I just received word that Facebook has succeeded in pushing through a rarely-if-ever used USPTO Director Order to have Leader’s U.S. Pat. No. 7,139,761 remanded for further reexamination—even though the Reexam Board was already processing Facebook’s request according to well-used procedures. The order was issued before a petition requesting such an order was filed!

Fig. 1 – Big trouble ahead for the Facebook IPO? Donna Kline reports for Pittsburgh Business Report and is a former reporter for Bloomberg.
Why is this news?

1. **Timing.** It comes just days after my Instagram-scam blog post raising serious concerns about the fiduciary (in)actions of the Facebook directors in Facebook’s $1 billion purchase of Instagram. The Wall Street Journal and other national media picked up the story yesterday. Facebook is clearly in damage control mode.

2. **Merit.** Facebook lost their first request for reexamination on Jan. 6, 2011 (see timeline below). They had re-argued the same prior art that they lost on at trial on Jul. 27, 2010, so their arguments have grown stale.

3. **Likely No Authority to Intervene.** The USPTO Director David Kappos was appointed by President Obama on August 13, 2009 (click here for USPTO press release). He appears to be acting sort of based on rule “1.181 Petition to the Director.” HOWEVER, the rule states that such a petition cannot be used for “issues committed by statute to a panel.” Facebook had filed an appeal for a second reexamination on Feb. 4, 2011 to the Board of Patent Appeals and Interferences (BPAI). That BPAI panel process was proceeding according to the MPEP rules (Manual of Patent Examining Procedure). This is what “issues committed by statute to a panel” means. Therefore, the rule “1.181 Petition to the Director” should NOT be eligible for enactment. Is David Kappos violating the rules of his own USPTO?

4. **Improperly-formed Order.** Orders for remand are common. This one is unprecedented because it gives no instructions to the Examiner. This is like someone filing a generic lawsuit against you without stating any claims—just saying “You’re sued.”

The way this order is formatted is telling.

The unusual elements from ALL other similar orders that I have reviewed are:

- It lists Leader v. Facebook. Normally it just lists the Appellant, not the target.
- It identifies the Leader “7,139,761” patent number on every page. Never done. Only the Appeal No. and Rexam App. No. are listed.
- It identifies no causes of action, namely what the Examiner is supposed to do.
- It says this is on behalf of the Director; never done where there is an open appealable process, as there is here—that was being followed with the BPAI.
- It lists the “First Named Inventor” as “7,139,761” rather than “Michael McKibben.” That’s weird for an organization that’s a stickler for protocol, procedure and proper form, especially when emanating
Without inherent knowledge of the patent process, these differences would likely go unnoticed. Makes this muppet wonder for whom this document is intended. Not patent lawyers, that is for sure.

Maybe a blanket production for the SEC???

**USPTO Director’s Order Oddities, Apr. 17, 2011**

Re. App. Nos. 95/001,261 & 90/010,591

1. No inventor listed (numbers don’t invent)

2. Patent owner listed (only applicant is listed)

3. Patent No. listed (patent holder never listed here)

4. No Petition was filed with the Director upon which this order is a response (no order authority cited)

5. Patent No. listed (patent holder never listed here)

### ORDER REMANDING APPEAL TO EXAMINER

The Office of the Group Director of Technology Center 3900, on behalf of the Director of the United States Patent and Trademark Office (USPTO), has requested that the application be remanded to the examiner for further consideration.

Accordingly, it is hereby ORDERED that the application is remanded to the Examiner for further consideration.

### Here’s what a normal remand order looks like:

This Order Just Appeared Out Of Thin Air, especially on the heels of the
What is Facebook on 3 in their S
Politically Motivated?

5. **This Order Just Appeared Out Of Thin Air—No Petition Was Filed First.** This order just appeared without warning or proper notice. The law says that “Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.”

PLUS, Michael McKibben as first named inventor is missing. Instead of listing Michael McKibben, the USPTO identifies the patent number “7,139,761″ as the “First Named Inventor.” Huh? All other such orders I have reviewed have the inventor’s name. ODD.

6. **Politically Motivated?** Why would Director Kappos take such risky action in a high profile case such as *Leader v. Facebook*, especially on the heels of the growing $1 billion Instagram scandal? President Obama’s ties to Facebook are no secret, he has hosted Mark Zuckerberg on several occasions and has over 26 million “Likes” on Facebook. (Mitt Romney only has 1.6 million, BTW.) Politicians certainly rely on – if not mortally – Facebook as their primary marketing tool. What happens to one’s political campaign if direct connection to over 26 million voters is lost in an injunction or scandal? Hm.

7. **What is Facebook’s End Game?** What does Facebook hope to achieve by this bizarre action? Is this the action of a suddenly desperate company working to save its IPO? Patent experts say this order achieves nothing since the remand process was already in motion with the BPAI. The mind wanders as to what Facebook is up to. Are they trying to justify why they have not disclosed *Leader v. Facebook* in their S-1? Are they attempting to create new stalling tactics to throw in the road after the Federal Circuit justices hammer down on their laughable “coffee stains” defense? One thing is certain, these bad boys like tricks and live in the gray areas of jurisprudence.
There are more questions than answers at this point.

8. **Reminiscent of NTP v. RIM.** During reexaminations of the NTP patents requested by RIM, NTP caught RIM trying to influence patent Examiners. Like Leader’s pending injunction, NTP had been awarded an injunction and RIM was using the reexamination process to delay the injunction. Is Facebook attempting to use political influence to forestall a looming Leader injunction against Facebook’s operations?

Here are the dates of proceedings as from Facebook’s first request for patent reexamination through April 17th, 2012 (as found in the public record):

- **Nov. 13, 2009** Facebook files for reexamination of US Pat. No. 7,139,761
- **Jan. 6, 2011** Leader wins on all claims. (Note: Facebook argued essentially the same prior art that it lost on in the Leader v. Facebook trial)
- **Feb. 4, 2011** Facebook appeals the Reexam decision citing “Examiner’s failure”
- **May 4, 2011** Leader files response to the appeal (“Respondent Brief Owner”)
- **Sep. 28, 2011** Examiner’s Answer (Deandra M. Hughes) “confirming the [Leader] claims”
- **Oct. 28, 2011** Facebook files rebuttal (Rebuttal Brief) (Note: Facebook argues essentially the same prior art that it lost on both at trial and reexam
- **Nov. 4, 2011** USPTO notices parties that proceeding has been forwarded to the Board of Patent Appeals and Interferences (BPAI) for decision on the appeal (whether an appeal will be accepted or not)
- **Apr. 17, 2012** The Director of the USPTO via the Group Director of Technology Center 3900 (Central Reexamination Unit – CRU) remands the patent for reexamination. The oddities here are (see also Fig. 3): (a) the order was generated by an administrator at the BPAI but nowhere states that the BPAI is remanding pursuant to the Rules (MPEP, Sec. 2682 Action Following Decision), (b) the CRU Group Director has no authority to remand, and (c) no reasons for the re-exam are given, therefore there is no basis for a response by the Examiner. It’s like telling your employee to fix the report he just wrote, but you didn’t tell him what needed fixing.

Since this type of order is rare and typically reserved for “news-making” cases such as **NTP v RIM**, the patent litigation world is now paying attention. In my view, it is a sign that Facebook attorneys are in a mad scramble to avoid an injunction. **FACEBOOK IS FINALLY TAKING LEADER TECHNOLOGIES SERIOUSLY!** We can only speculate what advantage Facebook thinks they can achieve by pulling strings at the USPTO, especially since they have already lost twice on what have become stale prior art arguments.

I wonder if they will call me up after this post and give me the intimate details of their actions like they ostensibly did two days ago for select mainstream media reporters?” Ha ha.

**USPTO Public Portal**

You can access all the USPTO documents yourself at [http://portal.uspto.gov/external/portal/pair](http://portal.uspto.gov/external/portal/pair). After getting past CAPTCHA, the system is defaulted to “Application Number” and you type “95/001,261” (without the quotes) in the text field. Choose the “Search” button. Click the “Image File Wrapper” tab and you’re there! You see everything filed in the reexamination, including this latest bizarre USPTO Director order.
Facebook forces reexam order of Leader’s patent through USPTO Director’s office in wake of Instagram controversy

Donna Kline on // Instagram-scam?
mike kennedy on // Instagram-scam?
Anonymous on // Instagram-scam?
Tex on // Instagram-scam?
Chronos on // Instagram-scam?

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{ 15 }

Comments

1. **Joe Edwards** | April 19, 2012 at 4:50 pm | Permalink

   Facebook’s logic is understandable (albeit generally immoral). With a pending IPO, the last thing Facebook would want to experience would be an adverse decision from the appellate judges mid-IPO selling. That would leave Facebook with limited options to explain away Leader’s patent infringement case. Confusion at the USPTO offers Facebook something to hang their hats on and allows them to perpetuate the view to “pay no attention to that man behind the curtain”. Unfortunately, I think other companies cornered like Facebook might do something similar to forestall their sins catching up to them; ethics be damned.

2. **Darren** | April 19, 2012 at 4:57 pm | Permalink

   In the Leader v. Facebook trial, Facebook said about it’s control of information on Facebook, “that it cannot guarantee adherence with these rules and, ultimately, does not control and is not responsible for what users post, transmit, or share on its website.” (PTX-628, PTX1000). Donna already proved that statement false with her Blog. See Facebook ordered pharma users to allow comments, yet will not return phone calls now.

   We now have the “Instagram” deal where Mark Zuckerberg told his board to vote yes on the deal! Now who do you think directed (ordered)(used his influence) the attorneys to file a “questionable” Order for Reexamination? 😐

   This should make the SEC deaf, with all these alarms going off!!!!!!

   It now ties in this administration, and we know how they handle things like, GSA, Fast and Furious and now the “NOT SO” Secret Service. I would like to give USPTO

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**Credits**


Posted by Donna Kline on Thursday, April 19, 2012, at 2:31 pm.
Filed under Investigation.
Follow any responses to this post with its comments RSS feed.
You can post a comment or trackback from your blog.
Director David Kappos the benefit of doubt, however, here’s your glass, Mr. Kappos!!! Meep Meep!

3. **Steve Williams** | April 19, 2012 at 6:10 pm | [Permalink](#)

“Messy, messy, messy!” as the venerable quote from Professor Hinkle goes. Why issue an order of re-examination of patent ’761 when it already has been (re-examined) twice before and found valid? Timing perhaps? Donna is definitely on point here.....I believe Joe nailed it when he stated that “Confusion at the USPTO office...”;

confusion, delay tactics, pay no attention to what my other hand is doing, these are the traits that have now become infamous to Facebook et al as they try in vain to hold onto something that they know is falling apart faster than the European Union. For the director of the USPTO office to play leap-frog with the Board of Patent Appeals and Interferences (BPAI), and issue this order, is like rotating flat-tires (it’s pointless). Let the examining board, which had already received the petition do just that, run its course before you arbitrarily start playing puppet master and pull strings; or, perhaps, is it your strings that are being pulled....hmmmm? David Kappos is clearly operating under the “Do as I say, not as I do” rule, or should I say “Do as Obama orders me (via Zuckerberg) to do”? Maybe the president should host a Kool-aid summit to clear up any misunderstanding.

Meep, meep!

4. **brad** | April 19, 2012 at 7:40 pm | [Permalink](#)

Donna, reading your last few posts has stirred me. I guess I am just as complacent as the press, or the SEC! Who polices the police? Last I remembered, I am a US citizen. Guess I forgot then, that Mr Kappos, and all the good folks at the SEC are my employees!

Guess it’s time to have our own HR dept (the Senate and Congress) do a “look see” just to see how they are doing their jobs! I am writing my Congressman tomorrow!

Anyone who reads this and get’s PO’d should do the same!

Here ya go folks! Phone numbers and email addys are right here:

[http://whoismyrepresentative.com](http://whoismyrepresentative.com)

Call your employees, and ask them to check on your other employees at the SEC and oh, Mr. Kappos!

5. **Chronos** | April 20, 2012 at 7:43 am | [Permalink](#)

HERE IT IS IN BLACK AND WHITE. The Director of the USPTO, the person who is supposed to be our advocate for the inventor, takes this unauthorized action in support of a PROVEN patent infringer. Very sad to hear from the leader of one of our venerable institutions. Pres. George Washington signed the very first US Patent. I wonder if old George just rolled in his grave. Mr. Kappos’s press says he’s an advocate for “open source.” Does that mean he’s secretly undermining the
USPTO’s duty to protect patents? Facebook has lost their arguments straight up... three times, once at trial and in two reexaminations. (Has anyone noticed that Facebook’s USPTO arguments are being made by the “dark arts” expert Dr. Saul Greenberg? [http://facebook-technology-origins.blogspot.com/2011/08/lesson-in-expert-witness-dark-arts.html]. [I blog on this here.] They can’t win with facts, so now they resort to court room theater, complain about the lack of “pristine” evidence on appeal [I blog on this too here], and play petty political games. Probably more to the point, does anyone doubt that Facebook just made a handsome contribution to a favorite anti-patent PAC?

6. **Winston Smith** | April 20, 2012 at 4:08 pm | Permalink

Hey Brad! I followed the link that you put in your comment, the one referring to Congressional emails, and I fired off an email to both my senators and my representative. The timing of David Kappos’ order reeks of political favoritism (I wonder whom is pulling whose strings over there). A lot of us out here are sick and tired of billion dollar bullies throwing their capital around with little or no regard for neither what they do (I’ll make the rules up as I go), nor who it hurts (Facebook’s wealth was literally built on stolen technology) in the process. As far as the SEC goes, they have got to be deaf at this point, as loud as the alarm bells are ringing! And to you Zuckerberg; no matter what you do, no matter how much money you try to buy time or someone off, no matter how many backdoor deals you try to pull, we puppets are watching. And the proverbial rock is rolling downhill, gaining speed, and heading straight for your Palo Alto estate!!

Meep, Meep!!

7. **Cave Creek 18** | April 20, 2012 at 4:37 pm | Permalink

Something seems out of place.... FB buying 750 patents from IBM and Kappos working for IBM in the past. He specifically managed their patents and intellectual property worldwide before being nominated as Trademark Director at USPTO. What have you been drinking lately David!

8. **BroadStreet** | April 21, 2012 at 12:34 pm | Permalink

Hmmmm. I wonder if there is a Cayman’s account set up for commissions on those IBM patents? Does anyone believe for a minute that IBM sold anything but junk patents? Over half their revenue comes from their intellectual property.

9. **JTPatterson6** | April 21, 2012 at 6:08 pm | Permalink

What’s the point in encouraging inventors to file for...
If when they get all done, the Patent Office Director, appointed by the President himself, actively supports a proven patent infringer?

Kathy | April 22, 2012 at 10:21 am | Permalink
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Why do there seem to be so many "coincidences" in this Leader v. Facebook situation? Facebook Director James W. Breyer, also a director of Walmart, claiming he was kept "in the dark" about the $1 billion Instagram acquisition. Now today we learn of a Walmart bribery scheme in Mexico. Is he really that clueless of a company director? The video of him speaking in Germany on Donna’s earlier blog [click here] shows how deeply involved he is in directing Facebook’s future. It doesn’t show a clueless individual. Now we learn of the USPTO Director David Kappos, who issued an illegal order concerning Leader’s patent, being a former IBM executive in charge of the patents, somehow arranging for Facebook to buy 750 (junk?) IBM patents? For what purpose since those are surely NOT social networking patents. Something very strange is afoot.

Tex | April 22, 2012 at 12:07 pm | Permalink
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I am just an old warrior sitting on a porch in North Texas watching and listening to, not only this unbelievable theft, but generally what’s happening under our new Chicago style politics/Russian mafia style dealings/our crony political environment/and every possible way for Obama and Zuckerberg to gain a stranglehold on us little, hard working taxpayers...........am I wrong to think that these guys have already created a way to produce a ONE WORLD currency, not with paper and coins, but with Facebook credits (currency). Can one imagine the power derived from controlling the accepted currency of every human on this planet? Leader has proven to be a real problem for them and I shudder to think of the conversations that are being held behind closed doors. Through their major flaw, "elite arrogance", they have underestimated the strength of us "NON "Harvard idiots. I have been going after Obama’s agenda for a year now on my blog....www.stateofjm.com. To do the work that Donna Kline has done is exactly what made America great.....keep after these thugs, Donna!! Once this cabal is fully exposed, perhaps we can begin getting back to being Americans again.

Chronos | April 22, 2012 at 7:45 pm | Permalink
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Does anyone else find it very strange that nobody from Facebook et al is stepping up to provide an alternative explanation for all these "coincidences?" If this is all true, this could become the biggest fraud ever against the US Patent Office (American public) and the securities business (also the American public).

Tell me this is not true...Fenwick & West provides legal blessing for Facebook to file over 750 patents since 2008 at the USPTO which do not disclose the Leader patent to the US Patent Office (which could mean they're all
bogus). Facebook claims those 750 patent filings as a primary value in their S-1, also written by Fenwick & West (this alone would be a profound fraud... enough to derail the offering). In the meantime, the Facebook insiders get Fenwick & West’s blessing to have Goldman Sachs sell off $3 billion of insider stock to a Moscow/London based Russian company, owned by Goldman Sachs and managed by former Goldman insiders, (over)using an exemption granted by the SEC also in 2008 which they call an "IPO supplement." (Why does Goldman get to split one share into thousands and not break the rules on what counts as 500 shareholders? Does this not replace the whole idea of a public vs. a private market?)

In the meantime Leader Technologies wins a patent infringement lawsuit which THREATENS to derail the Facebook IPO and the whole plan for world domination of the cabal, soooooo Facebook invokes its Obama administration political connections to get the USPTO Director David Kappos, an Obama appointee, to issue an ILLEGAL (?) order that Facebook will (no doubt) use as an EXCUSE TO DELAY action on Leader v. Facebook damages, willful infringement and injunction long enough to get Facebook’s stock public so that the MUPPET PUBLIC MARKET (Goldman’s description of its clients, not mine) can pay the Leader damages and the Facebook insiders can laugh all the way to their cabanas in the Caribbean. Please tell me I am missing it. I PRAY I am. However, I need different FACTS that show otherwise. Right now, the facts tell me that an ill-wind blows down the corridors of justice. Is this all a big misunderstanding or a tsunami of fraud?

This action by the USPTO Director Kappos to question a Leader patent that his own examiners have validated FOUR times offends the senses.

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Linda Willson | April 22, 2012 at 8:36 pm |
Permalink

Tex. The irony here is that Michael McKibben is a HARVARD PARENT. His son studied biology and was an offensive tackle teammate of Ryan Fitzpatrick, quarterback for the Buffalo Bills. According to Fitzpatrick’s press he and McKibben’s son were teammates on the winning-est Harvard football class in the history of Harvard. He even lived in Winthrop House — the same dorm as John F. Kennedy. Whoops. Cognitive dissonance for the Harvard cabal, or do they have no problem eating their own??? LOL. OUCH. If you study Donna’s timeline you see that McKibben was even helping Democratic Governor Kathleen Blanco and her staff saving lives after Hurricane Katrina while Zuckerberg was getting his money from James W. Breyer, Accel Partners, Reid Hoffman and Peter Thiel and gathering infringement steam in 2005. We have a clear choice here? Charlatans, or the real deal?
Linda. Please type slower so that I can get your point......Much like an alley cat, Zuck tries to cover his mess each time before moving on. The Thiel group knew, through Leaders former lawyers, that the Facebook technology was stolen from Leader...thus, scrape,scrape, scrape,and the mess was covered to the ordinary eye. At first, Zuck threw the idea out that over a few extra days at Harvard during exam week, he mystically designed the Facebook platform out of his giant brain which ironically, took McKibben thousands of professional hours and millions of real dollars to develop. Of course, that looked a little unbelievable, so they decided to attack the plaintiffs actions during a meeting or two while McKibben was trying to bring HIS ideas (patents) to life. The real Harvard connection (I use this metaphorically!) came as Zuck showed the Vulture Capitalists “his” concept. Since then, all of the Zucksters have been using their cat-like tendencies to cover the messes and not pay for the world changing idea McKibben developed and patented. Thank goodness, Donna has found the piles of mess and they are smelly,indeed..

Linda Willson | April 23, 2012 at 9:18 am | Permalink
Hi Tex, scratch, scratch, thanks. I forgot to comment on the Big Brain’s plan for a world currency (Facebook Credits within Facebook Connect) founded upon the surreptitious mathematics of his Russian buddies (Milner – Moscow State University & the Russian Academy of Sciences) and fueled by his Goldman Sachs buddies (who the US public bailed out) who have moved offshore (Moscow & London), out of the reach of US law. Don’t forget Accel Partners’ James Breyer’s new priorities (Bangalore, Beijing, Moscow, London... “not the USA/Silicon Valley”). This is all such an admirable moral basis for the future of humankind’s transactions. If we kittens give them control of this, then we deserve what comes next. This cat doesn’t have such a plan. Meow.
(Get the feeling these guys have their yachts all gassed up and ready to speed away offshore?)