/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg* New York.

LEADER V. FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Facebook Secrets (PDF)
4. Instagram-scam? (PDF)
5. USPTO-gate? (PDF)
6. Zynga-gate? (PDF)
7. Insider Trading (PDF)

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Please donate to the cause! This blog has become a grassroots effort. My *Leader v. Facebook* patent infringement interview (click here) has

{ 2012 05 08 }

/// Congratulations, Facebook. See you at the Supreme Court?

The U.S. Federal District Court of Appeals has sided with Facebook in the case of *Leader Technologies Inc. v. Facebook Inc.*, Case No. 2011-1366 (Fed. Cir.).

Please see the Court's opinion by clicking here.

The timing of this decision is suspicious. The case was decided the very day the Facebook IPO roadshow kicked off in NYC. Also after Facebook had juggled around IPO dates from May to June, then back to May again. What a Coinky-dink as Tex would say.

I am out of town today and cannot put together a complete report until tomorrow night. 😟

Please read the above and discuss below.

Meep. Meep.

**Let me just add that it pains me having to post this remotely and not be able to elaborate on the apparent injustices of our judicial system. I can appreciate the frustration felt by many of us muppets. Have faith. Read these reviews of the 'roadshow' and you will see where the devil has come to roost. For some of that coverage, click here, here and here.

***I see Leader's Michael McKibben has issued a press release which you can read by clicking here. I was able to place a quick call to him and he said his attorneys said the opinion is rife with legal error of almost monumental proportions. Stay tuned.

Hello Everyone ~ Thank you for the lively (and even complimentary) commentary. 😃 I am currently working on another post that will pick apart the Fed. Dist. Court's opinion line by line so all muppets will be able to see how obviously lazy and irresponsible the Judges were in their 'analysis' of this case. I agree that Moore's voice was suspiciously absent in this opinion and I hope to discover why. She didn't strike me as the type to fold easily. Stay tuned and Thank You Again for your support! PS See this video from CNBC this morning: http://video.cnbc.com/gallery/?video=3000089464&play=1 Meep. Meep.

Posted by Donna Kline on Tuesday, May 8, 2012, at 3:26 pm.

Filed under Investigation.

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mushroomed into a *major investigation*. Will you donate to the cause? Your donations will enable me to sustain this important news effort. Thank you! MEEP MEEP — *Donna*

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/// Facebook forces reexam order of Leader's patent through USPTO Director's office in wake of Instagram controversy
/// Instagram-scam?
/// Facebook's Orwellian (black-is-white) definition of "clear and convincing" evidence
/// Facebook countersues Yahoo with bogus patents? Confirms reckless mindset.
/// Facebook "Liked" Leader's source code ... before it didn't

Comments

1. **Jill** | May 8, 2012 at 5:11 pm | Permalink

I hate to use such a tired addage, but stick a fork in this dispute, because it's done. The prospects of having the jury verdict overturned by the Federal Circuit were extremely slim, and given the findings that the Court made here, the prospect of further appeal to the Supreme Court is virtually nil.

The Supreme Court only hears a miniscule percentage of the cases submitted, and this particular case does not have the hallmark of any of the types of cases that the Supreme Court would normally hear. It does not address any controversial Constitutional issues, nor any conflicts between the different federal circuit courts. And even if the court were to hear the appeal, two lower courts have already ruled in Facebook's favor. I think this is the end of the line.

[DLK: Hmmm. Really Jill? The clear and convincing evidence standard "does not have the hallmark of any type of cases that the Supreme Court normally here." The implications of this case for all inventors are astounding in their importance to the future of innovation, I believe. This court has just opened all inventors to personal attacks by infringers who cannot otherwise prove their case with real evidence.]

2. **Tex** | May 8, 2012 at 6:15 pm | Permalink

So it appears that a technicality has derailed justice for an obvious theft, coverups, and lies. Billions of dollars will flow to the perpetrators .A new level of justice has been established. Additionally, under the notion of "stare decisis" , future cases of patent theft will decided in favor of the perpetrators. What the hell has happened to our great country?

3. **Nana** | May 8, 2012 at 6:44 pm | Permalink

As small investors , we are very disappointed. We believe in Leader! However, after seeing how entangled

/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
/// MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess
/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know
/// Make up your mind, Fenwick & West LLP
/// Muppet Mania
/// Haughtiness in the face of "literal infringement"
/// Facebook *ordered* pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012
/// Judges Selected
/// San Francisco CBS-TV KPIX Coverage
/// NBC-TV4 (Columbus) Interview with Leader founder Michael McKibben
/// How Facebook tricked the jury – *YouTube*
/// New friends?
/// Did Someone Prod the Media?
/// Facebook: The New 'Too Big To Fail?'
/// Big trouble ahead for the Facebook IPO? — PBR / YouTube

all of these people are at high levels, it isn't too surprising; I am very concerned for our country as well but I know that justice will eventually prevail! Tex, I have so enjoyed your comments here and on your blog. There are still a few patriots left! Donna, thank you for all of your work, I agree that you have material for a best seller!

4. **chicago** | May 8, 2012 at 8:49 pm | Permalink
I guess the guy with the deepest pocket wins, I can't believe the justices and there decision. Well at this point what justice, I don't have any faith in the courts or the government due to corrupt political officials and higher ups. It's a sad day for the small guy.

5. **Steve Williams** | May 8, 2012 at 8:58 pm | Permalink
Donna,
I, too, would like to thank you for all of your untiring, and unwavering diligence in these matters. I applaud you for standing up to near insurmountable odds. And while things did not go Leader's way (this day), I know that there is still a fight to be had; and I know you'll be at the front lines to the end.
I deeply ache, in my heart, for not only Mike McKibben, and his team, but for the very country we espouse as the "last best hope for mankind"...Ronald Reagan (God rest his soul). What is wrong with us, where we, as a nation, reward wrongdoing, because of what?..Hearsay and unproven evidence? Is it best that we turn a blind-eye, because the cause in doing so benefits the many over right and reason (and law)?
While the ink on the court documents may say that Facebook, and their merry band of misfits, won the day, the world must still be made aware of this one, singular, quite-important fact: Mike McKibben is the rightful owner of patent '761. The courts may invalidate it through a technicality, but Facebook, and chiefly, Mark (the Hacker) Zuckerberg, can never lay claim to anything as remotely astounding as what Leader's inventors put forth; Zuckerberg just happened to find the right deep-pockets at the right time to help him steal away Mike McKibben's dream

/// What happens on March 5th, 2012?
/// More on FB's S-1 omissions & other conflicts of interest
/// Big trouble ahead for Facebook IPO? Backgrounder
/// My take on the MF Global debacle: It could have been a customer
/// Comments on EU reform announced Oct 27, 2011

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M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

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jules on /// Congratulations, Facebook. See you at the Supreme Court?
SNL on /// Congratulations, Facebook. See you at the Supreme Court?
Mike Kennedy on /// Congratulations, Facebook. See you at the Supreme Court?
Incredulous on /// Congratulations, Facebook. See you at the Supreme Court?
Jules on ///

6. **Jill** | May 8, 2012 at 10:07 pm | Permalink

Donna, in response to your comment, the supreme court would view this case as only a factual dispute. There is a legal standard as to clear and convincing evidence, and all the circuit court found was that there was some evidence on which a jury could have made its finding. Courts are LOATHE to dispute factual findings by a jury, and that is what we have here. For that reason, I think it is extremely unlikely that the supreme court would ever touch this. Right or wrong, a jury made a decision, and the appellate courts will generally not disturb such a finding.

7. **Derek** | May 8, 2012 at 11:09 pm | Permalink

Jill, I love you woman!!! Let these piss ant complainers wallow! I knew it! Let us now rally to help FB grow, prosper, and take on the world! Yes, I am of the left! Yes, I am for change in our dumb laws that attack those who do something with patents that are languishing anyway. One by one, we can win in this case, we can win as we have in health care for all, and we can win in a new world order that brings peace among peoples, and not confrontation. Reason wins! Right wings, step aside! The Dereks and Jills of the American voting public will succeed over the backward right and their philosophies which have always been wrong! Enlightened thinkers unite! Conservative "protectors" of the law….you are as hypocritical and as dead as Reagan! Let's get down to business!

8. **Incredulous** | May 8, 2012 at 11:20 pm | Permalink

Okay, Jill, I'm obviously no attorney, but how about this example as a way that the Supreme Court would hear this case:

Supreme Court unanimously holds § 145 to allow admission of new evidence and de novo review of BPAI decisions by the District of Columbia

The Supreme Court upheld the Federal Circuit's en banc decision that new evidence can be presented in a civil

Congratulations, Facebook. See you at the Supreme Court?

WDC Watchdog on /// Congratulations, Facebook. See you at the Supreme Court?

Donna Kline on /// Congratulations, Facebook. See you at the Supreme Court?

Fourleaf Tayback on /// Congratulations, Facebook. See you at the Supreme Court?

Winston Smith on /// Congratulations, Facebook. See you at the Supreme Court?

Barry on /// Congratulations, Facebook. See you at the Supreme Court?

jules on /// Congratulations, Facebook. See you at the Supreme Court?

LindaW on /// Congratulations, Facebook. See you at the Supreme Court?

gg on /// Congratulations, Facebook. See you at the Supreme Court?

Judicial Corruption on /// Congratulations, Facebook. See you at the Supreme Court?

Steve Williams on /// Congratulations, Facebook. See you at the Supreme

action brought under 35 U.S.C. § 145 against the Director of the USPTO, even if that evidence could have been presented to the USPTO. Any factual disputes created by the newly admitted evidence must be reviewed de novo rather than under the "substantial evidence" standard.

9. **Sally** | May 8, 2012 at 11:54 pm | Permalink

Jill,

You are missing something very important. Some things are greater than the odds. It's called the TRUTH (Derek does that make me right wing [I'm not] ?). The Supreme Court is there because the lower courts don't get it right and the jury system is acknowledged to be a flawed venue for justice, perhaps most especially in patent cases. For example, this court brought up evidence that was NEVER discussed in the lower court (e.g., reference to American Express). That is legal error. That's just one example. Also, the lower court did not bring that up anywhere in its opinion, so why is this court making up NEW arguments for Facebook? This court's job is to assess evidence in light of the law involved, not just accept whatever the jury thought about it., and certainly it is not its job to create new evidence. The clear and convincing standard for evidence was not even addressed in any credible way. Even the opinion said they would have probably not agreed with the jury..... so why did they? This opinion stinks as a matter of law. It is evident that this court was TROLLING for new evidence and had to CREATE new stuff that the jury didn't even hear in order to protect Facebook. That is out of bounds. Such conduct discredits the opinion and prejudiced Leader.

10. **Bill** | May 9, 2012 at 12:04 am | Permalink

This CA attorney smells retirement funds nicely socked away for the judges overseas? The newly-minted American Express evidence has the distinct odor of payola. Alternatively, were these judges coerced? The fact that they all agreed is suspicious, especially after the lively hearing and their individual reputations as cantankerous. The opinion is

Court?

Incredulous on /// Congratulations, Facebook. See you at the Supreme Court?

Tex on /// Congratulations, Facebook. See you at the Supreme Court?

bg761 on /// Congratulations, Facebook. See you at the Supreme Court?

bg761 on /// Congratulations, Facebook. See you at the Supreme Court?

Steve Williams on /// Congratulations, Facebook. See you at the Supreme Court?

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OPINION

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fundamentally flawed as a legal opinion I think.

Where is Judge Kimberly Moore's incredulousness at Facebook's "coffee-stained" source code argument? Where is her skepticism about Interrogatory No. 9? Where is an acknowledgement that only a Facebook-doctored version of Interrogatory No. 9 was shown to the jury and Leader was PREVENTED from showing a complete version? (FYI Jill: Rules of Evidence / Wigmore Evid, 3rd ed. ("Possibilities of error lie in trusting to a fragment of an utterance without knowing what the remainder was") – neither the jury nor the judge get to ignore this rule and if it was not followed, then this evidence is tainted, as is any resulting evidence.) (I am told the judges asked Facebook to see a full copy of Interrogatory No. 9 BEFORE the hearing; but now we hear NOT A PEEP.) Where is Judge Moore's question about the fairness of attacking an inventor just to get testimony you can spin in the opposite direction? Judge Moore's opinions were SILENT folks. I am having cognitive dissonance. This opinion is Swiss Cheese.

There is way too much rehashing of Facebook's favorite attorney-fabricated evidence and not nearly enough discussion of the law for an appeal opinion. The on sale bar evidence argument reads like a Facebook attorney-authored document, by perhaps Mark Weinstein from Cooley Godward? That's my bet. He's a good writer and this fits his style. Bad content, but well-presented. After all, he's the one that told the lower court that without source code, they could not prove on sale bar. (That's right he did... six months before trial, and this court suspiciously ignored that [I expose this in this post]). He has been attempting to fix that little boo boo every since.

Whose their fixer? Samuel O'Rourke from Facebook? Or maybe a Boris? I've read that O'Rourke used to work for Heidi Keefe and Mark Weinstein at White & Case before going underground and popping up as an inside counsel at Facebook during the discovery in this case (after Facebook mysteriously couldn't produce an entire two years of documents from 2004 and 2005).

OK, I'll say it. I think this Federal

and other local, state, national and international laws.

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Circuit opinion has been corrupted by people swirling around this Facebook IPO. What would Fyodor Dostoevsky be advising those of you right now who have been compromised about coming forward? (He'd say you have free will. Use it to do the right thing.)

You cannot take any of your ill-gotten gain to the grave with you, and you won't enjoy it knowing that you're a thief, coward and a liar the rest of your life.

11. **Tex** | May 9, 2012 at 6:07 am | Permalink
Derek, I wish you all the best in your remaining three years of high school ….

12. **Barry** | May 9, 2012 at 8:36 am | Permalink
So sad, but not surprising. These judges were given the opportunity to rule on this case in a fair and consistent manner according to law. I, as well, "suspect" their pockets were handsomely lined to do just the opposite. The day where people "did the right thing" is long gone. I suspected incompetency with the first judge, still believing there are still some good ones left. After the last round with the three stooges and their errors…gotta be the money…show me the money…..and I'll vote any way you like.

13. **Sally Bishop** | May 9, 2012 at 8:56 am | Permalink
Barry, I was looking for a credible, reasoned, seasoned analysis of the clear and convincing standard as compared to the evidence (esp. since Judge Moore, the former law professor, was so vocal during the hearing). That is what an appeals court is supposed to do.

None of that was there. That is why this opinion is so suspicious.

14. **LindaW** | May 9, 2012 at 10:37 am | Permalink
I really couldn't (did not want to) believe Sally's statement that the venerable Federal Circuit would be introducing NEW evidence against their own statement "We are bound by the record" (Opinion, p.15).

However, Sally is right. Judge Stark's opinion does not mention American Express evidence anywhere. Search for yourself. . . "American Express" evidence is nowhere discussed as relevant to this case or the jury decision . . . until now in this Appeal Opinion:
http://www.scribd.com/doc/92991258/Leader-v-Facebook-Doc-No-686-Judge-Stark-s-JMOL-Opinion-Mar-14-2011

THE LOWER COURT ALLOWED FABRICATED FACEBOOK EVIDENCE... AND NOW THE FEDERAL CIRCUIT MAKES UP NEW EVIDENCE FOR FACEBOOK TOO. WHAT THE HELL COUNTRY IS THIS ??? (please excuse the French . . . it is my expression of outrage as an American)

15. **Jill** | May 9, 2012 at 11:09 am | Permalink

Linda, the Federal Circuit did not make up new evidence to support its opinion. the appeals court bases its opinion on the complete written record of the underlying trial; this includes the daily trial transcripts, written evidence, materials submitted to the jury, etc. It is much, much broader than the judge's opinion or the short oral argument that was presented in front of the Federal Circuit.

All of the evidence to which the Federal Circuit referred in its opinion was part of the underlying trial record. By design, the Court of Appeal does not review any new evidence. It only looks at the underlying proceedings to form the evidentiary base, and the Court then bases its opinion off of that.

16. **bg761** | May 9, 2012 at 11:09 am | Permalink

As other people have said, "Thank You" Donna for being here and investigating the truth.
This Opinion by these judges is so full of "Lies", misquotes it is pathetic. They used Facebook's quote of Michael McKibben's testimony in their response which can only mean that they either didn't examine the evidence or had a Facebook attorney help them write the opinion. That is only one item that they misquoted. There are more. Having followed this case for a while, even I can see where these judges just ignored so many

facts and I am just a layman. It doesn't take a rocket scientist to see the corruption with these judges. Look for them to retire soon so they can use their new Facebook pensions.

17. **LindaW** | May 9, 2012 at 12:05 pm | Permalink

Jill, that's all fine and good as long as the privilege applies to Leader too, which it clearly has not. The link in Bill's post is a good example. The Court totally ignored the record where Weinstein said that without source code Facebook could not prove on sale bar. By then he had actually even used the Leader2Leader product. His testimony kills the on sale bar claim. Whoops.

If you are going to allow Facebook to reach well past the Judge's Order about what he asserted the verdict was based on, then turnabout is fair play, you must allow Leader also. That evidence destroys Facebook's charade. You will lose your argument... and I haven't even mentioned the no-reliance agreements that negate any "legal effect" to any of those discussions . . . oh, and did I point out that they didn't even put forward an expert witness on the subject. This opinion is just disgusting every time I have to rehash it. I predict that this may go down as one of the worst opinions ever written by the Federal Circuit.

18. **Amy** | May 9, 2012 at 6:15 pm | Permalink

Thank you Bill and others. We all will sleep easier these coming days knowing there are still people like you We the people, with a conscience and a heart of GOLD ,no matter what is put upon us will prevail in a beautiful way..(Dont let it go). We all have FREE WILL .We can do whatever it is we want with it ..USE IT..or ABUSE IT. What next ?...I guess we shall see..I live my life in truth.Sorry to see so many do not.May GOD lead our souls to a better way.

19. **Gary** | May 9, 2012 at 8:58 pm | Permalink

Derek do Jill a favor and take a cold shower and Jill stop playing into his fantasies with your seductive legal

speak!
It’s obvious that this judgment exemplifies the adage; first you get the money, then you get the power then you get the…….

20. **mad patent holder** | May 9, 2012 at 10:21 pm | Permalink

I am a patent holder and have been following this case for years. I too was expecting a clear discussion of the law as it relates to Facebook’’s so-called evidence. We received nothing but silence and more shadows from this opinion.
As a matter of law I was expecting legal guidance regarding the sufficiency of introducing only portions of an interrogatory when the Rules of Evidence say otherwise, especially when Leader was overruled after asking that the entire interrogatory be shown. This court was silent.
As a matter of law I was expecting legal guidance on the ability of a contractual no-reliance clause to prevent business discussions to eventually commercialize a coming invention from inadvertently triggering on sale bar, especially during the days and months surrounding an invention becoming ready for patenting. This court was silent.
As a matter of law I was expecting legal guidance on whether mere attorney-generated testimony from depositions and interrogatories can ever be used to satisfy the clear and convincing evidence standard without substantial other corroborating evidence like source code and engineering drawings. This is especially an open question when Facebook admitted they could not prove anything without source code, which means they admitted McKibben testimony was useless without source code proof. This court was silent.
It is a cop-out to rely solely on the “sufficiency of evidence” doctrine. Hand-waiving about sufficiency is a cop-out. A legal analysis of each item of evidence should have been conducted. Did the jury hear expert witness testimony about Leader’s source code? No. Why are we paying these judges to be lap dogs and run from the work we hire them to do?
These are just a few of the glaring deficiencies in this “decision.” I agree with Bill, this opinion smells of

corruption. It is nothing more than a rubber stamp for the Facebook agenda. Very sad indeed. Who was bought or coerced?

21. **Joseph** | May 9, 2012 at 11:10 pm | Permalink

This is a corrupt decision. If we don't stand with McKibben and Leader now, all real inventor patents are at risk.

Members of my board are contacting members of the House and Senate Judiciary Committees to request investigation of this compromised Federal Circuit opinion as well as the likely illegal patent reexam notice issued by Patent Office Director David Kappos.
House:
http://judiciary.house.gov/about/members.html
Senate:
http://www.judiciary.senate.gov/about/members.cfm

Others are encouraged to do the same. We need to mobilize powers greater than big money and corrupted branches of government.

22. **Judicial Corruption** | May 9, 2012 at 11:48 pm | Permalink

My senator's aide in a west coast state just recommended that we contact activist members of the senate and house judiciary committees; members who do not shy away from raising hell when corruption is suspected on either side of the isle or by foreign influences. He emphasized what this article below said... that if citizens are not vigilant, wealth interests will silently buy influence—-just like Facebook is doing now. GET CRACKING MUPPETS. MEEP, MEEP.

http://www.counterpunch.org/2010/12/10/why-judicial-corruption-is-invisible/

23. **Disillusioned** | May 10, 2012 at 7:58 am | Permalink

It's quite obvious now why Leader wasn't in the S-1, Why Facebook made no comments, No media coverage, No return messages from our Representatives and Senators. This has been a corrupt and under the Dirty table deal from the Start to the Finish. Another Horrible day for Justice in America! Mike Mckibben and his company should not be given up on. Good guys shouldn't finish last.

DONNA KLINE, You are a important part of Americana, The Facts only, Nothing but the Facts. Keep up your Important Work!

24. **Yes, a travesty** | May 10, 2012 at 8:16 am | Permalink

Dear Donna and Readers,

That article about JUDICIAL CORRUPTION is correct, we attorneys usually don't criticize judges because it is bad for business. However, this Leader v. Facebook Federal Circuit decision is truly a travesty of justice. My conscience doesn't allow me to be silent.

Realize something, this opinion was not written for legal precedent or lawyers, it was written by Facebook's attorneys to make it SOUND PLAUSIBLE to muppet investors and financial analysts with whom they are currently speaking about the Facebook IPO. While it is not badly written as such, it is a DECEPTION OF THE HIGHEST ORDER. It is evident that Facebook paid handsomely for this piece of fiction.

Leader did not bring a "sufficiency of evidence" argument to this court. They argued a "clear and convincing standard of evidence" argument. The court IGNORED Leader's pleadings entirely. This is why I am so certain that the Facebook minions wrote this– either through bribery, coercion or some other form of CORRUPTION. It was tailor-made for the muppet financial analysts on Wall Street, lawyers unfamiliar with patent law and other muppets who don't know patent law.

I will give you just one of the legion of examples of how bad this opinion is. Under a sufficiency of evidence standard the court should have compared the evidence, like the sales letters where McKibben is describing business activity to his shareholders, and the nondisclosure agreements containing the no-reliance clause, against the well-tested standards for determining if an offer "rises to the level of a commercial offer for sale." Those cases (that every patent litigator would expect to see discussed as a matter of course in a Federal Circuit opinion on sufficiency of evidence) include Group One, Linear, Elan, In re Kolar, etc. You will not find ANY of this law discussed, which is the ONLY

legitimate way to have used the sufficiency of evidence standard . . . that is after having ignored the fact that the “clear and convincing standard” legal analysis was MISSING COMPLETELY, which is prejudicial to Leader since the judges are ignoring Leader’s right to be heard (and responded to in kind with legitimate law).

Look for any of the cases discussed in this USPTO document in the opinion. http://www.uspto.gov/web/offices/pac/mpep/documents/2100_2133_03_b.htm

All muppets, lawyers and American citizens need to be up in arms about this travesty of jurisprudence. Facebook and the Federal Circuit are counting on the fact that the American public will let this slide because patent law is so esoteric. Surprise them folks. This injustice is MONUMENTAL in its importance to the administration of justice in America in all sorts of future cases of property rights and inventor rights. If allowed to stand, this opinion will destroy patent rights in my humble opinion.

25. **bg761** | May 10, 2012 at 10:07 am | Permalink

As a layman reading the court” opinion” one of the things that jumps out at me is the way the court MISQUOTED McKibben’s testimony as justification for their substantial evidence argument, REPLACING Leader’s clear and convincing argument.

McKibben answered in his deposition:

> 8 Q. Did you have any technique for
> 9 identifying differences between various
> 10 iterations of Leader2Leader product?
> 11 A. As I’m speaking here today, I
> 12 believe that our developers kept track of that.
> 13 But the name they gave to it, I don’t remember.
> 14 Q. Can you identify any iteration of
> 15 the Leader2Leader product that, in your opinion,
> 16 did not implement what’s claimed in the ’761
> 17 patent?
> 18 A. That was a long time ago. I — I
> 19 can’t point back to a specific point.

What the court said McKibben said:

> "In his deposition, McKibben could not identify any iteration of the Leader2Leader® product that did not fall within the scope of the claims of the '761 patent, testifying that "[t]hat was a long time ago. I – I can't point back to a specific point."

Ahmmmm. So much for the Federal Circuit's commitment to the facts.

Meep, meep.

26. **Mark Curtis** | May 10, 2012 at 10:20 am | Permalink

bg761, I don't understand your comment. McKibben did in fact state in that transcript that he could not identify any version of the product that did not practice the '761 patent. And that is exactly what the court said in its opinion. The court was stating that McKibben failed to rebut other evidence that established the on sale bar. The court did NOT state that McKibben affirmatively testified that every version of the product practiced the 761.

27. **gg** | May 10, 2012 at 11:13 am | Permalink

As a small investor in Leader I am so upset with these games that are being played. Being a simple laymen, I would like to help fight this unjust war on the little guy. (forget the war on women). I would like to follow Joseph and Judicial corruption's lead. Is there any way we muppets could get a draft of the letter your board members are sending?

28. **Donna Kline** | May 10, 2012 at 12:24 pm | Permalink

Hello Everyone ~ Thank you for the lively (and even complimentary) commentary. I am currently working on another post that will pick apart the Fed. Dist. Court's opinion line by line so all muppets will be able to see how obviously lazy and irresponsible the Judges were in their 'analysis' of this case. I agree that Moore's voice was suspiciously absent in this opinion and I hope to discover why. She didn't strike me as the type to fold easily. Stay tuned and Thank You Again for your support! PS See this video from CNBC this morning: http://video.cnbc.com/gallery/?

video=3000089464&play=1 Meep. Meep.

29. **Steve Williams** | May 10, 2012 at 1:21 pm | Permalink

I just wanted to let everyone know that, even though everybody is upset at this verdict, that there is still work to do; this battle is far from over. I personally have been emailing my senators, representatives, and even my state officials to let them know of this travesty and asking for their assistance. I've been tweeting anyone remotely associated with judicial oversight and linking them back to this site. I know that many people may be hesitant, even though they profess anger, in trying to get a hold of their elected officials for fear of saying either the wrong things or not knowing what to say. So, my suggestion is this (and this goes to Donna, Tex, BG, Sally, or anyone else who might want to contribute):
1. Can we post a draft of grievances over this judicial misconduct somewhere on line (here perhaps)
2.That we have the ability to link our friends and families to it that they may sign their names and locales to it, and...
3. That this letter be somehow delivered to the powers that be in Washington?
I know that Washington has failed to lend its ears, thus far, but someone has eventually got to listen. As I recall, the Tea Party didn't just happen by coincidence.
Any thoughts from the muppet gallery?

30. **bg761** | May 10, 2012 at 5:28 pm | Permalink

To Mark Curtis:

That was my point exactly. The court took Mike McKibben's testimony out of context. They said that Mike McKibben didn't know ANY iteration that didn't contain the invention, but that is not what he said. He only said he couldn't remember a specific point in time, but he did say that his developers would know. So, the court misrepresented the testimony.

31. **bg761** | May 10, 2012 at 5:31 pm | Permalink

Hey Steve, count me in.

32. **Tex** | May 10, 2012 at 6:48 pm | Permalink

Steve, how about waiting to see Donna's analysis of the decision by the Apellate court and then send links to all of those you mention. The Federal oversight committees in Comgress are generally made up of former Federal prosecutors or defense lawyers. They have a mandate to protect " jurisprudence" in our great country. This case begs review ! They need to take a look at this.....the written opinion doesn't match the evidence. Very smelly ,indeed ! I agree with Jill that the SCOTUS will not accept this case without some outside influence.

33. **Incredulous** | May 10, 2012 at 7:41 pm | Permalink

I agree, Steve. Having easily digestible bullet points that we can copy and paste to multiple e-mails would be helpful as well.

34. **Steve Williams** | May 10, 2012 at 9:07 pm | Permalink

Ok guys, I'm going to make a bullet point list; feel free to add, detract, or otherwise modify any if needed (I am not a legal scholar by any means) ....just an angry S.O.B. with a little bit of smarts. Here goes...

• "Leader asked the Federal Circuit to overrule this verdict, because the company's patent interests were protected by a 'no-reliance' agreement that negated any possibility of making offers before we had signed contracts," (Mike McKibben). The court ignored these agreements.

• The court misquoted McKibben's testimony as justification for their substantial evidence argument. Mike McKibben stated that he couldn't remember any specific point in time, nor could he remember any instance of Leader2Leader© being implemented in patent '761. What the court stated was, "In his deposition, McKibben could not identify any iteration of the Leader2Leader® product that did not fall within the scope of the claims of the '761 patent, testifying that "[t]hat was a long time ago. I – I can't point back to a specific point."

• The circuit court referred to evidence (American Express) that was never

introduced into the original lower court trial.
• Leader tried, and was denied, to introduce the entire Interrogatory #9 as evidence (which would have disproven Facebook's claims); however, the court relied on a doctored Facebook version.
• Facebook admitted they could not prove anything without source code, which means they admitted McKibben testimony was useless without source code proof; the source code was never introduced as evidence.
• The director of the USPTO, David Kappos, ordered an illegal review of patent '761, in our opinion, to delay any fallout from an unfavorable ruling by the courts.
• Foreign influence, and taxpayer bailed-out financial institutions, were bankrolling Facebook's activities throughout these legal proceedings.
• Facebook was found guilty in the original court trial on 11 of 11 counts of literal patent infringement.
Here is my letter that I have been sending to Congress. Please feel free to comment or correct....

Thursday, May 10, 2012

Dear....

I am very concerned for our country. The U.S. Federal District Court of Appeals has sided with Facebook in the case of Leader Technologies Inc. v. Facebook Inc., Case No. 2011-1366 (Fed. Cir.). This case stems from a lawsuit filed by Leader Technologies over patent infringement by Facebook, Inc. The lower court ruling (Leader Technologies Inc. v. Facebook Inc., 08-cv-862, U.S. District Court, District of Delaware (Wilmington), sided with Leader, finding facebook guilty on 11 of 11 counts of literal patent infringement. However, this same jury invalidated Leader's patent through the use of an "on-sale bar" clause. Leader asked the Federal Circuit to overrule this verdict, because the company's patent interests were protected by a 'no-reliance' agreement that negated any possibility of making offers before they had signed contracts, but the court ignored these agreements.
The timing of this decision is suspicious, as well. The case was decided the very day the Facebook IPO road show kicked off in NYC. Also after Facebook had juggled around IPO dates from May to June, then back to

May again (http://www.donnaklinenow.com/). The implications of this case for all inventors are astounding in their importance to the future of innovation. This court brought up evidence that was NEVER discussed in the lower court (e.g., reference to American Express). That is legal error. The clear and convincing standard for evidence was not even addressed in any credible way. Even in the opinion the judges stated they would have probably not agreed with the lower court jury..... So why did they? http://www.cafc.uscourts.gov/images/stories/opinions-orders/11-1366.pdf Is it the court's job to troll for, or create, new evidence in order to protect Facebook? I think not! That is out of bounds. Such conduct discredits the opinion and prejudiced Leader. Where is an acknowledgement that only a Facebook-doctored version of Interrogatory No. 9 (McKibben's original deposition) was shown to the jury and Leader was PREVENTED from showing a complete version? (Rules of Evidence / Wigmore Evid, 3rd ed. ("Possibilities of error lie in trusting to a fragment of an utterance without knowing what the remainder was"). I believe this Federal Circuit opinion has been corrupted by people swirling around this Facebook IPO. I am not accusing any one federal judge of misconduct, but I am saying that something is afoot here. It is a real travesty that Mike McKibben, through all of his hard work, should have his invention stripped away from him, only because Facebook may happen to be another "too big to fail" companies. If we don't stand with McKibben and Leader now, all real inventor patents are at risk, because, it is my opinion, that this court has just opened all inventors to personal attacks by infringers who cannot otherwise prove their case with real evidence. Please look into this matter so that we can correct the wrongdoings here, and possibly restore a little faith that is sorely lacking in our governmental institutions.

Sincerely,

Steven....
.....,.....

35. **Judicial Corruption** | May 11, 2012 at 7:19 am | Permalink

Steve,

Suggest we add:

= Judge Kimberly Moore chose utter silence over writing anything in the opinion about her substantial questioning and discrediting of key pieces of evidence that the opinion embraced. The silence is deafening in its absence.

= Leader asked the court to apply the clear and convincing standard to the evidence. The court totally IGNORED Leader's appeal and chose the substantial evidence standard which the appellant did not even argue. Instead, the court suspiciously chose the ONLY argument Facebook had and went ONLY with that.

= The court utterly failed to apply ANY well-settled law on sale bar law to evaluate the sufficiency of each piece of evidence, thus utterly failing to apply the law even to its own newly-minted arguments. Group One, Ltd. v. Hallmark Cards, Inc., 254 F. 3d 1041 (Fed. Cir. 2001) (uses the Uniform Commercial Code to evaluate alleged offers). This well-settled UCC legal standard was taking a vacation in this opinion. Group One was well argued by Leader in its post-trial motions, but TOTALLY ignored by this court that wrote that opinion. This omission is appallingly suspicious. Since the court reached back in the record to pull out never-argued and a trivial American Express mention, how could they miss the Group One standard shouting for their attention? How bad is this? The court found a mere reference to American Express (not ever argued or presented to the jury at trial or mentioned by the court judge in his opinion) while totally ignoring Leader's nondisclosure agreements with each of the parties — evidence absolutely shouting to them that Leader was very careful with its disclosures at all times. Why did we see no legal analysis of the efficacy of nondisclosure agreements that contain no-reliance clauses? That would have been very helpful guidance to the inventing world. Quoting Donna and Tex... another Coinky-dink.

= The court ignored the trial court judge's opinion about the issues and reached back into the trial record and brought forward NEW evidence that was never even argued at trial (e.g., a mere mention of American Express in a letter – no proof of anything other than that a conversation occurred

about something). However, the court pulled out only snippets favorable to Facebook. The court suspiciously ignored SUBSTANTIAL evidence that would destroy Facebook's arguments, like Leader's no-reliance agreements with each of the supposed recipients of offers.

= The court UTTERLY IGNORED well-settled patent law saying that mere mentions of brand names are not sufficient to prove on sale bar; one needs hard evidence like source code, engineering documents and expert testimony. Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339 (Fed. Cir. 2000). Facebook produced nothing but attorney-fabricated evidence and trial theater. This does not even satisfy the court newly-minted substantial evidence theory, much less address the clear and convincing evidence standard. Read Helifix, it is directly on point, it says that mere mention of brand names in sales literature and letters in insufficient to prove whether a patented invention is present at any given time. YOU NEED REAL EVIDENCE, NOT ATTORNEY HAND-WAIVING AND UNDUE INFLUENCE.

= If this opinion is allowed to stand, it could destroy innovation since it effectively says that inventors will not be able to discuss their invention ideas with any third party for fear those conversations will be construed as offers for sale whether or not anything about the actual invention is discussed or not. Inventors won't be able to raise money and explore business opportunities for their budding inventions without unscrupulous vulture attorneys misconstruing even those most innocuous of conversations and business letters as full-blown offers for sale (remember, the Court ignored Helifix v. Blok-Lok. This is a precedent now that the court is empowered to be capricious with their own rulings in favor of big money infringers / counterfeiters (thieves).

= There is a massive amount of case law that this opinion ignored, but the two I have cited are a good start.

Still fuming that we pay these judges our hard-earned tax dollars, and then we get handed a pile of steaming poo for an opinion at the second highest court in our beloved land. This is a scandal of immense proportions. For

the first time in my career I get a sense of what motivated the folks in the original Boston Tea Party... massive and intolerable injustice by individuals we vest with power. That power has presented a corrupted decision IMHO.

(I have already had my inventor clients come to me up in arms, asking if all our work to file for patents is all for naught since we'll just be blindsided by unscrupulous court opinions like this... using this precedent.)

36. **gg** | May 11, 2012 at 9:50 am | Permalink

Does anyone think it would be worth trying to get this scam out to FOX NEWS? After Donna's report of course.

37. **LindaW** | May 11, 2012 at 10:04 am | Permalink

FUNDAMENTAL CONTRADICTION

Facebook introduced Leader source code at trial that was contained in the provisional patent filed on Dec. 11, 2002. Facebook argued that this code DID NOT REPRESENT THE INVENTION filed on Dec. 10, 2003. Even though Facebook prevailed due to the voodoo science of Dr. Saul Greenberg, the jury believed them. This blog analyzes Greenberg's bad science (that should have been thrown out by the judge). See this analysis of the Greenberg testimony: http://facebook-technology-origins.blogspot.com/2011/08/lesson-in-expert-witness-dark-arts.html

Wait a minute. Facebook argued and prevailed that the provisional patent DID NOT represent the invention, and despite this, also argued the exact opposite — that the same code Leader put in the provisional patent DID represent the invention for the purposes of on sale bar??? Facebook attorneys = Flip-flop-flip-flop-flip-flp-flip-flop. (Do I hear circus music too?) Is Cooley Godward LLP an attorney firm sworn to uphold our laws, or a circus act?

Facebook actually argued out of both sides of its mouth... that the technology WAS NOT ready for patenting for the purposes of the efficacy of the provisional patent, but WAS ready and offered for sale at the same moment. Gack! I just hurled a hair ball.

No wonder the jury's head was

spinning (or maybe influenced too?). Nothing would surprise me right now. If Facebook is ready to influence judges, then mere jury members would be a walk in the park with Bambi.

There can be no other conclusion in my mind than this court was either (1) incompetent, (2) asleep, (3) lazy, (4) coerced, (5) bribed or some combination. They certainly did not do their jobs. Even this muppet can see that.

38. **jules** | May 11, 2012 at 11:22 am | Permalink

Leader's appeal did not argue against judicial discretion at any point, and yet the court's opinion argued as if Leader had. What is that??? It is apparent that this Court FABRICATED a Leader argument of its own, and then came out against its fabricated argument. Such action offends the senses. As the Church Lady says, "How conveeeeenient."

Facebook fabrication of evidence is a common thread throughout this whole trial. See http://facebook-technology-origins.blogspot.com/ That's what Cooley Godward seems quite skilled at. This opinion is reading like Cooley-Godward-more-of-the-same fabrications.

39. **Barry** | May 11, 2012 at 11:50 am | Permalink

Speaking of the original jurors, has anyone checked to see if any of them are now driving lambos??????????????/

40. **Winston Smith** | May 11, 2012 at 12:51 pm | Permalink

I say we all decide on a good date and picket on court house steps!! That would get the media's attention! What do you say folks? I will go get my camping gear today. I could use a day or two to get away. We could all get to know one another in person that way.

41. **Fourleaf Tayback** | May 11, 2012 at 1:11 pm | Permalink

gg, in regards to your question about trying to gain some attention and investigation of this decision at Fox News I would say..absolutely! What do we, who believe that an injustice was

done, have to lose? Unless something changes it is questionable that the Supreme Court would even hear the case. A media storm seems to be the only hope of creating the kind of attention required to motivate Congressional members to question the injustice. Don't stop at Fox News. There are many financial news outlets who might find interest in this story, especially with hype and buzz surrounding FB's IPO. DK is the expert on the case and the media. I would think that Donna would know how to best do this and she would be the best person, along with McKibben and his attorneys, to be interviewed.
Stop now and we lose. Winning isn't everything...it is the ONLY thing. Time to pull out all of the stops. I say..GET LOUD.

42. **Donna Kline** | May 11, 2012 at 2:41 pm | Permalink
Absolutely true. No need to wait for my post. You have plenty of fodder already out there! I am waiting on commentary from a few key individuals. Hope to be up tomorrow. In the interim, have a look at this article on our friendly dominant market-making bank, JP Morgan. (Listed on FB S-1) They got themselves into a bit of a pickle. And this money losing position was discussed publicly over a month ago! http://ftalphaville.ft.com/blog/2012/05/11/996131/too-big-to-hedge/ Also see first article describing the trade on April 8th: http://www.bloomberg.com/news/2012-04-05/jpmorgan-trader-iksil-s-heft-is-said-to-distort-credit-indexes.html

43. **WDC Watchdog** | May 12, 2012 at 7:41 am | Permalink
I smell yet another rat. Let's see, Morgan Stanley aka Goldman Sachs' almost constant partner in deal making since the bail out, is selected to lead the Facebook IPO since Goldman has it hands all over Facebook's insider trading of some $3 billion in a private market of the insider stock, mostly to foreign interests, and much of that from Moscow, Russia's Digital Sky Technologies. Goldman also fails to disclose its substantial ownership of Digital Sky where it is partnered with a Russian oligarch who Fortune says has funds of "dubious origins. Now

Morgan Stanley reveals a $2-3 billion shortfall using derivatives – the instrument that got them in trouble before!!!

Do ya think Morgan intended to top up the shortfall with their Facebook IPO winnings, perhaps with Goldman's help from far off Moscow where Goldman can sell off Facebook stock without being noticed by US regulators?

Gack! Hairballs hurling here too.

44. **Jules** | May 12, 2012 at 1:10 pm | Permalink

Larry Summers's association with Juri Milner, Digital Sky in Moscow, Russia, and Goldman Sach-Russia is a HUGE UNDISCLOSED CLOUD hanging over this Leader patent infringement case and the IPO. Were those resources used to compromise the US judiciary? It appears to me possible that they (Summers and the PayPal/Accel cabal) (a) propped the Zuck up in front of the infringement once they saw Leader's white paper (misusing an SEC exemption from the 500 shareholder rule to avoid regulation?), (b) knew they had what they needed to build a new advertising revenue engine, then (c) carefully worked to acquire Facebook stock and cash themselves out BEFORE the public offering... then (d) do it a second time DURING the public offering, then (e) a third time AFTER the public offering. Three bites at the apple... all before the legal community could catch up to this tangle of conflicts and insider trading? Could this be the biggest scam of public trust ever? Orchestrated by one of the most "insider" of "insiders" from multiple US administrations and the World Bank?

45. **Incredulous** | May 12, 2012 at 4:25 pm | Permalink

I agree, Winston! Picketing on the nation's most visible courthouse steps has got to raise some attention – even in this bizarre environment where corruption is an everyday occurrence.

By giving everyone a few weeks notice and widely publicizing this – Facebook friends maybe- lol! – we should have a good turnout!

46. **Mike Kennedy** | May 12, 2012 at 5:58

pm | Permalink

It's amazing to view the increase number of visits to donnas blog site world wide. Now, suppose one person tells an additional 10 or more (maybe even a few congress members or senators) and they tell 10 more ….., ya think someone may realize that there is a serious problem here, and our great country is running amok? God help us.

47. **SNL** | May 12, 2012 at 10:29 pm | Permalink

HEY…HOW ABOUT SOME MORE COWBELL!

48. **jules** | May 13, 2012 at 6:58 am | Permalink

The more I dig on this Lawrence Summers person, the more uneasy I become about who he is and what he is orchestrating. I have watched many of the videos of his speeches at the Brookings Institution where he was a fellow (and where Facebook COO is a Trustee, aaahhhhmmmm) and all I hear and read about his agenda is that he is making a global play to divest American sovereignty to his international buddies. (Milner has organized a party for these people in Scotland to be held after this IPO…. to gloat at the stupidity and naiveté of America's leaders, regulators and investing muppets?)

If you doubt, see this current video announcing how Larry Summers, one of the architects of the $1billion Instagram debacle (?) may be appointed by Pres. Obama to run the World Bank http://www.brookings.edu/up-front/posts/2012/02/14-summers-world-bank-ayogu Juri Milner used to work for the Word Bank with Sheryl Sandberg of Facebook. All too cozy to be coincidence?

Was the Leader Technologies patent a fly in the ointment of their agenda to create a new international currency using Facebook Credits? The Zuckster says he thinks all future e-commerce apps will run on Leader's technology (sorry Zuck, you are literally infringing it on 11 of 11 claims). The Zuckster says he is looking to Digital Sky Juri Milner's friends at Moscow State University to do the programming for Facebook Credits. Really now?

Buying or coercing a few Federal Circuit judges would be a cake walk for the crowd with whom all this very public information says that Larry Summers is associated. After all, this is the very same Larry Summers who orchestrated the failed US bail out, including the bail out of his buddies at Goldman Sachs... the very same Goldman that organized up to $3 billion in Moscow money to Facebook insiders in an unregulated sale of Facebook stock to Moscow interests (in which Goldman is a partner!!!!).

Something smells very wrong here. I hope the Legislature, Press, SEC and FTC are on this. It is apparent to me that the Executive and Judiciary have drunk the Kool-Aid. Those 26 million Likes on Facebook are too alluring I guess. Plus, the Facebook insiders have held so many fund raisers already.

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