

2011-1366

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

*Plaintiff-Appellant,*

v.

FACEBOOK, INC.,

*Defendant-Appellee.*

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*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*

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**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*<sup>1</sup> 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.<sup>2</sup> The withholding of this evidence created a

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<sup>1</sup> *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).

<sup>2</sup> 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

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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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Lakshmi Arunachalam, Ph.D.  
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Lakshmi Arunachalam, Ph.D.

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

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

*Two (2) copies by regular mail 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 by regular mail 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*

A copy was also provided to Americans for Innovation at scribd/amer4innov.

*/s/*

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Lakshmi Arunachalam, Ph.D.

July 18, 2012



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**EXHIBIT 2, pg. 10**

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. 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.

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

JUL 24 2012

**EXHIBIT 2, pg. 11**

JAN HORBALY  
CLERK