

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

LEADER TECHNOLOGIES, INC., a Delaware corporation,)	
)	CIVIL ACTION
)	
Plaintiff and Counterdefendant,)	No. 1:08-cv-00862-LPS
)	
v.)	
)	
FACEBOOK, INC., a Delaware corporation,)	
)	
Defendant and Counterclaimant.)	
)	

**DEFENDANT FACEBOOK, INC'S OPPOSITION TO PLAINTIFF'S
MOTION FOR JUDGMENT AS A MATTER OF LAW AND FOR A NEW TRIAL**

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I. INTRODUCTION

Having weighed all the evidence and assessed the credibility of the witnesses, the jury in this case unanimously found that the asserted claims of the '761 patent are invalid because Leader offered to sell and publicly disclosed its claimed invention more than one year before the effective filing date of the '761 patent application. The jury also unanimously concluded that Facebook does not control or direct the actions of its users or employees. Because Leader provides no basis for setting aside any of these findings, its motion should be denied.

With respect to the jury's findings of invalidity, Leader's principal argument is that Facebook did not show that Leader2Leader, the product that it offered for sale and publicly demonstrated before the critical date, embodied the asserted claims of the '761 patent. This argument ignores the fact that Leader repeatedly admitted, in sworn interrogatory responses, in pre-trial deposition testimony and in trial testimony, that Leader2Leader embodied the asserted claims. The sole question for the jury was not *whether* the product embodied the claims, but *when* it did so. The answer to that question turned on the credibility of Mr. McKibben and whether the jury believed his (1) pre-trial deposition testimony in which he could not identify any prior version of Leader2Leader that did not embody the asserted claims; or (2) his concocted and contradictory "recollection" at trial that Leader2Leader did not embody the asserted claims until shortly before December 11, 2002. The jury was entitled to discount Mr. McKibben's contradictory story at trial in assessing his credibility and weighing the evidence – and it did so.

The jury also heard substantial evidence supporting the other elements of the on sale and public use defenses. The evidence at trial established that Leader made commercial offers for sale of Leader2Leader to at least three third parties, which included specific quantities, pricing, and delivery terms among others. The evidence also established that, more than one year before the effective filing date of the '761 patent, Leader discussed Leader2Leader with third parties *more than a thousand times* and demonstrated the product in fully operational form to numerous of those third parties. Because even one offer for sale or unprotected disclosure invalidates a patent, the jury had more than substantial evidence to find an invalidating public use.

The jury also properly concluded that the provisional application did not disclose all elements of any of the asserted claims. The jury heard named inventor Jeff Lamb testify under oath at his deposition that Leader's provisional application lacked support for at least one element of each asserted claim of the '761 patent. Mr. Lamb's conclusion was supported by expert testimony at trial. The jury certainly had sufficient evidence to conclude – and did in fact conclude - that the claims were not entitled to the provisional application's filing date.

With regard to Leader's infringement claims, the jury properly concluded that Leader did not establish that Facebook controlled or directed the actions of its users or employees. This is an essential element of all of Leader's theories of infringement. The sole evidence Leader submitted to show control or direction of users was Facebook's terms of service, which are insufficient. Leader offered no evidence that Facebook controls or directs its own employees with respect to any of the steps recited in the asserted claims. As explained below and in Facebook's co-pending Motion for Judgment as a Matter of Law (Motion No. 1), the Federal Circuit has repeatedly affirmed summary judgment or JMOL against plaintiffs that presented considerably more evidence of control or direction than Leader presented here. For the foregoing reasons and the reasons explained below, Leader's motion should be denied.

II. ARGUMENT

A. Leader Failed To Preserve Its Grounds for Judgment as a Matter of Law

As a threshold matter, Leader's motion should be denied as procedurally barred because Leader failed to make an adequate pre-verdict motion to preserve the specific grounds argued in its post-trial motion. Third Circuit law is clear that: "A motion for judgment as a matter of law pursuant to Rule 50(b) must be preceded by a Rule 50(a) motion *sufficiently specific* to afford the party against whom the motion is directed with an opportunity to cure possible defects in proof which otherwise might make its case legally insufficient." *Lightning Lube, Inc. v. Witco*

Corp., 4 F.3d 1153, 1173 (3d Cir. 1993) (emphasis in original).¹ A motion brought under Rule 50(a) “may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.” Fed. R. Civ. P. 50(a)(2). Accordingly, “a [party’s] failure to raise an issue in a Rule 50(a)(2) motion with sufficient specificity to put the [other party] on notice waives the [moving party’s] right to raise the issue in their Rule 50(b) motion.” *Williams v. Runyon*, 130 F.3d 568, 571-72 (3d Cir. 1997). Because Leader did not comply with the specificity requirements of Rule 50(a), its “renewed” motion under Rule 50(b) fails as a matter of law.

1. Leader’s Pre-Verdict Motions Were Inadequate Under Rule 50(a)

Leader’s entire pre-verdict motion under Rule 50(a), as to both the on sale and public use defenses, was limited to the following statement:

Number three, judgment as a matter of law that the invention covered by any of the asserted claims of U.S. Patent Number 7,139,761 was not in public use or on sale by Leader Technologies more than one year prior to the effective filing date and the asserted claims of U.S. Patent Number 7,139,761 are therefore not invalid for that reason.

Ex.² A at 1714:3-10.

Leader did not identify a single basis for its motion, providing Facebook with no opportunity to cure the alleged evidentiary deficiencies Leader now argues in its opening brief. *See* D.I. 626 at 4-11. Leader therefore waived its right to bring a motion for judgment as a matter of law on the on sale/public use defenses under Rule 50(b). Leader also failed to make *any* pre-verdict motion several other issues it now raises in its opening brief, specifically whether Facebook exercised “control or direction” over its users and employees, or whether the offers for

¹ Third Circuit law governs the question of whether Leader’s pre-verdict JMOL motion was sufficient under Rule 50(a). *See, e.g., Duro-Last, Inc. v. Custom Seal, Inc.*, 321 F.3d 1098, 1106 (Fed. Cir. 2003) (regional circuit law governs procedure for new trial and JMOL motions).

² Citations to “Ex. ___” refer to cited exhibits attached to the Declaration of Jeffrey T. Norberg in Support of Facebook’s Opposition to Leader’s Motion for Judgment as a Matter of Law and Motion for New Trial, filed concurrently herewith.

sale and public uses of Leader2Leader were “experimental uses.” Because Leader failed to even mention these issues in its pre-verdict JMOLs, it is barred from raising those issues now.

2. Leader’s Post-Verdict “Rule 50(a)” Motion Was Without Legal Effect

Rule 50(a) is clear that a motion under that rule must be filed “before the case is submitted to the jury.” Fed. R. Civ. P. 50(a)(2). Leader told the Court after making its oral JMOL motions that it reserved the right to file a written submission on its Rule 50(a) motion. *See* Ex. A at 1733:24-1734:4. Leader did not file that submission, however, until six days after the jury verdict was entered. D.I. 612. That post-verdict “Rule 50(a)” motion, for the first time, articulated grounds for Leader’s pre-verdict oral motions and made additional motions that were never previously made. Leader’s belated motion is a nullity that must be disregarded in determining whether Leader complied with the specificity requirements of Rule 50(a).

Leader will likely argue that the Court gave it permission to file its post-verdict belated Rule 50(a) motion, but such an argument is unavailing. On the last day of trial and after apparently realizing that it had neglected to file its promised written Rule 50(a) submission, Leader requested for permission to file its motion after the verdict. The Court indicated that this was “acceptable,” but the Court never authorized Leader to exceed the scope of its oral pre-verdict JMOL motions, nor did it excuse Leader from the specificity requirements of Rule 50(a). *See* Ex. A at 1898:10-19. Nor could it have. Allowing a party to articulate its Rule 50(a) grounds after the verdict, too late for the opposing party to address those alleged deficiencies in its proof, would defeat the very purpose of the rule. *See* Fed. R. Civ. P. 50, Advisory Committee Notes to 1991 Amendment (“Paragraph (a)(2) retains the requirement that a motion for judgment be made prior to the close of the trial, subject to renewal after a jury verdict has been rendered. The purpose of this requirement is to assure the responding party an opportunity to cure any deficiency in that party’s proof that may have been overlooked until called to the party’s attention by a late motion for judgment.”). Leader’s renewed motion under Rule 50(b) must therefore be judged entirely by the content of Leader’s pre-verdict oral JMOL motions, which were insufficient for the reasons discussed above.

B. Substantial Evidence Supports The Jury’s Findings Against Leader

In order to prevail on its JMOL motion, Leader must show that, “viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury” could have made the findings that it did. *Lightning Lube*, 4 F.3d at 1166 (citing *Wittekamp v. Gulf & Western Inc.*, 991 F.2d 1137, 1141 (3d Cir. 1993)). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000) (citation omitted). As explained below, the jury’s findings that the asserted claims were invalid under 35 U.S.C. § 102(b), and that Leader failed to prove that Facebook controls or directs the actions of its users and employees, are supported by substantial evidence.

1. Substantial Evidence Supported The Jury’s Verdict of Invalidity Based on the On-Sale Bar

Facebook prevailed on its on-sale bar defense by presenting the jury with clear and convincing evidence that (1) Leader2Leader, which embodied the asserted claims of the ’761 patent, was subject to a commercial offer for sale more than one year prior to the patent’s effective date; and that (2) the invention was ready for patenting. *See Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 67 (1998). The jury heard ample evidence as to both elements.

a. Substantial Evidence Supported the Jury’s Finding that Leader2Leader Embodied the Asserted Claims

Leader devotes a substantial portion of its opening brief to the assertion that Facebook did not present sufficient evidence that Leader2Leader embodied the asserted claims of the ’761 patent. Leader’s primary argument is that Facebook was required to conduct an element-by-element technical comparison of Leader2Leader against the claims of the ’761 patent. Federal Circuit law is clear, however, that no such requirement exists: “That the offered product is in fact the claimed invention may be established by any relevant evidence, such as memoranda, drawings, correspondence, and testimony of witnesses.” *Sonoscan, Inc. v. Sonotek, Inc.*, 936 F.2d 1261, 1263 (Fed. Cir. 1991) (quoting *RCA Corp. v. Data Gen. Corp.*, 887 F.2d 1056, 1060

(Fed. Cir. 1989)) (emphasis added). For example, the Federal Circuit has repeatedly held that when a patent owner admits in litigation that a particular product practices the claimed invention, that admission is sufficient to sustain the defendant's burden that the product anticipates the claims for purposes of an on sale bar. *See, e.g., Vanmoor v. Wal-Mart Stores, Inc.*, 201 F.3d 1363, 1366 (Fed. Cir. 2000); *Evans Cooling Sys., Inc. v. Gen. Motors Corp.*, 125 F.3d 1448, 1451 (Fed. Cir. 1997); *see also Cummings v. Adidas USA*, No. 08 Civ. 9860(SAS), 2010 WL 2076975, at *4 (S.D.N.Y. May 24, 2010). The cases cited in Leader's opening brief address the situation in which the parties disagree on the question of whether the offered product ever practiced the claimed invention. Those cases have no applicability when, as here, the accused infringer relies on the patent owner's own admissions to show that the offered product embodies the claimed invention.

In *Vanmoor*, for example, the Federal Circuit affirmed summary judgment of invalidity based on pre-critical date sales of caulking gun cartridges. 201 F.3d at 1365. The court rejected the patent holder's argument that the defendants had not carried their burden of establishing that "the cartridges that were the subject of the pre-critical date sales anticipated the claims of [the] patent." *Id.* at 1366. The court explained that although the defendants "bore the burden of proving that the cartridges that were the subject of the pre-critical date sales anticipated [the patent], that burden was satisfied by [plaintiff's] allegation that the accused cartridges infringe [the patent]." *Id.*; *see also Cummings*, 2010 WL 2076975, at *4 (accused infringer met its burden under *Vanmoor* by relying on patentee's allegations and discovery admissions that accused products embody the asserted claims).

To prove that Leader2Leader practiced the asserted claims, Facebook presented Leader's sworn interrogatory responses, the deposition testimony of Mr. McKibben and documentary evidence. *See* Ex. A at 1201:15-21, 1377:14-19; Ex. B (DTX0963-R); Ex. C (DTX0969-R); Ex. D (DTX0179) at LTI_048198, 203. In particular, Facebook presented two interrogatory responses in which Leader admitted that "Leader2Leader® powered by the Digital Leaderboard® engine is covered by the '761 Patent." *Id.* Ex. B (DTX0963-R) at 4; *see also* Ex.

C (DTX 0969-R) at 46 (“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.”). These admissions were unequivocal and not qualified in any way. Each of the three pre-critical date commercial offers for sale introduced by Facebook was for Leader2Leader. The earliest of those three offers in January 2002, for example, was for the “Digital Leaderboard™ System software . . . supplied under the brand name Leader2Leader™” Ex. D (DTX0179) at LTI_048200. Leader’s unqualified interrogatory admissions would have been sufficient, standing alone, to carry Facebook’s burden of proof on his issue. But there was more.

Facebook also presented the pre-trial deposition testimony of Mr. McKibben, testifying as Leader’s founder, CEO, lead inventor of the ’761 patent and Leader’s corporate designee under Rule 30(b)(6) on the topic of whether Leader2Leader practices the asserted claims.³ Mr. McKibben confirmed during that deposition that Leader2Leader practices the claims of the ’761 patent. *Id.* Ex. A at 1201:15-21. When asked whether he could identify any previous version of Leader2Leader that did *not* practice the claims, Mr. McKibben testified that he could not:

Q. Can you identify any iteration of the Leader2Leader product that, in your opinion, did not implement what’s claimed in the ’761 patent?

A. That was a long time ago. I – I can’t point back to a specific point.

Id. Ex. A at 1377:14-19.

In an attempt to avoid its interrogatory responses and other pre-trial admissions, Leader came up with an entirely new story at trial – that Leader2Leader did not incorporate the

³ Mr. McKibben served as Leader’s Rule 30(b)(6) designee as to all deposition topics specified in Facebook’s notice. Two of those topics dealt directly with the identity of versions of Leader2Leader that practiced the ’761 patent. *See* Ex. E at 5 (Topic 14: “The identity of each version or each LTI product and/or service that LTI contends practices one or more asserted claims of the ’761 Patent, including Leader2Leader, and the manner in which such product and/or service allegedly practices the claimed invention.”), *id.* at 4 (Topic No. 5: “The conception, design, research, experimental work, development, reduction to practice, examination, analysis, testing, evaluation, sales, marketing and public use of each version of each LTI product, including Leader2Leader.”).

technology of the '761 patent until shortly before the filing of Leader's provisional patent application on December 11, 2002. *See* Ex. A at 1316:2-13, 1320:20-1321:16, 1324:23-1325:17, 1327:2-1327:19. In particular, Mr. McKibben asserted at trial that the Leader2Leader product referenced in Leader's offers for sale did not practice the claims of the '761 patent because "that technology was not done until a few days before December 11, 2002." Ex. A at 1327:7-10.

The question presented to the jury, therefore, was not *whether* Leader2Leader practiced the asserted claims of the '761 patent in 2002 (as Leader repeatedly admitted it did), but *when*. The answer to that question turned on the credibility of Mr. McKibben's trial testimony that the technology of the '761 patent "was not done until a few days before December 11, 2002." *Id.* at 1327:9-10. The jury was properly instructed that in weighing that testimony, it should consider "the witness's biases, prejudices or interests; the witness's manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony." D.I. 601 at 10, Jury Instruction 1.7. The jury was further instructed that if it could not reconcile contradictions between Leader's pre-trial and trial testimony, "it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable." *Id.* Contrary to Leader's claim that the jury was required to disregard the entirety of Mr. McKibben's testimony if they found him not credible, the jury was entitled to credit Leader's and Mr. McKibben's pre-trial deposition testimony, and discredit any contrary testimony offered at trial. And that is precisely what it did.

The jury saw Leader's trial testimony as what it was – a self-serving and last-minute fabrication to salvage an invalid patent, and the jury's rejection of it is not subject to attack through a JMOL motion. *See Lighting Lube*, 4 F.3d at 1166 ("In determining whether the evidence is sufficient to sustain [the verdict], the court may not weigh the evidence, determine the credibility of witnesses, or substitute its version of the facts for the jury's version."). As the Supreme Court has noted, "although the court should review the record as a whole [in considering a JMOL motion], it must disregard all evidence favorable to the moving party that the jury is not required to believe." *Reeves*, 530 U.S. at 151.

But even if there was a legal basis to second-guess the jury's assessment of the evidence, the jury's conclusion was clearly a correct one. Mr. McKibben offered no explanation for his on-the-stand, after-the-fact and surprising recollection of the precise date on which Leader2Leader first included the invention of the '761 patent. His assertion that the '761 technology "was not done until a few days before December 11, 2002" was unsupported by any facts. Mr. McKibben did not, for example, identify a single facet of Leader2Leader that underwent any change in 2002 (or at any other time), let alone any change significant enough to affect whether or not the product practiced the '761 patent. Mr. McKibben's proposal to Wright-Patterson Air Force Base in January 2002 – eleven months before the date Mr. McKibben claimed at trial that the technology was "done," portrayed Leader2Leader as a fully-functioning product for facilitating on-line collaboration. *See* Ex. D (DTX0179) at LTI_048198, 203. In the end, Mr. McKibben's trial testimony depended on the jury believing the implausible notion that the version of Leader2Leader that Mr. McKibben offered earlier in 2002 – and for which Leader was seeking many millions of dollars – did not implement the invention on which the entire product was allegedly based.

In *Cummings v. Adidas, supra*, Judge Scheindlin of the Southern District of New York recently entered summary judgment of invalidity based on the on-sale bar under facts strikingly similar to those presented here. The plaintiff/patentee in that case admitted in discovery that a particular shoe practiced the asserted claims of the patent. *Cummings*, 2010 WL 2076975, at *2. The defendant relied on this admission and filed a motion for summary judgment of invalidity. The plaintiff sought to avoid the effect of its admissions by arguing that older versions of the product did not practice the claimed invention. The court rejected this argument, noting that "[i]f plaintiffs wanted to accuse some AJXV shoes but not others, they had a duty to qualify their responses appropriately. They did not." *Id.* at *5. As in *Cummings*, if Leader had a basis for claiming that earlier versions of Leader2Leader did not practice the '761 patent, it would have qualified its interrogatory responses or identified those versions during Mr. McKibben's

deposition, as he was required to do under Rule 30(b)(6). Mr. McKibben's self-serving attempts to do so at trial were properly rejected by the jury.⁴

Finally, even if the jury had credited Mr. McKibben's implausible story that Leader2Leader did not practice the '761 patent until "a few days before December 11, 2002," it could *still* have found the claims invalid based on evidence at trial of actual sales or offers of sale of Leader2Leader to The Limited, Boston Scientific and several other companies that may have occurred in those same days before the critical date. In particular, Facebook introduced an e-mail dated December 8, 2002 authored by Mr. McKibben following-up on what he called "numerous developments on the sales front." Ex. F (DTX0766); Ex. A at 1304:1-1306:21. In that e-mail, Mr. McKibben wrote: "We have confirmation **now** from both the COO, Len Schlessinger, and the CIO, Jon Ricker [of The Limited], that we will acquire a significant contract in January for their implementation of Leader2Leader®." Ex. F (DTX0766) (emphasis added). In that same document, Mr. McKibben similarly claimed that Leader was "well down the path toward a contract for us to supply Leader2Leader" to Boston Scientific. *Id.* The document continued by discussing other recent efforts to sell Leader2Leader to Netcom Solutions and "A Major Japanese Bank." Of course, December 8, 2002 is a "few days" before December 11, 2002. The jury therefore could have reasonably found that Leader offered to sell or sold the patented technology even during the "few days" window when Leader now claims the '761 technology was first incorporated into Leader2Leader.

b. Substantial Evidence Supported the Jury's Finding that the Invention was the Subject of a Commercial Offer of Sale

Leader's contention that Facebook did not present sufficient evidence of a commercial offer for sale is similarly unavailing. Whether a communication qualifies as a commercial offer

⁴ Leader's claim that co-inventor Jeff Lamb "confirmed" Mr. McKibben's testimony is false. D.I. 626 at 10, n.3. At trial Jeff Lamb only testified that his references to Leader2Leader sometimes included references to other Leader products. Ex. A at 469:8-470:21. Mr. Lamb did not confirm Mr. McKibben's on-the-stand sudden recollection that the technology of the patent was not included in Leader2Leader until just a few days before the filing of the provisional patent application.

for purposes of the on sale bar is determined by reference to federal common law. *See Honeywell Int'l, Inc. v. Nikon Corp.*, 672 F. Supp. 2d 638, 642-43 (D. Del. 2009) (Farnan, J.) (citing *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041, 1046 (Fed. Cir. 2001)). Factors that may be considered in determining whether a “commercial offer” has been made include the language used by the parties, the circumstances surrounding the making of the offer and whether the offer includes detailed terms. *Honeywell*, 672 F. Supp. 2d at 642-43. Leader’s claim that a reasonable jury could not have found that Leader’s communications to The Limited, Boston Scientific and Wright Patterson were commercial offers is without merit.

Leader’s written submission to Wright-Patterson Air Force Base (“WPAFB”) identified Leader as the “offeror” and provided a detailed offer for selling Leader2Leader, including the number of licenses to be sold (20,000), the price for those licenses (\$8,400,000) and the timeframe for implementation (end of Q1 2002). Ex. D (DTX0179) at LTI_048202, 204-205. Leader’s written offer to The Limited included the actual word **offer**: “I’d like to **offer** you the following sweetheart deal[,]” including the number of licenses to be provided (2,000), the term of those licenses (3 years) and the price (\$1.5 million, or “\$20.83 per user per month.”). Ex. G (DTX0185) (emphasis added). And the fact that Leader offered to sell Leader2Leader to Boston Scientific was confirmed by Leader employee Steve Hanna in an October 10, 2002 internal Leader e-mail that said: “L2L: we have verbally committed to selling a system to Boston Scientific...” Ex. H (DTX0184). This evidence was more than sufficient for the jury to find that Leader2Leader was the subject of at least three commercial offers of sale, notwithstanding that only one offer was required to sustain the jury’s finding of invalidity based on the on sale bar.

Leader cites *MLMC, Ltd. v. Airtouch Communications, Inc.*, 215 F. Supp. 2d 464 (D. Del. 2002) for the proposition that communications that include prices do not necessarily constitute commercial offers for purposes of § 102(b). The court in *MLMC* found insufficient evidence of an offer where the defendant offered testimony that a patentee provided “budgetary quotations” to serve as a starting point for negotiations, but without submitting the actual quotations into evidence, and which did not include other traditional contract terms such as delivery dates. *Id.* at

480. Significantly, Judge Robinson found the absence of words such as “I offer” to be a significant factor in finding that no commercial offer took place. *Id.* Here, the offers to sell to WPAFB and The Limited included all of the necessary and specific terms one would expect to find in a commercial offer, including price, number of licenses, duration and delivery, along with express language indicating that Leader was making a commercial offer of sale. Further, the jury could have reasonably believed Leader’s internal e-mail in which it admitted that it “verbally committed to selling [Leader2Leader] to Boston Scientific.” Ex. H (DTX0184).

Mr. McKibben attempted at trial to deny that his communications with these third parties were offers to sell Leader2Leader, but that presented nothing more than a credibility question for the jury. Mr. McKibben’s deposition testimony, moreover, made it easy for the jury to discredit his trial testimony. In a November 3, 2002 e-mail, Mr. McKibben wrote: “We had a phenomenal selling week last week. The Limited www.limited.com just committed to contracting with Leader for LeaderPhone(r) and Leader2Leader(tm).” Ex. I (DTX0186). When asked during his deposition whether this was true (which was played for the jury), Mr. McKibben characterized it as “hyperbole” or “an overstatement to make a point that we had a good meeting.” Ex. A at 1231:17-1232:7. The jury could properly have considered Mr. McKibben’s tendency to diminish the significance of damaging communications with third parties in assessing the credibility of his attempts to deny that he made offers to sell Leader2Leader. D.I. 601 at 10, Jury Instruction 1.7.

c. Substantial Evidence Supported the Jury’s Finding that the Alleged Invention was “Ready for Patenting”

An accused infringer may show that an alleged invention was “ready for patenting” in at least two ways: “by proof of reduction to practice before the critical date; or by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention.” *Pfaff*, 525 U.S. at 67-68. Leader presented evidence at trial that the alleged invention of the ’761 patent was conceived before January 1, 2000. Ex. A at 1382:1-5. And Facebook presented

substantial evidence that the Leader2Leader product embodying the asserted claims of the '761 patent was actually reduced to practice before the critical date.

Mr. McKibben testified during his deposition that the collaborative technology claimed in the patent at issue was implemented as early as 2001 or 2002:

Q. At some point there came a time when you had a product implemented; correct?

A. Well, as was -- software is never finished, so even version one of a product is not implemented in the sense that it's perfect. But we were confident of a fairly stable design by '98 and then we started coding and -- now these are rough time frames, but I would say we were coding -- well, we haven't stopped coding, **so a fairly stable collaborative environment was working by I'm going to say 2001/2002 time frame.**

Ex. A at 1200:6-17 (emphasis added). Mr. McKibben's deposition testimony was corroborated by Leader's January 9, 2002 written proposal to WPAFB, in which Leader stated that "the Leader2Leader™ platform *is operational now* with low user volumes." Ex. D (DTX0179) at LTI_048203 (emphasis added). In that same document, Leader said that the Digital Leaderboard system of Leader2Leader was "[f]ully developed at private expense." *Id.* at LTI_048200.

The jury was also presented with evidence that Leader demonstrated the functionality of Leader2Leader to third parties as early as December of 2001 and throughout 2002. *See* Ex. J (DTX0178) at LTI_014125 (December 8, 2001: COO of The Limited agrees to endorsement "after his latest viewing of the Leader2Leader™ platform[.]"); Ex. K (DTX0181) (August 29, 2002 e-mail: "Mike had 2 demos on Tuesday (one to the State of OH Police who are interested in the L2L platform) . . ."). The fact that Leader2Leader was operational and the subject of functional demonstrations to third parties obviously indicates that it was reduced to practice, and was more than sufficient to sustain the jury's conclusion that the alleged invention was ready for patenting. The claims do not recite any required user volume, so operation at "low user volumes," Ex. D (DTX0179), fully satisfies the claims. *See Geo M. Martin Co., v. Alliance*

Mach. Sys. Int'l LLC, Nos. 2009-1132, 2009-1151, ___ F.3d ___, 2010 WL 3275967, at *8 (Fed. Cir. Aug. 20, 2010) (prior art that did not work at “production speed” could still satisfy patent claim that did not require any particular speed).

Leader argues that Facebook “effectively conceded” that the invention was not ready for patenting by December 10, 2002 when it argued that the provisional application did not support the claims of the issued patent. This argument is based on twisted and flawed logic because the content of the provisional application is independent of the functionality of Leader2Leader. The evidence at trial, for example, established that while Leader2Leader was fully operational in 2002, Leader did not fully disclose the details of its operation in its sparse provisional application. Leader’s own expert, Dr. Herbsleb, admitted that the source code contained in the provisional application was incomplete and relied on “import” statements referencing other, undisclosed code. Ex. A at 1855:1-1863:15. The fact that Leader chose to prepare and file an incomplete provisional application does not diminish the fact that the underlying Leader2Leader software was “ready for patenting” at that time.

d. Substantial Evidence Supports the Jury’s Finding that the Asserted Claims of the ’761 Patent Are Not Entitled to the Priority Date of the Provisional Application

The testimony of at least three witnesses (i.e. Jeff Lamb, Professor Greenberg, Dr. Herbsleb) supported the jury’s conclusion that the provisional application does not disclose each and every element of any asserted claim. First, co-inventor Jeff Lamb testified (via deposition testimony played at trial) that elements in each independent claim, such as tracking movement of users and associating metadata with user created content, were not disclosed in the provisional application. Ex. A at 1182:1-1186:21.⁵ Second, Professor Greenberg provided extensive testimony about the differences between the provisional application and the issued claims, and

⁵ Although Mr. Lamb later attempted to alter this deposition testimony via an errata, Mr. Lamb testified at trial that he did not intend to make any substantive changes to his testimony and that his deposition was accurate. Ex. A at 467:3-17. The jury could properly have given the errata little to no weight in assessing whether the provisional application supported the issued claims.

explained why the provisional neither disclosed nor enabled those claims. *See generally*, Ex. A at 1402:20-1403:2, 1407:19-1444:12, 1447:11-20. Third, as noted above, even Dr. Herbsleb admitted that the source code in the provisional (on which he relied for many claim elements) was incomplete. *Id.* at 1855:1-1863:15. That Leader does not agree with the testimony of these three witnesses provides no basis for overturning the jury’s verdict.⁶

Leader’s reliance on the work of Dr. Herbsleb’s post-doctoral student Dr. Cataldo, who did not appear as a witness at trial, does not warrant overturning the jury’s verdict. On cross-examination, Dr. Herbsleb admitted that the report created by Dr. Cataldo referenced claim elements (such as the “context component” and “tracking component”) that do not appear in the provisional application and appeared for the first time in the later-filed application. Ex. A at 1867:12-19; Ex. L (PTX-3). Further, Dr. Herbsleb testified that he did not oversee Dr. Cataldo’s work, and all he knew regarding whether Dr. Cataldo referenced any outside materials in conducting this experiment was “what he told me. . . .” Ex. A at 1865:14-24. Dr. Herbsleb also admitted that, as the ’761 patent is publicly available, Dr. Cataldo “had access to [the ’761 patent] as does everyone.” *Id.* at 1867:15-1868:3. Dr. Herbsleb further admitted that Dr. Cataldo never built any actual working product in connection with this work. *Id.* at 1868:11-20. Furthermore, the jury could easily have found that Dr. Cataldo’s skill far exceeded that of one of ordinary skill in the art at the time the application was filed, rendering his work unreliable. D.I. 601 at 39, Jury Instruction 4.6 (“Leader may rely on the filing date of its provisional application . . . if the application teaches *one of ordinary skill in the art* to make and use the claimed invention of the ’761 patent, and to do so without undue experimentation.”). Dr. Cataldo has a Ph.D., not a bachelor’s degree, and ten years of experience – placing him well

⁶ Leader’s motion also incorrectly places the burden of proof on Facebook. *See* D.I. 626 at 18 (“That kind of analysis does not rise to the level of clear and convincing evidence”). The Court’s jury instructions were clear that it was Leader’s initial burden to prove, by a preponderance of the evidence, that the ’761 patent is entitled to the priority date of the provisional application by. D.I. 601 at 36, Jury Instruction 4.4. *See also Power Oasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1304-06 (Fed. Cir. 2008) (patentee must show entitlement to priority application that contained less disclosure than earlier application).

beyond a person of ordinary skill in art. *See* Ex. A at 1864:8-20, 1740:16-1741:2, 1406:10-22. The lack of any testimony by Dr. Cataldo, the likelihood that he relied on materials outside the provisional application, the fact that he never built a working product, and the fact that he did not even qualify as a person of ordinary skill in the art, provided an overwhelming basis for the jury to disregard Dr. Herbsleb's second-hand account of Dr. Cataldo's unreliable experiment.

2. Substantial Evidence Supported The Jury's Verdict of Invalidity Based on the Public Use Bar

Leader argues that Facebook did not present sufficient evidence of a public use because, according to Leader, any disclosures of Leader2Leader were subject to confidentiality restrictions. Instruction 4.6 correctly instructed the jury that: "The disclosure of the invention to even a single third party may qualify as a 'public' use provided that the third party was under no legal obligation to the inventor to maintain its secrecy." D.I. 601 at 39, Jury Instruction 4.6; *see also Eolas Techs. Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1334 (Fed. Cir. 2005) (disclosure of invention to two individuals who were under no obligation of secrecy could constitute public use under § 102(b)). Mr. McKibben testified at trial that he had *more than a thousand* meetings with third parties, before filing the patent application, during which Leader2Leader was discussed. Ex. A at 1289:3-1291:17. The jury only needed to find a single unprotected disclosure of Leader2Leader to reach its verdict of invalidity based on public use. D.I. 601 at 39, Jury Instruction 4.6.

Facebook submitted evidence that Mr. McKibben provided a demonstration of Leader2Leader to Boston Scientific on November 25, 2002, but did not have a signed NDA from Boston Scientific until the next day. Ex. A at 1297:6-1299:19; Ex. M (DTX0736); Ex. N (DTX0776). The only signed NDA with Boston Scientific in evidence was provided by Boston Scientific (not Leader), and said nothing about protecting the earlier demonstration of Leader2Leader. *See* Ex. M (DTX0736). Mr. McKibben attempted to explain this discrepancy by claiming that other individuals with Boston Scientific had signed earlier NDAs, but he never identified those NDAs during trial. Ex. A at 1363:20-1364:7. This failure was particularly

telling given that Leader entered thousands of NDAs into evidence (DTX0725), yet could not identify a single one that covers the November 25 demonstration to Boston Scientific. A reasonable jury could have properly concluded, based on just the demonstration to Boston Scientific, that the asserted claims were invalid based on public use. Moreover, given the pervasive credibility problems with Mr. McKibben's testimony as discussed above, the jury could have simply discredited his testimony that the thousands of disclosures of Leader2Leader were all made under NDAs.

3. Substantial Evidence Supported the Jury's Rejection of Leader's "Experimental Use" Defense

The jury's verdict in favor of Facebook on the on-sale bar and public use defenses necessarily means that the jury rejected Leader's argument that its offers for sale and public disclosures were experimental uses. The jury was properly instructed that once Facebook satisfied its burden of establishing an offer for sale or public use, the burden shifted to Leader to show that any such offers or public displays were made for experimental purposes. D.I. 601 at 43, Jury Instruction 4.8. The jury's instruction noted in relevant part that:

The experimentation must relate to the features of the claimed invention, and it must be for the purpose of technological improvement, *not commercial exploitation*. A test done primarily for marketing, and only incidentally for technological improvement, is not an experimental use, but a public use. If any commercial exploitation does occur, it must be merely incidental to the primary purpose of experimentation.

Id. (emphasis added).

The jury reasonably concluded that the primary purpose of the offers for sale and public disclosures of Leader2Leader was commercial exploitation. The evidence on this point was overwhelming. Leader's offer to Wright Patterson required a payment to Leader of \$8,400,000 for Leader2Leader licenses (Ex. D (DTX0179) at LTI_048204) and the offer to The Limited required payment of \$1.5 million (Ex. G (DTX0185)). Moreover, Leader's employees characterized the offer to Boston Scientific as being commercial in nature by admitting that

Leader had committed to “selling” Leader2Leader. Ex. H (DTX0184). With so many millions at stake, it is hard to imagine that the jury could have concluded that these offers and disclosures had anything other than commercial purposes. *See Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1355 (Fed. Cir. 2002) (holding that amounts to be paid is a factor in determining whether use was experimental or commercial).

The references to “beta testing” in some of Leader’s offers do not render them “experimental uses” under the law. Federal Circuit law is clear that “[e]xperimentation conducted to determine whether [a product] would suit a particular customer’s purposes does not fall within the experimental use exception.” *Id.* at 1355 (citing *In re Theis*, 610 F.2d 786, 792 (C.C.P.A. 1979)). Leader admits in its motion that the purpose of its offer to Wright-Patterson was directed to tailor a product to Wright Patterson’s needs rather than as part of an internal testing program: “the whole point of the project was to jointly *develop* solutions to allow intelligence agencies to share data more easily.” D.I. 626 at 12 (emphasis in original). The dollar amounts and other details included in the offers to The Limited and Boston Scientific, as well as Leader’s numerous demonstrations to potential customers (including Boston Scientific), provide a sufficient basis for a reasonable jury to have concluded that Leader failed to carry its burden on the experimental use exception.

C. A Reasonable Jury Could Have Found That Leader Failed To Carry Its Burden on Control or Direction

With respect to Leader’s assertion that Facebook infringed claims 9, 11 and 16, the jury found that Leader failed to show that Facebook controls or directs the actions of its users and employees. This verdict is supported by substantial evidence. With respect to Facebook users, the only evidence offered by Leader to show control or direction consisted of the existence of Facebook’s terms of service – terms that in no way require users to interact with the site. *See, e.g.*, Ex. O (PTX-628) at LTI_000722 (“Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the

Site The Company is not responsible for the conduct, whether online or offline, of any user of the Site or Service.”). To show control or direction over Facebook employees, Leader offered documents and testimony suggesting, at best, that Facebook employees test the website’s functionality from time to time. D.I. 626 at 19. Leader offered no evidence that Facebook employees actually perform any of the specific method steps of the asserted claims, nor any evidence that Facebook requires its employees to do so. In light of this failure, there is no basis for disregarding the jury’s determination that Leader failed to carry its burden of proof on this issue.

Leader’s motion for JMOL on the “control or direction” relies on evidence so weak that it actually supports JMOL in favor of *Facebook*. As explained in Facebook’s pending motion for JMOL of Non-Infringement (Motion No. 1), Leader’s evidence is insufficient as a matter of law under controlling law. *See Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1330 (Fed. Cir. 2008) (“That [defendant] controls access to its system and instructs bidders on its use is not sufficient to incur liability for direct infringement.”); *see* D.I. 632, Facebook’s JMOL No. 1 at 7-10. The jury’s verdict on this issue should therefore be left undisturbed.

D. Leader Provides No Basis for A New Trial

Motions for a new trial are governed by Fed. R. Civ. P. 59. Leader has limited its new trial motion to a single unsupportable ground: that “the jury’s verdict is against the clear weight of the evidence, and a new trial must be granted to prevent a miscarriage of justice[.]” *Lucent Techs., Inc. v. Newbridge Networks Corp.*, 168 F. Supp. 2d 181, 251 (D. Del. 2001) (Farnan, J.). In that very case, however, the court noted that “the court should proceed cautiously, because such a ruling would necessarily substitute the court’s judgment for that of the jury.” *Id.* (citing *Klein v. Hollings*, 992 F.2d 1285, 1290 (3d Cir. 1993)). Judge Farnan further cautioned “a new trial should only be granted where ‘a miscarriage of justice would result if the verdict were to stand,’ the verdict ‘cries out to be overturned,’ or where the verdict ‘shocks our conscience.’” *Id.* (quoting *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1352 (3d Cir. 1991)); *see also Price v. Delaware Dept. of Correction*, 40 F. Supp. 2d 544, 550 (D. Del. 1999)).

Leader's alternative new trial motion is premised entirely on two faulty premises. First, Leader relies on the *Lucent* case for the proposition that the Court need not view the evidence in light most favorable to the prevailing party when deciding whether to grant the motion. D.I. 626 at 20. As discussed above, Judge Farnan in *Lucent* cautioned against granting a new trial when doing so would require the court to substitute its own judgment for that of the jury's. *Lucent*, 168 F. Supp. 2d at 251. As discussed in greater detail above, the jury's verdict on the on-sale bar and public use defenses turned largely on the jury's determination of Mr. McKibben's credibility and its assessment of conflicting evidence. These determinations present classic jury questions, and the jury's reasonable findings do not meet the high "shock the conscience" standard necessary to obtain a new trial.

Leader's second argument, that the jury's verdict "rests entirely on speculative inferences[,]" is simply false. D.I. 626 at 20. Leader does not specify which inferences it claims warrant a new trial, and none are apparent from the face of Leader's motion. As discussed above, Facebook relied on sworn admissions and extensive documentary evidence in support of each element of Facebook's on-sale bar and public disclosure defenses. Leader's unsupported claim that the jury made unreasonable inferences provides no basis for a new trial.

III. CONCLUSION

For the foregoing reasons, Leader's motion should be denied.

Dated: September 15, 2010

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*Attorneys for Defendant and
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**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/LPS

**DECLARATION OF JEFFREY T. NORBERG IN SUPPORT OF DEFENDANT
FACEBOOK, INC.'s OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT
AS A MATTER OF LAW AND FOR A NEW TRIAL**

I, Jeffrey T. Norberg, declare:

1. I am an attorney with Cooley LLP, of counsel in this action for Defendant Facebook, Inc. ("Facebook"). I make this declaration in support of Facebook, Inc.'s Opposition to Plaintiff's Motion for Judgment as a Matter of Law and for a New Trial. I have personal knowledge of the facts contained within this declaration, and if called as a witness, could testify competently to the matters contained herein.

2. Attached hereto as Exhibit A are true and correct copies of excerpts from the transcript of the jury trial in this action held July 19-27, 2010.

3. Attached hereto as Exhibit B is a true and correct copy of the redacted version of Leader Technologies, Inc.'s First Supplemental Responses to Facebook, Inc.'s Interrogatories Nos. 3 and 9, dated April 17, 2009, admitted as trial exhibit DTX 0963-R.

4. Attached hereto as Exhibit C is a true and correct copy of the redacted version of 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. 9, dated October 28, 2009, admitted as trial exhibit DTX 0969-R.

5. Attached hereto as Exhibit D is a true and correct copy of Leader Technologies White Paper titled "Advanced Cross-platform Communications & Anti-terrorism Command Center Prototype," dated January 9, 2002, bearing Bates numbers LTI_048195-LTI_048206, admitted as trial exhibit DTX 0179.

6. Attached hereto as Exhibit E is a true and correct copy of Defendant Facebook, Inc.'s Notice of Deposition of Defendant Leader Technologies, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), dated February 8, 2010.

7. Attached hereto as Exhibit F is a true and correct copy of an email string from John Butler to Michael McKibben, dated December 8, 2002, bearing Bates numbers LTI078611-LTI078612, admitted as trial exhibit DTX 0766.

8. Attached hereto as Exhibit G is a true and correct copy of an email from Michael McKibben to Len Schlesinger, dated November 21, 2002, bearing Bates numbers LTI074788-LTI074789, admitted as trial exhibit DTX 0185.

9. Attached hereto as Exhibit H is a true and correct copy of an email from Steve Hanna to cwcall@computerwizards.com, dated October 10, 2002, bearing Bates numbers LTI105611-LTI105613, admitted as trial exhibit DTX 0184.

10. Attached hereto as Exhibit I is a true and correct copy of an email string from Mrfugler@aol.com to Michael McKibben, dated November 4, 2002, bearing Bates numbers LTI095216-LTI095218, admitted as trial exhibit DTX 0186.

11. Attached hereto as Exhibit J is a true and correct copy of an email from Michael McKibben to Leader Members, dated December 10, 2001, bearing Bates numbers LTI_014121-LTI014127, admitted as trial exhibit DTX 0178.

12. Attached hereto as Exhibit K is a true and correct copy of an email from Steve Hanna to Karen Houser, dated August 29, 2002, bearing Bates numbers LTI 145929-LTI 145932, admitted as trial exhibit DTX 0181.

13. Attached hereto as Exhibit L is a true and correct copy of Provisional Application for Patent, dated December 11, 2002, bearing Bates numbers LTI 000742-LTI 000760, admitted as trial exhibit PTX-3.

14. Attached hereto as Exhibit M is a true and correct copy of Confidential Disclosure Agreement between Boston Scientific Corporation and Leader Technologies Incorporated, entered into November 26, 2002, bearing Bates numbers LTI_006469-LTI_006473, admitted as trial exhibit DTX 0736.

15. Attached hereto as Exhibit N is a true and correct copy of an email from Steve Hanna to cwcall@computerwizards.com, dated November 26, 2002, bearing Bates numbers LTI 111341-LTI 111342, admitted as trial exhibit DTX 0776.

16. Attached hereto as Exhibit O is a true and correct copy of Terms of Use from Facebook's website, dated September 23, 2008, bearing Bates numbers LTI 000717-LTI 000724, admitted as trial exhibit PTX-628.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 15, 2010 in Palo Alto, California.



Jeffrey T. Norberg

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Volume 2
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

Tuesday, July 20, 2010
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPALDING
BY: PAUL ANDRE, ESQ.
BY: LISA KOBIALKA, ESQ.
BY: JAMES HANNAH, ESQ.

Counsel for Plaintiff
Hawkins Reporting Service
715 North King Street - Wilmington, Delaware 19801
(302) 658-6697 FAX (302) 658-8418

1 wouldn't know to contradict that, but that
2 sounds about right.

3 Q. And nothing you said in that
4 deposition was incorrect; right? In fact, you
5 stand by the testimony you gave during that
6 deposition?

7 A. I made a few one-word
8 clarifications in that deposition, but the
9 deposition I gave was accurate. It's just a
10 little bit more clear about those one-word
11 additions.

12 Q. But those one-word additions
13 didn't change the substance of your deposition
14 or your testimony?

15 A. I don't believe they changed the
16 substance, they just clarified and narrowed it a
17 little bit.

18 MS. KEEFE: Thank you very much
19 for your time, Mr. Lamb.

20 THE WITNESS: You're welcome.

21 THE COURT: Redirect.

22 MS. KOBIALKA: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. KOBIALKA:

1 time period are you referring to?

2 A. I don't know when the term
3 Leader2Leader first came into existence, but
4 essentially from that moment until the day I
5 left.

6 Q. Which was in 2005?

7 A. 2005.

8 Q. You mentioned there was a
9 collection of technologies. What are you
10 referring to?

11 A. So we had underlying technology
12 concept that was kind of the big thing that
13 solved it, solved the data burden issue, but
14 then we felt like we had to come to specific
15 applications the users were going to need as an
16 entry point to have it be useful.

17 So things like, you know, an email
18 tool, a task tool, a project management tool,
19 calendaring, file upload, you know, put files
20 into a shared space, any kind of file load is
21 kind of cool, that collection, that was -- there
22 were several of those applications that had to
23 be part, we thought had to be part of the
24 technology.

1 And that changed over time, too,
2 as we came up with other applications that we
3 built into that, we added that to the mental
4 pictures of what Leader2Leader was in the
5 product.

6 Q. Sometimes when you talked about
7 Leader2Leader during your time at Leader, did
8 that include things like LeaderPhone?

9 A. Yeah, so LeaderPhone was one of
10 the products I developed, helped develop, led
11 the team in developing at Leader Technologies.

12 Q. Is there any other names that come
13 to mind that would have --

14 MS. KEEFE: Objection. Beyond the
15 scope.

16 THE COURT: Overruled.

17 THE WITNESS: Smart Camera was
18 another application that stood out as something
19 that we didn't conceive of when we originally
20 started, but then later on, hey, this would be a
21 cool addition to throw that in.

22 Q. Turning to the technology that you
23 developed that you understand is the invention
24 of the '761 patent, when you implemented it, did

945

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Volume 4
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

July 22, 2010
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPALDING
BY: PAUL ANDRE, ESQ.
BY: LISA KOBIALKA, ESQ.
BY: JAMES HANNAH, ESQ.

Counsel for Plaintiff

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1 Q. Okay. Is there anything in the
2 code that is included with the provisional
3 application that implements tracking a change of
4 a user from one board to another board?

5 A. I would have to have a lot more
6 time to review it to definitively say so. But
7 based on a short review, it does not appear that
8 there is code present in these pages that tracks
9 when a user switches from one board to another
10 board of interest.

11 Q. Or from one web to another web,
12 the same answer?

13 A. There is an assumption in the
14 question that I don't think is accurate. To my
15 recollection, there isn't an event where a user
16 switches from one web to another. So when -- so
17 the question falls apart.

18 Q. Is there anything in the code
19 attached to the provisional that implements
20 associating metadata with user created data?

21 A. Could you repeat the question?

22 Q. Sure.

23 Is there anything in the code
24 attached to the provisional application that

1 implements associating metadata with user
2 created data?

3 A. In my cursory review of this code,
4 I have run across a couple of instances in which
5 the association of metadata with user created
6 data is called, but the implementation is in the
7 methodology being called, not in the code that's
8 listed here.

9 Q. So the implementation of
10 associating metadata with user created data is
11 not contained in the code that you've reviewed;
12 correct?

13 A. In a cursory review I've done, I
14 haven't run across one of those instances yet.

15 Q. Okay. And did you -- you reviewed
16 the code all the way up to Page 19?

17 A. Yeah. You said all the code, so I
18 looked at all of it.

19 Q. I'd like to go back just to Page
20 2. Trust me, we're almost done with this
21 document.

22 Looking at the textual description
23 between Pages 2 and 8, can you identify anything
24 in that text that discloses tracking movement of

1 a user from one board to another board?

2 A. I'd have to spend a lot of time
3 reviewing it to know for sure, but I -- I feel
4 confident deducing from what I do know and
5 remember that tracking a user from -- tracking a
6 user changing from one board to another board as
7 a result of that user expressing interest in
8 that other board is not something that we had
9 implemented in the technology that I think this
10 section refers to.

11 Would -- would you like me to take
12 the time to review the whole thing to --

13 Q. That may not be necessary. So the
14 paragraph that we reviewed earlier and you're
15 free to go back to any of them, did you see
16 anything in those paragraphs that disclosed
17 tracking movement of a user from one board to
18 another board?

19 A. While reading this in our time
20 together, I don't remember running across
21 anything that was -- that said to me there was
22 an indication of tracking a user switching from
23 one board to another board.

24 Q. Was the ability to track movement

1 of a user from one board to another board
2 something that Leader did not implement, to the
3 best of your knowledge?

4 A. I -- the technologies that I
5 remember building did not track the -- did not
6 track a user switching from -- simply switching
7 from one board to another board.

8 Q. You said simply switching. Is --
9 did it track movement at all?

10 A. I don't remember anything like
11 that.

12 Q. Okay. Last section, I promise.
13 If you could go to Page 16.

14 Towards the middle of the page,
15 there is a line of code that begins with
16 `action.addActionListener`
17 `(RemoveWebRelationshipActionListener.GLOBAL)`.

18 Do you see that?

19 A. I do.

20 Q. And then go down maybe about a
21 dozen or so lines, the end of that section
22 begins with -- ends with `return form`. Do you
23 see that?

24 A. Mm-hmm.

1 Q. If you look at the code between
2 those two sections and including those two
3 lines, if you could review that and let me know
4 when you're finished.

5 A. Okay. I'm done.

6 Q. Does this code implement a user
7 interface for the user?

8 A. What a member of the technology
9 team would have said to another member of the
10 technology team at that point in time is that
11 this code does create the object that contains
12 the data necessary for the construction of a
13 form that the user could use to interact with
14 the system.

15 Q. I understand. Is there anything
16 in -- in this code, the code we've been talking
17 about on Page 16, that implements tracking
18 movement of a user from one board to another
19 board?

20 A. No.

21 Q. Okay.

22 (Conclusion of videotape
23 deposition excerpt of Mr. Lamb.)

24 THE COURT: Okay. That's the end

1 conceptual design, I can point -- I can remember
2 probably in the seven -- or '98, '98 time frame
3 when we were fairly confident we knew how to do
4 it. But there again, we were still iterating,
5 so '98 feels like the right time.

6 Q. At some point there came a time
7 when you had a product implemented; correct?

8 A. Well, as was -- software is never
9 finished, so even version one of a product is
10 not implemented in the sense that it's perfect.
11 But we were confident of a fairly stable design
12 by '98 and then we started coding and -- now
13 these are rough time frames, but I would say we
14 were coding -- well, we haven't stopped coding,
15 so a fairly stable collaborative environment was
16 working by I'm going to say 2001/2002 time
17 frame.

18 Q. Did you write any of the Java code
19 for this technology?

20 A. No, I hired people to do that.

21 Q. Did you write any of the C code
22 for this technology?

23 A. We had different people do that.

24 Q. Were you among them?

1 A. In terms of writing the code?

2 Q. Yes, sir.

3 A. I did not write the code. I hired
4 people to write that code.

5 Q. And the HTML code, did you write
6 any of that code for the technology?

7 A. I may have. I don't recall
8 whether -- I mean, I was more involved with that
9 side of it, but I don't know whether they used
10 any of my code or not, but I was definitely very
11 involved in that part of it.

12 Q. What technology of Leader, if any,
13 implements what's being claimed in the '761
14 patent?

15 A. Okay. Well, I can't answer any of
16 the -- respond to any of the legal issues
17 involved with the '761 patent, but as far as I'm
18 concerned, that is what Leader2Leader is using.

19 Q. Your answer is from an engineering
20 standpoint; correct?

21 A. As one of the inventors, yes.

22 Q. Are there any other products of
23 Leader that implements what's claimed in the '
24 '761 patent?

1 A. I do.

2 Q. Was that an accurate statement as
3 of November 3rd, 2002?

4 A. Again, I don't know who I'm
5 communicating with here. I don't recall this
6 person. And I don't recall specifically writing
7 this, but it's referring to we met with their
8 COO, CIO and CTO. And I do have some memory of
9 that meeting. And in that meeting the COO, and
10 I believe that would be Len Schlesinger that we
11 talked about earlier, came in the meeting and in
12 a strategic sense committed to moving forward
13 with a relationship with us regarding Leader's
14 company, Leader's products. And so I was
15 probably giving more detail to this person based
16 on a positive meeting.

17 Q. So the sentence that says, "The
18 Limited just committed to contracting with
19 Leader for LeaderPhone and Leader2Leader," was
20 that sentence accurate when it was written on
21 November 3rd, 2002?

22 A. I would say accurate in the sense
23 it was hyperbole.

24 Q. Which portion of it was hyperbole?

1 A. The entire statement.

2 Q. And by hyperbole, what do you mean
3 by that?

4 A. Well, I would have to get a
5 definition, or get a dictionary to define
6 hyperbole, but in general it means an
7 overstatement to make a point that we had a good
8 meeting. But again, I don't know my audience,
9 because I don't remember who this person is.

10 Q. Could he have been a potential
11 investor in Leader?

12 A. I can't speculate who he is
13 because I don't remember him.

14 Q. So at the time this email was
15 sent, November 3rd, 2002, did Leader have a
16 commitment with The Limited to contract for
17 Leader2Leader?

18 A. We had a very positive indication
19 from Len Schlesinger that he was going to do
20 something, but it was a strategic visionary
21 commitment at that stage.

22 Q. By do something, he was going to
23 contract for the purpose of Leader2Leader;
24 correct?

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Volume 5
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

Friday, July 23, 2010
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPALDING
BY: PAUL ANDRE, ESQ.
BY: LISA KOBIALKA, ESQ.
BY: JAMES HANNAH, ESQ.

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1 meetings and demos." Do you see that?

2 A. I do.

3 Q. Now, let's just take for a moment
4 the date of December 10, 2003, when the final
5 patent application was filed. Are you with me?

6 A. I'm listening.

7 Q. Before that time, you made many
8 presentations about Leader to Leader to many
9 people; right?

10 A. I made numerous presentations
11 about Leader to Leader, yes.

12 Q. And many of those were under
13 confidentiality agreements; correct?

14 A. All of them were under
15 confidentiality agreements.

16 Q. And indeed you had literally
17 hundreds of confidentiality agreements before
18 December 2003.

19 A. Probably more than that.

20 Q. Thousands?

21 A. Probably over a thousand.

22 Q. So over -- and they were all with
23 different people and entities?

24 A. Yes, usually.

1 Q. So before the patent application
2 was filed, you had over 1,000 different times
3 that you met with over 1,000 different folks to
4 talk about Leader to Leader; is that right?

5 A. Whenever we were speaking with
6 investors or potential suppliers or potential
7 customers, when we finished the product, prior
8 to those meetings, we would always get a
9 confidentiality agreement from them before we
10 disclosed any business trade secrets.

11 Q. Always?

12 A. Always.

13 Q. And always before the meeting?

14 A. That's correct.

15 Q. Never happened after the meeting?

16 A. Never.

17 Q. The purpose of these thousand
18 different meetings with 1,000 different parties
19 with 1,000 different contracts was to discuss
20 business opportunities for Leader to Leader;
21 right?

22 A. Well, you made some very broad
23 statements there. There weren't thousands of
24 contracts, and the way you characterize it is

1 probably incorrect, but we did have a lot of
2 presentations to potential investors, potential
3 suppliers or vendors, some developers that we
4 were talking to, and whenever we -- to build the
5 company, and whenever we did that, to protect
6 our trade secrets, we always had them enter a
7 confidentiality agreement so that we properly
8 protected our business trade secrets.

9 Q. Thank you. And many of those were
10 before December 1st of 2002, weren't they?

11 A. Yes.

12 Q. And many of those instances
13 involved discussions about someone buying or
14 licensing Leader2Leader; correct?

15 A. Well, those were prospective
16 discussions, and we couldn't have sold
17 Leader2Leader because it wasn't ready yet.

18 Q. Take a look at the -- if we go
19 down to the section that's says L2L. I think
20 it's two asterisks.

21 MR. RHODES: At the bottom, Ken.

22 BY MR. RHODES:

23 Q. Now, I take it where we see L2L,
24 that's a reference to the product Leader2Leader?

1 right?

2 A. That is correct.

3 Q. Okay. Take a look at --

4 MR. RHODES: Start. Stop, Ken.

5 BY MR. RHODES:

6 Q. The date is -- Monday, 11/25 is
7 the day before the day of the email, which is
8 November 26th. Do you see that?

9 A. Yes, I do.

10 Q. Okay. So he's writing it on the
11 Tuesday, but he's talking about what happened
12 the day before the Monday. Are you with me?

13 A. I am.

14 Q. Okay. So, now let's go to the
15 body of the document and the first very part
16 under general. Just the first few lines.

17 MR. RHODES: Ken, thank you.

18 BY MR. RHODES:

19 Q. And it says, yesterday, so that
20 would be November 25th; right, the Monday?

21 A. That's right.

22 Q. Okay. So where we see yesterday,
23 we know that's Monday 11/25. Mike, that's you;
24 right?

1 A. Yes.

2 Q. You met with Boston Scientific;
3 right?

4 A. I remember that meeting. Yes.

5 Q. And he says you were demoing.
6 That means demonstrating; correct?

7 A. I believe that would mean
8 demonstrating, yes.

9 Q. And you were demonstrating the
10 Leader2Leader functionality for senior staff
11 members; correct?

12 A. Yes.

13 Q. And senior staff members refers to
14 the folks that are at Boston Scientific;
15 correct?

16 A. That meeting was with information
17 technology people within Boston Scientific.

18 Q. Okay. Now, let's take --

19 MR. RHODES: I'm sorry. Your
20 Honor, I'll move into evidence DTX 0776.

21 MS. KOBIALKA: No objection.

22 THE COURT: It's admitted.

23 BY MR. RHODES:

24 Q. Let's now take a look at DTX 0736.

1 MR. RHODES: Just blow up the
2 first paragraph -- or yeah, that's fine, Ken.

3 BY MR. RHODES:

4 Q. Have you had a chance to look at
5 that one?

6 A. Yes, I have.

7 Q. All right. So this is a document
8 that's entitled Boston Scientific Confidential
9 Disclosure Agreement. Do you see that?

10 A. I do.

11 Q. What's the effective date?

12 A. November 26, 2002.

13 Q. That's the day after November 25;
14 right?

15 A. Generally.

16 Q. Yeah. And November 25 is the day
17 you gave the demonstration?

18 A. Yes, that's right. It was on a
19 Monday.

20 Q. So this document wasn't in place
21 in the point in time that you made the
22 demonstration, was it?

23 A. Well, this was the second
24 confidentiality agreement we had with them.

1 BY MR. RHODES:

2 Q. Let's take a look at DTX 766,
3 please. And again, Ken, start with the invented
4 e-mail first. This one is dated Sunday
5 December 8, 2002, and I'm sorry. These are
6 pedantic questions, but I have to ask them.

7 You agree with me that's one year
8 before the final patent application was filed?

9 A. I do.

10 Q. And it's from you, of course?

11 A. This is an e-mail to one of my
12 shareholders and a supplier of some of our
13 hardware.

14 Q. From you?

15 A. From me to John.

16 Q. When we see, "Hi, John,"
17 everything after that is your words; correct?

18 A. Let me check here. That is
19 correct, except for the response from John.

20 Q. Right, and John was one of the
21 shareholders in your company?

22 A. He is a shareholder and a supplier
23 of hardware.

24 Q. You were writing to him

1 essentially a status report?

2 A. That's what this appears to be,
3 yes.

4 Q. May I ask that you look to the
5 paragraph that's entitled The Limited.

6 It says -- now, The Limited is the
7 company that has this man named Len
8 Schlessinger; is that right?

9 A. Len Schlessinger is former
10 associate dean at Harvard Business School,
11 became chief operating officer at The Limited in
12 Columbus, yes.

13 Q. That's the name that we see in the
14 -- you say The Limited. We have confirmation
15 now from both the CEO, Len Schlessinger. Do you
16 see that?

17 A. I do.

18 Q. You say confirmation. Now, that
19 means the present tense as of December 8, 2002?

20 A. Yeah, I'm following up a meeting
21 we had with Len Schlessinger and John Richter,
22 chief information officer at the executive
23 level, so they decided to move forward with us
24 to try to do something with our suite of

1 technologies.

2 Q. And it says in the next sentence
3 the contract -- it sounds like you're saying we
4 will acquire a contract in January for the
5 implementation of Leader2Leader; right?

6 A. That was one of the decisions that
7 came out of that meeting.

8 Q. You say that meeting. Which
9 meeting? The one before December 8th?

10 A. The one I just spoke about.

11 Q. Before December 8th?

12 A. Before this e-mail, yes.

13 Q. So before December 8th, you had
14 made an offer to sell Leader2Leader to The
15 Limited.

16 A. That would have been impossible.
17 We didn't have it done yet.

18 MR. RHODES: I move into evidence
19 DTX 0766.

20 MS. KOBIALKA: No objection.

21 THE COURT: Admitted.

22 MR. RHODES: Let's look at DTX
23 185. Please blow up the header.

24 THE WITNESS: What's the number of

1 to get set up.

2 Mr. McKibben, you've been asked a
3 lot of questions yesterday and today about
4 Leader2Leader. And there was one very important
5 question that hadn't been asked yet which is:
6 Is Leader2Leader exactly the same thing as the
7 technology of the '761 patent?

8 MR. RHODES: Objection, Your
9 Honor. Leading.

10 MS. KOBIALKA: This is
11 cross-examination.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MS. KOBIALKA:

15 Q. Okay. So we probably need to
16 discuss a little bit about what, in fact,
17 Leader2Leader is and then how that plays with
18 respect to the technology in the '761 patent; is
19 that right?

20 A. That is correct.

21 Q. Okay. I believe you mentioned
22 that Leader2Leader is a suite of technologies
23 that falls under a brand; is that right?

24 A. That is correct.

1 friendly witness.

2 THE COURT: It's
3 cross-examination. Overruled.

4 MS. KOBIALKA: Thank you, Your
5 Honor.

6 THE WITNESS: I'm sorry. Can you
7 repeat the question?

8 BY MS. KOBIALKA:

9 Q. When you're talking about the
10 suite of technologies, LeaderPhone is just one
11 of those technologies as an example?

12 A. That's correct.

13 Q. Okay.

14 A. You could put them together any
15 way you wanted to.

16 Q. Okay. Now, was LeaderPhone, could
17 that be sold just separately and apart from
18 Leader2Leader?

19 A. Yes, it could. And it is.

20 Q. Okay. At some point, you had the
21 technology of the '761 patent; correct?

22 A. On December 11th, 2002, we did.
23 Yes.

24 Q. Okay. And then you had a product

1 that embodied the technology of the '761 patent;
2 correct?

3 A. We could -- we could use that as a
4 plug in for any of those technologies.

5 Q. Okay. But you did get some sort
6 of other technology at some point; right?

7 A. Yes.

8 Q. Okay. So then that was a plug in,
9 so it would be another just -- just another part
10 of the --

11 A. Leader2Leader. Right. It could
12 be a plug in for Leader2Leader, for all of them,
13 or it could be a plug in for any one of them.

14 Q. So we can't equate Leader2Leader
15 with the technology of the '761 patent; right?

16 A. No, we can't.

17 Q. You've got to actually be specific
18 about what we're talking about when we're
19 talking about Leader2Leader; correct?

20 A. Exactly.

21 Q. Now, why did you just use
22 Leader2Leader as a name, then, in documents or
23 in talking to people?

24 A. Well, as we developed our

1 right.

2 So you founded the company
3 sometime in 1997; is that right?

4 A. Yes, that's correct.

5 Q. And when did the patent issue for
6 the -- we'll find it. It will be on there at
7 some point. There it is.

8 And when did the patent issue?
9 The 761 patent.

10 A. November 23rd, 2006.

11 Q. So November 2006. And when did
12 you file the provisional patent application?

13 A. On December 11, 2002.

14 Q. Okay. There was reference earlier
15 in questions about the final patent application.
16 The final application was in connection with the
17 filing that occurred after, I believe, it was
18 December 10, 2003.

19 Do you believe that the
20 December 11, 2002, wasn't the filing of the
21 patent application that led to the 761 patent?

22 A. We never thought of it that way.

23 Q. So prior December 11, 2002, when
24 you referred to Leader2Leader, did that include

1 the 761 technology that's a plug-in to
2 Leader2Leader?

3 A. No, it couldn't have because that
4 technology wasn't done until days before the
5 December 11, 2002, filing.

6 Q. How do you know that?

7 A. I vividly remember that because
8 this had been a long R and D cycle, and we had
9 been struggling during 2002 to get the code
10 ready, and we ran into some more difficulties,
11 so we were working into the fall.

12 And within days of actually
13 getting the code working, the technology
14 working, we actually pulled a section of that
15 code out of the working code and put it into the
16 provisional patent, and we went to the patent
17 office.

18 Q. That's all the pages of code we've
19 been seeing on that provisional patent
20 application?

21 A. Yes.

22 Q. You wanted to make sure you had
23 your code before you did the filing?

24 A. So that would tell a computer

1 under the hood.

2 Q. Okay. So prior to December 11,
3 2002, was there any technology in Leader2Leader
4 that could permit someone to move from one work
5 space to another work space?

6 A. No, it wasn't done yet.

7 Q. Or move from board to board within
8 the system?

9 A. No, that technology was not done
10 until a few days before December 11, 2002.

11 Q. You couldn't track any movement
12 obviously since you didn't have that movement;
13 right?

14 A. It was not finished until right
15 before 2002. That is correct.

16 Q. At some point, you had a version
17 of the software; right? Is that correct?

18 A. Yeah, right around that time
19 December 11th.

20 Q. Okay. And you started to do some
21 beta testing of that software; right?

22 A. Yeah, what happens after that is
23 we had an experimental version then, so we
24 started doing experimental testing first inside

1 order just to get one connection.

2 So to have two connections in a
3 conference room where the person's only got an
4 hour and to have two computers, it was just too
5 cumbersome. And we never did it.

6 Q. All right. I'd like to show you a
7 draft of The Limited brand beta agreement marked
8 as PTX 773.

9 MS. KOBIALKA: May I approach?

10 THE COURT: You may.

11 BY MS. KOBIALKA:

12 Q. Do you recognize this document,
13 Mr. McKibben?

14 A. Yes, I do.

15 Q. And what is the document?

16 A. This was the result of our
17 discussions during the first few months of 2003
18 to finalize an initial experimental test with
19 them. We called it the Beta Agreement.

20 Q. Okay. Let's talk about Boston
21 Scientific.

22 In some of your first meetings
23 with Boston Scientific, did Professor Chandler
24 attend with you?

1 A. Actually Professor Chandler
2 introduced us to Boston Scientific and he
3 attended the first meeting.

4 Q. And you had an NDA at that first
5 meeting; correct?

6 A. We had a confidentiality agreement
7 at the very first meeting.

8 Q. I think we have enough NDAs in the
9 record, so I'll just ask some questions. What
10 was that meeting about that you were discussing
11 back in September of 2002?

12 A. That was a meeting with the chief
13 security officer for Boston Scientific and the
14 professor and him had been a colleague for many
15 years, years in the National Intellectual Law
16 Institute.

17 That meeting was primarily
18 introductory and it was to generally discuss our
19 products. I recall showing him LeaderPhone and
20 discussing the possibilities with that.

21 And the other aspect of our
22 technology that he was primarily interested in
23 was the Leader Smart Camera, because he was in
24 charge of all of the security systems for Boston

1 completeness, start at Line 9. And where did
2 you want to end it, Mr. Rhodes?

3 MR. RHODES: Line 21.

4 THE COURT: Okay. You can go
5 ahead and play that. Nine through 21, please.

6 (Beginning of videotape deposition
7 excerpt of Mr. McKibben:)

8 Q. Did you have any technique for
9 identifying differences between various
10 iterations of Leader2Leader product?

11 A. As I'm speaking here today, I
12 believe that our developers kept track of that.
13 But the name they gave to it, I don't remember.

14 Q. Can you identify any iteration of
15 the Leader2Leader product that, in your opinion,
16 did not implement what's claimed in the '761
17 patent?

18 A. That was a long time ago. I -- I
19 can't point back to a specific point.

20 (Conclusion of videotape
21 deposition excerpt of Mr. McKibben.)

22 BY MR. RHODES:

23 Q. Now, Mr. McKibben, at some point
24 in time, you had the Leader2Leader product

1 Q. I thought you conceived them in
2 1999; right?

3 A. Is the question did Jeff and I
4 conceive of 761 sometime in 1999? The answer is
5 yes.

6 Q. And whatever Leader2Leader was at
7 the time, you were proposing to install and
8 implement that within the first quarter of 2002
9 in this document; correct?

10 A. As I've explained, Leader2Leader
11 discussions vary depending on who it is that we
12 are discussing it with, and at that time the
13 specific components of Leader2Leader that we
14 were discussing with Wright-Patterson Air Force
15 Base weren't working and weren't included in
16 that reference.

17 Q. Weren't working?

18 A. They were working and were
19 included in that reference, but it couldn't have
20 been the 761 technology because it didn't exist
21 until a few days before November 11, 2002.
22 December 11, 2002.

23 Q. Did Leader Technologies ever
24 create marketing materials before 2002 in which

1 Q. Were you asked to perform another
2 task?

3 A. Yes.

4 Q. What was that?

5 A. The second task was to take the
6 761 and essentially to judge its novelty. That
7 is, to compare each and every asserted element
8 in the asserted claims of the 761 patent against
9 several references. That is, several
10 publications or systems that appeared before the
11 filing of the -- either the provisional and 761
12 patent.

13 And if in fact the ideas in the
14 761 patent appeared earlier, then it's not
15 novel, so that in the words, it means that the
16 patent would be invalid.

17 Q. Did you prepare a slide to show
18 the two things that you were asked to do?

19 A. Yes, I did.

20 Q. I believe you already testified
21 the first task. That's what's under the first
22 number there; is that right?

23 A. That's right. So my first opinion
24 is the provisional patent application did not

1 disclose every element of the asserted claims of
2 the 761 patent.

3 Q. And did you come to an opinion
4 regarding your second task, whether or not the
5 patent was valid?

6 A. Yes, I did.

7 Q. What was that?

8 A. As you can see here, I compared
9 each asserted claim of the 761 patent to a
10 variety of references, and for the first three
11 there, we see U.S. patent 6236994. I'll call
12 this Swartz from now on. Swartz is the inventor
13 assigned to.

14 Everything in the asserted claims
15 was in Swartz, and the iManage 6.0 reference
16 manual, and I again found all the ideas in the
17 asserted claims in each and every element of the
18 asserted claims in the iManage system.

19 And I also looked at the European
20 patent application, EP 10873067 AT, which I'll
21 call Hubert, and I found each and every element
22 of the asserted claims in the Hubert patent were
23 in the 761 patent -- I should correct myself.
24 For Swartz and Hubert. That's each and every

1 that definition when they were there.

2 If the Court did not construe or
3 define any terms, I went to the patent itself to
4 see if they provided a definition.

5 If they did not provide a
6 definition, I used the definition that would be
7 known to one skilled in the art.

8 These slides are bit of evidence
9 back up.

10 Q. I think you were saying if there
11 wasn't a definition provided by the Court, you
12 used the patent itself to find the definition or
13 you used what one of ordinary skill in the art
14 would use.

15 A. That's correct.

16 Q. What is one of ordinary skill in
17 the art in computer science in this case?

18 A. One of ordinary skill in the art,
19 as I believe, is somebody with a bachelor of
20 science in computing science or computer
21 engineering or equivalent and a couple years of
22 experience.

23 I kind of know what students can
24 do as soon as they graduate, and you need a

1 couple years experience to mature and understand
2 what you do and how to build products within
3 that.

4 Because of the nature of the 761
5 patent, they would have to have background in
6 networking, in distributed systems, in
7 weapon-based platforms, and a little groupware.
8 Doesn't have to be extensive.

9 Q. When you were doing your analysis
10 regarding the other pieces of prior art Swartz
11 and iManage and Hubert, did you use a different
12 definition or different process for the claim
13 terms?

14 A. No, I used exactly what was
15 construed by the Court then what the patent said
16 and then failing that, what one of ordinary
17 skill in the art would understand those words to
18 mean.

19 Q. So right now, Dr. Greenberg, I'd
20 like to step us through your first opinion, the
21 one regarding the provisional application, and
22 whether or not the provisional application
23 contains a disclosure of each and every element
24 of the issued claims.

1 A. Yes.

2 Q. I think you have an exhibit in
3 your binder, PTX 3. Can you turn to that.

4 A. I see it.

5 Q. What is that?

6 A. This is the provisional
7 application.

8 Q. And again just for clarity, when
9 you were doing your analysis comparing the
10 claims of the issued patent to the provisional
11 application, did you confine yourself to just
12 those two pieces of paper?

13 A. Yes, I did.

14 Q. Why did you do that?

15 A. My understanding of patent law is
16 that for a patent to be entitled to the date of
17 provisional application, the provisional
18 application by itself has to disclose each and
19 every element of the claim, and if it doesn't,
20 the patent is not allowed to use the filing date
21 of provisional application.

22 Q. And so why didn't you look to
23 anything else that was in existence at the same
24 time?

1 A. Well, as I mentioned, the law
2 states that I have to confine myself to the
3 provisional application. I am, of course,
4 allowed to apply my understanding as one skilled
5 in the art or as I would interpret one skilled
6 in the art at the time of the filing, how they
7 would understand the terms in the provisional
8 application. As a matter of law, that's how it
9 is.

10 Q. What conclusion did you make when
11 you started this analysis?

12 A. The provisional application -- I
13 have a graphic on this.

14 The provisional application
15 defines a whole variety of -- defines ideas in
16 it. There is some stuff in it. When I compared
17 it to the 761 patent, the 761 patent has
18 substantially more material in it, and it's not
19 just more words, but it has substantially new
20 ideas, new parts of invention, that just don't
21 appear in the provisional anywhere.

22 Q. Doctor, before we move on, I
23 notice you have claim numbers up there. Why did
24 you choose those claims?

1 A. Yes, because when you look at the
2 ideas that are in the claims, those ideas are
3 covered by the material added to the 761 patent,
4 and they're not in the provisional application.
5 The provisional application does overlap with
6 what's in the patent, but not in the ideas that
7 are in the claims. That's all the new stuff
8 that was added.

9 Q. And why did you pick these
10 particular claims?

11 A. Well, my understanding is that
12 these are the claims being asserted in the case,
13 and that's where I focused my attention. Other
14 claims may talk about what's in the provisional
15 application, but that's not what's at issue
16 here.

17 Q. Did you analyze each and every one
18 of these claims and compare it to what was
19 disclosed in the provisional application?

20 A. Yes, I did.

21 Q. And what did you -- you said that
22 there was some things in these claims that was
23 not in the provisional application. What do you
24 mean by that?

1 A. Well, what I did was, I looked for
2 the ideas, what's in each one of the elements.
3 Can I find a match of the provisional
4 application?

5 So for example, at one level, are
6 the words there? At another level, if the words
7 aren't there, is the idea there?

8 There's some code included in the
9 provisional application. I looked at the code,
10 and I asked, does the code actually have any of
11 these words or ideas within it?

12 So that's how I did my comparison.

13 Q. Can you pull up a slide of claim
14 one, please. Just go to the patent itself and
15 show claim one.

16 So for example, this is claim one;
17 is that right?

18 A. Right.

19 Q. Now, are there -- what elements in
20 claim one are you talking about when you say
21 that there are ideas that are in the claim that
22 are not in the provisional application?

23 A. We see two major elements. We see
24 two paragraphs.

1 In the first, we see a
2 "computer-implemented context component for
3 capturing context information associated with
4 user defined data." One of the things I looked
5 for a was a context component in the provisional
6 that captures context information. Is there
7 something there that's associated with user
8 defined data?

9 The second paragraph says there's
10 a computer-implemented tracking component for
11 tracking of change of the users from the first
12 context to the second context. I looked at the
13 provisional to see is there anything there that
14 tracks a user moving from one context to
15 another.

16 And the third thing, dynamically
17 updating the stored metadata based on the
18 change. I looked to see, first, is there any
19 notion of metadata and any notion of dynamically
20 updating the metadata on change.

21 Q. Is there anything in the patent
22 that talks about these things you're mentioning?

23 A. Absolutely. I believe the figure
24 on the face of the patent, that is Figure 1,

1 which is a little figure we see clearly.

2 So this is obviously important.

3 It's on the very front of the patent, and
4 there's -- on the left side we see this thing
5 called a context component and this thing called
6 a tracking component. This is part of the 761
7 patent.

8 Q. Are those figures in the
9 provisional patent?

10 A. This figure is not in the
11 provisional patent. There's no figures at all
12 in the provisional patent.

13 Q. Are there more figures in the
14 issued patent?

15 A. There's twenty or twenty-one.
16 However you count in the issued patent, there's
17 quite a lot more.

18 Q. Are there other differences
19 between, just facial differences between the
20 provisional patent application and the final
21 patent?

22 A. Well, the provisional application
23 is a lot shorter, for one thing. And I
24 actually --

1 Q. Did you prepare a slide?

2 A. Yes. So here's a good

3 side-by-side comparison.

4 The provisional application, as I

5 mentioned, is quite a bit shorter. We see

6 there's nine and a half pages of text, plus

7 eight and a half pages of code.

8 And it's in quotes because I don't

9 actually know if it's working code or just

10 something that was written that never actually

11 ran. There's nothing in the application that

12 says that.

13 Whereas the final patent

14 application has 39 pages of text. You know, so

15 this is substantially more stuff in it.

16 The provisional has no figures to

17 illustrate a concept whereas the final patent

18 application has 22 figures.

19 I mention words like tracking,

20 context, context data, metadata. There's

21 absolutely no mention of the word tracking in

22 the provisional application. And in the final

23 patent application, tracking is an element of

24 every single asserted claim, and it's also

1 described thoroughly in the specification.

2 In the provisional application,
3 there's no mention of context data or this idea
4 of metadata. Well, there is of storing
5 metadata.

6 There is one mention of metadata
7 that I'll talk about shortly. But there's no
8 mention of these terms of context data at all.

9 Whereas in the final patent, their
10 context data and metadata are in -- are elements
11 of each and every one of the independent claims.
12 And it's also claimed in the -- described in the
13 specification.

14 Q. And you mentioned that the
15 metadata is used once in the provisional, but
16 it's not used as -- the same way in the final?

17 A. And again, metadata is in each and
18 every one of the elements of the asserted -- of
19 the independent claims that are asserted in this
20 case.

21 Q. Can you describe for us some of
22 the examples of the description of context
23 components and context data that you found in
24 the patent itself? And I think you had some

1 slides for that as well.

2 A. Sure.

3 Q. Column 6.

4 A. Well --

5 Q. Oh, go ahead. Did you want to
6 talk about this?

7 A. Sure. Maybe we can just bring
8 them both up at the same time. Okay.

9 This just elaborates a little bit
10 more about what I said before. Tracking appears
11 zero times. Track appears zero times.

12 Metadata appears once. And as I
13 mentioned, not in the way it's used, access
14 appears twice. And whereas these terms are
15 really heavily used in the final patent.

16 They appear 64 times. So that was
17 back to the question of, you know, on the face
18 level, you know, are there stark differences.
19 And the answer is yes.

20 Q. Okay. So you mentioned that these
21 terms appear numerous times in the final
22 application?

23 A. That's correct.

24 Q. Before we dive into the

1 provisional, I'd like you to walk us through a
2 little bit of how those elements are described
3 in the final patent application.

4 A. Sure.

5 Q. So I think you actually had some
6 slides that showed some portions of the patent
7 that describe these elements; is that right?

8 A. There is columns from the patent,
9 yes.

10 MS. KEEFE: Can you bring up
11 Columns 6 and 7?

12 BY MS. KEEFE:

13 Q. Does this look familiar?

14 A. Yeah. Yeah, it does.

15 Q. What is this?

16 A. So this is from Column 6 of the
17 patent. So here -- here we see it clearly says,
18 The system 100 also includes a context component
19 in association with the figures context to
20 monitor and generate context data associated
21 with data operations of the user in the first
22 context.

23 Essentially what this means is
24 that there, context component is monitoring what

1 people are doing with their data and it's
2 generated context data captioning that
3 information.

4 Q. And is the same true with respect
5 to the tracking component you were mentioning in
6 the claims?

7 A. Yes, it is.

8 Q. Can we look at Column 7?

9 A. Yeah. So here's another excerpt.

10 And here at the bottom we see --
11 let's see. So such user activities and data
12 operations in the one or more context of the
13 system 100 and movement of the user between
14 context are tracked using a tracking component.

15 So what this is talking about here
16 is that we have a tracking component in a bit of
17 the software that's actually watching what's
18 going on, that's watching how the user moves
19 from one context to another. And it's
20 captioning that as information.

21 Q. And is it your opinion that either
22 of these concepts, which are in all of the
23 claims, do they appear anywhere in the
24 provisional application?

1 A. No. They don't appear whatsoever.
2 And again, I have to stress, and I think this is
3 really important, it's not just that the words
4 don't appear, but the concept itself just isn't
5 there in the provisional.

6 Q. Is the process of moving between
7 contexts, so moving from one context to another,
8 discussed in the later -- in the later patent
9 application, just that idea of movement, not
10 just tracking?

11 A. It's discussed in the patent.
12 Yes.

13 Q. Could you show Figure 2 again,
14 please? How does Figure 2 show that?

15 A. Well, there's also some associated
16 text with this. I don't know if you can bring
17 this side by side.

18 Q. Column 7.

19 A. That may be a bit -- can everybody
20 see that?

21 So here this -- this essentially
22 describes the basic process that's handled by
23 pretty well all of the asserted independent
24 claims of the patent.

1 We have at the beginning here, you
2 know, it starts user is associated with a first
3 context. They do some stuff. You know, user
4 sends application. They may perform data
5 operations.

6 That is the notion of context
7 component. You know, watching what's going on
8 and actually looking at this.

9 But then we see the step 206,
10 where it says the user changes context, and
11 there's a text that describes it. It says at
12 206, the user changes context from the first
13 context to a second context. So there's the
14 movement there.

15 And then at 208, it says the data
16 and applications are then automatically
17 associated with the second context. So there's
18 a consequence there.

19 But we see this idea of user
20 changing context is part of the general flow
21 that's described in the '761 patent. And this
22 is pretty well what happened with all of the
23 independent claims being asserted.

24 Q. And does a description like

1 this -- actually the first question: Does this
2 language appear in the provisional application,
3 the language that you were just describing?

4 A. No, it does not.

5 Q. And does Figure 2 appear in the
6 provisional application that you've been
7 describing?

8 A. They're -- not only does Figure 2
9 not appear, there's nothing in the provisional
10 application that even textually describes what's
11 in Figure 2.

12 Q. Aside from the exact language, is
13 there any description using any language of the
14 concepts that are disclosed in the paragraph
15 that you've been talking about here?

16 A. No, it's not. It's not in the
17 description.

18 It's not in the examples given,
19 nor is it in the code that was provided.

20 Q. So I think you've actually
21 mentioned three things, if I remember right.
22 You mentioned that the provisional application
23 did not have any concept of metadata storage or
24 updating; is that right?

1 A. That's correct.

2 Q. In fact, can I get a --

3 MS. KEEFE: Your Honor, may I
4 approach behind to write on a white board? To
5 put a white board up and write on it?

6 THE COURT: You may.

7 MS. KEEFE: So I apologize already
8 for speaking from here. I'll be very loud
9 before I go back over there.

10 BY MS. KEEFE:

11 Q. So I believe that you actually
12 said that the first thing that you couldn't
13 find -- and by the way, I'm only doing this
14 because Dr. Greenberg says his handwriting is
15 very bad.

16 A. It's really bad.

17 Q. I think you said the first concept
18 that's all throughout all of the claims as well
19 as the specification of the patent was the idea
20 of metadata storage and updating; is that right?

21 A. That's correct.

22 Q. And then if I remember right --

23 MR. ANDRE: Your Honor, objection.

24 Counsel is leading. He can tell her what to

1 write.

2 THE COURT: Sure. Sustained.

3 BY MR. RHODES:

4 Q. What were the other two concepts
5 that you did not find from the claims of the
6 patent in the provisional application?

7 A. Okay. So the other -- I am just
8 going to bring the patent, just use the right
9 language in front of me. So this is '761 here.

10 So essentially the context
11 component for captioning context. For caption
12 context information.

13 Q. Okay. And another?

14 A. And the third one is tracking
15 component for tracking a change of the user from
16 the first context to a second context.

17 Q. Does that look right?

18 A. That's correct.

19 Q. Okay. So I'd like to go through
20 these with you one by one.

21 A. Sure.

22 Q. So why don't we take the first one
23 first.

24 Why do you think that there is no

1 description of metadata storage or update in the
2 provisional application?

3 A. Well, it's just not there. In
4 fact, they -- the term metadata is used only
5 once, and it's used as a description of what was
6 available previously.

7 And the way it's used is in a
8 different way from the way it's described in the
9 '761 patent.

10 In fact, I have some -- I've
11 highlighted some materials about that.

12 Q. Actually, no, before we bring that
13 up --

14 A. That's not --

15 Q. No. No, before we bring that up,
16 so with metadata, I just want to back up and
17 make sure this concept is very clear.

18 Where does metadata storage and
19 update -- in fact, let's bring up Claim 1 again.

20 Where does metadata and storage
21 appear in Claim 1?

22 A. Okay. So it appears in -- let's
23 take a look at this.

24 So if we look at the first

1 paragraph right at the middle, we see the word
2 metadata. If we can highlight that.

3 There it is. So we see the
4 context component dynamically storing the
5 context information in metadata associated with
6 the user-defined data. So that is the first
7 place it appears.

8 Essentially the context component
9 is taking this information and it's storing
10 it. And metadata, by the way, is just data
11 about data. That's the Court's construction.
12 That's the everyday use of the Court's
13 construction, I believe.

14 The second paragraph says metadata
15 based on the change. So what this is talking
16 about is that the tracking component is watching
17 the person moving from one context to another.
18 And as part of that, it takes that metadata, the
19 stuff that was stored in the first context and
20 is updating it again. Essentially is adding
21 new.

22 It's either changing the
23 information or adding things associated with
24 that information.

1 Q. Is this an important context in
2 the claim?

3 A. Well, absolutely. It appears in
4 every -- as I mentioned, it appears in every one
5 of the asserted independent claims.

6 And it's talked about extensively
7 throughout the patent. Essentially it says in
8 computer science terms, it says, this is a
9 method by which we will take this information
10 and we'll structure it and store it for later
11 access and use.

12 Q. Can you show us where the concept
13 of metadata is in Claim 9, please?

14 A. Sure. Let's move to Claim 9.

15 It's -- we'll see that there's --
16 it's all very similar, although the wording
17 around it is somewhat different. So, again, in
18 the middle, we see dynamically -- well,
19 beginning of the second paragraph, we see
20 dynamically associating metadata with the data.
21 So it appears there again.

22 And then it says the data and
23 metadata stored on a storage component. We see
24 even later on, the metadata -- what the metadata

1 consists of, what it includes. So information
2 related to the user, the data, the application
3 and the user environment.

4 In the last paragraph, we see
5 dynamically updating the stored metadata. And
6 again, it gives a bit of a description of what
7 it's doing. So there it is in Claim 9.

8 Q. And is the concept in Claim 21?

9 A. Let's look at Claim 21, and we see
10 something very similar. We see in the second
11 paragraph, again dynamically associating
12 metadata with the data. And again, the data,
13 metadata stored, in this case, on a web-based
14 computing platform.

15 There we see the metadata includes
16 information and it says what's in it.

17 We see in the one, two, three,
18 fourth paragraph dynamically associating the
19 data and the application with the second user
20 workspace in the metadata.

21 And then final paragraph, we see
22 starting near the bottom that we see a plurality
23 of different users can access the data via the
24 metadata from a corresponding plurality of

1 different user workspaces.

2 So, again, we see it's littered
3 throughout this claim.

4 Q. And finally, is it also -- the
5 concept of metadata also in Claim 23?

6 A. Yes, it is. So, again, something
7 very similar. Let me just search for this.

8 Here -- it's somewhere in the
9 middle of the first paragraph. It says for
10 dynamically -- just a little bit below, for
11 dynamically storing the context data as metadata
12 on a storage component.

13 And a little bit right after that,
14 it says which metadata. It says that's
15 dynamically associated with data.

16 And then in the second paragraph,
17 we have again near the bottom, it says
18 dynamically storing the change information on
19 the storage component as part of the metadata.
20 So again, it's throughout these claims. It's a
21 fundamental component of many of the elements of
22 these claims.

23 Q. And what's the basis for your
24 opinion that these elements are not disclosed in

1 the provisional application?

2 A. Well, as I mentioned, the word
3 metadata appears only once and it appears in a
4 completely different context. In fact, as part
5 of the background of the invention.

6 And there's -- there's nothing
7 else in the -- in the provisional that actually
8 has any concept of metadata, nor is there
9 anything in the code, nor is there anything in
10 the examples. I didn't see it.

11 Q. Can you please pull up the
12 background of the provisional.

13 So is this the paragraph that
14 describes metadata?

15 A. Yes. So let me just see where it
16 is, if it's this particular part.

17 Maybe it's the next paragraph.
18 I'm not sure.

19 Q. How about Paragraph 11?

20 A. Yeah, keep going.

21 There we go. In fact, if you
22 include Paragraph 12 as well, that would be
23 good.

24 So this is in the background of

1 the invention in the provisional. And so what
2 they're talking about here is what existed at
3 the time of the filing of this provisional
4 application.

5 And here we see, the second line,
6 it says Current processes. So this is what
7 exists. Then designed to add context to files
8 such as the metadata tagging approach, involve
9 having a knowledge officer view files after they
10 have been stored and create metadata tags.

11 So here they're saying that at the
12 time of this filing, the one approach was to use
13 metadata where some person would manually assign
14 essentially this information to the file so they
15 can later search for it.

16 And then immediately following it,
17 it says -- it actually says, Well, this isn't
18 good enough. It says, Notwithstanding the
19 usefulness of the above-described methods, a
20 need still exists for a communications tool that
21 associates files generated by applications with
22 individual groups and topical context.

23 So really here they're talking
24 about metadata as here's what existed before.

1 They're talking about it as, Oh, it was done
2 manually and we can do better than that.

3 But that's it. That's the only
4 use of the word metadata in this entire
5 provisional is to say, Here's what's been done
6 before.

7 And it's wrong or it's not wrong,
8 but it's not enough.

9 Q. If the provisional doesn't
10 describe metadata storage and updating, what
11 does it describe?

12 A. So I prepared a series of slides
13 on power point to try to illustrate this. If we
14 could bring that up. There we go.

15 So the provisional application
16 describes this idea -- describes here a lot of
17 the ideas in it. So there is stuff in there.
18 It's just not the stuff that's in the asserted
19 claims.

20 So the first thing it does, it
21 describes these things called boards. And
22 boards are essentially a collection of data and
23 application functions.

24 So these are things like, Well,

1 you know, we have Microsoft Word and we have a
2 document prepared with it. And it's all the
3 stuff that -- essentially all the data and later
4 applications, stuff that can happen on the
5 board. So it's just a collection.

6 It knows that there could be a
7 word file, for example, with the document
8 associated with it.

9 The next thing it does, if you go
10 to the next slide, is that -- and this is a
11 quote from the provisional -- it says "the
12 present invention automates workflow processes."

13 The workflow is a sequence of
14 steps. It's usually designed -- workflow is
15 usually for office automation where it tries to
16 automate some kind of procedure that documents
17 will follow or that people have to follow.

18 So for example, like, if you
19 wanted to buy something, you filled out a form,
20 and that form would go to this place first and
21 that place next and that place next. It's a
22 sequence of steps.

23 Q. Dr. Greenberg, when you have your
24 quotes up there, I wanted to help. If anyone

1 wanted to follow, what is the paragraph number?
2 What does that mean?

3 A. That means this is an excerpt from
4 paragraph twenty-two in the provisional
5 application.

6 The provisional application says
7 we can relate these boards together in a
8 sequence of steps, and the next thing the
9 provisional says -- this is a quote from page
10 six, paragraph three. The numbering is a little
11 different because the provisional looks like two
12 different documents stuck together. The way the
13 provisional numbers their paragraphs isn't
14 consistent.

15 It says the workflow process may
16 be readily reorganized by making a change to one
17 or more of the webs and boards. Imagine that.
18 Somehow we've created a sequence, maybe
19 manually, that there's a sequence or process
20 that goes from board A to board B to board C and
21 then D.

22 We can shuffle around that
23 sequence. The invention says we can change that
24 sequence and reorganize those boards, so we can

1 go from board B to board D to board A. All that
2 stuff will be on those boards.

3 Q. Why would someone want to do that?

4 A. Workflow processes essentially, as
5 I said, describe a sequence of steps, and these
6 steps could change over time.

7 One of the problems around -- I
8 shouldn't say major problem. One of the issues
9 that we wanted workflow systems to be, for
10 example, so a site administrator could say,
11 let's change the sequence of steps we're going
12 to do things in without having to do a massive
13 amount of rewrite of code.

14 Essentially what this invention
15 says, we can change the sequence of steps. I
16 think we have a few more animations to show
17 that.

18 We could do this, and this is
19 captured by this quote, and this is what's meant
20 in the provisional. The user changes the
21 context, the files, and applications
22 automatically follow dynamically capturing those
23 shifts in context, so this is automated.

24 When they go from one board to the

1 next, these things will be in the right place.
2 This is not about tracking movements, capturing
3 contexts. It is about, here's the boards,
4 here's the relationships, and we keep juggling
5 those relationships and boards around to define
6 different sequences of steps and different
7 relationships.

8 Q. Say as a user changes their
9 context. Why doesn't that mean when a user goes
10 from board D to board C?

11 A. Here they are going from board D
12 to board C. This is an after-the-fact thing.

13 What the invention describes is we
14 can take the boards and change the
15 relationships. Here we're talk about a person
16 can go from one board to the next, and the stuff
17 will be there. There is no capturing of the
18 context of what the person is doing as they do
19 that, nor is there any tracking of the movements
20 nor updating of metadata. That is not in there.

21 Q. You mentioned there's two
22 documents pushed together to make up this
23 provisional application; is that right?

24 A. That's correct.

1 Q. What are those two documents?

2 A. If I look at the provisional, so
3 there's one that looks like an -- essentially a
4 description, and it's -- they have paragraphs
5 numbers one through twenty-five and then there's
6 an attachment. It's labeled attachment two.

7 So I'm not sure. There's no
8 attachment one. I could see it just seems
9 something gathered from someplace else which
10 contained another description, and there's code
11 associated with it.

12 Q. Did you study that portion of
13 application as well?

14 A. Yes, I did.

15 Q. Does the code included in that
16 portion of the application change your opinion
17 regarding what's disclosed in that provisional
18 application?

19 A. No, if anything, it reenforces
20 what I found in the description.

21 The code is all about here's a
22 board and here's a relationship between boards,
23 and one is simply form filling essentially
24 manually what the relationships between the

1 boards are.

2 Q. Can you pull up the code,
3 Dr. Greenberg. Do you see the import statements
4 here?

5 A. Yes, I do.

6 Q. Are these in the provisional?

7 A. Yes, they are at the beginning of
8 the code section.

9 Q. What's the purpose of an import
10 statement?

11 A. So an import statement is, as the
12 name suggests, is a way for the computer program
13 to import code that's somewhere else, so
14 essentially it says it's a way for us to manage
15 code. It says that there's code somewhere else,
16 and I want to bring it into the program so the
17 program can actually use it.

18 Q. If we take the -- one of the first
19 ones, for example, the import com.leader.util.
20 What would that mean?

21 A. Not much because one thing that is
22 not in the provisional is what's in these
23 external files. All this tells me is that --
24 and I'm just guessing now, so this is an

1 educated guess -- that because it starts with
2 com.leader, this is some code that Leader may
3 have or may not have written yet or may plan to
4 write that does some stuff.

5 Essentially it just says that
6 whatever is there is intrinsic to Leader, so I
7 would be guessing. It's like, we have this box,
8 and we have stuff in it, and the company
9 holds the box, but I won't tell you what's in
10 it.

11 Q. Can you determine in any way from
12 the import statements what the code looks like?

13 A. First, I have to say I don't know
14 if the code exists. I can't tell if this code
15 is working code. Is it actually code that they've
16 actually compiled to run? I don't know. I
17 can't tell from this because that's not
18 complete.

19 The second thing I can tell is
20 this code or pseudocode is stuff intended to run
21 compiled by systems to be run eventually, or
22 it's more of a sketch. And looking at it, it
23 looks more like code. Again I don't know.

24 The third thing I can't tell is

1 whether these files com.leader.util or debug,
2 whether they exist or not. I have no idea
3 whether these are just place holders or if they
4 have stuff there. It's not in the provisional.

5 If I look at any particular one of
6 them, I can make a guess. Com.leader.util,
7 maybe that means there's a utility program in
8 it, but there's another one called
9 asp.facebook.util, so I don't know what's in it.
10 I just make a wild guess.

11 Q. These are part of what's been
12 described as the code for this program?

13 A. Well, it's part of the code that
14 was produced in the provisional, but it's the
15 actual stuff in these things designated by the
16 import isn't there. They did not deliver that.

17 I've read other patent
18 applications, other things, before and sometimes
19 they come with a floppy or CD that says, here's
20 our stuff.

21 For one, this is all I have to
22 work with. I would be guessing.

23 Q. Can I direct your attention to a
24 particular part of the code attached here, the

1 sixteenth page of the provisional. There should
2 be something called tool code. Tool code equals
3 get contact?

4 A. I think you want to see more than
5 that. The bottom one. Keep going right to the
6 bottom, to where it says return form.

7 Two more lines.

8 Q. And in here in particular, I'd
9 like to point your attention to the middle of
10 the page where it says action.addactionlistener.
11 Do you see that code?

12 A. I do.

13 Q. What does that code do?

14 A. So remember before I said that
15 what the provisional allows it to reset the
16 relationship between these boards. I believe in
17 looking at this and using my knowledge of
18 programming that what this essentially does is
19 really the user interface part for somebody to
20 manually set the relationship of one board to
21 another.

22 If I could highlight, it says the
23 fourth, fifth line down, add new relationship
24 subform. So it's using the word "form," and we

1 have sub equal new concrete sub form create
2 relationship sub form. So that would probably
3 be the title of the window you would see as the
4 user and creator.

5 New relationship would be
6 instruction, and the rest of the code -- go a
7 little below it -- says sub.addboarddropdown.
8 It says sub.addboarddropdown, and following
9 that, it talks about the board drop down.

10 I think this is a drop down form
11 or guideline, something that you've probably
12 seen before on computer systems, but it brings
13 up this form that lets you set the relationship
14 of one board to another, and this is a manual
15 thing.

16 Q. Does anything in this disclose
17 tracking a user's movement from one board to
18 another board?

19 A. Neither is it in this code and
20 nowhere else in the code.

21 Q. Does anything in this code
22 disclose tracking a user's movement from one
23 context to a separate context?

24 A. No.

1 Q. There was a deposition taken in
2 this case of Mr. Lamb. Are you aware of that?

3 A. Yes, I am.

4 Q. Did you read Mr. Lamb's
5 deposition?

6 A. I did.

7 Q. Did you base your opinion on
8 Mr. Lamb's testimony in his deposition?

9 A. No, I did not.

10 Q. When you reviewed Mr. Lamb's
11 testimony about what he thought was in the
12 provisional application, did it change your
13 opinion as to whether or not the provisional
14 disclosed each and every element of the claim?

15 A. It enforced my position. He said
16 several times that no tracking was done in the
17 provisional application.

18 MR. ANDRE: I'm going to object to
19 the characterization of the witness's testimony,
20 and he testified to that.

21 THE COURT: Overruled. He's
22 testifying to his interpretation of that.

23 BY MS. KEEFE:

24 Q. Dr. Greenberg, one of the terms we

1 hear a lot of in patent law is enabling. Do you
2 know what that means?

3 A. Yes, I do.

4 Q. What does it mean to be enabled or
5 enabling technology?

6 A. It mean that is -- this
7 description has to be enough that somebody of
8 ordinary skill in the art could go and build it.
9 It doesn't have to say everything, but it should
10 be rich enough that you can say, here's what it
11 says, and you can do something about it.

12 Q. And in your opinion, was the text
13 and code in the back of the provisional
14 application enabling technology?

15 A. It was enabling in the sense that
16 I understood enough to determine it's about
17 creating boards and setting the relationships
18 between those boards. In that sense, it's
19 enabling.

20 But it's not a full specification.
21 There's a lot of stuff missing, such as in those
22 import files. I could tell from the code in the
23 description that it matches the description I
24 told you, but in terms of enabling what's in the

1 761 patent, I would say it's not.

2 Q. So the -- in your -- in your
3 opinion, did the disclosure from the provisional
4 application, including the code at the back,
5 enable one of skill in the art to build or
6 understand what was in the claims of the 761?

7 A. No.

8 Q. In your opinion, does the
9 provisional patent application disclose each and
10 every element fully of the asserted claims of
11 the 761 patent?

12 A. No, they do not.

13 MS. KEEFE: This is a good place
14 for a break, Your Honor, or we can go to the
15 next topic.

16 THE COURT: I know the next topic
17 will take more than six minutes.

18 MS. KEEFE: I promise it will.

19 THE COURT: Based on that promise,
20 we'll start our lunch a little early today and
21 have the jurors back in time to start again at
22 1:30.

23 THE CLERK: All rise.

24 (The jury exited the courtroom at

1 things I had to take care of and I apologize for
2 keeping you waiting. And welcome back and let
3 me keep you waiting no longer.

4 Ms. Keefe.

5 MS. KEEFE: Dr. Greenberg.

6 Go ahead and put up the summary
7 slide.

8 BY MS. KEEFE:

9 Q. Good afternoon, Dr. Greenberg.

10 A. Hi.

11 Q. So before lunch, I think we were
12 talking about your first opinion; is that
13 correct?

14 A. That's correct.

15 Q. And what was your first opinion,
16 again?

17 A. So just to summarize, the
18 provisional patent application does not disclose
19 every element of each asserted claim of the '761
20 patent.

21 Q. Thank you.

22 I'd like for us now to move on to
23 your second opinion. Now, before we dive into
24 that, I think one of the terms that we keep

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Day 6
INC.,)
)
Plaintiff,)
) C.A. No. 08-862-JJF-LPS
v.)
)
FACEBOOK, INC., a)
Delaware corporation,)
)
Defendant.)

Monday, July 26, 2010
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPALDING
BY: PAUL ANDRE, ESQ.
BY: LISA KOBIALKA, ESQ.
BY: JAMES HANNAH, ESQ.

Counsel for Plaintiff

1 prior art and are therefore not invalid for that
2 reason.

3 Number three, judgment as a matter
4 of law that the invention covered by any of the
5 asserted claims of U.S. Patent Number 7,139,761
6 was not in public use or on sale by Leader
7 Technologies more than one year prior to the
8 effective filing date and the asserted claims of
9 U.S. Patent Number 7,139,761 are therefore not
10 invalid for that reason.

11 Number four, judgment as a matter
12 of law that Facebook has no defense to
13 infringing the asserted claims of U.S. Patent
14 Number 7,139,761 under the Doctrine of
15 Equivalents, including but not limited to, that
16 Facebook has not demonstrated that infringement
17 under the Doctrine of Equivalents results in the
18 asserted claims ensnaring the prior art, as
19 Facebook has failed to provide a hypothetical
20 claim as required to prove ensnarement.

21 Number five, judgement as a matter
22 of law that the U.S. Provisional Patent
23 Application 60/432,255 supports the asserted
24 claims of the U.S. Patent Number 7,139,761 and

1 THE COURT: Three paragraphs, one
2 sentence. One more sentence.

3 MR. WEINSTEIN: Can I use
4 semicolons? I'm sorry, Your Honor.

5 Each and every claim of the '761
6 patent is invalid as obvious as detailed in the
7 testimony of Professor Greenberg and no
8 reasonable jury could fail to find as much.

9 And we just want to reserve our
10 right under the IPXL Holdings. I understand
11 Your Honor has reviewed the IPXL ruling.

12 THE COURT: I'm willing to reserve
13 judgment on all of Facebook's motions as I have
14 on Leader's.

15 I do want to give counsel a
16 five-minute break. Is there anything else that
17 needs to be discussed first? Hopefully not.
18 No.

19 We'll see you in five minutes.

20 (A brief recess was taken.)

21 THE CLERK: All rise.

22 THE COURT: Okay. We'll bring the
23 jury in.

24 MR. ANDRE: Your Honor, before the

1 jury comes in, we also -- I think Your Honor
2 also already made this clear. We're going to
3 reserve our right to the file written submission
4 on the Rule 50 motion.

5 THE COURT: That's fine. That
6 right is now reserved --

7 MR. ANDRE: Thank you.

8 THE COURT: -- to the extent, it
9 wasn't earlier.

10 MR. ANDRE: I thought it was, but
11 after that long --

12 THE COURT: That's fine.

13 MR. RHODES: And, Your Honor, at
14 the end of the case, I'm literally just going to
15 say and I reiterate what Mr. Weinstein said and
16 then say no more. I can do it at a side-bar.

17 I don't want to interrupt your
18 flow at the end. So I'll look at you, and all I
19 am going to say is remake the motion again for
20 the reasons stated. That is all I am going to
21 do.

22 THE COURT: I think you will
23 probably be able to do that in front of the
24 jury.

1 that is in Dr. Greenberg's report.

2 Q. What information did you review in
3 order to come to your opinion?

4 A. Well, I reviewed Dr. Greenberg's
5 report and all of the citations or all of the
6 references cited in his report.

7 I reviewed the '761 patent. I
8 reviewed the claim construction order. I
9 reviewed the prosecution history of the patent.

10 And I think that completes the
11 list.

12 Q. And you reviewed the provisional
13 application?

14 A. Of course, I did review the
15 provisional application.

16 Q. For all of your analysis, did you
17 understand that you needed to identify who
18 constitutes one of ordinary skill in the art as
19 it relates to the '761 patent?

20 A. Yes, I did.

21 Q. Who would that person be?

22 A. Well, it might be one of ordinary
23 skill in the art would be someone with a
24 bachelor's degree in computer science or related

1 field, and/or perhaps several years of
2 experience.

3 Q. And would someone with let's say
4 Master's degree in computer science fit within
5 the scope of one of ordinary skill in the art?

6 A. Sure. I think so.

7 I mean, it's increasingly common
8 for developers in industrial settings to have
9 bachelor's degree. So I don't think that would
10 be unusual.

11 Q. And as you get more advanced in
12 degrees, is it typical to specialize in a
13 certain area?

14 A. Yeah. I think by the time someone
15 is studying for Ph.D., the things that the
16 person is studying for are extremely narrow and
17 aren't typically all that helpful in real world
18 in building things like web applications.

19 So I think a Bachelor's degree or
20 higher would be -- people in that category would
21 be fairly equivalent when it comes to building
22 applications like this.

23 Q. Did you do all your analysis for
24 the opinions that you're going to provide today

1 Q. But you also have testified before
2 that the code attached to the provisional
3 application is just pseudo code; correct?

4 A. Yes. Well, that goes along with
5 the idea that it's mainly a communication device
6 for other people who might want to make and use
7 this invention. It's not really a full
8 implementation as I said, but it is designed to
9 be helpful, you know, to give information and
10 hints to someone who might want to actually make
11 this invention.

12 Q. To make hints, that is what you
13 just said?

14 A. For someone practicing the art, it
15 would give strong indications of how to
16 implement, make and use this invention.

17 Q. And pseudo code would not actually
18 function if you were to compile it into an
19 executable program; right?

20 A. Pseudo code would not, right.

21 Q. And that's because it's not a real
22 programing language; right?

23 A. So pseudo code is not a real
24 programing language, but there is really kind of

1 a fine line here that I would like to clarify.

2 So the language that appears here
3 looks very much like Java, although I didn't
4 really try to compile it and test it and see if
5 it actually runs. But the purpose of that code
6 that looks a lot like Java is to provide
7 information to someone skilled in the art so you
8 know what kind of glasses had been imported, you
9 would know how data was being stored, you would
10 know where to go to access information about
11 users, and so on.

12 Q. You mentioned a lot of things in
13 that last answer that I would like to go
14 through.

15 A. Okay.

16 Q. Can we actually see the import
17 statement section of the provisional, please.
18 So you mentioned these import statements quite a
19 few times; is that correct?

20 A. That's right.

21 Q. And, in fact, the ones that we
22 pointed to most frequently were the import.com.
23 Leader.persist.vbsf, and the very last import,
24 com.leader.osapplication.sessionstate; is that

1 correct?

2 A. That's correct.

3 Q. You just mentioned that an import
4 statement imports classes that are defined
5 elsewhere; is that right?

6 A. That's right.

7 Q. What is a class?

8 A. It is a unit of code.

9 Q. So an import statement is used to
10 bring in code that lives somewhere else into the
11 code without having to repeat that code right
12 here; is that correct?

13 A. Yeah, it's used for, you know,
14 very common sort of utilities and boiler plate
15 sort of code that's used very frequently. And
16 every Java program and most programming language
17 these days import things like that.

18 Q. But with respect to the import
19 statements that we have highlighted here, you
20 can't really know what is in those classes
21 unless you actually have access to the
22 underlying source code that's being imported;
23 isn't that correct?

24 A. I would say that's not correct. I

1 would say that anyone skilled in the art knows,
2 you know, you don't know every single detail of
3 exactly what is within those classes, but you
4 know that VBSF is middleware that allows you to
5 store information in a database, you know, that
6 session statement is there to sort of capture
7 and hold information about a session because web
8 protocols are stateless and they can't catch a
9 state, so you know that kind of stuff from just
10 looking at the names of these things because
11 those are very common names in the industry.

12 MS. KEEFE: Your Honor, I would
13 like to play from the deposition at page 132,
14 lines 19 through 22.

15 MS. KOBIALKA: I'll object.
16 That's an incomplete clip. We need to continue
17 on to --

18 THE COURT: Which lines do you
19 propose in addition?

20 MS. KOBIALKA: At least page 133
21 through line one.

22 THE COURT: 133, one.

23 MS. KEEFE: That's fine, Your
24 Honor.

1 THE COURT: Okay.

2 (Videotape:)

3 Q. You can't really know what's in
4 these classes unless you actually have access to
5 the underlying code. Correct?

6 A. So, that's correct -- except
7 someone with skill in the art would be able to
8 make reasonable guesses based on the names, I
9 would maintain.

10 BY MS. KEEFFE:

11 Q. And, in fact, the best you could
12 do is guess as to what's in the code referred to
13 in an import statement; isn't that correct?

14 A. Not in the sense of a wild guess,
15 no. So as I said before, you don't know the
16 details of how each one of those is implemented
17 because you don't see the code. But VBSF are
18 very common well understood terms so that anyone
19 knowledgeable in the art would know basically
20 what they're doing and they would tell you that
21 if you are trying to make and use this
22 invention, certain kinds of information are
23 going to be stored in a relational database and
24 certain kinds of information are going to be

1 stored in a session state. That would be clear.

2 MS. KEEFE: Your Honor, I would
3 like to play page 133 lines, two through six.

4 MS. KOBIALKA: I'll object as
5 incomplete. If it goes through line 13 on page.

6 THE COURT: No objection through
7 line 13?

8 MS. KOBIALKA: Yes.

9 THE COURT: Ms. Keefe.

10 MS. KEEFE: I actually disagree, I
11 literally asked the question directly and then
12 the answer, but if that helps then we can go
13 ahead and play it.

14 THE COURT: It helps. Let's go
15 ahead and play it then, the whole portion.

16 (Videotape:)

17 Q. But that's the most they could
18 make, is reasonable guesses?

19 A. Yes. But someone, you know,
20 skilled in the art could make reasonable
21 guesses, I think.

22 Yes. But someone, you know,
23 skilled in the art could make reasonable
24 guesses, I think.

1 Q. So let's talk about VBSF for a
2 minute. What is VBSF?

3 A. Sort of a middleware that matches
4 up object-oriented programs with relational
5 databases so that it does the translation from
6 the object model to a relational model, makes it
7 much easier to use in a relational database.

8 BY MS. KEEFE:

9 Q. And, in fact, with respect to the
10 sessions state classes, you were, in fact,
11 speculating as to what was contained within
12 them; isn't that correct?

13 A. So, are you talking about this
14 clip? This clip is talking about VBSF.

15 Q. No, I'm talking about session
16 state classes.

17 A. Session state classes.

18 Q. That were imported.

19 A. So, as I mentioned, you can't see
20 the details of what is session state because the
21 source code is not here. But it is sort of
22 boiler plate type code. Session state is
23 something that if you're writing a web and you
24 have to maintain session state, it's usually the

1 same for almost every application, a set of
2 things that you're doing in web protocols, they
3 don't know that you have logged in, they don't
4 know that you have seen this page but not that
5 page. But session state captures that sort of
6 information and holds it.

7 It is well-known that this is the
8 purpose of session state libraries.

9 Q. But you agree that with respect to
10 the session state, you were speculating as to
11 what it contained?

12 A. I think that when something is
13 well understood by people versed in the art it's
14 not really quite speculation. It is a very
15 informed inference.

16 MS. KEEFE: Your Honor, I would
17 like to play from page 132, line five through
18 line 18.

19 MS. KOBIALKA: Object, Your Honor.
20 This isn't impeachment.

21 THE COURT: Pass up a copy, please
22 of the transcript. 132, line five through 18?

23 MS. KEEFE: Yes, sir, Your Honor.

24 THE COURT: The objection is

1 overruled. You can play it.

2 MS. KEEFE: Thank you, Your Honor.

3 (Videotape:)

4 Q. So you would not know how to
5 locate those classes. Correct?

6 A. So there are session state classes
7 in Java, for example, that may be very similar
8 to this, so the functionality of these kinds of
9 classes -- the reason -- well, I'm speculating.
10 But the reason they're not fully reproduced here
11 is simply because they're fairly common kinds of
12 things that you wouldn't need to look at.

13 Q. But you are speculating. I mean,
14 you can't --

15 A. I am.

16 (End of videotape.)

17 A. So if I may clarify what I was
18 speculating about is the reason they don't
19 appear here, if you go back and carefully read
20 that, I'm not speculating about what the classes
21 mean, I'm saying I'm speculating the reason they
22 don't appear here is because they're very common
23 and they don't need to appear here.

24 Q. When you hired doctor -- you hired

1 Dr. Caltaldo to actually attempt an experiment,
2 is that correct, using the provisional
3 application?

4 A. I'm not sure if hire is the
5 correct word. I'm the one that gave him the
6 task, I did not pay him, someone else paid him,
7 but yes, I gave him that task.

8 Q. And you agree that a person of
9 ordinary skill in the art in this case can have
10 as little as a bachelor of science in computer
11 science according to your testimony; is that
12 right?

13 A. Yes, that's right.

14 Q. But Dr. Caltaldo actually has a
15 Ph.D.?

16 A. He does.

17 Q. And Dr. Caltaldo has more than ten
18 years of experience in the field of computer
19 science?

20 A. That's correct.

21 Q. And you consider him to be very
22 talented; right?

23 A. He's talented, yes, but then on
24 the other hand, as I said before, having a Ph.D.

1 does not necessarily enhance somebody's ability
2 to create a web application. Having a Ph.D.
3 you're doing research that takes you into an
4 extremely specialized area and since I was his
5 thesis supervisor, I can tell you it had
6 absolutely nothing to do with web applications
7 or even applications.

8 I think ten years of experience
9 is, you know, probably fairly average for
10 someone in industry, so I think if you put all
11 that together, he was someone, you know, that
12 would be a representative of someone who was
13 well versed in the art.

14 Q. And other than assigning him this
15 task, you didn't actually oversee Dr. Caltaldo
16 in any way during the project; is that right?

17 A. Not in any way having to do with
18 this, no.

19 Q. And you don't know if Dr. Caltaldo
20 referenced any outside materials in coming up
21 with the pseudo code that he developed; isn't
22 that correct?

23 A. All I know is what he told me, and
24 he told me he did not, when I asked him.

1 is that at some point in the deposition, I think
2 it was at lunchtime or perhaps a break, I called
3 Dr. Caltaldo and asked him some of these
4 questions. So I didn't know during the first
5 half, I knew some of the answers during the
6 second half. There were some things I didn't
7 think to ask him which I asked him yet later, so
8 there are several different points in time here.

9 Q. Could we pull up the pseudo code,
10 please. I think it's the new exhibit, 1125.
11 1125, please. Can you highlight just the title.

12 Dr. Herbsleb, is this the title of
13 the report that Dr. Caltaldo gave you?

14 A. Yes, it is.

15 Q. And the terms at the end here,
16 context and tracking components. Those are
17 phrases used in the patent; isn't that correct?

18 A. That's correct, they are used in
19 the patent.

20 Q. In fact, it's -- you testified
21 earlier that it was possible that Dr. Caltaldo
22 actually had a copy of the final patent when he
23 was performing his analysis, didn't you?

24 A. I believe what I said is that it's

1 public information, that anybody can access
2 that, so of course he had access to it as does
3 everyone.

4 Q. Dr. Herbsleb, what Dr. Caltaldo
5 built was actually pseudo code, wasn't it?

6 A. Well, again, it appears to be
7 Java. It is very, very close to Java, but since
8 I didn't compile it, I don't know if it really
9 runs, so we could call it pseudo code. It looks
10 just like Java.

11 Q. You testified before that
12 Dr. Caltaldo did not build any actual working
13 system in connection with his work with the
14 provisional; isn't that correct?

15 A. That's correct, because it does
16 make calls into the code, you know, provided in
17 the provisional patent application which we
18 didn't have in code form, so it couldn't run
19 because it makes those calls to the code that's
20 in the system.

21 Q. And the fact that it is pseudo
22 code indicates to you that the code Dr. Caltaldo
23 developed could not be used to create a working
24 application; is that correct, by itself?

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,) Trial Day 7
INC., a Delaware)
corporation,)
PLAINTIFF,)
v.) C.A. No. 08-862-JJF-LPS
FACEBOOK, INC., a)
Delaware corporation,)
DEFENDANT.)

Tuesday, July 27, 2010
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK,
United States District Court Magistrate

APPEARANCES:

POTTER ANDERSON & CORROON, LLP
BY: PHILIP ROVNER, ESQ.
-and-
KING & SPALDING LLP
BY: PAUL ANDRE, ESQ.
BY: JAMES HANNAH, ESQ.
Counsel for Plaintiff

1 THE CLERK: All rise. Court is
2 now in session, the Honorable Leonard P. Stark
3 now presiding.

4 THE COURT: Good morning.

5 (Everyone said, Good morning, Your
6 Honor.)

7 THE CLERK: Please be seated.

8 THE COURT: Anything we need to
9 take up before the jury comes in?

10 MR. ANDRE: Just real quick, Your
11 Honor. I'm a little paranoid. I saw that
12 Facebook made a filing this morning on Rule 58.
13 Some objections. I just want to make sure our
14 objections to the jury are noted and the Rule 58
15 motion can come in sometime after the jury
16 verdict, perhaps within ten days. Is that
17 acceptable, Your Honor?

18 THE COURT: That's all acceptable
19 with me. Thank you very much.

20 MR. RHODES: Your Honor, we forgot
21 to move into evidence DTX 278 and 280.

22 THE COURT: It is admitted.

23 MR. RHODES: I appreciate that,
24 Your Honor.

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:

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Dated: April 17, 2009
912447

By:  _____

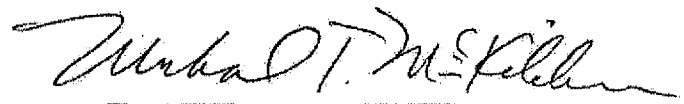
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Leader Technologies, Inc.*

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

**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:

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EXHIBIT C

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/LPS
)
) **HIGHLY CONFIDENTIAL--**
) **FOR ATTORNEY'S EYES ONLY**
)
)
)

**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. 9**

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

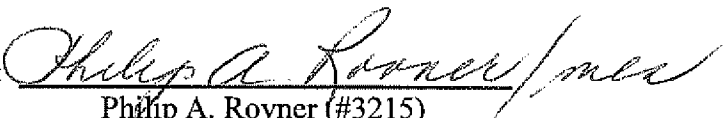
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Dated: October 28, 2009
939709

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

CERTIFICATE OF SERVICE

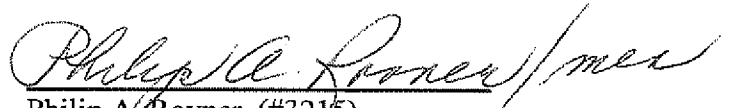
I, Philip A. Rovner, hereby certify that on October 28, 2009, true and correct copies of the within document were served on the following counsel of record, at the addresses and in the manner indicated:

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EXHIBIT D

BAA Number: 02-Q-4655

Mission Area: Information Integration Center

Requirement No: 109 / ALT-109-LEADER-1220WP

Proposal Title: Advanced Cross-platform Communications & Anti-terrorism Command Center Prototype¹

White Paper

Offeror: Leader Technologies LLC
Point of Contact: Michael T. McKibben
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¹ Ref. Quad Chart, ALT-109-LEADER-122001.pdf

EXHIBIT 302
McKibben 2/23/10
(WITNESS) (DATE)
JANIS JENNINGS, CSR 3942

DEFENDANT'S EXHIBIT
DTX 0179
CASE NO. 1:08-CV-00862-LPS

Leader White Paper

This White Paper is in support of our proposal Requirement No. 109 / ALT-109-LEADER-1220WP to the Under Secretary of Defense for Acquisition, Technology and Logistics (USD (AT&L)) and Combating Terrorism Technology Support Office (CTTSO) Technical Support Working Group (TSWG) Broad Agency Announcement (BAA), 02-Q-4655 (referred to herein as “BAA”) for funding an Advanced Cross-platform Communications Environment and Anti-terrorism Command Center Prototype

1 Introduction

We at Leader Technologies (“Leader”), in cooperation with the *concurring* co-venturer University of Dayton Research Institute (“UDRI”), are pleased to offer the following White Paper in support of our BAA funding submittal. Wright Patterson Air Force Base (“WPAFB”), Douglas W. Fleser, Deputy CIO, is the *concurring* customer having identified a number of areas of mission-critical need at WPAFB for which Leader Technologies has built specific solutions over the last 3.5-years of intensive research and development. Since September 11 it became patently clear that this WPAFB project has direct benefit to the War on Terrorism (and therefore to the BAA) without any change to the technical specifications or requirements for WPAFB. We at Leader intend to cooperate extensively with Mr. Fleser and his WPAFB team, and simultaneously to cooperate with the BAA in extending the WPAFB as required by the BAA. In addition, we have engaged the capable resources of the UDRI in the implementation of this \$12,074,495 Phase 1 proposal to be delivered over the following 12 months. Cost Displacement and ROI studies for this project have already yielded numbers in the 500-1500% range.

The tragic events of September 11, 2001 have only further heightened the urgency of this project. In addition to this project being able to thoroughly support the WPAFB technical requirements, this project can now join the frontlines in our War on Terrorism by providing a fully-operational NORAD-like Anti-terrorism Command & Control Theater environment prototype that can support the needs of the Secretary for Homeland Security, NSA, FBI, CIA, FEMA and the CDC in their requirements to improve communications and collaboration capabilities.

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BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 2 of 12

Little did we know when we set out to build Leader2Leader™ 3.5 years ago that it would be tailor-made for the War on Terrorism effort.

2 Problem Statement

"One of the things that the president has commissioned me to do in his Executive Order is make sure that the gap, the delay in information-sharing no longer exists as we combat this war on terrorism."

Tom Ridge, Director for Homeland Security, December 17, 2001

"A lack of technology needed to analyze and integrate data from disparate sources is proving to be an early answer to people asking how the U.S. disaster could have occurred, security experts admit."

Infoworld, September 14, 2001

A similar problem statement can be applied to the customer of this proposed BAA grant, namely Wright Patterson Air Force Base, Douglas W. Fleser, Deputy CIO. Mr. Fleser has identified four areas of priority for WPAFB: records management, acquisitions, management, engineering collaboration, and knowledge management. Prior to September 11, 2001, Mr. Fleser felt a growing sense of priority and urgency to these priorities as they related mainly, at the time, to the coming "brain drain" of federal employees with significant knowledge of our most critical defense systems, and, as it related to facilitating secure, distributed engineering collaboration environments across the United States Air Force communications network.

The tragic events of September 11, 2001 have only served to heighten the priority for what Mr. Fleser had previously identified as his set of needs. In fact, this WPAFB BAA can very clearly "kill two birds with one stone" by becoming the prototype for a NORAD-like Anti-terrorism Command and Control Theater for potential use by the Secretary for Homeland Security that is fed data from existing data repositories. This same system can then be evaluated for use in related security applications with the Center for Disease Control (CDC), the Federal Emergency Management Agency (FEMA) as well as such agencies as the FBI, NSA, Federal Reserve and Secret Service. In fact, Leader is now fielding preliminary inquiries from state agencies who are now tasked with establishing state-wide homeland defense systems.

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During the past 3.5 years, Leader has developed a fully-scalable enterprise-class communications platform that combines previously disparate communications and collaboration applications into a common, integrated and secure environment. Leader's research have discovered and fixed a plethora of serious shortcomings and flaws in prevailing platform assumptions about

mere aggregation vs. true integration of communications technologies (see

Figure 1: The Communications "Glass Ceiling")

). These discoveries point to

why such platforms as Lotus Notes and

Microsoft Exchange are patently ill-

suited for the task at hand. Armed with

these discoveries, Leader set out to build

the Digital Leaderboard™ System that

will be used by enterprises under the

brand name Leader2Leader™. Mr.

Fleser believes that the Leader2Leader™

platform will form a solid foundations for his top strategic priorities for WPAFB. In the course of implementing the

Leader2Leader™ foundation, Mr. Fleser has requested that Leader with UDRI's assistance develop a number of

database management modules that will seamlessly tie the Leader2Leader™ system with existing WPAFB data base

applications and thus create on contiguous collaboration environment.

3 Objectives

To implement a new Leader2Leader™ enterprise-wide collaboration environment at Wright Patterson Air Force

Base (WPAFB) that satisfies priority WPAFB infrastructure needs in records management, acquisitions,

management, engineering collaboration, and knowledge management.

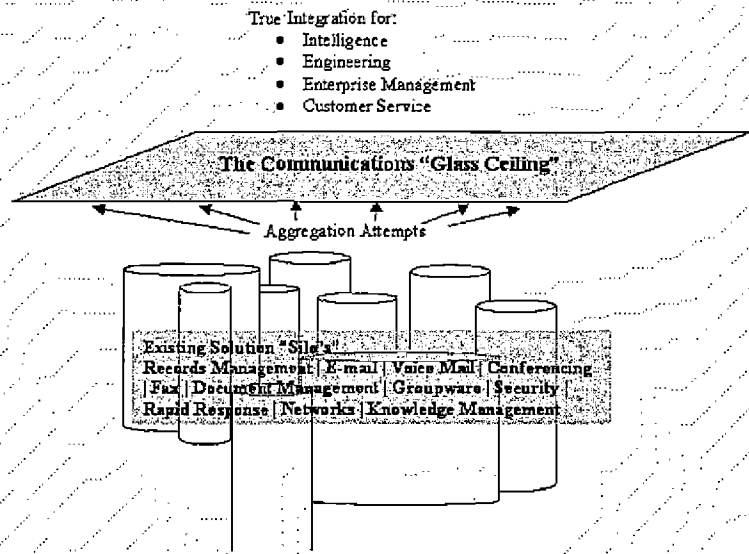


Figure 1: The Communications "Glass Ceiling"

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BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 4 of 12

To develop LeaderCube™ data integration modules as bridges between six high priority WPAFB data repositories and the Leader2Leader™ collaboration system.

To build a prototype NORAD-like Anti-terrorism Command and Control Theater at WPAFB to evaluate the capabilities of the Leader2Leader™ / LeaderCubes™ environment for use as the collaboration engine for inter-agency collaboration within the DoD, DCD, FEMA, etc.

To include the LeaderCubes™ developed as a part of the BAA into the commercialization of the Leader2Leader™ platform that is already well underway and for which there is substantial commercial, academic and government interest.

4 Summary of Approach

Leader uses a combination of Waterfall and Extreme programming engineering methodologies project methodologies. The Waterfall methodology is employed up to the alpha phase of a project, at which time the team switches to Extreme Programming methods to drive the product through testing and into production. This combination of methodologies has proven quite successful in the completion of Leader's first commercial product, LeaderPhone™ Teleconferencing Services.

WPAFB will use the LeaderPhone™ services within its firewalls. WPAFB will become a classical beta customer for the full Leader2Leader™ platform and will receive commensurate licenses to do so. Leader will develop LeaderCubes™ according to specifications developed jointly with WPAFB for the tying of WPAFB mission-critical systems with Leader2Leader™ after which WPAFB will receive a perpetual internal license to the LeaderCubes™ according to the BAA intellectual property agreement.

Leader is already commercializing LeaderPhone™ and Leader2Leader™ to government, commerce and education and plans to add the LeaderCubes™ to its product mix at the end of this BAA. Field support will be maintained in the normal course of Leader's ongoing Customer Service program.

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5 Identification of Rights in Technical Data and Computer Software/Patent Rights

As per the TSWG 02-Q-4665 BAA Package Requirement 3.2.3.4, Identification of Rights in Technical Data and Computer Software/Patent Rights, we present the following chart as outlined in DFARS 252.227-7017(d).

Technical Data			
Computer Software To be Furnished With Restrictions	Basis for Assertion	Asserted Rights Category	Name of Person Asserting Restrictions
Digital Leaderboard™ System software and online user documentation supplied under the brand name Leader2Leader™ and Click2Lead™	Fully developed at private expense	Wholly-owned	Michael T. McKibben
LeaderPhone™ System software and online user documentation supplied under the brand name LeaderPhone™ Teleconferencing Services	Fully developed at private expense	Wholly-owned	Michael T. McKibben
49 Digital Leaderboard™ System software sub-components supplied under the brand name Leader2Leader™ and Click2Leader™	Fully developed at private expense	Wholly-owned	Michael T. McKibben
Leader Cubes™ concept, software and online user documentation	Partially developed at private expense	Leader will further develop certain LeaderCubes™ as a part of this BAA project and license their use to the US Government, and retain commercial and IP rights	Michael T. McKibben

Table 1: Identification of Rights in Technical Data and Computer Software/Patent Rights

6 Team Qualifications & Resources

The Leader team is staffed with information technology and management veterans with extensive, multi-disciplined skills in all phases of this project from organization and management to programming, implementation and customer support. In fact, the Leader resumes read like a *Who's Who* in American business and technology. To name a few and their accomplishments:

- a. **Michael T. McKibben, Founder & CEO** – Formerly, rebuilt AT&T's Windows messaging and enhanced fax infrastructure; the principal designer of Leader2Leader™
- b. **Brad Whiteman, CIO** – Formerly, conceived and built the Shared Data Warehouse for the Department of Defense

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- c. **Ed Detwiler, Director** – Formerly, built and managed Bank One’s thrice-redundant global banking infrastructure.
- d. **Jeff Lamb, CTO** – Former senior architect for the National Air Intelligence Center (NAIC)
- e. **Steve Hanna, VP of Engineering** – Former Lockheed and Oracle senior project manager for SIGINT projects at WPAFB
- f. **Tom Ayres, Chief Sales and Marketing Officer** – Former AT&T Sales Executive in telecommunications, data networking and e-commerce
- g. **Steve Gonzalez, Director** – Former AT&T Vice President in charge of over \$4 billion in annual sales of IP services.
- h. **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.
- i. **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.
- j. **William “Bill” DeGenaro, Advisor** – former Chief of Strategic Planning for 3M Company and former White House Chief of Strategic Countermeasures for the Reagan and Bush Administrations
- k. **University of Dayton Research Institute** – Staff with approximately 300 full-time engineers, scientists, and support personnel with annual revenues exceeding \$40M, provides basic and applied research for government and industry. UDRI has both a long history of IT development (see: Appendix C) and long-standing R&D relationship with numerous entities at WPAFB.
- l. **Clancy W. Cross, Associate Research Analyst, UDRI** – Currently head of the UDRI Web Development Center
- m. **Ronald L. Thomas, Senior Software Engineer** – Responsible for proposals, design and implementation for the UDRI Web Development Center

Leader currently has the facilities and computer resources to build and support this proposed project. Leader has approximately 6,000 square feet of secure engineering and management facilities in Westerville, Ohio and employs over 20 full-time people. Leader’s facility is secured to a high commercial standard, including video surveillance, intrusion, fire and smoke detection. Leader also leases co-location facilities in the Columbus area as

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BAA NUMBER: 02-Q-4655 – REQUIREMENT NUMBER 109 / ALT-109-LEADER-1220WP, Page 7 of 12

well as maintains robust development servers on premises. Leader will soon expand its co-located facilities within a major telco provider. UDRI will use existing facilities to provide the documentation, training and testing services specified in this proposal.

7 Expected Outcomes

7.1 Deliverables

- a. Leader2Leader™ software licenses for 20,000 WPAFB employees
- b. Six (6) LeaderCube™ unlimited (for internal use) software licenses with full documentation
- c. Six (6) WPAFB data repositories fully integrated into the Leader2Leader™ platform
- d. Leader2Leader™ hardware and hosting platform fully tested and operational at WPAFB
- e. WPAFB customer and technical support staff trained and in place
- f. A NORAD-like Anti-terrorism Command and Control Theater full operational in prototype form at WPAFB or other mutually suitable location.

7.2 Timing

- a. Leader2Leader™ platform installation and training will be fully implemented by the end of Q1 of 2002.
- b. LeaderCube™ development, testing, implementation, documentation and training for six (6) modules will be completed by the end of Q2 of 2002.
- c. The NORAD-like Anti-terrorism Command & Control Theater prototype will be completed by the end of Q2 of 2002, unless this priority is moved up by BAA to address the pressing needs of the Secretary for Homeland Security.

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7.3 Benefits to Client

- a. WPAFB will receive a working, integrated, scalable, flexible solution to its Records Management, Acquisitions Management, Engineering Collaboration and Knowledge Management priority projections in a time frame that is factors ahead of where WPAFB thought it could be in a 6-12 month time frame if all of these projects were let separately.
- b. BAA will have a fully operational NORAD-like Anti-terrorism Command and Control Theater prototype from which various applications and uses can be determined -- all in a very short period of time; much shorter than if all those projects were just going out to bid in the coming months.
- c. WPAFB Cost Displacement Studies already done on this project (and which will be included in the complete project plan) indicate that this BAA can, at minimum, create a more than 500% return on investment, without including a plethora of intangible values. Inclusion of reasonable values for intangible benefits puts the ROI well over 1,500%.

8 Risks and Risk Mitigation

The Leader2Leader™ platform is operational now with low user volumes. A potential risk is performance problems that have not yet been tested for large numbers of concurrent users. This risk is mitigated by the fact that Leader is using industry-standard components that are already proven to be scalable in other high volume web environments. Therefore, we believe that any potential scale problems can be mitigated by normal software optimization during the stress testing phase. An additional risk is that the LeaderCube™ modules have not been built yet and there is no assurance that they will work properly. This risk is mitigated by the fact that these systems integration modules are familiar to many of the Leader technical principals (in large scale environments) from their work in previous companies and they, from their experience do not anticipate this requirement to be more burdensome than anything they have implemented successfully in the past.

9 Project Plan Management Milestones & Deliverables

This BAA is a one-year contract with a five-year tail. All of the heavy development work will occur in the first 12 months. The ensuing 5 years of the tail will entail some hardware upgrading as well as ongoing Leader2Leader™ licensing and a support contract.

Table 2: BAA Funding Request - ALT-109-LEADER-1220WP

Prepared by Michael T. McKibben, CEO, Leader Technologies & Clancy Cross, University of Dayton

Project Plan, Deliverables & Use of Funds

January 9, 2002

Use of Funds

Description	Total Requested	Month (from commencement of BAA)												Totals	
		1	2	3	4	5	6	7	8	9	10	11	12		
Leader - Cube Dev.	\$1,424,495	237,415	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	118,708	1,424,495
UD - Cube Dev.	\$1,350,000	225,000	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	112,500	1,350,000
WPAFB - Platform Expenses	\$400,000	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	33,333	400,000
NORAD-like Anti-terrorism Theater expenses	\$500,000	\$500,000													500,000
Leader2Leader™ licenses	\$8,400,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	700,000	8,400,000
	\$12,074,495	\$1,695,748	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$964,541	\$733,333	\$12,074,495
Headcount															
Leader – Leader2Leader™ Installation & Support and LeaderCube™ Technical Staffing & Support		11.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	0.0	71
UD -- LeaderCube™ Documentation, Training, Performance Testing, Helps, Usability Studies & Systems Integration		11.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	0.0	68
WPAFB -- Platform hardware and Support		2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	25
		25.2	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	13.6	2.1	164
Product Deliverables															
Leader2Leader™		Leader2 Leader™ platform installation & staging	Leader2 Leader™ beta installation	Leader2 Leader™ beta installation		Leader2 Leader™ enterprise installation									
LeaderCubes™				LeaderCube™ 1	LeaderCube™ 2	LeaderCube™ 3	LeaderCube™ 4	LeaderCubes™ 5 & 6							
NORAD-like Anti-terrorism Theater Prototype								NORAD-like Anti-terrorism Command & Control Theater prototype, fully operational							

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Table 2: BAA Funding Request, continued
 Prepared by Michael T. McKibben, CEO, Leader Technologies & Clancy Cross, University of Dayton
 Project Plan, Deliverables & Use of Funds
 January 9, 2002

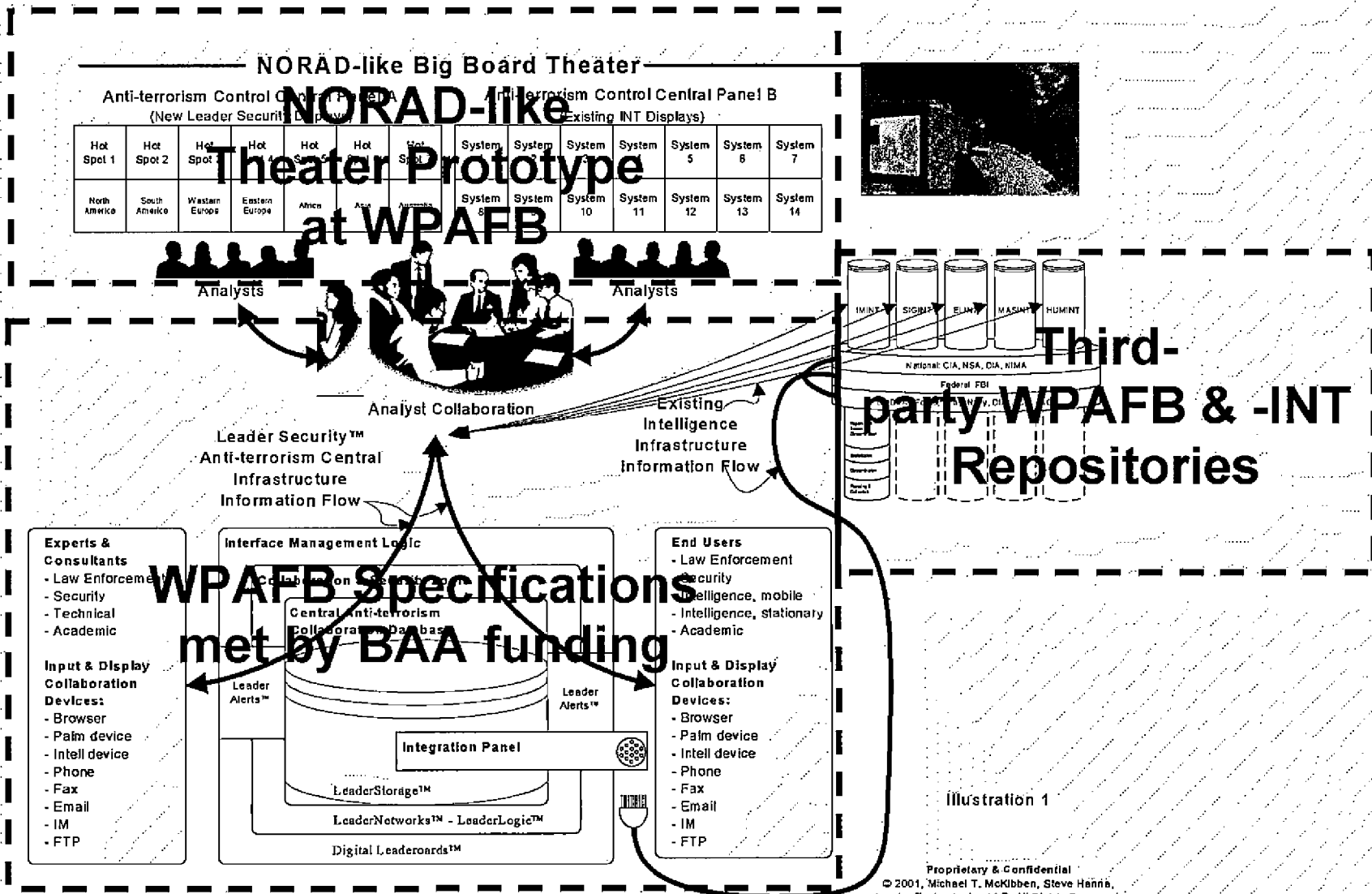
WPAFB-UD-Leader Project Costs Worksheet

WPAFB user base = 20,000		Year										
Costs	Source	Units	Unit descriptor	Costs	Cost per unit descriptor	1	2	3	4	5	6	Totals
Leader2Leader™ licenses, term	Leader	20,000	users	\$ 35.00	/user/month	8,400,000	8,400,000	8,400,000				
Leader2Leader™ licenses, tail	Leader	20,000	users	\$ 35.00	/user/month				8,400,000	8,400,000	8,400,000	
Hardware platform & support, term	Leader	20,000	users	\$ 449,495	/system	449,495						
Hardware platform & support, tail	WPAFB	20,000	users	\$ 449,492	/system				449,492			
Development environment	Leader	1	system	\$ 75,000	/system	75,000	15,000	15,000	15,000	15,000	15,000	
NORAD-like Command & Control Theater prototype						450,000						
Internal Bandwidth	WPAFB			No net change								
External Bandwidth	WPAFB			No net change								
Facilities & Management	WPAFB	200	square foot/age	\$ 500	/square foot/year	100,000	100,000	100,000	100,000	100,000	100,000	
LeaderCube™ Development	Leader	6	db silo cubes	\$ 150,000	/cube	900,000	180,000	180,000	180,000	180,000	180,000	
LeaderCube™ Documentation, Training & Help	Univ. of Dayton	6	db silo cubes	\$ 41,667	/cube	250,000						
LeaderCube™ Performance Testing	Univ. of Dayton	6	db silo cubes	\$ 83,333	/cube	500,000						
LeaderCube™ System Integration	Univ. of Dayton	6	db silo cubes	\$ 83,333	/cube	500,000						
WPAFB Metrics Studies	Univ. of Dayton	3	years square	\$ 100,000	/year square	300,000	100,000	100,000				
NORAD-like Command & Control Theater facility	WPAFB	2,000	man-foot/age	\$ 25	/man-foot/year	50,000						
WPAFB Leader2Leader™ internal help desk	WPAFB	1.25	man-years/year	\$ 120,000	/person/year	150,000	150,000	150,000	150,000	150,000	150,000	
WPAFB LeaderCube™ internal technical support	WPAFB	1.25	man-years/year	\$ 120,000	/person/year	150,000	150,000	150,000	150,000	150,000	150,000	
Total R&D Costs						12,074,495	8,695,000	8,695,000	9,144,492	8,695,000	8,695,000	55,998,987

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10 Figure 2: NORAD-like Big Board Theater for Anti-terrorism Command and Control



Case 1:08-cv-00862-LPS Document 651-4 Filed 09/15/10 Page 13 of 13

EXHIBIT E

**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/LPS

**DEFENDANT FACEBOOK, INC.'S NOTICE OF DEPOSITION OF DEFENDANT LEADER
TECHNOLOGIES, INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)**

NOTICE IS HEREBY GIVEN pursuant to Federal Rule of Civil Procedure 30 that Defendant and Counterclaimant FACEBOOK, INC. (“Facebook”) will take deposition upon oral examination of Plaintiff and Counterdefendant LEADER TECHNOLOGIES, INC. (“LTI” or “Plaintiff”) at a time and place to be agreed upon, and continuing from day to day thereafter until completed. The deposition will be recorded by a certified stenographic reporter. Facebook may also record the deposition by videotape and through the instant visual display of the testimony (i.e., LiveNote).

NOTICE IS HEREBY FURTHER GIVEN pursuant to Federal Rule of Civil Procedure 30(b)(6) that LTI shall designate and produce one or more of their officers, employees, managing agents, or other such persons as are most qualified, knowledgeable, and competent to testify on LTI’s behalf as to all matters known or reasonably available to LTI regarding the subjects set forth in Exhibit A, Section II below, in accordance with the Definitions set forth in the attached Exhibit A, Section I below.

EXHIBIT A

I. DEFINITIONS

1. “Any” shall be understood to include and encompass “all.”
2. The singular shall always include the plural and the present tense shall also include the past tense.
3. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of this request all documents or things that that might otherwise be construed to be outside its scope.
4. “Person” and “persons” mean both natural persons and legal entities, including, without limitation, corporations, companies, firms, partnerships, joint ventures, proprietorships, associations, and governmental bodies or agencies. Unless noted otherwise, references to any person, entity or party herein include its, his or her agents, attorneys, employees, employers, officers, directors, or others acting on behalf of said person, entity, or party.
5. “Relate” or “refer” or any variants thereof, when used in connection with any document, shall be understood to apply if the document directly or indirectly evidences, mentions, discusses, constitutes, concerns, supports, contradicts, refers to, or in any other way deals with the subject matter described in the request in which the term appears.
6. “Document” shall have the broadest meaning ascribed to it by Federal Rule of Civil Procedure 34 and Federal Rule of Evidence 1001.
7. “Communication” means any contact, oral or documentary, formal or informal, at any place or under any circumstances whatsoever whereby information of any nature is transmitted or transferred, including, without limitation, a single person seeing or hearing any information by any means.
8. “LTI,” “Plaintiff,” “You,” and “Your” mean Leader Technologies, Inc., its directors, officers, parents, subsidiaries, predecessors, successors, assigns, agents, servants,

employees, investigators, attorneys, and all other persons and entities representing it or acting on its behalf.

9. “Facebook” means Facebook, Inc.

10. “Litigation” means the action commenced in the District of Delaware (No. 08-cv-862-JJF/LPS) and any actions between the parties.

11. “Persons with knowledge” means any persons (1) who observed or witnessed the event or communication in question; (2) who participated in the event in question; or (3) who discussed the event or communication in question with a person meeting the description in (1) or (2) herein.

12. “Patent-in-suit” and “’761 patent” both mean United States Patent No. 7,139,761.

13. “Leader2Leader” shall be understood to include the LTI product and/or service referred to by LTI as “Leader2Leader,” “L2L,” “Leader2Leader® powered by Digital Leaderboard®,” and/or “Leader’s Enterprise Social Networking technology.”

14. “Prior Art” means any document, action, or information that satisfies, or potentially satisfies, any of the prior art provisions of 35 U.S.C. § 100, et seq., e.g., §§ 102, 103.

15. “Infringe” or any variant thereof refers to any infringement whether direct, contributory, or by inducement.

16. “Complaint” means the complaint filed by LTI in this Litigation.

II. DEPOSITION TOPICS.

Pursuant to Rule 30(b)(6), LTI is required to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf as to the following topics:

1. For each claim of the ’761 patent that LTI contends is infringed by Facebook, the circumstances surrounding the alleged invention of the claim, including, for example, the precise date of conception; the persons involved and the nature of their involvement; the date of actual or constructive reduction to practice; the date and circumstances of first experimental or test use; the date and circumstances of first public disclosure; the date and circumstances of the first offer

to sell or sale; and the steps constituting diligence from conception to actual or constructive reduction to practice.

2. LTI's relationship to the named inventors of the '761 Patent, including any contractual or consulting arrangements.

3. The sales and alleged commercial success of LTI products and/or services, including the number and identity of LTI customers, the identity and quantity of LTI products and/or services that have been sold or otherwise provided to customers, and all revenue, profits or losses derived or resulting from such LTI products and/or services.

4. Any analysis performed by LTI relating to the market or evaluation of competitors or potential competitors.

5. The conception, design, research, experimental work, development, reduction to practice, examination, analysis, testing, evaluation, sales, marketing and public use of each version of each LTI product, including Leader2Leader.

6. Any Prior Art of which LTI is aware that concerns, discloses, describes or claims any alleged invention disclosed, described or claimed in the '761 Patent.

7. All available or potentially available substitutes or non-infringing alternatives (whether acceptable or unacceptable) to the technology claimed in the '761 Patent.

8. Sales, offers to sell or license, or plans to market or sell or license the alleged invention of the '761 Patent or products and/or services utilizing any alleged invention of the '761 Patent.

9. Any consideration, efforts, or attempts to assign, sell, transfer or license the '761 Patent or any patents related thereto.

10. Any damages, lost profits, or other injury that LTI claims to have suffered as a result of Facebook's alleged infringement of the '761 Patent.

11. Any costs or expenditures LTI claims to have incurred as a result of Facebook's alleged infringement of the '761 Patent.

12. LTI's first knowledge or awareness of Facebook.

- 13.** LTI's decision to commence litigation against Facebook.
- 14.** The identity of each version or each LTI product and/or service that LTI contends practices one or more asserted claims of the '761 Patent, including Leader2Leader, and the manner in which such product and/or service allegedly practices the claimed invention.
- 15.** The design, development, operation, testing, evaluation, promotion, marketing and sales of each version of any LTI product that LTI contends practices one or more asserted claims of the '761 Patent, including Leader2Leader.
- 16.** LTI's efforts to mark its product with the '761 Patent, including the identity of each product and/or service that was marked and the analysis, if any, by which the decision to mark such product and/or service was reached.
- 17.** Any copyright registrations filed by LTI relating to LTI's products.
- 18.** Any Communication with any third party concerning the '761 Patent, this Litigation, potential litigation against any party involving the '761 Patent, including the identity of any third parties who signed or were asked to sign non-disclosure agreements relating to any of the foregoing.
- 19.** All potential and/or actual investments in or funding of the costs of this Litigation or any potential litigation against any party involving the '761 Patent, and all related Communications.
- 20.** The history and organizational structure of LTI and all of its subsidiaries and/or related companies, including the identity of any principals, officers and investors of LTI during its history.
- 21.** LTI's relationship with Computer Wizards Consulting, Inc.
- 22.** Any factual basis for LTI's contention that Facebook has induced others to infringe the '761 Patent, as set forth in the Complaint at ¶ 9.
- 23.** Any factual basis for LTI's contention that Facebook has contributorily infringed the '761 Patent, as set forth in the Complaint at ¶ 9.
- 24.** Any factual basis for LTI's contention of willful infringement of the '761 Patent,

as set forth in the Complaint at ¶ 9.

25. Any factual basis for LTI's contention that it is entitled to a permanent injunction against Facebook, as set forth in the Complaint at ¶ 10.

26. Any policy LTI has in place regarding retention of Documents.

27. Any destruction of Documents by LTI, or by any third party at LTI's request, where said Documents related in any manner to the Litigation.

28. Your collection and production of responsive information, documents, communications and things responsive to Facebook's discovery requests, including but not limited to the persons responsible for and involved in your document collection and production; actions taken to locate and produce responsive information, documents, communications and things; files and locations that were searched for responsive information, documents, communications and things; and communications relating thereto.

Dated: February 8, 2010

By: /s/ Melissa H. Keyes

Heidi L. Keefe (pro hac vice)
Mark R. Weinstein (pro hac vice)
Jeffrey Norberg (pro hac vice)
Melissa H. Keyes (pro hac vice)
Elizabeth L. Stameshkin (pro hac vice)
COOLEY GODWARD KRONISH LLP
3000 El Camino Real
5 Palo Alto Square
Palo Alto, CA 94306

Counsel for Facebook, Inc.

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action. My business address is 3000 EI Camino Real, Five Palo Alto Square, Palo Alto, CA 94306.

On February 8, 2010, I served the following document:

DEFENDANT FACEBOOK, INC.'S NOTICE OF DEPOSITION OF DEFENDANT LEADER TECHNOLOGIES, INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)

on the interested parties in this action follows:

<p><u>BY E-MAIL:</u></p> <p>Paul J. Andre, Esq. Lisa Kobialka, Esq. James Hannah, Esq. King & Spalding 333 Twin Dolphin Drive, Suite 400 Redwood Shores, CA 94065</p> <p>pandre@kslaw.com lkobialka@kslaw.com jhannah@kslaw.com</p>	<p><u>BY E-MAIL:</u></p> <p>Philip A. Rovner, Esq. Potter Anderson & Corroon LLP P.O. Box 951 Wilmington, DE 19899-0951</p> <p>provner@potteranderson.com</p>
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[XX] BY ELECTRONIC MAIL: I am personally and readily familiar with the business practice of Cooley Godward Kronish LLP for the preparation and processing of documents in portable document format (PDF) for e-mailing, and I caused said documents to be prepared in PDF and then served by electronic mail to the parties listed above.

I declare that I am employed in the office of a member of the bar of this Court at whose directions the service was made. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 8, 2010 at Palo Alto, California.

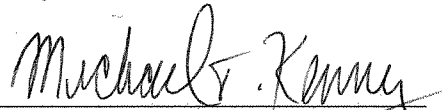

Michael Kenny

EXHIBIT F

From: John Butler <johnbutler@anysystem.com>
Sent: Sunday, December 8, 2002 11:03 PM
To: mmckibben@leader.com
Cc: johnbutler@anysystem.com
Subject: Reply: Got your message

I will get working on the lease for \$97,750 first thing Monday morning

I will try to get this whole thing done by the end of the month

John

-----Original Message-----

From: Michael T. McKibben [mailto:mmckibben@leader.com]
Sent: Sunday, December 08, 2002 10:43 AM
To: John Butler (E-mail)
Subject: RE: Got your message

Hi John:

Let me give you a little more information about what is brewing:

Proprietary & Confidential

We have had numerous developments on the sales front.

The Limited – www.limited.com – We have confirmation now from both the COO, Len Schlessinger, and the CIO, Jon Ricker, that we will acquire a significant contract in January for their implementation of Leader2Leader®, our full suite of technology services, and LeaderPhone®, our teleconferencing system. Both gentlemen are willing to receive VC calls for confirmation with a heads up from me. The point man for these calls will be the CIO, Jon Ricker.

CommPartners – www.commpartners.com – We just received confirmation that LeaderPhone® has been chosen as their new vendor to supply 500,000 to 1,000,000 audio conferencing minutes to CommPartners. This will be at 9.5 cents per minute. They want to also offer Leader2Leader® services when they are ready for market. The contract lead is able to be telephoned with a heads up from me.

Boston Scientific – www.bostonscientific.com – We are well down the path toward a contract for us to supply Leader2Leader® and LeaderPhone® services to support their clinical trials communications. This system will involve 35 trials, up to 80 hospitals per trial, 15 people per hospital, and 50 clinical trials personnel. The current system is paper and fedex. The fedex cost displacement alone pays for the whole system. Boston Scientific executives are available to field VC calls with a heads up from me.

American Express – www.americanexpress.com – We are in serious dialog now to have AMEX co-brand Leader2Leader® and LeaderPhone®. They have asked me to fly to New York to discuss financing Leader. They are also interested in the products for internal use, including providing Leader2Leader® to their 3,800 affiliate outlets around the globe. The head of technology architecture for AMEX will field VC calls with a heads up from me. This person said of our technology: "This is a disruptive technology... I have put a current collaborative computing initiative on hold after seeing Leader2Leader®... It will create its own market. You have created a whole new collaborative industry."

A Chicago-based Trading Company – I meet next week to discuss use of the Leader2Leader® system (with some modifications) for use as a global trader information repository for a Chicago company supporting 100 traders. Comment from the technology chief: "Your approach is of high priority and importance for our technology strategy." This person can take a few calls with a heads up from me.

A Major Japanese Bank – The President of this bank has already given the go ahead to pursue use of Leader2Leader® as its new IP-based ATM platform, first in Japan, then in the Pacific Rim. They have already

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LT1078611

DEFENDANT'S EXHIBIT
DTX 0766
CASE NO. 1:08-CV-00862-LPS

contracted Ernst & Young to pursue the due diligence on Leader. The technology lead on this project is willing to field VC calls.

Netcom Solutions -- www.netcomsol.com -- Leader has signed a Teaming Agreement with a well-respected minority firm engaged in telecommunications and defense contracting to supply LeaderPhone® and Leader2Leader® via Netcom's considerable network. This engagement has begun. Netcom principals will field VC calls with a heads up from me.

-----Original Message-----

From: Michael T. McKibben [mailto:mmckibben@leader.com]

Sent: Sunday, December 08, 2002 10:04 AM

To: John Butler (E-mail)

Subject: Got your message

Hi John:

Got your intriguing message. Are you going to be Santa Claus for Leader people this Christmas?!

I'll try and call you later today. How was your party?

--Mike

Michael T. McKibben
Chairman & CEO
Leader Technologies Incorporated
Spectrum Commerce Center
921 Eastwind Drive, Suite 118
Westerville, Ohio 43081
(614) 890-1986 Voice
(614) 864-7922 Fax
mmckibben@leader.com Email
www.leader.com WWW

To view the LeaderPhone® Teleconferencing Services video, click <http://www.leader.com/leaderphone/cmailbrochure.htm>, then click the video camera icon.

To subscribe to LeaderPhone® Teleconferencing Services, click <https://www.leaderphone.com/leaderphone/index.jsp?803=200068965>

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EXHIBIT G

From: Michael T. McKibben <mmckibben@leader.com>
Sent: Thursday, November 21, 2002 9:01 AM
To: LSchlesinger@LIMITED.com
Subject: Limited-Leader update

Hi Len:

Kurt Schnieders and Herb Berger visited our offices on Monday for a briefing. It was a productive meeting. The next step was for them to discuss immediate possibilities with Jon and Kathleen then for Kathleen to get back to us.

In parallel, I now have all four Ohio-based VC's interested in funding our **\$10M round**. They are **Primus, Blue Chip, Battelle Venture Partners** and **River Cities**. (We are working on others, but these guys are the the furthest along.) A key element in finalizing this financing at a decent valuation is to show them a major contract or pending major contract.

Would you be willing to field a call from the lead VC among this group? They want to hear why a major player is interested in this technology. At this stage, even an estimate from you of what the Leader contract amount will be would go a long way in my valuation negotiations. FYI, interestingly Len, of our three value propositions: *leadership, collaboration* and *intellectual capital*, these guys only get it on the collaboration piece. The strategic and intellectual capital value of what we've built is lost on them. Nonetheless, they see the potential just from the collaboration features.

In exchange for Limited's support in helping us secure this VC round, I'd like to offer the following sweetheart deal:

LeaderPhone® – We're ready to supply teleconferencing to Limited at 5 cents per minute plus the long distance charge. The VCs will simply want to hear what Limited's minutes-per-month ramp up projection is over 6-12-18 months. We will also add Limited-requested custom features at no charge. In addition, if needed, we have Sprint ready to stand with us on unique supplier requirements you might have if that is necessary. We are actually moving to a least-cost routing supplier right now that is much cheaper than Sprint and actually contracts with Sprint, AT&T, etc. We'll configure this part of the solution however Jon and Kathleen wish.

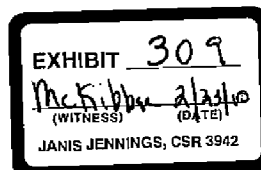
Leader2Leader® – The ideal "marquee" Leader2Leader® contract for us in these VC valuation negotiations would be a \$1.5 million license of Leader2Leader®. May I suggest that Limited purchase the licenses for 2,000 Leader2Leader® user-seats for 3 years. That works out to \$20.83 per user per month. We can include a clause which would permit any unused license fees to be applied to future LeaderPhone® charges at your discretion. This helps us in another way... it also helps us establish a market rate for our user licenses. We had projected it to be \$20-40 per month depending on amounts of storage used. Clearly, with Limited we will be generous on storage and thus create plenty of value there. In addition, we will be very flexible in adding Limited-requested features to the system.

My assessment so far is that we have potentially strong fits in:

- TELECONFERENCING: more features, less cost, more secure
- DESIGN RESOURCES/COLLABORATION: more features, more convenient, less cost, easier to support, more secure, dynamic online resources, version control
- PROJECT RESOURCES/COLLABORATION: ditto
- SUPPLIER RESOURCES/COLLABORATION: ditto
- STORE RESOURCES/COMMUNICATIONS: online training and store resources, cuts courier costs, easier to support, thin client makes for easier support of basic communications like Email, fax, file exchange, bulletin boards, news, ideas, feedback, security, supports handhelds We look forward to reviewing the short list from our meeting with Kurt and Herb.

Thanks, Len, for your support and encouragement. These steps most definitely will "put us over the top" in our next step of growth.

I look forward to hearing from you on how quickly you think we can reasonably move on this. The sooner the better for us. It's brutal out here in the financing world right now. Every "angle" to get these financing guys out of the cellar is golden.



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LT1074788

DEFENDANT'S EXHIBIT
 DTX 0185
 CASE NO. 1:08-CV-00862-LPS

Yours truly,

—Mike

Michael T. McKibben
Chairman & CEO
Leader Technologies Incorporated
(614) 890-1986 VOICE
(614) 496-5442 CELL
mmckibben@leader.com EMAIL

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EXHIBIT H

From: Steve Hanna <steve@computerwizards.com>
Sent: Thursday, October 10, 2002 8:09 AM
To: cwcall@computerwizards.com
Subject: Yesterday in CWC (Tuesady-Wednesday, 10/8-9/2002)

Note: you will see a duplicate of this in the form of a reduced version that I am sending to leaderdev this morning

GENERAL:

Mike & Jerry had meetings and demos Tuesday and Wednesday; Mike and Jerry are in Cleveland today for meetings and demos (Mike indicated that the Mars demo would be some time around 9:30 this morning).

**Mike & Jerry are talking with a large company that is a long distance phone service provider or sorts they are more of a broker, buying and selling from all the major carriers and as a result, they can resell minutes in bulk at a much reduced rate. Jerry feels that we can cut our long distance phone costs in half, thereby allowing us to lower our price on LP and/or increase our profit margin.

Financial Status:

Mike received confirmation late yesterday for depositing the investor funds; this will be deposited this morning; Leader will work with the bank to make these funds immediately available such that we can get & deposit a check today from Leader. At this moment we are still projecting a Tuesday pay date.

PERSONNEL Misc.:

Travel / vacation:

- o Jeff out most of Monday and Tuesday
- o I was in Columbus Monday and Tuesday
- o Eric was in Columbus Tuesday and Yesterday

DEVELOPMENT OVERVIEW:

-We are in the midst of an extremely important and demanding development cycle. With our limited resources we have to support activities on a variety of fronts, and that is frustrating for all of us but that is just the way it has to be right now.

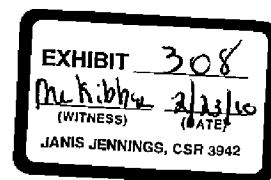
We are asking for as much of your time as you can give now in support of these tasks.

Below is an attempt to summarize the different efforts and who is working these primarily, at this time.

**L2L : we have verbally committed to selling a system to Boston Scientific; in general, the current level of functionality is sufficient for the initial roll out to Boston Scientific (with some exceptions one being the implementation of the Idea Registry). Below are the current tasks associated with L2L:

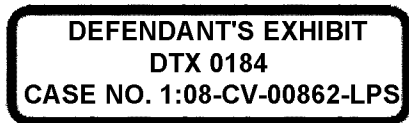
- 1)Performance -> 1st order is implementing VBSF 3.01 in the application ... Tim, Jeff
- > 2nd order will be use of Optimizit across the updated system Jeff

- 2)U/D Mars -> work through current problems on main as we did for LP and u/d Mikes demo & beta machine so that the code gets more exercise Mark (POC), Andrea, Wendy, Kim (Dave and Steve testing)



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3)Idea Registry Implementation -> Betsy

****SC:** Mike & Jerry tell us that they have a customer (SWACO) and they feel that a contract could be in place within 1-2 months: -> Eric and Bill primary (Tim and Bud part time)

*LP Redundant system = Brad and Jeff, and Bud

*LP production system support -> all as required right now we do not have a 'next update' scheduled and will try to delay work in this area

NON LEADER CUSTOMER ACTIVITIES:

- o DuJour: DOWN
- o UVJVS: n/a
- o Spammotel: experienced a major slowdown over night Tuesday, starting in the evening; Bud was able to remove a bad email that was monopolizing the majority of the system resources; also, Jeff has been spending some time working with the new Spammotel server
- o Atlas - n/a

LEADERPHONE(tm) Support & Development:

- o Following the Monday night production update, a problem was discovered in the Sales tool (this was found by Brad Dorsey); Betsy fixed this Tuesday afternoon and a small update was done Tuesday night.
- o Yesterday, another issue was uncovered in the Backoffice arena that resulted in a customers cc being rejected something to do with the user's address processing; Bill fixed this problem and made the change on production as well.
- o we are going forward with the changes to get CTI and the Application using common vbsf jar files.
- o various members of the team are working actions/research tasks associated with establishing the redundant LP system

L2L:

- o we have shifted our focus back to L2L; we are targeting an update to Mars as soon as we can get the code on cleaned up; Mark is the POC for this effort, and we will be creating a CVS branch today

MILESTONES:

- o move the Beta equipment suite from Leader to the hosting facility (Adelphia).... TBR ?????
- o start the external beta with external customer(s) TBR ?????

SC:

-Bill and Eric are the primary resources working this. We have turned the heat up on this based on the understanding from Mike that he is working a deal for implementing the SC capability at SWACO.

Steven E. Hanna
 Vice President of Technologies
 Leader Technologies Incorporated
 Spectrum Commerce Center
 921 Eastwind Drive, Suite 118
 Westerville, Ohio 43018
 (614) 890-1986 Voice
 shanna@leader.com Email
 hanna1@palm.net (Mobile email)
 www.leader.com WWW

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EXHIBIT I

From: Mrfugler@aol.com
Sent: Monday, November 4, 2002 12:32 PM
To: mmckibben@leader.com
Subject: RE: Week of Nov. 4th Schedule

I leave Tuesday late afternoon for Europe, no change possible, I think the best thing to do is have a meeting by phone late Monday afternoon or Tuesday when you are available, we can accomplish enough to get started and we can meet in person on my return

Michael

-----Original Message-----

From: Michael T. McKibben [mailto:mmckibben@leader.com]
Sent: Sunday, November 03, 2002 2:54 PM
To: Mrfugler@aol.com
Cc: dpatterson@conferenceleader.com; lluby@leader.com
Subject: Week of Nov. 4th Schedule

Hi Michael:

I got your latest information on your availability as Mon or Tues this week. I'm in the office today double-checking my calendar and realized that I have a conflicting meeting on Tues AM. Could Wednesday, Nov. 6th work for you in Atlanta (or wherever)? I just called and left a message for you on your cell phone. I trust you received our Executive Summary nonetheless.

We had a phenomenal selling week last week. The Limited www.limited.com just committed to contracting with Leader for LeaderPhone(r) and Leader2Leader(tm). They also want to take a close look at our Smart Camera(tm). We met with their COO, CIO and CTO.

I look forward to meeting you.

Yours sincerely,

--Mike

Michael T. McKibben
Chairman & CEO
Leader Technologies Incorporated
Spectrum Commerce Center
921 Eastwind Drive, Suite 118
Westerville, Ohio 43081
(614) 890-1986 Voice
(614) 496-5442 Cellular
(614) 864-7922 Fax
mmckibben@leader.com Email
www.leader.com WWW

EXHIBIT 310
McKibben 11/4/02
(WITNESS) (DATE)
JANIS JENNINGS, CSR 3942

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LT1095216

DEFENDANT'S EXHIBIT
DTX 0186
CASE NO. 1:08-CV-00862-LPS

To view the LeaderPhone(r) Teleconferencing Services video, click <http://www.leader.com/leaderphone/emailbrochure.htm>, then click the video camera icon.

To subscribe to LeaderPhone(r) Teleconferencing Services, click <https://www.leaderphone.com/leaderphone/index.jsp?803=200068965>

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-----Original Message-----

From: Michael T. McKibben [<mailto:mmckibben@leader.com>]
Sent: Monday, October 28, 2002 8:40 AM
To: 'Mrfugler@aol.com'
Cc: 'dpatterson@conferenceleader.com'
Subject: RE: "The loop" we seemed to have gotten out of the loop

Hi Michael:

I'll try and give you a call. I'm in Dallas tomorrow at Arter & Hadden's office, so maybe we'll also try then.

Thanks,

--Mike

-----Original Message-----

From: Mrfugler@aol.com [<mailto:Mrfugler@aol.com>]
Sent: Saturday, October 26, 2002 10:54 AM
To: mmckibben@leader.com
Subject: "The loop" we seemed to have gotten out of the loop

Let's try and reconnect this coming week and see what we can do. I know that your guys and I tried to connect unsuccessfully but we all tried a number of times. Maybe this week.

Michael

917-834 7250

EXHIBIT J

To: Leader Members
From: Michael T. McKibben
 Founder, CEO & Senior Manager
Subject: ... Leader Report
Date: December 10, 2001

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Holiday Greetings! I hope this letter finds you healthy and happy at this special time of year. Speaking for myself, I know that I am hugging my loved ones just a little tighter this year and appreciating them just a little more after the events of September 11.

I am pleased to bring you a strong report on the state of the company as we move into this 2001 holiday season. This is the first printed communication I have sent to all our members since September 11, so please permit me to put those events in a little Leader context.

While all of us in the Leader team work tirelessly, we have heavy hearts. Reports are still coming in from our members in the New York and New Jersey areas of family, friends, neighbors, colleagues and acquaintances who died in the tragedy of September 11, 2001. We hear about the recurring nightmares among the children of members who live near Ground Zero. One Leader member lost 5 in his company plus the loss of the 3-year old son of an employee who was a passenger on one of the planes. Another Leader member attended 9 funerals in the span of two weeks – all services for dads who left grieving widows and young children. One Leader Director lost his best friend who worked on the 104th floor of Tower 1. Yet another Leader Director was a good friend of conservative commentator Barbara Olson, wife of the Solicitor General, who was a passenger on American Flight 77 that crashed into the Pentagon. Unfortunately, we could fill pages relating similar stories.



United We Stand

Our corporate website at www.leader.com expresses some of our feelings. I think the additional thing I will say is that we have suddenly become more aware of what it means to be American and what it means to live in a *free country*. We are not perfect, for sure, but our Founding Fathers, in their wisdom and guided by God, did set in motion a new type of governance on this planet; a governance that depends upon moral men and women; a type of governance that gives hope and opportunity to the entrepreneurial spirit. Leader is a good example of that. Back in 1997 I had an idea for a new business and new product platform. Armed with that idea (and little else), I set up office in our spare bedroom and began planning for the company that is now Leader Technologies. We had no enterprise sponsors, no deep pockets, no insider relationships... just a dream, sheer determination and a country where dreams can be realized if one is willing to work hard. **Only in America.** Others like Ben Zacks, Michael Greulich, Adam Steiger, Brad Whiteman, Major General Freeze, Jeff Lamb, Steve & Tina Engle, and Karen Houser caught the vision (forgive me for not naming every Leader insider here – please see their names at the company website under “Management”). We

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EXHIBIT 301
McKibben Zacks
(WITNESS) (DATE)
JANIS JENNINGS, CSR 3942

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

LTI_014121

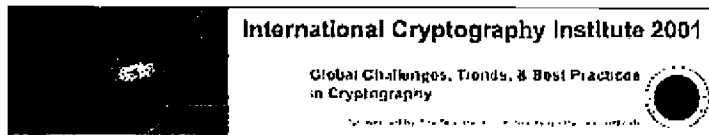
DEFENDANT'S EXHIBIT
DTX 0178
CASE NO. 1:08-CV-00862-LPS

Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001. page 2 of 6

gained traction steadily. Along the way we met each of you. You caught the vision. The rest is history that brings us to today and the main purpose of this letter which is to set the wheels in motion for the next phase of growth in our company.

Whatever it is about our country that makes Leader possible is some of what is unique about America. We must hold fast to these unique qualities and make sure we preserve those lofty principles for posterity.

We are pleased to report the following highlights of the successful work efforts of the Leader team. This list is by no means comprehensive, nor can it convey the significant levels of "behind the scenes" effort underway. I can tell you that the length and breadth of Leader's sales, marketing and alliance-building expands daily in commercial, academic and government circles. Very powerful and influential people are being introduced to Leader and our technology. There is *much interest and enthusiasm* for the breakthroughs we have made in communications technology.



For example, just last week I attended with our Director Ed Detwiler and CTO Jeff Lamb the invitation-only International

Cryptography¹ Institute 2001 in Washington D.C. Speaker after speaker discussed the state of modern computing and laid out their recommended agendas for the next decade. Those agendas had **Leader2Leader™** written all over them, metaphorically speaking. Many of the United States' leading thinkers on e-commerce, cryptography, electronic security and privacy were at this invitation-only conference. People like Phil Zimmerman, the inventor of PGP and crusader for privacy rights in cyberspace; Dr. Whitfield Diffie, Sun Microsystems Vice President and inventor of the Diffie/Hellman encryption standard; Bruce Sterling, science fiction writer and author of *The Hacker Crackdown: Law and Disorder on the Electronic Frontier*; Special Agent Marcus C. Thomas, Section Chief of the FBI's Cyber Technology Section at Quantico; Brigadier General James Armor, Directorate Director, the National Reconnaissance Office; and David Kahn, historian and author of the seminal work on the history of cryptography, *The Codebreakers*; and many others of equal stature. These people presented many sides of the issue and sometimes disagreed fundamentally. However, there was an uncanny convergence of agreement that platforms (like Leader's) are needed to help the national interest vs. personal privacy debate find its footing.

Breaking News: I have just engaged Phil Zimmerman, the inventor of PGP², to consult with our technical team on our privacy and security systems and standards. *InfoWorld* named Phil one of the Top 10 Innovators in E-business in 2000. Phil received the 1995 Chrysler Award for Innovation in Design. We will also be talking to Phil about the potential for a strategic alliance with respect to new products he is developing and our emerging product lines.

¹ Cryptography deals with the storing and transmission of data so that it is secure and private. Despite the fact that "crypto" goes back many millennia (it's a Greek word meaning hidden writing), modern-day standards have only started to emerge recently. Competing interests abound in this field all the way from the open-standards folks and civil libertarians on one side to privacy advocates, government, law enforcement and intelligence on the other. For example, we want the CIA to be able to intercept and decrypt Osama bin Laden's electronic communications to his international cells, but do you want them to have those same powers to open and read your love letters to your sweetheart? Tough issues.

² PGP is the de facto international standard for E-mail encryption today.

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Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 3 of 6

Other business highlights:

1. **LeaderPhone™ Teleconferencing Services** officially launched in September 2001. Go to www.leaderphone.com to sign up and use it. Spread the word. I am pleased to announce that the company is now booking revenue. Early sales affiliates include Anysystem.com (New York), Communications Marketing Systems (Denver), Data-tell (Columbus), Ameritraining (Columbus), Adelphia (Pittsburgh). Early customers include the preceding plus the Minneapolis Jaycees, The Fountains (healthcare), the Railroad Engineer's Union, and The National Intellectual Property Law Institute. A host of new sales accounts are being lined up by Tom Ayres, our new Chief Sales and Marketing Officer. As an example, Data-tell has a 20+ person direct sales force and sells telecommunications products to the Fortune 2000. As of last Friday, LeaderPhone™ will become their teleconferencing offering. Also, we are now slated for an appointment with Ford Motor Company that is interested in looking at LeaderPhone™ for their 5,000,000 teleconferencing minutes per month.



Fig. 1: LeaderPhone™ Teleconferencing Services Home Page

2. **Fenwick & West LLP**, a leading Silicon Valley high technology law firm, has been engaged to assist us in positioning the company for growth. Fenwick & West was named a Fortune 2001 "100 BEST COMPANIES TO WORK FOR." They have offices in Palo Alto, San Francisco and Washington DC. You can read more about Fenwick and West on their website at www.fenwick.com.

3. **Steven P. Gonzalez**, former AT&T Sales Vice President for IP Services joins the Board. You can read more about Steve on our website. Go to www.leader.com then click the "Management" button. I am thrilled to have Steve on our Board. In my opinion, Steve is probably the most experienced and successful corporate sales executive in telecom and high technology today. He is experienced on both sides of the ball (data and telecom). This experience will serve us well. Steve has had many other offers for Board seats and has selected Leader among them. As an example of Steve's hands on experience, Steve created and profitably ran a 150+ person e-commerce direct sales force that sold all of AT&T's e-commerce products until the mid-1990's. (Read: They sold electronic stuff at a profit, grew their business every year, and made real money. Strangely, this had become a novel thought during the heady dotcom days but is now coming back into vogue. As most of you will recall, I have been preaching good fundamentals from Day 1.)

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Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 4 of 6

4. Leader is on the cusp of signing research and development agreement with a major national research laboratory for sales rights to advanced technology developed by the laboratory to be marketed in conjunction with the Leader2Leader™ enterprise platform. As some of you are aware, this agreement has been in process for a number of months now. It experienced various delays due to procedural shortcomings on the other side that have now been worked out. In fact, officials from this laboratory recently made a two-day trip to Columbus for meetings at our offices. Leader's association with this laboratory, while enabling us to obtain powerful intellectual property rights, also "puts us on the map" with respect to technological validation. It is akin to having an AT&T Bell Labs endorsement. In addition, it positions our technology for wide deployment among prospective government purchasers.
5. Leader teams with the University of Dayton Research Institute to pursue a joint venture with Wright Patterson Air Force Base to install Leader2Leader™ at Wright Patterson and build special data sharing modules for use by the US Air Force. I cannot say a lot more about this opportunity other than it is in process now. Funding meetings are occurring right now for this project. We already have the technical sign-off from the government customer, now we must get through the financing hurdles, which, tragically, became suddenly easier after September 11.
6. Thomas E. Ayres, former AT&T General Manager and former Area Vice President of Rhythms NetConnections, joins Leader as Chief Sales and Marketing Officer. I have known Tom and his wife Susan for 8 years. He is a highly skilled corporate sales executive, superb sales force motivator, and powerful closer. He exceeds his plan wherever he goes. He, like Steve Gonzalez, is experienced on "both sides of the ball" (data and telecom) which makes his experience tailor-made for marketing LeaderPhone™, Leader2Leader™ and Click2Leader™.
7. Bill DeGenaro, former Director of Business Research & Analysis for 3M Company and former Director of Strategic Countermeasures Planning for the White House joins the Leader Advisory Board. Bill has already made the trip to Columbus to train our personnel on detecting industrial espionage techniques that could be used against Leader to steal our trade secrets. Bill is also a highly skilled corporate strategist. His advice will be invaluable as we grow. Few people know that much of the 3M Company quality story written about in *Built to Last* (HarperBusiness) was a plan conceived and implement by none other than our new Advisor, Bill DeGenaro, when he was a 3M Company executive.



Fig. 2 – Our large enterprise B2B Brand.

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Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 5 of 6

8. Other significant Market Validations continue:

- a. **Jerry Rampelt**, a National Malcolm Baldrige Award Examiner, invests. For those of you unfamiliar with "the quality movement" in corporate America, the Malcolm Baldrige Award is the Super Bowl ring of quality. The Baldrige Committee is comprised of the finest strategy and organizational development minds in the world. Jerry's investment couldn't be a better signal to the quality world that **Leader2Leader™** is about ready to compete for the ring.
 - b. **Anysystem.com**, a major re-seller of large system computer gear, invests significant platform hardware for the staging of **Leader2Leader(tm)**. This development allows us a lot of flexibility to engage major beta users in testing **Leader2Leader™** in the coming months. With this platform, we don't need to bother internal IT shops with our requirements. We can simply invite "early innovator" testers from these firms to use the **Leader2Leader™** beta on our equipment and under our supervision and support. I cannot tell you how many selling obstacles this platform overcomes.
 - c. **Len Schlesinger**, COO, The Limited and formerly the George F. Baker, Jr. Professor of Business Administration at the Harvard Business School agrees to this endorsement after his latest viewing of the **Leader2Leader™** platform: "This is impressive. I could help manage the entire Limited family of companies from the **Leader2Leader™** system." Len saw our concepts back in 1998 and has followed us from a distance. While The Limited is not yet a customer, it is a testament to how far we've come that one of the most powerful people in the fashion world is willing to have his name associated with Leader even before the product is ready.
 - d. **Ed Detwiler**, former Sr. Vice President of Bank One, joins the Leader Board of Directors and makes a personal investment: "Leader has a unique Fortune 50 caliber management team for a 3.5-year-old up start company. Ed built what is today the 5th largest banking computer system in the United States. As many of you know, Ed has now joined Leader on a full time basis, is a Director, and is our **LeaderPhone™** Product Manager.
 - e. **Tom Ayres**, former AT&T General Manager and Vice President at Rhythms NetConnections says upon joining the Leader team as Chief Sales and Marketing Officer: "Every bit of my experience in the telecommunications and networking arenas tells me that Leader's product line will be in great demand. I plan to make my retirement with this opportunity. This opportunity is once in a lifetime."
 - f. **Steve Monaghan**, former Vice President for Ericsson: "**Leader2Leader™** is complete. You have nailed all the issues that have prevented others from being successful at what you have done. I want on board the Leader team." (Note: We have just reached agreement with Steve and he just started selling enterprise accounts for Leader full time last week.)
9. **Financing.** We continue to raise "angel" money from a small number of accredited investors. We are preparing to discuss financing with venture capitalists regarding a \$7-10 million round. If you or someone you know may have an interest in



Fig. 3 – Our Internet subscription-based B2B & B2C Brand.

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Message from the Leader Senior Manager, Michael T. McKibben, December 4, 2001, page 6 of 6

considering an investment prior to us completing this \$7-10 million round, please contact me.

10. **Intellectual Property.** We have filed for numerous trademarks. Copyright and patent filings are being prepared by our intellectual property counsel, The Chandler Law Firm Chartered.
11. **Shift from LLC to C corporate form; 3-for-2 Split.** Our key advisors have recommended that we make the planned shift from LLC to C corporate form now. The Managers of Leader LLC agreed. You will receive separate materials concerning the entity conversion transaction. **We have decided that in conjunction with the recapitalization from an LLC to C corporation we will, in effect, split all Member equity holdings 3 for 2.**

On my own behalf and on behalf of the whole Leader team I want to thank you for being a part of a business opportunity that I believe can reshape modern computing. It isn't many times in one's lifetime that one can be a part of such a possibility. This Merger (shift of corporate form to a C corporation) is a next step along that pathway.

Have a wonderful holiday season with your friends and family. We have a lot to be thankful for.

Yours sincerely,

Michael T. McKibben
CEO & Senior Manager
Leader Technologies LLC

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www.leader.com

Leader.

921 Eastwood Drive
Suite 116
Westerville, Ohio 43081
USA614 890.1986 VOICE
614 864.7922 FAX

To: Leader Members
From: Mike McKibben, CEO & Senior Manager
Date: May 1, 2002
Subject: Status Report & LLC-to-C Corp Conversion

Greetings to each of you and your families. I hope this letter finds you happy and in good health. I have much to report and too little space to report it, so I will try to summarize.

Leader2Leader™ trials are starting as we speak. In fact, I did my first remote presentation Friday – I was here in Columbus and the other person was in Washington D.C. It went well. It is gratifying to see the pent up demand for our platform. The response from those who have seen the platform is uniformly enthusiastic, from both large and small companies. Our task over this next year is to solidify our financing and roll out the platform to accommodate this demand. We are working hard to make sure we take full advantage of the global business potential of our powerful communications platform. **Click2Lead™** will be the subscription version of the platform version that will enable anyone to sign up and use the product. We expect that **Click2Lead™** will be available starting sometime in the summer after the platform has been sufficiently debugged.


LeaderPhone™ Teleconferencing Services is out on the market now, is working like a champ and gaining customers. Our sales ramp up has been slower than expected, but we continue to refine our approaches and affiliate relationships to speed that up. I am pleased to tell you that **LeaderPhone™** is currently under evaluation to become the teleconferencing service for the Commonwealth of Pennsylvania. One of its unique features is the ability of the server to call you (instead of you calling a 1-800 number with a pre-defined PIN number). This powerful feature, even though much more convenient, takes customers some getting used to. They are used to having to work harder to get into a conference call! For this reason, we will likely offer a more expensive operator-assisted service as well to mimic what people do now.

Leader Smart Camera™. As many of you know, we have acquired the property rights to a Smart Camera™ developed at a well-known National Research Laboratory. We have also entered a Cooperative Research and Development Agreement with that laboratory. These are very valuable rights to a video security camera that will be connected to the **Leader2Leader™** platform and marketed as "Leader Smart Camera™". We believe that, especially following the events of September 11, these devices and our platform will be in great demand. We are currently pursuing a single local opportunity that would deploy 100 cameras this year. As with **LeaderPhone™** we plan to put an executive and budget in place to pursue this very important vertical market for **Leader2Leader™**.

Moving Forward. One of the important next steps in Leader's business strategy is to better position the company for future growth. We believe this can best be facilitated by the conversion of the company from an Ohio limited liability company to a Delaware C corporation.

The enclosed LLC-to-C conversion package explains what will happen. Please feel free to call me if you have any questions. This mailing is informational. There is nothing for you to do yet. Stay tuned and we will let you know when you are to cast your vote.

Yours truly,


 Michael T. McKibben
 CEO & Senior Manager

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EXHIBIT K

From: Steve Hanna <steve@computerwizards.com>
Sent: Thursday, August 29, 2002 10:26 AM
To: khouser@leader.com
Subject: [Fwd: Yesterday in CWC (Monday-Wednesday, 8/26-28/2002)]

Karen ... just wanted to share this one with you you no doubt will not fully approve of all that I share, but I thought this one would be meaningful to you.
Steve

GENERAL:
Mike had 2 demos on Tuesday (one to the State of OH Police who are interested in the L2L platform); yesterday there was one demo/presentation to the Ohio Education Association.
The calendar does not show any demos today or tomorrow, however I believe that Mike has activity on Friday?

** I had lunch with Mike yesterday. I thought that I would take a few minutes and jot down some of the highlights from the conversation to keep everyone as 'in the loop' as possible.
Mike is very excited about where are as a company and the current contacts that he has been and is making, both on the investor front, but also with prospective customers.
Last week he meet with the 10th largest law firms in the U.S. and they were interested in the use of the LP service and also in L2L. There turned out to be a huge coincidence that worked in our favor, as the head of this firm was a former student of professor Chandler, Mike took full advantage of this relationship and got the professor on the phone real time to engage in major smoozing. The firm would like to get involved 1) they are trying out LP 2) they may work with us to get us in front of big \$\$ investors to complete the new large round of investment \$\$ for this they would like to be our corporate council, which is in conflict with the current relationship we have with Fenwick & West more balls for Mike to juggle...:-)
He was encouraged by the meeting with Dell computers, but he did not dwell on that; he said that they (Dell) were to have an internal meeting yesterday to discuss the LP service & them he had not heard anything as of mid day yesterday.

Mike acknowledged the fact that we are in 'low' period financially; he is aggressively attacking that issue (as we have observed over the past two weeks);
his view is that things will continue to be tight for at least the next 6 weeks, and should ease some after that.

Mike feels that we are close to bigger deals on both the LP and L2L front. There are high level discussions happening with companies such as Mastercard, Bankone and others for wholesale use of the LP service; there are follow up meetings scheduled with multi-national corporations regarding the L2L platform, as well as strong interests from smaller organizations such as the Ohio Police, etc.

Good news / Bad news ...My perspective:
-First, the bad news Karen's last full time employment with Leader

EXHIBIT 305
McKibben 2/23/10
(WITNESS) (DATE)
JANIS JENNINGS, CSR 3942

Highly Confidential - Attorneys' Eyes Only

LTI 145929

DEFENDANT'S EXHIBIT
DTX 0181
CASE NO. 1:08-CV-00862-LPS

[Fwd: Yesterday in CWC (Monday-Wednesday, 8/26-28/2002)]

is this week she keeps telling everyone that is the case but there just does not seem to be the concern / preparation on the part of the rest of Leader that there SHOULD be. I am afraid that those in the position to make a difference are too busy and are relying too much on her promise to work part time in the future what they aren't grasping is that she WILL be PART-TIME only she will not be there to do all of the underlying tasks that keep the office propped up each and every day.

I have come to respect and rely on Karen, professionally and as a friend she will be sorely missed.

-Scott Heitkamp (accountant):

Scott is on board and has jumped in with both feet. He is doing a great job in these early days with the company. I liked Gloria and miss seeing her at the office, but I have to say that Scott is a more outgoing, aggressive force in the accounting/controller position and will be a very positive factor for Leader and CWC.

-Lisa Porter (in-house direct Sales person):

Lisa has hit the ground running. She has come up to speed on the LP product very fast and has immediately begun the process of establishing a customer base. Her experience and direct customer contact will be a very positive force for our team, and we need to pay attention to her inputs when they start coming to us, as the result of her first hand exposure to LP customers.

-Kim Wohlford - LP Operator plus:

Kim was a steal! She was brought in under the umbrella of providing the LP Operator assistance to LP customers. It was understood up front that there was a huge unknown as to the level of effort for the operator position, and as a result we made sure that the person knew that they would be asked to wear many hats, at least one of those being an admin. assistant hat. Well, she not only easily covers the operator & admin. requirements, she brings developer talents that have already been engaged.

-Jerry Rampelt - Senior level, business development, etc.:

Jerry's role is not one that most of us have direct day-to-day contact with, however it 'appears' that he is a positive factor already. Mike has been a one-man show on the investor & business development front for quite a while. Jerry is bringing with him a 'new' set of potential investors and companies that might be interested in the Leader products. He has set up many investor and potential customer meetings. I don't think that he is a dynamic presenter, etc. (like Mike), but he appears to be a great front man, establishing contacts with investors and companies and 'setting the table' for Mike. Time will tell how well this all works out, but so far so good.

[I provided these notes to give the remote folks greater insight into the newest members of our larger team and their roles I hope it is helpful]

PERSONNEL Misc.:

Travel / vacation:

-none Monday

-Eric and I were in Columbus Tuesday & Wednesday (yesterday).

*Vonda's birthday is Today Happy Birthday Vonda!

NON LEADER CUSTOMER ACTIVITIES:

***Flag is continuing to be a problem yesterday Bud and others spent time trying to resolve performance issues; today the saga continues email 'seems' ok, but taskman is unavailable, and other hosted sites on that server are hit and miss.

Spammotel - Bud has assembled a new server for the new version of Spammote;, once configured this will be shipped to Jeff and he will begin work on the modified version of spammotel**Bud has run into issues with the server that have delayed its completion
Atlas - Jeff is continuing some low level work for Chuck.

LEADERPHONE(tm) Support & Development:

-We created the branch and began testing Monday ... initial problems were uncovered by Betsy; testing Tuesday and Wednesday uncovered cosmetic issues that Andrew and Wendy addressed. There are low level issues identified, but no show stoppers.
-work continues in the background, identifying the necessary pieces of a redundant LP system

L2L:

-Andrea & Betsy are working changes to User Package ... these are being done on Tim's branch and will be merged with Tim's work to main soon.
-the long awaited release of VBSF (3.1) occurred yesterday; Tim is making final tweaks to the current branch that implements all of the necessary new schema, etc. for 3.x compatibility, while still using VBSF 2.3 features; this will be merged to main soon (perhaps today) and we will test and fix remaining areas in the application. A new branch will be created by Tim, where he will implement the performance enhancing features of 3.1.
-Mark has implemented the PDF file conversion feature for projector, and this will go to main today

MILESTONES:

o move the Beta equipment suite from Leader to the hosting facility (Adelphia).... now looking like the 2nd week in Sept.
o start the external beta with external customer(s) now looking like NET 2nd week in Sept.

SC:

-Work is continuing at a low level (Eric, and Bill)

--
Steven E. Hanna
Vice President of Technologies
Leader Technologies Incorporated
Spectrum Commerce Center
921 Eastwind Drive, Suite 118
Westerville, Ohio 43018
(614) 890-1986 Voice
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www.leader.com WWW

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[Fwd: Yesterday in CWC (Monday-Wednesday, 8/26-28/2002)]

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--

Steven E. Hanna
Vice President of Technologies
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EXHIBIT L

APPROV

12/11/02
 Jc906 U.S. PTD

PTO/SB/16 (10-01)
 Approved for use through 10/31/2002 OMB 0651-0032
 U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
 Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
 Jc906 U.S. PTD
 07/432255
 12/11/02

PROVISIONAL APPLICATION FOR PATENT COVER SHEET

This is a request for filing a PROVISIONAL APPLICATION FOR PATENT under 37 CFR 1.53 (c).

Express Mail Label No.

INVENTOR(S)

Given Name (first and middle [if any])	Family Name or Surname	Residence (City and either State or Foreign Country)
Michael T. Jeff R.	McKibben Lamb	Westerville, Ohio Westerville, Ohio

Additional inventors are being named on the ___ separately numbered sheets attached hereto

TITLE OF THE INVENTION (500 characters max)

METHOD FOR DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES

Direct all correspondence to:

CORRESPONDENCE ADDRESS

Customer Number

25534

Place Customer Number
Bar Code Label here

OR

Type Customer Number here

Firm or
Individual Name

Address

Address

City

State

ZIP

Country

Telephone

Fax

ENCLOSED APPLICATION PARTS (check all that apply)

Specification Number of Pages

18

CD(s), Number

Drawing(s) Number of Sheets

Other (specify)

Application Data Sheet. See 37 CFR 1.76

METHOD OF PAYMENT OF FILING FEES FOR THIS PROVISIONAL APPLICATION FOR PATENT

Applicant claims small entity status. See 37 CFR 1.27.

A check or money order is enclosed to cover the filing fees

FILING FEE
AMOUNT (\$)

The Commissioner is hereby authorized to charge filing fees or credit any overpayment to Deposit Account Number:

80.00

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The invention was made by an agency of the United States Government or under a contract with an agency of the United States Government

No

Yes, the name of the U.S. Government agency and the Government contract number are _____

Respectfully submitted,

SIGNATURE

Frederick N. Samuels

Date

12/11/2002

REGISTRATION NO.

34715

(if appropriate)

Docket Number:

547.0003P

TYPED or PRINTED NAME Frederick N. Samuels

TELEPHONE 202-331-8777

USE ONLY FOR FILING A PROVISIONAL APPLICATION FOR PATENT

This collection of information is required by 37 CFR 1.51. The information is used by the public to file (and by the PTO to process) a provisional application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the complete provisional application to the PTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C., 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Box Provisional Application, Assistant Commissioner for Patents, Washington, D.C. 20231.

Plaintiff's Trial Exhibit

PTX-3

Case No. 08-CV-00862

METHOD FOR DYNAMIC ASSOCIATION OF ELECTRONICALLY STORED INFORMATION WITH ITERATIVE WORKFLOW CHANGES

I. Field of the Invention

[0001] This invention relates to management and storage of electronic information. More particularly, this invention relates to new structures and methods for creating relationships between users, applications, files and folders.

II. Background of the Invention

[0002] Digital communications solutions are presently supplied to users in ways that are completely divorced from their business context. A particular item of communication provides little or no inherent understanding of how that communication furthers the purpose and intent of the group or enterprise. In other words, an email inbox collects emails about all topics, business and personal. The email application itself is not discerning about topic, priority or context beyond perhaps rudimentary "message filters" that will look for certain key words or people then place those items in target folders. Generally, it simply presents a sequential list of messages received. Similarly, a fax machine receives fax pages in sequence. A fax machine is not discerning about topic, priority or context. It simply outputs fax pages. Once received, it remains the task of the recipient to sort, categorize and organize these items of communication in ways most meaningful to that person. The organization task generally occurs outside the context of the particular communications tool itself.

[0003] Typical methods for organization of communications are limited and fragmented. For example, for an email, the recipient may either leave all email in the inbox or move it to another electronic folder. For a fax, the recipient is likely to place that fax in a file folder that is identified by project name or name of recipient. These

typical methods of organizing communications are wholly inadequate for a number of reasons:

[0004] 1. **Organization** – the recipient is left to do all the work of organization and categorization of the communications rather than having the systems themselves doing that work for them, automatically.

[0005] 2. **Leadership** – the linkage between business strategy and an individual act of communication is non-existent.

[0006] 3. **Categorization** – the items themselves rarely apply to only one topic of interest. As such, under current systems, the items would need to be manually stored in multiple locations (either electronic or “brick and mortar” folders). For example, a fax letter to a sales manager may contain information about contact addresses, market intelligence data, specific product requests, and financial accounting.

[0007] 4. **Knowledge Sharing** – items often relate to organizational issues for which one or more work groups need access; access that is denied when the recipient “buries” that item in his/her personal filing system, electronic or otherwise.

[0008] 5. **Context** – prior art communications tools do not know the business and/or personal context(s) within which files are created and used. For example, a person may create three files in a word processor, one relating to sales, the second relating to operations and the third relating to his son’s football team. However, the word processor itself has no way of knowing to automatically store those three files in at least three different places.

[0009] 6. **Security & Privacy** – the applications and their file storage methods are generally insecure; they do not conform to a single, dependable security model.

[0010] Known software applications create and store files outside of a contextual framework. For example, when a user creates a Microsoft Word (*.doc) file in Microsoft Word 2000, the user must select a single folder within which to store that file. The file may be stored in an existing folder or the user may create a new folder to receive the file. This file management method is known as Lightweight Directory Application Protocol (LDAP). LDAP borrowed the physical world paper file management scheme where a machine/application creates files, stores those files in individual folders and stores those folders in cabinets. Under this scheme, context is completely independent of the application. File context is limited to the decision made by the user about which folder the file should be stored. The user decision does not adequately represent reflect the true context of the file given that the file may contain information that could reasonable be stored in multiple folders.

[0011] Another limitation of LDAP is that little or no information is contained within the file about the user and the context and circumstances of the user at the time the file was created. Current processes designed to add context to files such as the "meta-data" tagging approach, involve having a knowledge officer view files after they have been stored and create meta-data tags with additional key words associated with the file for search purposes.

[0012] Notwithstanding the usefulness of the above-described methods, a need still exists for a communications tool that associates files generated by applications with individuals, groups and topical context.

III. Summary of the Invention

[0013] It is an object of the invention to provide a communication tool that seamlessly facilitates, collects, compiles and distributes communication data.

[0014] It is a further object of the invention to provide a communication tool that links communication data to enterprise leadership priorities.

[0015] It is another objective of the invention to provide a communication tool that performs communications tasks while simultaneously reminding the user of his/her individual work priorities.

[0016] It is still a further object of the invention to provide a communication tool that automatically stores contextual information relating to an item of communication and utilizes that contextual in performance of communication tasks.

[0017] Still another object of the invention is to provide a communication tool that integrates two or more different communication applications such as telephony, unified messaging, decision support, document management, portals, chat, collaboration, search, vote, relationship management, calendar, personal information management, profiling, directory management, executive information systems, dashboards, cockpits, tasking, meeting, conferencing, etc. into a common application.

[0018] Still a further object of the invention is to provide a structure for defining relationships between complex collections of data.

[0019] Yet another object of the invention is to provide a process for automating workflow between multiple entities.

[0020]

[0021] Given the following enabling description, the invention should become evident to a person of ordinary skill in the art.

IV. Description of the Embodiments

[0022] In the past, intuitive, dynamic, changeable workflow processes have proved to be too dynamic and expensive for automation. The present invention utilizes "boards" and "webs" to automate workflow processes and define relationships between data and applications. As users create and change their contexts, the files and applications automatically follow, dynamically capturing those shifts in context.

[0023] As used herein, a "board" is defined as a collection of data and application functionality related to a user-defined topic. For example, a user defined topic may be a department of a company or a project that involves the company. In the case of a project, the board preferably includes all of the data relating to that project including email, tasks, calendar events, ideas, discussions, meetings, phone calls, files, contact records, people, etc. Data and applications may be grouped in a board based on the identity of the tag.

[0024] As used herein, the term "web" refers to a collection of interrelated boards. Boards in a web may have, for example, a parent-child relationship. A given board may have more than one parent and may have more than one child. A board may not be its own child or its own parent. However, boards may have various relationships to each other. For example, a board may be part of a circular relationship of any complexity such as the following: A is parent to B; B is parent to C and C is parent to A.

[0025] In accordance with the invention, webs may be used to maintain the location of content within a complex and changing set of boards and support automation of the

workflow process. Automation of the workflow process may shown by the following example.

Example

The workflow process to be automated is $A \rightarrow B \rightarrow C$. Three different people are assigned to each item. Therefore $A(1,2,3) \rightarrow B(4,5,6) \rightarrow C(7,8,9)$. The workflow change desired in this example is $A \rightarrow B/C \rightarrow C$.

In the known environment, LDAP, it is necessary for the automation sequence to predetermine how work data flows from A to B and C. Then, the automation module for inputs to D must be spelled out and rewritten to consolidate split input from B and C. As such, the automation support for this workflow change will always lag behind the ability of the people involved to start working with the new workflow assumptions.

In contrast, in accordance with the present invention, webs and boards are preferably the context for applications, files and folders. Hence, the workflow process may be readily reorganized by making a change to one or more of the webs and boards.

In preferred embodiments, webs may be utilized to maintain the location of content within a complex and changing set of boards. Content is preferably associated with a routing algorithm referred to herein as a webslice. Thus the content has an intelligent quality whereby upon a change of structure of the web, the content knows which board or boards it should be on both before and after the change of structure. In keeping with a preferred aspect of the invention, the location of the content may be

determined at dynamically at run using the routing algorithm. Alternatively, the loction of content may be determined by detecting changes in structure, detecting the temporary location fo the content on the boards in the routing algorithm before and after the change and adjusting the location of the affected content as part of the change in structure.

ATTACHMENT 2

“board” Module

“WEB VERSION 1” WORKING DESCRIPTION

Webs are collections of boards and a collection of parent-child relationships between those boards. Boards in a web may have more than one parent and may have more than one child. A board may not be its own child (and thus may not be its own parent), but may participate in a circular relationship of any complexity (A is parent to B. B is parent to C. C is parent to A).

WebSlices are a way of representing an algorithm that's ultimate output is a set of boards. A webslice consists of a Web, a starting board, and a traversal (of arbitrary complexity). Take for example a web of boards a b and c where b and c are children of a. A webslice that referenced this board, started at a and used a traversal of "all children" would return b and c. If the same traversal on the same web had started at b, the empty set would be the result.

Webs can be utilized to maintain the location of content within a complex and changing set of boards. If content has a webslice associated with it, then any change of structure in the web would still result in the content (with the webslice) knowing what boards it should be on both before and after the change of structure. Actually effecting this change of location can be done by allowing the "location" to be determined dynamically at run time using the webslice or can be accomplished by detecting changes in structure, detecting the (temporary) location of the content on the boards in the slice before and after the change and adjusting the location of the affected content as part of the change in web structure.

CIAP also facilitates a new business workflow process. Workflow automation is currently a site-specific effort. The workflow between A to B to C must be clearly specified in all its variables prior to automation. Automation fixes this workflow in code. Changes to the workflow require manual changes to the code. Predictable, repeatable, transactional and hierarchical workflow processes are best suited to this approach. LDAP and hierarchical storage models work best in this environment. Multiple applications work independently of the storage, generating and reporting data to and from the storage model.

Intuitive, dynamic, changeable workflow processes have proved too dynamic and expensive for automation. CIAP changes that. CIAP is key off users and context, not off of applications and files. As users create and change their contexts, the files and applications automatically follow, dynamically capturing those shifts of context.

Professional services consulting is currently held hostage by a cumbersome, expensive, time-consuming and often dehumanizing process known as "change management." The modus operandi of these firms is to for the implementation of that firm's change model. These models have a variety of names: Balanced Scorecard, Critical Success Factors, Vital Signs, etc. These models are often intended to replace traditional "command and control" models. Generally this is an either/or process. This change in the workflow practices in a company is time consuming. Generally these new processes begin a spate of new automation projects to support these changes. However, as any professional services person knows, the automation, like the change process itself, is iterative. Typically 50% of the changes initially championed will not work. Then 25% of the secondary changes will not work. Then, 12.5 of the third round of changes will not work... and so on. As a consequence, automation always lags behind, many times in terms of years.

CIAP allows professional services providers to support IT automation professionals with an approach to automation support of workflow changes that changes and adapts as the organization learns with little to no change to the underlying IT architecture.

To use a simple example, $A \rightarrow B \rightarrow C$ is the workflow process we want to automate. We assign 3 different people to each item, Therefore $A(1,2,3) \rightarrow B(4,5,6) \rightarrow C(7,8,9)$.

LDAP Implementation

Persons (1,2,3,4,5,6,7,8,9) \rightarrow Applications \rightarrow Afiles, Bfiles, Cfiles \rightarrow Afolders, Bfolders, Cfolders.

Now let's say a workflow change is proposed to look like this: $A \rightarrow B/C \rightarrow D$. In an LDAP environment, before the people involved have any automation support for this change, the automation sequence *pre-determine* how work data flows from A to B & C. Then, the automation module for inputs to D must be *spelled out and rewritten* to consolidate split input from B & C. In other words, the automation support for this change will always lag behind the ability of the people involved to start working with the new workflow assumptions. LDAP structure forces a regimented, minimalistic approach to the automation of workflow processes.

CIAP Implementation

Persons (1,2,3,4,5,6,7,8,9) \rightarrow Web \rightarrow Aboard, Bboard, Cboard (incl. Applications, Files, Folders)

Now let's say the workflow changes to $A \rightarrow B/C \rightarrow D$. In a CIAP environment a simple adjustment is made to the webs & boards table and the entire workflow process is reorganized with all the relevant data files appropriate reorganized and available. This should always be the first step in the change process. The first step in the change process should always be the instantaneous reorganization of the people and topic associations along with the communications tools. At this stage in the change, no predictable, repeatable, transactional or hierarchical process can be established. That can only come with time and consistency. Some processes must remain flexible; unpredictable, yet they


```

    1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

```

```

    */
    public void addWebRelationship(WebRelationship relationship){
        if(relationship != null){
            relationships.add(relationship);
        }
    }

    /**
     * Remove a WebRelationship from the Web.
     * @param relationship The relationship to remove.
     */
    public void removeWebRelationship(WebRelationship relationship){
        if(relationship != null){
            relationships.remove(relationship);
        }
    }

    /**
     * Remove a WebRelationship from the Web.
     * @param relationshipId The object id of the relationship to remove.
     */
    public void removeWebRelationship(Long relationshipId){
        if(relationshipId != null){
            Iterator iterator = relationships.iterator();
            while(iterator.hasNext()){
                WebRelationship relationship =
(WebRelationship)iterator.next();
                if(relationshipId.equals(relationship.getId())){
                    removeWebRelationship(relationship);
                }
            }
        }
    }

    /**
     * Get all the WebRelationships on this Web. If there are no
    relationships,
     * return a 0 length array.
     * @return WebRelationship array.
     */
    private WebRelationship[] getWebRelationships(){
        return (WebRelationship [])new ArrayList(relationships).toArray(new
WebRelationship[relationships.size()]); //WebRelationship
[[])relationships.toArray(new WebRelationship[relationships.size()]);
    }

    /**
     * Determine whether a given board is in this web.
     * @param board Board we want to check on.
     * @return boolean True if board is in this web, false otherwise.
     */
    public boolean contains(Board board){
        List webBoards = getBoardsList();
        return webBoards.contains(board);
    } -

    /**

```

09/15/10 10:00 AM

```

    * Get all the board included in this Web.  If there are no
relationships,
    * and hence no boards, return an empty List.
    * @return Board[] Array of boards in this Web.
    */
    public List getBoardsList(){
        List boardList = new ArrayList();
        WebRelationship[] relations = getWebRelationships();
        for (int i=0; i < relations.length; i++){
            Board parent = relations[i].getParent();
            Board child = relations[i].getChild();
            if (!boardList.contains(parent)) boardList.add(parent);
            if (!boardList.contains(child)) boardList.add(child);
        }
        return boardList;
    }

    /**
    * Get all the Children of a Board on this Web.
    * @param board the board to find children of.
    * @return Set of children Boards.  0 size set if board parameter is
null
    * or when there are no children.
    */
    public Set getChildren(Board board){
        Set childrenSet = new HashSet();
        if(board == null){
            return childrenSet;
        }
        Iterator allRelationships = relationships.iterator();
        while (allRelationships.hasNext()){
            WebRelationship relationship =
(WebRelationship)allRelationships.next();
            if (relationship.getParent().getId().equals(board.getId())){
                childrenSet.add(relationship.getChild());
            }
        }
        return childrenSet;
    }

    /**
    * Get all the Parents of a Board on this Web.
    * @param board the board to find parents of.
    * @return Set of parent Boards.  0 size set if board parameter is
null
    * or when there are no parents.
    */
    public Set getParents(Board board){
        Set parentsSet = new HashSet();
        if(board == null){
            return parentsSet;
        }
        Iterator allRelationships = relationships.iterator();
        while (allRelationships.hasNext()){
            WebRelationship relationship =
(WebRelationship)allRelationships.next();
            if (relationship.getChild().getId().equals(board.getId())){

```



```

    0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99

```

```

        toolCode = getContentToolCode();

        //Web name sub-form.
        Page page = new ConcretePage("createWebPage", pageIndex,
selectedIndex);
        SubForm sub = new ConcreteSubForm("webNameSubForm", "Web name");
        sub.add(new TextField("webNameTextField", (getName() != null ?
getName() : ""), "Web name", true));
        page.add(sub);

        //Existing relationships sub-form.
        sub = new ConcreteSubForm("existingWebRelationshipsSubForm",
"Existing Web Relationships");
        sub.add(getWebRelationshipsListField(requestState.getPairsMap()));

        InterfaceAction action = new
InterfaceAction("removeRelationship", "Remove Relationship", toolCode,
true);

action.addActionListener(RemoveWebRelationshipActionListener.GLOBAL);
action.addInterfaceListener(AddInterfaceListener.GLOBAL);
action.setErrorInterfaceListener(AddInterfaceListener.GLOBAL);
sub.addAction(action);
page.add(sub);

        //Add new Relationships sub-form
        sub = new ConcreteSubForm("createRelationshipsSubForm", "Create New
Relationship");
        SingleSelectGroupKeyField boardDropDown = new
BoardKeyField(PARENT_BOARD_FIELD_ID, "Parent Board", null,
requestState.getCurrentUser().getId());
        sub.add(boardDropDown);
        boardDropDown = new BoardKeyField(CHILD_BOARD_FIELD_ID, "Child
Board", null, requestState.getCurrentUser().getId());
        sub.add(boardDropDown);
        action = new InterfaceAction("addRelationship", "Add
Relationship", toolCode, true);
        action.addActionListener(AddWebRelationshipActionListener.GLOBAL);
        action.addInterfaceListener(AddInterfaceListener.GLOBAL);
        action.setErrorInterfaceListener(AddInterfaceListener.GLOBAL);
        sub.addAction(action);
        page.add(sub);

        form.add(page);
        return form;
    }

    /**VBSF*/
    private Collection getRelationshipsCollection(){
        return relationships;
    }

    /**VBSF*/
    private void setRelationshipsCollection(Collection collection){
        this.relationships = collection;
    }
}

```

```

/**
 * Return a Field representing a list view of the web relationships
 in this
 * web. This is used by the getForm method, and by the
 MyContextInterface.
 * @param pairs SE
 * @return a Field
 */
public Field getWebRelationshipsListField(Map pairs){
    Iterator iterator = relationships.iterator();
    List displayFieldsList = new ArrayList();
    Long[] keys = new Long[relationships.size()];
    for(int i=0; iterator.hasNext(); i++){
        WebRelationship relationship = (WebRelationship)iterator.next();
        keys[i] = relationship.getId();
        displayFieldsList.add(relationship.getDisplayFields());
    }
    Long[] selectedKeys =
    MultiSelectListKeyField.convert(RELATIONSHIPS_LIST_FIELD_ID, pairs);
    Field[][] displayFields = (Field[][])displayFieldsList.toArray(new
    Field[relationships.size()][0]);
    MultiSelectListKeyField relationshipsList = new
    MultiSelectListKeyField(RELATIONSHIPS_LIST_FIELD_ID, keys, "Existing
    Web Relationships", selectedKeys, displayFields);
    return relationshipsList;
}
}

[END Web.java]

```

Looking at the code for WebSlice.java:

```

package com.leader.osapplication.board;

import com.leader.osapplication.framework.*;
import com.leader.osapplication.*;
import com.leader.osapplication.util.*;
import com.leader.osapplication.exception.*;
import com.leader.osapplication.sessionstate.*;
import com.leader.debug.*;
import java.util.*;

/**
 * A collection of enough information to isolate a set of boards from
 the set
 * of all boards. This is typically codified as a Web to use, a
 starting board
 * and a Traversal. The Traversal is then used to travel across the Web
 from
 * the starting board and return a list of Boards.
 *
 * @author Jeff R. Lamb
 * @author Eric Rosenberg
 */
public class WebSlice extends AbstractPersistedObject{

    private Web web;

```


EXHIBIT M

Boston Scientific

CONFIDENTIAL DISCLOSURE AGREEMENT

This Agreement is entered into November 26, 2002, between Boston Scientific Corporation (including its subsidiaries, collectively identified herein as "BSC"), a corporation with a place of business at One Boston Scientific Place, Natick, MA 01760-1537 and Leader Technologies Incorporated, 91 Eastwind Drive, Suite 118, Westerville, OH 43081, attn: Michael McKibben, Chairman and Chief Executive Officer.

WHEREAS, each party has developed or owns technical, operational, and business information which it deems proprietary; and

WHEREAS, the Parties agree that to facilitate possible future business arrangements concerning secure, web-based collaboration technology for BSC's clinical organization to share/store sensitive information with BSC's external clinical partners (the "Project"), it may be necessary to exchange certain information on a confidential basis;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the exchange of information, the Parties agree as follows:

"Information" is defined as communication or data, in any form, including but not limited to oral, written, graphic or electromagnetic forms and physical observation.

"Proprietary Information" is defined as that information which a Party desires to protect against unrestricted disclosure or competitive use, and which is designated as such in the manner provided by this Agreement.

All information which is disclosed by one Party to the other Party and which is to be protected hereunder as Proprietary Information of the disclosing Party:

- (a) If in writing or other tangible form, shall be conspicuously labeled as proprietary at the time of delivery; and
- (b) If oral, or is disclosed by observation or viewing, shall be identified as proprietary prior to disclosure; and after disclosure shall be reduced to writing or other tangible form, within thirty (30) business days thereafter, and delivered to the receiving party.

Proprietary Information of a disclosing Party shall be treated and safeguarded hereunder by the receiving Party for a period of five (5) years from the date of disclosure and with the same degree of care with which it treats its own Proprietary Information of like character. The receiving Party warrants that it applies reasonable safeguards against the unauthorized disclosure and use of Proprietary Information.

The receiving Party agrees that (i) any Proprietary Information disclosed hereunder shall be used by the receiving Party solely for the purpose of evaluating the mutual interests of the Parties in the Project and (ii) it will not distribute, disclose, or disseminate Proprietary Information to anyone except its employees and consultants who are involved in the consideration or evaluation of the Project, unless and until such time as:

MITM
1/2

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

LTI_006469

DEFENDANT'S EXHIBIT
DTX 0736
CASE NO. 1:08-CV-00862-LPS

- (a) Such Information is generally available to the public, through no fault of the receiving Party, its employees or consultants, and without breach of this Agreement; or
- (b) Such Information is already in the possession of the receiving Party, its employees or consultants without restriction and prior to any disclosure hereunder, as evidenced by appropriate documentation; or
- (c) Such Information is or has been lawfully disclosed to the receiving Party, its employees or consultants by a third party without an obligation of confidentiality upon the receiving Party; or
- (d) Such Information can be shown to have been developed independently by employees or consultants of the receiving Party without use of the Information disclosed hereunder, as evidenced by appropriate documentation.

If disclosure is required by order of a competent court, the receiving Party will give the disclosing Party prior written notice sufficient for the disclosing Party to seek appropriate protective orders.

Except as expressly provided herein, no license or right is granted by either Party to the other Party under any patent, patent application, trademark, copyright or trade secret.

All Information furnished by one Party to the other Party shall remain the property of the disclosing Party. At the written request and instruction of the disclosing Party, all Information in the possession of the receiving Party which is Proprietary Information shall be returned to the disclosing Party, except for one archival copy.


This Agreement is governed by the laws of The Commonwealth of Massachusetts, USA, without regard for the conflicts of law provisions.


This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges all prior discussions between them.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by duly authorized representatives as of the date first written above.

BOSTON SCIENTIFIC CORPORATION

ACCEPTED AND AGREED TO:

By: 
 Name: Vance R. Brown
 Title: Corporate Counsel

By: 
 Name: MICHAEL T. MCKELVEY
 Title: CEO
 Date: December 7, 2002

M:\Legal\VRB\2way



Leader.

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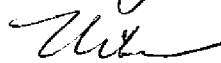


Fax

Boston Scientific
 To: *ATTN: Debbie Rollins* From: *Michael T. McKibben*
 Fax: *508-650-8558* Pages: *3 TOTAL*
 Phone: *508-650-8234* Date: *DECEMBER 7*
 Re: *NDA - signed* CC:

Urgent For Review Please Comment As Requested Please Reply For Your Use

Hi Debbie,
We are verdy to get moving.
Let me know next steps/
action items.

Sincerely,


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Leader™

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HELP DESK

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support@leader.com

Tier 2 (937) 672-0354
(24x7) oncall@leader.com (goes to multiple support people + on-call pager)

SCHEDULED MAINTENANCE

Five (5) day's advance notice to be sent to hahnd@bsci.com at Boston Scientific Corporation.

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*First Name	Dave
*Last Name	Hahn
Middle Initial	
Title	
Company Name	Boston Scientific Corporation
*Address 1	One Boston Scientific Place
Address 2	
City	Natick
State	Massachusetts
*Zip or Postal Code	01760
*Country	United States
Send Promotional Emails to Me?	<input type="checkbox"/>
Make International Calls?	<input type="checkbox"/>
*Primary Teleconferencing Number	5086508093
Secondary Business Telephone No.	
Other Telephone No.	
Mobile Phone No.	
Fax No.	
*E-mail Address	mmckibben@leader.com
*Verify E-mail Address	mmckibben@leader.com
*Your LeaderPhone[r] Password	*****
Password Hint	simple series of numbers
Your home Time Zone	CST - Central Standard Time
*Name on the Credit Card	Dave Hahn
*Credit Card Type	visa
*Credit Card Number	*****1111
*Card Expiration Date	08/2006

[Click here to exit the sign up section and go to the Leader2Leader interface](#)

EXHIBIT N

From: Steve Hanna <steve@computerwizards.com>
Sent: Tuesday, November 26, 2002 9:11 AM
To: cwcall@computerwizards.com
Subject: Yesterday in CWC (Monday, 11/25/2002)

GENERAL:

o Yesterday, Mike had a meeting with Boston Scientific; he was demo'ing L2L functionality for senior staff members. They had a list of functionality that they are looking for in a tool to support their national clinical testing, etc. They are in need of a very secure system that will support full document management functions, provide varied levels of access to content, support local and distributed access, support search for content, support collaborative meetings/conferences in a nut-shell, they are looking for L2L.

*** Mike called after the meeting, he was very excited and said that the demo 'was flawless, not one glitch, and I didn't have to tap dance at any point they are going to buy;

Mike said that they are to put together a plan (proposal) over the next two weeks that lays out how/when they would bring L2L into BSC.

o Today, Mike is in AZ. and there are major meetings with Angel investors; these include demos of a) LP production, b) LP Meet Me on Zeus (this will be further coordinated today), and c) L2L on Mars

-Wed. Mike returns to Columbus

-Thur./Fri. Leader Holiday

-Mon./Tue. (2,3 Dec.) Mike to CA

Financial Status:

Mike is picking up some funding checks when in AZ today; he is also making a pitch to some very capable investors this afternoon / evening.

PERSONNEL Misc.:

Travel / vacation:

o none yesterday

o I am planning in Columbus today only

NON LEADER CUSTOMER ACTIVITIES:

o DuJour: DOWN

o UVJVS: n/a

o Spammotel: Wendy (I think) was able to clear the email problem yesterday

o Atlas - n/a

LEADERPHONE(tm) Support & Development:

o Busy day yesterday we made some ground in fixing problems, but also uncovered and document more problems I do not think that we will be doing an update tonight.

L2L:

** Right now, we are focusing primarily on those issues that affect LP.

Some work is proceeding on more general L2L issues.

o Mark will is continuing to work the file conversion issues

MILESTONES:

o L2L R1 ready for Beta 20 Dec.

SC:

o on hold until after 20 Dec.

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Steven E. Hanna
Vice President of Technologies
Leader Technologies Incorporated
Spectrum Commerce Center
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EXHIBIT O

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Date of Last Revision: September 23, 2008

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User Conduct

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook

Plaintiff's Trial Exhibit

PTX-628

Case No. 08-CV-00862

Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

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- register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;
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- upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- intimidate or harass another;
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site.
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.

Without limiting any of the foregoing, you also agree to abide by our [Facebook Code of Conduct](#) that provides further information regarding the authorized conduct of users on Facebook.

User Content Posted on the Site

You are solely responsible for the photos, profiles (including your name, image, and likeness), messages, notes, text, information, music, video, advertisements, listings, and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other users (collectively the "User Content"). You may not post, transmit, or share User Content on the Site or Service that you did not create or that you do not have permission to post. You understand and agree that the Company may, but is not obligated to, review the Site and may delete or remove (without notice) any Site Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of the Company violates this Agreement or the Facebook Code of Conduct, or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others. You are solely responsible at your sole cost and expense for creating backup copies and replacing any User Content you post or store on the Site or provide to the Company.

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Copyright Complaints

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Repeat Infringer Policy

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The Site contains (or you may be sent through the Site or the Service) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Applications, Software or Content"). Such Third Party Sites and Third Party Applications, Software or Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Applications, Software or Content posted on, available through or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Sites or the Third Party Applications, Software or Content. Inclusion of, linking to or permitting the use or installation of any Third Party Site or any Third Party Applications, Software or Content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third Party Sites or to use or install any Third Party Applications, Software or Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the Site or relating to any applications you use or install from the site.

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and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agrees to immediately remove all Share Links from its site.

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By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

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Facebook Platform Applications

The Facebook Platform is a set of APIs and services provided by Facebook that enable third-party developers ("Platform Developers") to create websites and applications that retrieve data made available by Facebook and its users and/or that retrieve authorized data from third-party sites for use on the Facebook Site ("Platform Applications")

Platform Developers may use the Facebook Platform and create Platform Applications only in accordance with the terms and conditions set forth in an agreement entered into between Facebook and the Platform Developer ("Developer Terms"). Our standard Developer Terms consist of the Facebook Developer Terms of Service and the related Facebook Platform Application Guidelines. We may from time to time enter into separate agreements with certain third party Platform Developers that contain different or additional terms, provided however, that each such separate agreement will require the third party Platform Developer to only display your information in accordance with your Facebook privacy settings. The standard Developer Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these documents from time to time. ALL USE OF THE FACEBOOK PLATFORM IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

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If you, your friends or members of your network use any Platform Applications, such Platform Applications may access and share certain information about you with others in accordance with your privacy settings as further described in our Privacy Policy. Platform Developers are required to agree to restrictions on access, storage and use of such information. However, while we have undertaken contractual and technical steps to restrict possible misuse of such information by such Platform Developers, we do not screen or approve Developers, and we cannot and do not guarantee that all Platform Developers will abide by such restrictions and agreements. Certain actions you take through the Platform Applications may be displayed to your friends in your profile, mini-feed and news feed, and you may opt-out of displaying your Platform Application actions on the Privacy Settings page. Please report any suspected misuse of information through the Facebook Platform as described in our Privacy Policy.

You may set your preferences for your news feed and mini-feed [here](#).

Facebook Connect

Facebook Connect ("Connect") enables participating third party websites to work just like Facebook Platform applications. Once you allow a third party website to connect with Facebook, you will be able to use your Facebook login information to log into that website. The third party website will be able to: generate and publish news feed and other stories about actions you take on their website; access Facebook information related to you (including your profile information, friends, and privacy settings) so you can use your Facebook information on the third party site; and allow you to interact with your friends on the website. In order to make Connect possible, you agree to allow Facebook to check your Facebook cookies when you are visiting participating third party websites, and allow Facebook to receive information concerning the actions you take on those third party websites. In addition, once you allow a participating third party website to connect with Facebook, you agree to allow Facebook and such third party website to generate and publish news feed and other stories about actions you take on the website without any additional permission. In the event you no longer want the third party website to publish stories about you, you can always disable this feature by changing your application settings.

When your friends connect their Facebook account with a participating third party website, Facebook Connect will enable them to find Facebook friends that may also be users of that third party website, and invite them to use Connect as well. If you do not want your friends to be able to invite you, you may change your privacy settings to disable this feature.

Connect also gives you the ability to permit Facebook and participating third party websites to generate and publish news feed and other stories about actions you have taken on such websites, even if you have not gone through the Connect process. In such cases, you will be asked whether you want to publish the story on Facebook, and will be given the opportunity to save your answer for future stories. In the event you want to change your settings for that website, visit your application settings.

Like Platform Applications, third party websites that participate in Connect are required, among other things, to protect your privacy consistent with your Facebook privacy settings and Facebook's privacy policy.

Facebook Pages

Facebook Pages are special profiles used solely for commercial, political, or charitable purposes. You may not set up a Facebook Page on behalf of another individual or entity unless you are authorized to do so. This includes fan Facebook Pages, as well as Facebook Pages to support or criticize another individual or entity.

FACEBOOK DOES NOT PRE-SCREEN OR APPROVE FACEBOOK PAGES, AND CANNOT GUARANTEE THAT A FACEBOOK PAGE WAS ACTUALLY CREATED AND IS BEING OPERATED BY THE INDIVIDUAL OR ENTITY THAT IS THE SUBJECT OF A FACEBOOK PAGE. NOR IS FACEBOOK RESPONSIBLE FOR THE CONTENT OF ANY FACEBOOK PAGE, OR ANY TRANSACTIONS ENTERED INTO OR OTHER ACTIONS TAKEN ON OR IN CONNECTION WITH ANY FACEBOOK PAGE, INCLUDING HOW THE OWNER OF THE FACEBOOK PAGE COLLECTS, HANDLES, USES AND / OR SHARES ANY PERSONAL INFORMATION IT MAY COLLECT FROM USERS (PLEASE REVIEW THE FACEBOOK PRIVACY POLICY IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING THE USE OR SHARING OF YOUR PERSONAL INFORMATION). YOU SHOULD BE CAREFUL BEFORE PROVIDING ANY PERSONAL INFORMATION TO OR ENTERING INTO ANY TRANSACTION IN CONNECTION WITH A FACEBOOK PAGE.

In addition to these Terms of Use, Facebook Pages are subject to and governed by certain Additional Terms Applicable to Facebook Pages. The Additional Terms Applicable to Facebook Pages control in the event of any conflict between them and the Terms of Use.

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User Disputes

You are solely responsible for your interactions with other Facebook users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

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We care about the privacy of our users. Click [here](#) to view the Facebook's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

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CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

Termination

The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site or through any Platform Application and/or prohibit you from using or accessing the Service or the Site or any Platform Application (or any portion, aspect or feature of the Service or the Site or any Platform Application) for any reason, or no reason, at any time in its sole discretion, with or without notice, including if it believes that you are under 13, or under 18 and not in high school or college. When we are notified that a user has died, we will generally, but are not obligated to, keep the user's account active under a special memorialized status for a period of time determined by us to allow other users to post and view comments.

Governing Law; Venue and Jurisdiction

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise

between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.

Arbitration

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) years after the cause of action arose.

Indemnity

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Applications, Software or Content you post or share on or through the Site (including through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Definitions and Constructions

Unless otherwise specified, the terms "includes", "including", "e.g.", "for example", and other similar terms are deemed to include the term "without limitation" immediately thereafter. Terms used in these Terms with the initial letter(s) capitalized will have the meaning attributed to them in these Terms.

Other

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

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