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

Scribd. scribd.com/amer4innov

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.

TABLE OF CONTENTS

Memorandum 1

Law & Argument 2

Error #1: Lack of Jurisdiction; Violation of Leader's Due Process Rights 3
Error #2: Clerical Mistake 6
Error #3: Fraud 7
Error #4: Court Procedures Out-Of-Order 7
Error #5: Financial Conflicts of Interest; Abuse of Discretion 8
Error #6: Court ignores material new evidence withheld by Mark Zuckerberg not previously available to Leader 12
Error #7: Relationship Conflicts of Interest 12
Error #8: Censorship 14
Error #9: Failure to follow the Jury Instructions 15
Error #10: Media Collusion 16
Error #11: The Court's decision places the patent world in turmoil 17

Relief Sought 18

TABLE OF AUTHORITIES

FEDERAL CASES

American Hoist & Derrick Co. v. Sowa & Sons,
725 F. 2d 1350 (Federal Circuit 1984) 4

Denton v. Hernandez,
504 US 25 (Supreme Court 1992) 9

Foman v. Davis,
371 U.S. 178, 181-82 (Supreme Court 1962) 2, 14

Group One, Ltd. v. Hallmark Cards, Inc.,
254 F. 3d 1041 (Federal Circuit 2001) 4, 15

Haines v. Kerner,
404 US 519 (Supreme Court 1972) 9

Microsoft Corp. v. i4i Ltd. Partnership,
131 S. Ct. 2238 (Supreme Court 2011) 4

O'keefe v. Van Boening,
82 F. 3d 322 - Court of Appeals, 9th Circuit 1996..........5

Porter v. Singletary,
49 f. 3d 1483 (11th Circuit 1995) 9

Portsmouth Square Inc. v. Shareholders Protective Comm.,
770 F.2d 866, 869 (9th Cir.1985) 5

Shell Oil Co. v. US,
672 F. 3d 1283 (Federal Circuit 2012) 10, 11, 17

Southeastern Promotions, Ltd. v. Conrad,
420 US 546 (Supreme Court 1975) 14

Weinberger v. Salfi,
422 US 749 (Supreme Court 1975) 5

FEDERAL STATUTES

28 U.S.C. §455(c) 9, 10

35 U.S.C. §102(b) 18, 19

Code of Conduct for Judicial Employees 8

Economic Espionage Act of 1986..........12

Federal Trade Secrets Act..........12

Fifth Amendment 5

Fourteenth Amendment 5

FRAP 27(a)(5)..........2

FRAP 27(d)(1)(E)(2)..........1

FRAP 45..........15

FRCP 27(a)(3)..........7

FRCP 60(a) 2

FRCP 60(b) 2

Sixth Amendment 5
Seventh Amendment 5
The Dictionary Act 18
Uniform Commercial Code 15

OTHER RESOURCES

Americans For Innovation and Against Intellectual Property Theft
http://www.scribd.com/amer4innov. 1, 8, 11

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

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>. 11

"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 5

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> 17

The Holy Bible, Book of Deuteronomy..3
Interrogatory No. 9 ....15, 18
Jury Instruction 1.7 15
Jury Instruction 4.4 16
Jury Instruction 4.6 15
Jury Instruction 4.7 15
Jury Instruction 4.8 16

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 liberally[2] 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 Price[8] 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 impropriety[9] 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.scribd.com/amer4innov>.

[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.

/s/

Sep. 1, 2012

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.

/s/
____

Sep. 1, 2012

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 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

Americans for Innovation and Against Intellectual Property Theft

English | Customer Service | USPS Mobile | Register / Sign In

Search USPS.com or Track Packages

Quick Tools | Ship a Package | Send Mail | Manage Your Mail | Shop | Business Solutions

Track & Confirm

GET EMAIL UPDATES | PRINT DETAILS

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
EG994712231US	Express Mail®	Delivered	September 03, 2012, 6 57 am	WASHINGTON, DC 20045	**Guaranteed By** September 4, 2012, 3 00 PM Proof of Delivery
		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	
		Acceptance	September 01, 2012, 10 28 am	MENLO PARK, CA 94025	

Check on Another Item

What's your label (or receipt) number?

Find

LEGAL
Privacy Policy ›
Terms of Use ›
FOIA ›
No FEAR Act EEO Data ›

ON USPS.COM
Government Services ›
Buy Stamps & Shop ›
Print a Label with Postage ›
Customer Service ›
Site Index ›

ON ABOUT.USPS.COM
About USPS Home ›
Newsroom ›
Mail Service Updates ›
Forms & Publications ›
Careers ›

OTHER USPS SITES
Business Customer Gateway ›
Postal Inspectors ›
Inspector General ›
Postal Explorer ›

Copyright© 2012 USPS. All Rights Reserved.

EG 994712231 US

UNITED STATES POSTAL SERVICE ®

Customer Copy
Label 11-B, March 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code: 94025

Day of Delivery: ☐ Next ☐ 2nd ☑ 2nd Del. Day

Postage: $ 46 95

Date Accepted: 9 / 1 / 12 (Mo. Day Year)

Scheduled Date of Delivery: Month 9 Day 4

Return Receipt Fee: $

Time Accepted: 1030 ☐ AM ☐ PM

Scheduled Time of Delivery: ☐ Noon ☑ 3 PM

COD Fee: $

Insurance Fee: $

Flat Rate ☐ or Weight: 3 lbs. 1 ozs.

Military: ☐ 2nd Day ☐ 3rd Day

Total Postage & Fees: $ 46 95

Int'l Alpha Country Code

Acceptance Emp. Initials

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time		Employee Signature
Mo. Day		☐ AM ☐ PM	
Delivery Attempt	Time		Employee Signature
Mo. Day		☐ AM ☐ PM	
Delivery Date	Time		Employee Signature
Mo. Day		☐ AM ☐ PM	

MENLO PARK, CA 94025 USPS SEP 1 2012

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.

Federal Agency Acct. No. or Postal Service Acct. No.

☐ **WAIVER OF SIGNATURE** *(Domestic Mail Only)*
Additional merchandise insurance is void if customer requests waiver of signature.
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.

NO DELIVERY
☐ Weekend Holiday ☐

Mailer Signature

FROM: (PLEASE PRINT) PHONE (650) 854 3393

Lakshmi Arunachalam
222 Stanford Avenue
Menlo Park, CA 94025

TO: (PLEASE PRINT) PHONE ( )

Clerk of Court
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Room 401
Washington, D.C.

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)

2 0 4 3 9 +

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

FOR PICKUP OR TRACKING

Visit **www.usps.com**

Call 1-800-222-1811

English | Customer Service | USPS Mobile | Register / Sign In

Search USPS com or Track Packages

Quick Tools | Ship a Package | Send Mail | Manage Your Mail | Shop | Business Solutions

Track & Confirm

GET EMAIL UPDATES | PRINT DETAILS

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
EG914595834US	Express Mail®	Delivered	September 03, 2012, 6 57 am	WASHINGTON, DC 20045	**Guaranteed By** September 4, 2012, 3 00 PM Proof of Delivery
		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	
		Acceptance	September 01, 2012, 10 32 am	MENLO PARK, CA 94025	

Check on Another Item

What's your label (or receipt) number?

Find

LEGAL
Privacy Policy ›
Terms of Use ›
FOIA ›
No FEAR Act EEO Data ›

ON USPS.COM
Government Services ›
Buy Stamps & Shop ›
Print a Label with Postage ›
Customer Service ›
Site Index ›

ON ABOUT.USPS.COM
About USPS Home ›
Newsroom ›
Mail Service Updates ›
Forms & Publications ›
Careers ›

OTHER USPS SITES
Business Customer Gateway ›
Postal Inspectors ›
Inspector General ›
Postal Explorer ›

Copyright© 2012 USPS. All Rights Reserved.

UNITED STATES POSTAL SERVICE®

Customer Copy
Label 11-B, March 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code: 94025	Day of Delivery: ☐ Next ☐ 2nd ☐ 2nd Del. Day	Postage: $ 46 95
Date Accepted: 1 9 12 (Mo. Day Year)	Scheduled Date of Delivery: 9 4 (Month Day)	Return Receipt Fee: $
Time Accepted: 1030 ☐ AM ☐ PM	Scheduled Time of Delivery: ☐ Noon ☐ 3 PM	COD Fee: $ / Insurance Fee: $
Flat Rate ☐ or Weight: 2 5 lbs. ozs.	Military: ☐ 2nd Day ☐ 3rd Day	Total Postage & Fees: $ 46 95
	Int'l Alpha Country Code	Acceptance Emp. Initials

DELIVERY (POSTAL USE ONLY)

Delivery Attempt (Mo. Day)	Time ☐ AM ☐ PM	Employee Signature
Delivery Attempt (Mo. Day)	Time ☐ AM ☐ PM	Employee Signature
Delivery Date (Mo. Day)	Time ☐ AM ☐ PM	Employee Signature

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.

Federal Agency Acct. No. or
Postal Service Acct. No.

☐ **WAIVER OF SIGNATURE** *(Domestic Mail Only)*
Additional merchandise insurance is void if customer requests waiver of signature.
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.

NO DELIVERY
☐ Weekend ☐ Holiday

Mailer Signature

FROM: (PLEASE PRINT) PHONE (650) 854 3393

Lakshmi Arunachalam
222 Stanford Avenue
Menlo Park, CA 94025

TO: (PLEASE PRINT) PHONE ( )

Clerk of Court
U.S. Supreme Court
1 First Street, NE
Washington, D.C

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)