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## ***Leader v. Facebook* Federal Appeals Fight Begins**

*Leader argues that Facebook failed their “clear and convincing” burden of proof*

**Columbus (July 26, 2011)** – Yesterday Leader Technologies filed its opening brief in its patent infringement fight against Facebook at the Court of Appeals for the Federal Circuit in Washington D.C. Leader is represented by King & Spalding LLP and lead counsels Paul Andre, Lisa Kobialka, Daryl Joseffer and Adam Conrad. The nine-day jury trial in Delaware ended on July 27, 2010 with a split verdict.



[Click here to download Leader's opening brief](#)

At trial, Facebook was judged to be “literally infringing” Leader’s U.S. Patent No. 7,139,761 on 11 of 11 claims, and the jury also found that the invention was not obvious over the published prior art. Put simply, this means that the software engine driving Facebook is Leader’s invention.

However, the jury found the patent invalid on the theory that Leader had engaged in premature commercial activity more than one year before the patent application was filed. According to Leader, while much evidence was presented on both sides regarding infringement and prior art, Facebook presented no evidence to support its allegations of early commercial activity. Facebook had the “heavy burden” to present “clear and convincing evidence” to prove its allegation that Leader disclosed the invention prematurely. The clear and convincing standard was recently reaffirmed by the Supreme Court in *Microsoft v. i4i*.

Leader argues that an attempt to invalidate computer software inventions requires hard evidence like source code, engineering documents, developer testimony, drawings, schematics and expert witnesses to prove early commercial activity. Facebook provided no such proof. Leader cites cases where invalidity verdicts were overturned when infringers failed to provide hard evidence.

The law on Facebook’s burden of proof requires Facebook to prove that *each and every element* of Leader’s invention was present in the alleged 2002 offers. Leader states that various products were sold in 2002, but none of them included the invention “because it did not exist at that time.”

Leader argues that Facebook had all versions of Leader’s source code and engineering documents, and that Facebook would surely have used the code had it actually discovered any evidence of Leader’s alleged early commercial activity.

McKibben said, “Facebook didn’t produce any of our source code because the programmer notations in our code prove they are wrong.”

Leader argues that “if requiring clear and convincing evidence of invalidity is to be more than an empty semantic exercise, it must mean that the jury’s verdict here cannot stand.”

Facebook’s response is due according to the court Rules.

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### **About Leader®**

Leader Technologies Incorporated is a software development and marketing company specializing in social networking and unified communications. Its technologies are patented and patent pending. Its brands include [Leader2Leader®](#) for enterprise social networking, [Leader Phone® Pro & Lite](#) and [Leader Phone® iPhone Audio Conferencing App](#) for Web 2.0 audio conferencing, [Leader Meeting™](#) for web conferencing, and [Leader Alert®](#) for alerting services. Leader provided the primary communications and collaboration system for the Governor of Louisiana in the state’s Hurricane Katrina disaster response. Leader supplies a wide range of customers in commerce, government, education and non-profit.

Leader filed suit against Facebook for patent infringement on November 19, 2008: [Leader Technologies Inc. v. Facebook Inc., 08-CV-862-JJF/LPS, U.S. District Court for the District of Delaware.](#)

For additional information, go online to [www.leader.com](http://www.leader.com) or contact John Needham at (614) 890-1986.