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

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LEADER TECHNOLOGIES, INC., a Delaware corporation,	:	CIVIL ACTION NO.
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
FACEBOOK INC., a Delaware corporation,	:	
	:	08-862 (JJF-LPS)
Defendant.	:	

- - -

Wilmington, Delaware  
Friday, November 13, 2009 at 9:39 a.m.  
*TELEPHONE CONFERENCE*

- - -

BEFORE: HONORABLE **LEONARD P. STARK**, U.S. MAGISTRATE JUDGE

- - -

APPEARANCES:

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

and

COOLEY GODWARD KRONISH, LLP  
BY: HEIDI L. KEEFFE, ESQ., and  
JEFFREY NORBERG, ESQ.  
(Palo Alto, California)

Counsel for Leader Technologies, Inc.

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

and

Brian P. Gaffigan  
Registered Merit Reporter

1 APPEARANCES: (Continued)

2

3

KING & SPALDING  
BY: PAUL J. ANDRE, ESQ., and  
LISA KOBIALKA, ESQ.  
(Redwood Shores, California)

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Counsel for Facebook, Inc.

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P R O C E E D I N G S

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(REPORTER'S NOTE: The following telephone

13

conference was held in chambers, beginning at 9:39 a.m.)

14

THE COURT: Good morning, everyone. This is

15

Judge Stark. Who is there, please?

16

MR. ROVNER: Good morning, Your Honor. This is

17

Phil Rovner from Potter Anderson on behalf of the plaintiff;

18

and with me are Paul Andre and Lisa Kobialka from King &

19

Spalding in California.

20

THE COURT: Okay.

21

MR. CAPONI: Good morning, Your Honor. Steve

22

Caponi from Blank Rome for Facebook. With me this morning

23

is Heidi Keefe and Jeffrey Norberg from Cooley Godward.

24

THE COURT: Okay. Good morning to all of you.

25

So this is, for the record, our case of Leader

1 Technologies Inc. versus Facebook. It's our Civil Action  
2 08-862-JJF-LPS.

3 I do have a court reporter with me here today,  
4 of course, and the purpose of today's call initially was to  
5 resolve a discovery dispute brought to my attention by  
6 Facebook. I have reviewed those letters and we will get to  
7 that.

8 I did also receive, very recently, supplemental  
9 letters, one from Facebook and one from Leader with  
10 allegations of potential spoliation of evidence. This is an  
11 allegation coming from Facebook and made on an urgent basis  
12 with the request that we discuss it this morning. I have  
13 gotten a response as well from Leader.

14 I do want to start with the spoliation issue,  
15 but before I hear from counsel, I do want to say I am  
16 troubled that it appears that there was not any substantial  
17 effort by Facebook to do more to meet and confer on this  
18 issue with Leader's counsel prior to writing a letter that  
19 is publicly available on our docket, making these allegations.  
20 It certainly would have been preferable from my perspective  
21 if there had been a further meet and confer and a further  
22 effort to understand what may or may not have occurred  
23 during the conversation that is recited in the letters.

24 I'm not, at this point, going to ask both parties  
25 to just take the floor and go further with their allegations

1 against, and their accusations against one another. We're  
2 not going to spend a lot of time on this issue. I have just  
3 a couple of very direct questions, and I'll start with  
4 Facebook.

5 You can first respond to why there wasn't a  
6 further effort to meet and confer. Also, I'd like a better  
7 understanding as to how the information that you're seeking  
8 could be likely to lead to admissible evidence, why therefore  
9 it's even within the realm of discoverable. And, finally,  
10 the only relief I would even begin to consider granting that  
11 you have requested is your first bullet point: That, for  
12 some reason, you'd be provided with a list of the third  
13 parties that Leader has contacted regarding the documents.  
14 And I'm not inclined to provide you even that relief, but  
15 I'll certainly hear an argument for why I should.

16 So, very briefly, and I encourage both sides to  
17 do your best to refrain from trying to inflame one another  
18 any further than you already have, and let's see if we can  
19 keep this a civil and professional discourse.

20 With that, I will turn it over to Facebook.

21 MS. KEEFE: Absolutely. Thank you very much,  
22 Your Honor.

23 With respect to the timing of the letter, Your  
24 Honor, we only learned of this issue mid-to-late-day  
25 Wednesday, and I took all of Wednesday to try to investigate

1 to find out exactly what had happened from the parties that  
2 were involved, from my associate who received the phone  
3 call, from Shearman & Sterling. I then contacted Shearman &  
4 Sterling myself to try to find out a little bit more about  
5 what happened and to confirm everything that was happening.  
6 I then proceeded to do some research to try to find out  
7 exactly how this would affect our case.

8 Immediately the following morning, at the  
9 beginning of business, at the opening of business, I sent a  
10 letter to Mr. Andre explaining my problems and informing him  
11 that I actually felt the need to go to the Court regarding  
12 this issue. I heard nothing. I would have expected a  
13 phone call, given the urgent nature of this and given the  
14 seriousness of what I was bringing up.

15 I also knew that we had this hearing on Friday  
16 morning and wanted to be able to address this issue during  
17 this hearing, since it was already set between the parties  
18 with Your Honor. I was going to the Court. I knew that if  
19 I waited to go to the Court until the very end of the day on  
20 Thursday, that King & Spalding would comment that I had not  
21 given them a chance to respond to the Court, so I filed my  
22 letter with the Court, making sure that there was ample time  
23 for them to respond to the Court, to that letter, and that  
24 was the course of events, and those were the timing that had  
25 took place.

1           If I should have filed the letter under seal, I  
2 admit, Your Honor, that that was simply something that  
3 didn't come to mind, and perhaps I should have done so, and  
4 for that I apologize; but the urgent nature of this and the  
5 possibility that the documents have been or were being  
6 actively destroyed at this moment caused me to come to the  
7 Court as quickly as I did.

8           Now, with respect to why these documents are  
9 relevant, all of these documents, everything that we're  
10 talking about here -- if we just take one step back, all of  
11 these documents are documents between Leader Technologies  
12 and/or his counsel and third parties from who they're  
13 seeking funding for a lawsuit. Judge Farnan has indicated  
14 that is not a privilege, but we can put that issue aside for  
15 a moment.

16           Mr. Andre and King & Spalding have taken the  
17 position that all of those documents have some form of  
18 privilege because all of those conversations were done in  
19 anticipation of litigation. From what we've been able to  
20 glean from the documents that have been produced, all of  
21 those documents had something to do with this case. They  
22 had to do with prior art that the parties had found and  
23 indicated that they were discussing with each other. They  
24 had investigations concerning allegations of infringement,  
25 concerning possible damages, all things which are highly

1 relevant to this case, to what people thought about the  
2 patent, to documents that had been requested, all documents  
3 regarding prior art, regarding this litigation, regarding  
4 the decision to file this lawsuit, investigations done  
5 before the lawsuit, and all were done in anticipation of  
6 litigation.

7           If, as Leader has done throughout this case,  
8 they're claiming a privilege as to these documents, under  
9 the Rambus versus Micron case, all of those documents needed  
10 to be preserved. Instead, what we learned on Wednesday, and  
11 what has been confirmed by Mr. Andre in his letter is that  
12 rather than a contract to preserve those documents, there  
13 seems to be a nondisclosure agreement which, according to  
14 Mr. Segal, he understood mandated their destruction. And  
15 the word that got me very nervous and made me come to Your  
16 Honor was that word "destruction," and that was the word  
17 Mr. Segal informed me about. I confirmed that word with  
18 Mr. Segal twice. I called him to ask him about it. And  
19 then before I sent the letter to Your Honor, I actually read  
20 the entire letter to Mr. Segal to confirm that it actually  
21 accurately represented what he had heard and what he had  
22 said to me.

23           THE COURT: And you are saying, in your view,  
24 it would be unlawful for parties to have a contractual  
25 nondisclosure agreement that requires the destruction of

1 documents that are created as part of a request to raise  
2 funds to pursue litigation?

3 MS. KEEFE: Yes, Your Honor, I am. That is  
4 borne out by the fact that Mr. Andre and in all of LTI's  
5 correspondence, they had claimed privilege to these documents,  
6 based on the fact that all those documents were in anticipation  
7 of litigation. In the Rambus versus Micron case, specifically,  
8 the Court held, this Court, Judge Robinson, held that  
9 because the document retention policy -- in that case, it  
10 was a retention policy; here, it would be the nondisclosure  
11 agreement -- was discussed and adopted within the context of  
12 litigation strategy, therefore, Rambus, according to the  
13 Court, should have known that a general implementation of  
14 the policy was inappropriate because the documents destroyed  
15 would become material at some point in the future.

16 And I believe, given the fact that they're  
17 claiming privilege to these documents based on the fact  
18 that all of this correspondence was in anticipation of  
19 litigation, would have yielded a duty to preserve those  
20 documents.

21 Now, even if we take the assumption that King &  
22 Spalding wasn't involved at that stage of this litigation,  
23 we know they weren't involved in all of -- you know,  
24 throughout all of the time that Leader was talking about,  
25 the minute that King & Spalding became aware of NDAs which

1 would have mandated destruction of documents, knowing that  
2 they were in the case, they should have contacted those  
3 third parties to remind them of their obligation to preserve  
4 the documents in anticipation of litigation and instead.

5 What I heard from Mr. Segal at Shearman &  
6 Sterling was that he was reminded of the NDAs obligation  
7 to destroy the documents, not to tell his client of his  
8 obligation to preserve the document. That is what gave us  
9 such concern is that we actually have documents, contrary  
10 to the holding in Rambus, which implement a policy wherein  
11 documents created in anticipation of litigation were to be  
12 destroyed.

13 THE COURT: And do you have the list of all  
14 of the third parties? Let's turn to the relief you are  
15 asking for in that first bullet point. How much of that  
16 information do you already have?

17 MS. KEEFE: I honestly don't know, Your Honor.  
18 We have some information. We subpoenaed a number of third  
19 parties based on the limited e-mails that we did receive  
20 indicating, you know, correspondence was sent between  
21 Mr. McKibben, or someone else at Leader and a funding  
22 company, or someone other third party. With respect to  
23 those that were identified in those e-mails, we have  
24 subpoenaed their information and are receiving resistance on  
25 many levels, but that is okay.

1 I don't know how many people are out there that  
2 I don't know about. For example, I didn't even know that  
3 this supposed NDA existed until Mr. Segal called. And now,  
4 in Mr. Andre's letter, he says that it does exist but that  
5 he hasn't produced it yet, and he claims that it is not  
6 responsive, even though there was a document request back in  
7 February of this year asking for all documents regarding  
8 this litigation or decisions to file this lawsuit, things of  
9 that nature.

10 THE COURT: All right. Let me hear from  
11 Mr. Andre at this point, please.

12 MR. ANDRE: Your Honor, the NDAs that counsel  
13 is referring to are not regarding this litigation, and they  
14 obviously are not the least bit relevant. The documents  
15 they're seeking, there is no way they will ever get  
16 admissible evidence for any of these documents.

17 When I had my call with Mr. Segal, I had these  
18 calls dozens and dozens of times with third parties. It was  
19 a professional courtesy to let them know about this NDA  
20 because he asked about it. The NDA actually says the  
21 parties would probably return all copies of confidential  
22 information in its possession; and that's what I told  
23 Mr. Segal.

24 I also told him that there is a provision in  
25 there that said if they created additional documents based

1 on confidential information, then those would be destroyed.  
2 This is standard language in every NDA. If you cannot have  
3 this type of language in NDAs, NDAs would not be useful at  
4 all. Any type of privilege that would be claimed would be  
5 attorney-client privilege, not work product, and that is not  
6 anticipation of litigation, it's a straight attorney-client  
7 privilege.

8 That being said, what I informed Mr. Segal of, I  
9 think it's pretty clear in the letter, was nothing out of  
10 the ordinary. Even what Ms. Keefe accused me of or accused  
11 in her letter would not warrant her leaping to the type of  
12 conclusion that she has come up with.

13 I don't have much more to add than what is in  
14 the letter. I think that the facts are pretty clear as to  
15 what went down here; and I think the unfortunate aspect was  
16 Ms. Keefe did not pick up her phone and give me a call. I  
17 was in a meeting yesterday morning, and I got the letter to  
18 the Court actually before I got Ms. Keefe's letter.

19 I think that is all I have to say about that,  
20 unless Your Honor should have any specific questions.

21 THE COURT: Why should I not order you to turn  
22 over the NDA now just to get that out of the way and so  
23 there is no further dispute as to what it actually says?

24 MR. ANDRE: It's our responsibility to do the  
25 document request, Your Honor, but if Your Honor wants us to

1 produce the NDAs, we do have provisions in here that these  
2 were supposed to be to remain confidential, but we can put  
3 that as a privilege -- I mean as a confidentiality  
4 designation and produce it.

5 THE COURT: Right. We have a protective order  
6 in this case; right?

7 MR. ANDRE: Exactly. So I don't mind producing  
8 the NDA. They put in document requests as of October 21st,  
9 our response is due November 20th, where they specifically  
10 ask for these type of NDAs. I don't think this is remotely  
11 relevant to this case. There is no possible way this will  
12 get into evidence. But if it will make this issue go away,  
13 we'll produce it.

14 THE COURT: And what about, why should I not  
15 make you disclose to Facebook a list of every third party  
16 that you have contacted regarding documents related to this  
17 lawsuit?

18 MR. ANDRE: There is no reason to do so, Your  
19 Honor. There is absolutely no reason whatsoever. The fact  
20 that when the subpoenas went out, when they subpoenaed all  
21 these relevant documents, many of the individuals they  
22 subpoenaed were, some were former employees of ours. Some  
23 are actually current employees, part-time employees. One  
24 is a member of our board. And some of these financing  
25 companies, they contacted us and asked if we would represent

1       them and file their objections and produce the documents, if  
2       they had any in their possession. We agreed to do so.

3               This is not anything that happens out of the  
4       ordinary in the case. There is absolutely no basis for this  
5       type of relief. The allegations in Ms. Keefe's letter are  
6       what was the conversation I had with Mr. Segal, Shearman &  
7       Sterling. There is nothing improper about that type of  
8       conversation. There is absolutely no implication or  
9       suggestion that they destroyed documents.

10              In fact, when he asked me, do you think there  
11       would be many documents, I said I doubt there will be,  
12       because your client has informed us that they had already  
13       returned all the documents or destroyed them pursuant to the  
14       NDA. So it was a professional courtesy. I don't think  
15       there would be much for you to review.

16              And that was the extent of it. There is no  
17       basis for giving Ms. Keefe and Facebook any relief at all  
18       based on what has happened.

19              THE COURT: And what about the suggestion that  
20       the NDA provision referencing a destruction obligation is  
21       itself unlawful?

22              MR. ANDRE: I disagree with that completely,  
23       Your Honor. I think that the law is contrary to that. I  
24       think that is a complete mischaracterization of the law.

25              I don't know what case Ms. Keefe is talking

1 about. That was not addressed in her letter, so I'm not  
2 sure what the case is, but I know that NDAs of this nature  
3 are prevalent throughout industry. These are standard terms  
4 in every single NDA I have ever seen. So if these were in  
5 any way unlawful, then they would cease to exist. So I  
6 think that is a complete mischaracterization of the law.

7 THE COURT: All right. I've heard enough on  
8 this dispute.

9 I am denying all of the relief that has been  
10 requested by Facebook. I'm satisfied by the representations  
11 that have been made by Mr. Andre in his letter and this  
12 morning. I think, as is evident by the fact this is  
13 something like our fifth or sixth call regarding discovery  
14 disputes, that obviously counsel have had a problem getting  
15 along and meeting their obligations to their clients and to  
16 the Court. I think, unfortunately, there has been a rush to  
17 judgment on occasion on both sides to too quickly assume bad  
18 faith as the motive on the other side; and I believe that is  
19 what happened here.

20 I'm satisfied that both parties acted in good  
21 faith, but further meeting and conferring on this issue  
22 would have allowed it to be resolved without reaching the  
23 level it did and without requiring the Court's attention.  
24 And I can only tell counsel that I've -- well, I haven't  
25 been in this job for a long time. I have handled a lot of

1 discovery disputes and various parts of high stakes  
2 litigation and intellectual property in other cases, and  
3 somehow it seems counsel, in almost every case, find a way  
4 to vigorously represent their clients but also to fulfill  
5 their obligations to the Court and to one another as  
6 members of the bar, to work cooperatively, to push a dispute  
7 properly through the process; and, at times, it has seemed  
8 this case is the exception, and I hope that things will  
9 improve as we go forward.

10 So I'm denying the relief that is requested. I  
11 am going to order that Leader produce the nondisclosure  
12 agreements, and to do that no later than five days from  
13 today.

14 I am not prepared at this point to make any  
15 ruling on who is right as to whether provisions in those  
16 agreements are, on their face, unlawful or not, but at least  
17 by providing those documents to Facebook, Facebook can see  
18 what the documents actually say. And if there is a basis  
19 to seek further relief, then I'm sure you will be able to  
20 pursue your rights at that point.

21 So that is enough on that issue. Let's turn now  
22 to the original issue that was the basis for this call. I  
23 don't want to spend a great deal of time on this one either,  
24 but I will give each side a chance to briefly respond to  
25 what they heard in the letters primarily; and since this is

1 Facebook's complaint, let me hear first from Facebook.

2 MS. KEEFE: Thank you very much, Your Honor.

3 Your Honor, this request regards the fact that  
4 after Your Honor's deadline of October 15th for putting  
5 in infringement contentions and after the deadline for  
6 Facebook to serve written discovery requests in this case,  
7 Leader supplemented its interrogatories to add three new  
8 never before disclosed claims. One of those claims is at  
9 least facially dramatically different from all of the other  
10 claims that have ever been asserted in this case. As a  
11 result of that dramatic difference, that particular claim  
12 has not been subject to analysis or investigation by  
13 Facebook. As a result, Facebook, if that claim stays in  
14 this case, Facebook will need to be able to mount an  
15 investigation, answer written discovery regarding that  
16 claim. That claim is No. 17, and it involves words and  
17 phrases that appeared in no other claim that has ever been  
18 previously asserted in this case, including, for example,  
19 the words "ordering," "arrangement" and "traversing."

20 Mr. Andre is correct that Facebook did put into  
21 its ex parte request for reexamination claims that had not  
22 been asserted, but those claims were only included because  
23 they included virtually identical language to other claims  
24 that had already been asserted or were dependent on an  
25 independent claim that was already asserted.

1 THE COURT: So Claim 17 is not part of the  
2 reexamination?

3 MS. KEEFE: Claim 17 is not part of the  
4 reexamination.

5 THE COURT: And have you conducted a search for  
6 prior art relating to Claim 17?

7 MS. KEEFE: We just started that search. During  
8 the process of meeting and conferring on this issue, these  
9 claims were added on October 29th. We immediately started  
10 the process of meeting and conferring. To the contrary of  
11 Mr. Andre's assertion that everything I ever wanted to do  
12 was stall the case, quite the opposite. My first request to  
13 Mr. Andre was to remove these claims from the case to avoid  
14 the need to extend discovery in this case.

15 I offered a compromise: That if Mr. Andre  
16 wanted Dependent Claims 3 and 6 to be in the case, he could  
17 leave those in because those were related to claims that we  
18 had done investigations on, and he would just drop Claim 17  
19 so that we could preserve the current calendar which has  
20 claim construction beginning the very first week in  
21 December.

22 At this point, we have begun our prior art  
23 analysis but we are nowhere near finished; and we have not  
24 had the opportunity to serve written discovery regarding  
25 that claim.

1 THE COURT: All right. So why isn't it, though,  
2 that Leader has until November 20th under my order to add a  
3 new claim, including a new independent claim?

4 MS. KEEFE: It's our belief, Your Honor, the way  
5 the entire process played out, that by October 15th, because  
6 of Your Honor's order carving out contention interrogatories  
7 regarding infringement, that those allegations were to have  
8 been put in by the 15th.

9 As of the 15th of October, Leader, by its own  
10 admission, had all of the documentation that it needs.  
11 Nothing has changed since the 15th. No new information has  
12 been propounded. No new information has been handed over.  
13 Leader hasn't even come back to, you know, look at the  
14 source code again. Nothing changed from the time of the  
15 15th. We think that Your Honor's order actually carved out  
16 that contention interrogatory from the remainder of the  
17 schedule so that the parties would know what claims were at  
18 issue in this case so that discovery could be finalized and  
19 so that we could go forward.

20 THE COURT: Are you referring to the September 4th  
21 order?

22 MS. KEEFE: Yes, Your Honor.

23 THE COURT: Okay. Let me hear from Mr. Andre,  
24 please.

25 MR. ANDRE: Your Honor, I think you are correct,

1 the scheduling order permits us to supplement our contention  
2 interrogatories up until November 20th. That's what we did.

3 The September 4th order talked about  
4 supplementation of the claims, and we had to include the  
5 source code modules. That is what the September 4th order  
6 was about. As you will recall, there was a large fight as  
7 to whether we could see the source code or not. And then we  
8 had to supplement our interrogatories with that source code  
9 information.

10 The fact of the matter is, is that we did that  
11 supplementation; and Facebook was not happy with the  
12 supplementation. They kept pushing us to supplement  
13 further. They produced the most critical documents to us  
14 unredacted in early October. And we have, after the second  
15 supplementation in October, we supplemented adding these  
16 three additional claims that are based solely on the  
17 confidential information that we received in September and  
18 early October. The previous supplementation was based on  
19 those claims that we could determine from the public  
20 information that were being infringed. These three  
21 additional claims we could not determine from the public  
22 information, but we could determine from the confidential  
23 source code and the documents that were produced in October.

24 So we think we've supplemented in good faith  
25 pursuant to the discovery order that was entered in this

1 case. We don't think there is any prejudice whatsoever  
2 for the written discovery that Facebook has provided, has  
3 not seen without certain claims. They've asked general  
4 discovery information about all the claims, and we will have  
5 to supplement all those written interrogatories and produce  
6 all documents related to these additional claims, just like  
7 we did the previous claims.

8 Then, I guess, lastly, if this is Facebook's  
9 position there is no allowed supplementation, no additional  
10 claims are allowed to be added, I think it would extremely  
11 unfair, the fact they were able to identify an additional  
12 35 or so odd additional references just last week. They're  
13 supplementing their interrogatories, adding new claims of  
14 invalidity. They're trying to even amend their complaint --  
15 their counterclaims to add in a claim of false marking. So  
16 I think it's a little disingenuous to say that adding three  
17 claims in that are on the exact same subject matter -- and  
18 Claim 17 just adds couple additional new terms, it's not  
19 vastly different technology, obviously. There is no  
20 prejudice at all.

21 THE COURT: So the contention interrogatories  
22 that you provided with respect to Claim 17, are they of the  
23 same level of detail as what you provided for the others  
24 that we've talked about previously and that you had to do by  
25 October 15th?

1 MR. ANDRE: They are, Your Honor. They add  
2 all the -- it's based purely on confidential information.  
3 There was no public information we could base the claim of  
4 infringement on, so it was based purely on our review of the  
5 source code and their highly confidential documents that  
6 were produced in late September and early October.

7 THE COURT: Are you planning any further  
8 supplementation with respect to Claim 17 by the November 20th  
9 deadline?

10 MR. ANDRE: Your Honor, they've asked us to  
11 supplement once again the claims. It's really more of in  
12 form, and that's part of their letter brief here, that they  
13 want us to make sure that any of the source code modules we  
14 listed in the accused instrumentality was included in the  
15 claim charts as well, that there would be no discrepancy.  
16 So we've agreed to supplement on that, in substance. There  
17 would be no additional supplementation of those claims other  
18 than the supplementation that we'll be getting out later  
19 today to Facebook based on their requests.

20 THE COURT: All right.

21 MR. ANDRE: There will be no new source code  
22 modules not previously identified --

23 THE COURT: All right.

24 MR. ANDRE: -- or documentation.

25 THE COURT: Ms. Keefe.

1 MS. KEEFE: Your Honor --

2 THE COURT: Yes, go ahead.

3 MS. KEEFE: I'm sorry, Your Honor. We actually  
4 disagree that the disclosure with respect to Claim 17 is of  
5 the same level of detail. I think if Your Honor simply  
6 looks at Pages 27 and 28 of the interrogatory response where  
7 the cells are containing the words, for example, that I am  
8 the most concerned about, things like "traversing" the  
9 different arrangements, you can see that there's actually no  
10 detail there whatsoever. We're back to parroting claim  
11 language with a simple pointing to one source code module.  
12 No explanation of how that source code module does it, what  
13 any of those terms mean. It's just a mere parroting.

14 The parroting here in Claim 17 looks more  
15 like the type of facially insufficient analysis that we  
16 originally complained about. Now, I will admit fully that  
17 with respect to the old claim, Leader did actually give us  
18 more detail, finally, and has given us a more detailed  
19 limitation-by-limitation analysis; but that had not happened  
20 with respect to Claim 17, and we think the document shows  
21 that.

22 THE COURT: Well, I think that there was an  
23 ambiguity in the various orders with respect to Leader's  
24 obligations on supplementing contention interrogatories, and  
25 this dispute falls right into that ambiguity. Whereas I

1 think it was reasonable for Facebook to understand that by  
2 October 15th, they would have full and complete contention  
3 interrogatories with respect to all of the claims that were  
4 being asserted, I also think it was reasonable for Leader to  
5 read the overriding date of November 20th as the deadline to  
6 allow it to do as it has done here.

7 While I am hearing and sympathetic to Facebook's  
8 suggestion that it may need relief from the accelerated  
9 schedule here now that three new claims, including one  
10 independent claim, Claim 17, have been added, I'm not yet  
11 persuaded that additional time is going to be necessary.  
12 I'm also not yet persuaded that I should strike the independent  
13 claim, Claim 17.

14 I'm also aware that while today is November 13th,  
15 it's not yet November 20th. So my ruling is I'm denying the  
16 requested relief from Facebook today. I'm going to let this  
17 play out another week. I'm not, at this point, assessing  
18 the sufficiency of the contention with respect to Claims  
19 3, 6, and 17, but what I am holding is that no later than  
20 November 20th, those contentions must be of the same level  
21 of clarity and detail and comprehensiveness as those which  
22 had been the subject of many conversations between us, that  
23 is, with respect to the other claims that were asserted from  
24 the beginning of the case.

25 So, at this point, I see no basis for ordering

1 any further relief. My hope is that there won't be any  
2 further dispute with respect to this issue, but I am mindful  
3 of where both sides are coming from. And keeping in mind  
4 my goal to keep this case on track to the trial date,  
5 which I think is next June, if events warrant, after the  
6 November 20th deadline, providing some additional relief  
7 with respect to the schedule or with respect to making this  
8 case narrower, I will deal with that if, and when, those  
9 disputes arise.

10 I believe that is all the issues that are in  
11 front of me today. Is that correct, Ms. Keefe?

12 MS. KEEFE: I believe so, Your Honor.

13 THE COURT: Okay. Mr. Andre?

14 MR. ANDRE: Thank you, Your Honor. That's all.

15 THE COURT: Okay. This transcript will serve as  
16 my ruling on the issues today. Thank you very much.  
17 Good-bye.

18 (The attorneys respond, "Thank you, Your Honor.")

19 (Telephone conference ends at 10:13 a.m.)

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