

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,)
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

July 14, 2009
2:30 p.m.
Teleconference

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPAULDING
BY: PAUL ANDRE, ESQ.

Counsel for Plaintiff

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APPEARANCES CONTINUED:

BLANK ROME, LLP
BY: STEVEN L. CAPONI, ESQ.

-and-

WHITE & CASE
BY: HEIDI L. KEEFE, ESQ.

Counsel for Defendant

1 THE COURT: Good afternoon,
2 counsel. This is Judge Stark.

3 Let me know who's on the line,
4 please.

5 MR. CAPONI: Good afternoon, Your
6 Honor. This is Eric Caponi from Blank Rome from
7 Facebook. And with me is Heidi Keefe from White
8 & Case.

9 MS. KEEFE: Good afternoon, Your
10 Honor.

11 THE COURT: Good afternoon.

12 MR. ROVNER: And Your Honor, this
13 is Phil Rovner from Potter, Anderson & Corroon
14 for the plaintiff. And with me on the line is
15 Paul Andre from King & Spaulding in California.

16 MR. ANDRE: Good afternoon, Your
17 Honor.

18 THE COURT: Good afternoon. You
19 folks are for Facebook; correct?

20 MR. ANDRE: Your Honor, yeah.
21 We're for Leader Technologies, plaintiff.

22 THE COURT: I'm sorry. Okay. Got
23 you.

24 MS. KEEFE: And Mr. Caponi and

1 myself are for Facebook.

2 THE COURT: Okay. Forgive me.

3 Okay. So for the record, this is
4 the Leader Technologies versus Facebook. It's
5 our Civil Action Number 08-862-JJF. And the
6 reason for the call today is that both parties
7 have some discovery requests, certain discovery
8 disputes.

9 And I reviewed the letters that
10 were submitted in connection with both parties'
11 dispute. I want to begin first and hear just
12 briefly from each side with respect to
13 Facebook's complaint regarding essentially the
14 response to Facebook's Interrogatory Number 10.

15 And let me hear briefly first from
16 Facebook on this.

17 MS. KEEFE: Thank you, Your Honor.
18 Again, this is Heidi Keefe.

19 Our complaint is actually, I
20 think, relatively small. What we're looking for
21 here is to simply have Leader's response to
22 Interrogatory 10 be complete. This is an
23 interrogatory in that it is -- it addresses a
24 very limited universe of documents and limited

1 information.

2 We are asking Leader to give us
3 their support for their contention that the
4 earlier filed, shorter application supports the
5 later issued claims of the patent at issue in
6 this case.

7 All of the information needed to
8 answer that interrogatory is within the four
9 corners of the specification of the patent in
10 question. When Leader came back with its
11 response, its response was, Well, the first
12 response was simply everything. And we said,
13 That's not good enough. We need to understand
14 limitation by limitation where it is.

15 Their supplemented response, while
16 it went in the right direction, we will give
17 them that, it was circumvented with all of this
18 language like it's just exemplary. You know,
19 this is non-limiting.

20 It's just some of the claims and
21 some of the examples that we find. And we're
22 simply asking, in order to understand what their
23 position is and move this issue forward, to have
24 a final and complete answer.

1 Now, we understand that if,
2 through the course of discovery, something comes
3 out that completely changes their mind under the
4 Federal Rules, they could come back and attempt
5 to supplement their responses.

6 But we're asking for a complete
7 response as they know it at this time. And we
8 simply don't have that yet.

9 THE COURT: All right. I
10 understand what you're asking for.

11 But as I understand it, they've
12 indicated to you that they believe the priority
13 date is the date of filing of the provisional
14 filing. So you know what their position is, so
15 you could determine what the prior art is based
16 on what they've already told you.

17 Help me out on why it is you're
18 entitled to or what's prejudicing you from them
19 reserving a right to potentially come up with
20 additional arguments or contentions based on
21 what you yourself describe as a limited universe
22 of documents.

23 Why can't they reserve the right
24 to do that?

1 MS. KEEFE: Well, I think -- I
2 think it goes to a number of things, Your Honor.
3 I think, first, what we're talking about in
4 terms of the priority date is that the burden is
5 on Leader to prove the priority date.

6 What we did was we said we don't
7 believe that you're entitled to that priority
8 date. And, you know, we have to come forward
9 with reasons that we don't believe that -- we
10 told them that the word tracking, for example,
11 which is in every one of the claims at issue in
12 this case didn't even appear in the original
13 priority document.

14 The burden then shifts to Leader
15 to establish why it is entitled to that
16 priority -- to that priority documentation.

17 We don't feel that they've done
18 that yet. And if all of their support, if
19 everything that they have is what they have
20 right now, we'd like to be able to move
21 potentially for summary judgment resolving this
22 issue, so that the universe of prior art is
23 firmly established and narrowed down.

24 But the way that they crafted

1 their answers saying that it's simply exemplary,
2 they simply don't know or they may have
3 different ideas later doesn't allow us to do
4 that, and doesn't allow us to know what the
5 universe of prior art is.

6 The burden is on them at this
7 point. We'd like a final answer.

8 If their final answer is as it
9 stands right now and they have no other
10 information and they confirm that, then we'd
11 like to move for summary judgment on this issue
12 that they're not entitled to that prior date.

13 That's what we're leading to so
14 that we can have as an absolute what the
15 universe of prior art will be in this case.

16 THE COURT: All right. Let me
17 hear from Leader, please.

18 MR. ANDRE: This is Paul Andre,
19 Your Honor, for Leader. I think Your Honor
20 understands the argument quite well that we put
21 in our letter brief. The patent is entitled to
22 the provisional date absent a showing by clear
23 and convincing evidence that the claims are not
24 enabled by the provisional application.

1 There's been no clear and
2 convincing evidence put forward at all, actually
3 no evidence at all. So our position is that we
4 can rely on the entirety of the application. We
5 tried to provide an exemplar just to avoid this
6 situation with the Court.

7 And it's not our burden at this
8 point to provide additional all-inclusive
9 responses.

10 THE COURT: Okay. Fine.

11 Ms. Keefe, anything else to add?

12 MS. KEEFE: I would just say, Your
13 Honor, we actually have provided evidence the
14 word track, for example, which is in every
15 claim, doesn't appear anywhere in the priority
16 application that they're claiming full support
17 of. And I disagree with Mr. Andre's statement
18 of the law, but that's in our briefing as well.

19 So...

20 THE COURT: Okay. Fine.

21 I'm prepared to rule on Facebook's
22 request here for further response to
23 Interrogatory Number 10.

24 And at this time, I'm denying

1 Facebook's request. I think, given the status
2 of the case, that Leader's response at this time
3 is adequate. It's been recognized by Facebook
4 that it may be that Leader will have to or will
5 be in a position to supplement its response over
6 time.

7 And I think there's nothing that I
8 see that precludes such a supplement from being,
9 based on the documents that Leader is already
10 aware of and has identified and is relying on at
11 this time, or if discovery proves that there's
12 additional evidence on which it can rely that it
13 thinks is responsive to Interrogatory Number 10,
14 Leader may do that as well.

15 So I'm denying Facebook's request
16 at this time.

17 Let's now turn to the issues that
18 Leader has raised with respect to Facebook. And
19 I do want to go through these quickly, but one
20 by one.

21 And since Leader is the moving
22 party on these, let me hear first from Leader on
23 the first issue, which goes to the production of
24 documents from previous litigation.

1 MR. ANDRE: Your Honor, this is
2 Paul Andre. Once again what we're asking for is
3 relevant documents. Not all the documents, just
4 the relevant documents from two particular
5 litigations that we've identified, the Connect U
6 case and the Cross Atlanta case.

7 The Connect U case is a trade
8 secret case in which case there has been about a
9 hundred pages of testimony that's been posted on
10 the web. And we've looked at that testimony and
11 find it relevant to our case.

12 It discusses the development of
13 the Facebook website, the design features, both
14 past and present of their website, indication of
15 key witnesses and documents and staff, certain
16 evidence like laptops, et cetera. So we know
17 that's relevant.

18 And Cross Atlanta we believe would
19 be relevant as well because it relates to
20 certain applications on the website regarding --
21 you know, it would -- that would be involved in
22 our case as well.

23 THE COURT: What about the
24 suggestion that Judge Farnan has already

1 reviewed this request for relief and set forth
2 an alternative procedure in that you're not
3 fully complying with that procedure for getting
4 this type of information?

5 MR. ANDRE: The alternative
6 procedure, Your Honor, was coming to Your Honor
7 with these requests. I actually brought this up
8 at the end of the hearing saying that, you know,
9 we still have one issue that was not related to
10 the source codes, but these documents in
11 particular.

12 He specifically said that we could
13 bring that up with Your Honor with a new
14 procedure that he's instituting for all new
15 discovery disputes. And his order was very
16 specific as well about the course of non-case
17 dispositive motions and referred them to Your
18 Honor.

19 So I think what Judge Farnan was
20 talking about and the way he explicitly said
21 that was we could bring this up during this
22 procedure.

23 THE COURT: Okay. Ms. Keefe or
24 Mr. Caponi, you want to respond?

1 MS. KEEFE: Your Honor, obviously,
2 we disagree. We think that what happened --
3 this is actually -- all of these issues are
4 disputes that the parties have been having since
5 the very, very beginning of this case in terms
6 of what is the extent of discovery that's
7 allowed by the infringement contentions that
8 Leader has provided thus far.

9 And we've been in front of Judge
10 Farnan twice on the same issue. And what Judge
11 Farnan did was he said, Okay, guys. I hear both
12 of you and I am going to come up with a
13 compromise. At which point he instituted this
14 procedure whereby we would give them a list of
15 the source code modules.

16 They would pick a reasonable
17 number. They would be reviewed.

18 And based on, you know, that
19 review, we would be able to narrow the case down
20 through the infringement contentions to what was
21 truly relevant.

22 Mr. Andre did, in fact, raise the
23 issue of the related or unrelated litigation at
24 the end of the hearing. And what I said to

1 Judge Farnan was, Your Honor, this relates
2 exactly in the same way that the technology
3 documents do. We can't possibly know what's
4 related and what is not until we know what the
5 technology is.

6 At that point, the judge
7 reiterated that he was denying all of the
8 motions and that we were to go forward on this
9 new procedure.

10 I then raised the fact that we had
11 a completely different issue, which was a broad
12 spectrum response and should we bring that
13 before Judge Farnan or should we bring that
14 before Your Honor, because he was deferring
15 future issues to you. And he said future issues
16 will go in front of Judge Stark.

17 He did not say we can readdress
18 all of the issues that had come before. Those
19 had been denied in favor of the staggered
20 approach that he put in place.

21 And that staggered approach makes
22 sense because it's all about figuring out what
23 is the relevant part of Facebook's website
24 that's at issue. And, therefore, what parts of

1 other litigations may or may not be relevant.

2 THE COURT: Okay. Mr. Andre.

3 MR. ANDRE: Your Honor, I disagree
4 completely with Ms. Keefe's characterization of
5 what Judge Farnan ruled on and what he stated.

6 He actually stated he denied all
7 motions as moot. It says it on Page 34 of the
8 transcript. And then he -- basically he wants
9 to defer all future discovery to Your Honor to
10 handle these.

11 The fact of the matter is Facebook
12 has been complaining all along that they don't
13 understand the scope of the case. So what we've
14 done now, we've identified specifically, I don't
15 know if you call them source code modules or
16 data files, we've identified ones that we were
17 interested in looking at at this point.

18 So they know what we are looking
19 at to be relevant any way, so they know what
20 documents they can produce with the previous
21 litigation.

22 It's a little bit different,
23 because I know with the Connect U case, one of
24 our positions is they copied the White paper we

1 published. And they were able to design and
2 develop their website based on that White paper.

3 There's nothing unclear about
4 that. I've looked at this testimony and read it
5 myself, and it's very clear that they talk about
6 how they designed and developed the website and
7 how they were able to code the entire thing in
8 two weeks. Or less than two weeks in some
9 cases.

10 So we know that's relevant to our
11 willful case, regardless of Ms. Keefe saying, We
12 don't know what the technology is. You know,
13 we've been hearing that song and dance since day
14 one.

15 So the information that's in these
16 previous litigations and like an olympic
17 universe of information we're entitled to.
18 There's absolutely no reason not to give it up
19 at this time.

20 THE COURT: Ms. Keefe, do you want
21 to add anything regarding why it wouldn't be
22 relevant, assuming I reach this issue on the
23 merits?

24 MS. KEEFE: Your Honor, this is

1 absolutely not relevant at this point. They've
2 actually -- they have established absolutely no
3 way of knowing that -- sorry. Let me back up.

4 They have not established, in any
5 way, that we had access to any White papers or
6 documentation, and that they have and we've
7 answered interrogatories that have absolutely
8 said that we did not. And so it is not relevant
9 at this point.

10 And the only thing that they've
11 otherwise been saying is that these litigations
12 are somehow related to the technology of the
13 Facebook website. And that's exactly what this
14 staggered approach is designed to do is to try
15 to figure out what is that technology that
16 they're using. The fact that they've identified
17 some modules that they want to look at does not,
18 by definition, make them relevant.

19 In fact, they haven't even viewed
20 those modules yet. They're scheduled to do so
21 later that week.

22 We would ask that the Court
23 continue with the parties on the course set by
24 Judge Farnan, and that they be forced to look at

1 the source code, come back and tell us what's
2 really at issue in this case. And we'll go
3 forward from there.

4 THE COURT: All right. And,
5 Mr. Andre, whether it's up to me independently
6 or whether Judge Farnan has already decided that
7 this is the way to proceed, it sounds like a
8 reasonable way of proceeding, why should I not
9 hold you to going and reviewing some of this
10 source code and other materials and then seeing
11 if you can make a showing as to the relevance of
12 the other litigation and maybe the other stuff
13 you're seeking here?

14 MR. ANDRE: Your Honor, it's
15 something that we can already show the relevance
16 of at least Connect U, because that has been
17 produced publicly or a hundred pages of it has
18 been.

19 We need the technical documents
20 when we get to that part of the brief to
21 actually understand the source code. If you
22 read source code in a vacuum, you can do it, to
23 some degree, but you need the supporting
24 documents, the design notes, and various other

1 technical support for that source code to get
2 full understanding of what's going on there.

3 So, you know, this is nothing more
4 than Facebook from day one they're trying to run
5 out the clock on us. We have a November
6 discovery cutoff in this case.

7 And they've been acting like they
8 don't know what this case is about. We've given
9 detailed infringement contentions based on
10 public information. We identified the
11 functionality.

12 We gave them screen shots. We
13 gave them API calls.

14 It is something that, regardless
15 of what we say, they come back and plead
16 ignorance. We don't know what they're talking
17 about now.

18 They are saying that is not
19 relevant. Well, I know for a fact the Connect U
20 testimony is relevant.

21 I can tell you right now what I'd
22 like to use in that testimony in my case in
23 chief, just what I told you about, the amount of
24 time it took them to write the code for the

1 Facebook website.

2 So there's other information there
3 as well. Obviously, the design features and
4 some other identification of documents of
5 witnesses that we would like to get. So I know
6 that's relevant.

7 And Ms. Keefe saying that, you
8 know, we don't know what the case is about. All
9 one has to do is read the patent and the claims
10 and, as Judge Farnan said on multiple occasions,
11 this is not the type of claims that people
12 cannot understand. It's fundamental
13 architecture of their website that we believe is
14 infringing and there's no reason to withhold
15 these documents whatsoever.

16 They have already produced them
17 once in the previous litigations. They can do it
18 again.

19 THE COURT: I guess by necessity,
20 we've overlapped now into the second request
21 that Leader makes which is more specifically
22 with respect to the technology for the Facebook
23 website.

24 Is there anything else to add on

1 that request that we haven't already addressed?
2 Mr. Andre, first.

3 MR. ANDRE: Your Honor, none other
4 than there's no reason not to produce it. The
5 only reason they put forward is they said Judge
6 Farnan didn't order it.

7 They have been dodging their
8 discovery obligations since the beginning of
9 this case. Just because a judge doesn't order
10 it, that doesn't mean you don't produce it
11 pursuant to the Federal Rules.

12 So our position there is that we
13 identified the module or the data files,
14 whatever you want to call them. We want the
15 supporting documents for those so we can make
16 heads or tails of the source code. And there's
17 absolutely no reason not to produce them.

18 THE COURT: And when is it that
19 you're scheduled to go look at something?

20 MR. ANDRE: We have our expert
21 witness coming in this week to look at it on
22 Thursday.

23 THE COURT: And why should I not
24 put all of this on hold, you know, my decision,

1 you know, for a week or so and get you all back
2 after you had the chance to have your expert
3 review those materials that are already arranged
4 to be seen and see what the dispute looks like,
5 you know, a week from now?

6 MR. ANDRE: Well, the expert
7 already informed us that he'll need technical
8 documents to actually conclude, you know, make
9 his evaluation of the source code.

10 THE COURT: So are you saying he's
11 not going to be able to get anything productive
12 done on Thursday if I --

13 MR. ANDRE: No. We'll get some
14 productive information done. There's no doubt
15 about it.

16 He's going to be able to go in,
17 see how the source code is set out because the
18 list they gave us was -- it was supposed to be a
19 map of the source code. They didn't give us a
20 map.

21 They gave us a list of 400 titles,
22 some of them as ridiculous as this is Letter R
23 or the Letter N or entitled documents. So
24 they're not descriptive in nature and they were

1 not a map at all.

2 But we decided we're going to work
3 with this, because we know what their approach
4 is, try to push discovery out as long as
5 possible and run out the clock on us.

6 What the expert is going to do is
7 go in and see how the source code is structured.
8 He's going to do a lot of information from that
9 first review.

10 He's not going to be able to get a
11 conclusive call one way or the other on the
12 source code until he actually sees the support
13 documents.

14 THE COURT: Ms. Keefe, I want you
15 to have a chance to address anything further
16 with respect to the technology documents, but
17 also articulate for me what, if anything, I
18 would be gaining particularly in terms of
19 clarity of this issue if I were to defer ruling
20 for, say, a week until after the expert for
21 Leader has had a chance to do whatever he or she
22 is going to do on Thursday.

23 MS. KEEFE: Absolutely. Thank
24 you, Your Honor.

1 I think, first off, this goes back
2 to the notion that this is -- we're in a new
3 kind of place with this discovery. We're in a
4 staggered form.

5 Yet their argument has always
6 been -- we understand that ours has always been
7 that we don't. Judge Farnan specifically
8 accepted both parties' position, and in fact, he
9 actually said, you know, "Okay. Leader's given
10 enough at this stage of the case, but not enough
11 to let them go full bore into Facebook."

12 And that's why he created
13 something that would protect both sides, their
14 interest at looking at some information, but our
15 interest in protecting what's most important to
16 us, which is our code. And the fact that the
17 site and the company are essentially massive,
18 and therefore, we need to be able to make sure
19 that only what's relevant is what's going on.

20 The judge then said what -- you
21 know what I think -- this is another quote.
22 "What I think we need to do to try and make this
23 a little bit informed and to let it evolve a
24 little bit, I think I would like Facebook to

1 produce that category list" -- which we did.

2 "Then I'd like to see how reasonable Leader is
3 in pulling that list. Does that make sense?"

4 So we gave them a list. They
5 picked their list.

6 We thought it was a little bigger
7 than it should be, but we denied to -- not to
8 raise that fight. Now, we're producing that
9 material. Then they -- they haven't even seen
10 the code and yet they're telling me that they
11 can't understand it.

12 I think that they will find that
13 the code actually is quite understandable. I am
14 not a computer scientist and I'm able to
15 understand Facebook's code by looking at it.

16 This isn't a company that makes
17 software that they then sell, so there aren't
18 things like user manuals going around. Facebook
19 crafts little keys.

20 It goes up on the -- as the
21 website and it changes over time quite a bit.
22 So I think Your Honor's approach in going back
23 to what Judge Farnan had originally intended is
24 a good one, because I think they'll find when

1 they actually do review the code that they will
2 understand what they're looking at. And they'll
3 then be able to narrow their request as everyone
4 intended this process to do in order to only get
5 at that which they really need and not the
6 things that they don't.

7 Regardless of what Mr. Andre says,
8 we do not still actually have a good grasp on
9 what they are accusing of infringement. And
10 that's why this process was set in place.

11 So, please, Your Honor, don't put
12 the cart before the horse. Have them review the
13 code. They're set to do so this week.

14 And then Mr. Andre and myself can
15 talk about what they saw or didn't see, why
16 something made sense or didn't make sense.
17 Judge Farnan also anticipated this happening and
18 he said that if, in fact, once we went through
19 process number one, we couldn't agree on what
20 was happening, he talked about the possibility
21 of bringing experts in from both sides to tell
22 him why they would want more than has been
23 already given, or an expert on my side to say
24 why they don't need what's going on.

1 So that was another part of Judge
2 Farnan's entire approach to this stage-in-tiers
3 discovery. We're not trying to stall things.

4 If the other side, if Leader
5 believes that we need more time, we're
6 absolutely happy to go to the Court and get
7 discovery extended. This is the position and
8 this is what Judge Farnan put in place. And
9 we'd like to see that through.

10 THE COURT: Okay. Let's move on
11 to the final topic, which is Leader's demand or
12 request that there be additional substantive
13 responses to the Request for Admission.

14 Mr. Andre, would you address that
15 for me?

16 MR. ANDRE: Yes, Your Honor.
17 Essentially what's happening, we've filed a very
18 specific set of Request for Admissions.

19 We're not asking him to admit
20 infringement or anything of that nature, but we
21 did ask them to make certain admissions
22 regarding their technology. And instead of
23 giving any substantive responses, they went
24 through and made objections that were so far off

1 the reality that it would be impossible to craft
2 our RFA that would be answerable according to
3 Facebook. So they objected to all the RFA's and
4 then denied it based on those objections.

5 I mean, just to give Your Honor
6 some examples, if you look at the Request for
7 Admission 22 where it says admit that Facebook's
8 website stores information about users in one or
9 more databases. The objection was that was
10 vague and ambiguous.

11 They said the word stores
12 information and users are vague and ambiguous,
13 and therefore, they denied it based on that.

14 Another one that was a good
15 example is RFA 28, admits that Facebook's
16 website is hosted from servers located in the
17 territory of the United States. Objection to
18 the word hosted and denied the RFA based on
19 that.

20 You know, counsel can play these
21 games of not wanting to admit any RFA. And
22 admitting RFA's or not are discovery tools that
23 lawyers don't like to use or to answer. But
24 there has to be some substantive responses other

1 than denials based on objections.

2 THE COURT: And what about the
3 proposals that they offered to try to get you
4 more information, either they would answer an
5 interrogatory giving their explanation for their
6 denials or you would serve new RFA's?

7 MR. ANDRE: Well, the new RFA's
8 would -- they wouldn't commit to the fact. If
9 we gave RFA's with specific definitions, they
10 asked -- when they asked us to define
11 essentially every word in the RFA. If we were
12 to give those specific RFA's, would they even
13 answer those?

14 They'd object to them according to
15 them. We couldn't get that locked in, one way
16 or the other. They said you try to refile them
17 and make them clear for us. Once again, a stall
18 tactic.

19 It was -- obviously, Ms. Keefe
20 would love to ask for extension of discovery and
21 lose our trial date in June of next year.

22 The other alternative about
23 interrogatories, I believe it was conditioned
24 upon the fact that if that's the case, that

1 would use up all of our remaining
2 interrogatories. We have a limited number of
3 interrogatories in the case.

4 THE COURT: What if we amended it
5 so that it wouldn't count towards your
6 interrogatory limit, or alternatively, required
7 them to respond very quickly to a new set of
8 RFA's.

9 Would either of those approaches
10 solve the problem?

11 MR. ANDRE: That would be fine,
12 Your Honor, if they responded substantively and
13 not with just objections. Again, that would be
14 fine with us.

15 THE COURT: All right. Ms. Keefe.

16 MS. KEEFE: Well, I mean, Your
17 Honor, I can't -- I'm not even sure where to
18 start. Let me back up.

19 As far as the interrogatory
20 proposition goes, our proposition to them was
21 that we would answer an interrogatory, so long
22 as -- and we wouldn't count it as each one being
23 a separate interrogatory for each RFA that had
24 to be responded to so long as they would give us

1 the same courtesy. If, after we served RFA's on
2 them, a single interrogatory would count.

3 So it wasn't at all that the rogs
4 would be used up. It was exactly the opposite.

5 It was that both parties would
6 agree that the rogs would not be used up and
7 they would treat interrogatories to define why
8 the RFA was answered that way in a similar
9 fashion. So we'd actually be extremely content
10 if Your Honor said, All right. You're allowed
11 to serve an interrogatory asking for the reasons
12 for the denial. We will answer that
13 interrogatory and not count it against their
14 total.

15 So long as when we serve RFA's on
16 them and then serve a similar single
17 interrogatory, it doesn't count against us.
18 That's the proposition and we are still willing
19 to do that.

20 THE COURT: Let's stop there,
21 because my understanding is Mr. Andre would be
22 content with that. Am I right, Mr. Andre?

23 MR. ANDRE: Your Honor, that would
24 be fine as long as, you know, the -- one of our

1 concerns is that, you know, we sent a very
2 limited world of RFA's to them and there is no
3 limit on RFA's.

4 Even though we requested it in our
5 Rule 16 conference, there are no -- in our
6 initial conference with the counsel. Then we
7 stipulated to the fact that there would be no
8 limits on RFA's.

9 So we are a little bit concerned
10 by the fact that we may get 250 RFA's from them.
11 It would be so unduly burdensome for us to have
12 to answer them on an interrogatory basis, that
13 that would be our only concern.

14 Maybe if counsel would agree to
15 limit the number of RFA's in the case in total,
16 that would be a way to alleviate that concern.

17 THE COURT: All right. I'm not
18 going to require any limitation on RFA's.

19 At this point, I find I've got at
20 least a full-time job just dealing with the
21 discovery disputes that are in front of me. I'm
22 not going to worry about ones that might come
23 down the pike.

24 But if they do, obviously you all

1 know how to raise a discovery dispute with me.
2 With respect to the RFA's, I am going to rule by
3 ordering that Facebook provide in the form of
4 interrogatory response. I guess actually I need
5 to rule, Mr. Andre, that Leader serve an
6 interrogatory that won't count towards your
7 limit whereby you ask for Facebook's basis for
8 the responses to the RFA's.

9 If at some point Facebook wants to
10 serve the same interrogatory for the same
11 limited purpose on Leader, that interrogatory
12 also will not count towards whatever
13 interrogatory limit is otherwise in place. That
14 takes care of that issue.

15 And let me give you my ruling with
16 respect to the first two issues that Leader has
17 raised. And there I'm going to deny without
18 prejudice to -- I'm going to deny Leader's
19 request at this time for any further -- for any
20 production of documents from other litigation or
21 production of additional technical documents.

22 I want to let the situation that's
23 in place play out, but only for a very limited
24 additional time. And specifically let me tell

1 you what I'm looking for.

2 My understanding is that Leader's
3 expert is going to be reviewing source code this
4 Thursday the 16th. After that review is
5 complete, the parties are to meet and confer and
6 discuss, at a minimum, these two discovery
7 requests that Leader presented to the Court
8 today.

9 If you're not able to resolve
10 amicably those two disputes, then by the end of
11 the day next Thursday the 23rd, I want a single
12 letter on behalf of both parties not to exceed a
13 total of five pages that sets out for me what
14 remains in dispute with respect to those two
15 requests and what each side's proposal is for
16 how I should resolve them.

17 And I will get back to you after I
18 get that letter as to whether I need further
19 information from you and whether I need to
20 schedule a call or if I'm able to just resolve
21 it based on the letter.

22 I don't want any reargument at
23 this time, but I do want to make sure everybody
24 understands what I have ruled here.

1 Any questions, Mr. Andre?

2 MR. ANDRE: No, Your Honor. Thank
3 you.

4 THE COURT: Okay. And Ms. Keefe?

5 MS. KEEFE: No. Thank you very
6 much, Your Honor.

7 THE COURT: All right. Thank you
8 all very much, counsel.

9 Bye.

10 (Teleconference was concluded at
11 3:09 p.m.)

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CERTIFICATE OF REPORTER

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I, Heather M. Triozzi, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public, do hereby certify that the foregoing record, Pages 1 to 36 inclusive, is a true and accurate transcript of my stenographic notes taken on July 14, 2009, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of July, 2009, at Wilmington.

Heather M. Triozzi, RPR, CSR
Cert. No. 184-PS