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BY HAND & ELECTRONIC FILING

July 10, 2009

The Hon. Leonard P. Stark
J. Caleb Boggs Federal Building
U.S. District Court for the District of Delaware
844 N. King Street, Unit 26, Room 6100
Wilmington, DE 19801-3556

Re: Leader Technologies, Inc. v. Facebook, Inc., C.A. No. 08-862-JJF

Dear Judge Stark:

Defendant Facebook, Inc. respectfully submits this letter brief in opposition to the letter brief filed yesterday by plaintiff Leader Technology, Inc.'s ("LTI"). D.I. 65.

A. The Court Already Denied LTI's Motion

LTI's exact same motion was already denied by Judge Farnan on May 28, 2009. LTI previously brought a motion to compel Facebook's source code, technical documents and materials from unrelated litigations (the same materials sought here). Facebook countered that in advance of any further document production, LTI should first be required to provide a clear explanation of what aspects of Facebook's website were alleged to infringe in order to narrow the case. To that end, Facebook brought its own motion to compel a further response to its interrogatory seeking LTI's infringement contentions. (D.I. 39).

At the May 28, 2009 hearing, Judge Farnan denied both motions in their entirety (Ex. A, May 28, 2009 Tr., 34:1-6), and adopted an alternative procedure designed to protect Facebook from LTI's overly broad discovery. The Court concluded that, at this time, LTI should have tailored access to portions of Facebook's source code—but nothing else. The Court said: "What I think we need to do to try and make this a little bit informed and to let it evolve a little bit, I think I would like Facebook to produce that category list [of source code modules]. Then I'd like to see how reasonable [LTI] is in polling that list." *Id.* at 22:4-9; *see also id.* at 23:5-7 ("Okay. [LTI has] given enough at this stage of the case, but that's not enough to let them go full bore into Facebook."). The Court's new procedure requires Facebook to first produce a list of source code modules. *Id.* at 38:9-39:11. Thereafter, LTI would select a reasonable subset of those modules for review, so that it could provide more detail to its infringement contentions so

July 10, 2009

Page 2

discovery could proceed only as to relevant portions of Facebook. *Id.* at 24:4-25:20; 38:9-39:11. Even after the Judge denied LTI's motion and put this new procedure in place, LTI again asked the Court about its request regarding litigation materials. But Judge Farnan was clear that he had also denied that request in favor of his new procedure (outlined above). Ex. A at 39:7-11.

Per Judge Farnan's directions, Facebook produced the source code module list and LTI has made its selections, but LTI has not yet reviewed the source code nor supplemented its infringement theories. Therefore, nothing has substantively changed since the May 28 hearing. Until LTI's review is complete and its infringement contentions are properly supplemented, Judge Farnan's Order makes clear that LTI is not entitled to any further document production.

B. LTI's Attempt to Circumvent the Court's Order Should Be Rejected

The May 28 Order made clear that the Court was striking a balance between intruding on Facebook and providing LTI with the information it needed at this stage of the case. LTI should not be allowed to end run Judge Farnan's procedure by renewing its motion before Your Honor.

LTI provides no explanation for why these materials are relevant. The three litigations LTI now mentions have nothing to do with LTI or its patent. *See Wyeth v. Impax Labs., Inc.*, 248 F.R.D. 169, 170-71 (D. Del. 2006) (Farnan, J.) (holding requests for "pleadings, deposition transcripts, hearing transcripts and expert reports" in separate litigation involving the same patent to be overbroad and unreasonable).

As an aside, LTI's claim that Facebook has produced only 3,000 pages of documents is incorrect. Facebook has produced well over 100,000 pages. Moreover, LTI has continual access to the website, user guides and developer documents and has been offered access to the source code modules it selected. These provide LTI enough to articulate its alleged infringement case.

C. Facebook Has Answered LTI's Poorly-Drafted Requests for Admissions

Facebook has properly responded to LTI's Requests for Admissions ("RFAs"), which were complex and poorly-drafted. In fact, a month after Facebook served its responses, LTI complained that it did not understand the basis for Facebook's responses. Facebook assured LTI that its responses were proper, but offered LTI two reasonable options to address its concerns: (1) Facebook would agree to answer an LTI interrogatory seeking explanations for Facebook's denials (provided that both parties treat such interrogatories as only a single interrogatory toward the limit in FRCP 33); or (2) LTI could serve a new set of succinct, clear, precise RFAs, to which Facebook would respond. Ex. C at 1. LTI rejected the first proposal without explanation, and



July 10, 2009
Page 3

rejected the second proposal simply because it did not want to wait 30 days for response to well drafted RFAs.

Facebook properly responded to the RFAs, which were violated Rule 36's requirement that RFAs be simple, concise and direct while avoiding vagueness and ambiguity. *United Coal Cos. V. Powell Constr. Co.*, 839 F.2d 958, 967-68 (3d Cir. 1988); *Tulip Computers Int'l B.V. v. Dell Computer Corp.*, 210 F.R.D. 100, 107-08 (D. Del. 2002). LTI's RFA No. 1, cited in its letter brief, is actually a good example of the flawed nature of its RFAs. RFA No. 1 asks Facebook to "[a]dmit that the Facebook Website operates on one or more servers." Facebook properly objected to the RFA as vague because of LTI's definition of "Facebook Website," which it incorporated into nearly all of the RFAs, includes all versions of Facebook's website or any "associated" website that ever existed and all functionality available, even those that no longer operate. *See* Ex. A at 1-2. Facebook limited its response to the then current site and properly denied the RFA because, as LTI should know, not all features of facebook.com "operate" on "one or more servers" (as certain functions operate on the member's computer and not on a server). A properly-drafted RFA would, at a minimum, have identified the specific features that were claimed to operate on a server.

LTI's other RFAs suffer from similar problems, generally by incorporating complex definitions that, in turn, incorporate the already overly broad "Facebook Website" definition. *See e.g.*, Ex. B at 8 (RFA No. 6). Many of the RFAs improperly seek admissions on contested issues of infringement and were therefore properly denied. *See e.g., id.* This Court has held that "where issues in dispute [such as infringement] are requested to be admitted, a denial is a perfectly reasonable response." *Pfizer Inc. v. Ranbaxy Labs. Ltd.*, 2004 WL 830388, *1 (D. Del., April 12, 2004) (Farnan, J.).

Facebook should not be required to make assumptions, or fill in gaps, in response to poorly-drafted RFAs seeking binding admissions. Facebook properly answered all LTI's failed RFAs in good faith and even attempted to work with LTI on its concerns. Facebook submits that LTI's request regarding its RFAs be denied.

Respectfully submitted,

/s/ Steven L. Caponi
Steven L. Caponi
I.D. No. 3484

SLC:pf

cc: Philip A. Rovner, Esquire – via e-service

EXHIBIT C

July 2, 2009

VIA E-MAIL

Rowena Young, Esq.
KING & SPALDING LLP
333 Twin Dolphin Drive, Suite 400
Redwood Shores, CA 94065

Re: *Leader Technologies Inc. v. Facebook, Inc.* Civil Action No. 1:08-cv-00862-JJF

Dear Rowena:

I write regarding your letter dated today.

As to LTI's Requests for Admissions, Facebook offered LTI two reasonable options for dealing with LTI's poorly drafted requests and its dissatisfaction with Facebook's responses: (1) agree that an interrogatory seeking the bases for either party's responses to a particular set of RFAs would count as a single interrogatory toward that party's total allowance; or (2) re-serve succinct, clear, precise RFAs. Either option would more than provide LTI with what it seeks. You rejected both options. You claimed that LTI did not want to wait 30 days for responses to a redrafted and re-served set of RFAs. Facebook finds LTI's position surprising since LTI waited for over a month after service of Facebook's responses before raising any issues with those responses.

Your proposal, though never clearly articulated, I believe was to attempt to modify definitions for certain terms in LTI's existing RFAs and have Facebook answer those existing RFAs using external and separate definitions. Rule 36 requires a party to answer succinct and simple RFAs as written. LTI's proposal would require reference to external materials and any narrowing of the RFAs would not be apparent from the response, which, as you know, would be binding. Therefore, LTI's proposal would be unworkable, even if LTI had provided a list of proposed definitions, which it did not.

Facebook's position on the production of materials from unrelated litigations has not changed. LTI requested these documents in its motion to compel. The Court denied that motion, at least until such time as the parties resolve the threshold issue of what LTI is accusing. Yesterday you suggested that deposition transcripts of Facebook's employees deposed in the *ConnectU* case might be relevant to "the technology of the Facebook Website." Counsel for LTI made the same

ABU DHABI ALMATY ANKARA BEIJING BERLIN BRATISLAVA BRUSSELS BUCHAREST BUDAPEST DÜSSELDORF FRANKFURT HAMBURG
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Rowena Young, Esq.

WHITE & CASE

July 2, 2009

argument at the May 28, 2009 hearing before Judge Farnan. *See* May 28, 2009 Hearing Trans. 36:4-37:10. Counsel for Facebook argued that LTI still has not stated what it means by the “technology of the Facebook Website” or what aspects thereof are accused in this case. *See id.* at 37:12-38:6. The Court sided with Facebook and denied LTI’s request. *See id.* at 39:7-11. Nothing has changed. LTI has not provided Facebook with a supplemental interrogatory response that identifies what LTI is accusing as directed by the Court.

We address your inquiry regarding source code production in separate correspondence.

Sincerely,

/s/ Craig W. Clark

EXHIBIT A

*Leader Technologies, Inc. v.
Facebook, Inc.*

*Hearing
May 28, 2009*

*Hawkins Reporting Service
715 King Street
Suite 200
Wilmington, DE 19801
(302) 658-6697*

*Original File LEADER-1.TXT, 44 Pages
Min-U-Script® File ID: 2663004738*

Word Index included with this Min-U-Script®

[1] IN THE UNITED STATES DISTRICT COURT
[2] FOR THE DISTRICT OF DELAWARE
[3]
[4] LEADER TECHNOLOGIES,)
[5] INC., a Delaware)
[6] corporation,)
[7] PLAINTIFF,)
[8] v.) C.A. No. 08-862 JJF
[9])
[10] FACEBOOK, INC., a)
[11] Delaware corporation,)
[12] DEFENDANT.)
[13]
[14] Thursday, May 28, 2009
[15] 10:35 a.m.
[16] Courtroom 4B
[17] 844 King Street
[18] Wilmington, Delaware
[19] BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
[20] United States District Court Judge
[21]
[22] APPEARANCES:
[23] POTTER ANDERSON & CORROON, LLP
[24] BY: PHILIP ROVNER, ESQ.
[25]
[26] KING & SPALDING LLP
[27] BY: PAUL ANDRE, ESQ.
[28] Counsel for Plaintiff
[29] BLANK & ROME, LLP
[30] BY: STEVEN L. CAPONI, ESQ.
[31]
[32] WHITE & CASE
[33] BY: HEIDI L. KEEFE, ESQ.
[34] Counsel for Defendant

[1] **THE COURT:** Now we have the group
[2] from detention coming in. You all are in the
[3] enviable position of having a dispute that seems
[4] to be continuing. It's like the kid in class
[5] that won't listen. We can take care of this.
[6] Want to announce your appearances?
[7] **MR. ROVNER:** Good morning, Your
[8] Honor. Phil Rovner from Potter Anderson. And
[9] with me from King and Spauling is Paul Andre.
[10] **THE COURT:** Good morning.
[11] **MR. CAPONI:** Good morning, Your
[12] Honor. Steve Caponi from Blank Rome, and with
[13] me today is Heidi Keefe from White and Case for
[14] Facebook.
[15] Your Honor, Ms. Keefe has a little
[16] laryngitis kicking in.
[17] **THE COURT:** Well, first of all, I
[18] have to tell you — well, in the brief in
[19] opposition. This is in this case. Ms. Keefe's
[20] brief.
[21] What size font is that footnote
[22] font? I didn't think they made that. What is
[23] that?
[24] **MS. KEEFE:** Which one, Your Honor?

[1] **THE COURT:** All of them. You have
[2] this print. I had to go to my ophthalmologist.
[3] They thought it was me.
[4] **MS. KEEFE:** I think it's ten. I
[5] apologize, Your Honor.
[6] **THE COURT:** Don't apologize. I
[7] have fun up here. Trust me. This is all good.
[8] What size is yours, Mr. Andre?
[9] **MR. ROVNER:** I believe ours is
[10] eleven, Your Honor.
[11] **THE COURT:** Is that all the
[12] difference is? That's shocking.
[13] Well, we're going to have an order
[14] that says nothing less than eleven.
[15] **MS. KEEFE:** No problem. That's
[16] easy.
[17] **MR. ROVNER:** Your Honor, I think I
[18] misspoke. Ours is twelve, which is the same as
[19] the body.
[20] **THE COURT:** Okay. That's good to
[21] know. Twelve. Making a note of that. So I was
[22] thinking I was getting a lot older all of a
[23] sudden.
[24] Seriously, we kind of knew this

[1] was going to happen. This is — you know, I got
[2] the note from the sixth grade teacher as you
[3] came into the seventh.

[4] She said, "This is what's going to
[5] happen. You have to be on top of it in
[6] September."

[7] Let me ask both of you, and we'll
[8] start with the plaintiff. Give me a description
[9] of what a person of ordinary skill in this art
[10] would look like. And I know. Believe me, I'm
[11] not committing you to this. I'm just interested
[12] today in understanding that.

[13] **MR. ANDRE:** Your Honor, I think it
[14] would be someone with a computer science degree,
[15] maybe even an advanced degree like a master's or
[16] doctorate, or someone who has a lot of computer
[17] experience, industry experience. Someone who
[18] has spent a significant amount of time working
[19] on the computer over the last ten, twenty years.

[20] That would by my understanding of
[21] someone skilled in the art as a layperson
[22] reading or using Facebook. I think a layperson
[23] without those skills can understand these
[24] claims. You characterize it as two guys in a

[1] the word "preliminary."

[2] **MR. ANDRE:** Your Honor, what we
[3] know is what's available in the public. So we
[4] can look at the manifestation of the source
[5] code, which is the web site.

[6] So what we will do once we get
[7] their technical information is take the back end
[8] stuff and supplement our infringement
[9] contentions. That's why we use the word
[10] "preliminary."

[11] We know their web site functions
[12] just as the claims dictate. We can tell that by
[13] looking at it. What we don't know are what
[14] components or modules are responsible for those
[15] functions.

[16] We don't know what components or
[17] modules, for example, do the tracking or things
[18] of that nature. So these are preliminary
[19] infringement contentions based on the public
[20] information.

[21] There are only two sources of
[22] public information available to us: Their web
[23] site itself and API. That's it. So we used
[24] those two sources to provide preliminary

[1] dorm room.

[2] I don't think it is overcomplex
[3] technology, but for one skilled in the art, I
[4] think a definition for validity purposes, it
[5] would be that characterization I just gave.

[6] **THE COURT:** And with regard to the
[7] case, this case at hand: Pre-filing. And I
[8] don't want you to disclose anything prematurely.
[9] This is just a yes or no. Did you have a
[10] consultation with potential experts?

[11] **MR. ANDRE:** Yes.

[12] **THE COURT:** Would they have been
[13] academics or more toward the industry side?

[14] **MR. ANDRE:** It was both, Your
[15] Honor, but primarily academics.

[16] **THE COURT:** Okay.
[17] And with regard to the claims,
[18] your papers tell me that — and I always want to
[19] be a careful reader — you say in response to
[20] their effort at discovery from you, with
[21] interrogatory number one, that you've given them
[22] your preliminary infringement analysis.

[23] **MR. ANDRE:** Yes, that's correct.

[24] **THE COURT:** Tell me why you use

[1] infringement contentions.

[2] We're probably borrowing a little
[3] bit from the districts that have requirements
[4] that you get preliminary infringement
[5] contentions early in the case and then your
[6] final later, once you get discovery.

[7] **THE COURT:** And the source code,
[8] that is what will be, kind of, like, the step
[9] off technical information?

[10] **MR. ANDRE:** The source code and
[11] the technical documents in support of the source
[12] code.

[13] The way the source code is written
[14] is, usually you have a design note. And they
[15] write the code based on that note. Those two
[16] sources of technical documents will give us all
[17] we need to finalize our infringement
[18] contentions.

[19] This is unique to all software
[20] cases, unless the code is open source of some
[21] type or available to the public.

[22] I think, Your Honor, one of the
[23] points here is that the parties know the source
[24] code is going to be produced in the case. We've

Page 8

[1] negotiated it in the protective order.
[2] **THE COURT:** It's all a question of
[3] timing, and what I hear all the time,
[4] particularly in these cases, is, "as the
[5] discovery evolves." And I am never in tune with
[6] that evolution, apparently. But that's okay.
[7] Let me ask Ms. Keefe some
[8] questions. Thank you.
[9] If you could just start out
[10] helping me with your idea of who might be a
[11] person, by characteristics, skilled in the art.
[12] **MS. KEEFE:** At a very broad level,
[13] Your Honor, I think I agree. Someone with
[14] computer science experience, whether that be
[15] from industry experience or from a degree.
[16] I think what we find in Silicone
[17] Valley most times is that degrees are not the
[18] arbiter of a person of skill since so many
[19] computer scientists/software engineers come
[20] straight out of high school and start working.
[21] So it really is someone with some experience in
[22] the field.
[23] **THE COURT:** Okay. Now, I guess
[24] the way I read your paper was that you felt that

Page 9

[1] you should get a — I'll say in the first
[2] instance — the full contention of plaintiff
[3] with regard to why they think they can accuse
[4] you of infringement, and that what has been
[5] produced in a — quote, unquote — preliminary
[6] context doesn't help you because it doesn't
[7] define the infringement issue.
[8] **MS. KEEFE:** That's exactly what
[9] our point is, Your Honor, especially with
[10] respect to the fact that they haven't linked any
[11] of their infringement contentions with any of
[12] the claim limitations or elements.
[13] **THE COURT:** You say you want a
[14] limitation-by-limitation analysis.
[15] **MS. KEEFE:** Correct, that's what
[16] our interrogatory asked for.
[17] What the case law tells us is that
[18] we know that there may be some aspects that are
[19] back end that the code would be helpful to them
[20] for. Before we get to that point, they still
[21] have to tell us everything that they know from
[22] the publicly available information. They
[23] haven't done that.
[24] In fact, we had a broad narrative

Page 10

[1] that wasn't linked to any limitations that
[2] didn't link itself to any of the products on
[3] Facebook's web site and therefore didn't tell
[4] us, even, what code we needed to go and gather.
[5] And instead, they've asked for all
[6] of the codes for all of the Facebook web site
[7] without telling us how that's linked in any way
[8] to the claims.
[9] So what we're asking for now, Your
[10] Honor —
[11] **THE COURT:** What's the feeling
[12] there? That they're going to find some
[13] additional infringement?
[14] **MS. KEEFE:** I'm sorry. Could you
[15] repeat that, please?
[16] **THE COURT:** What's the fear?
[17] Say I order you to produce the
[18] entire source code. It's electronic. You
[19] produce it. You have provisions in the
[20] protective order. What's the fear about that
[21] production, particularly the protective order?
[22] **MS. KEEFE:** I think for any
[23] software company, the first fear is simply
[24] wanting to make sure that the amount of code

Page 11

[1] that gets out is limited to what's involved in
[2] the case. No matter how good the protective
[3] order is, there's always human nature. There
[4] are always mistakes. There are always things
[5] that happen, and you can't unring that bell.
[6] And that's not accusing anyone of
[7] doing anything. It's just protecting the
[8] possibilities of potential problems.
[9] Secondly, Facebook's website is
[10] terabytes worth of data. Your Honor had a case
[11] recently with a similar thing where the entire
[12] source code was produced. And immediately,
[13] plaintiffs came back and said, "This is too big.
[14] I need you to tell me the lines in here that do
[15] X and Y."
[16] And Your Honor rightfully said,
[17] "You asked for all. You get it." What we're
[18] hoping to forestall are any of those types of
[19] problems.
[20] We understand that our code is
[21] going to be disclosed in this case. If they can
[22] show us that there are portions of our website
[23] that legitimately track to their claim
[24] limitations, we will provide that narrow scope

[1] of source code.

[2] We never refused to produce source
[3] code. We simply said, "Tell us what it is that
[4] we're supposed to produce. Not the whole site.
[5] We need to protect our assets, but the things
[6] that are relevant to this case."

[7] And they have yet to come to that
[8] hurdle. They still haven't given us that
[9] analysis.

[10] I think the most striking thing,
[11] if you read their interrogatory response, the
[12] one that is —

[13] **THE COURT:** If I read their claims
[14] and I was a person of skill by whatever
[15] definition we use, you're telling me that I
[16] could, from reading their claims, I could be
[17] able to tell what portions of the source code I
[18] want to see?

[19] **MS. KEEFE:** I think so, Your
[20] Honor.

[21] For example, one of the things
[22] that's very striking about what they haven't
[23] given us yet in the response itself —

[24] The response itself is a broad

[1] certain applications on the web site, then the
[2] answer is yes.

[3] What you can do, for example, with
[4] an application like gifts, there is a string of
[5] codes that affects gifts. There are also
[6] multiple other strings of codes and other
[7] modules that have nothing to do with gifts that
[8] affect other portions of the web site and how
[9] they work.

[10] So, yes, you can compartmentalize.

[11] **THE COURT:** How many modules are
[12] there?

[13] **MS. KEEFE:** My client will be
[14] angry that I don't know the number, but it is a
[15] very large number. And I know this from a
[16] previous case that I worked on with them where
[17] we had to parse through to find the module that
[18] we needed. And we went to them, got the module
[19] that we needed with the attendant arms and limbs
[20] that it touched into, and we were able to
[21] produce that to the other side.

[22] **THE COURT:** Mr. Andre, if you saw
[23] the list of modules, do you think that would
[24] help you relate it to your claims?

[1] narrative. Someone goes to Facebook and does
[2] something, but it doesn't link it to any web
[3] pages or any actual limitations.

[4] In their letter and their
[5] opposition papers, we're starting to suddenly
[6] see an actual linkage to real things that are
[7] happening. We see for the first time a mention
[8] of when a gift is given on Facebook. It's the
[9] gift, and how the gift is tracked.

[10] If the interrogatory response was
[11] that specific for the publicly-facing material,
[12] we would be able to give them the back code that
[13] allowed those publicly-facing things to happen.
[14] So they would be asking for the very things that
[15] they need by virtue of telling us what the
[16] front-end facing components are.

[17] In the claim, if you would review
[18] the declaration of Mr. Gray —

[19] **THE COURT:** Do you have category
[20] of bits? Not you personally. Does Facebook
[21] have categories of bits in the source code?

[22] **MS. KEEFE:** I'm not 100 percent
[23] certain that I understand what you mean. If you
[24] mean are there pods or modules that relate to

[1] **MR. ANDRE:** Most likely, Your
[2] Honor.

[3] If they had some kind of a map of
[4] their source code or the list of modules or
[5] anything like, I'm sure that would be very
[6] helpful to us, and we could probably limit it
[7] from there.

[8] We offered that to them, saying if
[9] they tell us how to categorize their source code,
[10] how they — everyone maps their codes so they
[11] can find it easily. Someone skilled in the art
[12] can easily pinpoint places in the codes.

[13] So if we had that, yes. That
[14] would be very helpful. We could probably, as
[15] long as they did somewhat of an accurate job of
[16] labeling the modules, we would be able to do
[17] that.

[18] Your Honor, one of the things
[19] we're concerned about, and Counsel raises it
[20] several times a day, is if we give them an
[21] example of infringement like the gifts, we don't
[22] want just the application for the gift.

[23] Our infringing contention is the
[24] fundamental architecture of their website. It's

[1] a context component and tracking component and
[2] other limitations in the claims.

[3] Our concern is we can't give them
[4] every single example of infringement. There
[5] would be hundreds of them because there's
[6] hundreds of applications that run on this
[7] architecture.

[8] If we get the list of their
[9] modules, we could probably look at that and
[10] determine what part of the architecture would be
[11] needed for us to look at.

[12] With the protective order, there's
[13] no worry at all about source code. There's no
[14] copies of it. We're not going to be able to
[15] print copies of it. It's held in a secure
[16] location at their office. We examine it. They
[17] have someone there watching us as we examine it.
[18] It's very safe. I don't think there is any
[19] threat at all that the source code is going to
[20] get out to the public somehow.

[21] **THE COURT:** One of the things — I
[22] know you understand this, and that's a rational
[23] argument. But if you and I owned it —

[24] **MR. ANDRE:** Trust me, Your Honor,

[1] we would be content to have them not say that,
[2] and say this is in things that we don't have.

[3] But they still have to tell us
[4] where the rest of the user-facing things are
[5] when they use the web site. That will help us
[6] determine which software to give them. That's
[7] what the case law says.

[8] The case law says that the
[9] Catch-22 we're talking about — and the parties
[10] actually agree. It's a unique situation that
[11] the parties agree on the case law that's
[12] applied. It's just that we disagree on whether
[13] or not they've given sufficient notice.

[14] **THE COURT:** I have to ask you a
[15] question because when I read these papers, why
[16] would anybody think the case law is more
[17] important than the rules?

[18] I understand the case law guides
[19] the decisions, but every patent case is
[20] different. And, well, that's why we don't have
[21] patent rules here. If you tried to apply them
[22] across the board to every type of patent case
[23] you get in, it doesn't work, is the result.

[24] When you read the rules, what

[1] I'm on both sides of the table involving
[2] software. I understand how proprietary
[3] engineers get about this.

[4] **THE COURT:** You would be very
[5] concerned about anybody looking at it.

[6] **MS. KEEFE:** Your Honor, I think
[7] one of the things that we're missing here is the
[8] limitation-by-limitation analysis that we still
[9] don't have.

[10] Mr. Andre keeps talking about not
[11] wanting to be limited to an application. He
[12] hasn't even given one limitation-by-limitation
[13] example of how the website infringes, telling us
[14] which portion of our code would be affected.
[15] Instead, we keep hearing "the platform."

[16] The case law tells us it is the
[17] plaintiff's burden to prove infringement at the
[18] stage of showing an infringement contention,
[19] showing how they believe someone infringes.
[20] They do have to go limitation by limitation.

[21] If they are contending, for
[22] example, that the tracking software on the back
[23] end or the storage aspect on the back end, which
[24] are the two elements they've listed as back end,

[1] happens is some judicial officer decides to
[2] write about their view of how the rules should
[3] be applied.

[4] Let me ask this question of both
[5] of you. Do you think most of these discovery
[6] decisions are informed or arbitrary?

[7] **MR. ANDRE:** In this court or other
[8] courts, Your Honor?

[9] **THE COURT:** You can say here
[10] because I think it's arbitrary. I wonder what
[11] lawyers and clients think.

[12] I understand at other courts,
[13] because judges talk at these conferences, I
[14] think it's arbitrary. Don't you think it's
[15] arbitrary?

[16] **MS. KEEFE:** Sometimes I feel like
[17] it's arbitrary, but sometimes I think there
[18] really are underlying things that can inform
[19] decisions.

[20] For example, in this case, the
[21] facts can inform what feels right and what seems
[22] fair based on what the plaintiff is supposed to
[23] do in a case and what the defendant is supposed
[24] to do.

[1] **THE COURT:** What I think the most
[2] interesting thing about this case is, from that
[3] kind of point, is that — and I think somebody
[4] mentioned in the papers — what was out there by
[5] the Facebook folks before the inventors of these
[6] claims.

[7] I'm not asking for an answer, but
[8] that's the kind of thing that's nuanced into
[9] this, that, to me, if I were a businessperson or
[10] on your side of the bench, it would drive me
[11] nuts.

[12] **MS. KEEFE:** It's driving Facebook
[13] nuts.

[14] **THE COURT:** I get that. I
[15] understand what you're telling me. I don't find
[16] the case law particularly helpful.

[17] I just gave a talk on eBay. eBay
[18] didn't do anything but say what was being done
[19] anyway, except they wanted to tell us what
[20] exceptions they liked as opposed to what the
[21] Federal Circuit likes.

[22] It's the craziest thing, but they
[23] have the equitable principles, which the trial
[24] judge applied. They have general principles

[1] people of technology come in and help us
[2] regularly get rid of these disputes. Everybody
[3] is alerted to this. It's a problem.

[4] What I think we need to do to try
[5] and make this a little bit informed and to let
[6] it evolve a little bit, I think I would like
[7] Facebook to produce that category list. Then
[8] I'd like to see how reasonable Mr. Andre is in
[9] polling that list. Does that make sense?

[10] **MS. KEEFE:** It does, Your Honor.
[11] The only thing — I'll go back to a rule instead
[12] of going to case law.

[13] **THE COURT:** You can do both. I'm
[14] just being frank with you.

[15] **MS. KEEFE:** I absolutely
[16] understand, and I agree with a lot of what Your
[17] Honor said.

[18] The rule, though, says that the
[19] plaintiff is supposed to have the burden of
[20] showing what's infringing.

[21] **THE COURT:** I know, but see,
[22] you've got a dumb judge who thinks I've bought
[23] into that preliminary showing.

[24] **MS. KEEFE:** We still don't know.

[1] from Roberts, and then Kennedy tells you, "Watch
[2] out for trolls."

[3] It's same thing the Federal
[4] Circuit said, just different words. I don't
[5] think that was any help at all for the trial
[6] courts, what they told us.

[7] I am concerned, both because I
[8] think these claims are readable — the
[9] limitations are readable, even to me — but I'm
[10] also concerned about the property of Facebook.

[11] I'll give you one more story. I
[12] was on the beach in Saint Thomas in January with
[13] my family, and some guy starts talking to me.
[14] And he winds up being the head of the computer
[15] department at the University of Chicago where
[16] they're building the world largest computer now.

[17] And he's in charge of that
[18] project, and he told me, when he heard I was
[19] from Delaware and heard I was judge, he said,
[20] "It's just terrible what's going on because
[21] inventors can't get tribute, and people who have
[22] property are getting abused."

[23] He thought the whole thing was
[24] crazy and didn't understand why we didn't have

[1] We even have a declarant with thirty years
[2] experience.

[3] **THE COURT:** I had to start
[4] somewhere with my arbitrariness.

[5] I said, "Okay. They've given
[6] enough at this stage of the case, but that's not
[7] enough to let them go full bore into Facebook."

[8] **MS. KEEFE:** We understand.

[9] **THE COURT:** I'm trying.
[10] But I think you have to come up
[11] with something, and I've kind of heard about
[12] these modules or bytes or all different things.

[13] I thought maybe if we got that
[14] list and then I go back and see how reasonable
[15] Mr. Andre wanted to be, and you can discuss this
[16] between yourselves. And then I'd have you back
[17] if you couldn't agree.

[18] **MS. KEEFE:** I think that's
[19] probably good.

[20] **THE COURT:** And then we see where
[21] we go next.

[22] **MS. KEEFE:** Okay.

[23] **THE COURT:** Mr. Andre?
[24] I'm trying to get you to stop

[1] talking. I'm getting nervous.
[2] **MS. KEEFE:** It's hard to do, Your
[3] Honor.
[4] **MR. ANDRE:** Thank you.
[5] Your Honor, that would be fine.
[6] One of the things I do tend to agree with Your
[7] Honor that these — my general impression is
[8] that discovery disputes are the biggest waste of
[9] courts' resources and clients' moneys in the
[10] civil litigation process. I think a lot of
[11] these rulings are arbitrary. I do tend to agree
[12] with you. We're not trying to ask for the
[13] world. We just want —
[14] **THE COURT:** I didn't think you
[15] were, but I can understand where they think that
[16] you are.
[17] **MR. ANDRE:** Absolutely. It is
[18] something that if we have a map or list of
[19] modules, we can pare that down and selectively
[20] target those modules.
[21] We can have our expert look at
[22] them, and if he says, "Well, this is having a
[23] call from another module," we'd like to be able
[24] to back and say, "We need that module as well."

[1] information. We'll be glad to supplement
[2] interrogatories and give them those limitation
[3] by limitation. No problem.
[4] I think the bigger issue we're
[5] going to have, obviously, is the fact that we're
[6] going to have those discovery fights. You heard
[7] from the very first time we were in the
[8] courtroom.
[9] Just to give you an example, kind
[10] of, like, Facebook, which is a magnitude larger
[11] than my small client, has produced about 2,800
[12] documents. We've produced two-and-a-half times
[13] that much already. This constant pull to try to
[14] get information is getting to be —
[15] It's kind of what you said in the
[16] earlier case today. They can make us spend a
[17] tremendous amount of money to try to pull out
[18] every single document.
[19] One of the things we were hoping
[20] for on this motion, for example, we filed a
[21] motion because they said they wouldn't give us
[22] documents. In their opposition, they give it to
[23] us. They said they weren't going to, then they
[24] did. So maybe it's moot now. Some of these

[1] Because if it's calling information from another
[2] module, we need that, obviously.
[3] **THE COURT:** Just so you know I'm
[4] not totally off the wall, the reason I asked
[5] those questions at the beginning, the next round
[6] of this evolution, I may ask each of you to
[7] bring in an expert to tell me why you want more
[8] than they're willing to give and let their
[9] expert tell me why you don't need it. So we
[10] have some information beyond legal argument.
[11] Does that make sense?
[12] **MR. ANDRE:** It does, Your Honor.
[13] If we get that and if we get the technical
[14] documents in support of those modules as well,
[15] once we identify them, that will take us almost
[16] all the way to all the technical documents we
[17] need anyway.
[18] **THE COURT:** Then you have to
[19] become very firm in your infringement analysis,
[20] limitation by limitation.
[21] **MR. ANDRE:** We think we've already
[22] done limitation by limitation on a broad scale
[23] based on public information. We've done
[24] everything we can do based on public

[1] categories are moot.
[2] But the technical documents, we
[3] don't want to have to come back here twenty
[4] times because every single time we ask for
[5] something, they put up a wall. That's our
[6] biggest concern, and that's what I'm most
[7] anxious about, I guess.
[8] We will be very precise on the
[9] modules. We won't go overbroad on this at all.
[10] **MS. KEEFE:** We've never, ever said
[11] we're not going to give the documents. We've
[12] given over 100,000 pages.
[13] If there is specificity to the
[14] request for our documentation, it will be
[15] forthcoming. There is no I'm pulling it, and
[16] you can't have it.
[17] We've maintained our position
[18] absolutely consistently. The one thing I'm
[19] worried about —
[20] I don't want Facebook to be
[21] trashed.
[22] **THE COURT:** Don't be so defensive.
[23] **MS. KEEFE:** I love my company.
[24] The only other thing I am hearing

(1) just a little bit, Your Honor, and I know this
(2) is just going to be, whenever it comes out is
(3) where it comes out.
(4) Mr. Andre seems to be saying,
(5) "Once I identify that module, I want every
(6) single thing about it, and then I'll keep coming
(7) back for more and more and more before I stop
(8) looking."
(9) One of the biggest points of us
(10) bringing this motion was in order to start
(11) moving forward in order for us to be able to do
(12) a proper invalidity analysis to start looking at
(13) claim construction. We need to know what's
(14) accused, and we do not still believe that we
(15) understand what's accused.
(16) So I would just ask that there be
(17) a little more give and take, that this just not
(18) be, I give a module list, he picks two, then he
(19) says he needs four, then six, then eight, and
(20) we're still left with no supplementation.
(21) Instead, maybe after each time,
(22) they have to supplement with additional
(23) information they learned each time so that we
(24) can keep moving this forward. He seems to be

(1) afraid of the fact that each supplementation is
(2) a limitation. I know that the rules state that
(3) you can supplement interrogatories with newly
(4) found information, so —
(5) **THE COURT:** The rules also say I
(6) can enter an order saying no more
(7) supplementation. That's why I like the rules.
(8) **MS. KEEFE:** Rules are good.
(9) **THE COURT:** In American courts, we
(10) don't follow them. You'll get briefs in
(11) discovery disputes, and it's all cases, and
(12) nobody analyzes the rule. Isn't that crazy?
(13) Maybe not. Call me crazy.
(14) I can order no more
(15) supplementation. I can put that down.
(16) You know what I'm going to do in
(17) this case? This case got started early, but I
(18) think it's an interesting enough case. I'm
(19) going to put you in my little study.
(20) **MS. KEEFE:** Oh, no.
(21) **THE COURT:** Yes. You're going to
(22) like this. You're not going to. Maybe you
(23) will.
(24) There's a big push in the courts

(1) for a whole lot of things in patent cases, some
(2) of which is completely ill-advised, I think.
(3) And to some extent, they're going to kill the
(4) goose, which is not a good thing for you all, in
(5) my view.
(6) So — and there's a lot of this
(7) international push, that we do things like they
(8) do it other places and why we have juries and
(9) all sorts of stuff out there.
(10) I'm going put you in the study
(11) which is going to, kind of, address what you
(12) just raised and also what you raised, Mr. Andre.
(13) There's a little questionnaire I
(14) have, and, for instance, I'll send you a letter
(15) and then you can respond to it.
(16) In camera, I'm going to ask you to
(17) submit — which means it doesn't go on the
(18) docket, it's not available in the clerk's
(19) office, it's only a chambers review document —
(20) and I tag it to Rule 1 and Rule 16. The word
(21) "inexpensive."
(22) Can you imagine that word is in
(23) the rules? It really is. There's actually a
(24) study commencing by an appellate judge, a guy

(1) who was an appellate lawyer who's been a
(2) district judge for five years or six years.
(3) He's doing a study on patent cases in complex
(4) litigation because in all his experience, he
(5) figured out how do this. Now he just needs some
(6) statistics to support it.
(7) He's polling lawyers and trial
(8) judges, and this is another ill-advised effort
(9) by our federal judicial center, in my view, to
(10) destroy the practice for lawyers. I think to
(11) make it more inefficient.
(12) I want you to send me a letter and
(13) tell me what your client spent pre-Rule 16
(14) conference to get to the Rule 16 conference,
(15) both in fees and costs.
(16) Then I want you to tell me in the
(17) letter what the budget — you don't have to
(18) share this with each other. It just comes to me
(19) — what the budget your client has for this case
(20) to a verdict or whatever interval you've priced
(21) the case. A budget of the case. Unless you're
(22) on a fixed fee, it would be a budget.
(23) And then at the end of the case,
(24) I'm going to ask you to tell us what was

(1) actually spent to get the verdict, and I will
(2) tie that budget number, without being biased or
(3) unduly influenced, to the amount of work I allow
(4) to be done in the discovery phase and allow the
(5) number of revitalizations of positions we'll
(6) allow and supplementations by whether or not
(7) we're tracking, to some extent, on the numbers.

(8) And the other financial collision
(9) we have going on is, you understand, even with
(10) the limited resources that your clients may be
(11) willing to spend on the this case or the
(12) extensive resources they may be willing to
(13) spend, you understand. Do they understand?

(14) And they don't. That's why
(15) they're whining to the Congress and all that
(16) they're basically throwing that up against a
(17) sole practitioner. It's unbelievable.

(18) To face, like, an — even in that
(19) patent pilot program we're talking about, for
(20) them to seriously allow us to handle what is
(21) thrown over this bench just in our patent cases
(22) would require a staff of ten law clerks, some of
(23) whom would have to have technical backgrounds.
(24) They don't get any of that. They look at you

(1) I'm going to deny all the pending
(2) motions as moot and order the production just on
(3) the transcript. I'm not going to enter a second
(4) order of the categories.

(5) When do you think you can get
(6) those?

(7) **MS. KEEFE:** I'm actually traveling
(8) this whole week. If Your Honor would give me
(9) until — not the week of June 1st — the
(10) following week, mid week. I would be able to go
(11) to my client —

(12) **THE COURT:** That's the week of
(13) June 15th. That's the Monday. So we'll say
(14) produce it by the 19th of June. That's the end
(15) of that week, and you can have a reasonable
(16) extension.

(17) **MS. KEEFE:** Yes, Your Honor.
(18) Thank you, Your Honor.

(19) **MR. ANDRE:** Your Honor, I think
(20) that's — with the production they made with
(21) their opposition, there was a category of
(22) documents where their affirmative defense is
(23) they said they produced everything, so we're
(24) okay with that. We don't want eleventh hour

(1) like you're crazy.

(2) But then you ask them, "How many
(3) associates do you have employed in this case as
(4) we go to trial?" Or staff and associates. I've
(5) never heard less than double digits. Never.

(6) So maybe we could use this case as
(7) one of our shining ten to twelve examples of how
(8) you can get cases through, stay on budget, if
(9) the court has knowledge. Then you have
(10) different mechanisms like we do here. There are
(11) some other things we'll tag, time to resolve
(12) discovery disputes.

(13) But I'll send you the whole
(14) questionnaire and the data we're going to
(15) collect. You're now in that study.

(16) Congratulations.

(17) **MR. ANDRE:** Sounds like fun.

(18) **MS. KEEFE:** Thank you, Your Honor.

(19) **THE COURT:** At least you can tell
(20) the client we're mindful. We're not out there
(21) in left field with no understanding of what
(22) they're going through and what you're going
(23) through to get the litigation completed as far
(24) as both sides and to resources.

(1) surprises, obviously. But that's fine.

(2) There was also a category of
(3) document requests for sales and marketing. They
(4) told us they produced those to us. We haven't
(5) had a chance to look at 100,000 pages of
(6) documents. If we start taking depositions and
(7) realize they didn't produce a lot of these
(8) documents, we would like to have it on the
(9) record that we can renew that portion of the
(10) motion in some formal way, re-filing the motion
(11) or with a less formal letter brief to Your Honor
(12) asking for a teleconference.

(13) A good example, Facebook announced
(14) in the news they just got a \$200 million
(15) financing based on a \$10 billion valuing of the
(16) company. I don't know if that kind of
(17) information is going to be useful information
(18) because George Pacific factors, not that any
(19) marked projections and stuff would be useful. I
(20) don't know.

(21) We will want that type of
(22) information from them if it's relevant to our
(23) case. We want some process in place where we
(24) can come back to Your Honor if we review the

[1] technical documents and don't think they are
[2] complete. They are the tenable documents I
[3] think Your Honor has handled.
[4] The fourth category, and this is
[5] something that we haven't mentioned today, is
[6] the documents in the previous litigations.
[7] There's two litigations in particular, one
[8] involving trade secrets and another involving
[9] patent infringement.
[10] In those cases, source code was
[11] produced. We've seen some of the deposition
[12] testimony from the founder of the company. It's
[13] on the web. We're finding it very relevant to
[14] our case.
[15] Their position has been those two
[16] litigations don't involve our patent; therefore,
[17] it's not relevant. It involves their
[18] technology.
[19] In those previous litigations,
[20] they made admission about their technology, they
[21] made other positions that we think would be very
[22] relevant. Their only objection for not
[23] producing it is on the relevancy ground.
[24] We don't think there will be any

[1] that it's relevant because it's about Facebook
[2] and about how Facebook developed.
[3] Once the technology — a broad,
[4] broad category — is circumscribed by virtue of
[5] this exchange that we're going to do now, I
[6] think we can revisit the issue and tell whether
[7] or not those cases are, in fact, related. And
[8] if they are, we'll produce them.
[9] **THE COURT:** Since you're in the
[10] study with the test group, you're — in the test
[11] group, you will be —
[12] I'm going to order this category
[13] production by June 19th, but you're going to be
[14] with Judge Stark, and you're not going to have
[15] to follow the Motion Day procedure.
[16] He has agreed to work with me on
[17] this study, and, actually, since he's a younger
[18] person and much brighter, he's going to be the
[19] one that goes out and talks about the study, I
[20] think.
[21] He's out in Berkeley right now at
[22] the program run by Professor Munell. He'll be
[23] back this weekend. You'll be able to call him
[24] up and present discovery disputes, and he's

[1] burden to producing deposition transcripts,
[2] discovery responses, and relevant documents from
[3] those litigations without implicating third
[4] parties.
[5] We want Facebook's information
[6] from those litigations. We don't think there's
[7] any burden. We think it's highly relevant.
[8] That's one issue we'd like to
[9] bring to the Court's attention today. There
[10] will be motion papers, as well.
[11] **THE COURT:** Right.
[12] **MS. KEEFE:** On taking them
[13] backwards, on the prior litigations, we're back
[14] to the same problem of Facebook's technology.
[15] It's everything on our web site.
[16] I actually would prefer that we
[17] revisit this issue after we identify which
[18] source code is going to be produced so we can
[19] see if those cases actually did, in fact, touch
[20] on the technology in these cases, so we're not
[21] just doing a but you're Facebook and there was
[22] technology at issue, so it must be at issue in
[23] this case.
[24] So far, that's all we have, is

[1] tracking the time it takes to resolve them and
[2] what you present.
[3] And then if you have an objection
[4] to his ruling, it'll come up to me, and I'm
[5] going to schedule it on the telephone. So I'm
[6] going to agree with you.
[7] Let's get the June 19th — I don't
[8] want to be inconsistent in the rulings since
[9] he's going to be taking as part of this group.
[10] Let's get that produced first, and then we'll
[11] take up these, Mr. Andre.
[12] **MR. ANDRE:** That's fine, Your
[13] Honor.
[14] **THE COURT:** And you'll have very
[15] good access to him because we've limited the
[16] cases, and we have this two-page data poll.
[17] And, of course, Judge Stark will want to look
[18] good, so I think he's going to have everything
[19] resolved in five days.
[20] I think it's going to be good to
[21] see what you can do, and — you know what the
[22] other part of that is? You have to hire a
[23] person to handle mediation. We don't care if
[24] you go there because you both have to agree to

[1] go to mediation.
[2] We want you to put somebody on
[3] board and then we'll give you a reporting
[4] interval. It will probably be every ninety
[5] days, and you can report to us that we didn't
[6] meet, so it doesn't cost anything.
[7] We're tracking it through various
[8] stages of discovery and then right up to the
[9] trial. But if you do meet, and you say, "We
[10] met. Progress made. Progress not made."
[11] That's all we want.
[12] Since we're putting all these
[13] financial resources — again, we have this
[14] financial collision with Judge Stark and myself
[15] into these cases. We felt that that was
[16] something that was the least cost that we could
[17] move out, and what could it cost you to retain
[18] somebody? \$1,000 or \$500 a piece?
[19] And you can select them from the
[20] list of people we have here. You can't use one
[21] of the judicial officers. Someone asked me
[22] could they go to Vice Chancellor Parsons, who
[23] was a patent litigator at Morris Nichols. He's
[24] at the Chancery Court, and they have a program

[1] to Judge Stark?
[2] **THE COURT:** That would go to Judge
[3] Stark. I'm not trying to get rid of it. I
[4] think you're going to find this test group —
[5] we're trying to find a way to expeditiously and
[6] inexpensively move patent cases through courts,
[7] so I think this is actually going to be less
[8] arbitrary and more informed for you and get you
[9] to the trial date more efficiently.
[10] **MS. KEEFE:** So for this second
[11] motion, it was on Your Honor's calendar for
[12] June 18th, is that now on Judge Stark's
[13] calendar?
[14] **THE COURT:** We'll send it down to
[15] Judge Stark. You don't have to use the patent
[16] Motion Day procedure in your case. You're going
[17] to have access to him by phone call or whatever
[18] he sets up with you.
[19] He's going to be tracking volume
[20] and that type of thing, which is something you
[21] both raised.
[22] **MS. KEEFE:** Thank you, Your Honor.
[23] **THE COURT:** Any other questions?
[24] **MR. ANDRE:** No, thank you.

[1] where they mediated intellectual property. You
[2] can go to him, or you can agree on somebody
[3] that's in Silicone Valley. I don't care.
[4] **MS. KEEFE:** Could we use a JAMS
[5] mediator?
[6] **THE COURT:** Sure. Whatever you
[7] want. That's the point. You get them. You
[8] decide what to pay them, and we're out of that.
[9] But, we're fulfilling our ADR
[10] obligation, and we're not imposing costs on you
[11] and not sapping resources here meeting every —
[12] the only thing we're going to tell you is how
[13] often we're suggesting you report this on
[14] anything you've done in that regard. It's
[15] strictly up to the parties to engage it.
[16] **MS. KEEFE:** That's easy, Your
[17] Honor.
[18] **THE COURT:** We're interested in
[19] getting to a trial.
[20] **MS. KEEFE:** That sounds easy.
[21] Only one other question, and that is, with
[22] respect, we actually have, just to please Your
[23] Honor, we've filed a second motion to compel
[24] already. Would you like us to now address that

[1] **MS. KEEFE:** No, thank you very
[2] much.
[3] **THE COURT:** You talked me into
[4] putting you in that group. I think it's going
[5] to be good for this case, and it'll get you,
[6] hopefully, better decisions and get them more
[7] expeditiously.
[8] But there is that one order, so
[9] ordered on this transcript, for June 19th.
[10] We'll be in recess.
[11] (Proceeding ended at 11:15 a.m.)
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[1] CERTIFICATION
[2] I, DEANNA WARNER, Professional
[3] Reporter, certify that the foregoing is a true and
[4] accurate transcript of the foregoing proceeding.
[5] I further certify that I am neither
[6] attorney nor counsel for, nor related to nor employed
[7] by any of the parties to the action in which this
[8] proceeding was taken; further, that I am not a
[9] relative or employee of any attorney or counsel
[10] employed in this case, nor am I financially
[11] interested in this action.

[12]

[13]

[14]

[15]

[16] DEANNA WARNER
[17] Professional Reporter and Notary Public

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Lawyer's Notes

\$

\$1,000 40:18
\$10 billion 35:15
\$200 million 35:14
\$500 40:18

1

1 30:20
100 13:22
100,000 27:12; 35:5
11:15 43:11
15th 34:13
16 30:20; 31:13, 14
18th 42:12
19th 34:14; 38:13; 39:7; 43:9
1st 34:9

2

2,800 26:11

A

a.m 43:11
able 12:17; 13:12; 14:20; 15:16; 16:14; 24:23; 28:11; 34:10; 38:23
absolutely 22:15; 24:17; 27:18
abused 21:22
academics 5:13, 15
access 39:15; 42:17
accurate 15:15
accuse 9:3
accused 28:14, 15
accusing 11:6
across 18:22
actual 13:3, 6
actually 18:10; 30:23; 32:1; 34:7; 37:16, 19; 38:17; 41:22; 42:7
additional 10:13; 28:22
address 30:11; 41:24
admission 36:20
ADR 41:9
advanced 4:15
affect 14:8
affected 17:14
affects 14:5
affirmative 34:22
afraid 29:1
again 40:13
against 32:16
agree 8:13; 18:10, 11; 22:16; 23:17; 24:6, 11; 39:6, 24; 41:2
agreed 38:16

alerted 22:3
allow 32:3, 4, 6, 20
allowed 13:13
almost 25:15
always 5:18; 11:3, 4, 4
American 29:9
amount 4:18; 10:24; 26:17; 32:3
analysis 5:22; 9:14; 12:9; 17:8; 25:19; 28:12
analyzes 29:12
Anderson 2:8
Andre 2:9; 3:8; 4:13; 5:11, 14, 23; 6:2; 7:10; 14:22; 15:1; 16:24; 17:10; 19:7; 22:8; 23:15, 23; 24:4, 17; 25:12, 21; 28:4; 30:12; 33:17; 34:19; 39:11, 12; 42:24
angry 14:14
announce 2:6
announced 35:13
anxious 27:7
API 6:23
apologize 3:5, 6
apparently 8:6
appearances 2:6
appellate 30:24; 31:1
application 14:4; 15:22; 17:11
applications 14:1; 16:6
applied 18:12; 19:3; 20:24
apply 18:21
arbitrator 8:18
arbitrariness 23:4
arbitrary 19:6, 10, 14, 15, 17; 24:11; 42:8
architecture 15:24; 16:7, 10
argument 16:23; 25:10
arms 14:19
art 4:9, 21; 5:3; 8:11; 15:11
aspect 17:23
aspects 9:18
assets 12:5
associates 33:3, 4
attendant 14:19
attention 37:9
available 6:3, 22; 7:21; 9:22; 30:18

B

back 6:7; 9:19; 11:13; 13:12; 17:22, 23, 24; 22:11; 23:14, 16; 24:24; 27:3; 28:7; 35:24; 37:13; 38:23
backgrounds 32:23
backwards 37:13
based 6:19; 7:15; 19:22;

25:23, 24; 35:15
basically 32:16
beach 21:12
become 25:19
beginning 25:5
bell 11:5
bench 20:10; 32:21
Berkeley 38:21
better 43:6
beyond 25:10
biased 32:2
big 11:13; 29:24
bigger 26:4
biggest 24:8; 27:6; 28:9
bit 7:3; 22:5, 6; 28:1
bits 13:20, 21
Blank 2:12
board 18:22; 40:3
body 3:19
bore 23:7
borrowing 7:2
both 4:7; 5:14; 17:1; 19:4; 21:7; 22:13; 31:15; 33:24; 39:24; 42:21
bought 22:22
brief 2:18, 20; 35:11
briefs 29:10
brighter 38:18
bring 25:7; 37:9
bringing 28:10
broad 8:12; 9:24; 12:24; 25:22; 38:3, 4
budget 31:17, 19, 21, 22; 32:2; 33:8
building 21:16
burden 17:17; 22:19; 37:1, 7
businessperson 20:9
bytes 23:12

C

calendar 42:11, 13
call 24:23; 29:13; 38:23; 42:17
calling 25:1
came 4:3; 11:13
camera 30:16
can 2:5; 4:23; 6:4, 12; 9:3; 11:21; 14:3, 10; 15:11, 12; 19:9, 18, 21; 22:13; 23:15; 24:15, 19, 21; 25:24; 26:16; 28:24; 29:3, 6, 14, 15; 30:15, 22; 33:8, 19; 34:5, 15; 35:9, 24; 37:18; 38:6; 39:21; 40:5, 19; 41:2, 2
CAPONI 2:11, 12
care 2:5; 39:23; 41:3
careful 5:19
Case 2:13, 19; 5:7, 7; 7:5, 24; 9:17; 11:2, 10, 21; 12:6; 14:16; 17:16; 18:7, 8,

11, 16, 18, 19, 22; 19:20, 23; 20:2, 16; 22:12; 23:6; 26:16; 29:17, 17, 18; 31:19, 21, 21, 23; 32:11; 33:3, 6; 35:23; 36:14; 37:23; 42:16; 43:5
cases 7:20; 8:4; 29:11; 30:1; 31:3; 32:21; 33:8; 36:10; 37:19, 20; 38:7; 39:16; 40:15; 42:6
Catch-22 18:9
categories 13:21; 27:1; 34:4
categorize 15:9
category 13:19; 22:7; 34:21; 35:2; 36:4; 38:4, 12
center 31:9
certain 13:23; 14:1
chambers 30:19
chance 35:5
Chancellor 40:22
Chancery 40:24
characteristics 8:11
characterization 5:5
characterize 4:24
charge 21:17
Chicago 21:15
Circuit 20:21; 21:4
circumscribed 38:4
civil 24:10
claim 9:12; 11:23; 13:17; 28:13
claims 4:24; 5:17; 6:12; 10:8; 12:13, 16; 14:24; 16:2; 20:6; 21:8
class 2:4
clerk's 30:18
clerks 32:22
client 14:13; 26:11; 31:13, 19; 33:20; 34:11
clients 19:11; 24:9; 32:10
code 6:5; 7:7, 10, 12, 13, 15, 20, 24; 9:19; 10:4, 18, 24; 11:12, 20; 12:1, 3, 17; 13:12, 21; 15:4, 9; 16:13, 19; 17:14; 36:10; 37:18
codes 10:6; 14:5, 6; 15:10, 12
collect 33:15
collision 32:8; 40:14
coming 2:2; 28:6
commencing 30:24
committing 4:11
company 10:23; 27:23; 35:16; 36:12
compartmentalize 14:10
compel 41:23
complete 36:2
completed 33:23
completely 30:2
complex 31:3
component 16:1, 1
components 6:14, 16;

13:16
computer 4:14, 16, 19; 8:14, 19; 21:14, 16
concern 16:3; 27:6
concerned 15:19; 17:5; 21:7, 10
conference 31:14, 14
conferences 19:13
Congratulations 33:16
Congress 32:15
consistently 27:18
constant 26:13
construction 28:13
consultation 5:10
contending 17:21
content 18:1
contention 9:2; 15:23; 17:18
contentions 6:9, 19; 7:1, 5, 18; 9:11
context 9:6; 16:1
continuing 2:4
copies 16:14, 15
cost 40:6, 16, 17
costs 31:15; 41:10
Counsel 15:19
course 39:17
COURT 2:1, 10, 17; 3:1, 6, 11, 20; 5:6, 12, 16, 24; 7:7; 8:2, 23; 9:13; 10:11, 16; 12:13; 13:19; 14:11, 22; 16:21; 17:4; 18:14; 19:7, 9; 20:1, 14; 22:13, 21; 23:3, 9, 20, 23; 24:14; 25:3, 18; 27:22; 29:5, 9, 21; 33:9, 19; 34:12; 37:11; 38:9; 39:14; 40:24; 41:6, 18; 42:2, 14, 23; 43:3
Court's 37:9
courtroom 26:8
courts 19:8, 12; 21:6; 24:9; 29:9, 24; 42:6
craziest 20:22
crazy 21:24; 29:12, 13; 33:1

D

data 11:10; 33:14; 39:16
date 42:9
day 15:20; 38:15; 42:16
days 39:19; 40:5
decide 41:8
decides 19:1
decisions 18:19; 19:6, 19; 43:6
declarant 23:1
declaration 13:18
defendant 19:23
defense 34:22
defensive 27:22
define 9:7
definition 5:4; 12:15

degree 4:14, 15; 8:15
degrees 8:17
Delaware 21:19
deny 34:1
department 21:15
deposition 36:11; 37:1
depositions 35:6
description 4:8
design 7:14
destroy 31:10
detention 2:2
determine 16:10; 18:6
developed 38:2
dictate 6:12
difference 3:12
different 18:20; 21:4; 23:12; 33:10
digits 33:5
disagree 18:12
disclose 5:8
disclosed 11:21
discovery 5:20; 7:6; 8:5; 19:5; 24:8; 26:6; 29:11; 32:4; 33:12; 37:2; 38:24; 40:8
discuss 23:15
dispute 2:3
disputes 22:2; 24:8; 29:11; 33:12; 38:24
district 31:2
districts 7:3
docket 30:18
doctorate 4:16
document 26:18; 30:19; 35:3
documentation 27:14
documents 7:11, 16; 25:14, 16; 26:12, 22; 27:2, 11; 34:22; 35:6, 8; 36:1, 2, 6; 37:2
done 9:23; 20:18; 25:22, 23; 32:4; 41:14
dorm 5:1
double 33:5
down 24:19; 29:15; 42:14
drive 20:10
driving 20:12
dumb 22:22

E

earlier 26:16
early 7:5; 29:17
easily 15:11, 12
easy 3:16; 41:16, 20
eBay 20:17, 17
efficiently 42:9
effort 5:20; 31:8
eight 28:19
electronic 10:18
elements 9:12; 17:24
eleven 3:10, 14

eleventh 34:24
employed 33:3
end 6:7; 9:19; 17:23, 23, 24; 31:23; 34:14
ended 43:11
engage 41:15
engineers 8:19; 17:3
enough 23:6, 7; 29:18
enter 29:6; 34:3
entire 10:18; 11:11
enviable 2:3
equitable 20:23
especially 9:9
even 4:15; 10:4; 17:12; 21:9; 23:1; 32:9, 18
Everybody 22:2
everyone 15:10
evolution 8:6; 25:6
evolve 22:6
evolves 8:5
exactly 9:8
examine 16:16, 17
example 6:17; 12:21; 14:3; 15:21; 16:4; 17:13, 22; 19:20; 26:9, 20; 35:13
examples 33:7
except 20:19
exceptions 20:20
exchange 38:5
expeditiously 42:5; 43:7
experience 4:17, 17; 8:14, 15, 21; 23:2; 31:4
expert 24:21; 25:7, 9
experts 5:10
extension 34:16
extensive 32:12
extent 30:3; 32:7

F

face 32:18
Facebook 2:14; 4:22; 10:6; 13:1, 8, 20; 20:5, 12; 21:10; 22:7; 23:7; 26:10; 27:20; 35:13; 37:21; 38:1, 2
Facebook's 10:3; 11:9; 37:5, 14
facing 13:16
fact 9:10, 24; 26:5; 29:1; 37:19; 38:7
factors 35:18
facts 19:21
fair 19:22
family 21:13
far 33:23; 37:24
fear 10:16, 20, 23
Federal 20:21; 21:3; 31:9
fee 31:22
feel 19:16
feeling 10:11
feels 19:21

fees 31:15
felt 8:24; 40:15
field 8:22; 33:21
fight 26:6
figured 31:5
filed 26:20; 41:23
final 7:6
finalize 7:17
financial 32:8; 40:13, 14
financing 35:15
find 8:16; 10:12; 14:17; 15:11; 20:15; 42:4, 5
finding 36:13
fine 24:5; 35:1; 39:12
firm 25:19
first 2:17; 9:1; 10:23; 13:7; 26:7; 39:10
five 31:2; 39:19
fixed 31:22
folks 20:5
follow 29:10; 38:15
following 34:10
font 2:21, 22
footnote 2:21
forestall 11:18
formal 35:10, 11
forthcoming 27:15
forward 28:11, 24
found 29:4
founder 36:12
four 28:19
fourth 36:4
frank 22:14
front-end 13:16
fulfilling 41:9
full 9:2; 23:7
fun 3:7; 33:17
functions 6:11, 15
fundamental 15:24

G

gather 10:4
gave 5:5; 20:17
general 20:24; 24:7
George 35:18
gets 11:1
gift 13:8, 9, 9; 15:22
gifts 14:4, 5, 7; 15:21
given 5:21; 12:8, 23; 13:8; 17:12; 18:13; 23:5; 27:12
glad 26:1
goes 13:1; 38:19
Good 2:7, 10, 11; 3:7, 20; 11:2; 23:19; 29:8; 30:4; 35:13; 39:15, 18, 20; 43:5
goose 30:4
grade 4:2
Gray 13:18
ground 36:23

group 2:1; 38:10, 11; 39:9; 42:4; 43:4
guess 8:23; 27:7
guides 18:18
guy 21:13; 30:24
guys 4:24

H

hand 5:7
handle 32:20; 39:23
handled 36:3
happen 4:1, 5; 11:5; 13:13
happening 13:7
happens 19:1
hard 24:2
head 21:14
hear 8:3
heard 21:18, 19; 23:11; 26:6; 33:5
hearing 17:15; 27:24
Heidi 2:13
held 16:15
help 9:6; 14:24; 18:5; 21:5; 22:1
helpful 9:19; 15:6, 14; 20:16
helping 8:10
high 8:20
highly 37:7
hire 39:22
Honor 2:8, 12, 15, 24; 3:5, 10, 17; 4:13; 5:15; 6:2; 7:22; 8:13; 9:9; 10:10; 11:10, 16; 12:20; 15:2, 18; 16:24; 17:6; 19:8; 22:10, 17; 24:3, 5, 7; 25:12; 28:1; 33:18; 34:8, 17, 18, 19; 35:11, 24; 36:3; 39:13; 41:17, 23; 42:22
Honor's 42:11
hopefully 43:6
hoping 11:18; 26:19
hour 34:24
human 11:3
hundreds 16:5, 6
hurdle 12:8

I

idea 8:10
identify 25:15; 28:5; 37:17
ill-advised 30:2; 31:8
imagine 30:22
immediately 11:12
implicating 37:3
important 18:17
imposing 41:10
impression 24:7
inconsistent 39:8

industry 4:17; 5:13; 8:15
inefficient 31:11
inexpensive 30:21
inexpensively 42:6
influenced 32:3
inform 19:18, 21
information 6:7, 20, 22; 7:9; 9:22; 25:1, 10, 23; 26:1, 14; 28:23; 29:4; 35:17, 17, 22; 37:5
informed 19:6; 22:5; 42:8
infringement 5:22; 6:8, 19; 7:1, 4, 17; 9:4, 7, 11; 10:13; 15:21; 16:4; 17:17, 18; 25:19; 36:9
infringes 17:13, 19
infringing 15:23; 22:20
instance 9:2; 30:14
instead 10:5; 17:15; 22:11; 28:21
intellectual 41:1
interested 4:11; 41:18
interesting 20:2; 29:18
international 30:7
interrogatories 26:2; 29:3
interrogatory 5:21; 9:16; 12:11; 13:10
interval 31:20; 40:4
into 4:3; 14:20; 20:8; 22:23; 23:7; 40:15; 43:3
invalidity 28:12
inventors 20:5; 21:21
involve 36:16
involved 11:1
involves 36:17
involving 17:1; 36:8, 8
issue 9:7; 26:4; 37:8, 17, 22, 22; 38:6

J

JAMS 41:4
January 21:12
job 15:15
judge 20:24; 21:19; 22:22; 30:24; 31:2; 38:14; 39:17; 40:14; 42:1, 2, 12, 15
judges 19:13; 31:8
judicial 19:1; 31:9; 40:21
June 34:9, 13, 14; 38:13; 39:7; 42:12; 43:9
juries 30:8

K

Keefe 2:13, 15, 24; 3:4, 15; 8:7, 12; 9:8, 15; 10:14, 22; 12:19; 13:22; 14:13; 17:6; 19:16; 20:12; 22:10, 15, 24; 23:8, 18, 22; 24:2; 27:10, 23; 29:8, 20; 33:18;

34:7, 17; 37:12; 41:4, 16, 20; 42:10, 22; 43:1
Keefe's 2:19
keep 17:15; 28:6, 24
keeps 17:10
Kennedy 21:1
kicking 2:16
kid 2:4
kill 30:3
kind 3:24; 7:8; 15:3; 20:3, 8; 23:11; 26:9, 15; 30:11; 35:16
King 2:9
knew 3:24
knowledge 33:9

L

labeling 15:16
large 14:15
larger 26:10
largest 21:16
laryngitis 2:16
last 4:19
later 7:6
law 9:17; 17:16; 18:7, 8, 11, 16, 18; 20:16; 22:12; 32:22
lawyer 31:1
lawyers 19:11; 31:7, 10
layperson 4:21, 22
learned 28:23
least 33:19; 40:16
left 28:20; 33:21
legal 25:10
legitimately 11:23
less 3:14; 33:5; 35:11; 42:7
letter 13:4; 30:14; 31:12, 17; 35:11
level 8:12
liked 20:20
likely 15:1
likes 20:21
limbs 14:19
limit 15:6
limitation 17:20, 20; 25:20, 20, 22, 22; 26:2, 3; 29:2
limitation-by-limitation 9:14; 17:8, 12
limitations 9:12; 10:1; 11:24; 13:3; 16:2; 21:9
limited 11:1; 17:11; 32:10; 39:15
lines 11:14
link 10:2; 13:2
linkage 13:6
linked 9:10; 10:1, 7
list 14:23; 15:4; 16:8; 22:7, 9; 23:14; 24:18; 28:18; 40:20

listed 17:24
listen 2:5
litigation 24:10; 31:4; 33:23
litigations 36:6, 7, 16, 19; 37:3, 6, 13
litigator 40:23
little 2:15; 7:2; 22:5, 6; 28:1, 17; 29:19; 30:13
location 16:16
long 15:15
look 4:10; 6:4; 16:9, 11; 24:21; 32:24; 35:5; 39:17
looking 6:13; 17:5; 28:8, 12
lot 3:22; 4:16; 22:16; 24:10; 30:1, 6; 35:7
love 27:23

M

magnitude 26:10
maintained 27:17
Making 3:21
manifestation 6:4
many 8:18; 14:11; 33:2
map 15:3; 24:18
maps 15:10
marked 35:19
marketing 35:3
master's 4:15
material 13:11
matter 11:2
may 9:18; 25:6; 32:10, 12
maybe 4:15; 23:13; 26:24; 28:21; 29:13, 22; 33:6
mean 13:23, 24
means 30:17
mechanisms 33:10
mediated 41:1
mediation 39:23; 40:1
mediator 41:5
meet 40:6, 9
meeting 41:11
mention 13:7
mentioned 20:4; 36:5
met 40:10
mid 34:10
might 8:10
mindful 33:20
missing 17:7
misspoke 3:18
mistakes 11:4
module 14:17, 18; 24:23, 24; 25:2; 28:5, 18
modules 6:14, 17; 13:24; 14:7, 11, 23; 15:4, 16; 16:9; 23:12; 24:19, 20; 25:14; 27:9
Monday 34:13
money 26:17

moneys 24:9
moot 26:24; 27:1; 34:2
more 5:13; 18:16; 21:11; 25:7; 28:7, 7, 7, 17; 29:6, 14; 31:11; 42:8, 9; 43:6
morning 2:7, 10, 11
Morris 40:23
most 8:17; 12:10; 15:1; 19:5; 20:1; 27:6
motion 26:20, 21; 28:10; 35:10, 10; 37:10; 38:15; 41:23; 42:11, 16
motions 34:2
move 40:17; 42:6
moving 28:11, 24
much 26:13; 38:18; 43:2
multiple 14:6
Munell 38:22
must 37:22
myself 40:14

N

narrative 9:24; 13:1
narrow 11:24
nature 6:18; 11:3
need 7:17; 11:14; 12:5; 13:15; 22:4; 24:24; 25:2, 9, 17; 28:13
needed 10:4; 14:18, 19; 16:11
needs 28:19; 31:5
negotiated 8:1
nervous 24:1
newly 29:3
news 35:14
next 23:21; 25:5
Nichols 40:23
ninety 40:4
nobody 29:12
note 3:21; 4:2; 7:14, 15
notice 18:13
nuanced 20:8
number 5:21; 14:14, 15; 32:2, 5
numbers 32:7
nuts 20:11, 13

O

objection 36:22; 39:3
obligation 41:10
obviously 25:2; 26:5; 35:1
off 7:9; 25:4
offered 15:8
office 16:16; 30:19
officer 19:1
officers 40:21
often 41:13
older 3:22

once 6:6; 7:6; 25:15; 28:5; 38:3
one 2:24; 5:3, 21; 7:22; 12:12, 21; 15:18; 16:21; 17:7, 12; 21:11; 24:6; 26:19; 27:18; 28:9; 33:7; 36:7; 37:8; 38:19; 40:20; 41:21; 43:8
only 6:21; 22:11; 27:24; 30:19; 36:22; 41:12, 21
open 7:20
ophthalmologist 3:2
opposed 20:20
opposition 2:19; 13:5; 26:22; 34:21
order 3:13; 8:1; 10:17, 20, 21; 11:3; 16:12; 28:10, 11; 29:6, 14; 34:2, 4; 38:12; 43:8
ordered 43:9
ordinary 4:9
ours 3:9, 18
out 8:9, 20; 11:1; 16:20; 20:4; 21:2; 26:17; 28:2, 3; 30:9; 31:5; 33:20; 38:19, 21; 40:17; 41:8
over 4:19; 27:12; 32:21
overbroad 27:9
overcomplex 5:2
owned 16:23

P

Pacific 35:18
pages 13:3; 27:12; 35:5
paper 8:24
papers 5:18; 13:5; 18:15; 20:4; 37:10
pare 24:19
parse 14:17
Parsons 40:22
part 16:10; 39:9, 22
particular 36:7
particularly 8:4; 10:21; 20:16
parties 7:23; 18:9, 11; 37:4; 41:15
patent 18:19, 21, 22; 30:1; 31:3; 32:19, 21; 36:9, 16; 40:23; 42:6, 15
Paul 2:9
pay 41:8
pending 34:1
people 21:21; 22:1; 40:20
percent 13:22
person 4:9; 8:11, 18; 12:14; 38:18; 39:23
personally 13:20
phase 32:4
Phil 2:8
phone 42:17
picks 28:18
piece 40:18

pilot 32:19
pinpoint 15:12
place 35:23
places 15:12; 30:8
plaintiff 4:8; 9:2; 19:22; 22:19
plaintiff's 17:17
plaintiffs 11:13
platform 17:15
please 10:15; 41:22
pods 13:24
point 9:9, 20; 20:3; 41:7
points 7:23; 28:9
poll 39:16
polling 22:9; 31:7
portion 17:14; 35:9
portions 11:22; 12:17; 14:8
position 2:3; 27:17; 36:15
positions 32:5; 36:21
possibilities 11:8
potential 5:10; 11:8
Potter 2:8
practice 31:10
practitioner 32:17
Pre-filing 5:7
pre-Rule 31:13
precise 27:8
prefer 37:16
preliminary 5:22; 6:1, 10, 18, 24; 7:4; 9:5; 22:23
prematurely 5:8
present 38:24; 39:2
previous 14:16; 36:6, 19
priced 31:20
primarily 5:15
principles 20:23, 24
print 3:2; 16:15
prior 37:13
probably 7:2; 15:6, 14; 16:9; 23:19; 40:4
problem 3:15; 22:3; 26:3; 37:14
problems 11:8, 19
procedure 38:15; 42:16
Proceeding 43:11
process 24:10; 35:23
produce 10:17, 19; 12:2, 4; 14:21; 22:7; 34:14; 35:7; 38:8
produced 7:24; 9:5; 11:12; 26:11, 12; 34:23; 35:4; 36:11; 37:18; 39:10
producing 36:23; 37:1
production 10:21; 34:2, 20; 38:13
products 10:2
Professor 38:22
program 32:19; 38:22; 40:24
Progress 40:10, 10

project 21:18
projections 35:19
proper 28:12
property 21:10, 22; 41:1
proprietary 17:2
protect 12:5
protecting 11:7
protective 8:1; 10:20, 21; 11:2; 16:12
prove 17:17
provide 6:24; 11:24
provisions 10:19
public 6:3, 19, 22; 7:21; 16:20; 25:23, 24
publicly 9:22
publicly-facing 13:11, 13
pull 26:13, 17
pulling 27:15
purposes 5:4
push 29:24; 30:7
put 27:5; 29:15, 19; 30:10; 40:2
putting 40:12; 43:4

Q

questionnaire 30:13; 33:14
quote 9:5

R

raised 30:12, 12; 42:21
raises 15:19
rational 16:22
re-filing 35:10
read 8:24; 12:11, 13; 18:15, 24
readable 21:8, 9
reader 5:19
reading 4:22; 12:16
real 13:6
realize 35:7
really 8:21; 19:18; 30:23
reason 25:4
reasonable 22:8; 23:14; 34:15
recently 11:11
recess 43:10
record 35:9
refused 12:2
regard 5:6, 17; 9:3; 41:14
regularly 22:2
relate 13:24; 14:24
related 38:7
relevancy 36:23
relevant 12:6; 35:22; 36:13, 17, 22; 37:2, 7; 38:1
renew 35:9
repeat 10:15

report 40:5; 41:13
reporting 40:3
request 27:14
requests 35:3
require 32:22
requirements 7:3
resolve 33:11; 39:1
resolved 39:19
resources 24:9; 32:10, 12; 33:24; 40:13; 41:11
respect 9:10; 41:22
respond 30:15
response 5:19; 12:11, 23, 24; 13:10
responses 37:2
responsible 6:14
rest 18:4
result 18:23
retain 40:17
review 13:17; 30:19; 35:24
revisit 37:17; 38:6
revitalizations 32:5
rid 22:2; 42:3
right 19:21; 37:11; 38:21; 40:8
rightfully 11:16
Roberts 21:1
Rome 2:12
room 5:1
round 25:5
ROVNER 2:7, 8; 3:9, 17
rule 22:11, 18; 29:12; 30:20, 20; 31:14
rules 18:17, 21, 24; 19:2; 29:2, 5, 7, 8; 30:23
ruling 39:4
rulings 24:11; 39:8
run 16:6; 38:22

S

safe 16:18
Saint 21:12
sales 35:3
same 3:18; 21:3; 37:14
sapping 41:11
saw 14:22
saying 15:8; 28:4; 29:6
scale 25:22
schedule 39:5
school 8:20
science 4:14; 8:14
scientists/software 8:19
scope 11:24
second 34:3; 41:23; 42:10
Secondarily 11:9
secrets 36:8
secure 16:15
seems 2:3; 19:21; 28:4, 24
select 40:19
selectively 24:19
send 30:14; 31:12; 33:13; 42:14
sense 22:9; 25:11
September 4:6
Seriously 3:24; 32:20
sets 42:18
seventh 4:3
several 15:20
share 31:18
shining 33:7
shocking 3:12
show 11:22
showing 17:18, 19; 22:20, 23
side 5:13; 14:21; 20:10
sides 17:1; 33:24
significant 4:18
Silicone 8:16; 41:3
similar 11:11
simply 10:23; 12:3
single 16:4; 26:18; 27:4; 28:6
site 6:5, 11, 23; 10:3, 6; 12:4; 14:1, 8; 18:5; 37:15
situation 18:10
six 28:19; 31:2
sixth 4:2
size 2:21; 3:8
skill 4:9; 8:18; 12:14
skilled 4:21; 5:3; 8:11; 15:11
skills 4:23
small 26:11
software 7:19; 10:23; 17:2, 22; 18:6
sole 32:17
somebody 20:3; 40:2, 18; 41:2
somehow 16:20
someone 4:14, 16, 17, 21; 8:13, 21; 13:1; 15:11; 16:17; 17:19; 40:21
Sometimes 19:16, 17
somewhat 15:15
somewhere 23:4
sorry 10:14
sorts 30:9
Sounds 33:17; 41:20
source 6:4; 7:7, 10, 11, 13, 20, 23; 10:18; 11:12; 12:1, 2, 17; 13:21; 15:4, 9; 16:13, 19; 36:10; 37:18
sources 6:21, 24; 7:16
Spauling 2:9
specific 13:11
specificity 27:13
spend 26:16; 32:11, 13
spent 4:18; 31:13; 32:1

staff 32:22; 33:4
stage 17:18; 23:6
stages 40:8
Stark 38:14; 39:17; 40:14; 42:1, 3, 15
Stark's 42:12
start 4:8; 8:9, 20; 23:3; 28:10, 12; 35:6
started 29:17
starting 13:5
starts 21:13
state 29:2
statistics 31:6
stay 33:8
step 7:8
Steve 2:12
still 9:20; 12:8; 17:8; 18:3; 22:24; 28:14, 20
stop 23:24; 28:7
storage 17:23
story 21:11
straight 8:20
strictly 41:15
striking 12:10, 22
string 14:4
strings 14:6
study 29:19; 30:10, 24; 31:3; 33:15; 38:10, 17, 19
stuff 6:8; 30:9; 35:19
submit 30:17
sudden 3:23
suddenly 13:5
sufficient 18:13
suggesting 41:13
supplement 6:8; 26:1; 28:22; 29:3
supplementation 28:20; 29:1, 7, 15
supplementations 32:6
support 7:11; 25:14; 31:6
supposed 12:4; 19:22, 23; 22:19
sure 10:24; 15:5; 41:6
surprises 35:1

T

table 17:1
tag 30:20; 33:11
talk 19:13; 20:17
talked 43:3
talking 17:10; 18:9; 21:13; 24:1; 32:19
talks 38:19
target 24:20
teacher 4:2
technical 6:7; 7:9, 11, 16; 25:13, 16; 27:2; 32:23; 36:1
technology 5:3; 22:1; 36:18, 20; 37:14, 20, 22; 38:3
teleconference 35:12
telephone 39:5
telling 10:7; 12:15; 13:15; 17:13; 20:15
tells 9:17; 17:16; 21:1
ten 3:4; 4:19; 32:22; 33:7
tenable 36:2
tend 24:6, 11
terabytes 11:10
terrible 21:20
test 38:10, 10; 42:4
testimony 36:12
therefore 10:3; 36:16
thinking 3:22
third 37:3
thirty 23:1
Thomas 21:12
though 22:18
thought 3:3; 21:23; 23:13
threat 16:19
throwing 32:16
thrown 32:21
tie 32:2
times 8:17; 15:20; 26:12; 27:4
timing 8:3
today 2:13; 4:12; 26:16; 36:5; 37:9
told 21:6, 18; 35:4
top 4:5
totally 25:4
touch 37:19
touched 14:20
toward 5:13
track 11:23
tracked 13:9
tracking 6:17; 16:1; 17:22; 32:7; 39:1; 40:7; 42:19
trade 36:8
transcript 34:3; 43:9
transcripts 37:1
trashed 27:21
traveling 34:7
tremendous 26:17
trial 20:23; 21:5; 31:7; 33:4; 40:9; 41:19; 42:9
tribute 21:21
tried 18:21
trolls 21:2
Trust 3:7; 16:24
try 22:4; 26:13, 17
trying 23:9, 24; 24:12; 42:3, 5
tune 8:5
twelve 3:18, 21; 33:7
twenty 4:19; 27:3
two 4:24; 6:21, 24; 7:15; 17:24; 28:18; 36:7, 15
two-and-a-half 26:12
two-page 39:16
type 7:21; 18:22; 35:21;

42:20
types 11:18

U

unbelievable 32:17
underlying 19:18
unduly 32:3
unique 7:19; 18:10
University 21:15
unless 7:20; 31:21
unquote 9:5
unring 11:5
up 3:7; 21:14; 23:10; 27:5;
 32:16; 38:24; 39:4, 11;
 40:8; 41:15; 42:18
use 5:24; 6:9; 12:15; 18:5;
 33:6; 40:20; 41:4; 42:15
used 6:23
useful 35:17, 19
user-facing 18:4
using 4:22
usually 7:14

V

validity 5:4
Valley 8:17; 41:3
valuing 35:15
various 40:7
verdict 31:20; 32:1
Vice 40:22
view 19:2; 30:5; 31:9
virtue 13:15; 38:4
volume 42:19

W

wall 25:4; 27:5
waste 24:8
Watch 21:1
watching 16:17
way 7:13; 8:24; 10:7;
 25:16; 35:10; 42:5
web 6:5, 11, 22; 10:3, 6;
 13:2; 14:1, 8; 18:5; 36:13;
 37:15
website 11:9, 22; 15:24;
 17:13
week 34:8, 9, 10, 10, 12,
 15
weekend 38:23
weren't 26:23
what's 4:4; 6:3; 10:11, 16,
 20; 11:1; 21:20; 22:20;
 28:13, 15
whenever 28:2
whining 32:15
White 2:13
who's 31:1
whole 12:4; 21:23; 30:1;

33:13; 34:8
willing 25:8; 32:11, 12
winds 21:14
without 4:23; 10:7; 32:2;
 37:3
wonder 19:10
word 6:1, 9; 30:20, 22
words 21:4
work 14:9; 18:23; 32:3;
 38:16
worked 14:16
working 4:18; 8:20
world 21:16; 24:13
worried 27:19
worry 16:13
worth 11:10
write 7:15; 19:2
written 7:13

X

X 11:15

Y

Y 11:15
years 4:19; 23:1; 31:2, 2
younger 38:17

Lawyer's Notes

EXHIBIT B

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

LEADER TECHNOLOGIES, INC., a Delaware corporation,)	
)	
Plaintiff-Counterdefendant,)	Civil Action No. 08-862-JJF
)	
v.)	
)	
FACEBOOK, INC., a Delaware corporation,)	
)	
Defendant-Counterclaimant.)	

**PLAINTIFF LEADER TECHNOLOGIES, INC.'S FIRST SET OF
REQUESTS FOR ADMISSION TO DEFENDANT FACEBOOK, INC.
(NOS. 1-34)**

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 36 and Local Rule 5.4, Plaintiff Leader Technologies, Inc. hereby requests that Defendant Facebook, Inc. answer the following Requests for Admission in writing and under oath, in accordance with the following Definitions and Instructions within thirty (30) days after the service of these Requests for Admission.

These Requests for Admission are continuing in nature and Facebook shall promptly serve upon Leader supplemental answers in accordance with Federal Rule of Civil Procedure 26(e) and the Local Rules of the District of Delaware as Facebook acquires additional knowledge or information responsive to these Requests for Admission.

DEFINITIONS

1. The terms "Plaintiff" and "Leader" shall mean Plaintiff Leader Technologies, Inc., its present and former directors, officers, employees, parent organization(s), subsidiary organization(s), predecessors in interest, successors in interest, divisions, servants, agents, attorneys, consultants, partners, associates, investigators, representatives, accountants, financial

advisors, distributors and any other person acting on its behalf, pursuant to its authority or subject to its control.

2. The terms “you,” “your,” “Facebook,” and “Defendant” shall mean Defendant Facebook, Inc. (“Facebook”), its present and former directors, officers, employees, parent organization(s), subsidiary organization(s) including ConnectU, Inc., predecessors in interest, successors in interest, divisions, servants, agents, attorneys, consultants, partners, associates, investigators, representatives, accountants, financial advisors, distributors and any other person acting on its behalf, pursuant to its authority or subject to its control.

3. The term “Facebook Website” shall mean the Facebook services and network currently located at www.facebook.com and formerly located at www.thefacebook.com (including any directly associated current or former domains), and all functionalities, components, programs, and modules (both software and hardware) currently or formerly built and used by Facebook. “Facebook Website” includes all components and information necessary to build and use features and applications created by Facebook including but not limited to: Facebook Flyers (now called Facebook Advertising); Facebook Platform; Facebook Platform Applications (including, but not limited to Facebook Video, Facebook Notes, Facebook Mobile, Facebook Posted Items (now called Facebook Links), Facebook Photos, Facebook Events, Facebook Gifts, Facebook Groups, Discussion Boards (part of Facebook Groups), Discography (part of Facebook Pages), Music Player (part of Facebook Pages), Translations, Wall, Facebook Exporter for iPhoto and Facebook Toolbar for Firefox); Facebook Mobile Services; Facebook Connect; Facebook Pages; Share Service; Share Link; Facebook Ads; Facebook Beacon; Social Ads; News Feed; Mini-Feed; and any other tools which facilitate Site Content or User Content. For purposes of clarification and not limitation, these terms shall have at least the same meaning

as used in Facebook's Privacy Policy located at www.facebook.com/policy.php (effective as of November 26, 2008), Terms of Use located at www.facebook.com/terms.php (revised on September 23, 2008), and Product Overview FAQ located at www.facebook.com/press/faq.php (accessed on December 17, 2008). For the purposes of this definition, "Facebook Website" does not include applications created by third parties.

4. The term "User Actions" shall mean any interaction a user may have with the Facebook Website, including selecting, clicking, typing, tagging, uploading, downloading, poking, blogging, commenting, posting messages, playing games, inviting, instant messaging, and logging-in.

5. The term "User Movement" shall mean a user of the Facebook Website changing from a first location in the Facebook Website to a second location in the Facebook Website. A non-limiting example being a user located in the photos application selecting the groups application icon and thereby changing location to the groups application.

6. The terms "person(s)" and "entit(y, ies)" shall mean, without limitation, any natural person, or association, firm, partnership, corporation or any other form of legal entity, unless the context indicates otherwise.

7. The term "third party" means any person or entity other than Leader or Facebook.

8. The term "Action" refers to Civil Action No. 08-862 filed in the United States District Court for the District of Delaware on November 19, 2008 styled Leader Technologies, Inc. v. Facebook, Inc.

9. The term "Leader Complaint" refers to the Complaint filed by Leader in the Action. (D.I. 1)

10. The term “Facebook Amended Answer” shall mean Facebook’s First Amended Answer to Complaint for Patent Infringement; Affirmative Defenses; and Counterclaims filed by Facebook in the Action. (D.I. 12)

11. The terms “‘761 Patent” and “Patent-in-Suit” shall mean United States Patent No. 7,139,761 entitled “Dynamic Association of Electronically Stored Information with Iterative Workflow Changes,” the application leading to this patent and any related patent application, including any WIPO, EPO or other foreign counterpart application or patents, any continuations, continuations in part, divisionals, reissues, reexaminations, extensions or parents thereof.

12. The term “document” shall mean all “writings” and “recordings” as those terms are defined in Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001 as well as any writing or recording of any type, whether written, printed, transcribed, recorded (mechanically or electronically) or reproduced by hand, including, but not limited to, all letters, correspondence, facsimiles, e-mail, telegrams, transcriptions and records of telephone conversations, memoranda, notes, records, reports, statements, minutes, communications, slide presentations, microfilm, microfiche, tape recordings, videotapes, photographs, studies, policy manuals and statements, books, plans, analyses, computer records, runs, programs, software and any code(s) necessary to comprehend the same, test results, notebooks, diaries, agreements, contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, third party or joint development agreements, bills, statements and any other written, printed, typed, recorded or graphic matter, however produced or recorded, including copies and drafts of same, and any handwritten or typewritten notes of any kind thereon or attached thereto. The term “document” shall also include all technical documents, source code, specifications, schematics, flow charts, artwork, drawing, pictures, pictorial representations, formulas, troubleshooting guides, service

bulletins, technical bulletins, production specification sheets, white papers, operator manuals, operation manuals, instruction manuals and all other documents sufficient to show the operation of any aspects or elements of your products which includes all past and present releases, revisions, versions and upgrades.

13. The term “communication” shall mean every manner or method of disclosure, transfer or exchange of information, whether orally or by document, and whether face to face, by telephone, mail, e-mail, facsimile, personal delivery or through another medium, including, but not limited to, discussions, conversations, negotiations, conferences, meetings, speeches, memoranda, letters, correspondence, notes, statements or questions.

14. The terms “concerning” and “concern” mean constituting, relating to, mentioning, discussing, evidencing, involving, depicting, describing, listing, consisting of, forming the basis of, commenting on, supporting, analyzing, forwarding, demonstrating, referring to, connected with, relying upon or in any way related to the indicated person, entity, event, document or product.

15. The terms “relating to,” “relate to,” “refer to” and “referring to” mean referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, identifying, describing, mentioning, reflecting, analyzing, comprising, constituting, evidencing, supporting, refuting, contradicting, memorializing, pertaining to, bearing upon or illuminating the subject matter into which inquiry is made.

16. The words “and” and “or” shall be construed conjunctively or disjunctively in a manner making the request inclusive rather than exclusive.

17. The singular of any word or phrase shall include the plural of such word or phrase, and the plural of any word or phrase shall include the singular of such word or phrase.

18. The term “all” shall mean “any and all” and the term “any” shall mean “any and all.”

INSTRUCTIONS

A. In answering the following requests for admissions, furnish all information available to Facebook, including information in the possession of its subsidiaries, officers, directors, attorneys, agents, employees, associates, and investigators; not merely information of the personal knowledge of the person answering these requests for admissions.

B. Written responses to these requests for admissions must comply with Rule 36 of the Federal Rules of Civil Procedure, in that if you do not admit each matter, you must separately respond under oath to each request within thirty (30) days of the service of this request for admission by:

- a. Admitting so much of the matter involved in the request for admission as is true, either as expressed in the request for admission itself or as reasonably and clearly qualified by the responding party;
- b. Denying so much of the matter involved in the request for admission as is untrue; and,
- c. Specifying so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.

C. If you cannot answer the following requests for admissions, after exercising due diligence to secure the information to do so, please so state and specify the portion of each request for admission that you claim to be unable to answer fully and completely. Please state the facts upon which you rely to support your contention that you are unable to answer the request for admission. These requests for admissions shall be continuous in nature, and pursuant

to Fed. R. Civ. P 26(e) and the Local Rules of the District of Delaware, you are under the continuing obligation to promptly serve supplemental and/or amended responses to the requests for admissions.

D. If you contend that any information requested is privileged or otherwise excludable from discovery, you are requested to describe any such information in sufficient detail for identification purposes and to state the basis for the asserted privilege or grounds for exclusion. If your response is that only part of a request for admission is objectionable, the remainder of the request shall be answered.

E. Objection will be made at the time of any trial or hearing to any attempt to introduce evidence which is directly sought by these requests for admission and to which no disclosure has been made.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that the Facebook Website operates on one or more servers.

REQUEST FOR ADMISSION NO. 2:

Admit that the Facebook Website has one or more databases.

REQUEST FOR ADMISSION NO. 3:

Admit that the Facebook Website allows a user to log-in to the Facebook Website.

REQUEST FOR ADMISSION NO. 4:

Admit that the Facebook Website stores data related to how long a user is logged-in to the Facebook Website.

REQUEST FOR ADMISSION NO. 5:

Admit that the Facebook Website stores data related to how often a user logs-in to the Facebook Website.

REQUEST FOR ADMISSION NO. 6:

Admit that the Facebook Website tracks User Actions while logged-in to the Facebook Website.

REQUEST FOR ADMISSION NO. 7:

Admit that the Facebook Website tracks User Movement as the user navigates from the profile page to the photos application on the Facebook Website.

REQUEST FOR ADMISSION NO. 8:

Admit that the Facebook Website tracks User Movement as the user navigates from the photos application to the groups application on the Facebook Website.

REQUEST FOR ADMISSION NO. 9:

Admit that the Facebook Website tracks a user navigating from the Facebook Website to a third party website.

REQUEST FOR ADMISSION NO. 10:

Admit that Facebook created the Facebook Connect service.

REQUEST FOR ADMISSION NO. 11:

Admit that the Facebook Connect service allows the Facebook Website and third party websites to share information between each other.

REQUEST FOR ADMISSION NO. 12:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to use different applications.

REQUEST FOR ADMISSION NO. 13:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to a profile page.

REQUEST FOR ADMISSION NO. 14:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to the photos application.

REQUEST FOR ADMISSION NO. 15:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to the groups application.

REQUEST FOR ADMISSION NO. 16:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to the events application.

REQUEST FOR ADMISSION NO. 17:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to the links application.

REQUEST FOR ADMISSION NO. 18:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to the notes application.

REQUEST FOR ADMISSION NO. 19:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to navigate to the gifts application.

REQUEST FOR ADMISSION NO. 20:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to enter or upload data.

REQUEST FOR ADMISSION NO. 21:

Admit that the Facebook Website tracks users by using sessions.

REQUEST FOR ADMISSION NO. 22:

Admit that the Facebook Website stores information about users in one or more databases.

REQUEST FOR ADMISSION NO. 23:

Admit that the Facebook Website collects information related to data entered or uploaded by users.

REQUEST FOR ADMISSION NO. 24:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to access data of other users.

REQUEST FOR ADMISSION NO. 25:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to access photographs uploaded by friends through the photos application.

REQUEST FOR ADMISSION NO. 26:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to tag photographs of friends through the photos application.

REQUEST FOR ADMISSION NO. 27:

Admit that the Facebook Website allows a user logged-in to the Facebook Website to view photographs with friends tagged in the photographs through the photos application.

REQUEST FOR ADMISSION NO. 28:

Admit that the Facebook Website is hosted from servers located in the territorial United States.

REQUEST FOR ADMISSION NO. 29:

Admit that Facebook has direct control over the servers hosting the Facebook Website.

REQUEST FOR ADMISSION NO. 30:

Admit that Facebook has not received an opinion of counsel regarding the '761 Patent that it will rely upon as a defense to the claim of willful infringement.

REQUEST FOR ADMISSION NO. 31:

Admit that Facebook was aware of the '761 Patent prior to filing of the Leader Complaint in this Action.

REQUEST FOR ADMISSION NO. 32:

Admit that Facebook was aware of Leader prior to filing of the Leader Complaint in this Action.

REQUEST FOR ADMISSION NO. 33:

Admit that Facebook was aware of US 2004/0122835 A1 prior to filing of the Leader Complaint in this Action.

REQUEST FOR ADMISSION NO. 34:

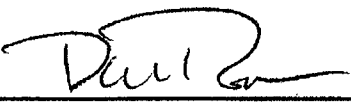
Admit that Facebook was aware of the white paper labeled LTI_066243-066251 prior to filing of the Leader Complaint in this Action.

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*Attorneys for Plaintiff
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on April 21, 2009, true and correct copies of the within document were served on the following counsel of record, at the addresses and in the manner indicated:

BY EMAIL AND FIRST CLASS MAIL

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