen-Vassallo-U-S-No-7-603-352-Fenwick-and-West-LLP-Mar-23-2012>.

[6] Fenwick & West LLP, Robert A. Hulse, Reg. No. 48,473. "Request for Certificate of Correction." *See* fn. 3, 05-11-2010.

[redacted]

PRIVACY ACT INQUIRY

(5) Action requested:

Copy of all communications between and among the parties identified above.

(6) N/A

(7) Requester's name:

(8) Date:

December 18, 2012

(9) Certification of request by notary:

See notary certification below

This request is pursuant to the Public Information, Freedom of Information and Privacy 37 CFR Part 102 Final Rule made effective on October 2, 2000 and published on the official website of the United States Patent and Trademark Office under the FOIA Regulations link at <http://www.uspto.gov/web/offices/com/sol/notices/pubfreeinf.pdf>.

Note is taken of FOIA Exemptions at <http://www.uspto.gov/web/offices/com/sol/foia/foia_exempt.htm>. This site includes a wide-ranging set of nine exemptions. If the FOIA officer believes that any of my requests are exempt, kindly identify that item in sufficient detail so that potential appeals can be specific.

Note is taken of the various policies regarding §102.11 Fees, and specifically §102.11(d)(5)(i), which indicates that no advance fees are required. *Op. cit.* **Where possible, an electronic copy of the information is preferred.** In cases where the electronic copy is available, please do not print out the electronic copy and then charge the $0.15 per page charge.

Respectfully, the regulations contain numerous opportunities for lack of transparency. For example, (c)(3) Search (i) "The FOIA Officer will charge for time spent searching even if no responsive records are located or if located records are entirely exempt from disclosure." I respectfully request that if such charges are to be made, that the officer will provide the specific search parameters used, and a sufficiently detailed abstract of the results, so that the documents can be reviewed if an appeal is requested. I trust given the nature of this inquiry, the officer will not consider this request unreasonable.

In order to help you determine my status for the purpose of assessing fees, you should know that I am a tax paying individual, and am seeking records for use for my personal interest.

PRIVACY ACT INQUIRY

I respectfully request a waiver of fees for this request because disclosure of the requested information to me is in the public interest. It is likely to contribute to public understanding of the practices of the USPTO.

By way of context, in addition to the current reexamination which I consider to be onerous and politically motivated, Patent Office records reveal that at least Fenwick & West LLP attorney Christopher P. King, Reg. No. 60,985 was representing both Mark Andreessen and Mark Zuckerberg on Feb. 23, 2010 when Facebook was awarded its first U.S. Pat. No. 7,669,123 (DURING the *Leader Technologies, Inc., v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008) patent infringement trial).

Therefore, I believe Fenwick & West's Christopher (aka Christopher-Charles) King had a professional duty of equitable conduct to disclose the McKibben patent as a prior art reference to the Examiner in the Zuckerberg patent *since he had already done so* in the earlier Marc Andreessen U.S. Pats. Nos. 7,603,352 and 7,756,945. Not only did Mr. King not disclose McKibben in the Zuckerberg-Facebook patent, but he *changed his name* to Christopher-Charles King in the Facebook patent. Nowhere else in the public record available to me does Mr. King identify himself as "Christopher-Charles."

Fenwick & West LLP was Leader Technologies, Inc.'s attorney in 2002-2003 and has failed to disclose this evident conflict of interest in any disclosure documents to which I am aware, and they certainly failed to disclose their knowledge of Leader's technology to the Patent Office.

Improprieties appear to be occurring with respect to the operation of the USPTO Director, certain registered USPTO attorneys, and Facebook with regard to Leader Technologies, Inc.'s U.S. Patent No. 7,139,761. I believe it is in the public's interest to understand what is going on and why the USPTO appears to be marching in lockstep with Facebook and its attorney firms. Individual inventors are being discouraged from disclosing their innovations to the USPTO in the wake of this highly questionable conduct.

It is in the public interest to know why the BPAI has become involved in a third re-exam in this matter over the objections of the Examiner herself. I trust you will assist in discovering the truth.

Please feel free to email or call me to discuss any aspect of my request. THANK YOU for your assistance. The foregoing may contain personal opinion that should not be relied upon without independent verification.

Sincerely,

[redacted]

SWORN TO AND SUBSCRIBED

Before me this 18th date of December, 2012

[redacted]

[redacted]

PRIVACY ACT INQUIRY

[redacted]

cc: Rebecca M. Blank, Acting Secretary of Commerce and Deputy Secretary of Commerce
Department of Commerce
1401 Constitution Ave., N.W.
Herbert C. Hoover Bldg, Room 5838
Washington, D.C. 20230

Honorable Jim Jordan (4th Dist. OH)
1524 Longworth House Office Bldg.
Washington, D.C. 20515

[redacted]

[redacted]

December 19, 2012

The Honorable Jim Jordan (4th Dist. OH)
3121 West Elm Plaza
Lima, OH 45805
T (419) 999-6455
F (419) 999-4238

[redacted]

Re: USPTO FOIA Request re. Leader Technologies, Inc.
and U.S. Patent No. 7,139,761

[redacted]

Enclosed is a courtesy copy of a Freedom of Information Act (FOIA) Inquiry that I have initiated at the United States Patent and Trademark Office (USPTO).

In my opinion, Leader Technologies as a *bona fide* Ohio innovator is being harassed mercilessly by the Director of the Patent Office by way of what are called "patent reexaminations."

As I understand it, patent reexaminations were originally intended by Congress to *cut down on the cost* of patent protection. However, the opposite appears to have occurred. Well-financed patent infringers like Facebook are now using re-examinations as yet another tool to *drive up the cost* of legitimate inventors protecting their inventions. Each reexamination costs hundreds of thousands if not millions of dollars in addition to the millions for patent infringement litigation. Little guys cannot afford to fight, which is exactly why the big guys drag the process out with frivolous costly actions.

For example, if a defendant in a patent infringement suit files for a re-examination of the plaintiff's patent early enough in the proceedings, they can often get the trial stayed for months if not a year or more while the re-examination proceeds. And, there is no limit to the number of reexaminations. In Leader's case the BPAI has just ordered a third reexamination of the same prior art. At this stage the Patent Office is not even hiding their pro-Facebook bias.

The purpose of my FOIA request is to determine if there has been abuse of the patent reexamination process, and whether there has been improper collaboration

[redacted]

between the USPTO Director, the Board of Patent Appeals and Interferences, the Federal Circuit, The Federal Circuit Bar Association, Facebook and Facebook's many attorneys who are active in the politics of Washington.

In stating the obvious: small inventors don't stand a chance at achieving justice and protection in law if the law, the courts and the Patent Office have been hijacked by the well-financed and well-connected. This third BPAI order for reexamination appears to be politically motivated.

I respectfully draw your attention to an earlier briefing on this subject prepared for your good offices:

> Briefing for Representative Jim Jordan, HOUSE OVERSIGHT COMMITTEE, "Abuse of Patent Reexamination Laws for the Purposes of Administrative (Political) Bullying, Business Harassment, Economic Dissipation, Dismantling of Patent Law, and Discouraging Small Inventors from Protecting Their Patent Rights," Nov. 6, 2012.[1]

[redacted]

Please feel free to email or call me to discuss any aspect of my request. THANK YOU for your assistance.

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[redacted]

Enclosed: USPTO FOIA Privacy Act Inquiry, Dec. 18, 2012

[1] Online: <http://www.scribd.com/doc/112347902/Briefing-for-Representative-Jim-Jordan-HOUSE-OVERSIGHT-COMMITTEE-Abuse-of-Patent-Reexamination-Laws-for-the-Purposes-of-Administrative-Political>.

[redacted]

December 19, 2012

Rebecca M. Blank
Acting Secretary of Commerce and Deputy Secretary of Commerce
Department of Commerce
1401 Constitution Ave, N.W.
Herbert C. Hoover Bldg, Room 5838
Washington, D.C. 20230
(202) 482-8376
(202) 482-2308 FAX
rblank@doc.gov

Dear Secretary Blank:

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and U.S. Patent No. 7,139,761

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I would appreciate your attention and inquiries into this matter that can bring a favorable outcome for Leader Technologies and Ohio.

Please feel free to email or call me to discuss any aspect of my request. THANK YOU for your assistance.

Sincerely,

[redacted]

Enclosed: USPTO FOIA Privacy Act Inquiry, Dec. 18, 2012

[1] Online: <http://www.scribd.com/doc/112347902/Briefing-for-Representative-Jim-Jordan-HOUSE-OVERSIGHT-COMMITTEE-Abuse-of-Patent-Reexamination-Laws-for-the-Purposes-of-Administrative-Political>.

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USPTO FOIA Officer
United States Patent and Trademark Office
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USPTO
Crystal Park Two
2121 Crystal Park Drive
Suite 714
Arlington, Virginia 22202

Privacy Act Inquiry

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Suite 714
Arlington VA. 22202

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X ☐ Agent ☐ Addressee

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