What Facebook, Goldman Sachs and Fenwick & West don’t want us “muppets” to know

Last Updated Mar. 24, 2012, 11:49 PM EST

1. Facebook risks losing a Leader v. Facebook federal patent infringement lawsuit.

Facebook did not bother to disclose this in the S-1 to us muppets.[1]

See Leader Technologies, Inc. v. Facebook, Inc. 08-cv-862-JJF-LPS (D.Del. 2008) and Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.).

2. Facebook was found guilty of “literal infringement” of 11 of 11 Leader patent claims in federal court, which essentially means that the engine running Facebook is Leader’s invention?

Facebook did not bother to disclose this in the S-1.[2]


3. At the time of the S-1 filing, the Leader v. Facebook appeal at the U.S. Court of Appeals for the Federal Circuit was pending—the first ever federal appeal in Facebook’s history.

Facebook did not bother to disclose this in the S-1.


4. Facebook is required by law to disclose in an S-1 anything other than routine litigation.

Facebook did not bother to disclose this in the S-1.
Patent experts are currently cataloging recent SEC response to an inquiry about what Facebook is required to disclose in an S-1: “filers must disclose legal proceedings that: 1. Are other than ordinary routine litigation 2. claims [sic] that exceed 10% of the current assets of the issuer.”

Apparently Facebook believes that their first-ever hearing at the second highest court in the United States (the Federal Circuit) is “routine.”

5. Facebook presented attorney-altered evidence (Interrogatory No. 9) in Leader v. Facebook.

Facebook did not bother to disclose this in the S-1.

6. Facebook is required by law to disclose in an S-1 any liability amounting to more than 10% of their assets. If Facebook loses Leader v. Facebook, they might have to pay damages ranging from 5-25% of their gross revenue from 2006 to 2021.

5-25% of Facebook’s gross revenue will likely be more. Facebook did not bother to disclose this risk in their S-1.

See Journal of Accountancy; See also Georgia Pacific v. United States Plywood Corp.

7. If Leader can prove “willful infringement,” Facebook might have to pay three times (3x) the damages.

Facebook did not bother to disclose this in their S-1.

8. Facebook is facing a pending injunction and might have to shut down if Leader wins its injunction request.

Facebook did not bother to disclose this in their S-1.

See Leader Complaint at 10.

9. Facebook’s S-1 lawyer, Fenwick & West LLP, was Leader Technologies’ corporate lawyer in 2002. 2002 was the critical timeframe that Facebook attacked in Leader v. Facebook.

Facebook did not bother to disclose this conflict in the S-1.

Did Fenwick use its knowledge of Leader’s business and technology for Facebook’s benefit? (That’s a no-no, by the way…)

According to Leader, Fenwick failed to get a signed waiver from Leader before representing Facebook (according to the California Rules of Professional Conduct); did not disclose this material omission in the S-1.

See the California Rules of (Lawyer) Professional Conduct, including Rule 3-310(E) (“A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment”).
Patent experts are currently cataloging these 100 Fenwick-filed Facebook patents so that any laymen will be able to verify the information for themselves.

USPTO (United States) and WIPO (world) patent records show only perhaps 100 Facebook filings. However, since Facebook claims over 700 patent properties, they should probably disclose them? Perhaps we muppets don't need to know? Like what we don't know won't hurt us? Hmmmmm.

Search for yourself; all USPTO information is public, go to: http://portal.uspto.gov/external/portal/pair
1. Enter CAPTCHA security info.
2. Select "Patent Number" radio button (or other type document desired).
3. Type the number for the "wrapper" (collection of documents) you want.

Mark Zuckerberg promised to tell the truth to the US Patent Office

Fig. 2 – USPTO Declaration and Power of Attorney for Patent Application filed by Mark Zuckerberg on Nov. 2, 2006 promising to tell the truth about such information as prior art. Click here to see a complete copy of this USPTO official record.

Fenwick & West LLP believed Leader’s invention was social networking prior art, but did not disclose this to the USPTO in any of the Facebook patents

Fig. 3 – Patent Office records reveal that at least Fenwick & West LLP attorney Christopher P. King, Reg. No. 90,985 was representing both Mark Andreessen and Mark Zuckerberg on Feb. 23, 2010 when Facebook was awarded its first U.S. Pat. No. 7,669,123 (and DURING the Leader v. Facebook case). Didn’t Fenwick & West’s Christopher (aka Christopher-Charles) King have a professional duty to disclose the McKibben patent as prior art in the Zuckerberg patent since he had already done so in the Andreessen’s social networking patents, and since the Leader v Facebook litigation was prima facie evidence of it being potential prior art? Click here to see portions of the USPTO “wrapper” for Marc Andreessen’s U.S. Pat. No. 7,603,352. Click here to see portions of the wrapper for Mark Andreessen’s U.S. Pat. No. 7,756,945. Click here to see portions of the wrapper for Mark Zuckerberg’s U.S. Pat. 7,669,123 (that was issued just before Facebook flipped its counterclaim in Leader v. Facebook to say that
“Inequitable conduct” means withholding knowledge of prior art (like Leader’s) from the Patent Office.

Inequitable conduct in patent law is like selling a car you have acquired under questionable circumstances. If you don’t warn the person who is considering purchasing the car that the origin of the title is questionable, then you are defrauding him/her. Likewise when applying for a patent, you have a legal duty to disclose known prior art to the Patent Office (so it can evaluate if you have clear title to what you are claiming as novel and unique). Facebook was judged to be infringing 11 of 11 Leader claims. Did they disclose this to the USPTO? Nope.

Not a single Facebook patent filed by Fenwick & West LLP identifies Leader’s U.S. Patent No. 7,139,761 as prior art.

We suspect Fenwick knew about Leader’s technology for two reasons: (1) they were Leader’s lawyers in 2002 when Leader’s patent was filed, and (2) they cited Leader’s invention in other patent work they did for Marc Andreessen, the founder of Netscape, several years before.

The Andreessen patents filed by Fenwick that cite Leader’s U.S. Patent No. 7,139,761 are 7,603,352 (Filed Aug. 26, 2005) and 7,756,945 (Filed Aug. 2, 2005). See for yourself.

This revelation screams inequitable conduct since Fenwick & West had knowledge of Leader’s patent before it ever filed the first patent for Facebook.

NEWS FLASH: Fenwick & West LLP withdrew representation from these Andreessen patents just seven weeks ago on Feb. 1 & 2, 2012!!! See USPTO File Wrapper (this is a site patent prosecutors don’t want laymen to know about!). Why the hurry, Fenwick? You have been the attorney-of-record on these patents since 2005. Why change now? Hahahaha.

Fenwick’s Christopher P. King, Reg. No. 60,985 knew and didn’t tell?

Patent specialists have uncovered what is perhaps the “smoking gun” that proves that at least one Fenwick & West LLP patent attorney named Christopher P. King, Reg. No. 60,985 worked on BOTH the Andreessen and Facebook patents. This PROVES that Fenwick & West failed to disclose Leader’s patent as prior art to the US Patent Office. Not knowing is one thing. Knowing and failing to disclose that knowledge is a severe no-no. See for yourself by clicking here. If you have trouble with the previous link, that document has also become available by clicking here. See also Figure 3 resource links.

Another oddity is the way Christopher P. King as listed in the Andreessen patents changed his name to Christopher-Charles King in the Zuckerberg / Facebook patents. It’s the same person because his Reg. No. in both is 60,985. Reference to Fenwick’s website shows that Mr. King does not use his newly-minted Facebook name “Christopher-Charles,” but rather uses his Andreessen name “Christopher P.
Fig. 4 – Goldman Sachs and Russian firm Digital Sky Technologies
(DST) invest in Facebook; as analyzed on Jan. 4, 2011 in
Industry
Leaders
magazine.

King. ” This alteration of his name to Christopher-
Charles would served to prevent his name from
appearing on any searches of “Christopher P. King”
his Andreessen and non-Facebook prosecution name.
WHY THE GAMES WITH YOUR NAME, MR. KING???

The negative implications on
Facebook’s 700+ patent
portfolio could be enormous,
according to patent experts
(could invalidate many if not
most). Is this not a material
risk?

11. Facebook’s S-1 claims over 700 patent properties,
preumably including the 92 US and International
applications filed for them by Fenwick & West LLP.

What else is Facebook not telling us?

12. Whether or not Leader wins Leader v. Facebook,
Fenwick’s failure to disclose Leader’s patent could
invalidate many of Facebook’s patents due to the
“inequitable conduct.”

Facebook did not bother to disclose this risk to
investors in the S-1.

13. Accel Partners LLP, Facebook’s first venture capital
investor in 2005, put forward its managing partner,
James W. Breyer, as Facebook’s first chairman.

Accel Partners’ principals Jim Swartz and Ping Li
received Leader’s proprietary business plans in the
Fall of 2005, according to Western Free Press. Those
documents have no less than 264 notices of Leader’s
patents pending and proprietary technology.

Facebook did not bother to disclose this risk to
investors in their S-1.

CNET’s Molly Wood identifies Jim Swartz and Ping
Lee as “big winners” in Facebook’s pending IPO. The
coincidences just keep piling up.

14. Facebook filed for an SEC 12(g) exemption from the
500 shareholder rule (Note: written by . . . Fenwick &
West), then used that exemption as an excuse to sell
more than $2.0 billion worth of its insider shares in a
sale led by Goldman Sachs—all without SEC oversight. These investments included $1 billion from Digital Sky Technologies (DST)-Moscow where Goldman Sachs is also a major shareholder. Questions from both the left and right swirl about the source of DST’s wealth and its affiliations.

Facebook did not bother to disclose in the S-1 whether or not it went over the 500 shareholder rule in the Goldman Sachs sale, nor did it disclose those liability risks to us muppets.

15. Facebook and Goldman Sachs shut out American investors from the $1.5 billion financing. See CNN Money.

This is the same Goldman Sachs that was BAILED OUT by the U.S. Government during the sub-prime mortgage market meltdown of 2008.

16. Accel Partners managing partner James W. Breyer (Facebook’s former chairman, director, and second or third largest shareholder) received a private tour of the Russian State Museum, The Hermitage, in St. Petersburg, hosted by DST’s Juri Milner, according to Fortune. In a recent interview with CBS’s Charlie Rose, Milner said Jim Breyer was a man who “influences” him. Given what this blog is uncovering, this is not surprising.

Breyer and Milner spoke in Munich, Germany at the DLD10 conference. Click the DLD10 video here to listen to his own words on how much he depends upon Leader Technologies’ invention to fuel Accel Partner’s business.

Take special note of Breyer’s statement that he started looking for social network opportunities in “2003-2004” (DLD Video at 19:33). This may have been a Freudian slip since he has never admitted knowing (and secretly funding?) Zuckerberg in 2003-2004. He stated “a couple of partners” at Accel (Jim Swartz and Ping Li?) found Zuckerberg in 2003-2004. (DLD Video at 21:14). This is the first known admission that Accel Partners had contact with Zuckerberg as early as 2003!!!

These Breyer statements are contradicted by earlier public statements. He was (and is) an uber-active Harvard alum, was President of the National Venture Capital Association, and is a co-owner of the Boston Celtics (Read: Loves all things Boston, including his Harvard alma mater.) Zuckerberg received almost as much coverage in The Harvard Crimson between October 2003 and September 2004 as President Clinton and more than George Bush, Al Franken, Google and IBM, yet “a couple of partners” (and not Breyer?) first took note of the Zuck! But I digress.
Nonetheless, in his Stanford interview with Zuckerberg on Oct. 26, 2005, he sticks with his other story that he first met the Zuck sometime later in 2004 or early 2005 at “the Village Pub.” Click here to see the full unedited video of the Breyer-Zuckerberg Stanford interview (63 min.). See also Stanford Interview Transcript page 8, line 20. Breyer confirms this story in the Munich interview, even giving us the exact date: Monday, April 4, 2004 (DLD Video at 21:28).

Amazingly, in the DLD video Breyer describes the very circumstance in the late 1990’s where an entrepreneur (like Leader) gets ripped off by venture capitalists (like Accel Partners) (DLD Video at 6:02-7:34). In other words, he did with Zuckerberg what he now doesn’t think will be repeated since everyone will now run on his Facebook Connect platform (… after he has reaped the benefit? How convenient.) This blog has learned that Breyer was invested in several medical companies that were doing business with Boston Scientific—at the time of Leader’s confidential clinical trials with Boston Scientific in the Fall of 2003. More coincidences. Did he know about the Leader platform when he teamed up with the Zuck?

In short, Breyer now admits that Accel Partners met Zuckerberg in 2003!!! After the copying of Leader Technologies’ White Paper? The coincidences just keep piling up.

Also note Breyer’s negativity about the US tech investment market. Perhaps he is trying to use his influence to create a self-fulfilling prophecy since he is going to lose Leader v. Facebook and must go international where patent laws are lax or non-existent?? Non-US investments represent 75% of Accel’s business in “London, Beijing and Bangalore” . . . and Moscow. Very interesting perspective indeed from a US tech leader who serves on dozens of US boards of directors, and is touted by President Obama as the “future of innovation.” The question is where? Managed by whom? (DLD Video at 4:35; 6:07).

In this video Milner confirms his objective to tap into all Facebook transactions via Facebook Credits (“virtual payments”). Hmmm. Smell a world currency plan (DLD Video at 30:59-32:05).
Facebook’s S-1 does not disclose the investor risks associated with receiving foreign investments that Fortune magazine says have uncertain origins.


Milner on monetization: Finds a “tax” on all application revenue running on a social platform attractive. Virtual government? (DLD Video at 30:59-32:05).

Milner on Facebook privacy: When asked why Facebook keeps screwing up, Milner said “Facebook is as good as it gets.” (DLD Video at 46:04-46:53). (This was before the FTC’s sanction of Facebook on privacy.) Did anyone hear George Orwell just turn over in his grave?

Milner on exit strategy: He is not interested in one, has “unlimited” patience, and wants to “follow the vision.” What is the vision if it is not to give investors a return? Oh, I forgot, a “tax.” So he can pay the upkeep on his $100 million Silicon Valley mansion (see below)? What has Goldman gotten us into?? (DLD Video at 42:00-42:25).

What drives these Men from Moscow? Not American capital rules, for sure. With this kind of agenda, I’d muster the patience of Job!!!

17. Goldman Sachs was one of the first investors along with Russian oligarch Alisher Asmanov in Digital Sky Technologies (DST) where Juri Milner is CEO. DST’s Moscow and London employee base “reads like a Goldman Sachs alumni roster. Seventy percent of his
Facebook’s S-1 does not disclose these conflicts of interest where Goldman Sachs is sitting on both sides (buyer and seller) of this prospective Facebook IPO (not to mention the fees they have already made in the $2+ billion private market). Old habits die hard apparently. Goldman must think itself immune from the rules?

18. Accel Partners (in a private sale brokered by Goldman Sachs) sold a “significant chunk” of its Facebook stock to DST/Milner/Asmanov, according to TechCrunch. In other words, Accel has already made $500M-$1B in cash off of the technology that Leader Technologies invented and that Accel has known about since at least October 2005. Facebook failed to disclose this liability risk as well.

19. DST-Moscow’s Juri Milner paid $100 million to buy a house in Silicon Valley in July 2011. This was the highest price ever paid in the USA for a single-family home, according to Los Angeles Times. Goldman Sachs, Milner’s and Facebook’s one and the same business partner and underwriter, had to be bailed out by the American taxpayer. What is this ostentatiousness telling us about the morality and ethics of this Facebook / Goldman Sachs bedfellow?

20. Mark Zuckerberg is looking to Juri Milner and DST to guide his “Facebook Credits” plan, according to The Economist, TechCrunch and Fortune. Given Facebook Director and early investor Peter Thiel’s openly libertarian views regarding banking regulation, should Facebook and Goldman Sachs be disclosing to America their intentions, especially to prospective investors who may not share their international agenda for world peace and harmony via a global Facebook? Thank you Leader? Oh wait, they infringe Leader.

21. DST’s largest investor (and perhaps the REAL #2 investor in

Fig. 6 – Juri Milner, CEO, Digital Sky Technologies (DST), Moscow, Russia. Photo: Fortune.

Fig. 7 – Alisher Asmanov, Russian oligarch, largest shareholder of Digital Sky Technologies (DST) which has already purchased $2 billion of Facebook insider shares; unregistered sales brokered by Goldman Sachs in 2010-2011. Fortune magazine
Facebook) is Russian oligarch Alisher Asmanov about whom Fortune magazine says “the origin of his wealth is not clear.”

Facebook’s S-1 does not disclose the swirl of “Devourer of Websites” defamation lawsuits that Asmanov filed all over Europe against bloggers and newspapers after Britain’s former ambassador to Uzbekistan criticized him and these sites carried the news report, according to Gawker and 4News.

See also “Facebook investor DST comes with ties to Alisher Usmanov and the Kremlin – Three Goldman Sachs bankers, Alexander Tamas, Verdi Israeli and John Lindfors joined DST over the past three years.” The Guardian.

Let’s see, the second largest shareholder in Facebook launches defamation lawsuits from Moscow, Russia against anyone who disagrees with him. Why have we not heard about this? Why didn’t Facebook disclose this risk?

Footnotes:


[2] For in-depth legal analysis (in more or less layman’s terms) of the Leader v. Facebook trial and access to much of the evidence, go to http://facebook-technology-origins.blogspot.com. For a Cliff’s Notes version, go to Backgrounder and Brief Summary.

Credits:


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Comments

1. Amy | March 20, 2012 at 5:38 pm | Permalink
   Donna,
   Congrats on doing such a FABULOUS job on covering this story! With the magnitude of corruption in this world today, people need educated so they can stay vigilant, esp. in today’s world with money being so tight for everyone. THANKS FOR BEING SUCH A “TOUGH COOKIE” We need more backbone people like you, because there are sooo many people and events that need to be brought to the surface. What is it called?..that's right...”The domino effect”. Keep up the great work for, “one nation under God...”

2. KCraine-CA | March 22, 2012 at 10:08 pm | Permalink
   Dear Donna, SORRY for doubting you (and sorry this post is long), but I really had a hard time believing your statement that “Zuckerberg received almost as much coverage in The Harvard Crimson between October 2003 and September 2004 as President Clinton and more than George Bush, Al Franken, Google and IBM.” So I went the Crimson site and checked for myself.
   You are right! He even received twice as much coverage as the famed Harvard Lampoon!!! My conclusion? There is no way a 19-year old Zuckerberg, disrespectful, “I thought that might be kinda fun, dude” kid could have garnered this much press coverage without a powerful Harvard donor/ handler (James W. Breyer, Accel Partners?). (FYI: Pres. Obama’s Economic Council director Larry Summers was Harvard president then.) Isn’t it strange that Breyer has carefully avoided any such admission (except for his Freudian slip in the
Munich video). It's hard enough getting a couple articles a year, much less Zuckerberg's 22 in eight months—from 17 DIFFERENT CRIMSON JOURNALISTS!!! AWESOME DUDE!!!, not to mention another 34 mentions of (the)Facebook (I actually stopped counting to go throw up). This part of the story is just as unbelievable as him creating the entire platform in “one to two weeks” when it took Leader Technologies 145,000 man-hours and $10 million to invent the real technology. I pray the Federal Circuit judges smack down Facebook's we-are-untouchable arrogance. “Pride comes before the fall.”

Breyer's “prepared-mind” really does think we're all a bunch of idiots, doesn't he? I also watched all the videos. Breyer has been the “power behind this thrown” all along? Did you notice how he was “handling” the Zuck at the Stanford interview? You can easily tell when they were making it up on the fly . . . uh, ah, er, you know, dude. Has this guy hatched a plan with Goldman, Fenwick, the Russians to “tax” us all from the comfort of their international jets / yachts / villas / dachas? Muppets Unite!!!

I found another great site that has catalogued The Harvard Crimson links. Hope this cut and paste works. The site is Facebook Technology Origins?


3. Nov. 06, 2003, S.F. Brickman, Face Off – New web venture not so hot


5. Dec. 09, 2003, David M. Kaden, College Inches


10. Mar. 01, 2004, Adam P. Schneider, *Facebook Expands Beyond Harvard*


17. May 28, 2004, T.J. McGinn, *"Online Facebooks Duel"*
Over Tangled Web of Authorship


Not bad for a kid who said “I don’t know what I am doing” two years later in the Oct. 26, 2005 Standford video. Is James W. Breyer the Don King of social media? Does his “prepared-mind” thesis have a moral backbone? Do we want our future economies guided by such morality? Is Mr. Zuckerberg the kind of “entrepreneur” that we want our children emulating? In the end, its our choice, not theirs. Meep, meep.

3. Scrent | March 23, 2012 at 1:58 am | Permalink
Meep, meep. Very snarky post, love it.

4. LW452 | March 24, 2012 at 1:52 am | Permalink
These Facebook people redefine “sneaky.” Why are we paying big salaries to the SEC to supposedly police this misconduct? CLEARLY THEY’RE DOING NOTHING. This blog exposes behavior that proves we’ve done NOTHING to fix our financial system. We bailed out immoral people who stuck the money in their pockets and are laughing all the way to their
vacation homes in the Bahamas * * * and we won’t put any of them in jail. This must stop folks. Let’s start throwing our weight behind teams like McKibben’s – the REAL inventors of social networking!!! – - – We need to start rewarding the good guys instead of these Facebook scoundrels.

5. bg761 | March 24, 2012 at 3:40 pm |
Permalink

When have attorneys been allowed to pass their “Reg. #” to another attorney? Especially when involved in Patent applications!! Or do you just change your middle name and add a “hyphen” so that the odds of not being discovered with a search engine are increased astronomically!!!!!! The majority of people that do this have something to hide. Does Mr. King have something to hide other than the fact that he apparently omitted important disclosure information, the Leader 761 patent, to the USPTO when applying for Facebook patents but included the Leader “761” patent as prior art in the application for the Andreessen patents! Why haven’t the SEC, FTC and the U.S. Patent Office looked into this? How many “coincidences” will it take to get the mainstream media involved? See the California State Bar Association website to see the name he used when becoming an attorney! http://members.calbar.ca.gov/fal/Member/Detail/247867 Why the name change on Facebook patents?

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MF GLOBAL + JP MORGAN + GOLDMAN SACHS + HARVARD GRADS + POLITICS = A BIG MESS »