

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LEADER TECHNOLOGIES, INC., a
Delaware corporation

Plaintiff and Counterdefendant,

v.

FACEBOOK, INC., a Delaware
corporation

Defendant and Counterclaimant.

CIVIL ACTION

NO. 1:08-cv-00862-JJF

**DECLARATION OF STEPHEN GRAY
IN SUPPORT OF DEFENDANT'S MOTION FOR ORDER
COMPELLING RESPONSE TO DEFENDANT'S INTERROGATORY NO. 1**

I, Stephen Gray, declare:

1. I am a founder and principal of the consulting firm Gray & Yorg, LLC based in San Diego, California. I have more than thirty (30) years of experience in the computer and communications industries. My background includes systems and software architecture, design and development. I regularly consult in the areas of computer systems and software architecture, design and software engineering. I have also served as an expert technical consultant and/or witness in more than a dozen patent infringement cases involving computer or software-related patents, including performing infringement analyses. An accurate copy of my CV is attached hereto as **Exhibit A**.

2. I am informed that plaintiff in this action, Leader Technologies, Inc. ("LTI"), has accused Facebook, Inc. ("Facebook") of infringing certain claims of U.S. Patent No. 7,139,761 (the "'761 patent"). I have reviewed the '761 patent, Leader Technologies, Inc.'s Response to Facebook, Inc.'s First Set of Interrogatories (Interrogatory No. 1), and a letter from Paul Andre, Esq. to Heidi Keefe, Esq. dated April 6, 2009. I have also reviewed the 151 pages of documents that were

referenced in LTI's response and letter.

3. I have been asked to analyze the information LTI has provided to determine whether LTI has meaningfully identified the features, functions or steps that allegedly infringe the '761 patent. Based on my review of the materials referenced above, which I am informed constitute the entire universe of information LTI has provided as to its infringement allegations against Facebook, it is not possible to determine with any degree of certainty which features, functions or steps LTI is accusing in this action.

4. Using claim 1 of the '761 patent as an example, it recites a system for managing data that includes multiple steps that must be performed by a user of an infringing system. For ease of reference, I have set forth claim 1 below and added bracketed headings to show the separate limitations of that claim:

1. A computer-implemented network-based system that facilitates management of data, comprising:
 - [a] a computer-implemented context component of the network-based system
 - [b] for capturing context information associated with user-defined data
 - [c] created by user interaction of a user in a first context of the network-based system,
 - [d] the context component dynamically storing the context information in metadata associated with the user-defined data,
 - [e] the user-defined data and metadata stored on a storage component of the network-based system; and
 - [f] a computer-implemented tracking component of the network-based system
 - [g] for tracking a change of the user from the first context to a second context of the network-based system and
 - [h] dynamically updating the stored metadata based on the change,
 - [i] wherein the user accesses the data from the second context.

5. The claim language above makes clear that all of the steps in this claim depend on certain actions taken by a user of the claimed system. In order to infringe, for example, a user must access “**user-defined data**” in a “first context,” with the system capturing context information “created by **user interaction of a user**” in that context. After storage of the context information, the claim further requires tracking “a **change of the user** from a first context to a second context,” and concludes with “the **user access[ing] the data** from the second context.” It is therefore not possible to know whether claim 1 is infringed without knowing precisely what actions the user is performing on an accused system.

6. In my opinion, a meaningful description of how an accused system allegedly infringes the '761 patent requires, at the very least, a step-by-step identification of the specific actions taken by a user of the accused system (including the specific features used), and a precise description of how those actions meet or trigger each claim element. Such a description is even more essential when the accused system is a large networked system such as Facebook, which provides millions of users many ways to share information through thousands of applications. Because Facebook provides so many different ways to share and distribute information, a clear identification is essential in order to separate accused from non-accused functionalities.

7. LTI has provided no meaningful description of how Facebook's alleged infringement of the '761 patent takes place. For example, LTI's responses avoid any identification of the “**user-defined data**” or the “**first context**” in which user must initially operate as required by claim 1. I cannot determine, for example, whether the “first context” refers to a specific web page on Facebook, a group of web pages, one or more applications available on Facebook, the entire website, or something entirely different. Given the large number of components and features available on the Facebook website, LTI's response does not even permit meaningful speculation as to LTI's infringement contentions. LTI's response also fails to identify the “**second context**” into which the user moves, or explain how the user effectuated that movement.

8. The confusion is compounded by the documents cited in LTI's response, which I

have reviewed. For example, with respect to the requirement of claim 1 that the user moves to and accesses user-defined data from a second context, LTI states:

The ability to access data from a different context is shown by screenshots of the Facebook Website, including but not limited to LTI000781 to LTI000912.

(Leader Technologies, Inc.'s Response to Facebook, Inc.'s First Set of Interrogatories (Interrogatory No. 1), at 8). The 151 pages of documents referenced in this response, which I have reviewed, consist of screen-captures from Facebook and portions of Facebook's on-line help files. These pages are neither annotated, nor is there any information in these pages connecting what is depicted on the screen to any of the elements of claim 1. These pages depict so many different and disparate functionalities of Facebook (many having no apparent connection to the patent) that they are not informative to determining the accused features, functions or steps of Facebook.

9. LTI's response also refers to API calls. The term "API" is an acronym for Application Programming Interface, a term generally used to describe a set of software services that are provided to programmers for creating their own applications. The API calls referenced in LTI's response are designed to allow third party developers to access certain information regarding user status. The existence of these API calls says nothing about whether that information is ever used by Facebook in the manner recited in the claims, and LTI's reference to them is not informative to the issue of how the alleged infringement takes place.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 30, 2009 in Borrego Springs, California.

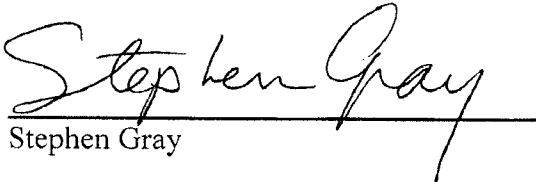

Stephen Gray

EXHIBIT A

Stephen Gray

Expertise

- Distributed Computing Architecture
 - Internet/Web/e-Commerce
 - Web Services Protocols/SOA
 - Client/Server Technology
 - Electronic Presentation Technology
 - Programming Languages
 - Image and Document Processing
 - Relational Database Design
 - Network Architecture
 - Software Quality
 - Software and Systems Development, Integration and Management
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Professional Summary

Mr. Gray has over 30 years of experience in the computer and communications industries. His background includes systems and software architecture, design and development as well as senior management positions in development, marketing, and general management.

Employment History

From: 1984 **Gray & Yorg, LLC**
To: Present San Diego, CA
Position: *Principal*

Mr. Gray is an expert in modern computing platform architecture, design, implementation and integration, including relational database design in networking environments. In providing consulting services, he has successfully completed the following projects:

- Performed patent portfolio analysis for large corporations
- Developed policies and procedures for a “clean” software development environment. Monitored activities to ensure conformance.
- CSO for a Business Process Management software start up. The firm develops Web Services/SOA based BPM creation, orchestration, management and optimization solutions.
- CTO for an e-Commerce Internet start up. The firm developed a product that specializes in procurement for public agencies.
- Interim CEO for a broadband Competitive Local Exchange Carrier (CLEC). Helped negotiate the successful sale of the CLEC.
- CTO for an Internet-based secure content distribution startup. The firm developed comprehensive Digital Rights Management (DRM) solutions for the control and promotion of content on the Internet.

- Architected several e-Commerce applications for legacy interoperability
- Participated in the architecture definition and design of a highly scalable, high performance device controller for multifunction document processing products
- Performed a detailed analysis of the competitive environment for retail point-of-sale hardware and software systems. Analysis included technology, marketing, compensation and back office interface issues
- Provided system design, product selection and project management for a turnkey software/hardware system for residential refuse hauling and toxic waste disposal company. System involved multiple hardware and software vendors around the IBM AS400 central processing system
- Led the design of a high performance, LAN-based image capture and statement printing subsystem using IBM system components using DBII relational database and SQL language for TRW
- Led the design of an image assisted, remittance processing system using IBM system components and Sybase relational database in a client/server architecture for TRW. Additionally, designed an object-oriented front end to the database so that the UNIX platform could execute Sybase applications
- Engaged to perform a technology audit for the United States Department of Agriculture using ORACLE database products, which resulted in a major overhaul of the database management implementation for their application
- Collaborated with FileNet to develop an IBM-to-UNIX interconnection strategy for their optical disk-based document imaging and filing system
- Defined high speed interconnection and relational database methods using SQL language for Marriott Corporation to handle large transaction volumes in a hotel reservations system
- Collaborated with Xerox in mid 1990s development of an electronic printing system front end supporting a wide range of advanced printing services, including resolution enhancement technology
- Advised Northern Telecom on the performance of IBM's Net View product
- Authored two technical seminars: SNA Technology Update, OS/2 and SAA, Introduction to Client/Server Technology with special emphasis on relational database management. Published articles in trade journals such as Interface Age, CASE World and Info World

From: 2001 **Networld Exchange Incorporated**

To: 2002 Bonsall, CA

Position: *Chief Technical Officer*

Networld Exchange, Inc. (NEI) provides Fortune 2000 companies private trading exchange (PTX) solutions that automate their B2B commerce activities. NEI is a restart. NEI is funded by institutional investors in New York and Florida. Mr. Gray was recruited in 4Q01 by the investors as part of the new management team.

From: 2000 **NTN Communications**

To: 2001 Carlsbad, CA

Position: *Chief Technical Officer*

NTN Communications, Inc. (AMEX: NTN) is the parent corporation of two operating divisions: Buzztime Entertainment, Inc. and the NTN Network®. Mr. Gray serves as CTO for the parent corporation and each of its operating divisions.

Buzztime Entertainment, Inc. develops and distributes sports and trivia games to a variety of interactive platforms including interactive television, the Internet, PDS and mobile phones.

The NTN Network, NTN's hospitality business, operates two interactive television (ITV) networks that broadcast games to millions of consumers each month at 3500 restaurants, sports bars and taverns in North America.

Mr. Gray is responsible for all of the technical aspects of the corporations as well as forward looking programs and business opportunities.

From: 1987 **Simpact Associates**

To: 1988

Position: *Director, Product Marketing*

Directed the full life cycle of definition, delivery, marketing and enhancement of four sets of IBM connectivity products, including:

- SNA protocol support hardware and software for DEC VAX systems
- An IBM PC-based gateway product that supports SNA and other industry-standard communications architectures
- A Netware-based Token Ring Network adapter board and software for DEC VAX systems
- A hardware/software product that receives financial market feeds and reformats the information for presentation to programs running a VAX via a proprietary applications programming interface (API)

From: 1982 **Xerox Corporation**
To: 1987
Position: *General Manager, Host Software Products*
1985-87 As the founder and leader of the product delivery organization of a Xerox independent business unit, Mr. Gray managed 21 employees and 33 contract professionals. He directed the definition, architecture, design, development, test, product transfer and sustaining engineering of six products for electronic page printers connected to IBM mainframes, DEC VAX and IBM PC's.

1982-85 Manager, Foreign System Interconnect. Managed four professionals who defined and developed the technical interconnect strategy for electric page printers to wide-and local-area networks. Mr. Gray's group delivered host software, network and printer engineering services. He invented a new printer interconnection technique, developed interfaces to Ethernet local area network, and designed connections to IBM mainframes using SNA and the System/370 channel.

From: 1979 **Computer Communications, Inc.**
To: 1982
Position: *Manager, Communication Controller Software Development*
As leader of the architecture, design, development, and testing of an SNA communications controller, Mr. Gray managed 24 professionals. His group successfully designed, developed and deployed the controller's operating software, diagnostics, host-based compilers, and system support software. Before that, he was the product manager for front-end processors and remote concentrators. Also, he engineered an X.25 multi-channel controller.

From: 1977 **Olivetti Corporation**
To: 1979
Position: *Regional Support Manager*
Started as a district manager and later became a regional software support manager for a series of mini- and microcomputer business systems. Applications included general business and on-line front-office banking.

From: 1973 **Burroughs Corporation**
To: 1977
Position: *Systems Programmer, Systems Analyst*
Specializing in data communications software and held several design and product implementation positions in the mid range and small system development groups.

Additional Professional Experience:

- Designed and implemented numerous relational database management systems using Sybase, Informix, Microsoft Access, DB2.
- Knowledgeable in C, C++, SQL, COBOL, RPG, Basic, Java, various Assembler languages, HTML, XML.
- Designed IBM SNA Distribution Services compatible electronic mail interface product. The product interfaced to MCI mail services.
- Designed peer-to-peer printing network product for MCI
- Designed image-processing system for TRW on contract with the Internal Revenue Service. Participated in the implementation of a prototype of the system.
- Designed image based item processing system for TRW and IBM Participated in the implementation of a prototype of the system.
- Defined IBM interoperability strategy for FileNet products.
- Defined distributed network printing product for Xerox.
- Defined and managed several networking products for Simpack Associates. Used the System Strategies Inc. Express SNA package.
- Defined, designed and implemented several interoperability interfaces to Xerox Electronic Printers.
- Defined, designed and implemented telecommunications control devices for Computer Communication Incorporated.
- Developed and presented numerous public and in-house courses in IBM, Unix, Internet and related networking technologies.
- Member of UCSD Connect “Most Innovative Product Award” Selection Committee (2002, 2003, 2004).
- Member of Association of Computing Machinery

Litigation Support Experience

Date: 2009 Jones Day
Case SuperSpeed v. IBM
Project: Patent infringement – distributed file systems
Status: Active

Date: 2008 Hogan & Hartson
Case ODS v. Magna Entertainment
Project: Patent infringement – E-Commerce
Status: Active

Date: 2008 Winston & Strawn
Case CNET v. Etilize
Project: Patent infringement – E-Commerce
Status: Active

Date: 2008 Weil, Gotshal & Manges
Case i4i v. Microsoft
Project: Patent infringement – Data formatting, representation
Status: Active

Date: 2008 Jones Day
Case MathWorks v. COMSOL
Project: Patent infringement - interoperability, Copyright
Status: Active

Date: 2008 Townsend, Townsend and Crew
Case Anthurium v. Spheris
Project: Patent infringement – Distributed Processing
Status: Active

Date: 2008 Jones Day
Case Soverain v. CDW, et al
Project: Patent infringement – e-commerce
Status: Active

Date: 2008 Paul Hastings
Case Sify v. Yahoo
Project: Trade secrets
Status: Active

Date: 2007 Finnegan Henderson
Case Cisco v. Telcordia
Project: Patent infringement – system monitoring
Status: Settled

Date: 2007 Brown, Raysman
Case WebSide Story v. NetRatings
Project: Patent infringement – web monitoring
Status: Settled

Date: 2007 Paul Hastings
Case MediaTek v. Sanyo
Project: Patent infringement – data compression
Status: Settled

Date: 2007 Sutherland
Case Fedex v. U.S.
Project: Tax Credit
Status: Active

Date: 2006 Jones Day
Case IBM v. Amazon
Project: Patent infringement – Electronic commerce
Status: Settled

Date: 2006 Brown, Raysman
Case NetRatings v. SageMetrics
Project: Patent infringement – web monitoring
Status:

Date: 2006 Young Conaway Stargatt & Taylor
Case Sungard v. PHI
Project: Breach of contract
Status: Settled

Date: 2006 Paul Hastings
Case Autobytel v. Dealix
Project: Patent Infringement – Electronic commerce
Status: Settled

Date: 2005 Brown Raysman
Case NetRatings v. Coremetrics, et al
Project: Patent Infringement – Electronic commerce
Status: Settled

Date: 2005 Kim & Wilcox
Case HealthFirst v. HealthTrio
Project: Contract Dispute – Electronic information portals
Status: Settled

Date: 2005 Ropes & Gray (Fish & Neave)
Case Ampex v. Kodak, et al
Project: Patent Infringement – Image transformation
Status: Settled

Date: 2005 Sedgwick Detert Moran & Arnold LLP
Case Waltrip Associates v. Kevin Kimberlin & Spencer Trask Ventures
Project: Contract Dispute - Theft of trade secret, EDI and ecommerce
Status: Settled

Date: 2005 Orrick, Herrington & Sutcliffe LLP
Case Metilinx v. Hewlett-Packard
Project: Contract Dispute - Large scale software deployment, QA, system
 management
Status: Settled

Date: 2005 Morrison & Foerster
 BEA v. SoftwareAG
 Patent Infringement - Web Services, Software development tools,
 OOP
 Settled

Date: 2005 Jones Day
Case Orion v. American Honda
Project: Patent Infringement – Electronic Catalogs and Brochures
Status: Active

Date: 2004 Keker & Van Nest
Case AB Cellular v. City of Los Angeles
Project: Contract Dispute – Tax Authority, Source Code Analysis
Status: Settled

Date: 2004 Silicon Edge Law Group
Case Oracle v. Mangosoft
Project: Patent Infringement – Web System Personalization
Status: Settled

Date: 2003 Smith Katzenstein & Furlow LLP
Case S. Rakoff et al v. Dot Com Group, A. Nash et al
Project: Contract Dispute – Web Analytics
Status: Settled

Date: 2003 Jones Day
Case Hill v. IBM
Project: Patent Infringement – Electronic Catalog, data management
Status: Active

Date: 2003 Fish & Richardson
Case Mirror Imaging LLC v. Affiliated Computer Services
Project: Patent Infringement – Electronic Document Storage
Status: Dormant

Date: 2003 Jones Day
Case VPS LLC v. Eastman Kodak Co. and Ofoto
Project: Patent Infringement – Digital Media distribution
Status: Settled

Date: 2002 Steptoe and Johnson
Case Steven Heard & Dean Messier v. California Institute of Technology
& Jet Propulsion Laboratory
Project: Patent Infringement - Digital Images Upload/Storage
Status: Closed

Date: 2002 Fish & Neave LLP
Case Harrah’s Casino v. Station’s Casino
Project: Patent Infringement – Player loyalty system in a network
Status: Dormant

Date: 2002 Preston Gates and Ellis LLP
Case Eyefinity, Inc. vs. Entigo, Inc.
Project: Contract Dispute - Faulty software development
Status: Settled

Date: 1998 Robman & Seeley
Case Ametron-American Electronic Supply v. Entin, et al
Project: Theft of Trade Secrets - Recovery of Data and Evaluation
Status: Settled

Date: 1998 Kronish Lieb Weiner & Hellman
Case GTE v. Videotron
Project: Contract Dispute - Analysis of UNIX-based system
Status: Settled

Date: 1998 Kudo & Daniels
Case Total Recovery Services v. Microage
Project: Contract Dispute - Faulty Product, evaluation of product.
Status: Settled

Date: 1996 Baker & Botts
Case BMC Software v. Peregrine Systems, Inc.
Project: Theft of Trade Secrets - DB2 enhancement software.
Status: Settled

Date: 1995 Pacific Bell Inside Counsel
Case David McGoveran v. Pacific Telesis Group and Pacific Bell
Damages trial in Theft of Trade Secret Litigation - assess market
potential and value of SQL software.
Status: Settled

Date: 1994 Cooley Godward Castro Huddleson & Tatum
Case ADV Freeman v. Boole & Babbage
Project: Contract Dispute - Assessment of software quality, expert witness
on product marketing and software quality.
Status: Settled

Date: 1984 O'Melveny & Myers
Case IBM v. NCR Comten
Project: Copyright Infringement - Code comparison and product analysis
and design of alternative technologies.
Status: Settled

Education

<u>Year</u>	<u>College/University</u>	<u>Degree</u>
1973	California Polytechnic University	BS, Economics
