

Lakshmi Arunachalam, Ph.D.

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August 15, 2012

**District of Columbia
Board on Professional Responsibility**

Re: Federal Circuit Clerk of Court Jan Horbaly

The District of Columbia Bar
1101 K Street NW, Suite 200
Washington DC 20005
202-737-4700

By USPS Express Mail,
Aug. 15, 2012

Dear Members of the Board,

***Re: Disciplinary complaint against Clerk of Court Jan Horbaly re. his conduct in
Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.)***

I regret but feel compelled to bring the conduct of Federal Circuit **Clerk of Court Jan Horbaly** to your attention. I believe that his conduct in *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.) ("*Leader v. Facebook*") has been unethical and does not instill the confidence of the public in the administration of justice.

Frankly, my general concern is that this complaint will be swept under the carpet and not be fully investigated. Pundits label "self-policing" of white collar misconduct in the legal profession as largely ineffective since attorneys are disciplining each other and feel the natural sympathy of "there but by the grace of God go I." Therefore, I challenge this Board to include a majority of laypeople in this evaluation. This will inject a modicum of objectivity and third party accountability into a process that otherwise looks to the average person as nothing more than attorney whitewashing.

My other concern is that if I do not mention a particular matter in this letter, the Board will then not investigate additional matters that may arise from its investigation. Therefore, I respectfully ask that you not limit your investigation to only the matters I raise herein, but rather to all matters that arise from the investigation, including the matters I raise below.

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The following are my complaints:

1. Clerk Horbaly signed two Orders regarding my Motions that he had not given to the judges according to Federal Court Clerk of Court staffer, Valerie White on Aug. 7, 2012. Worse, the Jul. 11, 2012 Order was entered only *hours* after my time-stamped motion was received by the court. According to Ms. White, the judges would not have had time to receive and consider my motion.ⁱ See Orders, Jul. 11, 2012ⁱⁱ and Jul. 24, 2012,ⁱⁱⁱ *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.).

2. Clerk Horbaly did not disclose his prior associations with a person likely to be a key Leader witness, Professor James P. Chandler. Professor Chandler was a professor of law at George Washington University and likely quite well known to the whole court. It is also likely that undisclosed differences exist with various members of the court and Professor Chandler since he was instrumental in the passage of the Federal Trade Secrets Act and the Economic Espionage Act in 1996. At the very least these associations required disclosure. This association was likely to inject bias into the proceedings and should have been grounds for disqualification or at least a request for waiver. Instead, the Clerk and the judges were utterly silent. Given that Professor Chandler's testimony (suppressed by the district court) would have been helpful to Leader and not Facebook, this oversight *shouts* for attention.

In addition, Professor Chandler has assisted the Judiciary in the prosecution of trade secrets and economic espionage cases. Therefore, it is quite likely that many, if not most, of the members of the Federal Circuit should have disclosed this association. The entire court was silent.^{iv}

3. Clerk Horbaly did not disclose his and the Federal Circuit's prior associations with various Facebook attorneys. These associations were likely to inject bias into the proceedings and should have been grounds for disqualification or at least a request for waiver.^v

4. Clerk Horbaly did not disclose his Facebook holdings or whether or not he or any of his direct relationships to the third degree held or purchased stock in Facebook during the pendency of the *Leader v. Facebook* proceedings. Since Facebook's highly publicized initial public offering occurred during the pendency of the court's decision, this matter must certainly be material and would inject bias, and the disclosure one way or the other would have satisfied the requirement for judges to avoid even the appearance of impropriety, especially when considering that at least Judges Lourie and Moore had acquired Facebook stock.^{vi}

5. Even more specifically, Clerk Horbaly has actually hosted events where he invited Facebook's attorney Thomas Hungar as a guest speaker on the subject of the

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future of the Federal Circuit. It is evident that the Federal Circuit courts Mr. Hungar's favor and that this conflict of interest required disclosure.^{vii}

6. Clerk Horbaly authorized public disclosure of key court decisions *timed* to Facebook media needs regarding its IPO in what the average person on the street can only consider Facebook bias. The announcement of the decision was *timed* on the same day as the beginning of the Facebook Road Show in New York on May 8, 2012, and the announcement of the denial of the Leader petition for rehearing was *timed* and unexpectedly announced first by *Fox Business* interviewer Shibani Joshi during a nationally televised interview of Leader's Chairman Michael McKibben on July 16, 2012.^{viii}

7. In his "hyperactive" role as a surrogate judge, Clerk Horbaly ignored the substance of my motions which included firm evidence of matters that required serious review instead of the cursory denials they received. For example, I provided clear proofs of substantial conflicts of interest among the Clerk and judges, substantial new evidence of Facebook's withholding of key evidence in this case, and egregious oversights of law that cannot possibly pass for judicial discretion.^{ix}

8. Clerk Horbaly's court has failed to provide timely FOIA information which asked that the court disclose its conflicts checking process in general, and specifically what conflicts checking occurred prior to and during the pendency of *Leader v. Facebook*.

9. In his "hyperactive" role as a surrogate judge, Clerk Horbaly abused his discretion by denying motions 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."

In his Clerk duties, Clerk Horbaly has failed to docket my motions, leaving the public in the dark as to the subject of the denials of those motions which have been published. Such dereliction of duties is tantamount to the kind of censorship one would expect to see in a totalitarian state. Further, Federal Circuit Clerk staffer Valerie White told caller Steve Williams on Jul 7, 2012 that the court had "no record" of even receiving any of my three motions. This sort of conduct of a major court is unacceptable.^x

10. The public record shows the possibility of undue influence over the proceeding by political and foreign influences. More specifically, at least Judges Lourie and Moore acquired Facebook stock through well-publicized transactions involving the very substantial involvement of investors in Facebook (including the closely related companies Zynga and Groupon) with close ties to the current U.S. administration and to

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the Russian government (“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).^{xi}

For the sake of economy, I will not attach hard copies of the supporting documents, but will provide links to the downloadable documents online. Should the Board wish to have hard copy print outs of the cited documents, I will provide them upon request.

Given the already public nature of this case, and the fact that I am already in contact with members of the U.S. legislature, I will be providing copies of this complaint to members of the House and Senate Judiciary Committees, among others. In this spirit, I would request that you make the results of your investigation publicly available.

Respectfully yours,

/s/

Lakshmi Arunachalam, Ph.D.
CEO
WebXchange, Inc.

Resources:

1. White Brief, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.). Accessed Aug. 14, 2012 <<http://www.leader.com/docs/Leader-v-Facebook-APPEAL-Opening-Brief-25-Jul-2011.pdf>>.
2. Red Brief, *Id.* Accessed Aug. 14, 2012 <<http://www.leader.com/docs/Leader-v-Facebook-FACEBOOK-APPELLEE-BRIEF-24-Oct-2011.pdf>>.
3. Gray Brief, *Id.* Accessed Aug. 14, 2012 <<http://www.leader.com/docs/Leader-v-Facebook-LEADER-REPLY-BRIEF-28-Nov-2011.pdf>>.
4. Green Brief, and Motion for Leave to File of Amicus Curiae Lakshmi Arunachalam, Ph.D.; Motion for Reconsideration; Renewed Motion for Leave to File. Accessed Aug. 14, 2012 <<http://www.scribd.com/amer4innov>>.
5. The *Leader v. Facebook* investigative reports of former *Bloomberg TV* reporter Donna Kline. Accessed Aug. 14, 2012 <<http://www.donnaklinenow.com>>.

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ENDNOTES:

ⁱ Conversation between Federal Circuit Clerk of Court staff member Valerie White and Ohio resident Steve Williams. “Judicial Hyperactivity at the Federal Circuit. Accessed Aug. 14, 2012 <<http://www.donnaklinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit#comment-3365>>.

ⁱⁱ Order, Jul. 11, 2012. Accessed Aug. 14, 2012 <<http://www.scribd.com/doc/100272477/Delivery-Receipt-and-Order-Re-Amicus-Curiae-Lakshmi-Arunachalam-PhD-Motion-for-Leave-to-File-Jul-11-2012#page=2>>.

ⁱⁱⁱ Order, Jul. 24, 2012. Accessed Aug. 14, 2012 <<http://www.scribd.com/doc/102490453/Order-DENYING-Motion-for-Reconsideration-of-Motion-for-Leave-to-File-Amicus-Curiae-Lakshmi-Arunachalam-P-D-Brief-Re-Leader-v-Facebook-Jul-24-20>>.

^{iv} 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, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012, pp. 6-10 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=15>>.

^v *Id.*, pp. 16-17 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=25>>.

^{vi} Donna Kline. “Judge Alan D. Lourie Chose Retirement Fund Value Over Justice? [citing Judge Moore’s public financial disclosure showing T. Rowe Price holdings and Facebook’s S-1 disclosure of a 5.2% holding by 158 T. Rowe Price Funds]” *Donna Kline Now!* Accessed Aug. 15, 2012 <<http://www.donnaklinenow.com/investigation/hijinks-at-the-high-court>>. See also T. Rowe Price Associates, Inc. “Principal And Selling Stockholders, fn. 20,” [Facebook S-1 Filing](#), p. 129. Accessed Aug. 1, 2012; See also Judge Kimberly A. Moore Fidelity Contra-Fund Holdings, 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, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012, pp. 13-16 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=22>>.

^{vii} *Id.*

^{viii} See Letter Complaint to Mr. William Suter, Clerk of Court, U.S. Supreme Court, written Aug. 11, 2012, submitted Aug. 13, 2012, p. 2. Accessed Aug. 14, 2012

*Disciplinary Complaint Against **Federal Circuit Clerk of Court Jan Horbaly***

<<http://www.scribd.com/doc/102686250/Lakshmi-Arunachalam-Ph-D-Judicial-Misconduct-COMPLAINT-to-the-U-S-SUPREME-COURT-Aug-11-2012>>.

^{ix} 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, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS>>.

^x See “Court Has ‘No Record’ Of These Motions as of Aug. 8, 2012.” *Donna Kline Now!*, Accessed Aug. 15, 2012 <<http://www.donnaklinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit>>

^{xi} *Id.*, pp. 14-15 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=23>>.



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