

2014-1495

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PI-NET INTERNATIONAL, INC.,

Plaintiff-Appellant,

v.

JPMORGAN CHASE & CO.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware
in Case No. 1:12-cv-00282, Judge Sue L. Robinson*

PLAINTIFF-APPELLANT'S REPLY IN
OPPOSITION TO DEFENDANT-APPELLEE'S
OPPOSITION TO MOTION TO STAY

October 27, 2014

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I. ARGUMENT

Plaintiff-Appellant and *pro se* patent owner, Dr. Lakshmi Arunachalam (“DrA”) files this reply to JPMorgan Chase & Co’s (“JPMC”) Opposition to Plaintiff-Appellant's Motion to Stay Appeal, Given Pending Motion to Vacate Judge Robinson's Ruling. JPMC’s opposition is an attempt to cloud the actual matters of law, constitutionality, due process and propriety in misdirection and should be denied.

In lieu of addressing the egregious judicial misconduct, namely the substantial JPMorgan financial and relationship conflicts of interests among the lower court judges, this Court’s judges and JPMorgan, JPMC defends the misconduct in violation of the Rules of Professional Conduct, including Rule 8.3, and makes arguments that support DrA, not JPMC.

- 1. This Court has recognized Dr. Arunachalam’s *pro se* rights previously, and recognizes them now by docketing this motion practice, thus mooted by inference the prejudicial order to bring counsel by Nov. 10, 2014**

JPMC cited in its Exh C an August 10, 2012 order by this Court signed by clerk Jan Horbaly. That order recognized DrA’s *pro se* status in *amicus curiae* briefs. Yet now, in a case involving *her own patent properties*, this Court resists ruling on her motions to substitute parties and entry of *pro se* appearance, **which should be perfunctory**. Instead, the Court has ordered her to bring an attorney when that is not her wish due to her previous attorneys’ insubordination and obstructionist

efforts. Thus, the Court abuses its own rules that state: “You as an individual may conduct your own case pro se in the United States Court of Appeals for the Federal Circuit.” Guide for Pro Se Petitioners and Appellants. Guide for *Pro Se* Petitioners and Appellants, p. 165, updated Feb. 11, 2014.

Further, the Court’s Nov. 10, 2014 deadline to bring new counsel or have the case dismissed creates procedural confusion since DrA has already made an entry of appearance, and this wrangling over the Court’s conflicting positions prejudices DrA by having to waste valuable time arguing over what should be perfunctory procedures.

2. This Court has shown contempt for DrA’s *pro se* rights by making false statements that place DrA in a bad light

JPMC in its Exh. C, p. 2 cites an order that makes false statements about DrA’s alleged procedural “defect.” The Court stated: “No such [FRAP 29(c)(5)] certification appears in any brief Dr. Arunachalam filed with the court ... any purported amicus is charged with learning the court’s rules and conforming to them if she has any claim to serving as a friend to the court.” *See* Table 1 below.

The facts are just the opposite. Dr. Arunachalam *properly* included a certification of interest in *every* brief, as shown in Table 1 below. Such haughty statements by the Court reflect a disturbing prejudice against DrA that is reemerging here at JPMC’s hand, thus making a fair hearing in this Court unlikely.







DrA'S CERTIFICATES OF INTEREST IN <i>AMICUS CURIAE</i> BRIEFS					
2012					
Jul. 10	Jul. 18	Jul. 27	Sep. 1	Sep. 5	Sep. 17
<i>Amicus Curiae</i> Brief, p. ii.	Motion for Reconsideration, p. 7.	Renewed Motion, p. 2.	Motion for Relief, p. 2.	Motion to Compel Conflicts Discl. p. 2.	Response to FCBA Request, p. 2.
<u>Exhibit A</u>	<u>Exhibit B</u>	<u>Exhibit C</u>	<u>Exhibit D</u>	<u>Exhibit E</u>	<u>Exhibit F</u>
					

Table 1: The Court's order cited by JPMC makes a false statement that DrA did not file certificates of interest in her *amicus curiae* motions in *Leader v. Facebook* to put her in a bad light, thus rendering a fair and impartial hearing in this Court unlikely. Such a knowingly false statement shows extreme bias by this Court. Def-Appellee Exh. C. Clerk of Court Jan Horbaly stubbornly refused to docket many of these filings at the time, although they appear now.

Given Chief Judge Randall R. Rader's resignation from the bench over his inappropriate relationship to Edward R. Reines, Weil Gotshal LLP, proves that DrA's concerns were not only justified, **they were right**, especially when considering Reines filed the FCBA Request in the *Leader v. Facebook* case, cited above. The web of interrelationships among JPMC, their lawyers and the Court appear to be incestuous. How can any inventor get a fair hearing with such hidden agendas with deep-pocketed infringers?

3. Federal Circuit may not be able to hear this case due to endemic conflicts of interest involving litigants JPMorgan, SAP and Dell

The newly-discovered findings in this case reveal deep involvement by numerous Federal Circuit judges and staff in JPMC, SAP, Dell and Facebook.

These conflicts of interest may make it impossible for DrA to get a fair hearing in

this Court. Def-Appellee Exhs. A, D. The conduct of the courts in this case raise the troubling specter of collusion across cases involving core patents to Internet functionality that are coveted by deep-pocketed infringers like JPMorgan, SAP, Dell and more.

4. JPMC distinguishes Rule 60 is incorrectly

Rule 60(b) “Rule 60(b)(6) is a ‘grand reservoir of equitable power to do justice in a particular case.’ *Pierce v. Cook Co.*, 518 F.2d 720, 722 (10th Cir. 1975) (citation omitted).”¹ If ever that power should be used, it is in this case.

JPMC argues *Concept Design Elects* incorrectly. No judicial conflicts of interest were present in *Concept Design*. That court was not addressing the havoc that judicial conflicts of interest reek on the judicial machinery, as is the case here. Equity does not permit a court to prejudice a litigant by manipulating its own procedures and orders. In this case, no briefs have been filed and no arguments are being prejudiced by a stay. Needless to say, if Judge Robinson grants the 60(b) motion, then this appeal will be withdrawn and referred to the Third Circuit. DrA is merely trying to clean up the mess created when George Pazuniak filed a notice of appeal against DrA’s written instructions not to and played obstructionist. DrA immediately filed a motion for substitution and entry of appearance *pro se* to preserve her claims in this highly uncertain situation. Instead of simply granting this request perfunctorily, the Court issued what amounts to a threat: get new

¹ *Kustom Signals, Inc. v. Applied Concepts, Inc.* 247 F. Supp. 2d 1233, 1244 (D. Kan. 2003).

counsel by Nov. 10, 2014 or your case will be dismissed. This order ignored the motions to substitute and the entry of appearance. Therefore, DrA was forced to try and stay this prejudicial rush to dismissal since the Court is ignoring her constitutional right to represent herself *pro se*. Alternatively, DrA would be willing to agree to a stipulated dismissal without prejudice.

Furthermore, JPMC's citation to Judge Robinson's *TA Instruments* opinion is unseemly since her conduct is in question. Citation of a judge's own case opinions to support that judge's conduct is inappropriate in ethical disputes like this.

5. Conclusory statements

JPMC's first argument is conclusory and unconvincing, stating "[n]one of these motions offers any justification to further delay this appeal." JPMC cannot possibly know the outcome of a pending Rule 60 motion in advance. The judge has made no statement. In fact, JPMC's statement attempts to waive away the very purpose of FRCP 60(a) which says: "[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Indeed, if an impartial tribunal (which DrA demands) corrects a mistake in its judgment, then this appeal is moot. Therefore, a stay conserves judicial resources.

6. JPMC makes false statements about alleged lack of evidence, when in fact, it is all notorious public information and judicially recognizable

JPMC's second argument is that DrA has not put forward evidence that would justify vacating Judge Robinson's ruling. This argument is unavailing since DrA has indeed put forward *much evidence*. The fact that JPMC may not like or is embarrassed by the evidence is irrelevant. Like it or not, the evidence of judicial financial holdings and Congressional testimony of relationship conflicts is a matter of public record and is *judicially recognizable hard evidence* that has yet to be tested by an impartial tribunal.

7. JPMC hides their reliance on DrA's invention exploited by The Eclipse Foundation

Newly discovered evidence that helped precipitate DrA's 60(b) motion for relief from judgment in the lower court shows that JPMC claims to be the holder of its infringing technology, when in fact, their core technology was provided to them by The Eclipse Foundation, formed on Nov. 29, 2001 by IBM's David J. Kappos and Leader Technologies' patent counsel, James P. Chandler, Professor Emeritus of law at George Washington University, a close collaborator with Edward R. Reines, Weil Gotshal LLP and the Federal Circuit Bar Association where Jan Horbaly was the Ex Officio officer.² **Exhibit G**. The facts about Professor Chandler are a matter of public record and notoriously known to this Court. No reasonable person can consider all these interconnections merely coincidental.

² "Eclipse Consortium Forms to Deliver New Era Application Development Tools" by THE ECLIPSE FOUNDATION, Nov. 29, 2001

JPMorgan's technology relies upon Internet code provided by The Eclipse Foundation's dubious code base that appears to trace back to DrA, Leader Technologies, Inc., Leader's patent attorney, James P. Chandler, and Chandler's close association with IBM and David J. Kappos. Kappos was IBM's long-time general counsel for intellectual property until he was appointed by President Obama to be director of the U.S. Patent Office in 2009 in a surprise recess appointment. Kappos and his lieutenant, Pinchus M. Laufer, were the prime movers behind the highly destructive "America Invents Act."

Chandler also has close, long-time ties to the Federal Circuit, having provided analysis of the Court's opinions for years. Chandler and Kappos are credited with turning IBM's attention to aggressive prosecution of IBM's largesse of "junk" patents in order to force licensing settlements. This activity gave birth to the "patent troll." Kappos and IBM's PR machine have worked hard to get the public to believe the opposite—that the victim small inventors are the patent trolls, when in fact, it is the largest holder of patents on the planet, IBM and its cronies, including JPMorgan, who are the patent trolls, thieving the inventions of the real inventors, like DrA.³ **Exhibit H.**

³ "JPMorgan Raises the Bar for Banking Applications by THE ECLIPSE FOUNDATION, p. 3, ca. Mar. 09, 2007 https://www.eclipse.org/community/casestudies/jp_morgan_final.pdf



Figure 1: JPMorgan’s technology relies upon Internet computer code provided by The Eclipse Foundation

II. THE COURT SHOULD GRANT MOVANT'S MOTION TO STAY BECAUSE SUBSTANTIAL NEWLY-DISCOVERED FRAUD AND JUDICIAL MISCONDUCT HAVE TAINTED THE PROCEEDINGS AND WILL REQUIRE A NEW TRIAL TO RECTIFY; THEREFORE, ANY OUTCOME OF THIS APPEAL WILL BE MOOT

1. Citations to judicial misconduct in *Leader v. Facebook* support DrA, not JPMC

JPMC’s third argument is shocking in its irrelevance. They cite DrA’s arguments in *Leader v. Facebook* as somehow availing here. That case is a different set of claims with a different fact pattern and different litigants.

However, since JPMC has opened this door, DrA’s conflict of interest concerns in *Leader v. Facebook* have proven to be justified. The Order cited by JPMC in its Exh. C points to subsequent events that prove DrA’s argument, not JPMC’s.

For example, both Chief Judge Randall R. Rader and Clerk of Court Jan Horbaly have resigned as a result of their chummy relationships with firms like Weil Gotshal LLP.⁴ See also **Exhibit I**. Edward R. Reines, Weil Gotshal LLP, not only participated in, but acted as counsel to the Federal Circuit Bar Association where former Clerk of Court Jan Horbaly was the *ex officio* senior officer, yet neither Rader nor Horbaly disqualified themselves from their substantial involvement in *Leader v. Facebook*.

It is now notoriously known that Chief Judge Randall R. Rader was forced to resign when news of his almost familial relationship to Edward R. Reines, Weil Gotshal LLP, was made public, presumably by a whistleblower.⁵ **Exhibit J**.

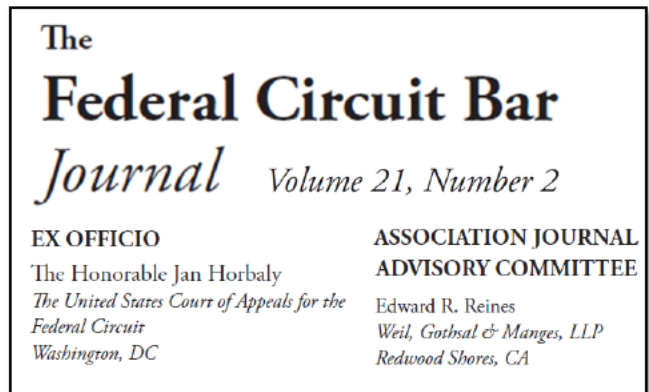


Figure 2: The close relationship among Edward Reines, Weil Gotshal LLP, Clerk of Court Jan Horbaly, the FCBA and the Federal Circuit is indicated by this *Federal Circuit Bar Journal* published in 2011. No reasonable person believes such close relationships do not bias their mutual interests. (Compilation)



Figure 3: Rader apologized for "conduct that crossed the lines" when he sent an email to Weil, Gotshal & Manges partner Edward Reines praising Reines' skills and encouraging him to share the email with others.

⁴ e.g. See "Judge Rader, Author of Controversial Email to Lawyer [Edward R. Reines, Weil Gotshal LLP], to Resign from Bench" by Ashby Jones, *THE WALL STREET JOURNAL LAW BLOG*, Jun. 13, 2014, <http://blogs.wsj.com/law/2014/06/13/judge-rader-author-of-controversial-email-to-lawyer-to-resign-from-bench/>; See also "Rader Resignation A Head Scratcher Despite Email Flap" by Ryan Davis, *Law360*, Jun. 16, 2014, http://www.law360.com/ip/articles/548419?nl_pk=3d7de43c-2a83-457b-8e08-511bc28d2aec&utm_source=newsletter&utm_medium=email&utm_campaign=ip.

⁵ "Rader Steps Down as Chief, Apologizes for Reines Email" by Scott Graham, *The Recorder*, May 23, 2014, <http://www.therecorder.com/id=1202656698314/Rader-Steps-Down-as-Chief-Apologizes-for-Reines-Email?slreturn=20140924111447>

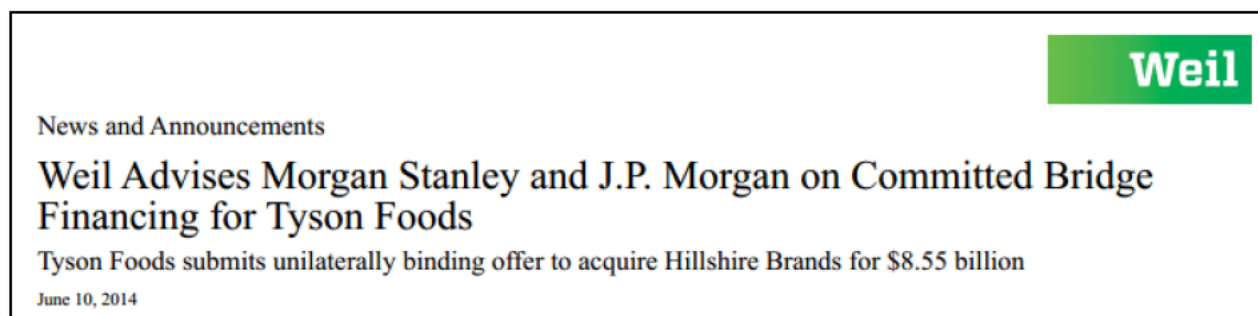


Figure 4: JPMorgan and Weil Gotshal LLP are close collaborators, as exemplified by this Weil Gotshal press release. Morgan Stanley is another Facebook underwriter, so the favoritism to Weil's SAP, Facebook and JPMorgan interests is evident in their holdings.

2. JPMorgan and Weil Gotshal LLP too, are chummy

Weil Gotshal LLP's close relationships to JPMorgan are notoriously known.⁶ Exhibit K. In addition, it is notoriously known that JPMorgan is one of the lead underwriters for Facebook. It is curious that JPMC cites *Leader v. Facebook* here since that evidence supports DrA, not JPMC. Hindsight shows that *Leader Technologies, Inc.* in *Leader v. Facebook* was hopelessly prejudiced by these chummy relationships. Not surprisingly, JPMC, as Facebook's underwriter, participated in this corruption and does not wish this Court to face these facts in this case. Hence DrA's surprise that they cite the very evidence that condemns their argument.

For example, chief judge Randall R. Rader must be assumed to have tainted the proceedings in *Marine Polymer Technologies, Inc. v. Hemcon, Inc.*, Case No. 2010-1548 (Fed. Cir. 2010—Edward R. Reines, Weil Gotshal et al, figured prominently in those proceedings.

Marine Polymer shows that in 2010, during the pendency of *Leader v.*

⁶ e.g. See "Weil Advises Morgan Stanley and J.P. Morgan on Committed Bridge Financing for Tyson Foods," Weil Gotshal LLP press release, June 10, 2014, accessed 10/24/2014 <http://www.weil.com/articles/weil-advises-morgan-stanley-and-jp-morgan-on-committed-bridge-financing-for-tyson-foods>

Facebook, Reines and Weil Gotshal represented Facebook AND two litigants in DLA's case, SAP and Dell.⁸ Exhibit L.

This revelation about SAP and Dell's involvement with Weil Gotshal LLP, JPMorgan and the judiciary taint other DLA proceedings in addition to this one.

Also telling is the appearance of Matthew J. Moore in this case representing Latham

& Watkins LLP. Latham & Watkins LLP is the firm where U.S. Securities & Exchange Commission chief counsel

Thomas J. Kim worked prior to approving Facebook's unprecedented exemption from the 500-shareholder rule. That Kim exemption opened the door to the "dark pools" insider trading that drove Facebook's (and therefore numerous judges') valuation to record levels. **Matthew Moore is the husband of Circuit Judge Kimberly A.**

Proof that the Courts are colluding with deep-pocketed infringers who taint this case, as well as *Leader v. Facebook*

Marine Polymer Technologies, Inc. v. Hemcon, Inc.,
672 F.3d 1350 (2012)

SAP America, Inc.
Amicus Curiae

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Amicus Curiae

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EOA Filed :2/10/2012

Facebook, Inc.
Amicus Curiae

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EOA Filed :2/10/2012

Figure 5: The lawyer whose Federal Circuit insider relationship with former Chief Judge Randall R. Rader, Edward R. Reines, Weil Gotshal LLP, represented Facebook in *Marine Polymer*, then represented the Federal Circuit Bar Association, in *Leader v. Facebook* in opposition to DLA's motion. Just now discovered is that **Reines also represented SAP and Dell, litigants in DLA's cases**. This raises the troubling specter of deeply embedded prejudice against all real inventors in favor of deep-pocketed infringers at the Federal Circuit.

⁸ Case Summary, *Marine Polymer Technologies, Inc. v. Hemcon, Inc.*, 672 F.3d 1350 (2012), [http://premium.docstoc.com/docs/172975227/Case-Summary-Marine-Polymer-Technologies-Inc-v-Hemcon-Inc-Case-No-2010-1548-\(Fed-Cir\)-PACERCAFCUSCOURTSgov-Accessed-Jun-5-2013](http://premium.docstoc.com/docs/172975227/Case-Summary-Marine-Polymer-Technologies-Inc-v-Hemcon-Inc-Case-No-2010-1548-(Fed-Cir)-PACERCAFCUSCOURTSgov-Accessed-Jun-5-2013)

Moore in the *Leader v. Facebook* case. Latham & Watkins LLP also represented the National Venture Capital Association whose chairman, James W. Breyer, Accel Partners LLP, became Facebook's primary early investor and chairman.

The judicial bias and chummy relationships among Rader, the Moore's, Reines, Facebook, Weil Gotshal LLP, Latham & Watkins LLP, Accel Partners, James W. Breyer, JPMorgan, Dell and SAP against real inventors like Michael McKibben and DrA is obvious.

JPMC cites the *Leader v. Facebook* order signed by Circuit Judge Kimberly A. Moore participated. According to her Senate confirmation

6. In *Seagate Tech LLC v. Cornice, Inc.* (D. Del. 04-418(SLR)), I was retained to give expert opinion on patent office procedure. I filed an expert report and testified by deposition in this matter. I was retained by Weil, Gotshal & Manges LLP.

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Weil, Gotshal & Manges LLP
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Figure 6: Kimberly A. Moore Senate Confirmation Testimony disclosing her relationship to Weil Gotshal LLP, S. HRG. 109-397, PART 5 - HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE, Kimberly A. Moore Confirmation Hearing, 111th Congress, 2nd Session, Jun. 28, 2006, Serial No. J-109-4, Pt. 5, Y 4.J 89/2, GPO, p. III, V, 53, 55-91 <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg32199/pdf/CHRG-109shrg32199.pdf>

testimony, she was formerly employed by Weil Gotshal LLP. See judicially recognizable evidence, Fig. 6. Exh. C.

3. The “safe harbor” rule has become the *raison d'être* for a secret society of oligarchs among deep-pocketed infringers, their lawyers and favored judges/clerks for “hot tips” about financial investments——no small inventor/patent holder stands a chance in this *ethically caustic* environment

JPMC admitted recently in the lower court that the judges hold JPMorgan interests, just like Judge Moore and her husband hold large amounts of Facebook interests, yet JPMC argued that judges are *allowed* to hold stock in litigants under the

“safe harbor” rule.⁸ No reasonable interpretation of the Canons, Law and related Rules that prescribe “avoid impropriety and the appearance of impropriety” could possibly allow common investment/mutual funds to become a veil for judicial insider trading.

4. **Legalized judicial bribery**

JPMC’s excuse that these funds hold a “myriad” of stocks, and therefore that fact makes the judicial holdings OK, is a transparent **excuse for legalized judicial bribery**. The fact is, JPMorgan is a prominent stock holding in each mutual fund cited by DrA, and therefore must be disclosed. Equity demands it.

5. **A financial interest is a financial interest, no matter how many “safe harbor” blankets one throws over it to hide the body**

The current *carte blanche* attitude among judges, lawyers and regulators that they are allowed to hold stock in litigants as long as they are inside mutual funds is incorrect. This faulty logic whitewashes the conflict of interest rules *forever* in favor of deep-pocketed patent infringers and their inevitable insider tips to favored judges. **A financial interest is a financial interest, no matter how many blankets one throws over it to hide the body.**

Finally, JPMC argues that a stayed appeal somehow stands in the way of a favorable Rule 60 motion. However, the fraud and judicial misconduct allegations in this case are so severe as to render JPMC’s arguments and citations *inapposite*. **Fraud trumps judgments. Judicial bias trumps judgments.** Due process demands that

⁸ Guide to Judiciary Policy, Ethics & Judicial Conduct, Vol. 2B, Ch. 2, See esp. Section 106, U.S. Courts , United States Department of Justice, <http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/Vol02B-Ch02.pdf>

DrA be given a new trial in an impartial tribunal. Any use of the resources of this Court before those issues have been decided would be a complete waste of judicial resources.

III. CONCLUSION

For the foregoing reasons, DrA's motion to stay the proceedings should be granted.



Dated: October 27, 2014

/s/ Dr. Lakshmi Arunachalam

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CERTIFICATE OF INTEREST

Pro Se Plaintiff-Appellant Dr. Lakshmi Arunachalam certifies the following:

1. The full name of every party or amicus who has been represented by me is:

Dr. Lakshmi Arunachalam

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Dr. Lakshmi Arunachalam

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are: N/A - *Pro Se*

Dr. Lakshmi Arunachalam

Withdrawn:

George Pazunia, Victoria Breant



Date: October 27, 2014

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

***Pi-Net International, Inc. v. JPMorgan Chase
& Co.,
No. 14-1495***

CERTIFICATE OF SERVICE

I certify that on October 27, 2014, the attached document "PLAINTIFF-APPELLANT'S REPLY IN OPPOSITION TO DEFENDANT-APPELLEE'S OPPOSITION TO MOTION TO STAY APPEAL" and Exhibits was sent by me via Express Mail to the Clerk of the Court for filing/docketing. I further certify that on October 27, 2014, I served a copy of the attached document "PLAINTIFF-APPELLANT'S REPLY IN OPPOSITION TO DEFENDANT-APPELLEE'S OPPOSITION TO MOTION TO STAY APPEAL" and Exhibits by First Class Mail to the following counsels of record for Defendant-Appellee:

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Citation links updated Mar. 13, 2014: On Fri. Mar. 7, 2014, the document service *Scribd* removed all documents cited herein that had been accessible from *Scribd* for two years. Some of the documents had over 10,000 reads. *Scribd* principals Trip Adler and Jared Friedman have Harvard associations with Mark Zuckerberg. The documents have been moved and the links updated herein. No content changes have been made.

Docketing irregularities: On Aug. 7, 2012, [Clerk staffer, Valerie White](#), told Marion, Ohio caller Steve Williams that the court had no record of receiving this brief on Jul. 10, 2012, and had never docketed it for public review.

When Ms. White was shown the USPS delivery receipt, she seemed puzzled and promised to investigate. The next day, her phone extension was disconnected, and she has not returned follow-up phone calls from Mr. Williams.

Nonetheless, this *amicus curiae* brief was accepted at **10:39am on Jul. 10, 2012**, never docketed, and denied under the signature of "Jan Horbaly Clerk" on **Jul. 11, 2012**, less than 24 hours later.

[CLICK HERE to see the delivery receipt and Horbaly denial attached.](#)

GREEN BRIEF

2011-1366

United States Court Of Appeals
for the
Federal Circuit

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D.
IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR
REHEARING AND REHEARING *EN BANC***

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July 10, 2012

<http://www.fbcoverup.com/docs/arunachalam/2012-07-10-Brief-Of-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-In-Support-Of-Leader-Technologies-Petition-For-Rehearing-And-Rehearing-En-Banc-Filed-Jul-10-2012.pdf>

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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Ms. Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) submits this brief as an *amicus curiae* pursuant to [Fed. R.App. P. 29](#)(a) and Rule 29(a) of this Court.

This brief is accompanied by a motion for leave to file pursuant to Fed. R.App. P. 29(b). Dr. Arunachalam supports Leader Technologies’ petition for rehearing and rehearing en banc. The consent of neither party has been sought to file this brief.

INTEREST OF *AMICUS CURIAE*

Ms. Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) is the inventor of a portfolio of the earliest Internet patents that give control over any real-time web transaction from any web application. These patents give her control over the internet cloud and any cloud application. Her companies, Pi-Net International, Inc. and WebXchange, Inc., are practicing entities with the earliest products implementing web applications based on her patents. At First Data Corporation her software implementations were certified as ACH-certified for credit card and other transactions. Her web applications were installed as pilot trials and beta tests at Cisco, France Telecom, Lycos, Le Saffre, BNP Paribas and La Poste. Dr. Arunachalam invests 100% of her time in research and development (R&D) and in the patenting of new internet-based products. She bootstrapped her companies with self-funding and relies on her patent portfolio of over a dozen patents to protect those investments. *See* APPENDIX for curriculum vitae.

Dr. Arunachalam is a champion of property rights and has a vested interest in the outcome of *Leader Tech v. Facebook*, Case No. 2011-1366. She believes that Leader's invention is an epoch-making event that will help re-establish America's world leadership in innovation, help America stop borrowing money from former Third World countries, and help revive America's profound constitutional values of "life, liberty and the pursuit of happiness." She believes that the wholesale theft of Leader Technologies' intellectual property dwarfs the conspiracies of Bernard Madoff's Ponzi schemes and undermines America's fundamental values. She believes that such crimes should be punished rather than showered with fame, glory, wealth and power.

Dr. Arunachalam is a champion of intellectual property rights for true inventors, especially small inventors, from whom large companies often steal, using their superior resources to quickly exploit the invention and deprive the small inventors of their rewards. She has a strong interest in seeing well-settled patent law applied fairly in this case, and in every case, at every level.

For these reasons Dr. Arunachalam believes that every champion of property rights in the United States must stand behind Michael McKibben and Leader Technologies. She believes that such activity as jury trickery and other court manipulations cannot be permitted to validate theft of property rights. She believes

that such activity will dissuade innovators from participating in the patenting process and thus deprive the public of the benefit of their innovations.

Dr. Arunachalam would like this Court to acknowledge the [fraud](#) and [trickery](#) that has transpired in this case and not be tempted by admitted hackers and counterfeiters to look the other way. She would like to remind the Court of the wisdom of Matthews 7:26: “Everyone who keeps on hearing these messages of mine and never put them into practice is like a foolish man who built his house on sand.” She believes America must rely on and support brilliant inventors and visionaries like Michael McKibben, and not on intellectual property thieves.

SUMMARY OF ARGUMENT

This Court has determined that on sale and public disclosure bars to patentability under [35 U.S.C. § 102\(b\)](#) should be evaluated against the [Uniform Commercial Code](#) (“U.C.C.”). This Court requires hard evidence to prove on sale and public disclosure bar based on the U.C.C. The patent community relies upon this prior body of case law. Surprisingly, the Court did not use its U.C.C. standard in this case. Such an abrupt shift in the Court’s well-settled precedent is unfair and inequitable to Leader Technologies, will place a significant undue burden on all patent holders going forward, and will increase litigation costs dramatically—all simply because the Court did not apply its own standards.

Compelling reasons justify the existence of the hard evidence rule founded in the U.C.C. The standard was implemented to avoid an otherwise capricious interpretation of business words like “sell” and “deal” and “offer” that can have many meanings depending upon context. It was also established to avoid mere word chases through the record for uses of brand names without assessing whether real inventions lay beneath the mere words on a page. Jurors unfamiliar with the language of research and development can become confused and easily mistake an offer to sell something once it is invented with an offer for sale. Understandably, such forward-looking language can be misconstrued by a juror unfamiliar with the dynamics of as-yet-unrealized visionary possibility.

Indeed, one of the motivations for companies to invest in research and development is to be able to benefit from the result of that effort, *if* it is successful. However, there are no sure things in research and development. In short, selling a dream of an invention is not the same thing as selling an invention that *might* result from that effort. Indeed, the road to research and development success is paved with failures. **The precedent set in this case could *destroy* the ability of individual inventors to finance their research and development.** This decision, as it stands, labels *prospective* conversations about *prospective* inventions as an offer for sale—even when these conversations occur under the protection of secrecy

agreements where the parties have agreed that their conversations will have no legal effect.

By contrast, this very Court decided over a decade ago to look to the U.C.C. to evaluate whether or not an alleged offer “rises to the level of a commercial offer for sale.” While the U.C.C. was not a “bright line,” it certainly brought clarity and objectivity to the evaluation and placed the question squarely in the mainstream of contract law. Otherwise, a patent holder’s future defenses against on sale and public disclosure bar will be left with no legal guidance. Dr. Arunachalam respectfully requests that this Court apply its U.C.C. standard in this case.

Compelling reasons also justify the existence of the “reasonable measures” test under [18 U.S.C. § 1839](#) to determine whether or not a patentee has maintained the secrecy of his or her invention under the 35 U.S.C. § 102(b) public disclosure bar. The test brought clarity to the maintenance of a trade secret prior to patenting. Otherwise, jurors would be guided only by mere personal opinion. Federal law mandates that reasonable measures involve both “words” and “deeds.” The “reasonable measures” test was not performed on the evidence by this Court. One common measure to preserve trade secrets is the use of nondisclosure agreements.

Leader Technologies exhibited uncommon zeal with regard to nondisclosure agreements and secrecy practices, yet no statutory “[deeds test](#)” was performed. The research and development community will be thrown into turmoil if nondisclosure

agreements are no longer recognized as one reasonable means to protect trade secrets from public disclosure. Dr. Arunachalam respectfully requests that this Court perform a “deeds test” on the evidence.

Finally, compelling reasons justify the existence in “The Dictionary Act” under [1 USC § 1](#) of the provision “words used in the present tense include the future as well as the present.” However, this Court did not apply the Act to its interpretation of [Interrogatory No. 9](#)’s use of “is practiced.” This case turns on this interpretation since without an interpretation of this interrogatory to the past, the Court has no legal basis for its decision. The patent community relies upon the prior body of case law on the use of tense. Such an abrupt shift in the Court’s well-settled precedent is unfair and inequitable to the Plaintiff-Appellant, will place a significant undue burden on patent holders going forward, and will increase litigation costs dramatically since patent holders will no longer be able to rely upon “plain and ordinary meaning.” Dr. Arunachalam respectfully requests that this Court apply the plain and ordinary meaning of the verb “is practiced” to mean the present tense with regard to its interpretation of Interrogatory No. 9. At that point, Facebook’s on sale and public disclosure bar verdict must be set aside as a matter of law.

For these reasons, Dr. Arunachalam strongly urges the Court to grant Leader Technologies’ petition, re-hear this case, set aside the on sale and public disclosure bar, and remand this case to the district court for further proceedings.

ARGUMENT

I. American Patent Property Rights Will Be Placed In Turmoil If This Decision Is Not Corrected.

Congress ratified the U.S. Constitution on September 15, 1787. The only property right given special attention by the framers was [Article I, § 8, cl. 8](#), granting to the Congress the power

"[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"

The current anti-patent and anti-small-inventor trend in our courts belies the lessons of history, which prove that American innovation is fueled by the individual inventor. It is only the predator, thief, counterfeiter, infringer, copycat, interloper, plagiarizer, the unthinking, and those who aid them, who would wish to destroy these most fundamental of American incentives to inventorship.

It has been said before and bears repeating that without the spark of invention in a society, the creative pace of new ideas slow. When creativity is not rewarded, entrepreneurship and job creation fall off. Fewer jobs mean a decrease in tax revenues, which in turn takes away society's ability to provide civil infrastructure and social services. When a government is unable to care for its citizens, civil unrest and the decline of that society is just around the corner. The framers of the U.S. Constitution were students of history and knew this. This is precisely why they

embedded patent property rights into the fabric of our democracy.¹ That fabric is being torn in this case.

Patent holders and those hoping to protect their inventions rely upon the Court's precedents in determining their courses of action in securing a patent. If not overturned, **this Court's decision** against Leader Technologies regarding the on sale and public disclosure bar **will place all patents in peril**.

This one decision:

(1) leaves patentees with no ability to rely upon the plain and ordinary meaning of the English language;

(2) leaves the patent process with no reasonable certainty about how to protect trade secrets prior to filing for a patent;

(3) opens the door wide for predators to cajole courts into ignoring precedential law capriciously; and

(4) gives *carte blanche* to infringers to misdirect the course of justice into trial theater, fabrication of evidence, tricky attorney argument, motion practice and undue influence upon the process itself based upon this precedent.

¹ [BD. OF TRUST. OF LELAND STANFORD v. ROCHE SYS.](#), 131 S. Ct. 2188 (Supreme Court 2011) at 2200 ("Patents, for example, help to elicit useful inventions and research and to assure public disclosure of technological advances").

II. The Court Erred In Applying The Substantial Evidence Standard (Quantitative) Without *First Applying The Clear And Convincing Evidence Standard (Qualitative) To Its Review.*

[Jury Instructions No. 1.11](#) specified the clear and convincing evidence standard. The Court can review the “substantial evidence” only in light of this instruction. It did not do that, because if it had it would have “exercise[d] its independent judgment on the evidence of record and weight it as a trial court” and used its precedential standards (e.g., *Group One*, *Linear*, *Allen*, *Helifix*). *Sub.*

Instead this Court sporadically dipped into the record looking for evidence to support a clearly predetermined outcome in favor of Facebook; conveniently issuing its decision within hours of the beginning of Facebook’s IPO road show. In doing so, the Court ran roughshod over its own well-settled precedent for judging the sufficiency of evidence to support on sale and public disclosure bar.

The standard is not whether there was **substantial (. . .) evidence**. The standard is whether there was **substantial (clear and convincing) evidence**. Bottom line, the Court’s opinion neglected the standard of review completely. In a *de novo* review the Court must think for itself and not simply try to justify a flawed jury conclusion—a conclusion elicited by deception and misconduct. [SSIH EQUIPMENT SA v. US Intern. Trade Com'n](#), 718 F. 2d 365 (Fed. Cir. 1983) at 281 (“The court in ‘de novo’ review must exercise its independent judgment on the evidence of record and **weight it as a trial court**”)(emphasis added).

III. The So-Called “Substantial Evidence” Is Not Convincing Grammatically, Logically or Scientifically; An Ambiguous Use Of Grammar For The Definition Of “Is Practiced” Can Never Satisfy The Clear And Convincing Evidence Standard.

Boiled down, Facebook’s so-called “substantial evidence” is solely based (according to this Court’s opinion) upon Leader’s response to Facebook’s question in 2009 about any claim of the ‘761 patent that “is practiced” by any Leader product and/or service. The Court has concluded that this is also an “inventor’s admission” of the state of the invention back in 2002, seven years earlier.

This interpretation offends the senses in multiple ways.

Firstly, the present tense English verb “is practiced” cannot be used in reference to the past. This is the law as well as good grammar and plain common sense.

Secondly, as an inventor of internet software, Dr. Arunachalam considers it a fallacious notion to assume *without serious scientific investigation* (of the kind required by this Court’s precedent) that a statement about the state of a piece of software in 2009 also applies to all times past. Any axiom that states that “the present state of a thing applies equally to all past states of the thing” is faulty. This Court must reject this faulty logic as the basis for the jury’s beliefs about Interrogatory No. 9. No such logic exists in science or philosophy. A jury decision based on faulty logic or science must be set aside as a matter of law. [*In re Bose Corp.*](#), 580 F. 3d 1240 (Federal Circuit 2009)(“there is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the

charging party"). The jury *inferred* an improper meaning to the verb "is practiced" (*present* tense) that must be resolved against Facebook since, according to the Decision, the case turned on this question alone. (The question was not was practiced; *past* tense.) *All* the other so-called "substantial evidence" was contained in this leaky bucket.

Thirdly, stating the previous point a different way, the Court's interpretation belies the [2nd Law of Thermodynamics](#).² That law says that matter (and energy) is in a constant state of decay. Software is not exempt from this law. Software practitioners know that left unattended, software decays, breaks and stops working over time. Therefore, the notion that Leader's answer about the state of its software in 2009 applies equally to its state in 2002 is a ludicrous lapse of logic. It infers that nothing changed. Even if Leader's engineers never touched the software code between 2002 and 2009, entropy happened. Entropy alone changes things. Therefore, no 2009 answer about the software can, as a matter of science, imply anything about its previous 2002 state. Hard investigation is required. All Facebook presented was speculation, innuendo and surmise. Speculation is not evidence and this Court cannot overturn a validly issued US patent based upon speculation.

² The irreversible tendency over time toward the natural entropic dissolution of the system itself. Stated more popularly, "Matter is in a constant state of decay."

Clearly Facebook will keep repeating this speculation as long as the courts continue to turn a blind eye to its preposterousness.

Facebook's mere chase through the record for references in business documents to the Leader2Leader brand name did nothing to *prove* one way or the other whether Leader's invention remained exactly the same between 2002 and 2009. Further, the fact that Facebook's own expert witness argued that the only Leader source code put into evidence by Facebook *did not* practice the invention destroys their own argument

Why is this Court arguing for Facebook on both sides of the ball? Facebook is the adjudged infringer. Leader Technologies is the proven inventor. Remarkably, on the one hand, this Court supports Facebook's contention that the only source code in evidence *did not* contain the invention. And, on the other hand this Court *also* supports Facebook's contention that the same source code, the only source code shown to the jury, *did* contain the invention, and, was offered for sale prematurely. This duplicity defies common sense and is ambiguous at best. Facebook's own expert said the source code did not practice the invention, therefore, the invention could not have been offered for sale during the time in question. Ambiguity is not "clear and convincing."

What else did Facebook do during trial? They attacked the credibility of Michael McKibben, the true inventor, in front of an unsuspecting lay jury. They

called him a liar who was desperate to save his invention and implied (without any hard proof whatsoever) that he must have slipped up and tried to sell it too soon. This Court even added to the innuendo that Leader was “struggling financially.” Decision 6. The record shows no analysis of Leader’s financial statements anywhere. This statement by the Court as fact is pure hearsay that demeans the inventor and supports the infringer. This is unconscionable.

In short, Facebook played to the naiveté of an uncritical public to believe a lie. While a jury can be forgiven for being fooled, the purpose of this Court on appeal is to prevent such injustice. This Court’s duty is to look for hard proof instead of simply relying upon the infringer’s trial fiction. Facebook filled the jury’s head full of gobbledygook.³ Dr. Arunachalam prays that this Court does not reward such ignoble conduct any longer.

Where was the adjudged infringer Mark Zuckerberg in all this? Did the jury ever get to assess his credibility as compared to Mr. McKibben’s? Remarkably no, because the district court refused to allow Leader Technologies to introduce his testimony or mention his name at trial. This makes absolutely no sense and was clearly prejudicial to Leader Technologies being able to tell the full story to the jury, and in being able to cross-examine the adjudged infringer in front of the jury.

³ Merriam-Webster Dictionary: “wordy and generally unintelligible jargon;” Language that is meaningless or is made unintelligible by excessive use of abstruse technical terms; nonsense.

The Court's interpretation of the "is practiced" question is ambiguous at best. Therefore, as a matter of law, science and logic, an ambiguous premise *cannot* be the basis for a "clear and convincing" determination. Put another way, an ambiguous item of evidence, upon which all other alleged evidence is based,⁴ cannot be the basis for overturning the presumption of validity of a patent issued in the United States of America.

By law, "is practice" cannot be applied in this case to any time prior to the time of the question, which was 2009. Therefore, Interrogatory No. 9 is not even ambiguous.

Even if one were to proceed down the path of reasoning that the fact finder might have believed the "is practiced" response applied to the past, this renders Facebook's interpretation ambiguous at best. Therefore, at best this response classifies as a mere "scintilla of evidence." *Sub.* The other so-called "substantial evidence" in support of this scintilla must, as items of logic, be considered as "sub-scintillas" of evidence, since their basis for validity relies upon the precedent scintilla and cannot themselves be elevated to a higher state of being than the scintilla parent. Then, adding up the lone scintilla with alleged "substantial" sub-

⁴ The law of bivalence was breached by Facebook's assertion. A clear and convincing conclusion cannot be based upon a statement that can either be true or false (ambiguous). In fact, in law an ambiguous assertion is generally considered a false assertion for the purposes of impeachment.

scintillas, one cannot raise the sum state of this aggregate of evidence to the level of “clear and convincing” in law, science, logic or common sense. [*Anderson v. Liberty Lobby, Inc.*](#), 477 US 242 (Supreme Court 1986) at 252 (“mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient”).

An illustration of Facebook “scintilla” may help clarify the legal question. Here “S” represents a scintilla of *deficient* Facebook evidence:

$$S + S_{sub-scintilla_1} + S_{sub-scintilla_2} \dots \neq \text{Clear and Convincing}$$

Now let’s compare the legal standard of review for **substantial (clear and convincing) evidence** (Fig. 1) with Facebook’s **substantial (deficient) evidence** whose sub-scintillas must be considered “gray” evidence at best (Fig. 2). “Gray” means the evidence is suspect at best since it is derived from a questionable premise. In Fig. 1 E_N represents an item of *clear and convincing* evidence.

E_1	E_2	E_3
E_4	E_5	E_6
E_7	E_8	E_9

Fig. 1 – The Legal Standard of Review: Substantial (Clear and Convincing) Evidence

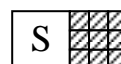


Fig. 2 – Facebook’s Substantial (Deficient) Evidence

This analysis illustrates the jury's and courts' confusion. Too much weight was given to the gobbledygook of Facebook's S(sub-scintillas) of evidence without first sorting out the S from the E(*n*) evidence. Without Interrogatory No. 9 there was no E evidence at all; *n*=null. Colloquially speaking, no attempt was made to separate the wheat from the chaff. Winnowing reveals that the evidence was *all chaff*—there was no wheat. Even a few grains of dodgy evidence is not clear and convincing.

Propriety dictates that a jury's belief about an ambiguous statement must be resolved in favor of validity (Leader Technologies, the real inventor). However, the fact is that Interrogatory No. 9 is not ambiguous as a matter of law. Therefore, Facebook fails to meet the clear and convincing burden of proof no matter how its deficient evidence is interpreted.

IV. The Court Neglected To Use Its Own Well-Settled Precedents To Test The Evidence—Precedents Upon Which The Entire Patent World Relies.

This Court is not a mere rubber stamp for district courts and juries. Its purpose is to take a critical look at what transpired in the lower courts for mistakes, prejudices and injustices, and make them right. This Court did not test *any* of Facebook's evidence against well-settled standards for assessing 35 U.S.C. 102(b) claims of on sale and public disclosure bar, including:

A. Element-by-Element Test: Did the Court perform an element-by-element prior art test against the alleged offers? **No.** [*Advanced Display Sys., Inc. v.*](#)

[*Kent State Univ.*](#), 212 F.3d 1272, 1282 (Fed. Cir. 2000)(“describe every element of the claimed invention”).

B. Uniform Commercial Code (“U.C.C.”) Test: Did the Court evaluate the alleged offers against the U.C.C.? **No.** Do the alleged offers “rise to the level of a commercial offer for sale” pursuant to the U.C.C.? **No.** [*Group One, Ltd. v. Hallmark Cards, Inc.*](#), 254 F. 3d 1041 (Fed. Cir. 2001) at 1047 (“we will look to the Uniform Commercial Code (“UCC”)”).

C. Reasonable Measures Secrecy Test: Did the Court perform the reasonable measures “deeds” test to determine if Leader had taken reasonable steps to protect its invention secrets from public disclosure? **No.** [18 U.S.C. §1839\(3\)\(A\)](#)(“reasonable measures to keep such information secret”); [*US v. Lange*](#), 312 F. 3d 263 (7th Circuit 2002)(“This makes it irrelevant that RAPCO does not require vendors to sign confidentiality agreements; it relies on deeds (the splitting of tasks) rather than promises to maintain confidentiality”);⁵

D. No-Reliance Contractual Terms Test: Did the Court take notice of the no-reliance agreements in place through the signing of the nondisclosure agreements (“NDA”) by alleged recipients of the offers; agreements that

⁵Leader Technologies involved leading experts in the field of intellectual property and trade secrets to help protect its secrets, namely law [Professor James P. Chandler](#) and [Maj. Gen. James E. Freeze, U.S. Army \(ret.\)](#). See p. 20; fn. 21.

contractually negated offers as a U.C.C. matter of law? **No.** U.C.C., [Restatement \(Second\) Contracts \(1981\) §21](#) (“parties . . . may intend to deny legal effect to their subsequent acts”); ⁶

E. Experimental Use Test: Did the Court test the evidence to determine if the alleged offers were permitted experimental use and therefore exempt from the on sale and public disclosure bar? **No.** [Allen Eng'g Corp. v. Bartell Indus., Inc.](#), 299 F.3d 1336 (Fed. Cir. 2002)(experimental use exemption).

F. Enablement Test of Brand References: Did the Court determine whether references to the Leader2Leader brand name “enables a person of ordinary skill in the art to practice the claimed method sufficient to prove on sale and public disclosure bar by clear and convincing evidence? **No.** [Helifix Ltd. v. Blok-Lok, Ltd.](#), 208 F. 3d 1339 (Fed. Cir. 2000)(“teaser” brand name references in selling documents do not trigger on sale bar because one of ordinary skill cannot build the invention from the mere reference to a brand name).

G. The Dictionary Act Test: Did the Court test the Interrogatory No. 9 evidence against the plain and ordinary meaning of English verb tense? **No.** [Carr v. US](#), 130 S. Ct. 2229 (Supreme Court 2010) at 2234 (“the present tense form of the

⁶ [PTX-1058](#) at 5 (Wright Patterson NDA: only definitive agreements shall have any legal effect); [DTX-725](#) (LTI-153002) at 5 (Vincent J. Russo NDA); [S. Hrg. 108-100](#) (2003) (testimony places Dr. Russo at WPAFB on Apr. 2, 2001).

verb `to travel' . . . , which according to ordinary English grammar, does not refer to travel that has already occurred”).

Inventors rely upon this Court to uphold patent property rights from infringers as a fundamental tenet of our democracy. If the Court does not uphold its own precedential standards, then all patent rights are thrown into disarray.

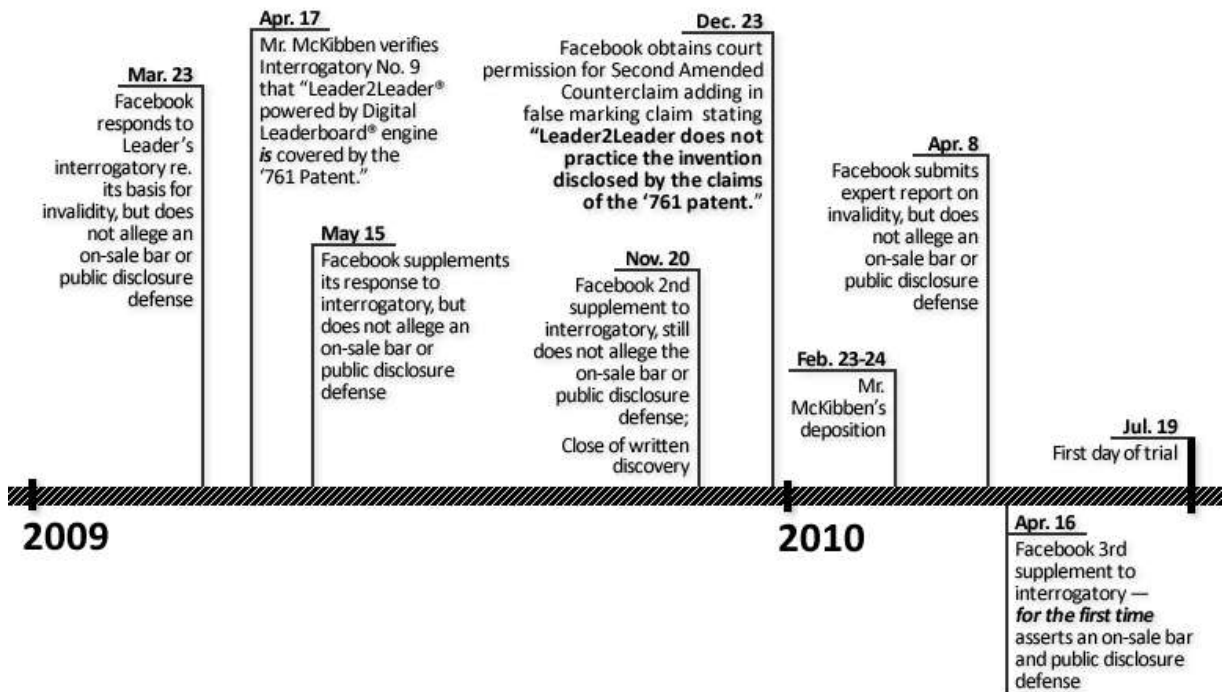
V. This Court Accepted Substantially Prejudicial Conduct In The Lower Court.

A. Prejudicially Late Claims Allowed. The district court changed judges just three months before trial. The new judge, as one of his first acts, allowed Facebook to amend its claims in an “about-face” and add on sale and public disclosure bar. Facebook should not have been permitted to claim on sale and public disclosure bar so close to trial. Besides being an illogical flip-flop in going from false marking (that no invention ever existed) to on sale and public disclosure bar (that an invention not only existed, but was offered for sale too early), this new claim was highly prejudicial since the district court did not allow any new discovery so that Leader could prepare its defenses. Such a decision crosses the line from judicial discretion to judicial prejudice.

For example, had Leader been allowed discovery, Leader would have been able to call expert witnesses including their former director law [Professor James P. Chandler](#) to testify on the subject of Leader’s “reasonable measures” taken to

protect its trade secrets. He knew these facts from personal knowledge and involvement. [Trial Tr. 10799:17-10800:22](#). The jury would have been unable to ignore Professor Chandler's authority and credibility since he was the chief author of the Federal Trade Secrets Act. His advice is relied upon by the U.S. Judiciary and Congress, among others. DTX-0179 ("Professor James Chandler, Director - President of the National Intellectual Property Law Institute and a principal security, intelligence and intellectual property advisor to over 202 jurisdictions worldwide"); [S.Hrg. 104-499](#) (Economic Espionage); [H.Hrg. Y 4.J 89/1:104/30](#) (Patents Legislation); H.Repts. [104-784](#), [788](#), [879](#), and [887](#); [White House Press Sec., Jan. 18, 2001](#) (NIAC); [DTIC-94-7-18-001](#).

Even a cursory review of Plaintiff-Appellant Leader's timeline (re-presented below) plainly shows the prejudice imposed on Leader Technologies by the late claim. [Corrected Combined Petition 6](#).



Leader was unfairly surprised and the allowance of this untimely claim confused the proceedings, creating extreme prejudice against the inventor. [Sears, Roebuck & Co. v. Mackey](#), 351 US 427 (Supreme Court 1956) at 437 (“any abuse of that [judicial] discretion remains reviewable by the Court of Appeals”); [Fed. R.Evid. 403](#) (excluding evidence for prejudice and confusion); [Fed. R.Civ. Proc. 26](#) (duty to disclose; prohibits unfair surprise).

B. Jury Binder / Interrogatory No. 9 Charade.

Facebook’s court room theater surrounding Interrogatory No. 9 was highly prejudicial and went unchecked by the district court. The court allowed Facebook to present a heavily-redacted version of Leader’s responses to Interrogatory No. 9

(over Leader's objection). Wigmore, Evidence, 3rd ed. ("Possibilities of error lie in trusting to a fragment of an utterance without knowing what the remainder was.").

To make matters worse, Facebook introduced the [doctored interrogatory](#) embedded deep inside a thick jury binder in a stunt that consumes *nine pages of trial transcript*. [Tr. 10740:7-10749:3](#). Facebook handed the jury a heavy binder that contained a raft of Leader engineering drawings dated around 2000. Facebook's heavily-redacted few pages of Interrogatory No. 9 were buried in the back of the binder, forcing the jury to fold over many pages of engineering drawings to get to it. Each of the engineering drawings contained the Leader2Leader logo graphic. The evident innuendo was that these drawings *implied* that actual software programming code *may* lie behind them.

Then, in the *piece de résistance* the next morning, Facebook claimed it made a mistake, claimed they did not intend for the engineering drawings to be given to the jury, and asked for them to be removed before Leader could cross-examine the evidence. Over Leader's vehement objections the district court allowed the removal, at one point even suggesting that he tell the jury a lie as the reason for the removal. [Tr. 10742:7-9](#) ("I've made an administrative mistake by admitting a large document when I meant to admit two pages"). Why would the judge offer to tell a fib for Facebook? Why would the judge allow such unvarnished prejudice? This conduct steps beyond judicial discretion into extreme prejudice.

By comparison, the district court in [*Guy v. Crown Equipment Corp.*](#), 394 F.3d 320 (5th Circuit 2004) at 2(b) excluded boxes of accident reports in a transparent attempt by the plaintiff to prejudice the defendant with innuendo by dumping boxes of documents on the jury. On appeal the judge's actions were affirmed, stating "The district court did not abuse its discretion in excluding all but the 360 accident reports for left-leg injuries incurred by operators of forklifts without doors. For starters, the court noted, and criticized, the 'theatrics' employed by Guy in offering the evidence — bringing boxes of accident reports into the courtroom, in the presence of the jury. Obviously, this was prejudicial. *See* [Fed. R.Civ.Proc.103\(c\)](#) (should not suggest inadmissible evidence to jury); [Fed. R.Evid. 403](#)."

C. Lack of Expert Witness Credibility.

Patent cases are often highly technical in nature, for this reason one of the solemn duties of the district court judge is to ensure the reliability of expert witnesses. It is the court's responsibility to disqualify unreliable science since the fact-finders rely on that testimony to assess the facts objectively. Without reliable expert testimony, the fact-finders cannot do their jobs, and their conclusions will be founded upon unreliable information. [*Daubert v. Merrell Dow Pharmaceuticals, Inc.*](#), 509 US 579 (Supreme Court 1993) at 595-597 (the trial judge must ensure the reliability of scientific testimony).

Facebook's expert witness Dr. Saul Greenberg's testimony regarding Leader's provisional patent was hopelessly flawed and unreliable. The district court had a duty to disqualify him and did not. Specifically, in a sad but somewhat humorous bit of hand waving, Dr. Greenberg first claimed that any comment he made about Leader's source code would be a "wild guess." [Tr. 10903:10](#). Firstly, it is simply not credible for a Java programming expert such as Dr. Greenberg to claim not to know the general purpose of Java "import" statements. This alone was grounds for dismissal. Then, several transcript pages later he waxed eloquent "using my knowledge of programming" to assist Facebook with an opinion about that very code he said that he could not understand. [Tr. 10904:8-10905:15](#). Such testimony is not credible. *See* also fn. 4 regarding the law of bivalence. Specifically, either he could or he could not understand the code. Both claims cannot be true. He claimed to later understand what he could not understand earlier. This ambiguous testimony should have been discarded by the district court.

Dr. Greenberg's contradictory claims discredit *all* of his testimony. Since his was the only testimony arguing against the validity of Leader's provisional patent, Facebook's on sale and public disclosure bar claim would have been moot without Greenberg's unreliable testimony. [Christophersen v. Allied-Signal Corp.](#), 939 F. 2d 1106 (5th Circuit 1991) at 1127 ("If the record establishes a critical fact contrary to the expert's testimony, or if a court may take judicial notice of a fact that fatally

contradicts the assumptions of an expert, then his or her testimony ought to be excluded").

D. Leader Was Denied The “Crucible Of Cross-Examination” Of Mark Zuckerberg, The Adjudged Infringer.

The jury was never given the opportunity to hear from Mark Zuckerberg because the district court would not allow Leader to introduce his testimony or even mention his name at the trial. Facebook attacked the credibility of the true inventor of ‘761, Michael McKibben, but Leader’s attorneys were not given the opportunity to put the adjudged infringer Mark Zuckerberg on the stand to test his credibility by comparison. Facebook called Mr. McKibben a liar. The jury was bent toward that unproven innuendo. How might the trial have gone if Leader were given the opportunity to inquire of Mr. Zuckerberg directly about where he obtained the Leader source code? It is quite likely the texture of this trial would have changed completely and the focus would have been rightly placed on the adjudged infringer and not solely on the rightful inventor.

How can any thinking person believe that disallowing Mark Zuckerberg’s testimony at this trial was not prejudicial and did not step beyond the bounds of judicial discretion? [*Davis v. Alaska*](#), 415 US 308 (Supreme Court 1974)(“We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination”); See also [*Crawford v. Washington*](#), 541 US 36 (Supreme Court 2004) at 61, 74

(“testing in the crucible of cross-examination . . . cross-examination is a tool used to flesh out the truth, not an empty procedure”).

Leader’s constitutional right to test Mark Zuckerberg “in the crucible of cross-examination” was denied, leaving Facebook free to attack the true inventor’s credibility with impunity. Such a denial is beyond judicial discretion.

New evidence is emerging in other venues that casts serious doubt on Mark Zuckerberg’s veracity (veracity that the district court in this case refused to allow Leader Technologies to test). For example, Mr. Zuckerberg now claims for the first time in a sworn declaration that “I conceived of the idea for Facebook in or about December 2003.”⁷ However, a conflicting witness claims that Mr. Zuckerberg’s claim is false.⁸ This witness (who recently passed a lie detector test on this question) also says that Mark Zuckerberg sent him Leader Technologies’ White Papers in February of 2003.⁹ If this is true, then Mark Zuckerberg perjured himself in his Leader deposition since he answered “absolutely not” when asked if he had seen a

⁷ [Decl. of Mark Elliot Zuckerberg](#), *Paul D. Ceglia, v. Mark Elliot Zuckerberg and Facebook, Inc.*, 10-cv-569-RJA (W.D.N.Y. 2010), Doc. No. 46, June 1, 2011, Ex. B.

⁸ Def. Mot. to Enforce, Jun. 27, 2012, Ex. D., [Aff. of David London, No. 10\(c\)](#), *Edward B. Detwiler et al, v. Leader Technologies, et al*, 09-CV-006857 (Franklin Co. (Ohio) C.P. 2009).

⁹ [Id., No. 32](#).

copy of Leader's White Papers in 2003-2004, according to Leader attorneys.¹⁰ The district court blocked Leader's attempt to introduce this evidence at trial.

Mr. Zuckerberg also claimed in 2006 testimony to have built the entire Facebook platform in "one to two weeks" while studying for Harvard final exams in January 2004.¹¹ However, this claim is now hotly contested by at least two witnesses. One witness claims that Mr. Zuckerberg was waiting for Leader's source code to be "debugged" all through 2003. If this is true, then Mr. Zuckerberg perjured himself again, and proof of patent infringement in this case becomes a *fait accompli*.¹² Another witness states that another heretofore unidentified person named "Jeff" was helping Mr. Zuckerberg, in late 2003¹³ thus contradicting his *ConnectU* testimony where he claims to have done everything all by himself.¹⁴

¹⁰ [Tr. 1107:8, Heidi Keefe](#), Judge's Conference, Jul. 24, 2009, Doc. No. 77.

¹¹ [Zuckerberg Deposition, Tr. 41:10; 82:4](#), Apr. 25, 2006, , *ConnectU LLC v. Zuckerberg et al*, 1:04-cv-11923-DPW (D.Mass. 2004).

¹² *Detwiler* (fn. 9 above), [Aff. of David London, No. 58](#).

¹³ [Amended Complaint, No. 39, Apr. 11, 2011](#), *Ceglia v. Zuckerberg* (Zuckerberg: "if you could send another \$1000 for the facebook (sic) project it would allow me to pay my roommate or Jeff to help integrate the search code and get the site live before them").

¹⁴ [Zuckerberg Deposition, Tr. 37:15-20](#) (Q: "Were you the initial code writer of the initial code for Facebook? A. Yes. Q. Was there anybody else who assisted in writing the initial code for Facebook? A. No.").

Mr. Zuckerberg stated under oath in the *ConnectU* deposition that he had “other” sources for the first version of Facebook, but not surprisingly, he couldn’t remember what they were. Was this “Jeff” one of those “other” sources? Facebook did not produce this Nov. 22, 2003 “Jeff” Email to Leader.¹⁵

Perhaps more egregious than anything else, Facebook provided no copies of Facebook’s source code or computer hard drive information to Leader from the critical 2003-2004 timeframe during discovery. However, new information has surfaced that volumes of 2003-2004 information not only exist, but that **Facebook is currently attempting to have it destroyed**. That evidence was never produced to Leader Technologies and may include “at least five computers belonging to and used by Defendant Zuckerberg while a student at Harvard.”¹⁶ These computers contain things like “Instant Messaging logs” and source code from Mr. Zuckerberg’s activity at Harvard in 2003-2004 that was never produced to Leader.¹⁷ This

¹⁵ [Id., Tr. 36:22](#) (Zuckerberg: “I’m sure there are other things”).

¹⁶ [Temporary Restraining Order, Doc. No. 232, Nov. 25, 2011](#), *Ceglia v. Zuckerberg*, (to prevent Facebook’s destruction of evidence)(“Plaintiff has come across evidence that Defendants and defense counsel have suppressed evidence, made fraudulent arguments related to that suppressed evidence and actively sought, encouraged, urged and solicited destruction of that evidence from those whom [sic] have possession of it.”);

¹⁷ [Motion Hearing, Tr. 19:21, Doc. No. 361-19, Jun. 2, 2008](#), *ConnectU, Inc. et al v. Facebook, Inc. et al*, 1:07-cv-10593-DPW, Aug. 19, 2011 (D.Mass. 2007).; *Id.*, Doc. No. 361-6, p. 7 (“To date, TheFacebook, Inc. (the “Facebook”) has produced

withholding of evidence is unconscionable, especially with the specter that it would prove not only patent infringement, but outright theft.

Facebook's "song and dance" in *all* the litigation against them, including this one, has been that they don't understand the scope of the litigation.¹⁸ This **predatory obfuscation tactic**¹⁹ needs to be exposed by this Court for the whole world to see, understand, and no longer permit as a tactic of obstruction to prevent the rightful owners of patent properties from enjoying the fruits of their labors. Predators should be prevented from using the Rules of Civil Procedure to *hide* their theft of patent properties. **This predatory litigation technique will destroy the small American inventor by putting such disincentives in the way that they will no longer bother sharing their ideas with the public.** See *LELAND STANFORD*, fn. 1 above. As another case in point, the eventual discovery procedure of the Zuckerberg hard drives in *ConnectU* was so narrowly defined as to be able to cleverly avoid any surfacing of

three different versions of its source code, with file dates spanning from early to mid 2004 up through 2005").

¹⁸ [Tr. 1106:13, Paul Andre](#), Judge's Conference, Jul. 24, 2009, Doc. No. 77.

¹⁹ Almost one year into the *Leader v. Facebook* litigation, Facebook's Cooley Godward LLP attorney Heidi Keefe continues the obstructive hand-waving mantra "we do not still actually have a good grasp on what they are accusing of infringement." [Id. 1116:8-9](#). Similar discovery disputes in the *ConnectU* case went on for the first *two years* of the litigation.

the Leader Technologies' source code.²⁰ Leader should have been given an opportunity to study all of these hard drives for evidence of its source code and white papers that New Zealander David London testifies and verifies by reputable polygraph he received from Mr. Zuckerberg in Feb. 2003. See fn. 9.

All these discrepancies in Mr. Zuckerberg's story, the possibility that he actually stole Leader's source code, and the possible deliberate concealment of discovery information deserved to be explored by Leader, but Leader was denied that constitutional opportunity by the district court for such inquiry at trial. One of Leader's claims was willful infringement. They were prevented by Facebook's stealth in hiding behind the Rules of Civil Procedure, blocking a full confrontation of Mr. Zuckerberg on all these matters. Surely the spirit and intent of the Rules are not to *obstruct* justice as has occurred here. Such decisions by the lower court step well beyond the bounds of judicial discretion.

VI. The Efficacy of Nondisclosure Agreements Are Placed In Doubt By The Court's Decision.

Unless the Court changes its mind, its treatment of the efficacy of nondisclosure agreements throws the entire patent world into turmoil. Leader

²⁰ [Order for Discovery of Computer Memory Devices, Doc. No. 361-18, Aug. 19, 2011, p. 4 of 22, *ConnectU v. Facebook*](#) (Order restricting the search to only "PHP or HTML source code"). Leader Technologies' source code was written in Java and XML. Facebook was found guilty of infringing this Leader source code on 11 of 11 claims.

Technologies exhibited admirable diligence in protecting its secrets, even hiring eminent directors who are experts in the field of trade secrets and security. The record shows not just reasonable measures, but extraordinary measures to protect its inventions from public disclosure.²¹

If this Court continues to ignore Leader's reasonable measures deeds as well as their written nondisclosure agreements, the impact of this precedent on the patenting process will be devastating. This Court will be saying that secrecy agreements, no matter how diligently handled, are irrelevant to maintaining secrecy during the invention process. Every infringer from this day forward will attack rightful inventors over the irrelevance of their NDAs and will cite this case as precedent.

Many if not most small inventors seek financial backing to sustain their invention efforts. If secrecy agreements are rendered irrelevant by this case precedent, the small inventors will have no ability to raise research and development funds. This decision will have effectively made the invention patenting process the exclusive domain of large, well-funded companies who can

²¹ For example, another Leader Director was Maj. Gen. James E. Freeze, U.S. Army (ret.), former head of the U.S. Army Security Agency; former Asst. Deputy Dir. of the National Security Agency (NSA); author of "The Freeze Report" on national laboratory security; [H.Hrg. 106-148](#); [GAO/RCED-93-10](#); [H.Hrg. 100-T91BB192](#) (J. Tuck); [DTX-0179](#) ("Major General James Freeze, US Army (ret.), Director - former head of the US Army Security Agency; Asst. Deputy Director of NSA; author of "The Freeze Report" on Department of Energy security").

afford to fund research internally. Such a change in the tenor of patent laws requires an Act of Congress based upon the will of the Citizens of the United States. Such a change in the interpretation of the U.S. Constitution Article I, § 8, cl. 8 is outside the jurisdiction of this Court.

CONCLUSION

For the reasons stated above, Dr. Arunachalam strongly urges the Court to grant Leader Technologies' petition, re-hear this case and rule in favor of Leader Technologies in this matter of critical importance to all inventors and patent holders, present and prospective.

Respectfully Submitted,

/S/

July 10, 2012

Lakshmi Arunachalam, Ph.D.

222 Stanford Avenue

Menlo Park, CA 94025

Tel.: (650) 854-3393

for Amicus Curiae Dr. Arunachalam

APPENDIX

CURRICULUM VITAE

Lakshmi Arunachalam, Ph.D.
Amicus Curiae

Dr. Lakshmi Arunachalam is a thought leader, inventor and pioneer in Internet multimedia web applications. She is Founder, Chairman and CEO of WebXchange, Inc, an online web applications platform for real-time exchange of multimedia information on the net, connecting users and devices with multimedia content owners and applications on the net. She holds key Internet patents on Internet Channel Control and web applications. In recent times, she has been focusing on patent licensing.

Dr. Arunachalam is also Chairman and Founder of Pi-Net International, Inc., a professional services company specializing in IT, IP, software, networking, security and Internet-related technologies. Dr. Arunachalam is also Chairman and Founder of e-pointe, Inc, Nithya Innovations, Inc. and WebXmagnet, Inc.

Prior to her current positions, Dr. Arunachalam directed network architecture at Sun Microsystems, IBM, AT&T Bell Labs, Carnegie Mellon Andrew File System and NSFNET. She held leadership positions in the IEEE802 and IEEE

POSIX X.500 standards bodies. She also worked at NASA Johnson Space Center with MITRE Corporation.

In addition to her patent and intellectual property work and entrepreneurial ventures, Dr. Arunachalam has taught at the University of Toronto and University of Madras. Her courses study the effects of the Internet and media technology on society. She has also taught courses in physics and computer networks, as well as refereed for computer journals. Dr. Arunachalam was a post-doctoral fellow at Rice University, Houston, Texas. She received her Ph.D. in Electrical Engineering from Salford University, Manchester, England, and M.S. in Physics from Simon Fraser University, British Columbia, Canada, graduate courses in Computer Science from University of Houston, and a B.S. and M.S. in Physics from University of Madras, India. She has published several books and papers in computer networking and holds patents, namely U.S. Patent Nos. [5,778,178](#); [6,212,556](#); [7,340,506](#); [5,987,500](#); [7,930,340](#); [8,037,158](#); and [8,108,492](#). She also has patents pending, namely U.S. Patent Application Nos. 12/628066; 12/628,068 (Notice of Allowance issued); 12/628,069; 12/932,758; and 13/199,077.

Lakshmi Arunachalam, Ph.D. | 222 Stanford Avenue | Menlo Park, CA 94025 | 650.854.3393 | laks22002@yahoo.com | laks@webxchange.com

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b), copies of the foregoing BRIEF OF *AMICUS CURIAE* LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC in green cover pursuant to Fed. R. App. P. 28.1(d) including a CERTIFICATE OF INTEREST and ENTRY OF APPEARANCE, were served on the following recipients by overnight mail:

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Washington D.C. 20439

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Paul Andre, Esq.

KRAMER LEVIN LLP

990 Marsh Road

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Palo Alto, CA 94304

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Fax: (650) 849-7400

Attorney for Defendant-Appellee

A copy of the foregoing was also provided to Americans for Innovation at scribd/amer4innov for publication.

/S/

Lakshmi Arunachalam, Ph.D.

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for Amicus Curiae

Lakshmi Arunachalam, Ph.D.

July 10, 2012

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
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1. This BRIEF OF *AMICUS CURIAE* LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) or Federal Rule of Appellate Procedure 28.1(e). 2. The brief contains 6425 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) or Federal Rule of Appellate Procedure 28.1(e) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in 14 point Times New Roman.

Any noncompliance with the aforementioned Rules is purely inadvertent and will be corrected immediately upon notification.

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

ENTRY OF APPEARANCE

Please enter my appearance: Pro se

I am: Amicus curiae

As amicus curiae, I support: Petitioner / Plaintiff-Appellant
Leader Technologies, Inc.

My address and telephone are: Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

Certificate of Interest: See page 2.

July 10, 2012 /S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

cc.

Paul Andre, Esq., KRAMER LEVIN LLP, Counsel for Leader Technologies, Inc.

Heidi Keefe, Esq., COOLEY GODWARD LLP, Counsel for Facebook, Inc.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D.
FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF
LEADER TECHNOLOGIES' PETITION FOR
REHEARING AND REHEARING *EN BANC*
*Civil Appeal No. 2011-1366***

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 10, 2012

MEMORANDUM IN SUPPORT

Inventor and patent holder Lakshmi Arunachalam, Ph.D.
("Dr. Arunachalam"), as *amicus curiae*, respectfully requests leave of this Court to file a BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC* dated July 10, 2012.

Dr. Arunachalam is an inventor and holder of numerous patents in the field of Internet technologies with a principal place of business in Menlo Park, California. She comments in favor of the Petitioner-Appellants' Corrected Combined Petition For Panel Rehearing And Petition For Rehearing *En Banc* Of Plaintiff-Appellant Leader Technologies, Inc. dated June 12, 2012.

Dr. Arunachalam believes this petition raises important issues of patent law that are critical to the future of the patenting process, and most especially for those engaged in the protection of Internet software technologies. As grounds for this request, Dr. Arunachalam states that her *amicus curiae* brief would be of special assistance to the Court because this proceeding presents a number of constitutional, legal and procedures issues of critical importance to the holders of existing patents as well as to prospective patent holders.

Dr. Arunachalam offers a unique perspective as a long time inventor and patent holder who has been involved with protecting her inventions for more than a

decade against the predatory litigation tactics of large law firms which can often deceive busy courts and result in injustices against an inventor's rightful property and denial of rightful returns to their investors who support innovation.

For the foregoing reasons, Dr. Arunachalam, as *amicus curiae*, respectfully requests that this Court grant this motion. The Plaintiff-Appellant's petition is pending and this motion is being submitted in support of the Court's consideration of the petition. As such, no return date is applicable.

Dated: July 10, 2012
Menlo Park, California

Respectfully submitted

/S/

Lakshmi Arunachalam, Ph.D.
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Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b) I do hereby certify that twelve (12) copies of the foregoing NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D. FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC will be sent to the Clerk of the Federal Circuit at:

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United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Room 401
Washington D.C. 20439

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990 Marsh Road
Menlo Park, CA 94025
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Attorney for Plaintiff-Appellant

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for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 10, 2012



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NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2011-1366

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Delaware in case no. 08-CV-0862, Judge Leonard P. Stark.

ON MOTION

Before LOURIE, MOORE, and WALLACH, Circuit Judges.

ORDER

Lakshmi Arunachalam, Ph.D. moves for leave to file a brief as amicus curiae in support of Appellant's corrected combined petition for rehearing and rehearing en banc.

Upon consideration thereof,


IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

July 11, 2012

Date



Jan Horbaly
Clerk

cc: Paul J. Andre, Esq.
Thomas G. Hungar, Esq.
Lakshmi Arunachalam, Ph.D.

FILED
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THE FEDERAL CIRCUIT

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JAN HORBALY
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Howard T. Markey National Courts Building
717 Madison Place, N.W.
Washington,



Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025

Exhibit A, Page 53



Exhibit B

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**MOTION FOR RECONSIDERATION OF
NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D.
FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF
LEADER TECHNOLOGIES' PETITION FOR
REHEARING AND REHEARING *EN BANC*
*Civil Appeal No. 2011-1366***

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 18, 2012

Pursuant to the Federal Rules of Appellate Procedure 27(a)(5) movant has conversed with the parties regarding movant's intent to file. Leader Technologies has indicated no objection to this filing. Facebook says it does not consent to the motion, will not file a response, and requested that this be added: "Facebook . . . notes that the motion is moot because rehearing has been denied."

Facebook's moot argument is out of order. Dr. Arunachalam's ten (10) day response time from July 11, 2012 pursuant to Federal Rules of Appellate Procedure 27(a)(3)(A) was still pending. The Rules require the Court to give "reasonable notice to the parties that it intends to act sooner." No such notice was provided. Therefore, any alleged denial of the petition would be out of order, if indeed this has occurred, since as of July 18, 2012 at 1:09 PM EDT no such notice appears on the Court's docket. In addition, a telephone call to the Clerk's office yesterday indicated that it is highly unlikely that the judges were forwarded copies of Dr. Arunachalam's motion, or had time to read it and give reasonable consideration. If such conduct occurred it would be a shocking denial of due process.

Dr. Arunachalam requests a reasonable explanation of the rationale justifying the denial of her *amicus curiae* brief by the Court in such an uncharacteristically hasty manner, replete with disrespectful typos in the July 11, 2012 docket entry.

MEMORANDUM IN SUPPORT

On July 10, 2012 inventor and patent holder Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) sent by overnight delivery a Notice Of Motion Of Lakshmi Arunachalam, Ph.D., For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies’ Petition For Rehearing And Rehearing *En Banc*. The Clerk of Court received it at 10:52 AM Eastern Standard Time on July 11, 2012. Remarkably, on the same day the Court issued an ORDER from Circuit Judges LOURIE, MOORE and WALLACH signed by Clerk Jan Horably denying Dr. Arunachalam’s motion without providing a justifying reason.

Dr. Arunachalam respectfully asks this Court to reconsider the motion pursuant to the Federal Rules of Civil Procedure 54(b) and the Federal Rules of Appellate Procedure 27. In addition, pursuant to Federal Rules of Civil Procedure 59(e) Dr. Arunachalam respectfully points out that her brief cites **substantial new evidence** that has been identified and verified in other forums that was not made available to Plaintiff-Appellant Leader Technologies. This evidence was **withheld by Facebook during discovery**. Amicus Curiae Lakshmi Arunachalam, Ph.D. Brief 26-29. For example, on August 19, 2011 in a motion hearing in *ConnectU*,

*Inc. et al v. Facebook, Inc. et al*¹ Facebook claimed that as early as August 18, 2005 they produced “**three different versions of its source code, with dates spanning from early to mid 2004.**” However, Facebook told Leader Technologies that *none* of that code existed and produced *none* of this code in discovery.

This Facebook source code information was withheld by Facebook and is material to Leader Technologies’ willful infringement claim. Its examination could give rise to new claims, especially if this discovery proves that Mark Zuckerberg actually started Facebook with an actual stolen copy of Leader’s source code. The lower court record reveals remarkable latitude given to Facebook in post-discovery-cut-off evidence gathering, but no such latitude was given to Leader Technologies.² The withholding of this evidence created a

¹ *ConnectU, Inc. et al v. Facebook, Inc. et al*, 1:07-cv-10593-DPW, Aug. 19, 2011, Doc. No. 361-6, p. 7 of 23 (D.Mass. 2007).

² Depositions of Leader Technologies’ former attorney Benjamin S. Zacks were permitted by the district court to occur up to July 6, 2010, **just two weeks before trial**. Leader Technologies was surprised to learn during these depositions that Mr. Zacks had removed 30 boxes of Leader’s business documents to his law offices; boxes that were previously unknown to Leader and were removed without authorization. Amicus Curiae Brief 26; *See also* Affidavit of Michael McKibben, *Edward B. Detwiler et al v. Leader Technologies, Inc., et al*, 09-CV-006857 (Franklin Co. (Ohio) C.P.). However, no such *quid pro quo* opportunity was given to Leader Technologies to depose individuals like their former directors Professor James P. Chandler and Maj. Gen. James E. Freeze, U.S. Army (ret.) who could have

manifest injustice. *Taitz v. Astrue*, No. 11-402, 2011 U.S. Dist. LEXIS 119453 (D.D.C. Oct. 17, 2011) at 221 (“In seeking reconsideration, a party must show that “there has been an intervening change of controlling law, that new evidence is available, or that granting the motion is necessary to correct a clear error or to prevent manifest injustice”). It is inconceivable that a reasonable person would not consider this as anything other than an **extraordinary circumstance.**

In addition, the Court is not permitted to deny a motion without providing a justifying reason. The U.S. Supreme Court in *Foman v. Davis*, 371 US 178 (1962) at 182 states:

“outright refusal to grant the leave **without any justifying reason** appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.” (emphasis added).

This Court gave no justifying reason for the denial of Dr. Arunachalam’s motion and she respectfully requests to be provided that reason with regard to her previous motion and this motion once it is ruled upon.

CONCLUSION

For the reasons stated above, Dr. Arunachalam respectfully requests that the Court grant this Motion For Reconsideration Of Notice Of Motion Of Lakshmi

provided corroborating evidence to support Leader’s on sale and public disclosure bar defenses. Oral Order, Jul. 16, 2010; *See also* Amicus Curiae Brief 17, 19, 20, 31.

Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of
Leader Technologies' Petition For Rehearing And Rehearing *En Banc*, and
provide justifying reasons for the decisions reached.

Dated: July 18, 2012
Menlo Park, California

Respectfully submitted,

/s/

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222 Stanford Avenue
Menlo Park, CA 94025
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for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies pursuant to the Federal Rules of Appellate Procedure 27(a)(7) the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 18, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

PROOF OF SERVICE

Pursuant to Fed. R. App. P. 27(a)(9) and 27(d)(1)(E)(3) I do hereby certify that four (4) copies plus one (1) original of the foregoing MOTION FOR RECONSIDERATION OF NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D. FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC* will be sent by overnight delivery to the Clerk of the Federal Circuit at:

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Tel.: (650) 752-1700
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Attorney for Plaintiff-Appellant

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/s/

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for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 18, 2012

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United States Court of Appeals for the Federal Circuit

2011-1366

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Delaware in case no. 08-CV-0862, Judge Leonard P. Stark.

ON MOTION

Before LOURIE, MOORE, and WALLACH, Circuit Judges.

ORDER

Lakshmi Arunachalam, Ph.D. requests reconsideration of the court's July 11, 2012 order which denied her motion for leave to file a brief as amicus curiae.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied as the brief is moot and was filed out of time and in excess of the permitted page count.

FOR THE COURT

July 24, 2012

Date



Jan Horbaly
Clerk

cc: Paul J. Andre, Esq.
Thomas G. Hungar, Esq.
Lakshmi Arunachalam, Ph.D.

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THE FEDERAL CIRCUIT

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JAN HORBALY
CLERK

Exhibit C

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**RENEWED MOTION OF LAKSHMI ARUNACHALAM, PH.D.
FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT
OF LEADER TECHNOLOGIES' PETITION FOR
REHEARING AND REHEARING *EN BANC*
*Civil Appeal No. 2011-1366***

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 27, 2012

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full name of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 27, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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AFFIDAVIT OF MS. LAKSHMI ARUNACHALAM, PH.D.

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INTEREST OF AMICUS CURIAE

Inventor and patent holder Lakshmi Arunachalam, Ph.D. as *amicus curiae*, respectfully requests leave for renewal and re-argument of her motion for leave to file a BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC* dated July 10, 2012 ("Dr. Arunachalam"),

The Court should consider and grant Dr. Arunachalam's motion, particularly in view of the new information that is emerging showing that officers of this Court are in likely multiple conflicts of interest. These *prima facie* conflicts bring the prior rulings into question and have substantially prejudiced Leader Technologies. Dr. Arunachalam seeks re-argument based on the contention that the court overlooked or misapprehended matters of fact and law in assessing the prior petitions and motions, especially in light of conflicts of interest that may have motivated the (in)actions.

Dr. Arunachalam is an inventor and holder of numerous patents in the field of Internet technologies with a principal place of business in Menlo Park, California. She comments in favor of the Petitioner-Appellants' Corrected Combined Petition For Panel Rehearing And Petition For Rehearing *En Banc* Of Plaintiff-Appellant Leader Technologies, Inc. dated June 12, 2012.

Dr. Arunachalam believes her petition filed pursuant to Fed.R.App.P. Rule 27 raises important issues of patent law that are critical to the future of the patenting process, and most especially for those engaged in the protection of internet software technologies. As grounds for this request, Dr. Arunachalam believes that her *amicus curiae* brief would be of special assistance to the Court because this proceeding presents a number of constitutional, legal and procedural issues of critical importance to the holders of existing patents as well as to prospective patent holders.

For the foregoing reasons, Dr. Arunachalam, as *amicus curiae*, respectfully files this motion pursuant to and requests that this Court grant this motion.

MEMORANDUM

Dr. Arunachalam believes that even one minute of this Court's attention to the *sole* remaining issue of law will result in an outright victory by Leader Technologies on the merits. Instead, this Court appears to be avoiding its duty and protecting the interests of the adjudged infringer Facebook behind a wall of conflicting interests.

Dr. Arunachalam emphasizes that Facebook has been adjudged to infringe 11 of 11 claims of Leader Technologies' U.S. Patent No. 7,139,761. In addition, after substantial element-by-element analysis at trial of alleged prior art, Leader defeated all prior art allegations. This means that Facebook's fortunes are being

made at the expense of important American private property rights. This circumstance offends the senses of anyone who believes that respect for personal property is a bedrock priority of a democracy. “Property must be sacred or liberty cannot exist.” John Adams, *The Works of John Adams*, 6:9, p. 280.

Yet to date, Facebook has succeeded in pulling the wool over the eyes of a jury and thirteen judges regarding Interrogatory No. 9. This Court has determined that Interrogatory No. 9 is the only item of Facebook evidence standing in the way of Leader’s outright victory. Remarkably, this Court is upholding a scandalous misconstruction of The Dictionary Act (Exhibit A) regarding Interrogatory No. 9.¹

Exhibit B.

STATEMENT

On March 5, 2012 this Court heard oral argument before Presiding Judge Alan A. Lourie, Judge Kimberly A. Moore and Judge Evan J. Wallach. On May 8, 2012 this Court issued a written opinion affirming the lower court. On July 16, 2012 this Court issued a denial of Plaintiff’s petition for rehearing and rehearing *en banc* over Clerk of Court Jan Horbaly’s signature and presumably considered by

¹ Judge Stark’s Order on Sep. 4, 2009 limited Interrogatory No. 9 to the present tense. The record shows the district court’s subsequent opinions contradict his earlier decisions. Further, the district court’s earlier rulings in *Honeywell International, Inc. v. Nikon Corp.*, 04-cv-1337-JJF (D.Del. 2004), Opinion, Dec. 4, 2009 ruled that on sale bar element-by-element proof is required. That standard was ignored.

all members of the Court. No officer of the Court disqualified himself or disclosed conflicts of interest.

Chief Judge Randall R. Rader was a law student at George Washington University Law Center when Professor James P. Chandler the Center's director. Professor Chandler has been a close intellectual property adviser and director of Plaintiff-Appellant Leader Technologies. Judge Rader and Clerk of Court Jan Horbaly have a close association with Facebook's attorney Thomas G. Hungar regarding Federal Circuit business. Judge Kimberly Moore holds Facebook stock through a mutual fund whose holdings are well-publicized. Professor Chandler, whose evidentiary facts are in dispute in this case, has consulted with the Judiciary for over a decade regarding intellectual property, patent and economic espionage matters.

The Court published both of its opinions timed to *coincide* with media events, one the commencement of Facebook's initial public offering road show in New York, and the other a nationally televised *Fox Business* interview with Leader Technologies' Michael McKibben. The denial of the rehearing petition contained no explanation of the important matters of patent and contract law being questioned.

THE LAW

Federal law requires a judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. §455(a).

Because section 455(a) is intended to avoid even the appearance of impartiality, it is not actual bias or prejudice, but rather the *appearance* of bias and prejudice that matters. *Liljeberg v. Health Services Acquisition Corp.*, 486 US 847, 860 (Supreme Court 1988); *Liteky v. United States*, 510 US 540 (Supreme Court 1994). Thus, so long as a judge’s impartiality might reasonably be questioned, disqualification is required “even though no actual partiality exists . . . because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible.” *Liljeberg* at 860. The standard for assessing whether section 455(a) requires disqualification is thus an objective one that “involves ascertaining whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *Preston v. US*, 923 F. 2d 731 (9th Circuit 1991).

Moreover, “a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to *the average person on the street*. Use of the word ‘might’ in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all the circumstances, would harbor doubts about the judge’s impartiality.” *Potashnick v. Port City Const. Co.*, 609 F. 2d 1101 (5th Circuit 1980) at 1111 (emphasis added). In “a close case, the balance tips in favor of recusal [disqualification].” *US v. Holland*, 519 F. 3d 909 (9th Circuit 2008) at 912.

Canon 2 of The Code of Conduct for United States Judges, including the Clerk of Court, states “A judge should avoid impropriety and the appearance of impropriety in all activities.”

28 U.S.C. § 455 states:

- (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or **personal knowledge of disputed evidentiary facts** concerning the proceeding; . . .
 - (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a **financial interest in the subject matter** in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
 - (5) **He or his spouse, or a person within the third degree of relationship** to either of them, or the spouse of such a person:
 - (i) Is acting as a lawyer in the proceeding;
 - (ii) Is known by the judge to **have an interest that could be substantially affected by the outcome** of the proceeding;
 - (iii) Is to the judge’s knowledge likely to be a material witness in the proceeding.

FACTS & ARGUMENT

1. New Evidence Suggests That Officers Of The Court Should Have Disqualified Themselves, Or At Least Fully Disclosed Potential Conflicts Of Interest And Sought Waivers.

Chief Judge Randall R. Rader had knowledge that long-time Leader advisor, director and intellectual property counsel **Professor James P. Chandler** was likely to be a material witness in favor of Leader Technologies, and that evidence concerning his involvement was in dispute. At minimum, *en banc* rehearing would have allowed a full and fair assessment of the law without having

to delve into these conflicts. Judge Rader's lack of disclosure, and the lack of disclosure from every justice regarding the personal knowledge of disputed evidentiary facts about Professor Chandler prejudice this case.

The evidence clearly shows that Professor James P. Chandler ("Professor Chandler") was closely associated with Leader Technologies as intellectual property adviser and director during the crucial 2002-2003 time frame. **Exhibit F**, *Amicus Curiae* Lakshmi Alunachalam, Ph.D. Brief 19, 20.

In 1977 Professor Chandler was appointed Professor of Law and Director of the Computers in Law Institute at the George Washington University National Law Center.² In 1995 and 1996 the public record as well as the trial testimony of Leader's founder and inventor Michael McKibben confirms that Professor Chandler was a central adviser to both the U.S. Senate and House Judiciary Committees on intellectual property matters including trade secrets, patents and economic espionage. Ex. F, p. 20, Trial Tr. 10799:17-10800:22.

From 1996 to the present day Professor Chandler has consulted closely with the U.S. Department of Justice in the selection and prosecution of economic espionage cases. For example, the "Economic Espionage and Trade Secrets" U.S.

² James P. Chandler, Computer Transactions: Potential Liability of Computer Users and Vendors, 1977 Wash. Univ. Law Quarterly 405 (1977), p. 405, fn.*
<<http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=2598&context=lawreview>>.

Attorneys' Bulletin, Nov. 2009³ cites the Feb. 28, 1996 testimony of FBI Director Louis J. Freeh who began his testimony acknowledging "I am also pleased that the committees have had the opportunity to consult with Professor James P. Chandler from George Washington University."⁴ Professor Chandler's consultations with federal courts include the following courts and cases:⁵

Case:	Jurisdiction:
<i>United States v. Okamoto and Serizawa</i> (2001)	N.D. Ohio
<i>United States v. Ye and Zhong</i> (2002)	N.D. Cal.
<i>United States v. Meng</i> (2006)	N.D. Cal.
<i>United States v. Lee and Ge</i> (2007)	N.D. Cal.
<i>United States v. Chung</i> (2008)	C.D. Cal.
<i>United States v. Jin</i> (2008)	N.D. Ill.
<i>United States v. Okamoto and Serizawa</i> (2001)	N.D. Ohio
<i>United States v. Williams</i> (2008)	N.D. Ga.
<i>United States v. Fei Ye</i> (2006)	N.D. Cal., 9th Cir.
<i>United States v. Meng</i> (2009)	N.D. Cal.
<i>United States v. Chung</i> (2008)	C.D. Cal.
<i>United States v. Lange</i> (2002)	7th Cir.
<i>United States v. Yang</i> (2003)	N.D. Ohio
<i>United States v. Martin</i> (2000)	1st Cir.
<i>United States v. Hsu</i> (1998)	3rd Cir.
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<i>United States v. Zeng</i> (2008)	S.D. Tex.
<i>United States v. Cotton</i> (2008)	E.D. Cal.

³ Economic Espionage and Trade Secrets. United States Attorneys' Bulletin, Vol. 57, No. 5, Nov. 2009. U.S. Dept. of Justice Executive Office for U.S. Attorneys, Wash. D.C. <http://www.justice.gov/usao/eousa/foia_reading_room/usab5705.pdf>.

⁴ *S.Hrg. 104-499* - Economic Espionage: Hearings before the Select Committee on Intelligence, U.S. Senate, and the Subcommittee on Terrorism, Technology, and Government Information of the Committee on the Judiciary, U.S. Senate, 104th Congress, 2nd Session, Feb. 28 (1996), *Y 4.IN 8/19:S.Hrg. 104-499*, Serial No. J-104-75, p. 10); *Amicus Curiae* Brief 20, Ex. A.

⁵ *Op.cit.*, pp. 7-9.

Therefore, a conflict of interests exists because Professor Chandler is likely to be a material witness during the pendency of this case, and that evidence regarding his involvement with Leader Technologies is in dispute.

Federal Circuit Chief Judge Randall Rader states on the Federal Circuit's website and in numerous other public documents that he received his "J.D. from George Washington University Law School in 1978."⁶ Professor Chandler moved to Washington, D.C. in 1977 to accept an appointment as Professor of Law and Director of the Computers in Law Institute at the George Washington University National Law Center where he served as its Director from 1977 to 1994.⁷

Therefore, the public record shows that Mr. Rader studied intellectual property law at George Washington University for two years during Dr. James P. Chandler's professorship of the very program in which then-student Mr. Rader was enrolled.

US v. Kelly, 888 F. 2d 732 (11th Circuit 1989)(recusal when a close personal friend was a key defense witness).

⁶ Randall R. Rader. Chief Judge. United States Court of Appeals for the Federal Circuit. Accessed Jul. 23, 2012 <<http://www.ca9.uscourts.gov/judges/andrew-r-rader-chief-judge.html>>.

⁷ H.Hrg. Y 4.J 89/1:104/30 - Patents Legislation : Hearings Before the Subcommittee On Courts and Intellectual Property of the Committee On the Judiciary, House of Representatives, 104th Congress, First Session, On H.R. 359, H.R. 632, H.R. 1732, and H.R. 1733, June 8 and November 1, 1995. Washington: U.S. G.P.O. (1996)(Testimony of Professor James P. Chandler, President, National Intellectual Property Law Institute, pp. III, IV, 349-354); *Amicus Curiae* Brief 20.

Mr. Rader became General Counsel to Senator Orrin G. Hatch between 1980 and 1988. Professor Chandler consulted with committees chaired by Senator Hatch multiple times. For example, this consultation was acknowledged prominently by FBI Director Louis J. Freeh in testimony before Senator Hatch's Committee on the Judiciary in 1996.⁸ A reasonable assumption from all this contact is that Judge Rader knows Professor Chandler very well as his former intellectual property law professor and the close mutual associations with Senator Hatch regarding intellectual property matters. Judges with knowledge of disputed facts in a case are duty-bound to disqualify themselves. *Potashnick, sub.*

Judge Rader appears to have misperceived the circumstances in this case and neglected to disqualify himself and his fellow justices who have conflicts of interest. At very minimum he should have granted rehearing *en banc* so that a full and fair hearing on the legality of the Court's misconstruction of the The Dictionary Act. *Supra.*

2. Facebook Stock Held By Officers Of The Court

Federal judges are required to disqualify themselves if they have a fiduciary conflict of interest in matters that come before them. 28 U.S.C. §455(b)(4). While

⁸ [*S.Hrg. 104-499*](#) - Economic espionage: Hearings before the Select Committee on Intelligence, United States Senate, and the Subcommittee on Terrorism, Technology, and Government Information of the Committee on the Judiciary, United States Senate, 104th Congress, Second Session, Feb. 28 (1996), [Y 4.IN 8/19:S.Hrg. 104-499](#), Serial No. J-104-75, (Testimony of FBI Director Louis Freeh acknowledging Professor James P. Chandler, p. 10).

the trend has been not to disqualify judges when investments in a litigant are held in mutual funds, this circumstance is different since (a) Facebook went public *during* this Court's deliberations, and (b) the appearance of conflict from a well-publicized mutual fund in a judge's portfolio is impossible for that judge *not* to notice.

a. **The Federal Circuit's Decision Was Conveniently Issued Within Hours Of Facebook's IPO Road Show Commencement In New York On May 8, 2012.**

The Federal Circuit Panel announced its decision on Tuesday, May 8, 2012 which was timed within hours of the beginning of Facebook's Road Show in New York City the same day. The average person on the street would consider this timing suspiciously accommodating to Facebook, and cause that person to "harbor doubts about the judge's impartiality." *Postashnick, sub.*

b. **The Federal Circuit's Denial of Leader's Rehearing And Rehearing *En Banc* Petition was suspiciously timed within hours of Leader Chairman and Founder Michael McKibben's nationally televised interview with *Fox Business* on July 16, 2012.**

Mr. McKibben was informed while on the air during a nationally televised *Fox Business* interview at about 2:45 PM EDT on July 16th⁹ that the Federal Circuit had denied Leader's petition earlier that day. Two days later, on July 18th, Facebook indicated in an email to Dr. Arunachalam that they were aware of the

⁹ Shibani Joshi. Interview with Michael McKibben. *Fox Business*, Jul. 19, 2012, 2:40 PM EDT. <http://video.foxbusiness.com/v/1738073255001/leader-technologies-sues-facebook-for-patent-infringement/?playlist_id=163589>.

decision. However, Leader's attorneys received no notice until Thursday, July 19, 2012. A reasonable person would consider that the Court was acting prejudicially and with suspicious timing, and thus "would harbor doubts about the judge's impartiality." *Potashnick, sub.*; See also *Lamprecht v. FCC*, 958 F. 2d 382 (D.C. Circuit 1992) at 403, 404 (breach of trust by a law clerk providing information to a news organization before it was known by the parties).

c. Denial Of Rehearing Out-Of-Order; Pleadings Un-docketed.

The Court is further prejudicing this case with questionable docketing practices. The Court has never posted for downloading by the public the 7/11/2012 Dr. Arunachalam's Motion of Lakshmi Arunachalam, Ph.D. for Leave to File Brief of Amicus Curiae. Then, the Court denied the motion the *same day*. No reasonable person believes that all twelve justices had time to consider this motion.

Likewise, the Court has never posted for downloading by the public Dr. Arunachalam's 7/19/2012 Motion for Reconsideration. Further, the Court's declaration of "moot" and exceeding the page limit is improper since conclusory declarations without citing page limit rules are not convincing except in totalitarian states, it cannot be moot if the petition denial was out of order, and even if there was a deficiency, no courtesy cure time was extended. *Pro se* parties are to be provided "liberal construction." *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

The actions of this Court do not “promote public confidence in the integrity of the judicial process” and are procedurally out of order. *Liljeberg, supra*; Fed.R.App.P. Rule 27(a)(2); *See also Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 US 344 (Supreme Court 1999)(case reversed and remanded due to improper dismissal of the case during a notice period); *Burns v. Ohio*, 360 US 252 (Supreme Court 1959)(case remanded where clerk refused to docket a filing on clerk-contrived procedural grounds); Fed. Cir. R.27(d)(1)(E)(2) (“not exceed 20 pages”).

d. At Least Judge Kimberly A. Moore Has Undisclosed Fiduciary Conflicts Of Interests

In her Financial Disclosure Form AO10 Judge Kimberly A Moore reveals that she holds investments in **Fidelity Contrafund**. **Exhibit D**. Fidelity Contrafund¹⁰ widely publicized its holdings in Facebook during the course of these proceedings. **Exhibit E**. This publicity created a temptation for Judge Moore to act in her own self-interest in this case. Fidelity Contrafund’s Facebook holdings are (all footnotes accessed 7/24/12):

¹⁰ Fidelity Contrafund. Form N-Q, Mar. 31, 2012. U.S. S.E.C. <<http://www.sec.gov/Archives/edgar/data/24238/000003540212000012/main.htm>>; *See also* Tim McLaughlin. “Fidelity’s Contrafund snaps up stakes in Facebook at \$63 billion valuation.” *Silicon Valley Business Journal*, Jun. 2, 2011. <<http://www.bizjournals.com/sanjose/news/2011/06/02/fidelitys-contrafund-snaps-up-stakes.html>>; *See also* Miles Weiss. “Fidelity’s Danoff Bets on Facebook, Zynga.” *Bloomberg*, Jun. 1, 2011. <<http://www.bloomberg.com/news/2011-06-01/fidelity-s-danoff-bets-on-facebook-zynga.html>>.

- i. 2.97 million shares of **Facebook, Inc.** Class B stock valued at \$74.2 million at the end of March 2012;
- ii. 2.93 million shares of **Zynga Game Network Inc.** convertible preferred stock valued at \$82.24 million; and
- iii. 2.63 million shares of **Groupon, Inc.** convertible preferred stock.

Judge Moore appears to have misperceived the circumstances in this case and neglected to acknowledge her conflicts of interest and acknowledge the perceived impropriety that would dictate her disqualification. *Potashnick v. Port City Const. Co.*, 609 F. 2d 1101 (5th Circuit 1980) at 1114 (“The judge's business dealings . . . constituted a ground for disqualification under section 455(a). Had the judge fully disclosed his relationship . . . on the record, the parties could have waived this ground”).

(1) Facebook shareholders who sold their Facebook interests between May 22-24, 2012 following the Facebook IPO are:

- (a) \$633,009,358 -- **Peter Thiel** (Facebook Director) (not including option awards and purchases).¹¹
- (b) \$2,169,376,940 -- **James W. Breyer** (Facebook Director) / **Accel Partners** et al / **Ping Li** (not including option awards and purchases; total value is approx. \$6,510,000,000).¹²
- (c) \$2,540,482,881 -- **DST Holdings Ltd.** / **Mail.ru Group Ltd.** et al . (**Juri Milner**, Moscow, Russia)(Facebook’s second largest shareholder)(not including option awards and purchases; total value is approx. \$3,790,000,000).^{13 14}

¹¹ 16,844,315 shares, Peter Thiel, <<http://www.secform4.com/insider-trading/1211060.htm>>.

¹² 57,726,901 shares, James W. Breyer et al <<http://www.secform4.com/insider-trading/1542464.htm>>.

¹³ 9,821,228 shares, Yury Milner, DST USA Ltd.; 18,340,758 shares, DST Global III, L.P.; 19,835,710 shares, DST Managers Ltd.; 19,600,699 shares, Mail.ru Group

- (d) \$745,465,653 -- **Mark Zuckerberg** (not including option awards and purchases).¹⁵
- (e) \$717,128,487 -- **Goldman Sachs** et al (Facebook Underwriter).¹⁶

(2) Facebook shareholders also with substantial insider stakes in Zynga¹⁷ in addition to Fidelity include:

- (a) Reid Hoffman (Facebook Director)¹⁸
- (b) Clarium Capital (Peter Thiel, Facebook Director)].¹⁹
- (c) Peter Thiel (Facebook Director). *Id.*
- (d) Digital Sky Technologies (Moscow, Russia, second largest Facebook stockholder). *Id.*
- (e) Andreessen Horowitz (Marc L. Andreessen, Facebook Director). *Id.*
- (f) T. Rowe Price. *Id.*

(3) Facebook shareholders also with substantial insider stakes in Groupon²⁰ in addition to Fidelity include:

- (a) Digital Sky Technologies. *Id.*

Ltd. <<http://www.secform4.com/insider-trading/1549931.htm> | [1545066.htm](http://www.secform4.com/insider-trading/1545066.htm) | [1550224.htm](http://www.secform4.com/insider-trading/1550224.htm) | [1326801.htm](http://www.secform4.com/insider-trading/1326801.htm)>.

¹⁴ Ryan Tate, “The ‘Hard’ Russian Oligarch Behind Facebook’s New Money.” *Gawker*, May 27, 2009. Last accessed May 2, 2011

<<http://gawker.com/5537538/the-humiliation-of-a-creepy-russian-sugar-daddy>>;

See also Simon Goodley. “Facebook investor DST comes with ties to Alisher Usmanov and the Kremlin – Three Goldman Sachs bankers, Alexander Tamas, Verdi Israelian and John Lindfors joined DST over the past three years.” *The Guardian*, Jan. 4, 2011.

<http://www.guardian.co.uk/technology/2011/jan/04/facebook-dst-goldman-sachs>>

¹⁵ 30,200,000 shares, Mark Zuckerberg,

<<http://www.secform4.com/insider-trading/1548760.htm>>.

¹⁶ 24,324,886 shares, Goldman Sachs et al,

<<http://www.secform4.com/insider-trading/1420392.htm>>.

¹⁷ Zynga, Inc., Crunchbase. <<http://www.crunchbase.com/company/zynga>>.

¹⁸ Hoffman, Reid, Director, Zynga, Inc. <<http://www.secform4.com/insider-trading/1439404.htm>>.

¹⁹ Clarium Capital (Peter Thiel), *Op.cit.*

²⁰ Groupon. Crunchbase. <<http://www.crunchbase.com/company/groupon>>.

- (b) Accel Partners. *Id.*
- (c) Morgan Stanley Ventures. *Id.*
- (d) Andreessen Horowitz. *Id.*

3. Undisclosed Attorney Associations Among Facebook, Federal Circuit Justices and Clerk of Court.

a. Clerk of Court Jan Horbaly sponsored a Federal Circuit conference in 2006 titled “The State of the U.S. Court of Appeals” where Facebook’s appellate attorney in this case, **Thomas G. Hungar** of Gibson, Dunn & Crutcher LLP, was one of *his* guest speakers.²¹ The appearance of impropriety dictates that the Clerk disqualifies himself from this matter. *Byrne v. Nezhat*, 261 F. 3d 1075 (11th Circuit 2001) at 1102 (“a law clerk has a financial incentive to benefit a future employer”).

b. Chief Judge Randall Rader was the keynote speaker on March 15, 2012 at the 2012 USC Law Intellectual Property Institute where Facebook’s appellate **Thomas G. Hungar** of Gibson, Dunn & Crutcher LLP was, again, a session speaker on the topic of “The Supreme Court’s Impact on Intellectual Property Law and the *Federal Circuit*” (emphasis added). Five other Facebook attorneys participated in the invitation of Judge Rader, namely: (i) **Wayne M. Barsky**, Gibson, Dunn & Crutcher LLP; (ii) **James C. Brooks**, Orrick, Herrington & Sutcliffe LLP; (iii) **Mark P. Wine**, Orrick, Herrington & Sutcliffe LLP; (iv)

²¹ Thomas Hungar. “The Federal Circuit, Looking Ahead.” C-SPAN-2 video, @33m53s. May 19, 2006. <<http://www.c-spanvideo.org/program/192618-1>>.

Andrew P. Bridges, Fenwick & West LLP; and (v) **David L. Hayes**, Fenwick & West LLP.²²

The average person would never believe that these familiar relationships among **Chief Judge Randall Rader**, **Clerk of Court Jan Horbaly**, and **Facebook’s** appellate counsel **Thomas G. Hungar** would not create temptations to do favors for attorney Hungar, who is an analyst of the Federal Circuit. *See* H. Rep. 111-427 (Mar. 4, 2010), Impeachment of G. Thomas Porteous, Jr., Judge of the United States District Court for the Eastern District of Louisiana; and H. Res. 1031, 111th Cong. 2d Sess. (Mar. 11, 2010)(“solicitation and receipt of things of value”).

The record shows no attempt by any of the justices to disclose their conflicts in this case, or to address how their participation in this case “looks to the average person on the street.” *Potashnick* at 1111.

Maintenance of an untarnished judiciary compels the judges in this case to err on the side of caution and disqualification. *Id.* 1111 (“question the judge’s impartiality” due to attorney associations); *Id.* 1112 (“ Our desire to maintain an untarnished judiciary compels us to hold that Judge Hand was required by 28 U.S.C. § 455(a) to disqualify himself from the Potashnick case, and his failure to do so constituted an abuse of sound judicial discretion.”).

²² USC LAW. 2012 Intellectual Property Institute, Mar. 15, 2012. Accessed Jul. 26, 2012 <<http://weblaw.usc.edu/why/academics/cle/ip/assets/docs/IPIbrochure.pdf>>.

4. Judicial Officials Should Provide Full Disclosure Before Proceeding So That Disqualification Or Waiver May Be Fully And Fairly Considered To Insure Impartiality And Avoid The Appearance Of Impropriety.

“In certain situations, disqualification can be waived. When the basis for disqualification is that the judge's "impartiality might reasonably be questioned," section 455(e) permits waiver after a full disclosure on the record of the grounds for disqualification.” *Potashnick* at 1114. The Clerk of Court and Justices should provide full disclosure of potential conflicts before this proceeding continues.

“Moreover, advancement of the purpose of the [impartiality] provision — to promote public confidence in the integrity of the judicial process . . . — does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew.” *Liljeberg* at 859, 860.

5. Jury Instruction 4.7 For On Sale Bar Is Deficient As A Matter Of Law; Never Mentioned The Uniform Commercial Code.

Remarkably, Jury Instruction No. 4.7 does not contain a single instruction of law. Nowhere is the jury instructed to look to the Uniform Commercial Code (“U.C.C.”) to determine whether an alleged offer “rises to the level of a commercial offer for sale.” **Exhibit C**; *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F. 3d 1041 (Fed. Cir. 2001).

Further, the jury instruction implies that nondisclosure agreements are “irrelevant” to on sale bar. 35 U.S.C. 102(b). As this case shows, and as the Restatement (Second) of Contracts §21 (1981) dictates (i.e., if you agree not to be legally bound by your discussions, then you are not legally bound), nondisclosure contracts among parties become absolutely relevant. The instructions are a naked misstatement of the law. The court-approved Facebook edits provided no assistance. Without such assistance, *the jury was understandably lost*. It is the duty of this Court to correct this error and **create new law** to clarify the totality of what constitutes a minimum standard to prove on sale bar by clear and convincing evidence, including the proper role of nondisclosure agreements and other secrecy deeds.

6. Since A Reasonable Probability Of A Different Outcome Exists, Except For Conflicts Of Interest; Why Else Would The Court Not Rehear This Case?

Except for conflicts of interest, why else would the Court not rehear this case? Only one remaining issue of law exists—whether Interrogatory No. 9 can be interpreted to apply to past states of Leader’s products. Justice demands attention to this question of law since application of The Dictionary Act to this legal question will create “a different result”—Leader will win this case outright. Exs. A, B.

The Supreme Court has defined materiality in terms of a "reasonable probability" of a different outcome. *Kyles v. Whitley*, 514 US 419 (Supreme Court 1995). Such a reasonable probability results when nondisclosure places the case in

a different light so as to undermine confidence in the verdict. *Id.* at 435. As Dr. Arunachalam has shown, one minute of attention by this Court to The Dictionary Act and Interrogatory No. 9 will create a different outcome. Confidence in the verdict has been undermined by the current state of the evident conflicts of interest.

CONCLUSION

For the reasons stated above, Dr. Arunachalam respectfully submits the RENEWED MOTION OF LAKSHMI ARUNACHALAM, PH.D. FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC*.

Dr. Arunachalam. further respectfully requests that the Court rule its July 16, 2012 denial of rehearing and rehearing *en banc* to be out of order since Dr. Arunachalam was not given ten day's notice before the denial was issued, and grant Leader's *en banc* rehearing once the conflict of interests issues disclosed in this motion have been addressed.

Respectfully submitted

/s/

Dated: July 27, 2012
Menlo Park, California

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue,
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Anrunachalam, Ph.D.

AFFIDAVIT OF MS. LAKSHMI ARUNACHALAM, PH.D.

State of California }
 } ss:
County of San Mateo }

FIRST BEING DULY CAUTIONED AND SWORN, AFFIANT STATES:

1. My name is Ms. Lakshmi Arunachalam, Ph.D., and I am of legal age, sound mind and otherwise competent to make this affidavit. At all times herein, I am a resident of 222 Stanford Avenue, Menlo Park, CA 94025. I have personal, direct knowledge of each of the facts set forth in this affidavit.

2. I certify and verify that the document contained in **Exhibit A** titled “1 USC 1, Title 1 – General Provisions, Chapter 1 – Rules of Construction, §1. Words denoting number, gender, and so forth” is a true and accurate copy of the document downloaded from the Cornell University Law School, Legal Information Institute with the URL
<http://www.law.cornell.edu/uscode/pdf/uscode01/lii_usc_TI_01_CH_1_SE_1.pdf> on July 26, 2012 (“The Dictionary Act”).

3. I certify and verify that the documents contained in **Exhibit B** captioned (a) Case 1:08-cv-00862-LPS, Document 627-23, “Leader Technologies, Inc.’s First Supplemental Responses To Facebook, Inc.’s Interrogatories Nos. 3 and 9,” and (b) Case 1:08-cv-00862-LPS, Document 627-24, “Leader Technologies, Inc.’s Second Supplemental Response To Facebook’s Interrogatory No. 1, First Supplemental Responses To Facebook’s Interrogatory Nos. 4, 11-17 And Third Supplemental Response To Facebook’s Interrogatory No. 9” are true and accurate copies of the documents downloaded from the District Court of Delaware PACER docket obtained on or before July 26, 2012.

4. I certify and verify that the document contained herein in **Exhibit C** titled “Jury Instruction No. 4.7, On Sale Bar” was downloaded from the District Court of Delaware PACER docket on July 25, 2012. I further certify and verify that the caption on this document is “Case 1:08-cv-00862-LPS, Document 601, Filed 07/26/10, Page 44 of 57” and that the PACER document entry read “Date Filed: 07/26/2010. Final Jury Instruction. (ntl) (Entered: 07/26/2010).” I further certify and verify that the pages contained in the exhibit, namely Pages 44 and 45 are not altered in any way.

5. I certify and verify that the document contained herein in **Exhibit D** titled "Financial Disclosure Report For Calendar Year 2010; 1. Person Reporting: Moore, Kimberly A.; 2. Court or Organization: Federal Circuit; Date of Report: 05/12/2011" is a true and accurate copy of the document as downloaded without alteration from JudicialWatch.org <<http://www.judicialwatch.org/judge/moore-kimberly/>> on July 25, 2012.

6. I certify and verify that the documents contained in **Exhibit E** are true and accurate copies of the financial articles downloaded on July 26, 2012 and represented by the following citations: (a) Tim McLaughlin. "Fidelity's Contrafund snaps up stakes in Facebook at \$63 billion valuation." *Silicon Valley Business Journal*, Jun. 2, 2011. <<http://www.bizjournals.com/sanjose/news/2011/06/02/fidelitys-contrafund-snaps-up-stakes.html>>; and (b) Miles Weiss. "Fidelity's Danoff Bets on Facebook, Zynga." *Bloomberg*, Jun. 1, 2011. <<http://www.bloomberg.com/news/2011-06-01/fidelity-s-danoff-bets-on-facebook-zynga.html>>.

7. I certify and verify that the document contained herein in **Exhibit F** titled "BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC*" dated July 10, 2012 is a true and accurate copy of the document sent to the Clerk of Court on July 10, 2012 by United States Express Mail and signed for by the Clerk's office at 10:52 AM via U.S. Express Mail No. EI 081 026 663 US. To my best knowledge and belief, the Clerk has not made these documents available for public review as of the date of this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

/s/

Lakshmi Arunachalam, Ph.D.

SWORN AND SUBSCRIBED before me, a Notary Public,
this ____ day of _____, 2012.

EXHIBIT A

TITLE 1 - GENERAL PROVISIONS

CHAPTER 1 - RULES OF CONSTRUCTION

§ 1. Words denoting number, gender, and so forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise—
words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

words importing the masculine gender include the feminine as well;

words used in the present tense include the future as well as the present;

the words “insane” and “insane person” and “lunatic” shall include every idiot, lunatic, insane person, and person non compos mentis;

the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

“officer” includes any person authorized by law to perform the duties of the office;

“signature” or “subscription” includes a mark when the person making the same intended it as such;

“oath” includes affirmation, and “sworn” includes affirmed;

“writing” includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise.

(July 30, 1947, ch. 388, 61 Stat. 633; June 25, 1948, ch. 645, § 6, 62 Stat. 859; Oct. 31, 1951, ch. 655, § 1, 65 Stat. 710.)

Amendments

1951—Act Oct. 31, 1951, substituted, in fourth clause after opening clause, “used” for “use”.

1948—Act June 25, 1948, included “tense”, “whoever”, “signature”, “subscription”, “writing” and a broader definition of “person”.

Short Title of 2002 Amendment

Pub. L. 107–207, § 1, Aug. 5, 2002, 116 Stat. 926, provided that: “This Act [enacting section 8 of this title] may be cited as the ‘Born-Alive Infants Protection Act of 2002’.”

Short Title of 1996 Amendment

Pub. L. 104–199, § 1, Sept. 21, 1996, 110 Stat. 2419, provided that: “This Act [enacting section 7 of this title and section 1738C of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Defense of Marriage Act’.”

References in Pub. L. 112–74

Pub. L. 112–74, § 3, Dec. 23, 2011, 125 Stat. 787, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Consolidated Appropriations Act, 2012, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 112–55

Pub. L. 112–55, § 3, Nov. 18, 2011, 125 Stat. 552, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Consolidated and Further Continuing Appropriations Act, 2012, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 112–10

Pub. L. 112–10, div. A, title IX, § 9015, Apr. 15, 2011, 125 Stat. 102, provided that: “Any reference to ‘this Act’ in this division [Department of Defense Appropriations Act, 2011, see Tables for classification] shall apply solely to this division.”

References in Pub. L. 111–118

Pub. L. 111–118, § 3, Dec. 19, 2009, 123 Stat. 3409, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Department of Defense Appropriations Act, 2010, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 111–117

Pub. L. 111–117, § 3, Dec. 16, 2009, 123 Stat. 3035, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Consolidated Appropriations Act, 2010, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 111–8

Pub. L. 111–8, § 3, Mar. 11, 2009, 123 Stat. 525, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Omnibus Appropriations Act, 2009, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 111–5

Pub. L. 111–5, § 4, Feb. 17, 2009, 123 Stat. 116, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [American Recovery and Reinvestment Act of 2009, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 110–329

Pub. L. 110–329, § 3, Sept. 30, 2008, 122 Stat. 3574, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ or ‘this joint resolution’ contained in any division of this Act [Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 110–161

Pub. L. 110–161, § 3, Dec. 26, 2007, 121 Stat. 1845, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Consolidated Appropriations Act, 2008, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 110–116

Pub. L. 110–116, § 2, Nov. 13, 2007, 121 Stat. 1295, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [see Tables for classification] shall be treated as referencing only to the provisions of that division.”

References in Pub. L. 109–289

Pub. L. 109–289, div. A, title VIII, § 8112, Sept. 29, 2006, 120 Stat. 1299, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in this division [Department of Defense Appropriations Act, 2007, see Tables for classification] shall be referring only to the provisions of this division.”

References in Pub. L. 109–148

Pub. L. 109–148, div. B, title V, § 5002, Dec. 30, 2005, 119 Stat. 2813, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in either division A [Department of Defense Appropriations Act, 2006, see Tables for classification] or division B [Emergency Supplemental Appropriations Act to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 109–115

Pub. L. 109–115, div. A, title VIII, § 847, Nov. 30, 2005, 119 Stat. 2507, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in this division [Transportation, Treasury, Housing and Urban

Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, see Tables for classification] shall be treated as referring only to the provisions of this division.”

References in Pub. L. 108–447

Pub. L. 108–447, § 3, Dec. 8, 2004, 118 Stat. 2810, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Consolidated Appropriations Act, 2005, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 108–199

Pub. L. 108–199, § 3, Jan. 23, 2004, 118 Stat. 4, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [Consolidated Appropriations Act, 2004, see Tables for classification] shall be treated as referring only to the provisions of that division.”

References in Pub. L. 108–7

Pub. L. 108–7, § 3, Feb. 20, 2003, 117 Stat. 12, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this joint resolution [Consolidated Appropriations Resolution, 2003, see Tables for classification] shall be treated as referring only to the provisions of that division.”

Continental United States

Section 48 of Pub. L. 86–70, June 25, 1959, 73 Stat. 154, provided that: “Whenever the phrase ‘continental United States’ is used in any law of the United States enacted after the date of enactment of this Act [June 25, 1959], it shall mean the 49 States on the North American Continent and the District of Columbia, unless otherwise expressly provided.”

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware
corporation,

Plaintiff-Counterdefendant,

v.

FACEBOOK, INC., a Delaware corporation,

Defendant-Counterclaimant

Civil Action No. 08-862-JJF

**HIGHLY CONFIDENTIAL—
FOR ATTORNEY'S EYES ONLY**

**LEADER TECHNOLOGIES, INC.'S FIRST SUPPLEMENTAL RESPONSES
TO FACEBOOK, INC.'S INTERROGATORIES NOS. 3 AND 9**

Redacted

INTERROGATORY NO. 9:

For each claim of the '761 Patent that LTI contends is practiced by any product(s) and/or services of LTI, identify all such product(s) and/or service(s) and provide a chart identifying specifically where each limitation of each claim is found within such product(s) and/or service(s).

Redacted

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Redacted

Leader2Leader® powered by the Digital Leaderboard® engine is covered by the '761 Patent.


Redacted

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Paul J. André
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Dated: April 17, 2009
912447

By: 
Philip A. Rovner (#3215)
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*Attorneys for Plaintiff-Counterdefendant
Leader Technologies, Inc.*

VERIFICATION

I, Michael T. McKibben, Chairman and Founder of Leader Technologies, Inc., being duly sworn, deposes and says that I am authorized to sign this Verification and that I am informed and believe that the factual statements in **Plaintiff Leader Technologies, Inc.'s First Supplemental Responses to Facebook, Inc.'s Interrogatories Nos. 3 and 9** are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury under the laws of the State of Ohio and the United States that the above statement is true and correct.

April 17, 2009
Date

Michael T. McKibben
Michael T. McKibben

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

CERTIFICATE OF SERVICE


I, Philip A. Rovner, hereby certify that on April 17, 2009, true and correct copies of the within document were served on the following counsel of record, at the addresses and in the manner indicated:

BY HAND DELIVERY AND E-MAIL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware corporation,)	
)	
Plaintiff-Counterdefendant,)	Civil Action No. 08-862-JJF/LPS
)	
v.)	HIGHLY CONFIDENTIAL--
)	FOR ATTORNEY'S EYES ONLY
FACEBOOK, INC., a Delaware corporation,)	
)	
Defendant-Counterclaimant)	

**LEADER TECHNOLOGIES, INC.'S SECOND SUPPLEMENTAL RESPONSE
TO FACEBOOK, INC.'S INTERROGATORY NO. 1, FIRST SUPPLEMENTAL
RESPONSES TO FACEBOOK'S INTERROGATORY NOS. 4, 11-17 AND
THIRD SUPPLEMENTAL RESPONSE TO FACEBOOK'S
INTERROGATORY NO. 2**

Redacted

Redacted

INTERROGATORY NO. 9:

For each claim of the '761 Patent that LTI contends is practiced by any product(s) and/or services of LTI, identify all such product(s) and/or service(s) and provide a chart identifying specifically where each limitation of each claim is found within such product(s) and/or service(s).

THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Redacted

Leader2Leader® powered by the Digital Leaderboard® engine is the only product or service provided by Leader which embodies, either literally or under the doctrine of equivalents, any of the asserted claims of the '761 Patent. Leader2Leader® powered by the Digital Leaderboard® engine embodies the following asserted claims of the '761 Patent: 1-17, 21, 23-26, 29, and 31-34.

Redacted

Redacted

OF COUNSEL:

Paul J. André
Lisa Kobialka
James Hannah
King & Spalding, LLP
333 Twin Dolphin Drive
Suite 400
Redwood Shores, California 94065-6109
(650) 590-7100

Dated: October 28, 2009
939709

POTTER ANDERSON & CORROON LLP

By: Philip A. Rovner
Philip A. Rovner (#3215)
Hercules Plaza
P.O. Box 951
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*Attorneys for Plaintiff-Counterdefendant
Leader Technologies, Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on October 28, 2009, true and correct copies of the within document were served on the following counsel of record, at the addresses and in the manner indicated:

BY EMAIL AND HAND DELIVERY

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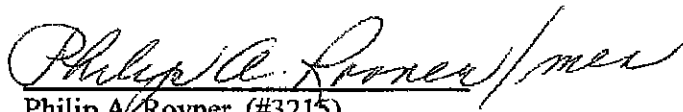

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EXHIBIT C

JURY INSTRUCTION NO. 4.7

ON SALE BAR

A patent claim is invalid if it can be shown by clear and convincing evidence that an embodiment that contains all the elements of that claim was, more than one year before the effective filing date, both (1) subject to commercial offer for sale in the United States; and (2) ready for patenting. Facebook contends that Claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31 and 32 of the '761 Patent are anticipated because the invention was on sale in the United States more than one year before the effective filing date.

In this case, Facebook must prove by clear and convincing evidence that a product that met all the limitations of the asserted claims was ready for patenting and was offered for sale more than a year prior to the effective filing date. Once again, your determination of the effective filing date will affect whether or not you find that a commercial offer for sale of the Leader invention occurred more than a year from the effective filing date. However, it is irrelevant whether or not the offer for sale was secret or non-secret.

An invention was "on sale" if the claimed invention was embodied in the thing commercially offered for sale. An offer for sale need not be accepted to trigger the on-sale bar. That the offer, even if accepted, might not have ultimately led to an actual sale of the invention is also not relevant. The essential question is whether or not there was an attempt to obtain commercial benefit from the invention. An offer to sell can invalidate a patent even if the offer was secret, such as under the protection of a non-disclosure agreement.

An invention is ready for patenting either when it is reduced to practice or when the inventor has enabled the invention by preparing drawings or other descriptions of the invention

sufficient to allow a person of ordinary skill in the art to make or use the invention. The claimed invention is ready for patenting when there is reason to believe it would work for its intended purpose.

EXHIBIT D

FINANCIAL DISCLOSURE REPORT FOR CALENDAR YEAR 2010

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Moore, Kimberly A.	2. Court or Organization Federal Circuit	3. Date of Report 05/12/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge	5a. Report Type (check appropriate type) <input type="checkbox"/> Nomination, <input type="checkbox"/> Date <input type="checkbox"/> Initial <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2010 to 12/31/2010
7. Chambers or Office Address U.S.C.A. Federal Circuit 717 Madison Place NW Washington, DC 20439	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☒ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. _____	_____
2. _____	_____
3. _____	_____

FINANCIAL DISCLOSURE REPORT

Page 2 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2010	West-Thomson, Book Royalties	\$5,603.76
2.		
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2010	attorney, self-employed, partner
2.	
3.	
4.	

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1.	Association of Corporate Patent Counsel	6/28/2010 - 6/30/2010	Philadelphia, Pennsylvania	Conference	Mileage, Meals, & Lodging
2.	Philadelphia Intellectual Property Law Assoc	11/18/2010	Philadelphia, Pennsylvania	PIPLA Dinner	Mileage, Meals, & Lodging
3.	University of San Diego School of Law	12/2/2010 - 12/5/2010	San Diego, California	Conference	Transportation, Meals, & Lodging
4.					
5.					

FINANCIAL DISCLOSURE REPORT

Page 3 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*NONE *(No reportable gifts.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*NONE *(No reportable liabilities.)*

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. National City Mortgage Co.	Mortgage on Rental Property	O
2. Citibank	Loan	K
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT

Page 4 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Rental Property (2008 \$2,211,554.00)	F	Rent	P1	S					
2. Chevy Chase Bank Checking Account	A	Interest	M	T					
3. Citibank	D	Interest	J	T					
4. Northwestern Mutual Life Insurance	B	Dividend	J	T					
5. Northwestern Mutual Life Insurance	B	Dividend	J	T					
6. Berkshire Life Insurance	A	Dividend	J	T					
7.									
8. Fidelity Retirement Account									
9. -Fidelity Capital & Income	B	Dividend			Buy	04/12/10	J		
10.					Sold	05/05/10	M	E	
11. -Fidelity Contra		None			Sold	01/08/10	K	D	
12. -Fidelity Contra K	A	Dividend			Buy	01/08/10	K		
13.					Buy (add'l)	04/12/10	J		
14.					Sold	05/05/10	L	A	
15. -Fidelity Low PR STK		None			Sold	01/08/10	K	E	
16. -Fidelity Low PR STK K		None			Buy	01/08/10	K		
17.					Buy (add'l)	04/12/10	J		

1. Income Gain Codes:
(See Columns B1 and D4)

2. Value Codes
(See Columns C1 and D3)

3. Value Method Codes
(See Column C2)

A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P3 = \$25,000,001 - \$50,000,000
Q = Appraisal
U = Book Value

B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other

C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

Exhibit C, Page 54

Exhibit D, p.4

FINANCIAL DISCLOSURE REPORT

Page 5 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18.					Sold	05/05/10	L	B	
19. -Fidelity US BD Index	A	Dividend			Sold	01/08/10	M	C	
20. -Vang Tot Bd Mkt Inst	A	Dividend			Buy	01/08/10	M		
21.					Sold	03/15/10	M	B	
22.					Buy	04/12/10	J		
23.					Buy (add'l)	05/05/10	N		
24.					Sold	05/24/10	N	A	
25. -Fidelity US Gov't Res	A	Dividend			Buy	03/15/10	M		
26.					Sold	05/05/10	M	A	
27.									
28. Smith Barney Retirement Account * (See Part VIII)		None			Closed	07/06/10	M		
29.									
30. Charles Schwab Accounts A									
31. -Proshares Ultra Financial		None			Sold	02/02/10	K	D	
32. -Proshares Ultra Short		None	L	T	Buy (add'l)	05/05/10	K		
33. -Alltel Corp Notes	C	Interest	K	T					
34. -United Health Bonds	B	Interest	K	T					

1. Income Gain Codes:
(See Columns B1 and D4)

A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P3 = \$25,000,001 - \$50,000,000
Q = Appraisal
U = Book Value

B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other

C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market

E = \$15,001 - \$50,000

Exhibit C, Page 55

Exhibit D, p.5

FINANCIAL DISCLOSURE REPORT

Page 6 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. -Anheuser Busch Bonds	B	Interest	L	T					
36. -Ingersoll-RND	C	Interest	L	T					
37. -XTO Energy Inc	B	Interest	K	T					
38. -Profunds Ultra Latin America		None			Sold	05/05/10	J	C	
39. -Vanguard GNMA	C	Dividend	L	T					
40. -Vanguard High Yield	C	Dividend	L	T	Buy (add'l)	05/06/10	J		
41.									
42. Charles Schwab Accounts B									
43. -Schwab Stable Value Select		None			Buy	04/05/10	J		
44.					Buy (add'l)	05/04/10	J		
45.					Buy (add'l)	06/03/10	J		
46.					Buy (add'l)	06/09/10	N		
47.					Buy (add'l)	07/06/10	M		
48.					Buy (add'l)	08/03/10	J		
49.					Sold	08/17/10	O	B	
50. -Schwab Stable Value Instl III		None	O	T	Buy	08/17/10	O		
51.					Buy (add'l)	09/02/10	J		

1. Income Gain Codes:
(See Columns B1 and D4)

2. Value Codes
(See Columns C1 and D3)

3. Value Method Codes
(See Column C2)

A = \$1,000 or less
F = \$50,001 - \$100,000
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P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market

E = \$15,001 - \$50,000

Exhibit C, Page 56

Exhibit D, p.6

FINANCIAL DISCLOSURE REPORT

Page 7 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52.					Buy (add'l)	10/04/10	J		
53.					Buy (add'l)	11/03/10	J		
54.					Buy (add'l)	12/02/10	J		
55.									

1. Income Gain Codes:
(See Columns B1 and D4)

A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
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U = Book Value

B = \$1,001 - \$2,500
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K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other

C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market

E = \$15,001 - \$50,000

Exhibit C, Page 57

Exhibit D, p.7

FINANCIAL DISCLOSURE REPORT

Page 8 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Part VII.

Smith Barney Retirement Account:

This is a retirement account that doesn't allow individual control of investment selections. This account was rolled over into Charles Schwab Accounts B - Schwab Stable Value Select on 7/6/2010.

FINANCIAL DISCLOSURE REPORT

Page 9 of 9

Name of Person Reporting

Moore, Kimberly A.

Date of Report

05/12/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Kimberly A. Moore**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

EXHIBIT E



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★ Fidelity's Contrafund snaps up stakes in Facebook at \$63 billion valuation

Silicon Valley / San Jose Business Journal by Tim McLaughlin

Date: Thursday, June 2, 2011, 7:13am PDT - Last Modified: Thursday, June 2, 2011, 8:42am PDT

Fidelity's Contrafund snapped up nearly 3 million Class B shares of Facebook Inc., paying \$25 each in an investment that values the privately held, venture-backed social media company at nearly \$63 billion.

Run by [William Danoff](#), the \$80 billion Contrafund is Boston-based Fidelity's largest stock fund. The fund reported holding 2.97 million Class B Facebook shares valued at \$74.2 million at the end of March, according to a U.S. regulatory filing. That puts Palo Alto-based Facebook's value, with an estimated 2.5 billion shares outstanding, at \$62.5 billion.

A Fidelity spokesman told Bloomberg News that more than 30 Fidelity funds held Facebook shares as of April 30. No fund had more than 0.15 percent of its assets invested in Facebook, Bloomberg reported, quoting the Fidelity spokesman.

Fidelity also reported investments in San Francisco-based [Zynga Game Network](#) Inc., the creator of Facebook games such as Farmville and Mafia Wars. The Contrafund reported holding 2.93 million shares of Zynga convertible preferred stock valued at \$82.24 million. That works out to \$28.06 per share.

The Contrafund also owned the convertible preferred stock of a third venture-backed company, [Groupon Inc.](#), holding 2.63 million shares worth nearly \$83 million. That put Groupon's value at \$31.59 per share.



Boston Business Journal

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Companies Mentioned

- [Fidelity Investments](#)
- [Zynga Game Network](#)
- [Groupon Inc.](#)

Relevant Industries

- [Banking & Financial Services](#)
- [Technology](#)

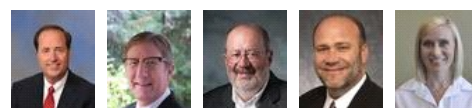
twitter

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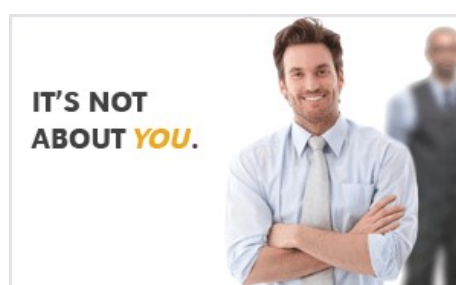
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Fidelity's Danoff Bets On Facebook, Zynga

By Miles Weiss - 2011-06-01T19:28:47Z

William Danoff, the manager of Fidelity Investment's largest stock fund, established a foothold in the social-networking industry during the first quarter by acquiring shares of [Facebook Inc.](#) and [Zynga Inc.](#)

Danoff's Fidelity Contrafund invested \$74 million in Facebook Class B common shares and \$82 million in Zynga convertible preferred stock, according to a quarterly report the fund filed yesterday with the U.S. Securities and Exchange Commission. Danoff, 50, has managed the \$80 billion Fidelity Contrafund since September 1990.

Fidelity and rivals T. Rowe Price Group Inc. and Capital Group Cos. are snapping up stakes in social-networking companies before they go public, after the mutual-fund industry avoided privately traded stocks for years. Boston-based Fidelity and Baltimore's T. Rowe Price may recognize an opportunity as a growing percentage of clients access their fund holdings through Facebook, said [Geoff Bobroff](#), a fund consultant in [East Greenwich, Rhode Island](#).

"We are seeing more of these fund companies embrace and adopt social media as something they are providing to their shareholders," Bobroff said today in an interview. "It's somewhat logical they would think there is value."

[Vincent Loporchio](#), a spokesman for Fidelity, said more than 30 of its funds held Facebook shares as of April 30. No fund had more than 0.15 percent of its assets invested in Facebook, according to Loporchio, who declined to comment further.

T. Rowe, American

T. Rowe Price reported in April that 19 of its mutual funds invested at least \$191 million during the first quarter in Facebook, the [Palo Alto](#), California-based owner of the world's most popular social-networking website. American Funds Growth Fund of America, a \$168 billion stock fund overseen by Los Angeles-based Capital Group, invested \$66.5 million on Feb. 18 in Zynga, the largest maker of games on Facebook, according to an April 29 filing.

[Fidelity Contrafund \(FCNTX\)](#) averaged annual gains of 7 percent over the past 10 years to beat 99 percent of its large-capitalization growth stock peers, according to Chicago-based research firm Morningstar Inc.

Danoff's fund aims to invest in stocks whose value hasn't been fully recognized by the public. At the end of last year, it had about 33 percent of net assets in information technology shares, including a \$5.3 billion stake in [Apple Inc. \(AAPL\)](#) and \$3.8 billion in Google Inc.

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The fund acquired 2.97 million Facebook shares during the first quarter for about \$25 each, the same price T. Rowe Price reported paying, according to yesterday's filing. Facebook in January said it had raised \$1.5 billion from investors led by [Goldman Sachs Group Inc. \(GS\)](#), placing a \$50 billion valuation on the closely held business at the time.

Convertible Preferred Shares

Fidelity Contrafund also bought its Zynga convertible preferred stock on Feb. 18, according to yesterday's filing. Zynga held talks in February with T. Rowe Price and Fidelity about selling shares at a price that implied the company's market value was close to \$10 billion, two people familiar with the situation said at the time.

Facebook and Zynga last year laid the groundwork for initial public offerings by imposing fees on employees who sell their shares. Zynga may file for an IPO by the end of June, a person familiar with the plans said last week.

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To contact the editor responsible for this story: Christian Baumgaertel at cbaumgaertel@bloomberg.net

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Facebook Inc. logos are displayed on computer screens. Photographer: Daniel Acker/Bloomberg



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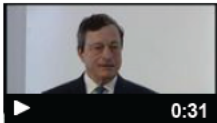


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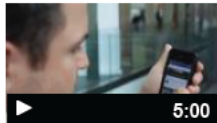
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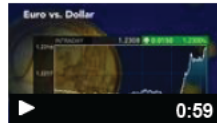
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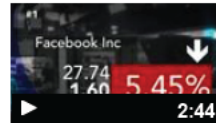
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2011-1366

United States Court Of Appeals
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LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D.
IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR
REHEARING AND REHEARING *EN BANC***

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July 10, 2012

2011-1366

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July 10, 2012

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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Ms. Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) submits this brief as an *amicus curiae* pursuant to [Fed. R.App. P. 29](#)(a) and Rule 29(a) of this Court. This brief is accompanied by a motion for leave to file pursuant to Fed. R.App. P. 29(b). Dr. Arunachalam supports Leader Technologies’ petition for rehearing and rehearing en banc. The consent of neither party has been sought to file this brief.

INTEREST OF *AMICUS CURIAE*

Ms. Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) is the inventor of a portfolio of the earliest Internet patents that give control over any real-time web transaction from any web application. These patents give her control over the internet cloud and any cloud application. Her companies, Pi-Net International, Inc. and WebXchange, Inc., are practicing entities with the earliest products implementing web applications based on her patents. At First Data Corporation her software implementations were certified as ACH-certified for credit card and other transactions. Her web applications were installed as pilot trials and beta tests at Cisco, France Telecom, Lycos, Le Saffre, BNP Paribas and La Poste. Dr. Arunachalam invests 100% of her time in research and development (R&D) and in the patenting of new internet-based products. She bootstrapped her companies with self-funding and relies on her patent portfolio of over a dozen patents to protect those investments. *See* APPENDIX for curriculum vitae.

Dr. Arunachalam is a champion of property rights and has a vested interest in the outcome of *Leader Tech v. Facebook*, Case No. 2011-1366. She believes that Leader's invention is an epoch-making event that will help re-establish America's world leadership in innovation, help America stop borrowing money from former Third World countries, and help revive America's profound constitutional values of "life, liberty and the pursuit of happiness." She believes that the wholesale theft of Leader Technologies' intellectual property dwarfs the conspiracies of Bernard Madoff's Ponzi schemes and undermines America's fundamental values. She believes that such crimes should be punished rather than showered with fame, glory, wealth and power.

Dr. Arunachalam is a champion of intellectual property rights for true inventors, especially small inventors, from whom large companies often steal, using their superior resources to quickly exploit the invention and deprive the small inventors of their rewards. She has a strong interest in seeing well-settled patent law applied fairly in this case, and in every case, at every level.

For these reasons Dr. Arunachalam believes that every champion of property rights in the United States must stand behind Michael McKibben and Leader Technologies. She believes that such activity as jury trickery and other court manipulations cannot be permitted to validate theft of property rights. She believes

that such activity will dissuade innovators from participating in the patenting process and thus deprive the public of the benefit of their innovations.

Dr. Arunachalam would like this Court to acknowledge the [fraud](#) and [trickery](#) that has transpired in this case and not be tempted by admitted hackers and counterfeiters to look the other way. She would like to remind the Court of the wisdom of Matthews 7:26: “Everyone who keeps on hearing these messages of mine and never put them into practice is like a foolish man who built his house on sand.” She believes America must rely on and support brilliant inventors and visionaries like Michael McKibben, and not on intellectual property thieves.

SUMMARY OF ARGUMENT

This Court has determined that on sale and public disclosure bars to patentability under [35 U.S.C. § 102\(b\)](#) should be evaluated against the [Uniform Commercial Code](#) (“U.C.C.”). This Court requires hard evidence to prove on sale and public disclosure bar based on the U.C.C. The patent community relies upon this prior body of case law. Surprisingly, the Court did not use its U.C.C. standard in this case. Such an abrupt shift in the Court’s well-settled precedent is unfair and inequitable to Leader Technologies, will place a significant undue burden on all patent holders going forward, and will increase litigation costs dramatically—all simply because the Court did not apply its own standards.

Compelling reasons justify the existence of the hard evidence rule founded in the U.C.C. The standard was implemented to avoid an otherwise capricious interpretation of business words like “sell” and “deal” and “offer” that can have many meanings depending upon context. It was also established to avoid mere word chases through the record for uses of brand names without assessing whether real inventions lay beneath the mere words on a page. Jurors unfamiliar with the language of research and development can become confused and easily mistake an offer to sell something once it is invented with an offer for sale. Understandably, such forward-looking language can be misconstrued by a juror unfamiliar with the dynamics of as-yet-unrealized visionary possibility.

Indeed, one of the motivations for companies to invest in research and development is to be able to benefit from the result of that effort, *if* it is successful. However, there are no sure things in research and development. In short, selling a dream of an invention is not the same thing as selling an invention that *might* result from that effort. Indeed, the road to research and development success is paved with failures. **The precedent set in this case could *destroy* the ability of individual inventors to finance their research and development.** This decision, as it stands, labels *prospective* conversations about *prospective* inventions as an offer for sale—even when these conversations occur under the protection of secrecy

agreements where the parties have agreed that their conversations will have no legal effect.

By contrast, this very Court decided over a decade ago to look to the U.C.C. to evaluate whether or not an alleged offer “rises to the level of a commercial offer for sale.” While the U.C.C. was not a “bright line,” it certainly brought clarity and objectivity to the evaluation and placed the question squarely in the mainstream of contract law. Otherwise, a patent holder’s future defenses against on sale and public disclosure bar will be left with no legal guidance. Dr. Arunachalam respectfully requests that this Court apply its U.C.C. standard in this case.

Compelling reasons also justify the existence of the “reasonable measures” test under [18 U.S.C. § 1839](#) to determine whether or not a patentee has maintained the secrecy of his or her invention under the 35 U.S.C. § 102(b) public disclosure bar. The test brought clarity to the maintenance of a trade secret prior to patenting. Otherwise, jurors would be guided only by mere personal opinion. Federal law mandates that reasonable measures involve both “words” and “deeds.” The “reasonable measures” test was not performed on the evidence by this Court. One common measure to preserve trade secrets is the use of nondisclosure agreements.

Leader Technologies exhibited uncommon zeal with regard to nondisclosure agreements and secrecy practices, yet no statutory “[deeds test](#)” was performed. The research and development community will be thrown into turmoil if nondisclosure

agreements are no longer recognized as one reasonable means to protect trade secrets from public disclosure. Dr. Arunachalam respectfully requests that this Court perform a “deeds test” on the evidence.

Finally, compelling reasons justify the existence in “The Dictionary Act” under [1 USC § 1](#) of the provision “words used in the present tense include the future as well as the present.” However, this Court did not apply the Act to its interpretation of [Interrogatory No. 9](#)’s use of “is practiced.” This case turns on this interpretation since without an interpretation of this interrogatory to the past, the Court has no legal basis for its decision. The patent community relies upon the prior body of case law on the use of tense. Such an abrupt shift in the Court’s well-settled precedent is unfair and inequitable to the Plaintiff-Appellant, will place a significant undue burden on patent holders going forward, and will increase litigation costs dramatically since patent holders will no longer be able to rely upon “plain and ordinary meaning.” Dr. Arunachalam respectfully requests that this Court apply the plain and ordinary meaning of the verb “is practiced” to mean the present tense with regard to its interpretation of Interrogatory No. 9. At that point, Facebook’s on sale and public disclosure bar verdict must be set aside as a matter of law.

For these reasons, Dr. Arunachalam strongly urges the Court to grant Leader Technologies’ petition, re-hear this case, set aside the on sale and public disclosure bar, and remand this case to the district court for further proceedings.

ARGUMENT

I. American Patent Property Rights Will Be Placed In Turmoil If This Decision Is Not Corrected.

Congress ratified the U.S. Constitution on September 15, 1787. The only property right given special attention by the framers was [Article I, § 8, cl. 8](#), granting to the Congress the power

"[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"

The current anti-patent and anti-small-inventor trend in our courts belies the lessons of history, which prove that American innovation is fueled by the individual inventor. It is only the predator, thief, counterfeiter, infringer, copycat, interloper, plagiarizer, the unthinking, and those who aid them, who would wish to destroy these most fundamental of American incentives to inventorship.

It has been said before and bears repeating that without the spark of invention in a society, the creative pace of new ideas slow. When creativity is not rewarded, entrepreneurship and job creation fall off. Fewer jobs mean a decrease in tax revenues, which in turn takes away society's ability to provide civil infrastructure and social services. When a government is unable to care for its citizens, civil unrest and the decline of that society is just around the corner. The framers of the U.S. Constitution were students of history and knew this. This is precisely why they

embedded patent property rights into the fabric of our democracy.¹ That fabric is being torn in this case.

Patent holders and those hoping to protect their inventions rely upon the Court's precedents in determining their courses of action in securing a patent. If not overturned, **this Court's decision** against Leader Technologies regarding the on sale and public disclosure bar **will place all patents in peril**.

This one decision:

(1) leaves patentees with no ability to rely upon the plain and ordinary meaning of the English language;

(2) leaves the patent process with no reasonable certainty about how to protect trade secrets prior to filing for a patent;

(3) opens the door wide for predators to cajole courts into ignoring precedential law capriciously; and

(4) gives *carte blanche* to infringers to misdirect the course of justice into trial theater, fabrication of evidence, tricky attorney argument, motion practice and undue influence upon the process itself based upon this precedent.

¹ [BD. OF TRUST. OF LELAND STANFORD v. ROCHE SYS.](#), 131 S. Ct. 2188 (Supreme Court 2011) at 2200 (“Patents, for example, help to elicit useful inventions and research and to assure public disclosure of technological advances”).

II. The Court Erred In Applying The Substantial Evidence Standard (Quantitative) Without *First Applying The Clear And Convincing Evidence Standard (Qualitative) To Its Review.*

[Jury Instructions No. 1.11](#) specified the clear and convincing evidence standard. The Court can review the “substantial evidence” only in light of this instruction. It did not do that, because if it had it would have “exercise[d] its independent judgment on the evidence of record and weight it as a trial court” and used its precedential standards (e.g., *Group One*, *Linear*, *Allen*, *Helifix*). *Sub.*

Instead this Court sporadically dipped into the record looking for evidence to support a clearly predetermined outcome in favor of Facebook; conveniently issuing its decision within hours of the beginning of Facebook’s IPO road show. In doing so, the Court ran roughshod over its own well-settled precedent for judging the sufficiency of evidence to support on sale and public disclosure bar.

The standard is not whether there was **substantial (. . .) evidence**. The standard is whether there was **substantial (clear and convincing) evidence**. Bottom line, the Court’s opinion neglected the standard of review completely. In a *de novo* review the Court must think for itself and not simply try to justify a flawed jury conclusion—a conclusion elicited by deception and misconduct. [SSIH EQUIPMENT SA v. US Intern. Trade Com'n](#), 718 F. 2d 365 (Fed. Cir. 1983) at 281 (“The court in ‘de novo’ review must exercise its independent judgment on the evidence of record and **weight it as a trial court**”)(emphasis added).

III. The So-Called “Substantial Evidence” Is Not Convincing Grammatically, Logically or Scientifically; An Ambiguous Use Of Grammar For The Definition Of “Is Practiced” Can Never Satisfy The Clear And Convincing Evidence Standard.

Boiled down, Facebook’s so-called “substantial evidence” is solely based (according to this Court’s opinion) upon Leader’s response to Facebook’s question in 2009 about any claim of the ‘761 patent that “is practiced” by any Leader product and/or service. The Court has concluded that this is also an “inventor’s admission” of the state of the invention back in 2002, seven years earlier.

This interpretation offends the senses in multiple ways.

Firstly, the present tense English verb “is practiced” cannot be used in reference to the past. This is the law as well as good grammar and plain common sense.

Secondly, as an inventor of internet software, Dr. Arunachalam considers it a fallacious notion to assume *without serious scientific investigation* (of the kind required by this Court’s precedent) that a statement about the state of a piece of software in 2009 also applies to all times past. Any axiom that states that “the present state of a thing applies equally to all past states of the thing” is faulty. This Court must reject this faulty logic as the basis for the jury’s beliefs about Interrogatory No. 9. No such logic exists in science or philosophy. A jury decision based on faulty logic or science must be set aside as a matter of law. [*In re Bose Corp.*](#), 580 F. 3d 1240 (Federal Circuit 2009)(“there is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the

charging party"). The jury *inferred* an improper meaning to the verb "is practiced" (*present* tense) that must be resolved against Facebook since, according to the Decision, the case turned on this question alone. (The question was not was practiced; *past* tense.) *All* the other so-called "substantial evidence" was contained in this leaky bucket.

Thirdly, stating the previous point a different way, the Court's interpretation belies the [2nd Law of Thermodynamics](#).² That law says that matter (and energy) is in a constant state of decay. Software is not exempt from this law. Software practitioners know that left unattended, software decays, breaks and stops working over time. Therefore, the notion that Leader's answer about the state of its software in 2009 applies equally to its state in 2002 is a ludicrous lapse of logic. It infers that nothing changed. Even if Leader's engineers never touched the software code between 2002 and 2009, entropy happened. Entropy alone changes things. Therefore, no 2009 answer about the software can, as a matter of science, imply anything about its previous 2002 state. Hard investigation is required. All Facebook presented was speculation, innuendo and surmise. Speculation is not evidence and this Court cannot overturn a validly issued US patent based upon speculation.

² The irreversible tendency over time toward the natural entropic dissolution of the system itself. Stated more popularly, "Matter is in a constant state of decay."

Clearly Facebook will keep repeating this speculation as long as the courts continue to turn a blind eye to its preposterousness.

Facebook's mere chase through the record for references in business documents to the Leader2Leader brand name did nothing to *prove* one way or the other whether Leader's invention remained exactly the same between 2002 and 2009. Further, the fact that Facebook's own expert witness argued that the only Leader source code put into evidence by Facebook *did not* practice the invention destroys their own argument

Why is this Court arguing for Facebook on both sides of the ball? Facebook is the adjudged infringer. Leader Technologies is the proven inventor. Remarkably, on the one hand, this Court supports Facebook's contention that the only source code in evidence *did not* contain the invention. And, on the other hand this Court *also* supports Facebook's contention that the same source code, the only source code shown to the jury, *did* contain the invention, and, was offered for sale prematurely. This duplicity defies common sense and is ambiguous at best. Facebook's own expert said the source code did not practice the invention, therefore, the invention could not have been offered for sale during the time in question. Ambiguity is not "clear and convincing."

What else did Facebook do during trial? They attacked the credibility of Michael McKibben, the true inventor, in front of an unsuspecting lay jury. They

called him a liar who was desperate to save his invention and implied (without any hard proof whatsoever) that he must have slipped up and tried to sell it too soon. This Court even added to the innuendo that Leader was “struggling financially.” Decision 6. The record shows no analysis of Leader’s financial statements anywhere. This statement by the Court as fact is pure hearsay that demeans the inventor and supports the infringer. This is unconscionable.

In short, Facebook played to the naiveté of an uncritical public to believe a lie. While a jury can be forgiven for being fooled, the purpose of this Court on appeal is to prevent such injustice. This Court’s duty is to look for hard proof instead of simply relying upon the infringer’s trial fiction. Facebook filled the jury’s head full of gobbledygook.³ Dr. Arunachalam prays that this Court does not reward such ignoble conduct any longer.

Where was the adjudged infringer Mark Zuckerberg in all this? Did the jury ever get to assess his credibility as compared to Mr. McKibben’s? Remarkably no, because the district court refused to allow Leader Technologies to introduce his testimony or mention his name at trial. This makes absolutely no sense and was clearly prejudicial to Leader Technologies being able to tell the full story to the jury, and in being able to cross-examine the adjudged infringer in front of the jury.

³ Merriam-Webster Dictionary: “wordy and generally unintelligible jargon;” Language that is meaningless or is made unintelligible by excessive use of abstruse technical terms; nonsense.

The Court's interpretation of the "is practiced" question is ambiguous at best. Therefore, as a matter of law, science and logic, an ambiguous premise *cannot* be the basis for a "clear and convincing" determination. Put another way, an ambiguous item of evidence, upon which all other alleged evidence is based,⁴ cannot be the basis for overturning the presumption of validity of a patent issued in the United States of America.

By law, "is practice" cannot be applied in this case to any time prior to the time of the question, which was 2009. Therefore, Interrogatory No. 9 is not even ambiguous.

Even if one were to proceed down the path of reasoning that the fact finder might have believed the "is practiced" response applied to the past, this renders Facebook's interpretation ambiguous at best. Therefore, at best this response classifies as a mere "scintilla of evidence." *Sub.* The other so-called "substantial evidence" in support of this scintilla must, as items of logic, be considered as "sub-scintillas" of evidence, since their basis for validity relies upon the precedent scintilla and cannot themselves be elevated to a higher state of being than the scintilla parent. Then, adding up the lone scintilla with alleged "substantial" sub-

⁴ The law of bivalence was breached by Facebook's assertion. A clear and convincing conclusion cannot be based upon a statement that can either be true or false (ambiguous). In fact, in law an ambiguous assertion is generally considered a false assertion for the purposes of impeachment.

scintillas, one cannot raise the sum state of this aggregate of evidence to the level of “clear and convincing” in law, science, logic or common sense. [*Anderson v. Liberty Lobby, Inc.*](#), 477 US 242 (Supreme Court 1986) at 252 (“mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient”).

An illustration of Facebook “scintilla” may help clarify the legal question. Here “S” represents a scintilla of *deficient* Facebook evidence:

$$S + S_{sub-scintilla_1} + S_{sub-scintilla_2} \dots \neq \text{Clear and Convincing}$$

Now let’s compare the legal standard of review for **substantial (clear and convincing) evidence** (Fig. 1) with Facebook’s **substantial (deficient) evidence** whose sub-scintillas must be considered “gray” evidence at best (Fig. 2). “Gray” means the evidence is suspect at best since it is derived from a questionable premise. In Fig. 1 E_N represents an item of *clear and convincing* evidence.

E_1	E_2	E_3
E_4	E_5	E_6
E_7	E_8	E_9

Fig. 1 – The Legal Standard of Review: Substantial (Clear and Convincing) Evidence

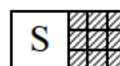


Fig. 2 – Facebook’s Substantial (Deficient) Evidence

This analysis illustrates the jury's and courts' confusion. Too much weight was given to the gobbledygook of Facebook's S(sub-scintillas) of evidence without first sorting out the S from the E(*n*) evidence. Without Interrogatory No. 9 there was no E evidence at all; *n*=null. Colloquially speaking, no attempt was made to separate the wheat from the chaff. Winnowing reveals that the evidence was *all chaff*—there was no wheat. Even a few grains of dodgy evidence is not clear and convincing.

Propriety dictates that a jury's belief about an ambiguous statement must be resolved in favor of validity (Leader Technologies, the real inventor). However, the fact is that Interrogatory No. 9 is not ambiguous as a matter of law. Therefore, Facebook fails to meet the clear and convincing burden of proof no matter how its deficient evidence is interpreted.

IV. The Court Neglected To Use Its Own Well-Settled Precedents To Test The Evidence—Precedents Upon Which The Entire Patent World Relies.

This Court is not a mere rubber stamp for district courts and juries. Its purpose is to take a critical look at what transpired in the lower courts for mistakes, prejudices and injustices, and make them right. This Court did not test *any* of Facebook's evidence against well-settled standards for assessing 35 U.S.C. 102(b) claims of on sale and public disclosure bar, including:

A. Element-by-Element Test: Did the Court perform an element-by-element prior art test against the alleged offers? **No.** [*Advanced Display Sys., Inc. v.*](#)

[*Kent State Univ.*](#), 212 F.3d 1272, 1282 (Fed. Cir. 2000)(“describe every element of the claimed invention”).

B. Uniform Commercial Code (“U.C.C.”) Test: Did the Court evaluate the alleged offers against the U.C.C.? **No.** Do the alleged offers “rise to the level of a commercial offer for sale” pursuant to the U.C.C.? **No.** [*Group One, Ltd. v. Hallmark Cards, Inc.*](#), 254 F. 3d 1041 (Fed. Cir. 2001) at 1047 (“we will look to the Uniform Commercial Code (“UCC”)”).

C. Reasonable Measures Secrecy Test: Did the Court perform the reasonable measures “deeds” test to determine if Leader had taken reasonable steps to protect its invention secrets from public disclosure? **No.** [*18 U.S.C. §1839\(3\)\(A\)*](#)(“reasonable measures to keep such information secret”); [*US v. Lange*](#), 312 F. 3d 263 (7th Circuit 2002)(“This makes it irrelevant that RAPCO does not require vendors to sign confidentiality agreements; it relies on deeds (the splitting of tasks) rather than promises to maintain confidentiality”);⁵

D. No-Reliance Contractual Terms Test: Did the Court take notice of the no-reliance agreements in place through the signing of the nondisclosure agreements (“NDA”) by alleged recipients of the offers; agreements that

⁵ Leader Technologies involved leading experts in the field of intellectual property and trade secrets to help protect its secrets, namely law [*Professor James P. Chandler*](#) and [*Maj. Gen. James E. Freeze, U.S. Army \(ret.\)*](#). See p. 20; fn. 21.

contractually negated offers as a U.C.C. matter of law? **No.** U.C.C., [Restatement \(Second\) Contracts \(1981\) §21](#) (“parties . . . may intend to deny legal effect to their subsequent acts”);⁶

E. Experimental Use Test: Did the Court test the evidence to determine if the alleged offers were permitted experimental use and therefore exempt from the on sale and public disclosure bar? **No.** [Allen Eng'g Corp. v. Bartell Indus., Inc.](#), 299 F.3d 1336 (Fed. Cir. 2002)(experimental use exemption).

F. Enablement Test of Brand References: Did the Court determine whether references to the Leader2Leader brand name “enables a person of ordinary skill in the art to practice the claimed method sufficient to prove on sale and public disclosure bar by clear and convincing evidence? **No.** [Helifix Ltd. v. Blok-Lok, Ltd.](#), 208 F. 3d 1339 (Fed. Cir. 2000)(“teaser” brand name references in selling documents do not trigger on sale bar because one of ordinary skill cannot build the invention from the mere reference to a brand name).

G. The Dictionary Act Test: Did the Court test the Interrogatory No. 9 evidence against the plain and ordinary meaning of English verb tense? **No.** [Carr v. US](#), 130 S. Ct. 2229 (Supreme Court 2010) at 2234 (“the present tense form of the

⁶ [PTX-1058](#) at 5 (Wright Patterson NDA: only definitive agreements shall have any legal effect); [DTX-725](#) (LTI-153002) at 5 (Vincent J. Russo NDA); [S. Hrg. 108-100](#) (2003) (testimony places Dr. Russo at WPAFB on Apr. 2, 2001).

verb 'to travel' . . ., which according to ordinary English grammar, does not refer to travel that has already occurred”).

Inventors rely upon this Court to uphold patent property rights from infringers as a fundamental tenet of our democracy. If the Court does not uphold its own precedential standards, then all patent rights are thrown into disarray.

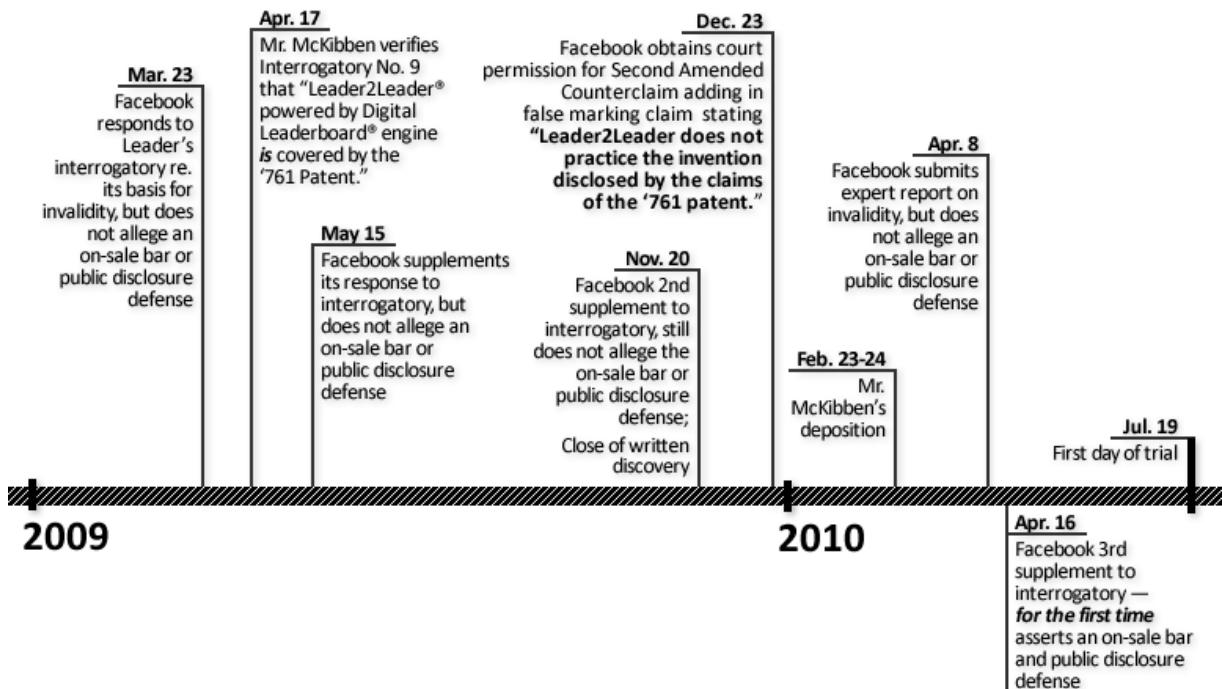
V. This Court Accepted Substantially Prejudicial Conduct In The Lower Court.

A. Prejudicially Late Claims Allowed. The district court changed judges just three months before trial. The new judge, as one of his first acts, allowed Facebook to amend its claims in an “about-face” and add on sale and public disclosure bar. Facebook should not have been permitted to claim on sale and public disclosure bar so close to trial. Besides being an illogical flip-flop in going from false marking (that no invention ever existed) to on sale and public disclosure bar (that an invention not only existed, but was offered for sale too early), this new claim was highly prejudicial since the district court did not allow any new discovery so that Leader could prepare its defenses. Such a decision crosses the line from judicial discretion to judicial prejudice.

For example, had Leader been allowed discovery, Leader would have been able to call expert witnesses including their former director law [Professor James P. Chandler](#) to testify on the subject of Leader’s “reasonable measures” taken to

protect its trade secrets. He knew these facts from personal knowledge and involvement. [Trial Tr. 10799:17-10800:22](#). The jury would have been unable to ignore Professor Chandler's authority and credibility since he was the chief author of the Federal Trade Secrets Act. His advice is relied upon by the U.S. Judiciary and Congress, among others. DTX-0179 ("Professor James Chandler, Director - President of the National Intellectual Property Law Institute and a principal security, intelligence and intellectual property advisor to over 202 jurisdictions worldwide"); [S.Hrg. 104-499](#) (Economic Espionage); [H.Hrg. Y 4.J 89/1:104/30](#) (Patents Legislation); H.Repts. [104-784](#), [788](#), [879](#), and [887](#); [White House Press Sec., Jan. 18, 2001](#) (NIAC); [DTIC-94-7-18-001](#).

Even a cursory review of Plaintiff-Appellant Leader's timeline (re-presented below) plainly shows the prejudice imposed on Leader Technologies by the late claim. [Corrected Combined Petition 6](#).



Leader was unfairly surprised and the allowance of this untimely claim confused the proceedings, creating extreme prejudice against the inventor. [Sears, Roebuck & Co. v. Mackey](#), 351 US 427 (Supreme Court 1956) at 437 (“any abuse of that [judicial] discretion remains reviewable by the Court of Appeals”); [Fed. R.Evid. 403](#) (excluding evidence for prejudice and confusion); [Fed. R.Civ. Proc. 26](#) (duty to disclose; prohibits unfair surprise).

B. Jury Binder / Interrogatory No. 9 Charade.

Facebook’s court room theater surrounding Interrogatory No. 9 was highly prejudicial and went unchecked by the district court. The court allowed Facebook to present a heavily-redacted version of Leader’s responses to Interrogatory No. 9

(over Leader's objection). Wigmore, Evidence, 3rd ed. ("Possibilities of error lie in trusting to a fragment of an utterance without knowing what the remainder was.").

To make matters worse, Facebook introduced the [doctored interrogatory](#) embedded deep inside a thick jury binder in a stunt that consumes *nine pages of trial transcript*. [Tr. 10740:7-10749:3](#). Facebook handed the jury a heavy binder that contained a raft of Leader engineering drawings dated around 2000. Facebook's heavily-redacted few pages of Interrogatory No. 9 were buried in the back of the binder, forcing the jury to fold over many pages of engineering drawings to get to it. Each of the engineering drawings contained the Leader2Leader logo graphic. The evident innuendo was that these drawings *implied* that actual software programming code *may* lie behind them.

Then, in the *piece de résistance* the next morning, Facebook claimed it made a mistake, claimed they did not intend for the engineering drawings to be given to the jury, and asked for them to be removed before Leader could cross-examine the evidence. Over Leader's vehement objections the district court allowed the removal, at one point even suggesting that he tell the jury a lie as the reason for the removal. [Tr. 10742:7-9](#) ("I've made an administrative mistake by admitting a large document when I meant to admit two pages"). Why would the judge offer to tell a fib for Facebook? Why would the judge allow such unvarnished prejudice? This conduct steps beyond judicial discretion into extreme prejudice.

By comparison, the district court in [*Guy v. Crown Equipment Corp.*](#), 394 F. 3d 320 (5th Circuit 2004) at 2(b) excluded boxes of accident reports in a transparent attempt by the plaintiff to prejudice the defendant with innuendo by dumping boxes of documents on the jury. On appeal the judge's actions were affirmed, stating "The district court did not abuse its discretion in excluding all but the 360 accident reports for left-leg injuries incurred by operators of forklifts without doors. For starters, the court noted, and criticized, the 'theatrics' employed by Guy in offering the evidence — bringing boxes of accident reports into the courtroom, in the presence of the jury. Obviously, this was prejudicial. *See* [Fed. R.Civ.Proc.103\(c\)](#) (should not suggest inadmissible evidence to jury); [Fed. R.Evid. 403](#)."

C. Lack of Expert Witness Credibility.

Patent cases are often highly technical in nature, for this reason one of the solemn duties of the district court judge is to ensure the reliability of expert witnesses. It is the court's responsibility to disqualify unreliable science since the fact-finders rely on that testimony to assess the facts objectively. Without reliable expert testimony, the fact-finders cannot do their jobs, and their conclusions will be founded upon unreliable information. [*Daubert v. Merrell Dow Pharmaceuticals, Inc.*](#), 509 US 579 (Supreme Court 1993) at 595-597 (the trial judge must ensure the reliability of scientific testimony).

Facebook's expert witness Dr. Saul Greenberg's testimony regarding Leader's provisional patent was hopelessly flawed and unreliable. The district court had a duty to disqualify him and did not. Specifically, in a sad but somewhat humorous bit of hand waving, Dr. Greenberg first claimed that any comment he made about Leader's source code would be a "wild guess." [Tr. 10903:10](#). Firstly, it is simply not credible for a Java programming expert such as Dr. Greenberg to claim not to know the general purpose of Java "import" statements. This alone was grounds for dismissal. Then, several transcript pages later he waxed eloquent "using my knowledge of programming" to assist Facebook with an opinion about that very code he said that he could not understand. [Tr. 10904:8-10905:15](#). Such testimony is not credible. *See* also fn. 4 regarding the law of bivalence. Specifically, either he could or he could not understand the code. Both claims cannot be true. He claimed to later understand what he could not understand earlier. This ambiguous testimony should have been discarded by the district court.

Dr. Greenberg's contradictory claims discredit *all* of his testimony. Since his was the only testimony arguing against the validity of Leader's provisional patent, Facebook's on sale and public disclosure bar claim would have been moot without Greenberg's unreliable testimony. [Christophersen v. Allied-Signal Corp.](#), 939 F. 2d 1106 (5th Circuit 1991) at 1127 ("If the record establishes a critical fact contrary to the expert's testimony, or if a court may take judicial notice of a fact that fatally

contradicts the assumptions of an expert, then his or her testimony ought to be excluded").

D. Leader Was Denied The “Crucible Of Cross-Examination” Of Mark Zuckerberg, The Adjudged Infringer.

The jury was never given the opportunity to hear from Mark Zuckerberg because the district court would not allow Leader to introduce his testimony or even mention his name at the trial. Facebook attacked the credibility of the true inventor of ‘761, Michael McKibben, but Leader’s attorneys were not given the opportunity to put the adjudged infringer Mark Zuckerberg on the stand to test his credibility by comparison. Facebook called Mr. McKibben a liar. The jury was bent toward that unproven innuendo. How might the trial have gone if Leader were given the opportunity to inquire of Mr. Zuckerberg directly about where he obtained the Leader source code? It is quite likely the texture of this trial would have changed completely and the focus would have been rightly placed on the adjudged infringer and not solely on the rightful inventor.

How can any thinking person believe that disallowing Mark Zuckerberg’s testimony at this trial was not prejudicial and did not step beyond the bounds of judicial discretion? [*Davis v. Alaska*](#), 415 US 308 (Supreme Court 1974)(“We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination”); See also [*Crawford v. Washington*](#), 541 US 36 (Supreme Court 2004) at 61, 74

(“testing in the crucible of cross-examination . . . cross-examination is a tool used to flesh out the truth, not an empty procedure”).

Leader’s constitutional right to test Mark Zuckerberg “in the crucible of cross-examination” was denied, leaving Facebook free to attack the true inventor’s credibility with impunity. Such a denial is beyond judicial discretion.

New evidence is emerging in other venues that casts serious doubt on Mark Zuckerberg’s veracity (veracity that the district court in this case refused to allow Leader Technologies to test). For example, Mr. Zuckerberg now claims for the first time in a sworn declaration that “I conceived of the idea for Facebook in or about December 2003.”⁷ However, a conflicting witness claims that Mr. Zuckerberg’s claim is false.⁸ This witness (who recently passed a lie detector test on this question) also says that Mark Zuckerberg sent him Leader Technologies’ White Papers in February of 2003.⁹ If this is true, then Mark Zuckerberg perjured himself in his Leader deposition since he answered “absolutely not” when asked if he had seen a

⁷ [Decl. of Mark Elliot Zuckerberg](#), *Paul D. Ceglia, v. Mark Elliot Zuckerberg and Facebook, Inc.*, 10-cv-569-RJA (W.D.N.Y. 2010), Doc. No. 46, June 1, 2011, Ex. B.

⁸ Def. Mot. to Enforce, Jun. 27, 2012, Ex. D., [Aff. of David London, No. 10\(c\)](#), *Edward B. Detwiler et al, v. Leader Technologies, et al*, 09-CV-006857 (Franklin Co. (Ohio) C.P. 2009).

⁹ [Id., No. 32](#).

copy of Leader's White Papers in 2003-2004, according to Leader attorneys.¹⁰ The district court blocked Leader's attempt to introduce this evidence at trial.

Mr. Zuckerberg also claimed in 2006 testimony to have built the entire Facebook platform in "one to two weeks" while studying for Harvard final exams in January 2004.¹¹ However, this claim is now hotly contested by at least two witnesses. One witness claims that Mr. Zuckerberg was waiting for Leader's source code to be "debugged" all through 2003. If this is true, then Mr. Zuckerberg perjured himself again, and proof of patent infringement in this case becomes a *fait accompli*.¹² Another witness states that another heretofore unidentified person named "Jeff" was helping Mr. Zuckerberg, in late 2003¹³ thus contradicting his *ConnectU* testimony where he claims to have done everything all by himself.¹⁴

¹⁰ [Tr. 1107:8, Heidi Keefe](#), Judge's Conference, Jul. 24, 2009, Doc. No. 77.

¹¹ [Zuckerberg Deposition, Tr. 41:10; 82:4](#), Apr. 25, 2006, , *ConnectU LLC v. Zuckerberg et al*, 1:04-cv-11923-DPW (D.Mass. 2004).

¹² *Detwiler* (fn. 9 above), [Aff. of David London, No. 58](#).

¹³ [Amended Complaint, No. 39, Apr. 11, 2011](#), *Ceglia v. Zuckerberg* (Zuckerberg: "if you could send another \$1000 for the facebook (sic) project it would allow me to pay my roommate or Jeff to help integrate the search code and get the site live before them").

¹⁴ [Zuckerberg Deposition, Tr. 37:15-20](#) (Q: "Were you the initial code writer of the initial code for Facebook? A. Yes. Q. Was there anybody else who assisted in writing the initial code for Facebook? A. No.").

Mr. Zuckerberg stated under oath in the *ConnectU* deposition that he had “other” sources for the first version of Facebook, but not surprisingly, he couldn’t remember what they were. Was this “Jeff” one of those “other” sources? Facebook did not produce this Nov. 22, 2003 “Jeff” Email to Leader.¹⁵

Perhaps more egregious than anything else, Facebook provided no copies of Facebook’s source code or computer hard drive information to Leader from the critical 2003-2004 timeframe during discovery. However, new information has surfaced that volumes of 2003-2004 information not only exist, but that **Facebook is currently attempting to have it destroyed**. That evidence was never produced to Leader Technologies and may include “at least five computers belonging to and used by Defendant Zuckerberg while a student at Harvard.”¹⁶ These computers contain things like “Instant Messaging logs” and source code from Mr. Zuckerberg’s activity at Harvard in 2003-2004 that was never produced to Leader.¹⁷ This

¹⁵ [Id., Tr. 36:22](#) (Zuckerberg: “I’m sure there are other things”).

¹⁶ [Temporary Restraining Order, Doc. No. 232, Nov. 25, 2011](#), *Ceglia v. Zuckerberg*, (to prevent Facebook’s destruction of evidence)(“Plaintiff has come across evidence that Defendants and defense counsel have suppressed evidence, made fraudulent arguments related to that suppressed evidence and actively sought, encouraged, urged and solicited destruction of that evidence from those whom [sic] have possession of it.”);

¹⁷ [Motion Hearing, Tr. 19:21, Doc. No. 361-19, Jun. 2, 2008](#), *ConnectU, Inc. et al v. Facebook, Inc. et al*, 1:07-cv-10593-DPW, Aug. 19, 2011 (D.Mass. 2007).; *Id.*, Doc. No. 361-6, p. 7 (“To date, TheFacebook, Inc. (the “Facebook”) has produced

withholding of evidence is unconscionable, especially with the specter that it would prove not only patent infringement, but outright theft.

Facebook's "song and dance" in *all* the litigation against them, including this one, has been that they don't understand the scope of the litigation.¹⁸ This **predatory obfuscation tactic**¹⁹ needs to be exposed by this Court for the whole world to see, understand, and no longer permit as a tactic of obstruction to prevent the rightful owners of patent properties from enjoying the fruits of their labors. Predators should be prevented from using the Rules of Civil Procedure to *hide* their theft of patent properties. **This predatory litigation technique will destroy the small American inventor by putting such disincentives in the way that they will no longer bother sharing their ideas with the public.** See *LELAND STANFORD*, fn. 1 above. As another case in point, the eventual discovery procedure of the Zuckerberg hard drives in *ConnectU* was so narrowly defined as to be able to cleverly avoid any surfacing of

three different versions of its source code, with file dates spanning from early to mid 2004 up through 2005").

¹⁸ [Tr. 1106:13, Paul Andre](#), Judge's Conference, Jul. 24, 2009, Doc. No. 77.

¹⁹ Almost one year into the *Leader v. Facebook* litigation, Facebook's Cooley Godward LLP attorney Heidi Keefe continues the obstructive hand-waving mantra "we do not still actually have a good grasp on what they are accusing of infringement." [Id. 1116:8-9](#). Similar discovery disputes in the *ConnectU* case went on for the first *two years* of the litigation.

the Leader Technologies' source code.²⁰ Leader should have been given an opportunity to study all of these hard drives for evidence of its source code and white papers that New Zealander David London testifies and verifies by reputable polygraph he received from Mr. Zuckerberg in Feb. 2003. See fn. 9.

All these discrepancies in Mr. Zuckerberg's story, the possibility that he actually stole Leader's source code, and the possible deliberate concealment of discovery information deserved to be explored by Leader, but Leader was denied that constitutional opportunity by the district court for such inquiry at trial. One of Leader's claims was willful infringement. They were prevented by Facebook's stealth in hiding behind the Rules of Civil Procedure, blocking a full confrontation of Mr. Zuckerberg on all these matters. Surely the spirit and intent of the Rules are not to *obstruct* justice as has occurred here. Such decisions by the lower court step well beyond the bounds of judicial discretion.

VI. The Efficacy of Nondisclosure Agreements Are Placed In Doubt By The Court's Decision.

Unless the Court changes its mind, its treatment of the efficacy of nondisclosure agreements throws the entire patent world into turmoil. Leader

²⁰ [Order for Discovery of Computer Memory Devices, Doc. No. 361-18, Aug. 19, 2011, p. 4 of 22](#), *ConnectU v. Facebook* (Order restricting the search to only "PHP or HTML source code"). Leader Technologies' source code was written in Java and XML. Facebook was found guilty of infringing this Leader source code on 11 of 11 claims.

Technologies exhibited admirable diligence in protecting its secrets, even hiring eminent directors who are experts in the field of trade secrets and security. The record shows not just reasonable measures, but extraordinary measures to protect its inventions from public disclosure.²¹

If this Court continues to ignore Leader's reasonable measures deeds as well as their written nondisclosure agreements, the impact of this precedent on the patenting process will be devastating. This Court will be saying that secrecy agreements, no matter how diligently handled, are irrelevant to maintaining secrecy during the invention process. Every infringer from this day forward will attack rightful inventors over the irrelevance of their NDAs and will cite this case as precedent.

Many if not most small inventors seek financial backing to sustain their invention efforts. If secrecy agreements are rendered irrelevant by this case precedent, the small inventors will have no ability to raise research and development funds. This decision will have effectively made the invention patenting process the exclusive domain of large, well-funded companies who can

²¹ For example, another Leader Director was Maj. Gen. James E. Freeze, U.S. Army (ret.), former head of the U.S. Army Security Agency; former Asst. Deputy Dir. of the National Security Agency (NSA); author of "The Freeze Report" on national laboratory security; [H.Hrg. 106-148](#); [GAO/RCED-93-10](#); [H.Hrg. 100-T91BB192](#) (J. Tuck); [DTX-0179](#) ("Major General James Freeze, US Army (ret.), Director - former head of the US Army Security Agency; Asst. Deputy Director of NSA; author of "The Freeze Report" on Department of Energy security").

afford to fund research internally. Such a change in the tenor of patent laws requires an Act of Congress based upon the will of the Citizens of the United States. Such a change in the interpretation of the U.S. Constitution Article I, § 8, cl. 8 is outside the jurisdiction of this Court.

CONCLUSION

For the reasons stated above, Dr. Arunachalam strongly urges the Court to grant Leader Technologies' petition, re-hear this case and rule in favor of Leader Technologies in this matter of critical importance to all inventors and patent holders, present and prospective.

Respectfully Submitted,

/S/

July 10, 2012

Lakshmi Arunachalam, Ph.D.

222 Stanford Avenue

Menlo Park, CA 94025

Tel.: (650) 854-3393

for Amicus Curiae Dr. Arunachalam

APPENDIX

CURRICULUM VITAE

Lakshmi Arunachalam, Ph.D.
Amicus Curiae

Dr. Lakshmi Arunachalam is a thought leader, inventor and pioneer in Internet multimedia web applications. She is Founder, Chairman and CEO of WebXchange, Inc, an online web applications platform for real-time exchange of multimedia information on the net, connecting users and devices with multimedia content owners and applications on the net. She holds key Internet patents on Internet Channel Control and web applications. In recent times, she has been focusing on patent licensing.

Dr. Arunachalam is also Chairman and Founder of Pi-Net International, Inc., a professional services company specializing in IT, IP, software, networking, security and Internet-related technologies. Dr. Arunachalam is also Chairman and Founder of e-pointe, Inc, Nithya Innovations, Inc. and WebXmagnet, Inc.

Prior to her current positions, Dr. Arunachalam directed network architecture at Sun Microsystems, IBM, AT&T Bell Labs, Carnegie Mellon Andrew File System and NSFNET. She held leadership positions in the IEEE802 and IEEE

POSIX X.500 standards bodies. She also worked at NASA Johnson Space Center with MITRE Corporation.

In addition to her patent and intellectual property work and entrepreneurial ventures, Dr. Arunachalam has taught at the University of Toronto and University of Madras. Her courses study the effects of the Internet and media technology on society. She has also taught courses in physics and computer networks, as well as refereed for computer journals. Dr. Arunachalam was a post-doctoral fellow at Rice University, Houston, Texas. She received her Ph.D. in Electrical Engineering from Salford University, Manchester, England, and M.S. in Physics from Simon Fraser University, British Columbia, Canada, graduate courses in Computer Science from University of Houston, and a B.S. and M.S. in Physics from University of Madras, India. She has published several books and papers in computer networking and holds patents, namely U.S. Patent Nos. [5,778,178](#); [6,212,556](#); [7,340,506](#); [5,987,500](#); [7,930,340](#); [8,037,158](#); and [8,108,492](#). She also has patents pending, namely U.S. Patent Application Nos. 12/628066; 12/628,068 (Notice of Allowance issued); 12/628,069; 12/932,758; and 13/199,077.

Lakshmi Arunachalam, Ph.D. | 222 Stanford Avenue | Menlo Park, CA 94025 | 650.854.3393 | laks22002@yahoo.com | laks@webxchange.com

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b), copies of the foregoing BRIEF OF *AMICUS CURIAE* LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC in green cover pursuant to Fed. R. App. P. 28.1(d) including a CERTIFICATE OF INTEREST and ENTRY OF APPEARANCE, were served on the following recipients by overnight mail:

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Attorney for Defendant-Appellee

A copy of the foregoing was also provided to Americans for Innovation at scribd/amer4innov for publication.

/S/

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for Amicus Curiae

Lakshmi Arunachalam, Ph.D.

July 10, 2012

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
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1. This BRIEF OF *AMICUS CURIAE* LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) or Federal Rule of Appellate Procedure 28.1(e). 2. The brief contains 6425 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

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Any noncompliance with the aforementioned Rules is purely inadvertent and will be corrected immediately upon notification.

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

ENTRY OF APPEARANCE

Please enter my appearance: Pro se

I am: Amicus curiae

As amicus curiae, I support: Petitioner / Plaintiff-Appellant
Leader Technologies, Inc.

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Lakshmi Arunachalam, Ph.D.

Certificate of Interest: See page 2.

July 10, 2012 /S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

cc.

Paul Andre, Esq., KRAMER LEVIN LLP, Counsel for Leader Technologies, Inc.

Heidi Keefe, Esq., COOLEY GODWARD LLP, Counsel for Facebook, Inc.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D.
FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF
LEADER TECHNOLOGIES' PETITION FOR
REHEARING AND REHEARING *EN BANC*
*Civil Appeal No. 2011-1366***

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222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 10, 2012

MEMORANDUM IN SUPPORT

Inventor and patent holder Lakshmi Arunachalam, Ph.D.
("Dr. Arunachalam"), as *amicus curiae*, respectfully requests leave of this Court to file a BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC* dated July 10, 2012.

Dr. Arunachalam is an inventor and holder of numerous patents in the field of Internet technologies with a principal place of business in Menlo Park, California. She comments in favor of the Petitioner-Appellants' Corrected Combined Petition For Panel Rehearing And Petition For Rehearing *En Banc* Of Plaintiff-Appellant Leader Technologies, Inc. dated June 12, 2012.

Dr. Arunachalam believes this petition raises important issues of patent law that are critical to the future of the patenting process, and most especially for those engaged in the protection of Internet software technologies. As grounds for this request, Dr. Arunachalam states that her *amicus curiae* brief would be of special assistance to the Court because this proceeding presents a number of constitutional, legal and procedures issues of critical importance to the holders of existing patents as well as to prospective patent holders.

Dr. Arunachalam offers a unique perspective as a long time inventor and patent holder who has been involved with protecting her inventions for more than a

decade against the predatory litigation tactics of large law firms which can often deceive busy courts and result in injustices against an inventor's rightful property and denial of rightful returns to their investors who support innovation.

For the foregoing reasons, Dr. Arunachalam, as *amicus curiae*, respectfully requests that this Court grant this motion. The Plaintiff-Appellant's petition is pending and this motion is being submitted in support of the Court's consideration of the petition. As such, no return date is applicable.

Dated: July 10, 2012
Menlo Park, California

Respectfully submitted

/S/

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for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b) I do hereby certify that twelve (12) copies of the foregoing NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D. FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC will be sent to the Clerk of the Federal Circuit at:

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July 10, 2012

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A copy of the foregoing was also provided to Americans For Innovation for publication.

/s/

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July 27, 2012

Lakshmi Arunachalam, Ph.D.

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laks@webxchange.com

July 27, 2012

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Mr. Jan Horbaly
Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Room 401
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Dear Mr. Horbaly,

Re: (1) Motion for Leave to File Amicus Curiae Brief, mailed July 10, 2012 and received on July 11, 2012 at 10:52 AM and (2) BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC mailed and received at the same time.

It has come to my attention that as of the date of this letter my motion and brief cited above have not been docketed pursuant to the Federal Rules of Appellate Procedure.

I note, however, that the Court's:

- (a) 7/11/2012 denial of the above-mentioned motion for leave to file and brief is docketed, but the motion and brief are *not available for public review*, and
- (b) 7/19/2012 denial of my motion for reconsideration is docketed, but the motion is not available for public review.

Will you kindly docket for downloading the above-mentioned motion and brief immediately pursuant to the Rules? The Clerk is not permitted to censor pleadings. See *Burns v. Ohio*, 360 US 252 (Supreme Court 1959).

Further, the docket notes that I have exceeded page limitations, despite the fact that Federal Circuit Rule 27(d)(1)(E)(2), p. 49 says the motion page limit is “not exceed 20 pages.” In addition, no notice of deficiency courtesy was provided, and I remind the Court that *pro se* filers are to be afforded liberal construction. See *Haines v. Kerner*, 404 US 519 (Supreme Court 1972). I do note that notice of deficiencies was provided to others during the pendency of this case.

Is this Court attempting to prevent a full and fair hearing of this case on the merits? It appears that way to “the ordinary person in the street.” I trust you will work to correct this perception in the interests of justice and preserving the integrity of the Court.

Respectfully,

/s/

Ms. Lakshmi Arunachalam, Ph.D.

For Amicus Curiae

Lakshmi Arunachalam, Ph.D.

cc.

Paul Andre, Esq., KRAMER LEVIN LLP, Attorney for Plaintiff-Appellant
Thomas G. Hungar, GIBSON DUNN LLP, Attorney for Defendant-Appellee



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2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

V.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**REQUEST FOR RELIEF FROM JUDGMENT AND ORDER
PURSUANT TO RULES 60(a) AND 60(b) FOR NEWLY DISCOVERED
EVIDENCE, MISTAKE, FRAUD, SURPRISE, MISREPRESENTATION,
MISCONDUCT AND THE JUDGMENT IS VOID**

Civil Appeal No. 2011-1366

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

Sep. 1, 2012

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

Sep. 1, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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Donna Kline. “Corruption at the Federal Circuit? You decide. Judge Alan D. Lourie Chose Retirement Fund Value Over Justice?” <i>Donna Kline Now!</i> Accessed Aug. 30, 2012 < http://donnaklinenow.com/investigation/hijinks-at-the-high-court >	8
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MEMORANDUM

Amicus Curiae Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) filed a motion for leave to file an *amicus curiae* brief in this matter. The Court denied the motion, as well as a motion for reconsideration and a renewed motion. Remarkably, while the Court has published its denials, citing elements of these motions, the Court has *refused* to publish the motions to which they refer. These motions may be obtained by the public nonetheless at <http://www.scribd.com/amer4innov>.

However, the Court made a fatal misstep in its march to railroad this matter out of the court. The Court said Dr. Arunachalam’s Motion for Leave to File Amicus Curiae Brief (“Motion for Leave”)¹ was moot because the Court had already denied Leader’s Petition for Rehearing and Rehearing *En Banc*. However, this is *impossible* since Dr. Arunachalam’s original motion was filed on **July 11, 2012** and Leader’s denial did not occur until **July 16, 2012**. Therefore, since all of the Court’s actions subsequent to July 11, 2012 are predicated on this denial of Leader’s petition, they are the **fruit of a poisoned tree** and void.

Further, Dr. Arunachalam relies on the Federal Rules of Appellate Procedure, including [Rule 27\(d\)\(1\)\(E\)\(2\)](#) (20 page limit). Dr. Arunachalam further

¹ Fully captioned as “Motion Of Lakshmi Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies’ Petition For Rehearing And Rehearing *En Banc*.”

requests that the Court interpret the rules liberally² as required by the Rules for *pro se* filers as well as required by the U.S. Supreme Court in [*Foman v. Davis*](#), 371 U.S. 178, 181-82 (Supreme Court 1962) which directs to assess the motion **on its merits** and not dismiss it for mere procedural technicalities.

Pursuant to [FRAP 27\(a\)\(5\)](#) Leader Technologies has said they will not oppose this motion and reserve the right to file a response; Facebook has not replied, therefore it is unknown whether or not they oppose the motion or whether they will file a response.

LAW & ARGUMENT

[Federal Rules of Civil Procedure, Rule 60\(a\)](#) provides for correction of mistakes in judgments, orders and records due to a clerical mistake, oversight or omission. [Federal Rules of Civil Procedure, Rule 60\(b\)](#) provides for correction of injustices on the following grounds:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void; . . .
- (6) any other reason that justifies relief.

² [Rule 27](#). Motions. Federal Circuit . Accessed Aug. 30, 2012
<<http://www.cafc.uscourts.gov/images/stories/rules-of-practice/rules.pdf>>.

From every appearance, at least certain members of the Court are choosing to ignore existing laws, and even the Court's own precedent, in an abject favoritism toward Facebook. Perhaps a Biblical admonition is in order, namely

[The Book of Deuteronomy 16:18-19](#) (NASB):

You shall appoint for yourself judges and officers in all your towns which the Lord your God is giving you, according to your tribes, and they shall judge the people with righteous judgment.

You shall not distort justice; you shall not be partial, and you shall not take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous.

The following discussion will not endeavor to distinguish between inadvertent error, fraud, misrepresentation or deception, since willful actions will require additional inquiry by the Court or appropriate disciplinary agencies. Dr. Arunachalam believes fraud and deception are evident from the *prima facie* record. However, all mistakes, omissions, oversights, frauds, misconduct, misrepresentations, etc. will be called "error."

Error #1: Lack of Jurisdiction; Violation of Leader's Right to Due Process

The overarching Constitutional question is whether or not this Court is even permitted to do what it is currently doing.

The Court fabricated a “substantial evidence” argument that was never made to the jury or argued on appeal.³ The Court also reached back into the record for justification, even pulling forward evidence that was never argued to the jury. For example, the Court cited a reference to American Express in an email as evidence of a commercial offer for sale when American Express evidence was not even argued to the jury by Facebook. Hypocritically, the Court did not even attempt to apply any of its own sufficiency tests or the Jury Instructions to the alleged offer. e.g., *Group One, sub*. Such conduct is manifestly wrong.

First, **the Court has no jurisdiction to become a trial court regarding new arguments and evidence**, especially when the arguments are its *own* which were *unilaterally* fabricated out of whole new cloth. Without hearings and briefings on such conduct, Leader was denied Constitutionally-guaranteed due process. This Court’s role is corrective. It has no mandate to try new evidence and claims. It certainly has no mandate to start new cases on behalf of the litigants.

Therefore, by creating a new argument and evidence not tried before a lower court,

³ Leader Technologies’ appeal was based on the “clear and convincing” evidence standard. See [Microsoft Corp. v. i4i Ltd. Partnership](#), 131 S. Ct. 2238 (Supreme Court 2011) citing [American Hoist & Derrick Co. v. Sowa & Sons](#), 725 F. 2d 1350 (Federal Circuit 1984). **No Facebook evidence** meets the clear and convincing evidence standard. The “substantial evidence” standard was *fabricated* by the Court who reached back into Facebook’s junk evidence (without the benefit of even a hearing to listen to what both sides had to say about the evidence that they plucked out *randomly*). Colloquially-speaking, a bucket full of junk is still junk. Scientifically-speaking, an unverified data set can *never* be considered reliable. The Court’s argument is illogical and meant only to present a façade.

this Court stepped outside its mandate and has **no jurisdiction** over the questions that it fabricated on its own. The Supreme Court ruled in [*Weinberger v. Salfi*](#), 422 US 749 (Supreme Court 1975) that a court has no jurisdiction over claims not asserted by a party, and it is impermissible to impute un-asserted claims upon a party as if they had been asserted.

Second, even if the Court were allowed to create a new argument and act as a trial court over those new arguments and evidence, **the Court denied Leader their [Fourteenth Amendment](#) Right to Due Process** by not at least holding a hearing on the new claims and evidence. Leader was not given “reasonable notice” that they would have to argue the sufficiency of a “substantial evidence” argument *fabricated* by the Court. "Reasonable notice implies adequate time to develop the facts on which the litigant will depend to oppose summary judgment." [*Portsmouth Square Inc. v. Shareholders Protective Comm.*](#), 770 F.2d 866, 869 (9th Cir.1985) cited in [*O'keefe v. Van Boening*](#), 82 F. 3d 322 - Court of Appeals, 9th Circuit 1996.⁴

A manifest Constitutional injustice has been perpetrated by this Court. This Court's decision is a violation of fundamental Constitutional rights embodied in the [Fifth](#), [Sixth](#), [Seventh](#) and [Fourteenth](#) Amendments.

⁴ See also "Judicial Hyperactivity: The Federal Circuit's Discomfort with Its Appellate Role; Rooklidge, William C.; Weil, Matthew F." [Univ. of California, Berkley](#), 15 *Berk. Tech. L.J.* 725 (2000). Accessed Aug. 4, 2012.

Error #2: Clerical Mistake

Clerk of Court Jan Horbaly signed an Order on July 11, 2012 denying the Notice Of Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing *En Banc* ("Motion for Leave") on the *same day* it was received.⁵ Clerk of Court employee Valerie White stated that such a rapid turnaround within hours of receipt was *impossible* since the judges would not have even had time to get a copy of the motion, much less read and consider it. Therefore, a reasonable person, at the very least, will consider the denial of the Motion for Leave a mistake. The Court's subsequent denial of the Renewed Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing *En Banc* ("Renewed Motion") states that "an earlier such amicus curiae brief was denied entry by the court as moot because the court had already denied Leader's petition for rehearing."⁶ This is a fraudulent statement. See below.

⁵ USPS.COM Express Mail public records for this filing (Label Number: EI081026663US) show that it arrived at the Federal Circuit in Washington D.C. at 10:52 AM on July 11, 2012.

⁶ See Order 2, Aug. 10, 2012.

*Error #3: **Fraud***

The Court's statement that the *amicus curiae* brief was moot because the Court had already denied Leader petition for rehearing is blatantly false. The **July 11, 2012** Motion for Leave cannot be rendered moot by a **July 16, 2012** denial. Remarkably, the July 16, 2012 order does not appear on the docket, nor do any of Dr. Arunachalam's motions. This conduct by the Clerk amounts to censorship and is a fraud upon the public. *See Error #8: Censorship, sub.*

*Error #4: **Court Procedures Out-Of-Order***

It appears that the Court is attempting to hide this material procedural error. The Court's subsequent denial of Leader's petition is out of order since the Court did not provide adequate time for the parties to file a response and reply to Dr. Arunachalam's Motion for Leave pursuant to [Federal Rules of Civil Procedure 27\(a\)\(3\)](#)(10 days for response; 7 days for reply). The Court's July 16, 2012 denial of Leader's petition occurred only four (4) days after receiving and denying Dr. Arunachalam's Motion for Leave, all within the span of just a few hours on July 11, 2012. An ordinary person knows that three to twelve judges cannot act in concert that quickly.

The Court jumped the gun by denying Leader's petition during the pendency of the response-reply period for Dr. Arunachalam's Motion for Leave. Then, the Court exacerbated its misstep by lying about it in their Aug. 10, 2012 Opinion. Whether by mistake, fraud, or both, the Court's subsequent acts are void as the **fruit of a poisoned tree**.

Error #5: Financial Conflicts of Interest; Abuse of Discretion

The Court's Aug. 10, 2012 Opinion did not adequately address its material conflicts of interest in a manner that would restore the public's confidence in the conduct of this Court. The Court misrepresented the spirit and intent of the conflict of interest rules for judges which dictate that they *avoid even the appearance of impropriety*.⁷ Despite the fact that at least Judge Lourie had multiple holdings in T.Rowe Price⁸ which is a well-publicized holder of more than five percent (5%) of Facebook, the Court's opinion claims Judge Lourie should benefit from the "safe harbor" rule. This flimsy excuse does not avoid the appearance of impropriety⁹ even at a minimum.

⁷ [Code of Conduct for Judicial Employees](#), Canon 2 ("A judicial employee should avoid impropriety and the appearance of impropriety in all activities.").

⁸ Renewed Motion for Leave To File, pp. 10, 13-16. Also available at <http://www.fbcoverup.com/federalcircuit/2012-07-27-Renewed-Motion-for-Leave-to-File-Amicus-Curiae-Brief.pdf>.

⁹ See also Donna Kline. "Corruption at the Federal Circuit? You decide. Judge Alan D. Lourie Chose Retirement Fund Value Over Justice?" *Donna Kline Now!*

Further, the Court argues that “[w]ithout such a provision, judges would be constantly recusing themselves from cases before them, hampering the administration of justice.” This argument is preposterous. This is tantamount to *excusing* conflicts of interests at the whim of the judge. If we had more judges recusing themselves for conflicts, the administration of justice would **improve**. This argument sets an unacceptably low ethical bar. [*Denton v. Hernandez*](#), 504 US 25 (Supreme Court 1992) at 34 (“the court inappropriately resolved genuine issues of disputed fact”); See also [*Haines v. Kerner*](#), 404 US 519 (Supreme Court 1972) at 520 (“dismissing his *pro se* complaint without allowing him to present evidence on his claims”).

Judges are responsible to make reasonable effort to keep informed of their personal and fiduciary financial interests [28 U.S.C. §455\(c\)](#). However, this Court says this activity *hampers* the administration of justice. [*Porter v. Singletary*](#), 49 f. 3d 1483 (11th Circuit 1995)(“a judge should disclose on the record information which the judge believes the parties or their lawyers might consider relevant”).

An ordinary person would consider Judge Lourie’s T. Rowe Price holdings certainly relevant and worthy of disclosure. He stood to benefit greatly by ruling in favor of Facebook.

Accessed Aug. 30, 2012 <<http://donnaklinenow.com/investigation/hijinks-at-the-high-court>>.

On March 7, 2012, just two days after the *Leader v. Facebook* oral argument, Chief Judge Randall R. Rader vacated and remanded a case due to the financial conflicts of interest of a judge and his family. In [*Shell Oil Co. v. US*](#), 672 F. 3d 1283 (Federal Circuit 2012) Judge Rader stated:

“Because we find that the trial judge's failure to recuse in this case was not harmless error, particularly given the risk of injustice and risk of undermining the public's confidence in the judicial process, we conclude that the appropriate remedy is to vacate the district court's orders and remand the case.”

...

“[W]e vacate Judge Smith’s final judgment . . . as well as the summary judgment orders . . . This case is hereby remanded with instructions that it be reassigned to a different judge . . . VACATED AND REMANDED”

Chief Judge Rader needs to apply the same medicine to this case. The apparent conflicts of interest in *Leader v. Facebook* are **significantly worse** than in *Shell Oil*. Remarkably, Judge Rader says in *Shell Oil*:

Chief Judge Rader wrote on March 7, 2012 (just two days after the *Leader v. Facebook* oral arguments):

The Court concluded that, when deciding whether to vacate a judgment for violation of [§ 455\(a\)](#) [financial conflicts of interest], a court should consider: (1) "the risk of injustice to the parties in the particular case"; (2) "the risk that the denial of relief will produce injustice in other cases"; and (3) "the risk of undermining the public's confidence in the judicial process."

To be clear, in March 2012 Judge Rader remanded a case and removed a judge because his *wife* had some stock in old-line Shell Oil. But in *Leader v.*

Facebook we have multiple judges *known* to be poised to benefit greatly by their thinly-veiled holdings in Facebook which was set to go public in the largest tech IPO in the history of NASDAQ during the pendency of this case, and Judge Rader does not consider that worthy of disqualification, or at least disclosure.

Judge Rader's conduct in *Leader v. Facebook* makes a mockery of his high-sounding (and legally correct) *Shell Oil* words. This conduct is perpetrating a manifest injustice against Leader Technologies and undermining the public's confidence which Judge Rader says he cares about. The same standard should apply in both cases and no appearance or reality of "special justice" for powerful litigants is appropriate.

Disclosure questions swirl around Facebook, making this Court's conduct all the more questionable. *CNBC* financial commentator Jim Cramer stated on Aug. 21, 2012 when asked about his opinion of Facebook Director Peter Thiel dumping his stock: "They get away with everything," "This made me furious" and "They have an excuse for every bit of bad behavior." More doubt from the ordinary person. The conflicts regarding Facebook just keep piling up around this Court.¹⁰

¹⁰ Jim Cramer Interview re. Facebook's Peter Thiel dumping his stock. *CNBC*, Aug. 21, 2012. Accessed Aug. 31, 2012
<<http://video.cnbc.com/gallery/?video=3000110603&play=1>>.

**Error #6: Court ignores material new evidence withheld
by Mark Zuckerberg not previously available to Leader**

The Court is ignoring newly-discovered evidence that was not available to Leader until recent months. This new evidence is newly-discovered Facebook source code from early to mid-2004 that Facebook's Mark Zuckerberg did not disclose or provide to Leader, yet disclosed in the *ConnectU v. Facebook* case on Aug. 19, 2011 after the *Leader v. Facebook* trial had concluded (on Jul. 27, 2010).¹¹ If this evidence proves that Mark Zuckerberg actually stole Leader's source code in 2003, then such a discovery would completely change the tenor of this trial.

Error #7: Relationship Conflicts of Interest

The Court has utterly failed to disclose judicial biases regarding Leader's former director and intellectual property adviser, Professor James P. Chandler. Chief Judge Randall R. Rader is a former law student of Professor Chandler. Professor Chandler also advised the Judiciary Committee chaired by Senator Orrin G. Hatch during Judge Rader's tenure as chief counsel to the committee. Many, if

¹¹ Motion For Reconsideration Of Notice Of Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing *En Banc* ("Motion for Reconsideration"), p. 4. Available at <<http://www.scribd.com/amer4innov>>.

not all, of the judges know Professor Chandler from his decades of work with Congress and Judiciary on intellectual property matters. The parties were given no opportunity to determine whether or not these relationships would bias the proceedings. It is well known that Professor Chandler's advocacy of the [Federal Trade Secrets Act](#) and the [Economic Espionage Act of 1986](#), as well as his Congressional Testimony regarding patent rights, have rankled some, especially those among the anti-patent and anti-inventor legal community (and perhaps members of this Court). Such feelings would certainly have tainted this ruling. *No disclosure* by these judges is not reasonable.

Failure to disclose judicial biases engendered from Chief Judge Rader's and Clerk of Court Jan Horbaly's long-time, policy-oriented relationships with Facebook attorneys include Thomas Hungar. Again, the Court's Aug. 10, 2012 Opinion was dismissive. After citing a litany of general professional activities, the Court lumped all of their Facebook attorney contacts into the general conclusion "[t]hese activities do not themselves constitute improper contacts." Therefore, the Court actually filled the page with words but said *nothing* to enlighten the public as to their numerous contacts with FACEBOOK'S attorneys so that the public can decide whether or not the contacts are/were proper. Again, this Court obfuscated and did not take the appropriate ethical actions.

Error #8: Censorship

This Court has not docketed a single motion by Dr. Arunachalam, citing various and sundry alleged procedural anomalies. This thinly disguised obfuscation is nothing more than the “old boy” network at work. To speak plainly, we laypeople are sick and tired of these procedural games that judges and attorneys use to reward their friends and punish their enemies. **These games are destroying the confidence of the public in our judicial system.** The evident reality here is that this Court does not want the truth to be published for the benefit of the public interest.

The Supreme Court said that the courts should not play these games in [*Foman v. Davis*](#), 371 U.S. 178, 181-82 (Supreme Court 1962) stating:

“The Federal Rules of Civil Procedure embody the principle that where possible, cases should be decided on their merits and not on mere procedural technicalities.”

The Supreme Court also showed its distaste for censorship in [*Southeastern Promotions, Ltd. v. Conrad*](#), 420 US 546 (Supreme Court 1975) at 553 stating:

“Our distaste for censorship—reflecting the natural distaste of a free people—is deep-written in our law.”

Not even one hearing was conducted before the decision to withhold Dr. Arunachalam’s motions from public access. Worse, Court employee Valerie White

claimed on Aug. 7, 2012 that the Court never even received Dr. Arunachalam's motions. See [Federal Rules of Appellate Procedure Rule 45](#); See also Error #8: Censorship, *supra*.

Error #9: Failure to follow the Jury Instructions

This Court is allowing the jury and the lower court to blatantly ignore the jury instructions. It seems evident that this Court failed to take even one minute to understand that the jury and the lower court *ignored* the following jury instructions.

Jury Instructions [4.6](#) and [4.7](#) required Facebook to prove on a claim by claim basis that the alleged offers for sale were “embodiment[s] that contains all the elements” and that the alleged offers for sale “rise to the level of a commercial offer for sale” as defined by the [Uniform Commercial Code](#) (“UCC”). Tellingly, the requirements of the UCC were never mentioned once by this Court—even though this very Court defined this precedential standard in [Group One, Ltd. v. Hallmark Cards, Inc.](#), 254 F. 3d 1041 (Federal Circuit 2001).

[Jury Instruction 1.7](#) instructed the jury to discard testimony not believed. Despite this, the lower court permitted the jury to transform disbelieved testimony into “affirmative evidence” of an ostensible opposite, thus allowing Facebook to perpetuate their fabricated evidence into this Court. This judicial support for such gross error supported the parallel lie about [Interrogatory No. 9](#)—the only item of

“evidence” left to reject. We are literally down to one piece of attorney-fabricated “evidence.” These circumstances make a mockery of the clear and convincing evidence standard.

Jury Instructions [4.4](#) and [4.8](#) instructed the jury to evaluate the evidence for permissible experimental use, yet that analysis was not performed by the jury, the lower court, or this Court.

How can any patent holder believe that this Court will protect their rights given the naked abdication of its own precedents in this case? This Court needs to fix these errors forthwith.

Error #10: Media Collusion

The Court’s two key decisions, the announcement of its decision on Leader’s appeal, and the announcement of its decision to deny Leader petition for rehearing were both timed to Facebook’s media needs. The Court claims this timing was “coincidence.” However, not a single “ordinary person” Dr. Arunachalam has polled believes this excuse. This is especially true when one considers the confusion, typos, contradictory information, un-docketed motions, Valerie White’s honest suspicions at first learning of these media events, and supposed docket technical problems emanating from the Clerk of Court. Put in the vernacular, the Court’s excuses don’t pass the proverbial “smell test.” One only

needs to view *Fox Business* Reporter Shibani Joshi's live interview with Leader's Chairman and Inventor Michael McKibben on July 16, 2012 to see that he was blindsided by this Court for Facebook's benefit.¹²

Judge Rader's high-sounding words in the *Shell Oil* opinion contrast dramatically with the Court's apparent double-standard in this case. The Court's deference to deep-pocketed litigants is apparent.

Error #11: This Court's decision places the patent world in turmoil

This Court's decisions in *Leader v. Facebook* are wrong and clearly biased toward handing Leader's hard-won U.S. Patent No. 7,139,761 to Facebook on a silver platter. This Court might as well shut down the U.S. Patent & Trademark Office due to all the turmoil and uncertainty this decision is creating.

This Court is throwing the definition of "clear and convincing" evidence out the window and opening the door wide for unscrupulous attorneys to steal whatever intellectual property they like. (For laypeople, this is akin to allowing attorneys to pull up your property boundary stakes and summarily declare that your property is now their client's because their client covets your land.) This Court is also telling unscrupulous attorneys that if they fabricate just the right kind of evidence which

¹² Shibani Joshi. Interview with Michael McKibben, Chairman & Founder of Leader Technologies, Inc. *Fox Business*, Jul. 16, 2012. Accessed Aug. 30, 2012 <http://video.foxbusiness.com/v/1738073255001/leader-technologies-sues-facebook-for-patent-infringement/?playlist_id=163589>.

hoodwinks an unsuspecting jury, and if they take good care of their “old-boy” judges, that they can steal anyone’s hard-won patent property using this mangled *Leader v. Facebook* on sale bar opinion.

In summary, Facebook had no evidence of on sale bar. This Court even agreed that the sole piece of “evidence” left was [Interrogatory No. 9](#) which we now learn the lower court *ordered* Leader on Sep. 4, 2009, to answer *only* in the *present tense*. This doesn’t even account for the Court’s ignoring of [The Dictionary Act](#) regarding interpretation of present tense language. Therefore, Facebook had **NO EVIDENCE**, and yet this Court is stubbornly sitting on its refusal to reverse.

Despite the fact that this Court has now *verified* that Facebook has **no evidence** to prove on sale bar pursuant to [35 U.S.C. §102\(b\)](#), this Court continues to *protect* Facebook from the day of reckoning.

This Court’s decisions do not engender public confidence.

RELIEF SOUGHT

Dr. Arunachalam respectfully requests, for the sake of justice and the future of patenting in the United States, that this Court remand this matter to an unbiased tribunal that will consider this case fairly and on the merits.

In the alternative, Dr. Arunachalam requests that unbiased judges be assigned and that Leader’s appeal be re-heard *ab initio*.

In the alternative, Dr. Arunachalam respectfully requests that the Court appoint unbiased judges and reconsider her original Motion for Leave to File Amicus Curiae Brief; and, since that motion pre-dated the Court's denial of Leader's petition for rehearing (and was therefore out-of-order), that the Court reconsider Leader's petition using unbiased judges.

Dr. Arunachalam further respectfully requests that credible, substantive opinions be written, and that a court of competent jurisdiction overturn Leader's [35 USC 102\(b\)](#) verdict, and remand the matter for further proceedings.

Dr. Arunachalam further respectfully requests that the Court provide relief in any other form that the Court deems fair and just; and in a manner that instills public confidence in the rule of law.

Sep. 1, 2012

/s/

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b) I do hereby certify that twelve (12) copies of the foregoing REQUEST FOR RELIEF FROM JUDGMENT AND ORDER PURSUANT TO RULES 60(a) AND 60(b) will be sent to the Clerk of the Federal Circuit, and twelve (12) copies to the Clerk of the U.S. Supreme Court at:

Clerk of Court
United States Court of Appeals for the
Federal Circuit
717 Madison Place, N.W.. Room 401
Washington D.C. 20439

Clerk of Court
United States Supreme Court
1 First Street, NE
Washington, D.C. 20543

Pursuant to Fed. R. App. P. 31(b), copies of the foregoing were served on the following recipients by overnight mail:

Two (2) copies to:
Paul Andre, Esq.
KRAMER LEVIN LLP
990 Marsh Road
Menlo Park, CA 94025
Tel.: (650) 752-1700
Fax: (650) 752-1800
Attorney for Plaintiff-Appellant

Two (2) copies to:
Thomas G. Hungar, Esq.
GIBSON DUNN LLP
1050 Connecticut Avenue, N.W.
Washington D.C. 20036-5306
Tel.: (202) 955-8558
Fax: (202) 530-9580
Attorney for Defendant-Appellee

Copies of the foregoing will be provided to (1) Americans For Innovation for publication;(2) Members of the House and Senate Judiciary Committees; and (3) the Washington D.C. Bar, Board of Professional Responsibility.

Sep. 1, 2012

/s/

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September 1, 2012

Mr. William Suter
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
(202) 479-3000
(202) 479-3472

Dear Mr. Suter,

*Re: Complaint about the Federal Circuit Judges and Clerk of Court in
Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.);
Supplemental 60(b) Motion sent Sep. 1, 2012*

Please kindly accept twelve (12) copies of the attached 60(b) Motion filed in the Federal Circuit today as a supplement to my complaint.

The Clerk of Court and the Chief Judge are implicated in the misconduct. Therefore, I have no confidence that they will oversee the information justly. I trust that the public can rely upon your good offices to fully investigate this matter, and not simply sweep these important matters to all patent holders under the carpet. To date, the Federal Circuit has only obfuscated and avoided the underlying evidence.

I will make myself available to you for your investigation. Please feel free to contact me at any time.

Respectfully yours,

/s/

Lakshmi Arunachalam, Ph.D.

To: Mr. William Suter, Clerk of Court, U.S. Supreme Court
From: Lakshmi Arunachalam, Ph.D. Complaint, 60(b) Supplement, Sep. 1, 2012

Enclosures: Twelve (12) Copies,

REQUEST FOR RELIEF FROM JUDGMENT AND ORDER PURSUANT TO
RULES 60(a) AND 60(b) FOR NEWLY DISCOVERED EVIDENCE,
MISTAKE, FRAUD, SURPRISE, MISREPRESENTATION, MISCONDUCT
AND THE JUDGMENT IS VOID in Leader Tech v. Facebook, Case No. 2011-
1366 (Fed. Cir.), Sep. 1, 2012.

cc.

House Committee on the Judiciary:

- Lamar Smith, Chairman
- John Conyers, Ranking Member
- Darrell Issa
- Steve Chabot
- Jim Jordan
- Howard Berman

Senate Committee on the Judiciary:

- Patrick Leahy, Chairman
- Chuck Grassley, Ranking Member
- Dianne Feinstein
- Al Franken
- Mike Lee
- Tom Coburn

Washington D.C. Bar

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		Depart USPS Sort Facility	September 01, 2012	SAN FRANCISCO, CA 94128	
		Processed through USPS Sort Facility	September 01, 2012, 8:41 pm	SAN FRANCISCO, CA 94128	
		Dispatched to Sort Facility	September 01, 2012, 4:31 pm	MENLO PARK, CA 94025	
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Label 11-B, March 2004

Post Office To Addressee

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Mo. Day		<input type="checkbox"/> PM	
Delivery Attempt	Time	<input type="checkbox"/> AM	Employee Signature
Mo. Day		<input type="checkbox"/> PM	
Delivery Date	Time	<input type="checkbox"/> AM	Employee Signature
Mo. Day		<input type="checkbox"/> PM	

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT

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☐ WAIVER OF SIGNATURE (Domestic Mail Only)

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I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

Federal Agency Acct. No. or
Postal Service Acct. No.☐ NO DELIVERY☐ Weekend☐ Holiday_____
Mailer Signature

TO: (PLEASE PRINT)

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717 Madison Place, N.W. Room 401
Washington, D.C.

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ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code	Day of Delivery	Postage
94025	<input type="checkbox"/> Next <input type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day	\$ 46.95
Date Accepted	Scheduled Date of Delivery	Return Receipt Fee
9/12	Month Day	\$
Mo. Day Year	Scheduled Time of Delivery	COD Fee Insurance Fee
Time Accepted <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Noon <input checked="" type="checkbox"/> 3 PM	\$ \$
Flat Rate <input type="checkbox"/> or Weight	Military	Total Postage & Fees
3 lbs. 1 ozs.	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	\$ 46.95
	Int'l Alpha Country Code	Acceptance Emp. Initials

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Lakshmi Arunachalam
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Exhibit D, Page 29

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		Acceptance	September 01, 2012, 10:32 am	MENLO PARK, CA 94025	

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EG 914595834 US

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code 94025	Day of Delivery Next <input type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day <input type="checkbox"/>	Postage \$ 4695
Date Accepted 1/9/12	Scheduled Date of Delivery Month 1 Day 4	Return Receipt Fee \$
Mo. Day Year 10 3 12	Scheduled Time of Delivery Month 1 Day 4	COD Fee Insurance Fee \$ \$
Time Accepted <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Total Postage & Fees \$ 4695
Flat Rate <input type="checkbox"/> or Weight 2.5 lbs. ozs.	Int'l Alpha Country Code	Acceptance Emp. Initials

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PHONE (

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Lakshmi Arunachalam
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Menlo Park, CA 94025



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Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

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☐ NO DELIVERY
Weekend Holiday ☒

Mailer Signature

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PHONE (

Clerk of Court
U.S. Supreme Court
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Washington, D.C.

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Exhibit D, Page 31

Exhibit E

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

V.

FACEBOOK, INC.,

Defendant-Appellee.

Citation links updated Mar. 13, 2014: On Fri. Mar. 7, 2014, the document service *Scribd* removed all documents cited herein that had been accessible from *Scribd* for two years. Some of the documents had over 10,000 reads. *Scribd* principals Trip Adler and Jared Friedman have Harvard associations with Mark Zuckerberg. The documents have been moved and the links updated herein. No content changes have been made.

[CLICK HERE](#) to see the delivery receipt and the Federal Circuit Bar Association's Request.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**MOTION TO COMPEL EACH MEMBER OF THE FEDERAL CIRCUIT
TO DISCLOSE CONFLICTS OF INTEREST**

Civil Appeal No. 2011-1366

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

Sep. 5, 2012

<http://www.fbcoverup.com/docs/arunachalam/2012-09-05-Motion-To-Compel-Judicial-Conflicts-Of-Interest-In-Leader-v-Facebook-By-Amicus-Curiae-Lakshmi-Arunachalam-PhD-Sep-5-2012.pdf>

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

To be clear, *Amicus Curiae* has no financial interest in either party. Rather, her interest in this matter is as a concerned citizen and holder of validly issued United States patents; the property rights therein she believes to be harmed by the conduct of Facebook and the courts in this matter.

Sep. 5, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

**CERTIFICATE OF GOOD FAITH PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE RULE 37(1)**

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. That *Amicus Curiae* has attempted in good faith to bring to the attention of the Court its duty to disclose conflicts of interest which are included in the Renewed Motion Of Lakshmi Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing *En Banc* ("Renewed Motion").
2. That *Amicus Curiae* received a four-page opinion from the Court that wholly excused its conduct and continues to fail to disclose its conflicts of interest.
3. Therefore, That *Amicus Curiae* is compelled to file this motion in both her interest as well as in the interest of the public.

Sep. 5, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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MEMORANDUM

Amicus Curiae Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) filed a motion for leave to file an *amicus curiae* brief in this matter. The Court denied the motion, as well as a motion for reconsideration and a renewed motion. On Sep. 1, 2012 Dr. Arunachalam sent a “Request For Relief.”¹ Remarkably, to date, while the Court has published its denials of Dr. Arunachalam’s motions, citing elements of these motions, the Court has *refused* to publish the motions to which they refer. These motions may be obtained by the public nonetheless at <http://americans4innovation.blogspot.com>.

This conduct amounts to censorship. [*Southeastern Promotions, Ltd. v. Conrad*](#), 420 US 546 (Supreme Court 1975) at 553 (“Our distaste for censorship—reflecting the natural distaste of a free people—is deep-written in our law.”). Not even a hearing was conducted before the decision to withhold Dr. Arunachalam’s motions from public access. Worse, the Court’s own employee, Valerie White, said

¹ Fully captioned as “[REQUEST FOR RELIEF FROM JUDGMENT](#) AND ORDER PURSUANT TO RULES 60(a) AND 60(b) FOR NEWLY DISCOVERED EVIDENCE, MISTAKE, FRAUD, SURPRISE, MISREPRESENTATION, MISCONDUCT AND THE JUDGMENT IS VOID.”

on Aug. 7, 2012² that none of Dr. Arunachalam's first three motions were even received even though the United States Post Office Records verify that they were.³

Dr. Arunachalam's briefs cite new, disturbing facts that this Court is choosing to ignore, namely that Facebook *withheld evidence* of its 2004 source code from Leader, investments by members of this Court in Facebook, and other conflicts of interest which reveal the **high likelihood of Court bias toward Facebook**.⁴ e.g., See **Exhibit A**, Deposition of Bryan J. Rose, Facebook forensic expert witness, *Paul D. Ceglia v. Mark Elliot Zuckerberg*, 1:10-cv-00569-RJA (W.D.N.Y. 2010), **July 18, 2012**, [Tr. 137:8-13](#) ("Q. Did your team -- your team evaluated 15 or 20 computers that Mr. Zuckerberg used historically; right? A. ... yes, correct"); *Id.*, [Tr. 41: 22-43:10](#) ("Q. Did they [Harvard] produce forensic copies [of Mark Zuckerberg's 2004-2004 email] from a backup source to you? A. Yes."). **Facebook told Leader that this evidence did not exist.**

It is unconscionable for this Court to overlook this new evidence that Facebook *withheld* from Leader during discovery.

² [Valerie White conversation with Steve Williams](#), Aug. 7, 2012. *Donna Kline Now!*.

³ "Do These Facts Pass The "Ordinary Person In The Streets" Test For Conflicts of Interest and Propriety?" See sidebar containing [USPS Express Mail Proofs of Delivery](#). *Donna Kline Now!*

⁴ See [Request for Relief, p. 12](#), citing Motion For Reconsideration Of Notice Of Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief Of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing *En Banc*, p. 4.

This revelation of new information withheld at Harvard becomes even more pertinent when one considers the central role that **Lawrence H. Summers** played then and now in Facebook—then President of Harvard University during Mark Zuckerberg’s matriculation (now CEO of Facebook), long-time professional adviser to Sheryl Sandberg (now Facebook COO), long-time economic adviser to Moscow, Russia-based Juri Milner (now CEO of Facebook’s second largest shareholder), director of the United States Government 2008 financial bailout of Goldman Sachs (now Facebook’s chief underwriter), and now special adviser to Marc Andreessen and Andreessen Horowitz (now a Director of Facebook).

Mr. Summers has returned to Harvard University in recent months. Given his central role in the questions swirling around these conflicts of interest, a reasonable person would consider the evidence at Harvard at risk of spoliation. *See* Ex. A. In the interest of justice, **this Court should act to prevent the spoliation** of the Harvard evidence, and other 2003-2004 Facebook documents, files, instant messages and emails that may be useful to Leader.⁵

Dr. Arunachalam believes that most, if not all, of the members of this Court have and had an ethical duty to disqualify themselves, or at least disclose their

⁵ *See* “Larry Summers Joins Andreessen Horowitz As Special Advisor.” Nicole Perlroth, [Forbes](#), Jun. 29, 2011. Accessed Sep. 4, 2012; *See also* “Larry Summers To Return to Harvard at Year's End.” Elias J. Groll and William N. White, [The Harvard Crimson](#), Sep. 21, 2010. Accessed Sep. 4, 2012.

conflicts of interest. Instead of full disclosure, they were silent, and when challenged, have presented a haughty, dismissive opinion.⁶ **Federal judges are not above the law**, and in this case, the law dictates that the members of this court provide full disclosure of their conflicts of interest. To date they have provided only conclusory, misleading, and in some instances, false statements.⁷ The public interest is best served by the members of this Court accounting for their appearances of impropriety in this case.

Dr. Arunachalam relies on the Federal Rules of Appellate Procedure, including [Rule 27\(d\)\(1\)\(E\)\(2\)](#) (20 page limit). Dr. Arunachalam further requests that the Court interpret the rules liberally⁸ as required by the Rules for *pro se* filers as well as required by the U.S. Supreme Court in [Foman v. Davis](#), 371 U.S. 178, 181-82 (Supreme Court 1962) which directs to assess the motion **on its merits** and not dismiss it for mere procedural technicalities.

⁶ Order, Aug. 10, 2012.

⁷ The Court's Aug. 10, 2012 Opinion stated falsely that Dr. Arunachalam had not provided a certificate of interest in motion for leave to file her amicus curiae brief. That certificate is the *second* ("ii") page of the motion. The Court also stated that Dr. Arunachalam's original motion was moot on **July 11, 2012** citing their **July 16, 2012** denial. This is also false; evidently designed to hide the fact that they jumped the gun and their decision is therefore invalid. See Request for Relief, pp. 6, 7. In addition, this Court is acting fraudulently since it lacks jurisdiction over the new unconstitutional claims that it is attempting enforce upon Leader. See *Id.*, pp. 3-5.

⁸ [Rule 27](#). Motions. Federal Circuit. Accessed Sep. 4, 2012.

Pursuant to [FRAP 27\(a\)\(5\)](#) Leader Technologies has said they will not oppose this motion and reserve the right to file a response; Facebook objects to this motion and says “We do not plan to submit a response.” Note that Mr. Thomas G. Hungar’s email at 7:02PM on Sep. 1, 2012 was received *after* the Request for Relief had already been sent to the Court earlier that day. For the record, Facebook indicated that they oppose the Request for Relief motion and “do not plan to submit a response.”

LAW AND ARGUMENT

The Federal Judicial Center begins its treatise on “Judicial Disqualification: An Analysis of Federal Law” with these crystal clear words:⁹

For centuries, impartiality has been a defining feature of the Anglo-American judge’s role in the administration of justice. The reason is clear: in a constitutional order grounded in the rule of law, it is imperative that judges make decisions according to law, unclouded by personal bias or conflicts of interest.

The Code of Conduct for Judicial Employees provides as follows:

Canon 1: A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee’s office.

Canon 2: A judicial employee should avoid impropriety and the appearance of impropriety in all activities.

⁹ [“Judicial Disqualification: An Analysis of Federal Law.”](#) Federal Judicial Center, 2010, p. 1. Accessed Aug. 29, 2012.

The [Model Rules of Professional Conduct](#), contain twenty-seven (27) instances referencing “conflicts of interest” and fifty-six (56) instances referencing “adverse interests.” Likewise, the [Code of Conduct for United States Judges](#) has four (4) instances discussing “conflict [of interests].” The definition of “conflict of interest” herein shall be as used as generally understood as defined by common law.

Precedent appears to be unclear as to how a judge is compelled by the public to disclose conflicts of interest. Indeed, the public relies on the judges themselves to be diligent in performing their *duty to initiate* such disclosure. Therefore, in one sense this motion is simply asking the members of the Federal Circuit, including the Clerk of Court, to be transparent and do their duties. Laypeople should not have to ask.

Dr. Arunachalam requests procedural latitude pursuant to *Foman, supra* and otherwise relies upon the general guidelines of the Federal Rules of Civil Procedure for a motion to compel, and the Federal Rules of Appellate Procedure Rule 27 for a motion in general. Dr. Arunachalam further relies upon the ethical principles embodied in 28 U.S.C. §455 regarding the public’s interest in the trustworthiness of the judiciary.

1. This motion is in the public interest

Judges have a duty to disclose conflicts of interests so that the public can be assured of his or her impartiality; hence, this motion is in the public interest. *See In re United States*, 666 F. 2d 690 (1st Circuit 1981)(“To ensure that the proceedings appear to the public to be impartial and hence worthy of their confidence, the situation must be viewed through the eyes of the objective person. *See* H.Rep.No. 1453, 93d Cong., 2d Sess., 1974 U.S.Code Cong. & Admin.News 6351, 6355.”).¹⁰

An ordinary person is hard-pressed to see where this Court lifted a finger to comply with these high ethical standards in this case. Instead, they have *masked* their conflicts in procedural gobbledygook¹¹ meant to confuse civilians with jargon and self-serving manipulation of rules that can be interpreted any way a judge, citing “judicial discretion” wishes. These excuses include such things as hiding investments in Facebook,¹² cozy relationships with Facebook’s attorneys,

¹⁰ See additional case law at [“Judicial Disqualification: An Analysis of Federal Law.” Federal Judicial Center, 2010, p. 97, fn. 488](#) and [Id. pp. 121-129](#). Accessed Aug. 29, 2012.

¹¹ Corrupt judges are notorious for using alleged procedural missteps to punish their enemies while citing “judicial discretion” to turn a blind eye to their friends. **Such conduct is destroying public confidence in American justice**; *See also Foman v. Davis*, 371 U.S. 178, 181-82 (Supreme Court 1962)(“The Federal Rules of Civil Procedure embody the principle that where possible, cases should be decided on their merits and not on mere procedural technicalities.”).

¹² “Anything goes with this company.” Jim Cramer Interview re. Facebook’s Peter Thiel dumping his stock. [CNBC](#), Aug. 21, 2012; *See also* Leader blindsided with

professional biases against Leader witnesses and prospective witnesses, ignoring explosive new evidence withheld by Mark Zuckerberg, abuse of due process, a clerk acting like a judge, failure to follow the spirit of justice embodied in the Rules of Civil or Appellate Procedure, and censorship of court records, to name a few.

“We find particularly worrisome [the judge’s] failure to disclose this conflict himself. “ [*Moran v. Clarke*](#), 296 F.3d 638 (8th Cir. 2002). This principle applies equally to clerks. “When the judge’s current law clerk has a possible conflict of interest, the Eleventh Circuit notes that ‘it is the clerk, not the judge who must be disqualified.’”¹³ Clerk of Court Jan Horbaly’s cozy relationship with Facebook’s attorneys have biased these proceedings. In fact, all evidence suggests that Mr. Horbaly unilaterally wrote and signed the opinions in breach of the law. US citizens do not appoint judges to sit on the bench; only to have those responsibilities shuffled off to unappointed (and therefore *unaccountable*) law clerks and legal assistants. If this is the case, then the public has no need for federal judges.

Court opinion. also Shibani Joshi, F Shibani Joshi. Interview with Michael McKibben, Chairman & Founder of Leader Technologies, Inc. [*Fox Business*](#), Jul. 16, 2012.

¹³ [Judicial Disqualification: An Analysis of Federal Law. Federal Judicial Center, 2010, pp. 29, 30](#), citing [*Byrne v. Nezhad*](#), 261 F.3d 1075, 1101–02 (11th Cir. 2001) (quoting [*Hunt v. Am. Bank & Trust Co.*](#), 783 F.2d 1011, 1016 (11th Cir. 1986)). Accessed Aug. 29, 2012.

Given the fact that the Court denied Dr. Arunachalam's Motion for Leave to File on the *same day* it was received on July 11, 2012, Jan Horbaly's signature stamp on the denial only *hours* later means that no duly-appointed judge even saw the motion. That's is what Clerk employee Valerie White confirmed. *See* fn. 2.

2. This Court is duty-bound to investigate and account to the public for its actions and the allegations of bias

"§455 calls upon judges to evaluate the merits of a movant's allegations and not simply the facial sufficiency of those allegations."¹⁴ This is especially true in this case since this case is broadly publicized and public confidence in the judicial process is being undermined by the Court's bias. [*In re United States*](#), 158 F.3d 26, 30 (1st Circuit 2001); *See also* [*In re Boston's Children First*](#), 244 F.3d 164, 167 (1st Cir. 2001)(where question of judge's partiality was highly publicized, writ of disqualification issued where it may not have under normal circumstances). The Court opinion was nothing more than whitewash. *See* fn. 5.

¹⁴ *Id.*, ["Disqualification Under 28 U.S.C. §455."](#) [Judicial Disqualification: An Analysis of Federal Law. Federal Judicial Center, 2010, p. 84.](#) Accessed Aug. 29, 2012.

3. Judges are responsible to adequately investigate their holdings and disclose possible conflicts

Porter v. Singletary, 49 F. 3d 1483 (11th Circuit 1995) at 1489 (“The Commentary to Canon 3E(1) provides that a judge should disclose on the record information which the judge believes the parties or their lawyers **might consider relevant** to the question of disqualification. We conclude that both litigants and attorneys should be able to rely upon judges to comply with their own Canons of Ethics.”)(emphasis added).

4. Biased rulings must be vacated

In *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F. 3d 120 (2nd Circuit 2003) **the district judge’s refusal to recuse himself after discovering a holding in Chase resulted in his decisions being vacated.** This fact pattern is not dissimilar to this case since the judges of this Court are known to own mutual funds with substantial, well-publicized holdings in Facebook. The Court’s reference in their Aug. 10, 2012 Opinion to Canon 3 C (3)(c)(i) which allows mutual funds in general **does not hold water in light of the overarching ethical principles and the fact pattern here.**¹⁵

¹⁵ See “Disqualification Under 28 U.S.C. §455.” Judicial Disqualification: An Analysis of Federal Law. Federal Judicial Center, 2010, pp. 73, 74. Accessed Aug. 29, 2012.

In [*United States v. Lauersen*](#), 348 F.3d 329 (2d Cir. 2003) the judge disclosed his shareholding in one of the defendant's insurance companies that would benefit from his ruling in their favor. The Second Circuit held that such a holding *would have been a basis for disqualification* had he not disclosed it. One is hard-pressed to see how this case is different.

5. Judge Lourie's and Judge Moore's holdings stood to benefit greatly from a ruling in favor of Facebook

Judges Lourie and Moore's mutual fund holdings held substantial stakes in Facebook; even heavily publicizing those holdings during the pendency of this case. Given the publicity, no reasonable person could excuse the judges for not disclosing those thinly-veiled Facebook holdings (even though the judge self-excused themselves citing Canon 3 C). Their personal holdings doesn't even account for the benefits that would likely accrue to their **relationships to the third degree**; information that is the judge's ethical duty to police pursuant to their Code of Conduct. Were such conflicts checks performed in this case? No one knows since the judges have remained intransigent.

6. Chief Judge Randall R. Rader issues contradictory rulings on judicial conflicts of interest

In [*Shell Oil Co. v. US*](#), 672 F. 3d 1283 (Federal Circuit 2012) Judge Rader *remanded* a matter and *removed* a district court judge when it was discovered that the judge's *wife* had some stock in Shell Oil. Remarkably, this decision was made just two days after oral arguments in this case. Judge Rader even *vacated* all the judge's rulings. Even though the conflicts of interest in this case are dramatically worse, Judge Rader is tellingly silent. **Apparently the Federal Circuit has a double standard** that applies the law properly in cases involving companies with deep pockets, but ignores the conflict when the deep pockets are the wrong doers. *See* Renewed Motion, pp. 13-15 (e.g., Judge Moore Fidelity holdings); *See* also e.g., Judge Lourie 2010 Financial Disclosure (T. Rowe Price holdings).

7. Federal law requires a judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. §455(a)

Because section 455(a) is intended to avoid even the appearance of impartiality, it is not actual bias or prejudice, but rather the *appearance of bias and prejudice* that matters. [*Liljeberg v. Health Services Acquisition Corp.*](#), 486 US 847, 860 (Supreme Court 1988); [*Liteky v. United States*](#), 510 US 540 (Supreme Court 1994).

The Federal Judicial Center states:¹⁶

Congress has enacted laws telling judges to withdraw or recuse themselves from any case in which a close relative is a party or in which they have any financial interest, **even one share of stock**. Congress requires judges to file a financial disclosure form annually, so that their stock holdings, board memberships, and other financial interests are on public record. Most judges maintain more frequent lists of their holdings for lawyers to inspect (emphasis added).

This Court appears to have ignored the admonition of the statute as well as those of the Ninth Circuit in [US v. Holland](#), 519 F. 3d 909 (9th Circuit 2008) at 912:

As a “general proposition a judge may *not* sit in cases in which his “impartiality might reasonably be questioned . . . If it is a close case, the balance tips in favor of recusal.”

The admonition to disqualify oneself if one’s impartiality could be reasonably questioned is echoed by the Seventh Circuit in [In re Nettles](#), 394 F.3d 1001, 1002 (7th Cir.2005) at 914:

We must bear in mind that these outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be. (internal quotation marks and citation omitted)).

Despite these clear admonitions to flee even the appearance of a conflict, this Court clings to misleading reliance on Canon 3 C (3)(c)(i), “coincidence” and

¹⁶ “For judges who are appointed for life, what safeguards ensure that they can do their jobs fairly and capably?” [Federal Judicial Center](#). Accessed Aug. 28, 2012.

Canon 4 A (1) while ignoring other canons and precedent that discredit their flimsy excuses for *maintaining and sustaining* their appearance of impropriety.¹⁷

For these reasons, Dr. Arunachalam is compelled to demand in the public interest that the members of this court fully disclose their conflicts of interest in this matter.

For the purposes of this motion, any reference to “judge” is also a reference to the “clerk” and any other judicial employee. All requests shall be considered requests for reasonably substantive responses.

DISCLOSURE QUESTIONS

Dr. Arunachalam, on behalf of herself as well as the public interest, moves to compel each member of the Federal Circuit to disclose the following:

1. What were the Court’s specific “conflicts of interest checking” procedures used in this case from inception to the present?¹⁸ Responses should include all written documentation and procedures. Please provide written verification as to whether or not each judge complied. Please document and verify verbal instructions.

¹⁷ See Footnote 4.

¹⁸ “Conflict of Interest” shall be used as generally understood by the legal profession and the general public. *Supra*.

2. What are the Court's written procedures for conflicts checking before judges and judicial employees are assigned to a case? Please provide copies of all written procedures and written verification of informal and verbal procedures.

3. What were the procedures used to process and develop opinions among the judges regarding Dr. Arunachalam's motions from March 5, 2012 to the present?

4. Did each and every member of the Federal Circuit receive each and every one of Dr. Arunachalam's motions, then write an opinion denying each motion regarding her amicus curiae brief? Please provide documentation and verification of every representation made in answer to this question.

5. What were the procedures used on July 11, 2012 to receive, process and deny Dr. Arunachalam's Motion for Leave to File in one afternoon? The response should include all written documentation and procedures, and verification as to whether or not each judge complied, and the content of their opinions.

6. What technical problems has the Court's PACER docket experience specifically related to the posting of docket items in this case, from the inception of this case to the present?

7. Why has the Clerk not posted each and every motion filed by Dr. Arunachalam's?

8. Why has the Clerk posted denials of Dr. Arunachalam's motions but not posted the motions themselves for public review?

9. What were the Court's procedures, including times, places and dates, used to notify the parties of the Court's July 16, 2012 denial of Leader's Petition for Rehearing and Rehearing En Banc? Please provide verified records of these notifications to the parties. Please include verified statements for any verbal notices provided.

10. Did the Court notify Facebook and/or *Fox Business* around noon on July 16, 2012 of its denial of Leader's Petition for Rehearing and Rehearing *En Banc*?

11. Which Court officer or employee provided notice to *Fox Business* of the denial of Leader's Petition for Rehearing and Rehearing *En Banc* about noon on July 16, 2012?

12. If *Fox Business* was provided a verbal notice of Leader's Petition for Rehearing and Rehearing *En Banc* about noon on July 16, 2012, then please provide a verified record of a similar notice having also been provided to the parties.

13. Describe each contact between each judge and Professor James P. Chandler, President of The National Intellectual Property Law Institute and former

Professor of the Law, and Director of the Computers in Law Institute at George Washington University National Law Center, from 1986 to the present time.

14. Describe each contact, professional and personal/casual/social, including funds and gifts exchanged, between each judge with any attorney who has represented or currently represents Facebook during the pendency of this matter. Please describe all contacts from 1986 to the present.

15. What are the direct Facebook stock holdings by each judge?

16. What are the Facebook holdings of each mutual fund held by each judge?

17. What are the direct and/or indirect (mutual funds, trust holdings, etc.) Facebook stock holdings by any family member of a judge, to the third degree of relationship? *See* 28 U.S.C. §455(b)(5) for definition of “third degree.”

18. Has any member of this Court been the target of attempts at undue influence in any form during the pendency of this case? If so, what form did this activity take and what was the outcome?¹⁹

¹⁹ For the purposes of this question, undue influence shall be defined as but not limited to bribery, coercion, threat, excessive force, compromise, duress, compulsive act, moral or social pressure, danger, intimidation, extortion, blackmail, physical abuse, psychological abuse, victimization, injury, fraud, excessive pressure, misrepresentation, false pretenses, favors, patrimony, victimization, deception, sexual favors, coercive persuasion, fear, puppeteering, isolation, withholding favors, enticements, playing on loyalties and medication.

19. Has any member of this Court been the target of foreign influence during the pendency of this case? If so, what form did this activity take and what was the outcome?

20. Describe each contact professional, personal, social, casual and otherwise by each member of this Court and/or relationship to the third degree with any of the following principals, beneficial parties and the self-described business “ecosystem” of Facebook’s Director James W. Breyer,²⁰ including all affiliated and interlocked organizations, from 1986 to the current time:²¹

- a. Mark E. Zuckerberg
- b. Dustin Moskowitz
- c. Christopher C. Hughes
- d. Eduardo L. Saverin
- e. Sean Parker
- f. Lawrence H. Summers and/or Andresseen Horowitz
- g. Sheryl K. Sandberg and/or World Bank, U.S. Dept. of Treasury, Brookings Institution
- h. Juri Milner (a.k.a. Yuri Milner) and/or DST Holdings Ltd., Mail.ru Group Ltd., Digital Sky Technologies, Alisher Asmanov,²² Moscow State University Departments of Physics

²⁰ Use affiliated and interlocked associations disclosed in “Facebook, Inc. Insured Profile Report – Cyber Liability Focus.” [Advisen Insurance Intelligence. pp. 2, 3.](#) Accessed Sep. 2, 2012 (James W. Breyer Interlocked Companies Wal-Mart Stores, Inc.; Dell, Inc.; News Corporation; Accel Partners; Prosper Marketplace, Inc., Maven Networks, Inc.; Brightcove, Inc. (aka: Video Marketplace, Inc.); The Founder’s Fund; Xoom Corporation); See also James W. Breyer, Director, Walmart. [Application number: 1-2064-74519 for Wal-Mart Stores, Inc.](#) Accessed Sep. 2, 2012 (“provide a single, trusted, **ecosystem** experience for Internet users worldwide”)(emphasis added).

²¹ Use [Renewed Motion, pp. 13-16](#) for verification of the party referred to.

²² Use [Renewed Motion, p. 14](#), “\$2,169,376,940 – DST Holdings (. . . Juri Milner, Moscow, Russia).”

and Mathematics, Moscow, Russia Russian Academy of Sciences, Moscow, Russia

- i. James W. Breyer and/or Accel Partners LLP (incl. subsidiaries and related web of holdings);²³ please identify all relationships and holdings in London (United Kingdom), Bangalore (India) and Beijing (China)
- j. Peter A. Thiel and/or Clarium Capital²⁴
- k. Reid G. Hoffman and/or PayPal, LinkedIn
- l. Elon Musk
- m. Matt Cohler and/or Instagram
- n. Marc L. Andreessen and/or Andreessen Horowitz
- o. James Swartz (Accel Partners)
- p. Ping Li (Accel Partners)
- q. Lisa T. Simpson
- r. Theodore Ulyot
- s. Thomas G. Hungar
- t. Fenwick & West LLP
- u. White & Case LLP
- v. Cooley Godward LLP
- w. Orrick Herrington LLP
- x. Gibson Dunn LLP
- y. Nicholas Carlson and/or *Business Insider*, aka *Silicon Alley Insider*
- z. David Kirkpatrick
- aa. Henry Blogget (*Business Insider*)
- bb. Ben Mezrich
- cc. Goldman Sachs and/or subsidiaries
- dd. Morgan Stanley and/or subsidiaries

²³ Use [SEC Insider Trading Table](#) of associated and interlocked Accel Partners and James W. Breyer associations delineated in “James W. Breyer’s tangled web of insider trading – AKA – “You’ve been Breyer-ed--In confusion there is profit? *Donna Kline Now!* Accessed Sep. 2, 2012.

²⁴ [Op.cit.](#), p. 14.

REQUEST FOR RELIEF

For the reasons stated above, Dr. Arunachalam respectfully requests full and complete responses to the aforementioned questions.

Dr. Arunachalam respectfully requests that the Court act to preserve from spoliation the 2003-2004 Facebook evidence that was withheld from Leader Technologies, including email and instant messaging archives at Harvard and other locations identified in the Rose deposition.

Dr. Arunachalam also respectfully requests that the Court sanction the members of this Court who have engaged in undisclosed conflicts of interest, and that those sanctions be levied in a manner that best serves the interests of justice and restores public confidence.

Sep. 5, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.

for Amicus Curiae Lakshmi Arunachalam, Ph.D.

222 Stanford Avenue

Menlo Park, CA 94025

(650) 854-3393

laks@webxchange.com

EXHIBIT A

A complete copy of this 293-page deposition is available at:

July 18, 2012 Deposition of Bryan J. Rose, Facebook forensic expert, *Paul D. Ceglia v. Mark Elliot Zuckerberg*, 1:10-cv-00569-RJA (W.D.N.Y. 2010). Accessed Sep. 4, 2012
<<http://www.fbcoverup.com/docs/federalcircuit/Deposition-of-Bryan-J-Rose-Facebook-forensic-expert-Ceglia-v-Zuckerberg-1-10-cv-00569-RJA-WDNY-2010-18-Jul-2012.pdf>>.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b) I do hereby certify that twelve (12) copies of the foregoing MOTION TO COMPEL EACH MEMBER OF THE FEDERAL CIRCUIT TO DISCLOSE CONFLICTS OF INTEREST will be sent to the Clerk of the Federal Circuit, and three (3) copies to the Clerk of the U.S. Supreme Court at:

Clerk of Court
United States Court of Appeals for the
Federal Circuit
717 Madison Place, N.W.. Room 401
Washington D.C. 20439

Clerk of Court
United States Supreme Court
1 First Street, NE
Washington, D.C. 20543

Pursuant to Fed. R. App. P. 31(b), copies of the foregoing were served on the following recipients by overnight mail:

Two (2) copies to:
Paul Andre, Esq.
KRAMER LEVIN LLP
990 Marsh Road
Menlo Park, CA 94025
Tel.: (650) 752-1700
Fax: (650) 752-1800
Attorney for Plaintiff-Appellant

Two (2) copies to:
Thomas G. Hungar, Esq.
GIBSON DUNN LLP
1050 Connecticut Avenue, N.W.
Washington D.C. 20036-5306
Tel.: (202) 955-8558
Fax: (202) 530-9580
Attorney for Defendant-Appellee

Copies of the foregoing will be provided to (1) Americans For Innovation for publication;(2) Members of the House and Senate Judiciary Committees; and (3) the Washington D.C. Bar, Board of Professional Responsibility.

Sep. 5, 2012

/s/

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

Lakshmi Arunachalam, Ph.D.

222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com

September 5, 2012

Mr. William Suter
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
(202) 479-3000
(202) 479-3472

Dear Mr. Suter,

*Re: Complaint about the Federal Circuit Judges and Clerk of Court in
Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.); Supplemental
information re. Motion to Compel Disclosure of Conflicts of Interest*

Please kindly accept the attached **Motion To Compel Each Member Of
The Federal Circuit To Disclose Conflicts Of Interest** as a supplement to my
complaint.

As I have explained in my complaint and Aug. 31, 2012 supplement to my
complaint (60(b) motion), since the Clerk of Court and the Chief Judge are
implicated in the misconduct, I have no confidence that they will oversee the
information justly. To date, they have only obfuscated and avoided the underlying
evidence.

I will make myself available to you for your investigation. Please feel free to
contact me at any time.

Respectfully yours,

/s/

Lakshmi Arunachalam, Ph.D.

Mr. William Suter, Clerk of Court, U.S. Supreme Court
Lakshmi Arunachalam, Ph.D. Complaint
September 5, 2012

Enclosure:

**MOTION TO COMPEL EACH MEMBER OF THE FEDERAL CIRCUIT
TO DISCLOSE CONFLICTS OF INTEREST** in *Leader Tech v. Facebook*,
Case No. 2011-1366 (Fed. Cir.).

cc.

House Committee on the Judiciary

- Lamar Smith, Chairman
- John Conyers, Ranking Member
- Darrell Issa
- Steve Chabot
- Jim Jordan
- Howard Berman

Senate Committee on the Judiciary

- Patrick Leahy, Chairman
- Chuck Grassley, Ranking Member
- Dianne Feinstein
- Al Franken
- Mike Lee
- Tom Coburn

Washington D.C. Bar

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Exhibit E, Page 34

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Exhibit F

6. In *Seagate Tech LLC v. Cornice, Inc.* (D. Del. 04-418(SLR)), I was retained to give expert opinion on patent office procedure. I filed an expert report and testified by deposition in this matter. I was retained by Weil, Gotshal & Manges LLP.

David C. Radulescu
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8007

Kimberly A. Moore, Senate
Confirmation Hearing, S. Hrg. 109-
397, Jun. 28, 2006, PDF p. 79.

2011-1366

This motion was sent by Dr. Lakshmi Arunachalam
by **Fedex** overnight delivery.
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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Citation links updated Mar. 13, 2014: On Fri. Mar. 7, 2014, the document service *Scribd* removed all documents cited herein that had been accessible from *Scribd* for two years. Some of the documents had over 10,000 reads. *Scribd* principals Trip Adler and Jared Friedman have Harvard associations with Mark Zuckerberg. The documents have been moved and the links updated herein. No content changes have been made.

Note that **Weil, Gotshal & Manges LLP** made an appearance in this motion. However,

Judge Kimberly A. Moore was formerly employed by Weil Gotshal LLP (PDF, p. 79), yet she did not disclose this conflict of interest, in addition to her substantial Facebook holdings which she failed to disclose.

CLICK HERE to see the delivery receipt and the Federal Circuit Bar Association's Request.

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

V.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

RESPONSE TO THE FEDERAL CIRCUIT BAR ASSOCIATION'S REQUEST FOR REISSUE OF ORDER AS PRECEDENTIAL PURSUANT TO FEDERAL CIRCUIT RULE 32.1(e) BY AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D.

Civil Appeal No. 2011-1366

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

Sep. 17, 2012

<http://www.fbcovr.com/docs/arunachalam/2012-09-17-Response-to-Request-of-Federal-Circuit-Bar-Association-s-Request-for-Reissue-Re-Leader-v-Facebook-Case-No-2011-1366-Fed-Cir-by-Lakshmi-Arunach.pdf>

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook

No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

To be clear, *Amicus Curiae* has no financial interest in either party. The interest of *Amicus Curiae* is in stopping the destruction of the patent property rights of small inventors which is occurring as a result of the precedents being set in this case.

Sep. 17, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

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**RESPONSE TO REQUEST FOR REISSUE ORDER AS PRECEDENTIAL
BY AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D.**

1. Petition for public hearing and disqualification

Amicus Curiae Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”) respectfully petitions/requests that this Court invite public comment and conduct a hearing (collectively “Hearing”) and recuse itself due to conflicts of interest before the Court rules on The Federal Circuit Bar Association (“FCBA” or “Bar”) request to have the Aug. 10, 2012 order (“Order”) be reissued as precedential (“Request”). Dr. Arunachalam received notification of the Request pursuant to Federal Circuit Rule 32.1(e) and therefore responds accordingly; whereby she “must be given an opportunity to respond.” *Leader Tech v. Facebook*, No. 2011-1366 (Fed. Cir.).

Dr. Arunachalam has sought and been unable to obtain instructions from the Court on response time and page-limitation, therefore Dr. Arunachalam relies upon Fed. Cir. R. 27(b)(“preferred organization of a response comparable to . . . “a motion”) and Fed. Cir. R. 27(d)(“Length of Motion” citing Fed. R.App. Proc. 27(d)(2)(must not exceed 20 pages) or 27(d)(1)(E)(2)(the formatting of the Fed. Cir. Rules pp. 48-49 is ambiguous on the numbering of page limitation rule).¹ The number of copies appears to be guided not by Fed. R.App. Proc. 27(d)(3)(3 copies) but rather by Fed. Cir. R. 32.1(e)(“[a]n original and 6 copies”). Rule 32.1(e)

¹ See Rule 27. Motions. “Rules of Practice.” United States Court of Appeals for the Federal Circuit, p. 47 <<http://www.cafc.uscourts.gov/images/stories/rules-of-practice/rules.pdf>>.

contains no guidance on the page-limit for a response, therefore, absent guidance from the Court, it is reasonably presumed to be the page length for a motion cited above.

Certificate of Interest rules appear to be guided by (a) FORM 9, Certificate of Interest; (b) Fed. Cir. R. 8, p. 16 (“Practice Notes, CERTIFICATE OF INTEREST”); (c) Fed. Cir. R. 47.4 (“Certificate of Interest”); and (d) Fed. Cir. R. 26.1 (“Corporate Disclosure Statement”)

Dr. Arunachalam, an expert in the field of systems workflow, wishes to point out that the rules are unnecessarily *ambiguous* and can be so easily manipulated in order to disqualify a motion by “reinterpreting” the rules *capriciously*. The rules are not objective; they have only the *appearance* of objectivity. The apparent strategy of their discombobulated organization is to interpret them in ways that reward friends and punish enemies. Such is the state of affairs that “the average person on the street” has come to distrust so deeply about the legal system, and as exemplified by the travesty of justice occurring in this *Leader v. Facebook* case. [*Foman v. Davis*](#), 371 U.S. 178, 181-82 (Supreme Court 1962) which directs to assess the motion on its merits and not dismiss it for mere procedural technicalities.

For example, the rules in this Court permit the Clerk of Court judicial powers in *breach* of the Federal Rules of Appellate Procedure (“FRAP”). The ambiguity between FRAP and the Federal Circuit Rules is quite apparent:

The Federal Rules of Appellate Procedure 45(a) states:

Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

However, the Federal Circuit Rule 45(a) states:

The clerk may dismiss an appeal for a failure to follow the Federal Rules of Appellate Procedure or these Federal Circuit Rules.

The “average person on the street” can only view this ambiguity as intentional so as to give the Clerk of Court almost dictatorial powers to act as not only an attorney, but as a sort of unaccountable monarch over the Federal Circuit. When these supra-judicial powers are combined with the legion of procedural ambiguities embedded in the Federal Circuit Rules, we see the kinds of cronyism being exposed in this case.

These injustices are discussed further herein with regard to the implications of the Request upon precedent.

**2. The Request encourages judges to conceal conflicts;
these circumstances beckon for public, unbiased scrutiny**

Approval of the Request without at least a Hearing sets a harmful precedent. It would encourage judges facing conflict of interest allegations to issue orders (like this Order) excusing their conduct while *concealing* the facts that triggered the allegations. In short, it will allow a court to use the court’s own procedures to hide from accountability for conflicts of interest. The rules of equity and fairness were

never intended to allow wrongdoers to hide behind them. Instead, they were designed to give accuser and accused alike a fair hearing. If this Request is made precedential, a Court can refuse to docket a motion alleging judicial conflicts (as was done here), then issue an order to cover up the sins—all without public scrutiny.² The Request is seeking a “comfort” ruling excusing the proven conflicts of interest in this case without having to address them specifically. No rule or act of the Court should be used for such an inequitable purpose.

Logically, since the Clerk of Court has struck down every one of Dr. Arunachalam’s un-docketed motions for alleged procedural noncompliance (in breach of the Supreme Court’s ruling in *Foman*), then this Court Order exists in no-man’s land since, according to the Clerk’s own actions—no underlying motion exists to which this Order corresponds. It also begs the question as to why the Federal Circuit Bar Association has become involved over an *un-docketed*, *supposedly nonexistent* motion.

² Fed. Rule Civ. Proc. 5(e) ("The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices"); 28 U.S.C.A. § 2254 Rule 3(b) (Supp. 2005) ("The clerk must file the petition and enter it on the docket") cited in [*Pace v. DiGuglielmo*](#), 544 US 408 (Supreme Court 2005) , fn. 5.

Indeed, the more the Court and the Bar attempt to cover up their conflicts of interest in this case, the more those conflicts beckon for scrutiny. *Sub.*

3. The Request encourages more violations of constitutional due process in the secrecy of chambers

This is not the first time this Court has acted by *secret fiat* in this case. The Court ignored Leader Technologies’ clear and convincing evidence appeal, and instead created, *in secret*, a novel substantial evidence argument, replete with new evidence not heard by the jury. Leader was given no hearing to confront these new allegations. Further, the Court also *ignored* its own opinion which *invalidated* the last piece of Facebook evidence subject to jury interpretation—disbelieved testimony as ostensible evidence of an opposite reality (allowed by the district court) versus discarding that testimony (pursuant to the jury instructions). In short, this Court is now sustaining an unproven verdict in Facebook’s favor by its own *secret* hand. This Fifth and 14th Amendment Constitutional violation is scandalous.

The role of the Federal Circuit is supposed to be corrective. It is not a trial court, yet this Court is acting like one. If the Court is to be allowed to fabricate new arguments and evidence *in the secrecy of chambers*, then hearings on such activity are paramount—before decisions are rendered. Otherwise, such decisions violate

constitutional due process. The right to confront one's accuser is a cornerstone of our American democracy.³

4. The Order contains false statements; bad facts make bad law

Propriety dictates that an Order that contains false statements made by the Court should not be made precedential since “bad facts make bad law.” [*Doggett v. United States*](#), 505 US 647 (Supreme Court 1992) at 659.

For example, the Order states that Dr. Arunachalam did not include “a certification that the purported amicus has no financial ties to any party in the case.” **This statement is false.** Dr. Arunachalam's *amicus curiae* brief contains a certification on page “ii” which states that she has no financial ties to the parties. The Order also states “[n]o certification appears in any brief Dr. Arunachalam filed with this court.” **This is a false statement.** Certifications were contained in *every* brief. Of course, the Court can play on both sides of this ball since none of the briefs were docketed; so if called on the carpet for this statement, the Court can claim that there were no certifications because the Clerk *did not see* any certifications in the briefs that he *did not docket*. The convolutions mount. The evident purpose of this statement is to imply without proof that Dr. Arunachalam did not follow the Rules. *See* p. 2 (the “appearance of objectivity” in the Rules). *See*

³ *See* “Judicial Hyperactivity: The Federal Circuit's Discomfort with Its Appellate Role; Rooklidge, William C.; Weil, Matthew F.” [Univ. of California, Berkley](#), 15 *Berk. Tech. L.J.* 725 (2000). Accessed Aug. 4, 2012.

<http://americans4innovation.blogspot.com> to read a copy of the un-docketed briefs that contain the Certificate of Interest in each motion.

The Order also states that “[a]n earlier such *amicus curiae* was denied entry by the court as moot because the court had already denied Leader’s petition for rehearing.” **This false statement is proved on national television.** Dr.

Arunachalam’s *amicus curiae* brief was denied on the same day it arrived—July 11, 2012. However, Leader’s petition was not denied until July 16, 2012.⁴ The *amicus curiae* brief could not have been mooted by a denial that does not exist.⁵

Remarkably, the violation of Leader Technologies’ Due Process Rights, and the uncovering of judicial conflicts of interest like investments in Facebook, has received no response from this Court other than “denied.” In an attempt to correct the Court’s misperception of this case, Dr. Arunachalam also filed a motion for reconsideration, renewed motion for leave to file, motion to compel disclosure of conflicts and a 60(b) motion. All denied without explanation except for the 60(b) motion which has not been ruled upon (or docketed).

By contrast, the uncovering of judicial conflicts of interest has generated a four-page Order and Bar Request. When the Court was asked to disclose its

⁴ Evidence of the almost exact July 16, 2012 timing of the Court’s denial was caught on a nationally televised Fox Business interview with Leader Technologies’ chairman and founder Michael McKibben. *See* Shibani Joshi. Interview with Michael McKibben, Chairman & Founder of Leader Technologies, Inc. [Fox Business](http://www.foxbusiness.com), Jul. 16, 2012. Accessed Aug. 30, 2012.

⁵ A copy of Dr. A’s un-docketed *amicus curiae* brief that is the subject of the Request is available at Americans For Innovation <<http://americans4innovation.blogspot.com>>.

conflicts of interest, the Court refused.⁶ Therefore, propriety dictates that this Court disqualifies itself from any decision on the Request.

5. Integrity is a moral principle, not a precedential rule

Dr. Arunachalam agrees with the Bar that the public record is scant on the specific subject of judicial conflicts of interest questions raised by bar and bench activities. However, the record may not need further clarification since ethical decisions are individual judgment calls. Integrity is a moral principle, not a precedential rule. To the average person on the street, the socialization of bench and bar generally does only bad things for justice. Fewer bench-bar events may be the better way, not more; and especially not more after being bolstered by the one-sidedness of this Request.

Frankly speaking, these Bar-Bench events provide an atmosphere conducive to certain types of behavior, and it would be naïve to pretend that such behavior does not take place, even if it is not universal among attendees. Attorneys attend to try and “get on the judge’s good side,” or influence a case, or schmooze political and judicial candidates, and judges attend to make sure the prospects for post judicial employment are plentiful. Such events also provide the opportunity for more nefarious deals, bribes, coercion and blackmail. Clients, justice and public

⁶ [Motion to Compel](#) Each Member Of The Federal Circuit To Disclose Conflicts Of Interest, sent Sep. 5, 2012, rec’d Sep. 6, 2012.

confidence are always left holding the short end of the stick. The bar-bench altruists turn a blind eye to all such possibilities, or speak about it in such flowery, non-committal, ivory tower language that the criticism fails to be effective.

The moral high ground for bench and bar is already well known and needs no new precedent. The Holy Bible's Book of Exodus 20:15-16 (NASB) advises:

You shall not steal.

You shall not bear false witness against your neighbor.

Dr. Arunachalam generally agrees with the Bar that the interests of the legal community can be served by the participation of judges in a wide variety of professional development and community activities. But this is by no means a given when considering the opportunities for dishonesty that also emerge in such events. By contrast, an honest judge is a pillar in a democratic society with whom every freedom-loving American wants to interact. On the other hand, the Request should not become a license for unscrupulous attorneys and judges. A judge's individual conduct at an event must be guided by the cautionary language of the statute advising to "avoid the appearance of impropriety." Arguably, no bright line rule works beyond "do the right thing."

The Request and Order appear to be an attempt to provide some sort of general blessing for the extra-judicial relationships among members of this Court

with Facebook principals, powerful Facebook investors and Facebook’s attorneys, without a sober evaluation of the contexts of these encounters, or how such contacts may be viewed by “the average person in the street,” and how these encounters have biased this case.

6. Judicial conflicts of interests should not be swept under the carpet

Dr. Arunachalam cites judicial disclosure statements and U.S. Securities and Exchange Commission records *proving* that at least two of the three judges in this case hold Facebook stock and stood to benefit personally from a decision favorable to Facebook. Dr. Arunachalam also cites C-SPAN-2 video showing Clerk of Court Jan Horbaly *hosting* Facebook’s attorney Thomas Hungar on the subject of “The Federal Circuit, Looking Ahead.”⁷ Such activity is more than incidental professional contact—it is *active collaboration* on the functioning of the Federal Circuit; the court that provides livelihoods to the judges and clerk in this case. This conflict demanded disclosure.

Dr. Arunachalam also cited the extensive Congressional record of the professional activity of Leader’s former director and witness Professor James P. Chandler.⁸ The record shows that Chief Judge Randall R. Rader had substantive, long-time contact with Professor Chandler, first as his George Washington

⁷ Thomas Hungar. “The Federal Circuit, Looking Ahead.” C-SPAN-2 video, @33m53s. May 19, 2006. <<http://www.c-span.org/video/?192618-1/state-us-court-appeals>>.

⁸ Renewed Motion for Leave to File *Amicus Curiae* Brief, pp. 6-10.

University law professor, then as chief counsel to Senator Orrin Hatch's Judiciary Committee to which Professor Chandler consulted specifically on intellectual property matters germane to this case. Such activity is more than "innocent" professional contact. The Request is attempting to sweep all these conflicts under the rug inappropriately.

If the Order becomes precedent, then every judge, good, mediocre and bad, will cite this precedent as an excuse. A reasonable person can only conclude that this Request is an attempt to bless this Court's Facebook conflicts and would make bad law.

7. Bench-Bar interests are not hindered by ethical principles

The Request rightly says this is a "subject of general interest to bar and bench alike." However, the Request then focuses the discussion on a misleading discussion of the first comment of Canon 4 where the Request *omits* the cautionary language that followed the cited element (*omitted* section underlined):

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and **impartiality is not compromised**, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law.

Subject to the same limitations, judges may also engage in a wide range of non-law-related activities (emphasis added).

Canon 4 contains other cautionary language about financial conflicts as well (this underlined section was also *omitted* in the Request):

(D) Financial Activities . . . A judge . . . should refrain from financial and business dealings that exploit the judicial position . . . or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

8. Federal Circuit Bar, too, fails to disclose conflicts of interest

A reasonable person can only believe that the Federal Circuit Bar Association is advocating new precedent based upon a skewed application of Canon 4 in order to assist both the Bar and the Court in avoiding disclosure of *massive* conflicts of interest among them in this case.

A member of the Bar's Board of Directors⁹ is a significant shareholder in Facebook—Microsoft Corporation. Microsoft is a 10% owner in Facebook.¹⁰ Microsoft received \$246,422,355 from the sale of its Facebook stock in the Facebook IPO—**during the pendency of this case**. Propriety dictated that the Bar disclose this evident conflict of interest.

⁹ Andrew Culbert, Esquire, Microsoft Corporation. Fed. Cir. Bar Assoc. Accessed Sep. 15, 2012 <<http://www.memberconnections.com/olc/pub/LVFC/cpages/misc/contact.jsp>>; See also <<http://www.fbcoverup.com/docs/federalcircuit/Federal-Circuit-Bar-Online-Community-Leaders-Circle-2013-accessed-Dec-10-2013.pdf>>.

¹⁰ Microsoft sold \$246,422,355 worth of Facebook shares on May 22, 2012 **during the pendency of this case**. <<http://www.secform4.com/insider-trading/789019-1.htm>>.

The ethical golden thread sewn into the fabric of Canon 4 is the cautionary proviso “[t]o the extent that . . . impartiality is not compromised.”

9. The totality of the circumstances is not “innocent”

The Request cites [*In re Aguinda*](#), 241 F.3d 194, 205 (2nd Cir. 2001) discussing professional development events. The Canon does not prevent such attendance nor do the facts in this case apply. *Aguinda* discusses “events of an entirely **innocent** nature” (emphasis added). Dr. Arunachalam agrees but contends the facts in this case can hardly be characterized as “innocent.” Indeed, it stretches credulity to claim that the sheer quantity of conflicts in this case are “innocent.”

Those conflicts include:

1. Knowingly false statements in the Order;
2. Facebook stock held by members of the Court (and likely their families) without disclosure, who stood to benefit personally from a favorable Facebook ruling;
3. Facebook stock held by board members of the Federal Circuit Bar Association with whom the Court collaborates closely and who filed the Request;
4. Undisclosed biases between members of the Court and a prominent public figure and Federal Circuit analyst, Leader witness and former director, Professor James P. Chandler;
5. Active collaboration between members of this Court and Facebook attorneys from whom the Court actively seeks favor, advice and advocacy for the Federal Circuit;
6. Court decisions timed to Facebook-favorable media events where the media knew about Court decisions before the parties;

7. Court's refusal to docket Dr. Arunachalam's *amicus curiae* pleadings for public review in breach of *Foman*;
8. Court's refusal to disclose its conflicts of interest when asked to;
9. Court's violation of Leader Technologies' Right of Due Process;
10. Relationships among members of the Court and Facebook stakeholders, including Microsoft Corporation, a 10% holder of Facebook stock who pocketed one-quarter of a billion dollars in the Facebook IPO.
11. Inequitable release of Court information to *Fox Business* and the Federal Circuit Bar Association while withholding that information from the parties and the public.

10. Request attempts to create an ethical duty-free zone for Bench & Bar

The Request says the “comfort of a precedential order on this subject would help insulate the community from the chill that could be expected if cooperation in bench/bar activities would alone fuel criticism of the kind included in the proposed *amicus* brief in this case.” The premise here is that the criticism in the *amicus curiae* brief is undeserved. First, the Bar Association has no business even having in its possession the un-docketed *amicus curiae* brief. Second, one of the Bar's directors owns more than ten percent (10%) of Facebook's stock and cannot be considered unbiased. Third, Dr. Arunachalam concedes that underserved criticism is unfair. Fourth, *deserved* criticism is necessary in order to preserve the integrity of our American legal system. This Request can only create a duty-free zone for bench-bar shenanigans. No good for justice and fairness can come of it.

One person's "chilling effect" is another person's wise choice. Certainly, for a judge intent on influence-peddling the conflict of interest rules have a chilling effect. But for conscientious judges, the rules rightly level the playing field as they should. Judges do not need "social" interplay with other attorneys to learn morals. Indeed, the Request seems custom-designed for two purposes: (1) to cover up this Court's (and now the Bar's) conflicts of interest in this case, and (2) to give blessing to future shenanigans in bench-bar events.

11. Circumspection is already the rule for Bar-Bench events

Remarkably, the Request seeks a precedential statement that excludes the cautionary language of Canon 4. Also remarkably, the Request cites a *Nebraska Law Review* article discussing "total isolation of judges from all social contact off the bench." No one suggests total isolation. Such either-or logic is unconstructive and unpersuasive. The balance is already well set in 28 USC §455 requiring a judge to avoid the "appearance of impropriety." [*Liljeberg v. Health Services Acquisition Corp.*](#), 486 US 847, 860 (Supreme Court 1988).

The Request's use of words like "cloistered," "isolated," and "hampered" is also unconstructive and attempts to trivialize these circumstances. A judge's moral character is of *great interest* to all citizens. Part of a judge's job description is to be vigilant in avoiding the appearance of impropriety. [Canon 2](#), Code of Conduct for

United States Judges (“A judge should avoid impropriety and the appearance of impropriety in all activities”). Every profession has such constraints. To judges intent on mischief, such rules do indeed “hamper” unethical conduct and serve to “isolate” them from other wrongdoers, which is their purpose. In fact, the 2nd Circuit accepted the fact that judges are cloistered. [*Repouille v. United States*](#), 165 F. 2d 152 (2nd Circuit 1947) at 154. The stiff priestly garb on our judges is there for a reason—to remind them of their high calling and that they *are* set apart; their cloistering is vital to a fair, healthy democracy. Otherwise, they become nothing but free-market hucksters. Is the Bar’s Request Freudian? One hopes not.

Therefore, the purpose of the Request is puzzling. Since the Canon is clear, the quest for a new precedent seems designed to justify *carte blanche* access to bar-bench activities (as if unethical conduct never occurs at such events). “[T]he average person on the street” believes that such events are often little more than the “old boys” getting together on the public’s dime to schmooze and cut side deals for well-heeled clients.¹¹ [*Potashnick v. Port City Const. Co.*](#), 609 F. 2d 1101 (5th Circuit 1980) at 1111; *See also* [*Rome v. Braunstein*](#), 19 F. 3d 54 (1st Circuit 1994) at 59 (citing [*In re Martin*](#), 817 F.2d 175 (1st Circuit 1987) at 182 (“There must be at

¹¹ The Board of Directors of the Federal Circuit Bar Association has only two industry representatives currently, Microsoft Corporation and Boeing Corporation, the 37th and 39th largest corporations in America. Tellingly, no small business inventor advocacy voices are represented to temper big infringer bias
<<http://www.memberconnections.com/olc/pub/LVFC/cpages/misc/contact.jsp>>; *See also* <http://www.fbcoverup.com/docs/federalcircuit/Federal-Circuit-Bar-Online-Community-Leaders-Circle-2013-accessed-Dec-10-2013.pdf>.

a *minimum* full and timely disclosure of the *details* of any given arrangement.

Armed with knowledge of all the relevant facts, the bankruptcy court must determine, *case by case*, whether [a conflict exists]." (emphasis added)); [*In re Huddleston*](#), 120 BR 399 (Bankr. Court, ED Texas 1990) at 401 ("this decision [burden of disclosure] **should not be left to counsel**, whose judgment may be clouded by the benefits of the potential employment.")(emphasis added); [*In re Roberts*](#), 46 B.R. (Bankr. Court, D. Utah 1985) at 834 (duty of disclosure and disallowance . . . are designed to **prevent the dishonest practitioner from engaging in fraudulent conduct**)(internal quotes and citation omitted)(emphasis added).

The Request does not appear to be in the public's interest. Reinforcement of such beliefs that judges conspire against the public interest at such events does not instill public confidence in the justice system. If a judge feels "hampered" by such moral constraints, then perhaps he or she is in the wrong profession.

12. The devil is in the details

The Request attempts to sweep all of this Court's (and the Bar's) prior associations with litigant attorneys under the carpet of "law school events," "bar association proceedings" and "educational conferences." As always with issues of conflicts of interest, the "devil is in the details." [*US v. Stein*](#), 435 F. Supp. 2d 330

(SD New York 2006) at 363 (“the government must have the ability . . . to prevent obstruction of its investigations . . . [b]ut the devil, as always, is in the details”).

13. The totality of the circumstances does not validate the Request

By contrast, when one combines the “totality of circumstances” in this case, the Court loses its “innocent” posture. [*Illinois v. Gates*](#), 462 US 213 (Supreme Court 1983) at 231 (“In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” citing [*Brinegar v. United States*](#), 338 U.S. 160, 176 (1949) at 175). It is evident that members of this Court failed to follow the guidelines of [28 U.S.C. § 455](#) and the [Code of Conduct for United States Judges](#) by failing to disqualify themselves from presiding over this matter. Therefore, the Order, replete with its false statements, should not be made precedential, at least until a public Hearing.

14. Attorney self-policing has failed

Ask the average person on the street about their confidence in the “self-policing” of the legal professional and they will generally react with extreme sarcasm. Legal professionals may waive off such attitudes as sour grapes, but they know in their heart-of-hearts that ethical discipline in the profession is broken.

Attorneys and judges are afraid to report each other under the premise “there but by the Grace of God go I.” Attorneys are afraid to speak up against judicial misconduct for fear the judge will *punish them* in a future case. Judges are reticent to discipline attorney misconduct so as not to upset the legal community. As a consequence, justice becomes the *victim* instead of the goal. These ethical compromises make *more bad decisions* and *more bad precedent* in an ever-accelerating deteriorating spiral. By comparison, the former Soviet Union had the *form* of a legitimate legal system too . . . until it collapsed in the late 1980’s under its own corruption. America will suffer the same fate if we do not turn it around. If the land of laws and fairness becomes the land of influence-peddling and bribes, America is destined for the rubbish heap of history. More to the point in this case, if our courts stop protecting the patents of the small inventor engine that has made this country, then the American economic engine will quickly begin to sputter.

The “public outcry for accountability” and ethical self-policing is becoming a louder and louder drum beat. The American Bar Association published this caution: “The ‘privilege’ of self regulation could so easily drift towards the view that it is but an ‘option’, one that can be easily removed if not treated with the serious sense of purpose it deserves.”¹² See also [*Bates v. State Bar of Ariz.*](#), 433 US 350 (Supreme

¹² Charles B. Plattsmier, “Self Regulation and the Duty to Report Misconduct, Myth or Mainstay?” [American Bar Association](#), May 13, 2008. Accessed Sep. 16, 2012.

Court 1977) at 379 (“it will be in the latter's interest [“candid and honest attorneys”], as in other cases of misconduct at the bar, to assist in weeding out those few who abuse their trust.”). Boston College Law Professor Judith A. McMorro wrote in a seminal 2004 study “[w]e need a better understanding of why judges impose varying sanctions for similar behavior.”¹³ The average person already knows this answer. Wink, wink. Nod, nod. Let’s do better.

REQUEST FOR RELIEF

For the foregoing reasons, Dr. Arunachalam respectfully requests that the Court conduct a full and fair public Hearing before making a decision regarding the Request. Dr. Arunachalam asks further that the Court disqualify itself from this decision due to its evident and egregious conflicts of interest.

Respectfully submitted

/s/

Dated: Sep. 17, 2012
Menlo Park, California

Lakshmi Arunachalam, Ph.D.
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¹³ Judith A. McMorro, “Judicial Attitudes Toward Confronting Attorney Misconduct: A View From The Reported Decisions,” [HeinOnline](#), 32 Hofstra L. Rev. 1425 2003-2004.

CERTIFICATE OF SERVICE

Pursuant to Fed. Cir.R. P. 32.1(e) I do hereby certify that an original and six (6) copies of the foregoing RESPONSE TO THE FEDERAL CIRCUIT BAR ASSOCIATION'S REQUEST FOR REISSUE OF ORDER AS PRECEDENTIAL PURSUANT TO FEDERAL CIRCUIT RULE 32.1(e) BY AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. will be sent to the Clerk of the Federal Circuit by Fedex, next day delivery, to:

Clerk of Court, United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Washington D.C. 20439

I also certify that two (2) true and correct copies of the foregoing were served on the following recipients by Fedex, next day delivery, to:

Paul Andre, Esq. KRAMER LEVIN LLP 990 Marsh Road Menlo Park, CA 94025 Tel.: (650) 752-1700 Fax: (650) 752-1800 <i>Attorney for Plaintiff-Appellant</i>	Thomas G. Hungar, Esq. GIBSON DUNN LLP 1050 Connecticut Avenue, N.W. Washington D.C. 20036-5306 Tel.: (202) 955-8558 Fax: (202) 530-9580 <i>Attorney for Defendant-Appellee</i>
Edward R. Reines, Esq. WEIL, GOTSHAL & MANGES LLP 201 Redwood Shores Parkway Redwood Shores, CA 94065 Tel. (202) 802-3000 <i>Counsel for Federal Circuit Bar Assoc.</i>	A copy of the foregoing was also provided to Americans For Innovation for publication, the House and Senate Judiciary Committees, and the Washington D.C. Bar.

/s/

Dated: Sep. 17, 2012
Menlo Park, California

Lakshmi Arunachalam, Ph.D.
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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-0862, Judge Leonard P. Stark.

**THE FEDERAL CIRCUIT BAR ASSOCIATION'S
REQUEST FOR REISSUE OF ORDER AS PRECEDENTIAL
PURSUANT TO FEDERAL CIRCUIT RULE 32.1(e)**

Terence P. Stewart
President
FEDERAL CIRCUIT BAR ASSOCIATION
1620 I Street, N.W., Suite 900
Washington, DC 20006
(202) 466-3923

Edward R. Reines
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
(650) 802-3000

Counsel for Federal Circuit Bar Association

CERTIFICATE OF INTEREST

Counsel for the Federal Circuit Bar Association, certifies the following:

1. The full name of every party or *amicus* represented by me is:

The Federal Circuit Bar Association

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **N/A**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or *amicus curiae* represented by me are:
None.
4. There is no such corporation as listed in paragraph 3.
5. The names of all law firms and the partners or associates that appeared for the party or *amicus* now represented by me in the trial court or agency or are expected to appear in this court are:

WEIL, GOTSHAL & MANGES LLP
Edward R. Reines

FEDERAL CIRCUIT BAR ASSOCIATION
Terence P. Stewart, President

September 11, 2012
Date



Edward R. Reines

REQUEST TO REISSUE ORDER AS PRECEDENTIAL

The Federal Circuit Bar Association (“FCBA”) respectfully requests the August 10, 2012 order (“Order”) in this matter be reissued as precedential. *Leader Techs., Inc. v. Facebook, Inc.*, No. 2011-1366, slip op. at 4 (Fed. Cir. Aug. 10, 2012) (per curiam) (order denying motion for leave to file an amicus brief). Federal Circuit Rule 32.1 authorizes the public to request the reissuance of an order in precedential form if it is initially categorized as non-precedential.¹

In its Order, this Court addresses the scope of Canon 4A(1) of the Judicial Code of Conduct and explains that judges may participate in a wide variety of educational and community activities. *See* CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 4A(1) (June 2, 2011). The Order squarely rebuffs a challenge to the impartiality of this Court because Federal Circuit judges may have participated in law school proceedings and spoken at legal conferences with lawyers or witnesses involved in the case. *Leader Techs.*, slip op. at 3-4.

The freedom of judges to participate in extra-judicial law-related activities is an important subject of general interest to the bar and bench alike—and is of specific significance to the FCBA. A vital purpose of the FCBA is to offer “a forum for common concerns and dialogue between bar and court, government

¹ Federal Circuit Rule 32.1(e) provides, in part: “Within 60 days after any nonprecedential opinion or order is issued, any person may request, with accompanying reasons, that the opinion or order be reissued as precedential.”

counsel and private practitioner, litigator, and corporate counsel.” *See Federal Circuit Bar Association Bench & Bar – Purpose*, FEDERAL CIRCUIT BAR ONLINE COMMUNITY, <http://www.fedcirbar.org/olc/pub/LVFC/cpages/purpose/who.jsp> (last visited Sept. 4, 2012).

The Order is an important precedent because it confirms that judges may properly participate in law school events, bar association proceedings and educational conferences. It also confirms that an appearance of impropriety is not created merely because co-participants in such gatherings are involved in cases that come before the Court. The comfort of a precedential order on this subject would help insulate the community from the chill that could be expected if co-participation in bench/bar activities would alone fuel criticisms of the kind included in the proposed amicus brief in this case.

There is need for precedent because there is no existing precedent by this Court regarding Canon 4 on the issues addressed by the Order. Moreover, the existing precedent nationally is thin. *But see In re Aguinda*, 241 F.3d 194, 205 (2d Cir. 2001) (“No reasonable person would believe that expense-paid attendance at such events would cause a judge to be partial, or to appear so, in litigation involving a minor donor-whether a party or counsel to a party-to a bar association, law school, or program administering a particular seminar. Were we to take a different view, judges would as a practical matter either have to recuse themselves

in a vast number of matters or decline invitations to numerous events of an entirely innocent nature that are of importance to the judiciary, the profession, and legal education.”).

It is well-recognized that judicial participation in the wider legal and academic community is desirable. A cloistered and isolated judiciary would be hampered in evaluating the effect of legal decisions on society and limited in its exposure to the legal thinking of the day. Likewise, given the caliber of the judiciary, its expertise, and its practical experience, judges have much to contribute to the bar and the academy that should not be forsaken. This is explained, for example, by the commentary to Canon 4 of the Judicial Code of Conduct:

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice.

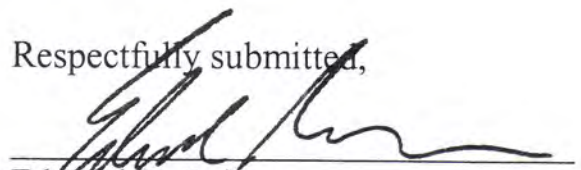
CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 4 cmt. (June 2, 2011); see also Howard T. Markey, *A Judicial Need for the 80's: Schooling in Judicial Ethics*, 66 NEB. L. REV. 417, 425 (1987) (“[J]udges are in their judging being involved more and more in the management of society. If total isolation of judges from all social contact off the bench would guarantee a totally ethical judiciary, what would be the cost?”).

Moreover, reissuing the Order as precedential is consistent with this Court's statements regarding the characteristics of precedential decisions. *See Seligson v. Office of Pers. Mgmt.*, 878 F.2d 369 (Fed. Cir. 1989) (explaining that an opinion was not selected for publication where "it did not add significantly, we thought, to the body of law, and was not of widespread legal interest"). As explained above, the Order adds significantly to a scant body of law in an area of substantial public interest.

For all the foregoing reasons, the FCBA respectfully requests the reissuance of the Order as precedential.

Dated: September 11, 2012

Respectfully submitted,



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Counsel for Federal Circuit Bar Association

CERTIFICATE OF SERVICE

I hereby certify that an original and six copies of the foregoing **FEDERAL CIRCUIT BAR ASSOCIATION'S REQUEST FOR REISSUE OF ORDER AS PRECEDENTIAL PURSUANT TO FEDERAL CIRCUIT RULE 32.1(e)** were filed on this date via Federal Express, next day delivery, to the Clerk of Court, Office, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, DC 20439.

I also certify that two true and correct copies of the foregoing **FEDERAL CIRCUIT BAR ASSOCIATION'S REQUEST FOR REISSUE OF ORDER AS PRECEDENTIAL PURSUANT TO FEDERAL CIRCUIT RULE 32.1(e)** were served via Federal Express, next day delivery, on this date to each of the principal counsel of record and as follows:

Paul J. Andre, Esq. KRAMER LEVIN LLP 990 Marsh Road Menlo Park, CA 94025 Tel.: (650) 752-1700 Fax: (650) 752-1800 <i>Counsel for Plaintiff-Appellant</i>	Thomas G. Hungar, Esq. GIBSON DUNN & CRUTCHER LLP 1050 Connecticut Avenue, NW Washington D.C. 20036-5306 Tel.: (202) 955-8558 Fax: (202) 530-9580 <i>Counsel for Defendant-Appellee</i>
Lakshmi Arunachalam, Ph.D. 222 Stanford Avenue Menlo Park, CA 94025 (650) 854-3393 <i>Movant for leave to file amicus curiae brief</i>	

September 11, 2012

Date



Edward R. Reines
*Counsel for Federal Circuit Bar
Association*

Exhibit G

eclipse.org formation

the open community driving the eclipse platform



Press release

Eclipse.org Consortium Forms to Deliver New Era Application Development Tools

- Industry Leaders Join to Form Initial Board
- Broad Commercial Support For Open Source Development Tools
- Common Public License Delivers Royalty Free Source Code

Chicago—Nov. 29, 2001—Borland, IBM, Merant, QNX Software Systems, Rational Software, RedHat, SuSE, and TogetherSoft today announced the formation of Eclipse.org, an open consortium of providers of development tools that manages the Eclipse Platform, which is being made available in open source under the Common Public License¹. These companies, each of which plans to release Eclipse Platform compatible product offerings, form the initial Eclipse.org board of directors. The bylaws and operating principles of the organization are published at <http://www.eclipse.org>.

The Eclipse Platform is a new open source environment for creating, integrating and deploying application development tools for use across a broad range of computing technology. It provides a common set of services and establishes the framework, infrastructure and interactive workbench used by project developers to build application software and related elements. Through the Eclipse Platform, seamless integration of tools from several different vendors will be possible on Windows™, Linux® and QNX® developer workstations.

The Eclipse Platform provides source code building blocks, plug-in frameworks and running examples that facilitate application tools development. A complete sample plug-in based integrated development environment for creating Java applications (JDT) is included. Code access and use is controlled through the Common Public License¹ allows individuals to create derivative works with worldwide re-distribution rights that are royalty free.

As with other open source communities, Eclipse.org brings together the broad participation needed to establish, refine and promote high-quality shared software technology. By taking advantage of common Eclipse Platform services, software tools developers are free to focus on their domains of expertise. Since the platform became available for download on November 7th, an average of more than 4,000 downloads have been logged daily.

The Eclipse Platform can be used to create and manage diverse objects like web site elements, process automation definitions, object models, image files, C++ programs, pervasive enterprise class Java™ applications and embedded technology. Written in the Java language, it comes with plug-in construction toolkits and examples, including a fully operational Java application development tools package. The platform implements a mechanism that discovers, loads and integrates the plug-ins developers need for manipulating and sharing project resources. When the Eclipse Platform is launched, the user is presented with a workbench-based integrated development environment composed of the user interfaces of available plug-ins.

"In the Eclipse environment everything is a plug-in. The Java IDE doesn't have a special status and is just another set of plug-ins. This demonstrates the seamless extensibility of the platform. Turning the Eclipse Platform over to an open source initiative enables all tool builders to contribute new plug-ins and also help improve the existing platform," said **Erich Gamma**, technical director of **Object Technology International's** Zurich lab and a member of the team that built the JDT plug-ins distributed with the Eclipse Platform.

From Industry Leaders Serving on the Eclipse.org Board:

"**Borland** is pleased to be a founding board member of the Eclipse.org consortium, and looks forward to working with other industry leaders to establish open standards," said **Simon Thornhill**, VP and GM of rapid application development solutions for Borland Software Corporation. "Our involvement with Eclipse further exemplifies our continued commitment to enable enterprises of all sizes to develop, deploy and integrate next-generation software solutions."

"**IBM** is very proud to be helping make Eclipse.org a level and open effort, supported by a large number of leading commercial tool developers," said **Lee R. Nackman**, vice president, Application Development Tools, Application and Integration Middleware Division, IBM Software Group. "We look forward to benefits across the entire computing industry as powerful tools from so many companies inter-operate and deliver improvements to the project development process itself. We are committed to using the Eclipse Platform as the foundation for strategic IBM application development products."

"We're very impressed by the power and flexibility of the Eclipse Platform," said **Andrew Weiss**, **MERANT** chief technology officer. "As a founding member of the board of directors for the open Eclipse.org consortium, we are committed to providing MERANT's current and potential customers with plug-ins to extend and complement Eclipse with familiar solutions like PVCS, our software configuration management and web and content management technologies."

"Embedded developers need an extraordinary range of tools, but to be truly productive, they need tools that can work together in a seamless, intuitive fashion," said **Dan Dodge**, president and CTO of **QNX Software Systems Ltd.** "With the Eclipse Platform, it's now much easier for developers and tool vendors to integrate their rich toolsets into a cohesive whole. At QNX Software Systems, we're proud to serve as a founding member of the Eclipse.org consortium and are dedicated to its vision of making embedded development more productive through inter-operable tools."

"**Rational Software** has been an early adopter of the Eclipse platform because we believe it delivers high value to software teams," said **Dave Bernstein**, senior vice president of Products for Rational Software. "We've been working closely with IBM to integrate our products with Eclipse to ultimately provide a single, integrated user experience for developers and other practitioners on a software team."

"As the open source community grows, we need open source development tools that meet the needs of more and more developers," said **Michael Tiemann**, CTO of **Red Hat**. "We are pleased to be taking a leadership position with Eclipse.org, not only to help put better tools in the hands of developers, but to help developers use the open source model to ultimately create better tools."

Juergen Geck of **SuSE Linux AG** commented: "The success of Linux and the Open Source computing model has changed the IT landscape. As this change matures, we see new open systems that extend the power of open development. SuSE is proud to be an active part in the evolution of the Eclipse Platform with its excellent capabilities for developing applications for middleware, such as database and groupware systems."

"**TogetherSoft's** mission of 'improving the ways people work together' is certainly embraced in the spirit of the Eclipse Platform," said **Todd Olson**, TogetherSoft's vice president of Together Products. "TogetherSoft is committed to supporting new technologies that benefit our customers. We welcome the opportunity to help shape and enhance them by leveraging our strong experience building software for software developers."

Full details of the Eclipse.org consortium and the design of the Eclipse Platform are available at <http://www.eclipse.org>.

About Eclipse.org

Eclipse.org is an open consortium of software development tool vendors that has formed the core of a community interested in collaborating to create better development environments and product integration. The community shares an interest in creating products that are inter-operable in an easy to use way based upon plug-in technology. By collaborating and sharing core integration technology, tool vendors can concentrate on their areas of expertise and the creation of new development technology.

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[Return to the eclipse.org consortium main page](http://www.eclipse.org/consortium/main.page)

Minutes of the eclipse.org Board Meeting November 29th, 2001

The first meeting of the eclipse.org Board was held at 0930 CST on Thurs Nov 29, 2001, at Chicago - O'Hare Airport, American Airlines Admiral's Club, Executive Meeting Facility.

The following are the minutes of this meeting.

Stewards in Attendance:

Bernstein, Dave	Rational	
Dodge, Dan	QNX	
Geck, Juergen	SuSE	
Nackman, Lee	IBM	
Nolen, Thor	Red Hat	(on behalf of Tiemann, Michael)
Olson, Tod	TogetherSoft	
Weiss, Andrew	Merant	

Meeting Objectives:

1. Introduce and form eclipse.org, eclipse.org Board, and authorize the building of the eclipse community;
2. Discuss and decide on eclipse.org Board business, technical, and marketing issues and policy;
3. Announce the formation of the eclipse.org Board via a WebCast; and
4. Informal information exchange among members.

Meeting Agenda:

- 1) Board Introductions;
- 2) Establish Meeting Objectives;
- 3) Business & Organization:
 - Form eclipse.org;
 - Adoption of Membership Agreement;
 - Adoption of By-laws;
 - Selection of founding member organizations;
 - Selection of voting members of the eclipse.org Board (Stewards);
 - Selection of Associate Members;
 - Selection of officers;
 - Creation of Executive Committee; and
 - Definition of roles and responsibilities of Executive Committee.
- 4) Technical:
 - Form PMC's and review technical plans;
 - Create Eclipse Project PMC, Approve Charter, review plans and appoint leader;
 - Create Eclipse Tools PMC, Approve Charter, review plans and appoint leader; and
 - Steward requirements, issues and questions.
- 5) Marketing:
 - eclipse.org press review;
 - eclipse.org analysts review;
 - eclipse.org launch review;
 - Member organizations and eclipse.org cross linkage;
- 6) WebCast: Announcement and launch the formation of eclipse.org; and

Minutes of the eclipse.org Board Meeting November 29th, 2001

7) Informal information exchange.

Organizational Issues

Adoption of Membership Agreement

The Board approved the eclipse.org Membership Agreement. The eclipse.org Membership Agreement is provided at www.eclipse.org. The Steward vote was unanimous.

Adoption of By-laws

The Board approved the By-laws for eclipse.org. The eclipse.org By-laws are provided at www.eclipse.org. The Steward vote was unanimous.

Selection of founding member organizations

The following organizations were approved for membership in the eclipse.org Board: Borland, IBM, Merant, QNX, Rational, Red Hat, SuSE, TogetherSoft, and WebGain. The list of eclipse.org Member Organizations is provided at www.eclipse.org. The Steward vote was unanimous.

Discussion of the Roles and Responsibilities of Members

The eclipse.org Board discussed and agreed that the following represented the roles and responsibilities of the eclipse.org Board members. The duties and responsibilities are defined in By-laws and Membership Agreement as published on www.eclipse.org.

Selection of voting members of the eclipse.org Board (Stewards)

The following individuals were approved as Stewards and voting members of eclipse.org Board:

Member Organization	Steward
Borland	Simon Thornhill
IBM	Lee Nackman
Merant	Andrew Weiss
QNX	Dan Dodge
Rational	Dave Bernstein
Red Hat	Michael Tiemann
TogetherSoft	Todd Olson
SuSE	Juergen Geck
WebGain	Earl Stahl

The Steward vote was unanimous.

Academic Associate Member of the eclipse.org Board

An associate non-voting member of the eclipse.org Board representing the academic community was created. Dr. Brian Barry was appointed to serve in that capacity. The duties and responsibilities of the Associate Member are defined in By-laws and Membership Agreement as published on www.eclipse.org. The Steward vote was unanimous.

Minutes of the eclipse.org Board Meeting November 29th, 2001

Industry Associate Member of the eclipse.org Board

The eclipse.org Board requested the Executive Committee review and recommend the appropriate roles, responsibilities, and representation of an Industry Associate Member to the eclipse.org Board. This membership might include analysts, user groups, open source experts, and individuals with specialized skills or background. The eclipse.org Board is very interested in creating a bi-directional information flow between eclipse.org and the industry. The Chairperson is to report back to the board at the 1Q02 eclipse.org Board Meeting. Linda Campbell of QNX will be responsible for this work item.

Creation of Chairperson Position

The eclipse.org Board decided to create a non-voting board officer to serve as Chairperson. The duties and responsibilities are defined in By-laws and Membership Agreement as published on www.eclipse.org. The Steward vote was unanimous.

Appointment of Chairperson

The eclipse.org Board decided to appoint Skip McGaughey as Chairperson. The Steward vote was unanimous.

Creation of Secretary Position

The eclipse.org Board decided to create a non-voting board officer to serve as Secretary. The duties and responsibilities are defined in By-laws and Membership Agreement as published on www.eclipse.org. The Steward vote was unanimous.

Appointment of Secretary

The eclipse.org Board asked the Chairperson to nominate a person to serve as Secretary to the Board. This recommendation should be made to the Board at the next Board 1Q02 meeting.

Discussion and definition of the roles and responsibilities of Executive Committee

The eclipse.org Board decided to define the following roles and responsibilities of the executive committee.

- Represent interest & responsibilities of Steward
- Serve at pleasure of Steward
- Responsible for day-to-day operations of eclipse.org
- Formulate recommendations to the Board
 - Formulate consensus
 - Conflict & issue resolution
- Serve as primary interface into member organization
 - Coordination, communication, and control of the following eclipse.org activities within member organization:
 - § Marketing
 - § PR
 - § Launch
 - § Analysts Relations
- Create a forum for dialogue where the community and PMC need outside assistance

Minutes of the eclipse.org Board Meeting November 29th, 2001

Creation of eclipse.org Executive Committee

The eclipse.org Board decided to create an Executive Committee. The membership of the executive committee will include: one representative appointed by each Steward, PMC leaders, and the eclipse.org Board Chairperson. The duties and responsibilities of the eclipse.org Executive Committee are defined in By-laws and Membership Agreement as published on www.eclipse.org. The Steward vote was unanimous.

Project Issues:

Establish Eclipse Project PMC, approval of charter

The eclipse.org Board approved the Eclipse Project Charter. This charter is provided at www.eclipse.org. The Steward vote was unanimous.

Election of Eclipse Project PMC Leader

The eclipse.org Board appointed Dave Thomson to serve as the PMC Lead for the Eclipse Project. The Steward vote was unanimous.

Establish Eclipse Tools Project PMC, approval of charter

The eclipse.org Board approved the Eclipse Tools Project Charter. This charter is provided at www.eclipse.org. The Steward vote was unanimous.

Election of Eclipse Tools Project PMC Leader

The eclipse.org Board appointed John Duimovich to serve as the Eclipse Tools Project PMC Leader. The Steward vote was unanimous.

Discussion of the Eclipse Tools Project

The eclipse.org Board asked the Eclipse Tools Project PMC Leader to create and provide an eclipse based C/C++ tool IDE as a high priority and to report back to the eclipse.org Board at the 1Q02 meeting the progress and plan for the eclipse based C/C++ tool IDE.

Quarter-by-quarter technical plan for eclipse.org projects

The eclipse.org Board decided to review eclipse.org technical plans and progress on a quarter-by-quarter basis. The PMC leaders have been asked to communicate to the Board each quarter the following:

- Pressures
 - Business
 - Market
 - Technical
- Deliverables and Plans
- Resource prioritization
- Dependencies
- What has been added since last review
- What has been deleted since last review
- Schedules

The Executive Committee should decide the format for this review.

Minutes of the eclipse.org Board Meeting November 29th, 2001

Steward technical requirements, issues, and questions

The eclipse.org Board asked the Chairperson to organize each Board meeting to include:

- A topic to discuss requirements, issues and technical questions that the Stewards have concerning the PMC plans and community activity; and
- A topic for each Steward to present to the other Stewards the member organization plans and technical direction.

Establishment of eclipse.org Research PMC

The eclipse.org Board approved in principle the creation of a Research PMC. Dr. Brian Barry was asked to develop a concrete proposal, documentation, charter, list of projects and membership roles & responsibilities for review and approval by the eclipse.org Board for the next Board meeting.

Support of Eclipse Platform and Tools

The eclipse.org Board discussed and asked the PMC Leaders of the Eclipse Platform Project and the Eclipse Tools Project to:

- Understand the service and support requirements of the member organizations;
- Define a written proposal to the eclipse.org Board at the next Board Meeting;
- This proposal to include a definition of different levels of service / support, the policies and practices of fixing back level code, the policies and practices for testing Eclipse Platform and Eclipse Tools, the feasibility of doing automated testing, and the experiences of other open source communities; and
- Review this proposal with SuSE, Rational, and Red Hat before it is presented at the next Board Meeting.

Poll of Stewards to determine member wants and needs

The eclipse.org Board asked the Chairperson to conduct an informal survey of the wants and needs of each member organization, Steward, and the Executive Committee Member pertaining to eclipse.org. The Chairperson is to track this on a quarter-by-quarter basis and report back to each respective Steward on the progress.

Formation of a legal advisory team

The eclipse.org Board asked the Chairperson to create a legal advisory team. Each Steward has the opportunity to designate a legal representative to advise the Executive Committee and eclipse.org Board concerning legal issues with the scope to include: Intellectual Property, structure, code acceptance and inclusion, licensing, trademarks, copyrights, and liability.

Membership Application Process and Strategy for Growth

The eclipse.org Board directed the Chairperson and the Executive Committee to propose at the next Board meeting: a membership application process; a strategy for the growth of eclipse.org; and a set of criteria to measure the success of the application process and growth strategy.

Minutes of the eclipse.org Board Meeting November 29th, 2001

Announcement of eclipse.org by the eclipse.org Board:

The eclipse.org Board announced the creation of eclipse.org via a WebCast hosted by YAHOO.COM.

WebCast Host, Andrew Weiss

Overview Presentation, Dave Bernstein

Steward Presentations:

SuSE, Jeurgen Geck

QNX, Dan Dodge

TogetherSoft, Todd Olson

IBM, Lee Nackman

Rational, Dave Bernstein

Merant, Andrew Weiss

Other Stewards were introduced including

Red Hat, Michael Tiemann

Borland, Simon Thornhill

WebGain, Earl Stahl

The WebCast is available at www.eclipse.org through the month of February 2002.

The presentations are available at www.eclipse.org.

The eclipse.org press release is available at www.eclipse.org.

Adjournment:

The meeting ended at 1645 Central time.

Exhibit H

JPMorgan Raises the Bar for Banking Applications



As one of the world's leading financial institutions, JPMorgan tracks changes in the world's financial markets 24 hours a day to bring their customers competitive retail, investment, commercial, and mergers and acquisitions banking services. With offices around the world and many highly specialized IT requirements for critical business functions such as inventory management and price forecasting, JPMorgan has built up a wide assortment of custom-built applications designed to meet specific needs.

Islands of Development

Such organic development, often at the departmental or branch level, is common in

“We wanted to develop an alternative to spreadsheets as a platform for modeling applications.”



needs of its employees, it also has real drawbacks that become more significant as markets globalize and their IT environments become more complex.

For example, since many applications have been written to solve narrowly defined problems, it is often difficult to reuse their functionality to solve similar problems in new software development.

The speed with which an application can be deployed in the front office to support a new business opportunity can have a significant impact on the value of the new offering to

DateTime	Algorithm	Strang...	Tim...	CutOff...	Price...	BidRate	Offer...	MyAlgor...	MyStr...	My...	MyCut...	MyPri...	MyBid...	MyOff...
09-Jun-06...	Sabr	Broker	Linear	15:00 (...)	Bid	114	114.03	Kennetron	Broker	Linear	15:00 ...	Bid	114.12	114.15

As...	Nu...	Publish Type	LastGoodReqDate	LastGoodFinishDate	LastGoodUserName	LastReqDate	LastReqUserName	Status
USD	JPY	speeds	08-Jun-06 15:58:57	08-Jun-06 15:58:57	u160432			OK
USD	JPY	volSurface	08-Jun-06 16:35:11	08-Jun-06 16:35:27	u160432			OK

T	Date	A	S/F	Rr25	Rr10	St25	St10	C10	C25	Atm	P25	St25
1D	12-Jun-06 [3]		S	-0.15	-0.29	0.12	0.43	6.32	6.07	6.03	6.22	0.15
1W	16-Jun-06 [7]	✓	S	-1.25	-2.70	0.15	0.54	8.81	9.14	9.62	10.40	0.15
2W	23-Jun-06 [14]		S	-0.36	-0.70	0.21	0.77	9.81	9.41	9.39	9.78	0.15
3W	30-Jun-06 [21]		S	-0.48	-0.93	0.21	0.79	9.63	9.28	9.31	9.76	0.15
1M	11-Jul-06 [32]	✓	S	-1.00	-1.89	0.15	0.54	8.68	8.73	9.08	9.73	0.15
2M	10-Aug-06 [62]		S	-0.79	-1.55	0.27	1.02	9.35	8.97	9.10	9.77	0.18
3M	11-Sep-06 [94]		S	-0.91	-1.78	0.30	1.18	9.25	8.81	8.96	9.72	0.19
6M	11-Dec-06 [185]		S	-1.23	-2.44	0.37	1.50	9.23	8.71	8.95	9.93	0.20
9M	09-Mar-07 [273]		S	-1.51	-3.04	0.40	1.70	9.09	8.56	8.92	10.07	0.20

Snapper and One Bench provide an alternative to spreadsheets for real time grid based applications.

the financial services industry, and has served JPMorgan well for many years.

But while decentralized software development gives JPMorgan valuable creative flexibility to meet the specialized

the firm. Rapidly deployed, tactical systems often result in cases where the new product offering takes off, the scaling of these systems from low volume niche

applications, into industrial strength strategic platforms can be a real challenge.

A case in point is large number of pricing applications developed as Excel spreadsheets that perform and display price calculations on the trader's desktops, the applications shortcomings were becoming more apparent as the demands on them increased. As Bruce Skingle, Distinguished Engineer with the Investment Bank Technology group at JPMorgan relates, "Spreadsheet applications are quick to deploy and can be understood and modified on the trading floor. This can be a powerful tool for a novel product, but it opens up a host of control issues. With more mature products the need for consistent pricing and risk management across regions becomes more important." It was also difficult to back up data associated with these custom copies.

Other problems noted by Skingle included general performance and reliability issues.

Throughout the bank, other groups faced similar problems. For example, building financial applications to take advantage of new market conditions involved a cumbersome combination of Excel and C++; and took too long to build. Similarly, other groups faced the challenge of maintaining the many applications for entering reference data that had been developed in isolation over the years, duplicating functionality and code. Up to ten years old and written in C++, they did not share functionality and were burdensome to maintain.

Bridging Developers

It was against this backdrop that the Investment Bank Technology group started work on a replacement for their existing systems. More than a re-write of the existing spreadsheets, they wanted to lay a solid foundation for enhanced security, auditing, scalability, interoperability and, above all, reusability. To achieve this, Skingle understood that they needed to produce a generalized platform in which this and other new applications could be extended, reused and shared. As he

explains, "We wanted to develop an alternative to spreadsheets as a platform for modeling applications and at the same time allow for greater abstraction and reuse across other projects. As a tool for building a new model, a spreadsheet is an excellent tool, but by the time a product is traded the official models developed by the Quantitative Research group are delivered as libraries, and the spreadsheet is being used as little more than a .dll container and a grid based GUI." To this end Skingle envisioned that the

spreadsheet-based GUI and code for common tasks like single sign-on and logging would be openly available for developers using the new environment, leaving application developers free to focus on the business problem.

The result was One Bench, a platform for developing and delivering custom banking applications, starting with Fuse, their new bond trading application.

Fuse is a perfect example of a rich client banking application. Receiving a constant

"We needed to know that we could recover in a hurry if an update went wrong. Having applications down for any amount of time on the trading floor is not an option."

stream of market data on bond trading prices, the application consolidates disparate sources to traders in a familiar grid. This data can then be used to help traders identify trends and perform ‘what-if’ analysis. The designers knew that, as a rich client application, Fuse consumes data in streams that could be shared across other bank applications. They envisioned a GUI framework, called Snapper, as another shared component that would run in the One Bench environment and into which developers could snap applications to provide a consistent user view to similar data.

EIS is being developed on One Bench by the IB Technology Exotics & Hybrids group to consolidate the large number of systems that have been set up over the years for entering reference data. Up to ten years old and written in C++, they did not share functionality and were burdensome to maintain. As Martin Game, Vice President with the IB Technology Exotics & Hybrids group relates “Moving our first project to Eclipse and One Bench took several months, as we added shared functionality to the environment, but future work will benefit from that investment and make us far more efficient.” Mr. Game expects that they will have several more EIS reference data applications ported to One Bench by the end of the year.

Similarly, QTrade was developed independently by the Exotics & Hybrids group in the bank to solve the problem of difficult and slow to write financial applications. Banks produce new applications on very short notice to take advantage of financial trends. Previously, each new application involved a combination of Excel and customized C++ coding, with a turn-around time of over two weeks.

JPMorgan evaluated several options for the development of One Bench, but the final choice came down to Java/Swing or Eclipse RCP. After careful evaluation, RCP emerged as the better alternative. RCP is designed from the ground up as a plug-in platform that will allow One Bench applications to be written as Eclipse plug-ins.

Hitting the Ground Running

Support for native windowing was also a significant advantage. Applications built for One Bench will meet users’ expectations for familiarity. Taking advantage of One Bench and Eclipse, the QTrade developers were able to develop a flexible and easy-to-use UI based on SWT and XML. Users can structure new exotic financial products using simple drag-and-drop operations to add libraries to a canvas and add business logic, and development times are reduced from weeks to hours.

Graphical performance was another area where RCP excelled. Previous development of Swing based applications had involved significant efforts to get performance from the very functional table control with large data sets and rapid update rates. A Snapper based proof of concept has demonstrated that an SWT-based table is capable of maintaining a 400,000 row data set with 1000 updates per second without any special coding tricks or unusual hardware. The IB Technology Exotics & Hybrids group’s EIS project saw similar benefits from RCP’s performance.

Delivering Mission Critical Applications

Since the long-term plan is that One Bench will become the platform of choice for developers of desktop applications within JPMorgan, the logistics of maintenance were critical. For instance, not all users need or are entitled to the same applications, or

specific functionality within an application. Roll out and updates had to be automated based on a user's credentials. Equally important, when deploying multiple applications to the same Java Virtual Machine, there is always the risk that a problem with updates to one application would crash one or more critical applications. "We needed to know that we could recover in a hurry if an update went wrong. Having applications down for any amount of time on the trading floor is not an

JPMorgan's Single Sign On system was originally designed for web-based applications and they can integrate this system with One Bench so that the system knows exactly what updates to apply to each desktop. Advanced features such as the ability to roll an application back to a previous release state, are also critical. Skingle explains that "banks are very conservative about any new technology, and sharing applications on a JVM is a real concern. Automated roll-backs in the

The screenshot displays the QTrade application authoring tool interface, which is organized into several panels:

- Model Outputs:** A panel on the top left containing a text box stating "This form contains model outputs" and a "Price" input field.
- Basket Average:** A central panel titled "Basket Average" containing "Basket Average Parameters". These parameters include:
 - Strike: 1.1
 - Is Call: true (dropdown)
 - Weight Type: U
 - Smile Type: D
 - Ref=Avg Out?: N
 - Notional: 1
 - Value Date(Date): 26-MAY-2006
 - Value Date(Time): SOD
 - Instrument Settlement: CashSettleDate (dropdown)
 - Ignore Past Values Dates: ☐
- CashSettleDate:** A panel on the top right containing "Cash Settlement" parameters:
 - Date: 26-MAY-2006
 - EOD: EOD
- IR Definition:** A panel on the far right containing "IR Definition Parameters":
 - Currency: USD (dropdown)
- Equity Basket:** A panel at the bottom left containing "Equity Basket Parameters":
 - Currency: USD (dropdown)
 - A table with columns: Asset, Weight, Style, and an empty column.

JPMorgan used SWT and XML to develop the easy-to-use QTrade application authoring tool. Users drag components to a canvas and apply business logic to develop applications quickly and without programming.

option."

These requirements made Eclipse's Update Manager central to their strategy for One Bench and the components and applications such as Snapper, EIS and QTrade that run on it. Accessing the Update Manager's API directly, they can take complete programmatic control of the update process. For example, they by-pass end user input, performing all application updates silently.

Eclipse Update Manager reduce our risk and makes the open One Bench approach feasible." QTrade applications, for example, are saved as XML files, and these are easily deployed out to desktops using the Eclipse Update Manager. As Paul Sampat, Vice President with the IB Technology Exotics & Hybrids group explains, "The One Bench plus Update Manager combination lets us develop and deploy quickly while reducing our risk."

Indeed, with the Update Manager, an application can be updated globally over a weekend. If a problem is discovered when employees start work on the following Monday in the Far East, the situation can be corrected immediately, and the rest of the global workforce will never know there was an issue.

Eclipse RCP gives JPMorgan what they need: a plug-in friendly environment that will encourage efficiency and lower costs, and the control to ensure that software can be managed effectively.

All of these development groups had independently identified Eclipse as their

environment of choice. When they learned of the One Bench initiative, they each knew that it would make their tasks easier and make sense for JPMorgan. One Bench gives them a head start for their own requirements, and as they contribute components, they make it a more attractive solution for developers throughout the bank.

With One Bench in place, they expect their developers to develop the banking world's next killer-applications.

Ron Stone is a technology writer and content management consultant based in Ottawa, Canada

Exhibit I



LAW BLOG

On cases, trends and personalities in business



CONSTITUTIONAL LAW
Driver Destroys
Disputed Oklahoma
Ten Commandments
Statue



CIVIL LITIGATION
Parents May Be
Liable for What
Their Kids Post on
Facebook, Court
Rules

LAW SCHOOL

CONSTITUTIONAL LAW

SUPREME COURT

LAWYERS & LAW FIRMS

STATE LEGISLATION

INTELLECTUAL PROPERTY

6:47 pm ET
Jun 13, 2014

INTELLECTUAL PROPERTY

Judge Rader, Author of Controversial Email to Lawyer, to Resign from Bench

ARTICLE

COMMENTS (7)

FEDERAL JUDGES

Email Print



By ASHBY JONES [CONNECT](#)

Update: The post was updated on June 15 to reflect comments made by Judge Rader in an email to the WSJ.

An embattled federal appeals judge who gave up his leadership position on the court last month in the wake of an ethical controversy involving a lawyer who appeared before him will retire from the bench, according to [a brief statement posted on the court's website](#).

Randall R. Rader, who served as chief judge of the U.S. Court of Appeals for the Federal Circuit in Washington from 2010 until late last month, will leave his current post as judge on June 30, according to the statement.

In an email, Judge Rader explained: "the bottom line is that I was NOT happy after vacating the Chief position and then awoke to realize that I should leave while I am YOUNG and brimming with enthusiasm about the prospects of improving world legal systems. . . . With that in mind, my plan for the future is to TEACH. . . ."

In the past, Judge Rader has taught intellectual property at universities around the world. In his email, he said this would now be his primary pursuit. "In sum," he said, "this is my chance to do what I love and I am going to seize it!"

A spokesman for the court did not respond to an email seeking comment.

Judge Rader's resignation marks a coda to [a situation that erupted last month](#) involving a patent lawyer who argued frequently before the court.

In March, Judge Rader sent a laudatory email to [Edward Reines](#), a patent lawyer at Weil Gotshal & Manges LLP in Silicon Valley. The email described a recent conversation



—Reuters

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The Law Blog covers the legal arena's hot cases, emerging trends and big personalities. It's brought to you by lead writer **Jacob Gershman** with contributions from across The Wall Street Journal's staff. Jacob comes here after more than half a decade covering the bare-knuckle politics of New York State. His inside-the-room reporting left him steeped in legal and regulatory issues that continue to grab headlines.



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Must Reads



Court: Remains of Jim Thorpe Can Remain in Jim Thorpe

The remains of Jim Thorpe can remain in Jim Thorpe, Pa. That was the ruling handed down on Thursday by a federal appeals court in Philadelphia in an unusual case involving a dispute between the family of the legendary Native American athlete and a small Pennsylvania town named after him.



Exhibit I, Page 1

in which another judge purportedly told Judge Rader that Mr. Reines was "IMPRESSIVE in every way." Judge Rader signed the note "Your friend for life, rrr."

Mr. Reines shared the email with a potential client, according to a person familiar with the matter. The email, which circulated to other lawyers, raised questions among lawyers in the patent bar because Mr. Reines had appeared before the court—a key venue in U.S. patent law—in prior cases.

Mr. Reines did not immediately respond to a request seeking comment.

In a statement posted the day he stepped down as chief judge, Judge Rader said he regretted sending the email, adding that the email was "a breach of the ethical obligation not to lend the prestige of the judicial office to advance the private interests of others." He wrote: "I am truly sorry for the lapse and will work diligently to ensure that it does not recur."

The obligation cited by Judge Rader is included in a written code of conduct that governs U.S. judges. He was replaced as head of the 18-judge, Washington, D.C.-based court by a current judge, Sharon Prost.

Judge Rader, a Nebraska native, was nominated to a seat on the Federal Circuit in 1990 by President George H.W. Bush, and became chief judge in 2010.

— Brent Kendall contributed to this story.

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3:48 pm June 18, 2014

Lastcall wrote:

DA: You are quite right, if close relationship means more than friendship, this could be an understatement.

3:42 am June 18, 2014

DisappointedAdvocate wrote:

Rader appears to be a great judge with bad judgement. I think what is more likely here is that this will turn out to be an understatement not an overstatement — generally where there is smoke there is fire. It is very likely that there is much more here than meets the (public) eye and Judge Rader is getting ahead of things before the entire story has to be rolled out. The idea that having an inappropriately close relationship with one or more counsel that argue before him and then somehow trying to recuse himself after the fact (a questionable remedy if there ever was one) would make it all go away was poorly conceived. Both the judge and the attorneys involved should have known better than to taint the role of unbiased adjudicator.

3:15 am June 17, 2014

Harold Miles wrote:

This surely is an overstatement of the whole thing!!

10:09 pm June 16, 2014

Jane Doe wrote:

This story is bogus...cover up..

11:21 am June 15, 2014

Lastcall wrote:

It seems an exaggeration this reaction!

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Rader Resignation A Head Scratcher Despite Email Flap

By Ryan Davis

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Law360, New York (June 16, 2014, 7:14 PM ET) -- Federal Circuit Judge Randall Rader's retirement announcement Friday amid a controversy over an email he sent praising a Weil Gotshal & Manges LLP patent attorney came as a surprise to legal experts, who say the incident didn't warrant leaving the bench but may cast a shadow over his time on the court.

Rader stepped down as chief judge last month and apologized for what he called an "inexcusably careless" breach of ethics in sending the email, but he said he would remain on the court. On...

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Exhibit J

THE RECORDER

Page printed from: [The Recorder](#)

Rader Steps Down as Chief, Apologizes for Reines Email

Scott Graham, *The Recorder*

May 23, 2014



SAN FRANCISCO — Randall Rader resigned as chief judge of the U.S. Court of Appeals for the Federal Circuit on Friday, admitting [in an open letter](#) he'd made ethical missteps.

Rader apologized for "conduct that crossed the lines" when he sent an email to Weil, Gotshal & Manges partner Edward Reines praising Reines' skills and encouraging him to share the email with others. In perhaps a more serious transgression, Rader also conveyed a Federal Circuit colleague's enthusiasm for Reines' performance in two cases he'd just argued to the court.

Rader will remain on the court but relinquish the chief judgeship on May 30 to Judge Sharon Prost, apparently the same judge whose confidence Rader betrayed with his March 5 email.

"While I never expected that email to emerge as it did, I realize in retrospect that the email constituted a breach of the ethical obligation not to lend the prestige of the judicial office to advance the private

Exhibit J, Page 1

interests of others," Rader wrote to his Federal Circuit colleagues in a letter posted on the court's website Friday.

Rader's letter helps explain why the judge was recused from two cases earlier this month after issuing an order in one and an opinion in the other, and why Reines vacated the chairmanship of the Federal Circuit Advisory Council. Reines did not respond to a voice mail seeking comment.

The controversy apparently stems from two cases Reines argued back-to-back on behalf of Life Technologies Corp. to a Federal Circuit panel comprising Judges Prost, Haldane Mayer and Raymond Chen on March 4. Rader emailed Reines the next day, saying that over lunch one of his colleagues had remarked on Reines' prowess against Wilmer Cutler Pickering Hale and Dorr partner Seth Waxman.

"She said Seth had a whole battery of assistants passing him notes and keeping him on track. You were alone and IMPRESSIVE in every way," Rader wrote.

"In sum, I was really proud to be your friend today!" Rader added. "Actually, I not only do not mind, but encourage you to let others see this message."

The email does not identify which judge Rader was referring to, but Prost was the only female member of the panel. The court issued a summary Rule 36 affirmance against Life Technologies and Reines in one of the two cases March 10. The other case—the one Waxman participated in—remains pending.

Patent lawyers said Friday they expect Rader's four-year tenure as chief to be remembered primarily for helping expand global understanding of intellectual property law. Rader led the Federal Circuit at joint judicial conferences in China, Japan and South Korea, with hundreds of judges from those countries attending each event.

Rader "moved the dial on the patent discussion internationally," said Drinker Biddle IP chief Robert Stoll, noting as one example that Japan's IP court is now accepting amicus curiae briefs. "Sometimes the governments are blocked but the judges can keep talking to each other."

"He has made the Federal Circuit a household name throughout the world," said Finnegan, Henderson, Farabow, Garrett & Dunner partner Donald Dunner, adding that's no small matter in an increasingly global economy.

The same outgoing personality also has led to deep friendships in the patent bar, including with Reines, one of the top patent lawyers in the country.

Rader wrote that such friendships "did not and would not ever compromise my impartiality in judging any case before me.

"But avoiding even the appearance of partiality is a vital interest of our courts," he added, "and I compromised that interest by transgressing limits on judges' interactions with attorneys who appear before the court. I was inexcusably careless, and I sincerely apologize."

New York University law professor Stephen Gillers, an expert on legal and judicial ethics, said there's nothing unusual about judges having friendships with attorneys who appear in their court. "In small communities and specialized law practices it's impossible to avoid it," he said.

But very close friendships can require recusal to maintain the appearance of impartiality, he said, and Rader clearly went too far by putting his praise in an email and inviting Reines to share it with others. "That's money in the bank in the competition for patent clients," Gillers said. "It would be different if

Exhibit J, Page 2

Rader said to Reines at a bar conference next time they met, 'You did a really good job on such-and-such case.'"

Gillers added he thought a rehearing before a new panel would be in order for the pending Life Technologies case. That would be true even if, as Rader asserted in his open letter, his description of his colleague's comments contained "certain inaccuracies."

"We're dealing here with appearances, which are important or, as the old saying goes, the appearance of justice is as important as justice," Gillers said.

How Rader's email to Reines surfaced and how it came to the attention of the court weren't clear Friday. The first sign that something was amiss came May 5, when the court [withdrew an opinion](#) in a case Reines had argued and then reissued it without a dissent Rader had written. Two days later the court [withdrew a stay order](#) in a high-profile medical device case involving Reines and substituted another judge in Rader's place.

"Working with the court," Rader wrote in his letter, "I have taken steps to remedy the breaches for which I was responsible by recusing in cases as to which a question might be raised as to my impartiality. ... I am truly sorry for the lapse and will work diligently to ensure that it does not recur."

Rader became eligible for senior status last month, though he had three years remaining on his seven-year term as chief. Had he served out his entire term, the chief position would have passed to Judge Kimberly Moore in May 2017, because Prost, 63, would have reached senior status by then.

Keker & Van Nest partner Matthias Kamber, who clerked for Prost 10 years ago, said there was some speculation in the bar that Rader might end his term a bit early to give Prost a chance to be chief, though he was unaware of any discussions between the two.

He described Prost as a judge who spends a lot of time with other judges in chambers hashing out cases. "I think she's going to work on building coalitions on the big issues," he said, noting the court has fractured in some high-profile en banc cases recently. "Who's to say it would have been any different under different leadership? Part of her strength is to help people find common ground on those issues, and I'm hopeful as chief she's going to be able to pull that off."

In farewell remarks to the Federal Circuit Bar Association on Friday, Rader counted international judicial cooperation as one of his proudest achievements as chief. He also spoke of helping six new judges getting acclimated to the court, launching an electronic filing and case management system, and guiding the court through federal budget sequestration. The transition from chief judge will give him more time for his "first love" of sitting by designation as a trial judge in various district courts, he said, while teaching intellectual property at U.S. and foreign law schools.

Contact the reporter at sgraham@alm.com.

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Exhibit K

News and Announcements

Weil Advises Morgan Stanley and J.P. Morgan on Committed Bridge Financing for Tyson Foods

Tyson Foods submits unilaterally binding offer to acquire Hillshire Brands for \$8.55 billion

June 10, 2014

A Weil team, led by New York partners Morgan Bale and Matthew Bloch, advised Morgan Stanley and J.P. Morgan in connection with providing committed bridge financing backing Tyson Foods' unilaterally binding offer to acquire Hillshire Brands, a leader in branded, convenient foods, for \$8.55 billion. The offer is subject to Hillshire Brands being released from its existing agreement to acquire Pinnacle Foods Inc.

If completed, the acquisition will accelerate Tyson Foods' expansion into prepared foods and create a company with market positions in chicken, breakfast meats, hot dogs and other categories. Hillshire Brands' portfolio includes brands such as Jimmy Dean, Ball Park, Hillshire Farm and Sara Lee frozen bakery.

The Weil team advising Morgan Stanley and J.P. Morgan was led by Banking & Finance partner Morgan Bale and Capital Markets partner Matthew Bloch, and included M&A partner Raymond Gietz; Banking & Finance associates Peter Puk and Justin C. Lee; Capital Markets associate Michael Esposito; and M&A associate Frank Martire (all in New York).

This transaction is the latest in a series of high profile investment grade bridge financings Weil has been involved in over the past year. Other recent matters include:

- Barclays and Goldman Sachs in connection with providing \$7.2 billion of committed bridge financing backing Exelon Corporation's \$6.8 billion acquisition of Pepco Holdings Inc. The acquisition will create a mid-Atlantic utility company serving about 10 million customers from D.C. up to Philadelphia and southern New Jersey, with a rate base of about \$26 billion.
- Morgan Stanley in connection with providing \$1.9 billion of committed bridge financing (and related matters) backing UIL Holdings Corporation's acquisition of Philadelphia Gas Works, the nation's largest municipally-owned natural gas utility, from the City of Philadelphia for \$1.86 billion.
- Goldman Sachs in providing \$4.75 billion of committed bridge financing (and related matters) backing Sysco Corporation's acquisition of US Foods from Clayton, Dubilier & Rice and KKR. This transaction, when completed, will unite two of the largest food distributors in the United States.
- Morgan Stanley on a senior unsecured 364-day high grade bridge facility in connection with Weyerhaeuser's \$2.65 billion acquisition of Longview Timber from Brookfield Asset Management. This transaction is the third largest forest acquisition in North America.

Exhibit L

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Short Case Title (Name) :	MARINE POLYMER V HEMCON	Docket Number : 2010-1548
Lower Court/ Agency :	DCT Division :NH	Stand Alone Case
Lower Court# :	06-CV-0100	
Notice of Appeal Received:	9/27/2010	
Date Docketed :	9/22/2010	
Certified List Filed:	9/27/2010	
Notice of Appeal Filed :	9/21/2010	
Fee Paid :	PD	Fee Amount : \$455.00 Receipt No : 663046

ATTORNEYS BY PARTY AS LISTED FOR THIS CASE

Biotechnology Industry Organization Amicus Curiae	PRINCIPAL ATTORNEY GOLLIN, MICHAEL A. Firm : Venable LLP 575 Seventh Street, N.W., , Washington, DC 20004-1601 (202)344-4000 - Tel ; ext. (202)344-8300 - Fax EOA Filed :2/10/2012	1
Biotechnology Industry Organization Amicus Curiae	OF COUNSEL ATTORNEY COSTON, WILLIAM D. Firm : Venable LLP 575 Seventh Street, N.W., , Washington, DC 20004-1601 (202)344-4000 - Tel ; ext. (202)344-8300 - Fax EOA Filed :2/10/2012	1
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Biotechnology Industry Organization Amicus Curiae	OF COUNSEL ATTORNEY KOENIGBAUER, FABIAN MICHAEL Firm : Venable LLP 575 Seventh Street, N.W., , Washington, DC 20004-1601 (301)424-1523 - Tel ; ext. () - Fax EOA Filed :2/10/2012	1
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Cisco Systems, Inc.
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Amicus Curiae

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Amicus Curiae

OF COUNSEL ATTORNEY
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HemCon, Inc. Defendant-Appellant	PRINCIPAL ATTORNEY KURZ, RAYMOND A. Firm : Hogan Lovells US LLP 555 13th Street, N.W., , Washington, DC 20004-1109 (202)637-5600 - Tel ; ext. (202)637-5910 - Fax EOA Filed :10/5/2010	7
HemCon, Inc. Defendant-Appellant	OF COUNSEL ATTORNEY CROWSON, CELINE M. JIMENEZ Firm : Hogan Lovells US LLP 555 13th Street, N.W., , Washington, DC 20004-1109 (202)637-5703 - Tel ; ext. (202)637-5910 - Fax EOA Filed :10/5/2010	7
HemCon, Inc. Defendant-Appellant	OF COUNSEL ATTORNEY O'DOHERTY, KEITH B. Firm : Hogan Lovells US LLP 555 13th Street, N.W., , Washington, DC 20004-1109 (202)637-4882 - Tel ; ext. (202)637-5910 - Fax EOA Filed :10/6/2010	7
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Hewlett-Packard Company Amicus Curiae	OF COUNSEL ATTORNEY GREENBLATT, NATHAN Firm : Weil, Gotshal & Manges LLP 201 Redwood Shores Parkway, , Redwood Shores, CA 94065-1175	8

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Intellectual Ventures Management LLC Amicus Curiae	PRINCIPAL ATTORNEY PHILLIPS, MATTHEW C. Firm : Stoel Rives LLP 900 S.W. Fifth Avenue, Suite 2600, Portland, OR 97204-1268 (503)224-3380 - Tel ; ext. (503)220-2480 - Fax EOA Filed :11/14/2011	9
Intellectual Ventures Management LLC Amicus Curiae	OF COUNSEL ATTORNEY RAINEY, MATTHEW C. Firm : Intellectual Ventures, LLC 227 Bellevue Way, PMB 502, Bellevue, WA 98004 (425)467-2300 - Tel ; ext. () - - Fax EOA Filed :11/14/2011	9
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Marine Polymer Technologies, Inc. Plaintiff-Appellee	PRINCIPAL ATTORNEY POISSANT, BRIAN M. Firm : Jones Day 222 East 41st Street, , New York, NY 10017-6702 (212)326-3838 - Tel ; ext. (212)755-7306 - Fax EOA Filed :10/15/2010	11
Marine Polymer Technologies, Inc. Plaintiff-Appellee	OF COUNSEL ATTORNEY CASTANIAS, GREGORY A. Firm : Jones Day 51 Louisiana Avenue, NW, , Washington, DC 20001-2113 (202)879-3639 - Tel ; ext. (202)626-1700 - Fax EOA Filed :10/25/2011	11
Marine Polymer Technologies, Inc. Plaintiff-Appellee	OF COUNSEL ATTORNEY SHENTOV, OGNIAN V. Firm : Jones Day 222 East 41st Street, , New York, NY 10017-6702 (212)326-3650 - Tel ; ext. (212)755-7306 - Fax	11

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Marine Polymer Technologies, Inc. Plaintiff-Appellee	OF COUNSEL ATTORNEY NGUYEN, LYNDIA Q. Firm : Jones Day 222 East 41st Street, , New York, NY 10017-6702 (212)326-3884 - Tel ; ext. (212)755-7306 - Fax EOA Filed :10/15/2010	11
Marine Polymer Technologies, Inc. Plaintiff-Appellee	OF COUNSEL ATTORNEY BAHER, JULIE MELISSA Firm : Jones Day 222 East 41st Street, , New York, NY 10017-6702 (212)326-3891 - Tel ; ext. (212)755-7306 - Fax EOA Filed :10/15/2010 Withdrawn:4/24/2012	11
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Hewlett-Packard Company	Amicus Curiae
Intellectual Ventures Management LLC	Amicus Curiae
Jan K. Voda, M.D.	Amicus Curiae

Marine Polymer Technologies, Inc. Plaintiff-Appellee

Pharmaceutical Research and
Manufacturers of America Amicus Curiae

SAP America, Inc. Amicus Curiae

Sealy Corporation Amicus Curiae

Soverain Software LLC Amicus Curiae

Tessera, Inc. Amicus Curiae

eBay Inc. Amicus Curiae

2010-1548

PACER Service Center			
Transaction Receipt			
06/05/2013			
PACER Login:		Client Code:	
Description:	dkt summary	Search Criteria:	2010-1548
Billable Pages:	5	Cost:	0.50

**PLAINTIFF-APPELLANT'S REPLY IN OPPOSITION TO DEFENDANT-APPELLEE'S
OPPOSITION TO MOTION TO STAY, *Pi-Net International, Inc., v. JPMorgan Chase &
Co.*, Case No. 2014-1495 (Fed. Cir. 2014), sent USPS Priority Mail, Oct. 27, 2014.**

OAK GROVE STATION
MENLO PARK, California
940259991
0567830141 -0097
10/27/2014 (800)275-8777 02:28:30 PM

Product Description	Sale Qty	Unit Price	Final Price
00 -- WASHINGTON DC 20439 Zone-8 Priority Mail 2-Day Medium Flat Rate Box 10 lb. 13.0 oz. Expected Delivery: Wed 10/29/14 USPS Tracking #: 9114 9999 4423 8789 1465 73 Includes \$50 insurance			\$12.65
Issue Postage:			\$12.65
(Forever) Purple Heart PSA 2012	1	\$0.49	\$0.49
Total:			\$13.14
Paid by: VISA			\$13.14
Account #:	XXXX:XXXXXXXX3970		
Approval #:	027235		
Transaction #:	468		
	23 903470300		

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On Time

Expected Delivery Day: Thursday, October 30, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
\$50 insurance included

USPS Tracking™

Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
October 29, 2014 , 11:25 am	Delivered	WASHINGTON, DC 20439
Your item was delivered at 11:25 am on October 29, 2014 in WASHINGTON, DC 20439.		
October 29, 2014 , 9:20 am	Sorting Complete	WASHINGTON, DC 20018
October 29, 2014 , 9 06 am	Arrived at Post Office	WASHINGTON, DC 20018
October 29, 2014 , 6:19 am	Departed USPS Facility	WASHINGTON, DC 20018
October 29, 2014 , 6:19 am	Departed USPS Facility	WASHINGTON, DC 20066
October 29, 2014 , 5 55 am	Arrived at USPS Facility	WASHINGTON, DC 20018
October 28, 2014 , 11 58 pm	Arrived at USPS Facility	WASHINGTON, DC 20066
October 28, 2014 , 4:31 am	Departed USPS Facility	SAN FRANCISCO, CA 94188
October 27, 2014 , 9 54 pm	Arrived at USPS Origin Facility	SAN FRANCISCO, CA 94188
October 27, 2014 , 3:30 pm	Departed Post Office	MENLO PARK, CA 94025
October 27, 2014 , 2:27 pm	Acceptance	MENLO PARK, CA 94025

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