

April 17, 2012

Mark Shuman, Director (202) 551-3462
Barbara Jacobs, Asst. Director (202) 551-3730
Mark Kronforst, Assoc. Director (202) 551-3870

U.S. Securities & Exchange Commission

Legal and Textual Disclosure Matters
Information Technologies and Services
100 F Street NE, 4th Floor
Washington DC 20549


Dear Directors,

Re: Facebook, Inc.'s S-1 Disclosure

I am writing to bring your attention to inequities, injustices and what can only be considered scandalous lack of disclosure in the current Facebook S-1 filing.

A persistent former Bloomberg investigative financial reporter named Donna Kline has taken up this cause. Rather than repeat her findings, I include some of her blog postings as attachments, in addition to my notice to Fenwick & West LLP. The information is accurate, as she has verified her findings with us.

Exhibit: Subject:

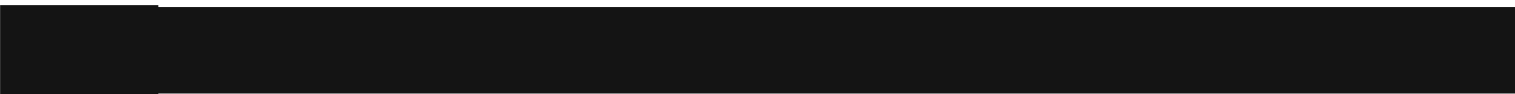
- A Instagram-scam? (**pre-IPO Insider Trading**)
- B Facebook's Orwellian (black-is-white) definition of "clear and convincing" evidence
- C "Haughtiness in the face of 'literal infringement'"
- D "What Facebook, Accel Partners, Goldman Sachs and Fenwick and West don't want us 'muppets' to know"
- E "Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook"
- F "Facebook 'Liked' Leader's source code... before it didn't"
- G "Facebook countersues Yahoo with bogus patents? Confirms reckless mindset."
- H 

████████████████████ Fenwick & West LLP, is embroiled in a tangle of conflicts of interest regarding Facebook's S-1 disclosure. For starters, we believe that they have abused Leader Technologies' trust, confidential and intellectual property. These conflicts permeate most aspects of the S-1 from the generic vs. specific risk disclosures, patent claims that may have been invalid out of the chute (due to Fenwick's prior knowledge of Leader's patents), valuation estimates based upon values that may be a house of cards if the entanglements dramatically alter Facebook's going forward organization and structure. Keep in mind ██████████ won a jury verdict of "literal infringement" on 11 of 11 claims of our U.S. Patent No. 7,139,761. In other words, the engine running Facebook is not their property, it is Leader's.

These above-mentioned facts don't even begin to account for the remarkable oversight that even though Leader Technologies is currently engaged in the first-ever federal lawsuit against Facebook to go to trial and now pending in the U.S. Court of Appeals for the Federal Circuit, Facebook via counsel Fenwick & West LLP *does not even mention it in the S-1*. Instead, they focus their verbiage on outlier litigation stories like Ceglia (which is still in discovery) and Yahoo (which has just begun). Such audacity is difficult to comprehend for honest people. Will the SEC let them get away with such flagrant disregard for materiality? One former CEO of a public company stated to me that he has never seen such openly arrogant disregard for our disclosure rules. (I will provide his name to you if you wish.)

I will repeat the questions ██████████ to Fenwick & West LLP (see Exhibit G). I respectfully request that the SEC watchdogs take up these questions with the players since they seem determined not to answer anyone's questions prior to the IPO. You have the only **big stick** that is likely put some sanity into this irrational situation.

1. What confidential information of Leader's has Fenwick and West disclosed to Facebook and other third parties, especially those in the broadly defined collaboration and social networking industries ("social networking")?
2. Why did not Fenwick & West seek an "informed written consent" conflicts waiver before engaging with Facebook for securities and patent prosecution pursuant to the California Rules of Professional Conduct?
3. Why did not Fenwick and West disclose Leader's U.S. Patent No. 7, 139,761 and related technologies as a reference in any of the patent prosecution work for Facebook and other third parties engaged in social networking technologies—especially since Fenwick was fully aware of and informed about Leader's art from at least 2001 forward?

- 
4. Why did not Fenwick & West disclose *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008) and *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.) as material litigation disclosure in Facebook's S-1 filing.
 5. Why did not Fenwick & West disclose its conflict of interest in having formerly represented Leader Technologies and currently representing Facebook in Facebook's S-1 filing? What other conflicting representations is Fenwick & West choosing not to disclose to Leader and the public?
 6. Why did not Fenwick & West recuse itself from being engaged by Facebook in securities, social networking litigation and patent prosecution matters after previously recusing itself from becoming Facebook patent litigation counsel in *Leader v. Facebook* following Leader's counsel notice of a conflict—to which you evidently agreed?

I look forward to your response. I believe that justice demands from our SEC Watchdogs more than a tacit review, or a turning of blind eyes. The information I enclose is chock full of evidence and facts for your investigation.

Please feel free to contact me at any time.




Exhibit A

/// Market Impact in an Evolving World

By Donna Kline — www.DLKIndustries.com

Donna Kline Now!



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg New York*.

LEADER V. FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Muppet Chat (PDF)

MOBILE QR-CODE:



Follow

Tweet

Tweet #TwitterStories

Tweet to @DonnaKline

{ 2012 04 14 }

/// Instagram-scam?

Facebook and its \$1 billion Instagram acquisition is similar in size to the [Ponzi schemes](#) of [Bernie Madoff](#). A quick review of the Instagram deal raises serious questions about the “independence” of the Facebook Board of Directors and their level of commitment to the [Business Judgement Rule’s](#) “disinterestedness” requirement for an ethically run board. It also raises concerns about their integrity and fair dealing; including parties with whom they have been judged to have infringed (Leader Technologies). Facebook S-1, p. 99, paragraph 3 (“each of these directors is ‘independent’”).



Fig. 1 – Patent infringement, inequitable conduct, material nondisclosure, breach of fiduciary duty, related party transactions and duties to former clients are just a few of the serious questions raised by the \$1 billion Instagram deal that cashes out Facebook insiders with borrowed money before an IPO.

1. Andreessen & Thiel fingerprints are all over both sides of the Instagram transaction?

Yes, this is the very same Marc Andreessen whose social networking patents, (filed by Fenwick & West, Leader Technologies’ former attorney and Facebook’s current attorney), disclosed Leader’s U.S. Patent No. 7,139,761 as a “prior art” reference. However, Fenwick did *not* disclose it in subsequent patents filed by Facebook—thus raising the very real specter of “inequitable conduct” which could invalidate many of Facebook’s patents. See previous posts [here](#) and [here](#).

2. Company directors are duty-bound to avoid conflicts of interest

According to [Facebook’s S-1](#), Marc Andreessen and Peter Thiel are

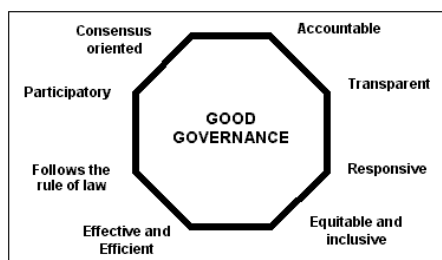


Fig. 2 - Principles of good governance: (1) Accountable, (2) Transparent, (3)

PREVIOUS POSTS

/// Instagram-scam?
/// Facebook's Orwellian (black-is-white) definition of "clear and convincing" evidence
/// Facebook countersues Yahoo with bogus patents? Confirms reckless mindset.
/// Facebook "Liked" Leader's source code ... before it didn't
/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
/// MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess
/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know
/// Make up your mind, Fenwick & West LLP
/// Muppet Mania
/// Haughtiness in the face of "literal infringement"
/// Facebook ordered pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012

directors and comprise 2/3rds of the Audit Committee. So why are their fingerprints all

Responsive, (4) Equitable, (5) Effective and Efficient, (6) Follows the rule of law, (7) Participatory, and (8) Consensus oriented. Is Facebook any of these? Source: ESCAP.

Conflicts of Interest
FENWICK & WEST LLP

Fenwick: "Is this wrong?"

Would Judge Strine's opinion (see Fig. 4.) about Fenwick's conduct as Leader's former counsel and Facebook's current counsel drip with as much sarcasm as he just leveled at Goldman Sachs six weeks ago?

- 1. Duties to Former Clients?** Fenwick & West was the attorney for Leader Technologies in 2002—the pivotal period that Facebook contested in Leader's patent infringement lawsuit *Leader v. Facebook*, 08-cv-862 (D.Del 2008). They sought no conflicts waiver.
- 2. Inequitable Conduct?** Fenwick & West listed Leader Technologies' US Pat. No. 7,139,761 as related-technology "prior art" references on two Marc Andreessen social networking US Pat. Nos. 7,756,945 and 7,603,352, yet never disclosed Leader's patent in any Facebook filings.
- 3. Material Nondisclosure?** Fenwick & West makes no mention in the S-1 of the *Leader v. Facebook* lawsuit that was just heard on March 5, 2012 in Washington D.C. at the Federal Circuit Court of Appeals—the second highest court in the land. The result of this case could result in billions of dollars in damages paid to Leader, and even an injunction (shut down Facebook?). Fenwick evidently does not consider such risks as material.
- 4. Breach of Fiduciary Duty?** Ironically, Fenwick & West were the attorneys responsible for the Facebook purchase of Instagram. No wonder the deal took only **54 hours** to complete over a holiday weekend! There weren't any members of the deal who *didn't* have a vested interest in making it happen! Since Facebook has been judged to be "literally infringing" 11 of 11 Leader patent claims, and in my opinion, argued a pretty flimsy case on appeal; shouldn't Fenwick now reconsider their fiduciary responsibility, to properly handle funds that may ultimately belong to their former client, Leader Technologies?
- 5. Related Party Transaction?** Fenwick & West attorney, Greg Roussel, was quoted in a Bloomberg Businessweek article talking about the ease of operation in the Facebook-Instagram deal.

Fig. 3 – Even our children know that school sports referees cannot make bets on games they call. Why not the adults involved in Facebook? Oh yes, the M-O-N-E-Y. Source: *Donna Kline Now!*

"recuse" himself, or in other words, step away and not be involved in that decision. Did Thiel and Andreessen and James Breyer do that with the Instagram transaction? Did the replacement committee ask the tough questions about valuation and advisability of the transaction? Hm. Doubtful.

over the Instagram side of this transaction? As both men are members of the Audit Committee, and Andreessen is a member of the Governance Committee, their responsibilities include:

- "reviewing related party transactions"
- "reviewing proposed waivers of the code of conduct"

—*Facebook S-1, p.100.*

WHAT?!?!?

"Related party transaction" means the party stands to benefit on the *other* side of a transaction. For example, you own stock in Company A that is looking to get a contract/deal from Company B. However, you are *also* involved in the hiring decisions at Company B. Often in such situations the person would

3. Facebook is a "Controlled



2012
 /// Judges Selected
 /// San Francisco
 CBS-TV KPIX
 Coverage
 /// NBC-TV4
 (Columbus)
 Interview with
 Leader founder
 Michael McKibben
 /// How Facebook
 tricked the jury –
 YouTube
 /// New friends?
 /// Did Someone
 Prod the Media?
 /// Facebook: The
 New 'Too Big To
 Fail?'
 /// Big trouble ahead
 for the Facebook
 IPO? — PBR /
 YouTube
 /// What happens on
 March 5th, 2012?
 /// More on FB's S-1
 omissions & other
 conflicts of interest
 /// Big trouble ahead
 for Facebook IPO?
 Backgrounder
 /// My take on the MF
 Global debacle: It
 could have been a
 customer
 /// Comments on EU
 reform announced
 Oct 27, 2011

**ARCHIVE OF
 POSTS**



CALENDAR:

April 2012

M	T	W	T	F	S	S
						1
2	3	4	5	6	7	8

**Company” . . .
 or not?**

The S-1 on page 99 says that Facebook is a “Controlled Company” where Mark Zuckerberg makes all the decisions and where “we are not required to have a majority of our board of directors be independent.” However, in the next section titled “Board Committees”

the S-1 describes normal and customary organization of board committees, namely audit, compensation and governance. Notably, in the prior section titled “Director Independence” Facebook describes their board of directors as “independent.”

Which is it? “Not required to be independent” or “independent.” The S-1 says both. Hmmm.

The S-1 says that “Mr. Zuckerberg will be able to effectively control all matters submitted to the stockholders for a vote, as well as the overall management and direction of the company.” Of course no-experience Mark Zuckerberg is directing these deals and acquisition schemes himself. **N-O-T.**

This S-1 disclosure appears to be the securities version of Monty Hall’s “Let’s Make a Deal.” Behind Door #1 is directorial ‘independence.’ Behind Door #2 is absolute control by Mark Zuckerberg. This is yet another example of the same duplicitous tactics that Facebook’s Cooley Godward attorneys used in *Leader v. Facebook* to confuse the unsuspecting jury (asserting diametrically *opposite* positions re. false marking vs. on sale bar). Meep, meep.



Fig. 5 – Facebook’s S-1 pages 99-100 regarding corporate governance read like a script from the game show ‘Let’s Make A Deal.’ It presents two contradictory stories: Behind Door #1 is directorial ‘independence.’ Behind Door #2 is absolute control by Mark Zuckerberg. This is yet another example of the same duplicitous tactics that Facebook’s Cooley Godward attorneys used in *Leader v. Facebook* to confuse the unsuspecting jury (asserting diametrically *opposite* positions re. false marking vs. on sale bar). Meep, meep. Pictured behind the doors left to right are (in?)dependent Facebook directors James W.

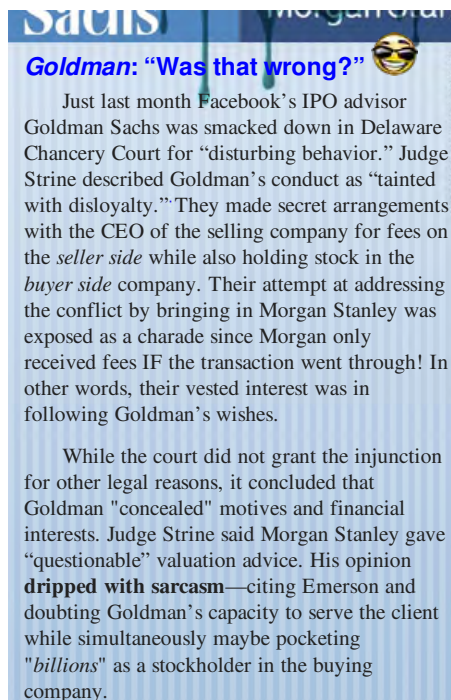


Fig. 4 – *In re El Paso Corporation Shareholder Litigation*, C.A. No. 6949-CS, Del. Ch. Feb. 29, 2012). Source: *Donna Kline Now!*

9 10 **11** 12 13 **14** 15
16 17 18 19 20 21 22
23 24 25 26 27 28 29
30

« Mar

RECENT COMMENTS

Frederick S.C. on ///
Instagram-scam?

LindaW on ///
Facebook's
Orwellian (black-is-
white) definition of
"clear and
convincing"
evidence

LindaW on ///
Facebook's
Orwellian (black-is-
white) definition of
"clear and
convincing"
evidence

Bill Cole on ///
Facebook's
Orwellian (black-is-
white) definition of
"clear and
convincing"
evidence

LindaW on ///
Instagram-scam?

Mike Strall on ///
Instagram-scam?

Darren on ///
Instagram-scam?

Christy Crenshaw on
/// Instagram-scam?

Steve Williams on ///
Facebook's
Orwellian (black-is-
white) definition of
"clear and
convincing"
evidence

Christy Crenshaw on
/// Facebook's

Breyer, Peter Thiel, Marc Andreessen and Mark Zuckerberg. Door Graphic:
Electiondebates.com.

4. Andreessen and Thiel are 2 of the 3 votes on Facebook's Audit Committee!

Good corporate governance requires that Andreessen and Thiel (being a majority of the 3-person Audit Committee) should have recused themselves from this transaction completely. They used *borrowed* money to make this purchase, so presumably Facebook had fiduciary requirements in the spending decisions. If they did, then they owe the public a duty of disclosure to reveal the decision-making process and valuation models on which this transaction was based.

5. Here's what just happened in the Instagram deal. It would make Harry Houdini proud.

Step 1. Facebook takes down a \$3 billion line of credit in March 2012.

Step 2. A month later Facebook acquires **Instagram**; a company with no revenue and no patents for \$1 billion; presumably with the approval of directors **Marc Andreessen, Peter Thiel, James Breyer (Accel Partners)** and **Mark Zuckerberg**. Are these directors striving to show their commitment to transparent corporate governance for a public company? Or, are they attempting to sneak another large transaction by the SEC and the public before the IPO—that way, there are fewer disclosures for the muppets to gnaw on? What do you think? Meep. Meep.

Step 3. **The Instagram beneficiaries include Andreessen & Thiel—multiple times!!!**

- **Marc Andreessen**, investor in Instagram
- **Benchmark Capital**, investor in Instagram; **Marc Andreessen & Matt Cohler**, principals
- **Sequoia Capital**, investor in Instagram; investor in **Peter Thiel** deals, incl. **PayPal, LinkedIn**

Step 4. **The Matt Cohler Outlier.** Matt Cohler, who is at Instagram of late, is **tangled in a web of conflicting relationships** with practically all the players on both sides of this transaction including Mark Zuckerberg, Peter Thiel (former Facebook bud), Marc Andreessen (current partner, former Facebook bud), Reid Hoffman (former Facebook bud), Benchmark Capital (a current partner), Sequoia Capital (bud of buds), Facebook (former VP), Dustin Moskowitz (former Facebook bud), Adam D'Angelo (former Facebook bud), PayPal (Peter Thiel's & Reid Hoffman's former company) and LinkedIn ("right-hand man" to Reid Hoffman).

- **LinkedIn**, former **Peter Thiel, Reid Hoffman** employee; Facebook investors
- **Facebook**, former VP, Zuckerberg employee,; spurned **Mark Zuckerberg** confidante

Orwellian (black-is-white) definition of “clear and convincing” evidence
Darren on ///
Facebook’s
Orwellian (black-is-white) definition of “clear and convincing” evidence
winston smith on ///
Facebook’s
Orwellian (black-is-white) definition of “clear and convincing” evidence
bg761 on ///
Facebook’s
Orwellian (black-is-white) definition of “clear and convincing” evidence
Linda W on ///
Facebook’s
Orwellian (black-is-white) definition of “clear and convincing” evidence
RobertC on ///
Facebook’s
Orwellian (black-is-white) definition of “clear and convincing” evidence
Steve Williams on ///
Facebook’s
Orwellian (black-is-white) definition of “clear and convincing” evidence
newbe on /// What
Facebook. Accel

- **Benchmark Capital**, Instagram investor; **Marc Andreessen**, partner

6. Goldman Sachs smacked down on Feb. 29, 2012 by Judge Strine for *dumbfounding* conflicts of interest also involving \$ billions in Goldman who advised the buyer and the seller and had holdings in the target. Goldman has major holdings in Facebook, is leading the IPO with JP Morgan (also fingered by the judge), collaborates with Fenwick & West.

Fig. 6 – Francis Pileggi and Kevin Brady of Eckert Seamans discuss a recent decision by the Delaware Court of Chancery in *In Re El Paso Corporation Shareholder Litigation*, which they wrote about in depth on the [Delaware Corporate and Commercial Litigation Blog](#).

Francis Pileggi describes the conflicts of interest that existed in the case, including several on the part of Goldman Sachs, which served as financial adviser to both parties, and the court’s decision to to deny the injunction and allow the El Paso shareholders to determine the adequacy of the price offered by Kinder Morgan despite the existence of those conflicts. Source: *YouTube*

7. Did Andreessen (on the Governance Committee) waive the “code of conduct” for himself and Peter Thiel on the Audit Committee?

Hm. Let’s think about how this (hypothetical) conversation transpired.

From the Desk of Marc Andreessen

Instagram Due Diligence

Andreessen: "Marc, would you be interested in buying your own company, Instagram?"

Andreessen: "How could I do that?"

Andreessen: "How about you borrow money from an outside source for the transaction?"

Andreessen: "Good idea!"

Andreessen: "Then, when the cash is raised from the IPO,

Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know
 newbe on /// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know
 bradh on /// Facebook countersues Yahoo with bogus patents? Confirms reckless mindset.
 Tex on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook

CATEGORIES

Current Positions
 Economic Analysis
 Investigation

SEARCH BLOG

META

Log in
 Entries RSS
 Comments RSS


Andreessen:	you could pay off the loan."
Andreessen:	"Even better idea, Marc—that way the muppet public investor would be the ones to finance the operation!"
Andreessen:	"Right. Now how do we get this by the Audit Committee?"
Andreessen:	"Hello? You are <i>on</i> the Committee. Peter Thiel is on the Committee, too, and a bunch of his close friends are invested in Instagram. Why would he mind?"
Andreessen:	"How about the Governance Committee?"
Andreessen:	"Ding Dong. <i>You</i> are on the Governance Committee."
Andreessen:	"Fantastic news. I bet we could do this multiple times before the IPO."
Andreessen:	"Absolutely. And the best part is that we govern ourselves. Bwaah hahaha!!"
Andreessen:	"Bwaah hahaha!!"
	
<p>Done!</p>	

Table 1 – Marc Andreessen’s hypothetical due diligence conversation with himself for the \$1 billion Instagram deal. Drawing: EduBlogs.

Apparently. Meep, meep.

READER

LOCATIONS:



OPINION

This is an opinion blog. Any information contained or linked herein should be independently verified and should be considered the sole opinion of the writer. Free Speech and Freedom of the Press are protected by the First Amendment of the U.S. Constitution and other local, state, national and international laws.



Fig. 7 - Marc Andreessen (L to R) participated on both the buy-side and sell-side of the \$1 billion Facebook-Instagram deal. Andreessen's earlier social networking patents disclosed Leader's patent to the Patent Office, but Facebook's later ones did not. Is Andreessen hiding 'guilty knowledge' and attempting to use \$3 billion in borrowed money to cash in on his patent failures and disclosure indiscretions by getting his money out BEFORE the public offering—leaving the muppets to clean up their mess? What does Matt Cohler know about this? Photo: Charlie Rose.

8. Hush money? IPO stock purchase money? Ponzi scheme? All of the above?

Instagram's Matt Cohler had a falling out with Zuckerberg in 2008 after being with him from at least May 2004 (after the infringement of Leader Technologies' patent had already begun). He was there when Stephen Dawson Haggarty was hired to implement the "groups functionality" that propelled Facebook's popularity (the same month Leader's patent first published at the USPTO describing the groups invention (like a real patent is supposed to do) ([Click here](#) for more on this). I blog about this [here](#) and [here](#).

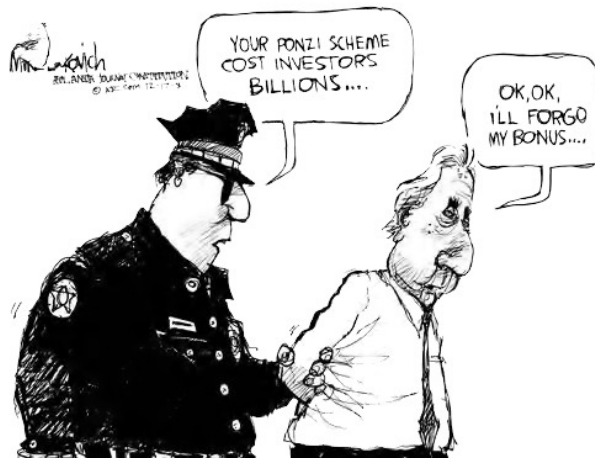
What does Cohler know that the Zuck does not want to be revealed about those formative years? Does he have information that would help Leader Technologies prove willful infringement (which could triple the patent infringement damages award). Oh, forgot. This is not a material risk either. Meep, meep.

9. \$1 billion price tag hiding big secrets?

Auditors and analysts should ask Mark Cohler if he is hiding what would otherwise be a material disclosure. They should ask him if he believes the \$1 billion valuation was justified, and if so, what model was used? For Facebook to pay \$1 billion for a company with no revenue, no patents, and a short operating history can only mean one thing: the players are hoping to keep us muppets in the dark about what is really going on. As I wrote in my previous post, this is nothing short of arrogant recklessness.

Being forewarned is forearmed. **R-U-N.**

Meep, meep.



*Ponzi Schemes make brokers rich on commissions.
Source: Atlanta Journal Constitution.*



"We've discussed honesty as a policy, but, so far, it hasn't gained any momentum."

Board Meeting for Facebook, Goldman Sachs, Morgan Stanley? Partner Meeting for Fenwick & West, Cooley Godward, Accel Partners? All of the above? Source: Boston Catholic Insider.



*I lost my other shirt in a Ponzi Scheme. Source:
Wall Street Law*

Credits

1. Good Governance graphic. [ESCAP](#). Accessed Apr. 12, 2012.
2. Harry Houdini. "The Right Way To Wrong – An Expose of Successful Criminals." *Harry Houdini*, 1906: Boston. Accessed Apr. 12, 2012.
3. Ponzi Scheme cartoon. [CartoonStock.com](#). Accessed Apr. 12, 2012.
4. I Lost My Other Shirt In A Ponzi Scheme. [Wall Street Law](#). Accessed Apr. 12, 2012.
5. Fenwick & West LLP logo. [Fenwick & West LLP](#). Accessed Apr. 14, 2012.
6. Goldman Sachs logo. [Goldman Sachs](#). Accessed Apr. 14, 2012.
7. Bernie Madoff photo. [Time](#). Accessed Apr. 17, 2012.
8. Matt Cohler photo. [Time](#). Accessed Apr. 17, 2012.
9. Marc Andreessen photo #1. [The Telegraph \(UK\)](#). Accessed Apr. 17, 2012.
10. Peter Thiel photo #1. [Jin Lee/Bloomberg](#), [Tabish.me](#). Accessed Apr. 17, 2012.
11. Peter Thiel photo #2. [Valleywag](#). Accessed Apr. 17, 2012.
12. Mark Zuckerberg photo. [SickFacebook.com](#). Accessed Apr. 17, 2012.
13. James W. Breyer photo. [Beta Beat](#). Accessed Apr. 17, 2012.
14. Marc Andreessen photo #2. [The Business Insider](#). Accessed Apr. 14, 2012.
15. Sneaky-Slick Smiley Face. Ownership unknown. Accessed Apr. 14, 2012.
16. Let's Make a Deal Door graphic. [Electiondebates.com](#). Accessed Apr. 17, 2012.
17. Francis Pileggi summary of *In Re El Paso Corporation Shareholder Litigation*. [YouTube](#). Access Apr. 14, 2012.
18. Marc Andreessen photo #3. [Charlie Rose](#). Access Apr.

- 14, 2012.
19. ClustrMaps. [ClustrMaps.com](#). Accessed Apr. 14, 2012.
 20. Beaker from the Muppets. The Muppets are believed to be owned by [The Walt Disney Company](#). Accessed Apr. 14, 2012.
 21. Devil drawing. [Mobypicture.com](#). Accessed Apr. 14, 2012.
 22. Good vs. Evil drawing. [EduBlogs](#). Accessed Apr. 14, 2012.
 23. Bernie Madoff Ponzi Scheme. Mike Luckovich, [Atlanta Journal Constitution](#). Accessed Apr. 14, 2012.
 24. Honesty cartoon. [Boston Catholic Insider](#). Accessed Apr. 14, 2012.

* * *

Posted by [Donna Kline](#) on Saturday, April 14, 2012, at 11:21 pm.


Filed under [Investigation](#).


Follow any responses to this post with its [comments RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

{ 5 }


Comments

1. **Christy Crenshaw** | April 15, 2012 at 1:44 pm | [Permalink](#) 

Donna, just when I thought the revelations were subsiding, another ethical tsunami. H-E-L-L-O SEC. Use your big stick.
2. **Darren** | April 15, 2012 at 3:07 pm | [Permalink](#) 

We have just learned what SEC means, "Sudden Economic Crisis!" They only act after the damage has been done! Look at what Wikipedia has to say about how they handled Bernard Madoff!!!
(http://en.wikipedia.org/wiki/Bernard_Madoff), "Botched investigations", "incompetent staff work or neglecting allegations of financial experts and whistle blowers". That was just what the SEC's own Inspector General did for 17 years!!!!
Also where are the Wall Street protestors on this, the 99%ers? Oh that's right, (clink, clink) (pouring sound), they used Facebook to rally everybody because they know that


Facebook is 110% about protecting their rights and privacy! 🙄
NOT!!!!
Pardon me while I pour some more drinks for the 99%ers, financial watchdog agencies and mainstream media! They seem to be kicking back and thirsty!

3. **Mike Strall** | April 16, 2012 at 8:49 am 
| [Permalink](#)

WOW–this Leader / Facebook lawsuit runs so deep and cuts into so many different powerful folks that even Bernie Madoff could of learned a trick or two!


One would hope the SEC’s own Inspector General won’t get burn’t a 2nd time when so many facts are right in front of their nose. Thank God for people like Donna; doing the SEC work investigations, while their agents are doing what?

(Processing e-mails, dealing with government regulations—who knows. I think they are under staffed—they need to hire more staff)–that’s the answer–HA:(

4. **LindaW** | April 17, 2012 at 10:01 am | 
| [Permalink](#)

Remember “The Cone of Silence” on the Get Smart TV comedy? That’s like the bubble under which these Silicon Valley operators communicate out here. They repeat each other’s lies so often that those lies become the truths among those who are members of the club. The lies stop only after the bubble bursts. In addition counseling its called intervention. It’s time for intervention, I think.

Although we hope the SEC will do something, I very much doubt it. As one post said, they “investigated” Bernie Madoff for 17 years and did nothing in the end. I too wonder why we pay them to occupy Washington office space.

5. **Frederick S.C.** | April 17, 2012 at 1:51 pm | 
| [Permalink](#)

Whew. Help me out here. Am I crazy,

or am I starting to unravel the treads of this legal mess that Facebook probably spent 10's of millions of dollars creating?

— If I bottom line all I've read on this site and elsewhere, the kid Zuck (a) stole the platform technology ideas from McKibben (who started inventing in 1997 when the kid was just 13 years old) whose son was in the next dorm and had details about the platform in his Zuck-hacked inbox, and (b) the faces idea from the Winkelvosses, Greenspan and Harvard Admin. Hoffman, Thiel, Breyer and the rest of the Accel Partners Harvard Alum clique arranged for the kid to get more Harvard Crimson newspaper coverage than Clinton or Bush in the span of six months (Nov-2003 to May-2004).

— The kid then flies to California where the Accel Partners "cabal" continues polishing their custom-designed "Harvard story" with the kid's cooperation (for which he is rewarded with unlimited access to cash). McKibben's patent publishes in June 2004 and the kid refines the "groups" feature which causes the system to take off. The advertising revenue starts to grow. They get a waiver of the 500 shareholder rule from the SEC in 2008 that they use as their excuse to sell \$3 billion (with a "B") in insider "IPO supplement" (Juri Milner's term) stock to money of questionable origins—a private market made by Goldman Sachs whose former executives and employees run their large Russian investor from Moscow and London, after blocking American investors from investing. These insiders sell off 10-30% of the company to a Russian oligarch and hire his entrepreneur as their chief adviser on Facebook money.

—Meanwhile, they are judged to be in "literal infringement" of Leader's patent, but win on a BS technicality for which they presented no credible defense on appeal and will probably lose. With the prospect of a damages, willful infringement and injunction looming in Leader v. Facebook, the issue an S-1 that doesn't even mention these facts, and they borrow another

\$3 billion, then six weeks later spend \$1 billion to buy the company of a former Facebook insider whose investor includes Facebook board members...

—What am I missing? Isn't this the definition of a criminal enterprise?

Post a Comment

Your email is never published nor shared. Required fields are marked *

Name *

Email *

Website

Comment

[« /// FACEBOOK'S ORWELLIAN \(BLACK-IS-WHITE\) DEFINITION OF "CLEAR AND CONVINCING" EVIDENCE](#)

Exhibit B

{ 2012 04 11 }



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg* New York.

LEADER V.

FACEBOOK PRESS

BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Muppet Chat (PDF)

MOBILE QR-CODE:



Follow @DonnaKline1

Tweet

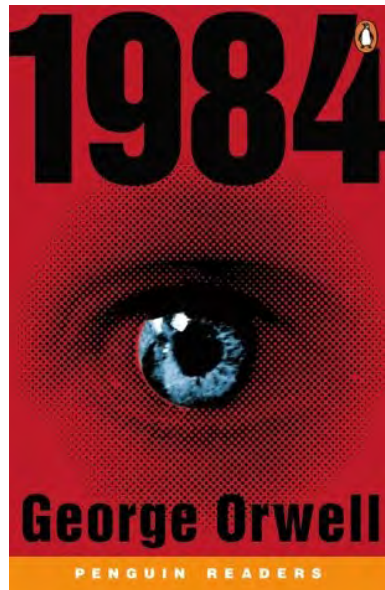
Tweet #TwitterStories

Tweet to
@DonnaKline1

PREVIOUS POSTS

/// Instagram-scam?

/// Facebook's Orwellian (black-is-white) definition of "clear and convincing" evidence



George Orwell's 1984

When Facebook employee Nick Bilton was asked how Mark Zuckerberg feels about privacy, Bilton laughed, "He doesn't believe in it." [Huffington Post](#), Jan. 2010.

[George Orwell's](#) novel *1984* introduced the maddening world of doublespeak where the bad were made to sound good. Facebook's definition of privacy is Orwellian since protecting privacy in Zuck-speak is an impediment to "engagement," which is a Facebook euphemism for selling your private information to advertisers to generate Facebook's revenue.

1. Privacy is an "old person's issue"

In perhaps an unguarded moment among compadres at the annual Davos conference in far off Switzerland, LinkedIn CEO Reid Hoffman (and large Facebook stockholder) said that privacy is "an old people issue." **HUH?** Don't believe me? [Click here](#) to watch him say it (at 13:00-13:11)! I don't know whether to call the police or a psychiatrist. Oh, I forgot, in the former Soviet Union (where Orwell's *1984* hellish prophesy actually became national policy), [the police and psychiatrists had adjoining offices](#). Ha Ha Ha. Let's see, healthcare information, financial information, trade secrets, personal thoughts, etc. etc. etc. GEESH!!! George Orwell is surely turning in his grave.



*Reid Hoffman, CEO, LinkedIn; very early Facebook investor.
Photo: CNN Money*

Hoffman is part of the so-called "[PayPal](#)" Mafia, holds 28.2% of Facebook B shares, was a prime mover in the murky Zuckerberg late-Harvard years in early to mid-2004 when the infringement of Leader's invention started. The new story emerging only now in 2012 (first source appears to be Wikipedia) is that Hoffman introduced Zuckerberg to Peter Thiel (another co-founder of PayPal) sometime in late 2003 or early-to-mid 2004. [1]. Curiously, Leader's patent detailing the "groups functionality" first published for public review on June 24, 2004. Thiel ostensibly invested the first \$500,000 in Facebook in the summer of 2004, but now it appears that Hoffman may have

/// Facebook's
Orwellian (black-is-
white) definition of
"clear and convincing"
evidence
/// Facebook
countersues Yahoo with
bogus patents?
Confirms reckless
mindset.
/// Facebook "Liked"
Leader's source code ...
before it didn't
/// Proof Fenwick &
West LLP did not
disclose Leader as prior
art to Facebook
/// MF Global + JP
Morgan + Goldman
Sachs + Harvard Grads
+ Politics = A big mess
/// What Facebook,
Accel Partners,
Goldman Sachs and
Fenwick & West don't
want us "muppets" to
know
/// Make up your
mind, Fenwick & West
LLP
/// Muppet Mania
/// Haughtiness in the
face of "literal
infringement"
/// Facebook *ordered*
pharma users to allow
comments, yet will not
return phone calls now
/// First thoughts after
leaving courthouse
March 5, 2012
/// Judges Selected
/// San Francisco CBS-
TV KPIX Coverage
/// NBC-TV4
(Columbus) Interview
with Leader founder
Michael McKibben
/// How Facebook

been coaching the young Zuck even earlier? (Remember that Accel Partners Chairman James Breyer let slip in a Euro video posted on this site ([here](#), Item 16) that Accel had contact as early as 2003; this is after he said in a 2005 Stanford video also posted on this site ([here](#), Item 16) that he had somehow "missed" the emergence of the Zuck until late 2004 or 2005?) Was LinkedIn Hoffman's reward from the cabal? The story discrepancies and coincidences are piling up!

2. Digital Peeping Toms?



Mr. Zuckerberg has been in the process of redefining words like "more engagement" in social-speak to mean **MORE REVENUE FOR ME AND MY CABAL OF INSIDERS** like Reid Hoffman. ([Click here](#) for CNET's Molly Wood's list of "big winners" aka "The Cabal of Digital Peeping Toms.") In Zuck's world protecting privacy is an impediment to "engagement." Well of course it is. We get

it Mr. Zuckerberg. Meep, meep.

Facebook was recently smacked with a 20-year sanction for deceiving consumers about privacy by the Federal Trade Commission. [USA Today](#), Nov. 30, 2011. "Privacy" in our actual English language means "freedom from intrusion." However, in Zuck-speak privacy is evil because it prevents Facebook from selling front-row seats in your backyard so well-heeled advertisers can view your online activity through your kitchen window.

3. Facebook attorneys carried the Zuck's Orwellianism into the *Leader v. Facebook* court room

At the *Leader v. Facebook* trial Facebook's attorneys persistently misrepresented a snippet of Michael McKibben's video-taped deposition. They confused the jury with it, repeated it on no less than 17 pages of their appeal brief, and then stated it yet again in front of the three-judge US Court of Appeals for the Federal Circuit panel on Mar. 5, 2012. I was at this hearing and heard it myself.

Here's Michael McKibben's actual video-taped testimony:

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

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

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

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.

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

Q. Now, Mr. McKibben, at some point in time, you had the Leader2Leader product implemented; correct?

A. As I've tried to explain, Leader2Leader is a suite of applications. It's a brand name. There is no such thing as completion of a brand name.

tricked the jury –
 YouTube
 /// New friends?
 /// Did Someone Prod
 the Media?
 /// Facebook: The New
 “Too Big To Fail?”
 /// Big trouble ahead
 for the Facebook IPO?
 – PBR / YouTube
 /// What happens on
 March 5th, 2012?
 /// More on FB’s S-1
 omissions & other
 conflicts of interest
 /// Big trouble ahead
 for Facebook IPO?
 Backgrounder
 /// My take on the MF
 Global debacle: It could
 have been a customer
 /// Comments on EU
 reform announced Oct
 27, 2011

ARCHIVE OF POSTS

Select Month 6

CALENDAR:

April 2012

M T W T F S S

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

« Mar

RECENT

COMMENTS

Frederick S.C. on ///
 Instagram-scam?
 LindaW on ///
 Facebook’s Orwellian
 (black-is-white)
 definition of “clear and
 convincing” evidence

There’s a lot of technologies within the suite of applications. Some were more developed than others at different times.

Q. The Leader2Leader platform, at some point in time, you had that implemented; correct?

A. I’m trying to help you here, but Leader2Leader is not a technology. It is a brand name for a suite of technologies. So the answer is various pieces of the product were done at different times.

—*Leader v. Facebook*, Fri. Jul. 23, 2010, Trial Tr. 10841:6 (PDF p. 104) to 10842:17 (PDF p. 105).

[Leader v. Facebook – Trial Transcript, Fri. Jul. 23, 2010, Trial Tr. 10841:6 \(PDF p. 104\) to 10842:17 \(PDF p. 105\)](#)

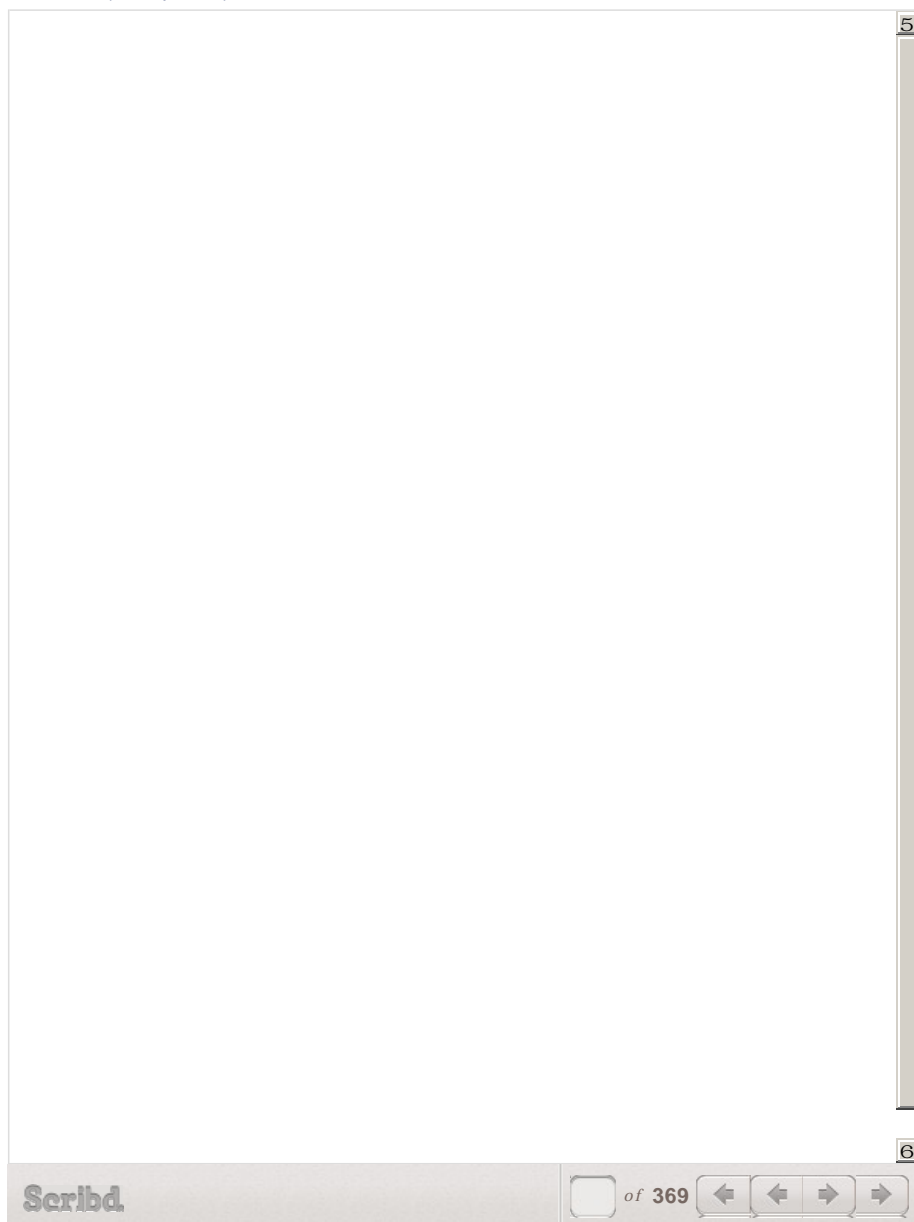


Fig. 1 – *Leader v. Facebook* Trial Transcript, Fri. Jul. 23, 2010. Leader inventor Michael McKibben’s video taped testimony snippet played twice to the jury, starting at p. 104. Facebook stated at the Federal Circuit Hearing on Mar. 5, 2012 that “we asked Mr. McKibben, “Can you identify any version of Leader2Leader that didn’t practice the patent?” He can’t identify any version.” As one can read here Mr. McKibben said nothing of the kind. Trial Tr. 10841:6 (PDF p. 104) to 10842:17 (PDF p. 105).

Now, are you ready for this? Here’s Facebook’s remarkable interpretation of what you just read:

LindaW on ///
Facebook's Orwellian
(black-is-white)
definition of "clear and
convincing" evidence
Bill Cole on ///

Facebook's Orwellian
(black-is-white)
definition of "clear and
convincing" evidence

LindaW on ///
Instagram-scam?
Mike Strall on ///
Instagram-scam?
Darren on ///

Instagram-scam?
Christy Crenshaw
on /// Instagram-
scam?

Steve Williams on ///
Facebook's Orwellian
(black-is-white)
definition of "clear and
convincing" evidence

Christy Crenshaw
on /// Facebook's
Orwellian (black-is-
white) definition of
"clear and convincing"
evidence

Darren on ///
Facebook's Orwellian
(black-is-white)
definition of "clear and
convincing" evidence

winston smith on ///
Facebook's Orwellian
(black-is-white)
definition of "clear and
convincing" evidence

bg761 on ///
Facebook's Orwellian
(black-is-white)
definition of "clear and
convincing" evidence

Linda W on ///
Facebook's Orwellian
(black-is-white)
definition of "clear and

"We asked Mr. McKibben. Can you identify any version of Leader2Leader that didn't practice the patent. He can't identify any version."

—Thomas Hungar, Facebook Attorney, Mar. 5, 2012, Federal Circuit Hearing Transcript 27:3-5.

WHAT????!! THAT IS NOT WHAT HE SAID. What he said was that *he didn't remember*, but that the Leader developers had that information. Did Facebook ask any of the developers? Curiously, not a one. What was the jury doing during this testimony? It is appearing more and more to me that Facebook's twisted story had them so confused that they must've switched off and said the heck with it, we'll just give this one to Facebook so we can get out of here. That's all I can figure, because Facebook's only other support for this concocted story is Interrogatory No. 9 which the justices weren't buying either.

In response to Judge Kimberly A. Moore's challenge of Facebook attorney Mr. Hungar's interpretation of this snippet of Mr. McKibben's testimony, Mr. Hungar responded:

"But, but, but."

—Thomas Hungar, Facebook attorney, Mar. 5, 2012, Federal Circuit Hearing Transcript 28:5.

[Leader Tech v. Facebook, Case No. 2011-1366 \(Fed. Cir.\) Hearing Transcript, Mar. 5, 2012, Tr. 28:5.](#)

convincing” evidence
 RobertC on ///
 Facebook’s Orwellian
 (black-is-white)
 definition of “clear and
 convincing” evidence
 Steve Williams on ///
 Facebook’s Orwellian
 (black-is-white)
 definition of “clear and
 convincing” evidence
 newbe on /// What
 Facebook, Accel
 Partners, Goldman
 Sachs and Fenwick &
 West don’t want us
 “muppets” to know
 newbe on /// What
 Facebook, Accel
 Partners, Goldman
 Sachs and Fenwick &
 West don’t want us
 “muppets” to know
 bradh on /// Facebook
 countersues Yahoo with
 bogus patents?
 Confirms reckless
 mindset.
 Tex on /// Proof
 Fenwick & West LLP
 did not disclose Leader
 as prior art to Facebook

CATEGORIES

Current Positions
 Economic Analysis
 Investigation

SEARCH BLOG

META

Log in
 Entries RSS
 Comments RSS
 WordPress.org

READER

LOCATIONS:

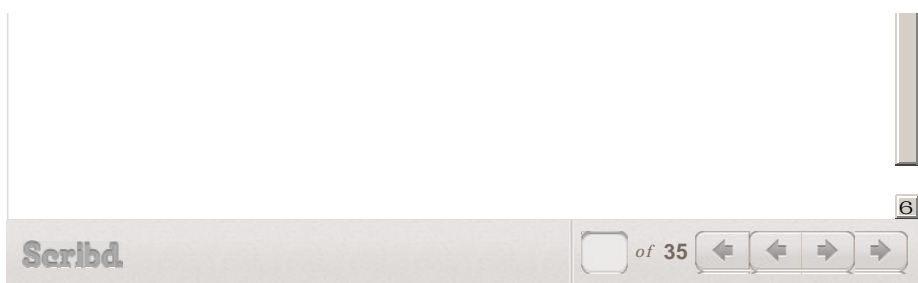


Fig. 2 – *Leader Tech v. Facebook, Case No. 2010-1366 (Fed. Cir.)* Hearing Transcript, Mar. 5, 2012. This page 28 (line 5) displays Facebook’s attorney Thomas Hungar’s response to Judge Moore’s challenge of his interpretation of Michael McKibben’s video-tape deposition testimony. Note that Mr. Hungar’s subsequent reference to “Digital Leaderboard” is another novel argument and reference to evidence that was NEVER argued to the jury. Therefore, the jury could not have opined one way or the other on this yet-another freshly-minted post-trial Facebook argument.

4. Hey Facebook. The world has been down this black-is-white path too many times! Isn’t it time to do better?

As the saying goes, when you live by the sword, you die by the sword (or the Kool-Aid)!!! Facebook, are you actually trying to get the venerable second highest court in the United States to buy the idea that the text in red below is “clear and convincing?” Do you have no shame in taking a straightforward statement that a person doesn’t remember and interpreting it as a universal supposed “clear and convincing” admission about Leader2Leader for all time? And that is enough to overturn a validly issued United States patent? *Why* are you wasting the court’s time with this nonsense? Oh, that’s right, the M-O-N-E-Y.

Leader Technologies, Inc. v. Facebook, Inc., 08-cv-862-JJF-LPS (D.Del. 2008), Trial Transcript 1084:6 (PDF p. 104) to 10842:17 (PDF p. 105).

Clear and convincing evidence?

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

Q. Did you have any technique for identifying differences between various Iterations of Leader2Leader product?

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

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.

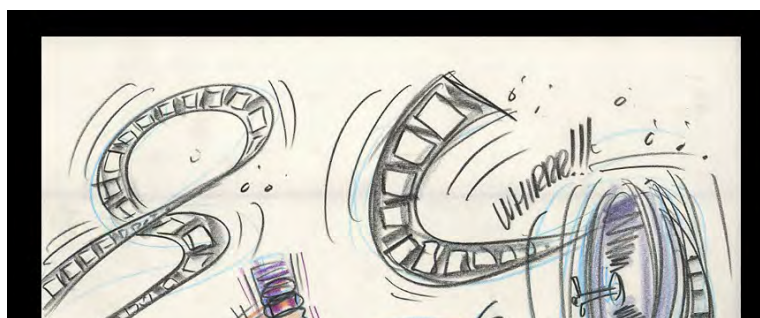
(Conclusion of videotape deposition excerpt of Mr. McKibben.)

Q. Now, Mr. McKibben, at some point in time, you had the Leader2Leader product implemented; correct?

A. As I’ve tried to explain, Leader2Leader is a suite of applications. It’s a brand name. There is no such thing as completion of a brand name. There’s a lot of technologies within the suite of applications. Some were more developed than others at different times.

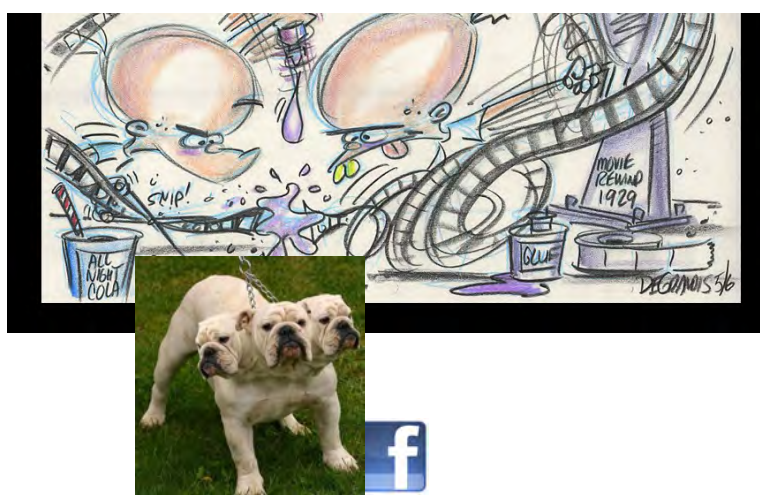
Q = (FACEBOOK) MR. RHODES;
 A = (LEADER) MR. MCKIBBEN;

5. Does Facebook play anything straight up?



OPINION

This is an opinion blog. Any information contained or linked herein should be independently verified and should be considered the sole opinion of the writer. Free Speech and Freedom of the Press are protected by the First Amendment of the U.S. Constitution and other local, state, national and international laws.



Bits of video can be made to say whatever one wishes when one is intent on taking the subject matter out of context



Cooley Godward LLP video-taped deposition of 'Honest Abe' Lincoln

6. Facebook/Cooley-Godward-speak (Facebook's attorneys* in Leader v. Facebook) of Abraham Lincoln's Gettysburg Address

* Facebook's Cooley Godward attorneys include Heidi Keefe, Michael Rhodes, Mark Weinstein, Jeffrey Norberg, Theodore Ulliyot (inside counsel for Facebook) and Samuel O'Rourke (inside counsel for Facebook).

Honest Abe's Actual Words: "Four score and seven years ago" = 87 years

Cooley/Facebook-speak: "~~Four score and~~ seven years ago" = 87 years

Facebook/Cooley-Godward-speak: "Mr. Lincoln has guilty knowledge! He said that the American Revolution occurred just "seven" years ago and that he gave the speech in "Getty."

Cooley-speak's Appeal Brief after Mr. Lincoln appeals this deception: **Pg. 1 – Lincoln's a Liar! Pg. 2 – Lincoln's a Liar! Pg. 3 – Lincoln's a Liar! Pg. 4 – Lincoln's a Liar! Pg. 5 – Lincoln's a Liar! Pg. 6 – Lincoln's a Liar! Pg. 7 – Lincoln's a Liar! Pg. 8 – Lincoln's a Liar! Pg. 9 – Lincoln's a Liar! Pg. 10 – Lincoln's a Liar! Pg. 11 – Lincoln's a Liar! Pg. 12 – Lincoln's a Liar! Pg. 13 – Lincoln's a Liar! Pg. 14 – Lincoln's a Liar! Pg. 15 – Lincoln's a Liar! Pg. 16 – Lincoln's a Liar! Pg. 17 – Lincoln's a Liar!** (. . . There, we said it 17 times; now its a newly-minted attorney fact. The muppets in the jury and the appeals court will fall for this 'cause we're attorneys who swore an oath to tell the truth and not mislead the public.) 😊

Facebook called Michael McKibben a liar on 17 pages of its appeal brief in *Leader v. Facebook*. [Click here](#) for an analysis.

7. Facebook's accusations against McKibben are out-of-character

Ironically, Michael McKibben is friend to numerous moral and spiritual leaders around the world. He has proven himself trustworthy in the midst of highly-charged world events. In the 1970's he worked extensively with then [Cardinal Karol Wojtyła](#) in Communist Poland to promote human rights and spiritual life through a youth movement named [Sacrosong](#), and later in a special audience in St. Peter's Square at the Vatican after Cardinal Wojtyła became [Pope John Paul II](#). He also worked in Poland with [Lech Wałęsa](#) and [Solidarity](#) during their formative days in 1980. Also in the late '70's and early '80's, in addition to working with dozens of human rights leaders in the USSR, he worked with Soviet/Russian composer [Aleksandra Pakhmutova](#), who collaborated with his wife Nancy in recording her music, including an English-lyrics version of her famous song "[We Can't Live Without Each Other](#)." Those lyrics are apropos to this blog topic (truth vs. lies) when this Soviet-American collaboration exhorts "We always speak in lies, it's our disguise. Oh please, speak truth to me, be strong, be wise."

This song went on the official [1980 Olympic](#) Gold Medalist film produced by Pakhmutova and her poet husband Nikolai Dobronravov. Over 200,000 copies were distributed in news kiosks across the Soviet Union, and it was performed on Soviet national TV produced by Yevgeny Ginzburg; probably the only Gospel concert of its kind in the history of the former Soviet Union. This occurred eight years before the [collapse of Communism in the USSR](#). McKibben and his groups did this during the years surrounding President Carter's [boycott](#) of the 1980 Moscow Summer Olympics over the Soviet Union's invasion of Afghanistan! If this weren't enough, also around 1980 he organized Protestant-Catholic concerts in Belfast during the height of "[The Troubles](#)," prompting one member of the House of Lords to describe that effort as perhaps more effective than all the pronouncements of the [British House of Lords](#). In then-[apartheid](#) South Africa, McKibben's band and [Andraé Crouch](#) organized the first-ever black-white integrated concert tour.

More recently, McKibben's Leader Technologies supported [life saving and disaster recovery](#) for the entire State of Louisiana in the aftermath of Hurricane Katrina—the only working large-scale collaboration system that remained working for the state and federal agencies as they worked to save people from housetops and recover. He also supplied substantial counter-terror support after 9/11, including to Homeland Security's first large-scale simulation of an attack on United States schools, hospitals and churches ("soft targets"). He has still not been paid for much of this quiet effort on behalf of our national security and safety.

So you see, Facebook's Orwellian-speak accusations against Mr. McKibben are totally out-of-character with his history. [Click here](#) to read more.

Hmmmm. Video deposition snippets are dangerous in the hands of unscrupulous attorneys, aren't they?

Meep, meep.



Stay tuned! Much more to come.

* * *

Footnotes:

[Back^](#) [1] Reid Hoffman. “Hoffman arranged the first meeting between Mark Zuckerberg and Peter Thiel, which led to Thiel’s initial \$500,000 angel investment in the company. Hoffman invested alongside Thiel in Facebook’s very first financing round.” *Wikipedia*. Accessed Apr. 10, 2012.

Credits:

1. George Orwell 1984 Book Cover. *Penguin Readers*. Accessed Apr. 10, 2012.
2. Reid Hoffman Photo. *CNN Money*. Accessed Apr. 10, 2012.
3. Make This Pledge Orwellian Poster. *Blogspot*. Accessed Apr. 10, 2012.
4. Peeping Tom Photo. *Cutcaster*. Accessed Apr. 10, 2012.
5. Scribd documents. *Scribd*, Public Domain. Accessed Apr. 10, 2012.
6. Facebook logo button. Facebook. Accessed Apr. 10, 2012.
7. Finster Film Splicers. *Frederatorblogs*. Accessed Apr. 10, 2012.
8. Three-headed Bulldog. *Blogspot*. Access Apr. 10, 2012.
9. Facebook Illuminati Symbol. *Gawker*. Accessed Apr. 10, 2012.
10. Beaker. The Muppet characters are believed to be the property of [The Walt Disney Company](#). Accessed Apr. 11, 2012.
11. Cooley Godward attorney photos Michael Rhodes, Mark Weinstein, Heidi Keefe, Jeffrey Norberg. [Cooley Godward LLP](#). Accessed Apr. 11, 2012.
12. Theodore Ullyot and Samuel O’Rourke photos. Facebook. Accessed Apr. 11, 2012.
13. Abraham Lincoln photo. [The White House Museum](#). Accessed Apr. 11, 2012.

Posted by [Donna Kline](#) on Wednesday, April 11, 2012, at 7:10 am.

Filed under [Investigation](#).

Follow any responses to this post with its [comments RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

{ 11 }


Comments


1. **Steve Williams** | April 11, 2012 at 6:21 pm |




[Permalink](#)

We muppets, living in the illustrious land of Oceana, should be grateful to Big Brother Zuck for allowing us not to be shackled with the chains of reason and logic. As one who continually practices “thoughtcrimes”, I’d like to point out that not remembering the exact details of a past situation does not constitute a flat-out denial of said facts. If “ignorance is strength”, as George Orwell so eloquently opined, then Mr. Unger should be hailed as a “Mental Giant”, for his brilliant utterances...”But, but, but”. When will the “Kool-aid” drinkers realize that, in by doing so, you are violating the very commandments you espouse, that of self-indulgement. And to the “Inner party” member, Reid Hoffman (Linked-In CEO), the only reason I can tell that you’d be looking in my kitchen window is to see what I’m putting on the dinner table (lose a few buddy).
Meep, meep!

2. **RobertC** | April 11, 2012 at 10:01 pm | [Permalink](#) 
- DONNA, THANK YOU THANK YOU THANK YOU. What's been nagging me for years is the absolute vacuousness of the Zuck's "dude vision." It never made sense to me how his "I thought, like, it might be kinda cool, ya know, dude" explanations for the beginnings of Facebook could've sparked this technology revolution. It made me kind of depressed to think that such substance could have emerged from such shallow thinking. Now we know! He stole it from somebody who sunk 150,000 man-hours and \$10 million into the hard work of real invention, and his immoral M-O-N-E-Y dudes fueled the theft from 2004 to today. Donna, you have opened my eyes and restored my faith in my instincts!!!! Your brief bio on McKibben shows me that a caring, thoughtful and courageous person is behind the invention...
- His story is a movie! His children are kicking butt professionally. The apple doesn't fall far from the tree? Doctor, nurse, designer, civil rights activist, NCAA Champion, Ivy League Champion.... every parent's dream. How did he pull off getting a Gospel group on Soviet TV and the Olympic Film in a militantly atheistic state while Carter was boycotting the Olympics? That link you included says he has friends who were imprisoned for "anti-Soviet activity." He has worked with some of the moral heroes of the 20th and 21st Centuries in the Pope John Paul II and Lech Walesa. Wow!!!!!!!!!!!! Maybe he can use those skills to fix Washington while he's at it. LOL. (not kidding)
- <http://www.merriam-webster.com/dictionary/vacuous>

3. **Linda W** | April 12, 2012 at 10:36 am | [Permalink](#) 
- Now that we're seeing that Facebook plays nothing straight up, what's with this paying a BILLION dollars for Instagram (with a "B" !!!!)? This smells to high heaven. Hope the super sleuths are digging into this. Here's what I think... they borrowed money from one group of thieves (whoops, bankers) to pay it to another group in their same "cabal?" I am taking bets.

4. **bg761** | April 12, 2012 at 12:10 pm | [Permalink](#) 
- "Does Facebook play anything straight up?"
- Clearly NO. Could there be a connection between Facebook and Instagram that is trying to be covered up? 🙄
- Does Matt Cohler know something that Mark Zuckerberg doesn't want the public to know. The connections are unbelievable!!!!!!!! He worked for Peter Thiel at Linked In in 2004. Became VP of Product Development at Facebook in 2005. (Remember that was the year Accel Partners' Jim Swartz and Ping Li received Leader's confidential business plan).

He left Facebook in 2008 amongst a flurry of other departures. HMMMMM! Then he joined Benchmark Capital. Benchmark invested in Instagram in Feb. 2011 and then he joined the Board there.

According to Wikipedia.org , Instagram was only worth \$25 million on Feb 2, 2011, \$500 million on April 3, 2012 and that was after raising only \$50 million from VC's. SOMETHING STINKS!!!!

Could it be a payoff? Is there information that needs to stay quiet. Doesn't this seem strange to anyone else?????

Here's the MATH:

THIEL + COHLER + ZUCKERBERG + NO REVENUE + NO INTELLECTUAL PROPERTY + \$3 BILLION LINE-OF-CREDIT = WORTH \$1 BILLION TO KEEP COHLER QUIET?


<http://www.siliconbeat.com/2012/04/09/todays-other-big-instagram-derby-winner-former-facebook-exec-matt-cohler-of-benchmark/>

5. **winston smith** | April 12, 2012 at 8:12 pm | 

[Permalink](#)

I have a question that I would like to pose to the people at Facebook, "If everything involving your IPO filing, everything involving the supposed facebook patent filings, everything involving shady business acquisitions, all the rumors of pay-offs and kick backs, all of the well-documented privacy infringements:

If these are all legit and on the up and up, why will not one individual, one representative of facebook, answer any questions, any phone calls, emails, or at least respond to these blogs and defend Facebook's position? Do you have something to hide? Or, have you so muddied the waters with inaccuracies, lies, and half-truths, that it's hard for even yourselves to see thru the murkiness that you created? And on another tangent, why no other reporter (thank you Donna), hasn't picked up the proverbial ball and ran with it is beyond me. Are all you other (reporters) scared to report the truth? Does it always have to be about an insidious crime like murder, rape, or terrorism? If lies and deception is your niche, well, then come on in!

6. **Darren** | April 14, 2012 at 1:16 pm | [Permalink](#) 

Facebook, an advocate of Cyber Intelligence Sharing and Protection Act (CISPA), released a statement Friday afternoon explaining that the company backs the bill because it allows it to receive information about cyber threats. Kaplan said the company would not use CISPA to share private information about its users to the government.

In the news article,

<http://mashable.com/2012/04/14/new-cispa-draft/>, this morning about new CyberSecurity that the Federal Government is working on. Facebook states, "The concern

is that companies will share sensitive personal information with the government in the name of protecting cybersecurity,” wrote Joel Kaplan, vice president of U.S. public policy at Facebook.

“Facebook has no intention of doing this and it is unrelated to the things we liked about HR 3523 in the first place — the additional information it would provide us about specific cyber threats to our systems and users.”



YOU HAVE GOT TO BE KIDDING ME!!!

Remember the FTC ruling!

<http://www.usatoday.com/tech/news/story/2011-11-29/facebook-settles-with-ftc/51467448/1>

If you believe that statement after reading all the quotes by Mark Zuckerberg and Associates, then here is your glass of Kool-Aid!!! 🤪 :-\

Meep Meep!

7. **Christy Crenshaw** | April 14, 2012 at 1:44 pm |



[Permalink](#)

Bad muppets, bad. You are thinking. In George Orwell's world of the novel *1984* you would be locked up.

See <http://en.wikipedia.org/wiki/Thoughtcrime>

8. **Steve Williams** | April 14, 2012 at 3:54 pm |



[Permalink](#)

@ christy ...meep meep!

9. **Bill Cole** | April 17, 2012 at 10:09 am | [Permalink](#)



This sort of unprincipled contradictory squirming in legal argumentation is a direct consequence of our fundamentally flawed model of software patents. The USPTO was basically handed over to the managers of the software industry 18 years ago and as anyone who has worked in the field can testify, that is the worst possible group to be trusted with sorting out real innovation from hand-waving hogwash or with strategic planning for long-term sustainability. As a result, we have a horrible mess of patents that never should have been awarded being used by a mix of Underpants Gnomes, Patent Trolls, and Entrenched Giants to fight battles among themselves over who gets to collect rents off of whose actually successful work. That war makes the creation of new software for the open market a game of huge risks played with lawyers as much as programmers. In the final analysis it is impossible to know whether a piece of software whose authors believe it to be completely original and unlike anything else in existence is an infringement of some dusty old patent that has never had a working implementation brought to market or which was written so broadly that its owners can use it in lawsuit blackmail.

The result of this has been a complete unmooring of software patent lawsuits from any semblance of ethics or pragmatism. The purpose of patents is supposed to be to promote innovation by assuring inventors temporary monopolies on their inventions. Issuing software patents indiscriminately has perverted that into a mechanism for blocking entrance into the software market. This case may be the exception to the trend in that Zuckerberg may have specifically known of Leader's work and specifically cribbed from it, but if you look at the Leader patent with an understanding of the state of the field at the time, it looks like a fraud on the patent system. Unfortunately, that does not set Leader apart from the rest of the software industry, and Facebook isn't about to fight a case on the general illegitimacy of software patents. So they are left with making a case on whatever legal technicalities they can grasp at.

10. **LindaW** | April 17, 2012 at 1:06 pm | [Permalink](#)



Dear Bill,

I generally agreed with your assessment until you painted the Leader v. Facebook case with your sweeping "off with their heads" brush strokes. You said "but if you look at the Leader patent with an understanding of the state of the field at the time, it looks like a fraud on the patent system."

Apparently you have not delved into the Leader history like I have. Michael McKibben began inventing in 1997. Google had not even started and we had not even had the "browser wars" yet. So that is the only part of your assessment that I don't think squares with the facts. The state of the art now that everyone takes for granted called "social media" wasn't even on anyone's radar then, so your comment about "the field at the time" also does not square with the facts. There was no "social" field when McKibben was inventing. Heck, we were only just seeing the first commercial websites then. Ordering online was just beginning. No large-scale collaboration of the kind McKibben envisioned (and we now take for granted) was occurring then. Client-server was king then. And by the way, word has it that a special website was put up at the beginning of the Leader v. Facebook case that invited programmers from around the planet to submit prior art that could defeat Leader's patent. I am told Facebook culled through those and argued the pick of the litter. The result at trial: "No prior published art." That's a fact.

11. **LindaW** | April 17, 2012 at 1:35 pm | [Permalink](#)



Dear Bill,

I found your turn of phrase "unprincipled contradictory squirming in legal argumentation" humorous and more to the point.

I think our problem is a LEGAL PROFESSION that has LOST ITS MORAL FOOTING. If these "unprincipled"

attorneys were run out of the profession, I predict things would improve. Instead, these people become politicians, bureaucrats, and... patent litigators!!! No wonder our democracy is in such a mess. We need to prohibit attorneys from being employed in areas of civic life where their backs are scratched by mischief, like patenting. Then the “real invention” emerging from real entrepreneurs and inventors like Michael McKibben and Leader Technologies can be properly protected by honest brokers. In the current junkyard-dog-run-amok legal environment, inventors are harassed by unscrupulous attorneys like Facebook’s Cooley (CHA CHING) Godward attorneys who have a vested interest in keeping the system constantly inflamed with conflict and frivolity (attorney maxim: “in conflict and frivolity there is profit”).

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

« [/// FACEBOOK COUNTERSUES YAHOO WITH BOGUS PATENTS? CONFIRMS RECKLESS MINDSET.](#) [/// INSTAGRAM-SCAM?](#) »

Exhibit C

/// Market Impact in an Evolving World

By Donna Kline — www.DLKIndustries.com

Donna Kline Now!



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg New York*.

LEADER V. FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)

MOBILE QR-CODE:



Follow @DonnaKline1

Tweet

Tweet #TwitterStories

Tweet to @DonnaKline

RECENT POSTS

/// Haughtiness in

{ 2012 03 09 }

/// Haughtiness in the face of “literal infringement”

“Haughtiness: an exaggerated sense of one’s importance that shows itself in the making of excessive or unjustified claims.” (“Haughtiness.” Merriam-Webster.com. 2012.)

In the face of a “*literal infringement*” verdict against them on 11 of 11 Leader claims and no published prior art, Facebook states in their first footnote on page 4 of their appeal reply brief that they don’t think that the technology that Leader invented is anything special. Such haughty statements may come back to haunt them.

Read On.

“Facebook does not believe that the '761 patent reflects a significant advance or solves any significant problem. The terms 'inventor' and 'invention' are used merely for convenience.” [Facebook Red Brief, fn. 1.](#)

1 Facebook does not believe that the '761 patent reflects a significant advance or solves any significant problem. The terms “inventor” and “invention” are used merely for convenience.

Fig. 1 – [Facebook Red Brief Footnote 1, pg. 4.](#) *Leader v. Facebook* appeal before the United States Court of Appeals for the Federal Circuit.

This comment belies the verdict against them of “literal infringement” of 11 of 11 claims in *Leader Technologies, Inc. v. Facebook, Inc.*, 08-862-JJF-LPS (D.Del. 2008). In other words, the engine running the Facebook website *is* Leader’s invention. See U.S. Patent No. 7,139,761; Fed. Cir. Case No. 2011-1366. So when Facebook says that that the patent doesn’t reflect any “significant advance,” I guess they are inferring that their technology isn’t anything special, either? 😊

700+ Facebook patents and patent applications disclosed in the S-1

Currently there are 700+ patents and patent applications waiting for approval at the [USPTO](#) and in patent offices in other countries. All this Facebook activity to protect its intellectual property contradicts their self-confessed “hacker culture” and their disrespect for the privacy and property rights of others—as exposed by the recent Federal Trade Commission sanction of Facebook for deceptive

the face of “literal infringement”

/// Facebook ordered pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012
/// Judges Selected
/// San Francisco CBS-TV KPIX Coverage
/// NBC-TV4 (Columbus)
Interview with Leader founder Michael McKibben
/// How Facebook tricked the jury – YouTube
/// New friends?
/// Did Someone Prod the Media?
/// Facebook: The New ‘Too Big To Fail?’

March 2012

M T W T F S S

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

« Feb

RECENT COMMENTS

Mike Strall on /// First thoughts after leaving courthouse March 5, 2012

privacy practices and Mark Zuckerberg’s vacuous mea culpa. See Achohido, Byron. “[Facebook settles with FTC over deception charges.](#)” *USA Today*, Dec. 2, 2011. Last accessed Dec. 3, 2011.

Mark Zuckerberg stated:

“one good hacker can be as good as 10 or 20 engineers.”

[Wired](#), Apr. 19, 2010;
[Hollywood Reporter](#), Jun. 28, 2011.

Facebook sends mixed messages regarding intellectual property. On the one hand, they admit hacking ideas at a feverish pace, and on the other, they are filing patent applications with abandon. See U.S. Patent Nos. 7,669,123; 7,725,492; 7,788,260; 7,797,256; 7,809,805; 7,827,208; 7,827,265; 7,890,501; 7,933,810; 7,945,653; 7,970,657; 8,010,458; 8,027,943; 8,037,093; U.S. Patent App. Nos. US 2011/0264736 A1; US 2011/0231747 A1; US 2011/0225481 A1; US 2011/0202531 A1; US 2011/0202822 A1; US 2011/0087526 A1; US 2011/0029388 A1; US 2011/0004831 A1; US 2010/0199192 A1; US 2010/0146443 A1; US 2009/0182589 A1; US 2009/0119167 A1; US 2009/0037277 A1; US 2008/0091723 A1; US 2008/0046976 A1; US 2008/0040474 A1; US 2008/0040673 A1; US 2008/0033739 A1; US 2007/0214141 A1; US 2007/0192299 A1; US 2004/0230672 A1; PRC 101849229 A; PRC 101495991; PRC 101366029; EP 2210185 A1; EP 1971911 A2; EP 1964003 A2; EP 1682089 A2; CA 2704680 A1; CA 2703851 A1; CA 2660539 A1; CA 2660459 A1; CA 2634961 A1; CA 2634928 A1; CA 2633512 A1; CN 101495991; CN 101366029; CN 101849229 A. See “[Mark Zuckerberg’s Patents](#),” *ip.com*. Last accessed Dec. 3, 2011; See also “[Inequitable Conduct](#).”

It doesn’t stop there.

When I first noticed the footnote comment in FB’s Red Brief, I thought it was merely an arrogant statement, but now with the revelations about Fenwick & West LLP’s *intimate* involvement in their 700+ patent portfolio, it comes into focus. Because Fenwick did not disclose Leader’s U.S. Patent No. 7,139,761 as “prior art” in ANY of their 700+ patents and patents pending, they opened Facebook up to serious claims of “inequitable conduct” for failing to disclose Leader’s prior art to the US Patent Office (they had this legal duty no matter whether or not Leader had a patent lawsuit against them . . . it’s just the law on disclosure during patent prosecution). Basically, it is your duty to tell the Patent Office about your full knowledge of the landscape in and around the novelty for which you are seeking a patent.

Did Fenwick reason that they needed this footnote in the brief in order to try and wiggle away from a lack of disclosure of Leader’s technology? Technology that they would have [prima facie](#) knowledge as Leader’s [corporate counsel in 2002](#).

emailme on ///

Facebook: The New 'Too Big To Fail?'

///Market Impact in an Evolving World – Donna Kline sheds light on Leader v. Facebook federal appeal | Leader Phone® Blog on ///

First thoughts after leaving courthouse March 5, 2012

Michael Neubarth on /// San

Francisco CBS-TV KPIX Coverage

emailme on ///

Facebook: The New 'Too Big To Fail?'

///Market Impact on an Evolving World – Donna Kline sheds light on Leader v. Facebook federal appeal | Leader Phone® Blog on ///

Facebook ordered pharma users to allow comments, yet will not return phone calls now

Tex on ///

Facebook: The New 'Too Big To Fail?'

Pineapp on ///

Facebook ordered pharma users to allow comments, yet will not return phone calls now

Steve Williams on ///

First thoughts after leaving courthouse March 5, 2012

Three Strikes

1. Not specifically disclosing Leader's U.S. Patent No. 7,139,761 and the *Leader v. Facebook* litigation is reckless enough. That's strike one.
2. Strike two is the fact that Fenwick was Leader's corporate attorney in 2002 ([See link.](#)) and Fenwick had **KNOWLEDGE** of Leader's '761 technology. Therefore, this lack of disclosure could be considered "willful."
3. Strike three is the fact that Fenwick chose not to disclose the "inequitable conduct" risk specifically related to the "Intellectual Property" portfolio described on p. 92 of Facebook's S-1 disclosure. It appears to me (one must review each of their 700+ filings to be sure) that the entire portfolio could be at risk of "inequitable conduct."

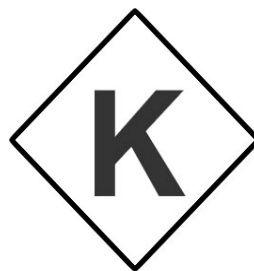


Fig. 2 – Baseball scorecard "K" notation for a batter strike out.

Here are the components of several of the patents listed above that may qualify for "[inequitable conduct](#)" as an example (thank you to my patent litigator source):

U.S. Patent No. 7,669,123 Zuckerberg et al issued Feb. 23, 2010:

1. Relies on a tracking component which is one of the novelties of Leader's U.S. Patent No. 7,139,761;
2. Does not disclosure U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art; and
3. Was prosecuted by Fenwick & West LLP

U.S. Patent. No. 7,827,265 Cheever et al (Assignee: Facebook) Nov. 2, 2010:

1. It fails to disclose U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. Claim 1 claims a "profile in a computer memory" related to an "organization" ('761: context component & storage component), and "established a connection" ('761: tracking component), and "updating the profile" ('761: wherein the user accesses data from the second context).

U.S. Patent No. 7,827,208 Bosworth et al (Assignee: Facebook) Nov. 2, 2010:

1. It fails to disclose U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. It is describing the association of metadata with the user and the data as users interact between contexts. This writes on the novelty of '761.

U.S. Patent No. 7,725,492 Sittig & Zuckerberg May 25, 2010:

1. It does not disclose U.S. Patent No. 7,139,761

--, ----
Mark Grossman on
/// **First thoughts
after leaving
courthouse March
5, 2012**
bg761 on /// **San
Francisco CBS-TV
KPIX Coverage**
Steve Williams on ///
**Facebook: The
New 'Too Big To
Fail?'**
Donna Kline on ///
**Facebook: The
New 'Too Big To
Fail?'**
Steve Williams on ///
**Facebook: The
New 'Too Big To
Fail?'**
winston smith on ///
**Facebook: The
New 'Too Big To
Fail?'**
Steve Williams on ///
**Facebook: The
New 'Too Big To
Fail?'**
KCraine on ///
**Facebook: The
New 'Too Big To
Fail?'**
Aok on ///
**Facebook: The
New 'Too Big To
Fail?'**
Steve Williams on ///
**Facebook: The
New 'Too Big To
Fail?'**
Al on /// **Facebook:
The New 'Too Big
To Fail?'**
Brooke Campbell on
/// **Facebook: The
New 'Too Big To
Fail?'**
Donna Kline on ///
Facebook: The

- McKibben et al Nov. 21, 2006 as prior art;
1. Fenwick & West LLP is the prosecutor; and
 3. It discloses a “social relationship editor” that tracks user movement and activity as the user moves between contexts. Leader’s ‘761 patent clearly predates these claims. It is claiming a novelty that is not Zuckerberg’s to claim.

U.S. Patent No. 7,797,256 Zuckerberg et al Sep. 14, 2010:

1. It does not disclose U.S. Patent No. 7,139,761 McKibben et al Nov. 21, 2006 as prior art;
2. Fenwick & West LLP is the prosecutor; and
3. It discloses a tracking component in at least Claim 1. It also discloses a storage component as well as a “flyer component” which could be analogous to the ‘761 context component.

To name a few . . .

Lastly, the Piece de Resistance:

I FINALLY have a response from the SEC regarding the lack of disclosure of this case in [Facebook’s S-1 filing](#).

“Thank you for contacting the U.S. Securities and Exchange Commission.

Item 103 of Regulation S-K (<http://taft.law.uc.edu/CCL/regS-K/SK103.html>) sets out the legal proceedings disclosure requirements. In general, an SEC filer must disclose legal proceedings that:

1. are other than ordinary routine litigation
2. claims that exceed 10% of the current assets of the issuer

Please note that I provide this website as a reference for you. The SEC does not endorse this website, it’s sponsor, or any of the policies, activities, products, or services offered on the site or by any advertiser on the site.

Please let me know if we may be of further assistance.

Sincerely,

Leslie M. Garner
Attorney
Office of Investor Education and Advocacy
U.S. Securities and Exchange Commission
(800) 732-0330
www.sec.gov”

SERIOUSLY????!!!!???

There is more disclaimer protecting the SEC from advertisers on the Taft site than input into a billion dollar Federal case!

C’MON NOW, PEOPLE!!

Let’s look at the two points:

1. Since when was a Federal Circuit trial “routine litigation?”
2. Damages in an infringement case can be anywhere from 5 – 25% of gross revenues for the life of the patent. (See [this link](#).*) In the *Leader v. Facebook* case

New 'Too Big To Fail?'

Linda W on ///

Facebook: The New 'Too Big To Fail?'

Steve Williams on ///

Facebook: The New 'Too Big To Fail?'

Aok on ///

Facebook: The New 'Too Big To Fail?'

Mike Strall on ///

Facebook: The New 'Too Big To Fail?'

Steve Craddock on ///

Facebook: The New 'Too Big To Fail?'

R Garcia on /// **Big trouble ahead for the Facebook IPO? PBR / YouTube**

JPM on /// **Big trouble ahead for the Facebook IPO? PBR / YouTube**

JPM on /// **Big trouble ahead for the Facebook IPO? PBR / YouTube**

Donna Kline on /// **What happens on March 5th, 2012?**

CATEGORIES

Current Positions
Economic Analysis
Investigation

SEARCH BLOG

Search Now

META

Log in
Entries RSS
Comments RSS
WordPress.org

it could be gross revenues generated by Facebook from 2006 through 2021.

* P.S. I don't "endorse this website, it's sponsor, or any of the policies, activities, products, or services offered on this site or by any advertiser on the site" either. 😊

No wonder we have so many cases like Madoff and Enron slipping through the cracks at the SEC. (Give Leslie Garner a call if you like.)

Stay tuned!

Posted by [Donna Kline](#) on Friday, March 9, 2012, at 4:01 pm.

Filed under [Investigation](#).

Follow any responses to this post with its [comments RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

Submit comment

« [/// FACEBOOK ORDERED PHARMA USERS TO ALLOW COMMENTS, YET WILL NOT RETURN PHONE CALLS NOW](#)

Exhibit D

/// Market Impact in an Evolving World

By Donna Kline — www.DLKIndustries.com

Donna Kline Now!



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg New York*.

LEADER V. FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Muppet Chat (PDF)

MOBILE QR-CODE:



Follow @DonnaKline1

Tweet

Tweet #TwitterStories

Tweet to @DonnaKline

RECENT POSTS

/// Facebook “Liked”
Leader’s source

{ 2012 03 20 }

/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don’t want us “muppets” to know

Last Updated Mar. 24, 2012, 11:49 PM EST



1. Facebook risks losing a *Leader v. Facebook* federal patent infringement lawsuit.

Facebook did not bother to disclose this in the S-1 to us muppets.[1]

See [Leader Technologies, Inc. v. Facebook, Inc.](#), 08-cv-862-JJF-LPS (D.Del. 2008) and [Leader Tech v. Facebook](#), Case No. 2011-1366 (Fed. Cir.).

2. Facebook was found guilty of “literal infringement” of 11 of 11 Leader patent claims in federal court, which essentially means that the engine running Facebook is Leader’s invention?

Facebook did not bother to disclose this in the S-1.[2]

See [Jury Verdict Form, Leader Technologies, Inc. v. Facebook, Inc.](#), 08-cv-862-JJF-LPS (D.Del. 2008).

3. At the time of the S-1 filing, the *Leader v. Facebook* appeal at the U.S. Court of Appeals for the Federal Circuit was pending—the first ever federal appeal in Facebook’s history.

Fig. 1 – Big trouble ahead for the Facebook IPO?
Donna Kline reports for *Pittsburgh Business Report* and is a former reporter for *Bloomberg*. This report analyzes Interrogatory No. 9, among other things.

Facebook did not bother to disclose this in the S-1.

See [LEADER TECH V FACEBOOK](#), March 5, 2012, Panel B, Courtroom 402, Judges: Lourie, Moore, Wallach. “Upcoming Oral Arguments – March Calendar. United States Court of Appeals for the Federal Circuit.

4. Facebook is required by law to disclose in an S-1 anything other than routine litigation.

Facebook did not bother to disclose this in the S-1.

code ... before it didn't

/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook

/// MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess

/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know

/// Make up your mind, Fenwick & West LLP

/// Muppet Mania

/// Haughtiness in the face of "literal infringement"

/// Facebook ordered pharma users to allow comments, yet will not return phone calls now

/// First thoughts after leaving courthouse March 5, 2012

/// Judges Selected

/// San Francisco CBS-TV KPIX Coverage

/// NBC-TV4 (Columbus)

Interview with Leader founder Michael McKibben

/// How Facebook tricked the jury – *YouTube*

/// New friends?

/// Did Someone Prod the Media?

/// Facebook: The New 'Too Big To

Recent SEC response to an inquiry about what Facebook is required to disclose in an S-1: "filers must disclose legal proceedings that: 1. Are other than ordinary routine litigation 2. claims [sic] that exceed 10% of the current assets of the issuer."

Apparently Facebook believes that their first-ever hearing at the second highest court in the United States (the Federal Circuit) is "routine."

5. Facebook presented attorney-altered evidence ([Interrogatory No. 9](#)) in *Leader v. Facebook*.

Facebook did not bother to disclose this in the S-1.

6. Facebook is required by law to disclose in an S-1 any liability amounting to more than 10% of their assets. If Facebook loses *Leader v. Facebook*, they might have to pay damages ranging from 5-25% of their gross revenue from 2006 to 2021.

5-25% of Facebook's gross revenue will likely be more. Facebook did not bother to disclose this risk in their S-1

See [Journal of Accountancy](#); See also [Georgia Pacific v. United States Plywood Corp.](#)

7. If Leader can prove "[willful infringement](#)," Facebook might have to pay three times (3x) the damages.

Facebook did not bother to disclose this in their S-1.

8. Facebook is facing a pending [injunction](#) and might have to shut down if Leader wins its injunction request.

Facebook did not bother to disclose this in their S-1.

See [Leader Complaint](#) at 10.

9. Facebook's S-1 lawyer, Fenwick & West LLP, was Leader Technologies' corporate lawyer in 2002. 2002 was the critical timeframe that Facebook attacked in *Leader v. Facebook*.



Facebook did not bother to disclose this conflict in the S-1.

Did Fenwick use its knowledge of Leader's business and technology for Facebook's benefit? (That's a no-no, by the way...)

According to Leader, Fenwick failed to get a signed waiver from Leader before representing Facebook (according to the California Rules of Professional Conduct); did not disclose this material omission in the S-1.

See the [California Rules of \(Lawyer\) Professional Conduct](#), including [Rule 3-310\(E\)](#) ("A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment").

10. Fenwick & West LLP has filed

Update: Scroll down to NEWS FLASH. Patent experts are currently cataloging

Fail?'

/// Big trouble ahead for the Facebook IPO? — PBR / YouTube

/// What happens on March 5th, 2012?

/// More on FB's S-1 omissions & other conflicts of interest

/// Big trouble ahead for Facebook IPO? Backgrounder

CALENDAR:

April 2012

M T W T F S S

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

« Mar

ARCHIVE OF POSTS

RECENT COMMENTS

Adelle Grayson on /// Facebook "Liked" Leader's source code ... before it didn't

BCaine on /// Facebook "Liked" Leader's source code ... before it didn't

RobertC on /// Facebook "Liked" Leader's source code ... before it didn't

Darren Mitchell on /// Proof Fenwick & West LLP did not disclose Leader as prior art to

almost 100 patents for Facebook that we could readily find. However, **Facebook claims over 700 on p. 91** of the S-1—all filed since August 11, 2006 (U.S. Pat. No. 7,669,123 Zuckerberg et al was the first one).

these 100 Fenwick-filed Facebook patents so that any laymen will be able to verify the information for themselves.

USPTO (United States) and WIPO (world) patent records show only *perhaps* 100 Facebook filings. However, since Facebook claims over 700 patent properties, they should *probably* disclose them(?) Perhaps we muppets don't need to know? Like what we don't know won't hurt us? Hmrrrrrrrr.

Search for yourself; all USPTO information is public, go to:

<http://portal.uspto.gov/external/portal/pair>

1. Enter CAPTCHA security info.
2. Select "Patent Number" radio button (or other type document desired).
3. Type the number for the "wrapper" (collection of documents) you want.

Mark Zuckerberg promised to tell the truth to the US Patent Office

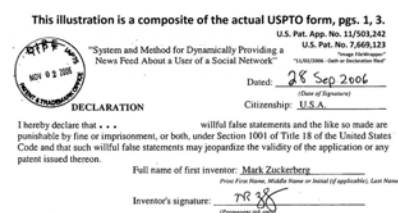


Fig. 2 – USPTO Declaration and Power of Attorney for Patent Application filed by Mark Zuckerberg on Nov. 2, 2006 promising to tell the truth about such information as prior art. [Click here](#) to see a complete copy of this USPTO official record.

Fenwick & West LLP believed Leader's invention was social networking prior art, but did not disclose this to the USPTO in any of the Facebook patents



Fig. 3 – Patent Office records reveal that at least **Fenwick & West LLP attorney Christopher P. King, Reg. No. 60,985** was representing *both* Mark Andreessen and Mark Zuckerberg on Feb. 23, 2010 when Facebook was awarded its first U.S. Pat. No. 7,669,123 (and DURING the *Leader v. Facebook* case). Didn't Fenwick & West's Christopher (aka Christopher-Charles) King have a professional duty to disclose the McKibben patent as prior art in the Zuckerberg patent since he had already done so in the Andreessen's social networking patents, and since the *Leader v. Facebook* litigation was *prima facie* evidence of it being potential prior art? [Click here](#) to see portions of the USPTO "wrapper" for Marc Andreessen's U.S. Pat. No. 7,603,352. [Click here](#) to see portions of the wrapper for Marc Andreessen's U.S. Pat. 7,756,945. [Click here](#) to see portions of the wrapper for Mark Zuckerberg's U.S. Pat. 7,669,123 (that was issued just before Facebook flipped its counterclaim in *Leader v. Facebook* to say that Leader was prior art). HIDDEN AGENDAS WITH USPTO FILINGS??? FACEBOOK: MASTERS OF

Facebook

Linda W on ///

Facebook "Liked"

Leader's source
code ... before it
didn't

Steve Williams on ///

Facebook "Liked"

Leader's source
code ... before it
didn't

Donna Kline on ///

New friends?

tabata on /// New
friends?

BradH on /// Proof

Fenwick & West LLP
did not disclose
Leader as prior art
to Facebook

Donna Kline on ///

Proof Fenwick &
West LLP did not
disclose Leader as
prior art to
Facebook

winston smith on ///

Proof Fenwick &
West LLP did not
disclose Leader as
prior art to
Facebook

Steve Williams on ///

Proof Fenwick &
West LLP did not
disclose Leader as
prior art to
Facebook

Jules on /// Proof

Fenwick & West LLP
did not disclose
Leader as prior art
to Facebook

Tex on /// Proof

Fenwick & West LLP
did not disclose
Leader as prior art
to Facebook

Michael Kennedy on
/// Proof Fenwick &
West LLP did not

THE FLIP-FLOP???

"[Inequitable conduct](#)" means withholding knowledge of prior art (like Leader's) from the Patent Office.

Inequitable conduct in patent law is like selling a car you have acquired under *questionable circumstances*. If you don't warn the person who is considering purchasing the car that the origin of the title is *questionable*, then you are defrauding him/her.

Likewise when applying for a patent, you have a legal duty to disclose known prior art to the Patent Office (so it can evaluate if you have clear title to what you are claiming as *novel and unique*). Facebook was judged to be infringing 11 of 11 Leader claims. Did they disclose this to the USPTO? Nope.

Not a single Facebook patent filed by Fenwick & West LLP identifies Leader's U.S. Patent No. 7,139,761 as prior art.

We suspect Fenwick knew about Leader's technology for two reasons: (1) they were Leader's lawyers in 2002 when Leader's patent was filed, and (2) they cited Leader's invention in other patent work they did for Marc Andreessen, the founder of Netscape, several years before.

The Andreessen patents filed by Fenwick that cite Leader's U.S. Patent No. 7,139,761 are [7.603.352 \(Filed Aug. 26, 2005\)](#) and [7.756.945 \(Filed Aug. 2, 2005\)](#). See for yourself.

This revelation screams inequitable conduct since Fenwick & West had knowledge of Leader's patent *before it ever filed the first patent for Facebook*.

NEWS FLASH: Fenwick & West LLP withdrew representation from these Andreessen patents **[just seven weeks ago, on Feb. 1 & 2, 2012!!!](#)** See [USPTO File Wrapper](#) (this is a site patent prosecutors don't want laymen to know about!). Why the hurry, Fenwick? You have been the attorney-of-record on these patents since 2005. Why change now? Hahahaha.

Fenwick's Christopher P. King, Reg. No. 60,985 knew and didn't tell?

Patent specialists have uncovered what is perhaps the "smoking gun" that proves that at least one Fenwick & West LLP patent attorney named **Christopher P. King, Reg. No. 60,985** worked on BOTH the Andreessen and Facebook patents. This PROVES that Fenwick & West failed to disclose Leader's patent as prior art to the US Patent Office. Not knowing is one thing. Knowing and failing to disclose that knowledge is a severe no-no. See for yourself by [clicking here](#). If you have trouble with the previous link, that document has also become available by [clicking here](#). See also Figure 3 resource links.

Another oddity is the way **Christopher P. King** as listed in the Andreessen patents changed his name to **Christopher-Charles King** in the Zuckerberg / Facebook patents. It's the same person because his Reg. No. in both is 60,985. Reference to [Fenwick's website](#) shows that Mr. King does not use his newly-minted Facebook name "Christopher-Charles," but rather uses his Andreessen name "[Christopher P. King](#)." This alteration of his name to Christopher-

disclose Leader as prior art to Facebook
 Justice must prevail on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
 Steve Williams on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
 SEC Watchdog on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
 BG761 on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
 Kayce Maria on /// Haughtiness in the face of "literal infringement"

CATEGORIES

Current Positions
 Economic Analysis
 Investigation

SEARCH BLOG

META

Log in
 Entries RSS
 Comments RSS
 WordPress.org



Charles would served to prevent his name from appearing on any searches of "Christopher P. King" his Andreessen and non-Facebook prosecution name. WHY THE GAMES WITH YOUR NAME, MR. KING???

The negative implications on Facebook's 700+ patent portfolio could be enormous, according to patent experts (could invalidate many if not most). Is this not a material risk?

- 11. Facebook's S-1 claims over 700 patent properties, presumably including the 92 US and International applications filed for them by Fenwick & West LLP.

What else is Facebook *not* telling us?

- 12. Whether or not Leader wins *Leader v. Facebook*, Fenwick's failure to disclose Leader's patent could invalidate many of Facebook's patents due to the "inequitable conduct."

Facebook did not bother to disclose this risk to investors in the S-1.

- 13. Accel Partners LLP, Facebook's first venture capital investor in 2005, put forward its managing partner, James W. Breyer, as Facebook's first chairman.

Accel Partners' principals Jim Swartz and Ping Li received Leader's proprietary business plans in the Fall of 2005, according to *Western Free Press*. Those documents have no less than 264 notices of Leader's patents pending and proprietary technology.

Facebook did not bother to disclose this risk to investors in their S-1.

[CNET's Molly Wood](#) identifies Jim Swartz and Ping Lee as "big winners" in Facebook's pending IPO. The coincidences just keep piling up.



Fig. 4 – Goldman Sachs and Russian firm Digital Sky Technologies (DST) invest in Facebook; as analyzed on Jan. 4, 2011 in *Industry Leaders* magazine.

- 14. [Facebook filed for an SEC 12\(g\) exemption from the 500 shareholder rule](#) (Note: written by . . . Fenwick & West), then used that exemption as an excuse to sell more than \$2.0 billion worth of its insider shares in a

sale led by Goldman Sachs—all without SEC oversight. These investments included [\\$1 billion from Digital Sky Technologies \(DST\)–Moscow](#) where Goldman Sachs is also a major shareholder. Questions from both the [left](#) and [right](#) swirl about the source of DST’s wealth and its affiliations.

Facebook did not bother to disclose in the S-1 whether or not it went over the 500 shareholder rule in the Goldman Sachs sale, nor did it disclose those liability risks to us muppets.

15. Facebook and Goldman Sachs shut out American investors from the \$1.5 billion financing. See [CNN Money](#).

This is the same Goldman Sachs that was **BAILED OUT** by the U.S. Government during the sub-prime mortgage market meltdown of 2008.



Fig. 5 – James W. Breyer. Managing Partner, Accel Partners LLP (in addition to associated investing entities identified in the Facebook S-1); Director, Facebook. *Photo source: Spiegel Online.*

16. **Accel Partners managing partner James W. Breyer** (Facebook’s former chairman, director, and second or third largest shareholder) received a private tour of the Russian State Museum, The Hermitage, in St. Petersburg, hosted by DST’s Juri Milner, according to [Fortune](#). In a recent interview with [CBS’s Charlie Rose](#), Milner said Jim Breyer was a man who “influences” him. Given what this blog is uncovering, this is not surprising.

Breyer and Milner spoke in Munich, Germany at the DLD10 conference. [Click the DLD10 video here](#) to listen to his own words on how much he depends upon Leader Technologies’ invention to fuel Accel Partner’s business.

Take *special note* of Breyer’s statement that he started looking for social network opportunities in “2003-2004” (DLD Video at 19:33). This may have been a Freudian slip since he has never admitted knowing (and secretly funding?) Zuckerberg in 2003-2004. He stated “a couple of partners” at Accel (Jim Swartz and Ping Li?) found Zuckerberg in 2003-2004. (DLD Video at 21:14). This is the first known admission that Accel Partners had contact with Zuckerberg as early as 2003!!!

These Breyer statements are contradicted by earlier public statements. He was (and is) an uber-active Harvard alum, was President of the National Venture Capital Association, and is a co-owner of the Boston Celtics (Read: Loves all things Boston, including his Harvard alma mater.) Zuckerberg received almost as much coverage in *The Harvard Crimson* between October 2003 and September 2004 as President Clinton and more than George Bush, Al Franken, Google and IBM, yet “a couple of partners” (and not

Breyer?) first took note of the Zuck! But I digress. Nonetheless, in his Stanford interview with Zuckerberg on Oct. 26, 2005, he sticks with his other story that he first met the Zuck sometime later in 2004 or early 2005 at “the Village Pub.” [Click here](#) to see the full unedited video of the Breyer-Zuckerberg Stanford interview (63 min.). See also [Stanford Interview Transcript page 8, line 20](#). Breyer confirms this story in the Munich interview, even giving us the exact date: Monday, April 4, 2004 (DLD Video at 21:28).

Amazingly, in the DLD video Breyer describes the very circumstance in the late 1990’s where an entrepreneur (like Leader) gets ripped off by venture capitalists (like Accel Partners) (DLD Video at 6:02-7:34). In other words, he did with Zuckerberg what he now doesn’t think will be repeated since everyone will now run on his Facebook Connect platform (... after he has reaped the benefit? How convenient.) This blog has learned that Breyer was invested in several medical companies that were doing business with Boston Scientific—at the time of Leader’s confidential clinical trials with Boston Scientific in the Fall of 2003. More coincidences. Did he know about the Leader platform when he teamed up with the Zuck?

In short, Breyer now admits that Accel Partners met Zuckerberg in 2003!!! After the copying of Leader Technologies’ White Paper? The coincidences just keep piling up.

Also note Breyer’s negativity about the US tech investment market. Perhaps he is trying to use his influence to create a self-fulfilling prophecy since he is going to lose *Leader v. Facebook* and must go international where patent laws are lax or non-existent??? Non-US investments represent 75% of Accel’s business in “London, Beijing and Bangalore” . . . and Moscow. Very interesting perspective indeed from a US tech leader who serves on dozens of US boards of directors, and is touted by President Obama as the “future of innovation.” **The question is where? Managed by whom?** (DLD Video at 4:35; 6:07).

In this video Milner confirms his objective to tap into all Facebook transactions via Facebook Credits (“virtual payments”). Hmmmm. Smell a world currency plan (DLD Video at 30:59-32:05).



Source: Creators.com.



Source: Bob Englehart, Hartford Courant.

Facebook's S-1 does not disclose the investor risks associated with receiving foreign investments that [Fortune magazine](#) says have uncertain origins.

Milner on financing: euphemism for making a multi-billion dollar private market in Facebook insider stock: "IPO Supplement." (DLD Video at 32:40-33:20).

Milner on monopolies: "Facebook monopoly worldwide is inevitable." (DLD Video at 38:45-39:55).

Milner on monetization: Finds a "tax" on all application *revenue* running on a social platform attractive. Virtual government? (DLD Video at 30:59-32:05).

Milner on Facebook privacy: When asked why Facebook keeps screwing up, Milner said "Facebook is as good as it gets." (DLD Video at 46:04-46:53). (This was before the FTC's sanction of Facebook on privacy.) Did anyone hear George Orwell just turn over in his grave?

Milner on exit strategy: He is not interested in one, has "unlimited" patience, and wants to "follow the vision." What is the vision if it is not to give investors a return? Oh, I forgot, a "tax." So he can pay the upkeep on his \$100 million Silicon Valley mansion (see below)? What has Goldman gotten us into?? (DLD Video at 42:00-42:25).

What drives these Men from Moscow? Not American capital rules, for sure. With this kind of agenda, I'd muster the patience of Job!!!

17. Goldman Sachs was one of the first investors along with Russian oligarch Alisher Asmanov in Digital Sky Technologies (DST) where Juri Milner is CEO. DST's Moscow and London employee base "reads like a Goldman Sachs alumni roster. Seventy percent of his

staff came from the bank,” according to [Fortune](#).

Facebook’s S-1 does not disclose these conflicts of interest where Goldman Sachs is sitting on *both sides* (buyer *and* seller) of this prospective Facebook IPO (not to mention the fees they have already made in the \$2+ billion private market). Old habits die hard apparently. Goldman must think itself immune from the rules?

18. Accel Partners ([in a private sale brokered by Goldman Sachs](#)) sold a “significant chunk” of its Facebook stock to DST/Milner/Asmanov, according to [TechCrunch](#). In other words, Accel has already made \$500M-\$1B in cash off of the technology that Leader Technologies invented and that Accel has known about since at least October 2005.



Fig. 6 – Juri Milner, CEO, Digital Sky Technologies (DST), Moscow, Russia. Photo: [Fortune](#).

Facebook failed to disclose this liability risk as well.

19. DST-Moscow’s Juri Milner paid \$100 million to buy a house in Silicon Valley in July 2011. This was the highest price ever paid in the USA for a single-family home, according to [Los Angeles Times](#).

Goldman Sachs, Milner’s and Facebook’s one and the same business partner and underwriter, had to be bailed out by the American taxpayer. What is this ostentatiousness telling us about the morality and ethics of this Facebook / Goldman Sachs bedfellow?

20. Mark Zuckerberg is looking to Juri Milner and DST to guide his “Facebook Credits” plan, according to [The Economist](#), [TechCrunch](#) and [Fortune](#).

Given Facebook Director and early investor [Peter Thiel’s](#) openly libertarian views regarding banking regulation, should Facebook and Goldman Sachs be disclosing to America their intentions, especially to prospective investors who may not share their international agenda for world peace and harmony via a global Facebook? Thank you Leader? Oh wait, they infringe Leader.

21. DST’s largest investor (and perhaps the REAL #2 investor in



Fig. 7 – Alisher Asmanov, Russian oligarch, largest shareholder of Digital Sky Technologies (DST) which has already purchased \$2 billion of Facebook insider shares; unregistered sales brokered by Goldman Sachs in 2010-2011. [Fortune](#) magazine

says “the origin of his wealth is not clear.” Asmanov may be, effectively, the second largest shareholder in Facebook. *Photo: The Guardian UK.*

Facebook) is Russian [oligarch](#) Alisher Asmanov about whom *Fortune* magazine says “the origin of his wealth is not clear.”

Facebook’s S-1 does not disclose the swirl of “[Devourer of Websites](#)” defamation lawsuits that Asmanov filed all over Europe against bloggers and newspapers after Britain’s former ambassador to Uzbekistan criticized him and these sites carried the news report, according to [Gawker](#) and [4News](#).

See also “Facebook investor DST comes with ties to Alisher Usmanov and the Kremlin – Three Goldman Sachs bankers, Alexander Tamas, Verdi Israelian and John Lindfors joined DST over the past three years.” [The Guardian](#).

Let’s see, the second largest shareholder in Facebook launches defamation lawsuits from Moscow, Russia against anyone who disagrees with him. Why have we not heard about this? Why didn’t Facebook disclose this risk?



Footnotes:

[1] “Muppets” is the term used by some Goldman Sachs insiders to describe their customers according to departing executive Greg Smith. See Greg Smith. “Why I Am Leaving Goldman Sachs.” [The New York Times](#), Mar. 14, 2012; See also this blog’s post [Muppet Mania](#).

[2] For in-depth legal analysis (in more or less layman’s terms) of the *Leader v. Facebook* trial and access to much of the evidence, go to <http://facebook-technology-origins.blogspot.com/>. For a Cliff’s Notes version, go to [Backgrounder](#) and [Brief Summary](#).

Credits:

“Beaker” is a long-time Muppet character owned by [Sesame Workshop](#). The source of the link used in this blog is <http://peilo.com/wp-content/uploads/2010/01/Meep_Meep_Muppet_Beaker_by_KuroganeLee.jpg>.

Fenwick & West LLP logo is a link from the Fenwick & West LLP corporate website at <http://www.fenwick.com/images/logo/inner-logo.gif>.

Posted by [Donna Kline](#) on Tuesday, March 20, 2012, at 12:34 pm.


Filed under [Investigation](#).


Follow any responses to this post with its [comments](#) [RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

{ 6 }

Comments

1. **Amy** | March 20, 2012 at 5:38 pm |  [Permalink](#)

Donna,
Congrats on doing such a FABULOUS job on covering this story! With the magnitude of corruption in this world today, people need educated so they can stay vigilant, esp, in today's world with money being so tight for everyone. THANKS FOR BEING SUCH A "TOUGH COOKIE" We need more back-boned people like you, because there are soooo many people and events that need to be brought to the surface. What is it called?..that's right .."The domino effect". Keep up the great work for, "one nation under God..."
2. **KCraine-CA** | March 22, 2012 at 10:08 pm |  [Permalink](#)

Dear Donna, SORRY for doubting you (and sorry this post is long), but I really had a hard time believing your statement that "Zuckerberg received almost as much coverage in *The Harvard Crimson* between October 2003 and September 2004 as President Clinton and more than George Bush, Al Franken, Google and IBM." So I went the Crimson site and checked for myself.

You are right! He even received twice as much coverage as the famed *Harvard Lampoon*!!! My conclusion? There is no way a 19-year old Zuckerberg, disrespectful, "I thought that might be kinda fun, dude" kid could have garnered this much press coverage without a powerful Harvard donor / handler (James W. Breyer, Accel Partners?). (FYI: Pres. Obama's Economic Council director Larry Summers was Harvard president then.) Isn't it strange that Breyer has carefully avoided any such admission (except for his Freudian slip in the

Munich video). It's hard enough getting a couple articles a year, much less Zuckerberg's 22 in eight months—from 17 DIFFERENT CRIMSON JOURNALISTS!!! AWESOME DUDE!!!, not to mention another 34 mentions of (the)Facebook (I actually stopped counting to go throw up). This part of the story is just as unbelievable as him creating the entire platform in “one to two weeks” when it took Leader Technologies 145,000 man-hours and \$10 million to invent the real technology. I pray the Federal Circuit judges smack down Facebook's we-are-untouchable arrogance. “Pride comes before the fall.”

Breyer's “prepared-mind” really does think we're all a bunch of idiots, doesn't he? I also watched all the videos. Breyer has been the “power behind this thrown” all along? Did you notice how he was “handling” the Zuck at the Stanford interview? You can easily tell when they were making it up on the fly . . . uh, ah, er, you know, dude. Has this guy hatched a plan with Goldman, Fenwick, the Russians to “tax” us all from the comfort of their international jets / yachts / villas / dachas? Muppets Unite!!!

I found another great site that has catalogued *The Harvard Crimson* links. Hope this cut and paste works. The site is [Facebook Technology Origins?](#)

1. Oct. 23, 2003, S.F. Brickman, [Not-so-artificial Intelligence](#)
2. Nov. 04, 2003, Bari M. Schwartz, [Hot or Not? Website Briefly Judges Looks](#)
3. Nov. 06, 2003, S.F. Brickman, [Face Off – New web venture not so hot](#)
4. Nov. 19, 2003. Katharine A. Kaplan, [Facemash Creator Survives Ad Board](#)
5. Dec. 09, 2003, David M. Kaden, [College Inches](#)


[Toward Campus-Wide Facebook](#)


6. Dec. 11, 2003, The Crimson Staff, [Put on a Happy Face](#)
7. Feb. 09, 2004, Alan J. Tabak, [Hundreds Register for New Facebook Website](#)
8. Feb. 17, 2004, Amelia E. Lester, [Show Your Best Face](#)
9. Feb. 18, 2004, Alan J. Tabak, [Harvard Bonds on Facebook Website](#)
10. Mar. 01, 2004, Adam P. Schneider, [Facebook Expands Beyond Harvard](#)
11. Mar. 09, 2004, Leon Neyfakh, [Columbia Rebukes thefacebook.com](#)
12. Mar. 11, 2004, The Crimson Staff, [Manifest Destiny, Facebook Style](#)
13. Mar. 15, 2004, Matthew A. Gline, [CrimsonPartiesHookupExchange.com](#)
14. Mar. 18, 2004, Sarah E.F. Milov, [Sociology of thefacebook.com](#)
15. Mar. 19, 2004, Anastasios G. Skalkos, [New Online Facebook Launched](#)
16. May 07, 2004, M. Grynbaum, [Online Facebook Solicits New Ads](#)
17. May 28, 2004, T.J. McGinn, ["Online Facebooks Duel](#)

[Over Tangled Web of Authorship](#)


18. Jun. 10, 2004, Elena Sorokin, [Internet Boosts Social Scene](#)
19. Jun. 10, 2004, M. Grynbaum, [Zuckerberg '06: The whiz behind thefacebook.com](#)
20. Aug. 13, 2004, Alan J. Tabak, [Zuckerberg Programs New Website](#)
21. Sep. 13, 2004, T.J. Mcginn, [Lawsuit Threatens To Close Facebook](#)
22. Sep. 15, 2004, The Crimson Staff, [Facing Off Over The Facebook](#)

Not bad for a kid who said “I don’t know what I am doing” two years later in the Oct. 26, 2005 Stanford video. Is James W. Breyer the Don King of social media? Does his “prepared-mind” thesis have a moral backbone? Do we want our future economies guided by such morality? Is Mr. Zuckerberg the kind of “entrepreneur” that we want our children emulating? In the end, its our choice, not theirs. Meep, meep.

3. **Scrent** | March 23, 2012 at 1:58 am | 
[Permalink](#)
Meep, meep. Very snarky post, love it.


4. **LW452** | March 24, 2012 at 1:52 am | 
[Permalink](#)
These Facebook people redefine “sneaky.” Why are we paying big salaries to the SEC to supposedly police this misconduct? CLEARLY THEY’RE DOING NOTHING. This blog exposes behavior that proves we’ve done NOTHING to fix our financial system. We bailed out immoral people who stuck the money in their pockets and are laughing all the way to their

vacation homes in the Bahamas * * *
and we won't put any of them in jail.
This must stop folks. Let's start
throwing our weight behind teams like
McKibben's – the REAL inventors of
social networking!!! – – We need to
start rewarding the good guys instead
of these Facebook scoundrels.

5. **bg761** | March 24, 2012 at 3:40 pm | 

[Permalink](#)

When have attorneys been allowed to pass their "Reg. #" to another attorney? Especially when involved in Patent applications!! Or do you just change your middle name and add a "hyphen" so that the odds of not being discovered with a search engine are increased astronomically!!!!!! The majority of people that do this have something to hide. Does Mr. King have something to hide other than the fact that he apparently omitted important disclosure information, the Leader 761 patent, to the USPTO when applying for Facebook patents but included the Leader "761" patent as prior art in the application for the Andreessen patents! Why haven't the SEC, FTC and the U.S. Patent Office looked into this? How many "coincidences" will it take to get the mainstream media involved? See the California State Bar Association website to see the name he used when becoming an attorney!
<http://members.calbar.ca.gov/fal/Member/Detail/247867>
Why the name change on Facebook patents?

6. **Law Before Children** | March 27, 2012 at 1:57 pm | [Permalink](#) 

Donna. I just received this Forward from my old law professor and had to post it ASAP!!!

Subject: Do attorneys have an ethical duty to report Fenwick & West?

Dear Dean _____:

Fenwick & West LLP appears to have failed to report material information to the Patent Office and to the American public in the Facebook S-1. They had clear knowledge of Leader Technologies' prior art to Facebook. Why didn't they report it to the Patent Office in any of their almost 100 patent filings to date? (Their S-1 says over

700, but the Patent Office records show less than 100.) Twisted lawyer excuses aside, where are the ethics here? Fenwick's attorney Christopher P. King even changed his name in an apparent attempt to escape coming up in search results.

This website details their provable omissions:

<http://www.donnaklinenow.com/?p=3091>

This site does as well:

<http://www.scribd.com/doc/86104023/Donna-Kline-Now-What-Facebook-Doesn-t-Want-the-American-Public-to-Know-Mar-20-2012>

Specifically, they appear to have failed to disclose their knowledge of Leader Technologies' prior art U.S. Patent No. 7, 139,761 in any of the patents they have filed for Facebook. Fenwick was Leader's attorney in 2002 and had a duty to disclose this conflict of interest in Facebook's S-1 filing and did not. (See proof of that representation: [Click here.](#)) If this were not bad enough, Fenwick did disclose '761 in earlier Marc Andreessen patents disclosed in the blog links above. Therefore, they knew and believed that Leader's patent was prior art to social networking. In addition, Fenwick did not seek a conflicts waiver from Leader Technologies before taking on its significant representation of Facebook.

The prima facie evidence of a massive Fenwick conflict is the fact that Leader Technologies won a verdict of "literal infringement" on 11 of 11 counts in Leader Tech v. Facebook, 2011-1366 (Fed. Cir.).

The Rules of Professional Conduct 8.3(a) state: "(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." One case says "If we fail in our duty, we forfeit that trust." In re Riehlmann, 891 So.2d 1239 (La. 2005) at 1249.

Now that you know, as a leader in the legal profession, I hope you and your colleagues will act appropriately. Us

layman need to count on somebody in the legal profession to do the right thing.

Thanks for caring,

— Your Favorite Former Student 😊

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

Submit comment

« [/// MAKE UP YOUR MIND, FENWICK & WEST LLP](#)

[/// MF GLOBAL + JP MORGAN + GOLDMAN SACHS + HARVARD GRADS + POLITICS = A BIG MESS](#) »

Exhibit E

/// Market Impact in an Evolving World

By Donna Kline — www.DLKIndustries.com

Donna Kline *Now!*



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg* New York.

LEADER V.

FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Muppet Chat (PDF)

MOBILE QR-CODE:



Follow @DonnaKline1

Tweet

Tweet #TwitterStories

Tweet to

@DonnaKline1

RECENT POSTS

/// Facebook “Liked”
Leader’s source code ...
before it didn’t

{ 2012 03 29 }

/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook

After a three-day “battle of experts” and mounds of evidence in *Leader v. Facebook*, a jury determined that Facebook infringes 11 of 11 Leader patent claims. In other words, Leader’s expert witnesses proved that Facebook “literally infringes” U.S. Patent No. 7,139,761 owned by Leader Technologies. According to Leader this means that the engine running Facebook is their invention.



Fig. 1 – “Prior Art” is a “Battle of Experts” – Expert witnesses in *Leader v. Facebook*. FOR LEADER: [Dr. Giovanni Vigna](#), University of California, Berkeley; and [Dr. James Herbsleb](#), Carnegie Mellon University. FOR FACEBOOK: [Dr. Michael Kearns](#), University of Pennsylvania; and [Dr. Saul Greenberg](#), University of Calgary.[1]

Another big part of the lawsuit that hasn’t garnered much attention until now is the subject of “[prior art](#).” Bottom line, if an alleged infringer can prove that a patent should not have been issued because of the existence of a prior invention that the Patent Office didn’t know about, that patent can be invalidated.

1. Leader knocked down ALL of Facebook’s prior art attacks

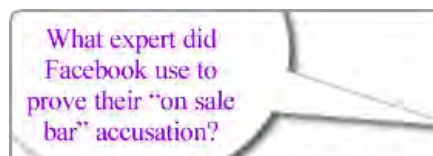
Facebook put forward nearly 100 pieces of alleged prior art during the litigation. Leader’s experts succeeded in knocking down all 100 and proving that no prior art predated its invention. This means Leader proved that no published prior art to its invention exists.



Here’s where this law gets tricky, and I can certainly sympathize with the jury now in trying to keep all this straight (they clearly didn’t and Facebook’s attorneys made darn sure they would stay confused). The “on sale bar” accusation is a part of the prior art analysis. Essentially, if one offers one’s invention for sale too early, the concept is that one puts one’s own invention into play and it becomes prior art to itself!!! 😊 Score one for me! Soooo, this means that to prove “on sale bar” you have to have exactly the same kind of expert testimony as you have for prior art. Facebook provided no expert witness at all for “on sale bar.” See my Mr. Cricket illustration on the right.



This also means that from the time of Leader’s invention was first made public (June 24, 2004), future patent filers of related technology MUST



/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
/// MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess
/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know
/// Make up your mind, Fenwick & West LLP
/// Muppet Mania
/// Haughtiness in the face of "literal infringement"
/// Facebook ordered pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012
/// Judges Selected
/// San Francisco CBS-TV KPIX Coverage
/// NBC-TV4 (Columbus) Interview with Leader founder Michael McKibben
/// How Facebook tricked the jury – YouTube
/// New friends?
/// Did Someone Prod the Media?
/// Facebook: The New 'Too Big To Fail?'
/// Big trouble ahead for the Facebook IPO? – PBR / YouTube
/// What happens on March 5th, 2012?
/// More on FB's S-1 omissions & other conflicts of interest

disclose Leader's technology to the Patent Office as a reference once they become aware of it. If they don't, their patent can be invalidated. The rationale here is that patent examiners cannot be expected to search the planet for prospective prior art on each application they evaluate. Instead, it is the patentee's duty to do that; while the examiner often/usually finds additional references as well (as he did in the Andreessen patents below).



2. How is prior art identified?

How does an inventor determine if prior art exists? Patent lawyers use a handful of databases to search the planet for prospective prior art. They enter a selection of search words and then review each result for relevance. In addition, inventors comb through their personal research files and disclose anything relevant to the claimed invention.

During the course of the patent "prosecution" (the process of working on a patent application) both the Patent Office examiner and the patentee submit dozens of lists of references considered; these references are listed on any final issued patent. This process helps ensure that prior art that would otherwise invalidate a patent application cannot be found.

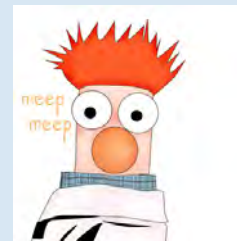
3. Here's where Fenwick & West—former attorneys for Leader and current attorneys for Facebook for both stock sales and patent filings—made their crucial mistake:

There are at least two "social networking" patents I could find that list Leader Technologies' U.S. Patent No. 7,139,761 as prospective *prior art* references considered. BOTH of them list Fenwick & West LLP as the attorney ("**the Andreessen Patents**"), and both were filed long before Facebook's patents.

- **Patent No. 7,756,945 Marc L. Andreessen**. Filed Aug. 2, 2005; awarded Jul. 13, 2010.
- **Patent No 7,603,352 Steven Vassallo, Marc L. Andreessen**. Filed Aug. 26, 2005; awarded Oct. 13, 2009.

4. Patenting for Muppets

When a patent application is filed, a patent examiner is assigned to the case. This person determines if the application describes something that "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof..." subject to the conditions and requirements of the law. See [this link](#) for more on the patent application process.



Part of the examination process is for the Patent Examiner to evaluate all relevant references of prior work in the field to help ensure that the claimed invention is truly "novel." All these references get listed on patents awarded. Inadvertent omissions can invalidate a patent. Willful omissions are considered fraud against the Patent Office and certainly invalidate the patent.

In addition, "all business with the United States Patent and Trademark Office (USPTO or Office) should *be transacted in writing*. Other patent correspondence, including design, plant, and provisional application filings, as

///
for Facebook IPO?
Backgrounder

well as correspondence filed in a nonprovisional application after the application filing date (known as “follow-on” correspondence).” See [this link](#) for more.

CALENDAR:

April 2012

M T W T F S S

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

« Mar

ARCHIVE OF POSTS

Select Month **6**

RECENT

COMMENTS

Adelle Grayson on ///

Facebook “Liked”

Leader’s source code ...

before it didn’t

BCaine on ///

Facebook “Liked”

Leader’s source code ...

before it didn’t

RobertC on ///

Facebook “Liked”

Leader’s source code ...

before it didn’t

Darren Mitchell on ///

Proof Fenwick & West

LLP did not disclose

Leader as prior art to

Facebook

Linda W on ///

Facebook “Liked”

Leader’s source code ...

before it didn’t

Steve Williams on ///

Facebook “Liked”

Leader’s source code ...

before it didn’t

Donna Kline on ///

New friends?

tabata on ///

friends?

BradH on ///

5. Translation: There is a public record of ALL written correspondence between the USPTO and the applicant. (AHA! This is how I found the proverbial “smoking gun”).

5a. U.S. Patent No. 7,756,945 Andreessen et al

Filed **August 2, 2005**; Lists Yasin M. Barqadle as the examiner; Lists Marc Andreessen et al.

On **April 2,2008**, Fenwick & West is named as attorneys for the patent.

On **April 3, 2009**, Examiner Barqadle filed a PTO-892 form entitled “Notice of References Cited” that lists four existing patents that are required to be listed as prior art. One of those is U.S. Patent No. 7,139,761 McKibben et al (Leader Technologies’ CEO). **In other words, the Patent Examiner put Fenwick & West on public notice of the Leader social networking prior art.**

[USPTO Patent Wrapper for Andreessen U.S. No. 7,756,945 – Fenwick and West LLP – Mar 23, 2012](#)

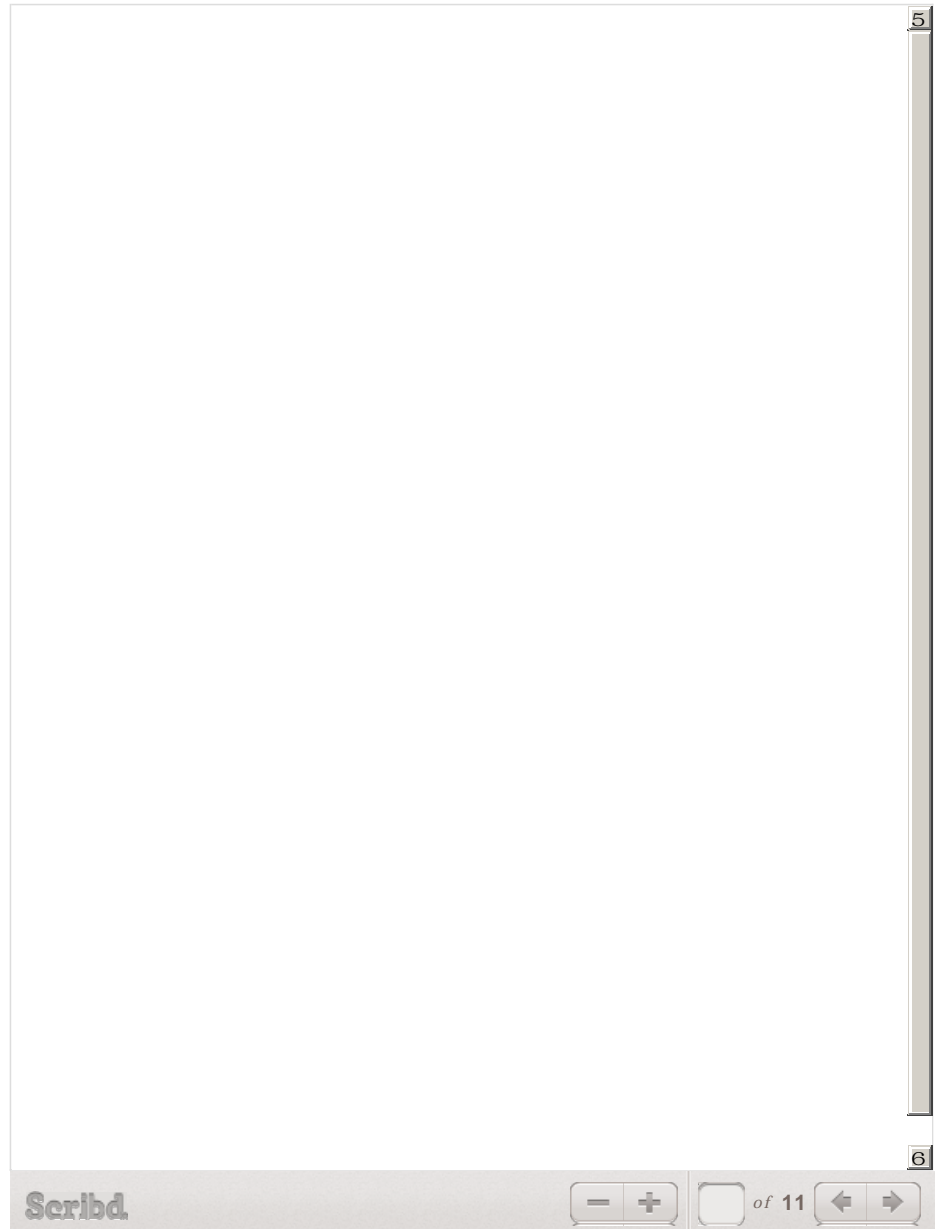


Fig. 2 – Selected documents from the “patent wrapper” for **U.S. Patent No. 7,756,945 Andreessen et al**, filed Aug. 2, 2005, issued Jul. 2010. Highlighted here is page 8 of this set showing the Examiner’s “Notice of References Cited” (form PTO-892) on Apr. 3, 2009 identifying U.S. Patent No. 7,139,761 McKibben et al, filed

Fenwick & West LLP
did not disclose Leader
as prior art to Facebook
Donna Kline on ///
Proof Fenwick & West
LLP did not disclose
Leader as prior art to
Facebook
winston smith on ///
Proof Fenwick & West
LLP did not disclose
Leader as prior art to
Facebook
Steve Williams on ///
Proof Fenwick & West
LLP did not disclose
Leader as prior art to
Facebook
Jules on /// Proof
Fenwick & West LLP
did not disclose Leader
as prior art to Facebook
Tex on /// Proof
Fenwick & West LLP
did not disclose Leader
as prior art to Facebook
**Michael Kennedy
on ///** Proof Fenwick &
West LLP did not
disclose Leader as prior
art to Facebook
**Justice must prevail
on ///** Proof Fenwick &
West LLP did not
disclose Leader as prior
art to Facebook
Steve Williams on ///
Proof Fenwick & West
LLP did not disclose
Leader as prior art to
Facebook
SEC Watchdog on ///
Proof Fenwick & West
LLP did not disclose
Leader as prior art to
Facebook
BG761 on /// Proof
Fenwick & West LLP
did not disclose Leader
as prior art to Facebook
Kayce Maria on ///

Dec. 10, 2003, issued Nov. 21, 2006, and assigned to Leader Technologies, Inc., as prior art. These documents are publicly accessible from <http://portal.uspto.gov/external/portal/pair>.

On **July 13, 2010**, this patent is awarded. On the **FIRST PAGE** of the patent document, U.S. Patent No. 7,139,761 McKibben et al. is cited as a reference (prior art). See Fig. 2, p. 10. **GOTCHA!**

5b. U.S. Patent No. 7,603,352 Vassallo & Andreessen

Filed **August 26, 2005**; Lists Aleksandr Kerzhner as the examiner; Lists Steven Vassallo (& Marc Andreessen).

On **April 2, 2008**, Fenwick & West is named as attorneys for the patent.

On **July 24, 2009**, Fenwick & West filed an “**INFORMATION DISCLOSURE STATEMENT BY APPLICANT**” which lists 17 items of prior art. One of those is U.S. Patent No. 7,139,761 McKibben et al (Leader Technologies’ CEO). **In other words, Fenwick & West acknowledges Leader’s invention as social networking prior art.**

[USPTO Patent Wrapper for Andreessen-Vassallo U.S. No. 7,603,352 – Fenwick and West LLP – Mar 23, 2012](#)

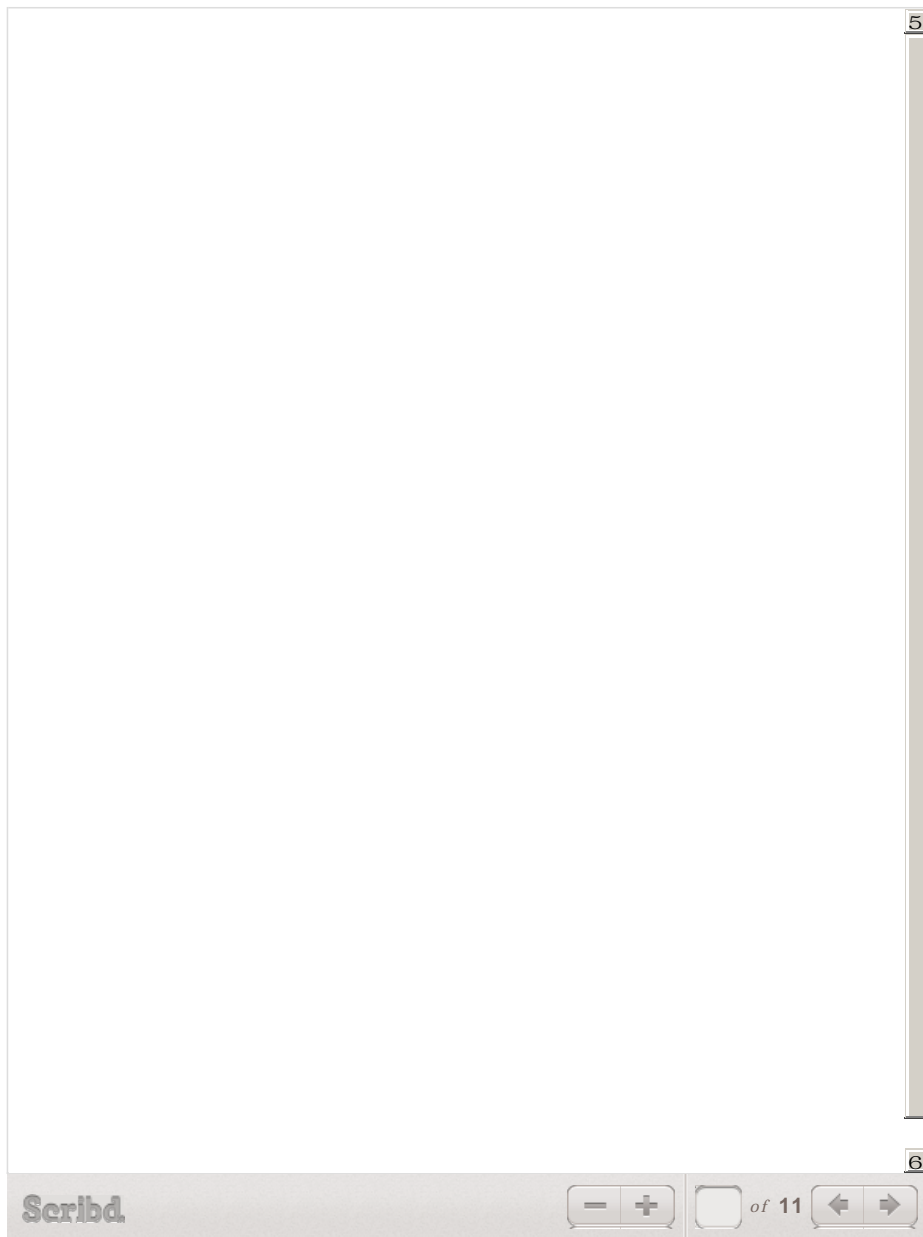


Fig. 3 – Selected documents from the “patent wrapper” for **U.S. Patent No. 7,603,352 Vassallo and Andreessen**, filed Aug. 26, 2005, issued Oct. 13, 2009. Highlighted here is page 7 of this set showing the Applicant’s “**INFORMATION DISCLOSURE STATEMENT BY APPLICANT**” on Jul. 24, 2009 identifying U.S. Patent No. 7,139,761 McKibben et al, filed Dec. 10, 2003, issued Nov. 21, 2006, and assigned to Leader Technologies, Inc., as prior art. These documents are publicly accessible from <http://portal.uspto.gov/external/portal/pair>.

On **October 13, 2009** this patent is awarded. On the **FIRST PAGE** of the published patent, U.S. Patent No. e,139,761 is cited as a reference (prior art). See Fig. 3, p. 11. **DOUBLE GOTCHA !!**

Haughtiness in the face of “literal infringement”

CATEGORIES

Current Positions
Economic Analysis
Investigation

SEARCH BLOG

Search Now

META

Log in
Entries RSS
Comments RSS
WordPress.org



Fenwick & West clearly knew of Leaders’ patent and recognized it as prior art in two other earlier dated patent applications—the Andreessen Patents. But, but they don’t acknowledge it again later in ANY of the nearly 100 patents they have filed for Facebook since then.

6. “Christopher P. King” . . . or is it “Christopher-Charles King”? Mr. King appears to have hyphenated his first name just for Mark Zuckerberg! Isn’t that precious?

I couldn’t believe my luck in finding a common Fenwick & West attorney listed in the USPTO records in both the Andreessen Patents and the Facebook patents: Christopher King. Mr. King actually signed all the Andreessen filings as “Christopher P. King, Reg. No. 60,985.”

But (and this is a big but), he actually changed his first name to “Christopher-Charles King, Reg. No. 60,985.” His name at the [Fenwick & West website](#) is “Christopher P. King” as it is also at the [State Bar of California](#). Why the name change? Will we discover that this name change occurred about the time Fenwick & West withdrew from the Andreessen Patents just eight weeks ago, on Feb. 1, 2012? Could this change be intended to thwart search attempts to link him to both Andreessen and Facebook? **TRIPLE GOTCHA !!!**

[USPTO Patent Wrapper for Mark Zuckerberg U.S. 7,669,123 – Fenwick and West LLP – Mar. 23, 2012](#)



Fig. 4 – Selected documents from the “patent wrapper” for **U.S. Patent No. 7,669,123 Zuckerberg et al**, filed Aug. 11, 2006, issued Feb. 23, 2010. Highlighted here is page 2 of this set showing the Applicant’s “Attorney/Agent Information” identifying “Facebook/Fenwick” and “Reg #: 60985, Name: King, Christopher-

Facebook **DID NOT** disclose U.S. Patent No. 7,139,761 as a reference in **ANY** of its patents, including the one above. See Fig. 4, pp. 14-16.

7. Here's how Mr. King was listed at Fenwick & West LLP on Mar. 24, 2012

[Fenwick and West LLP – Christopher P. King \(aka Christopher-Charles King\) Bio – accessed Mar. 24, 2012](#)

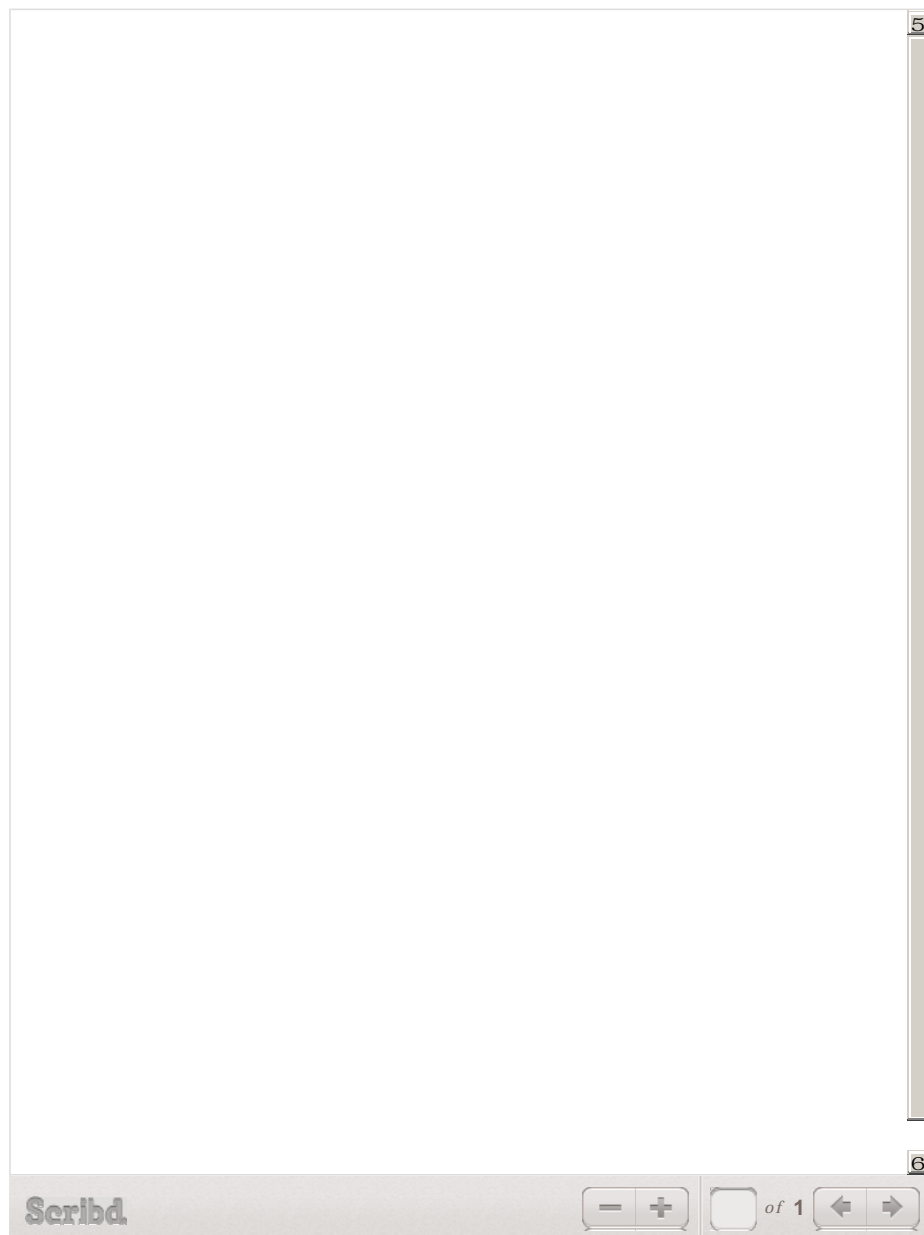
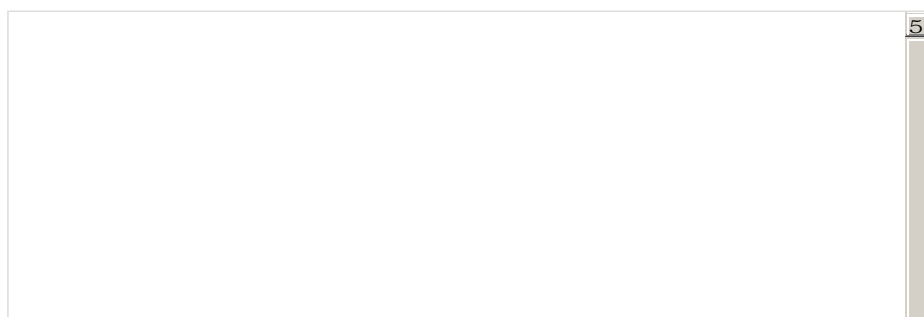


Fig. 5 – Christopher P. King (not Christopher-Charles King as he now lists himself at the US Patent Office) professional bio at the Fenwick & West LLP corporate website on Mar. 24, 2012. Source: <http://www.fenwick.com/professionals/Pages/christopherking.aspx>

8. Here's how Mr. King represented himself to the U.S. Patent Office for the earlier Andreessen Patents

[USPTO Patent Wrapper for Andreessen U.S. No. 7,756,945 – Fenwick and West LLP – Mar 23, 2012](#)



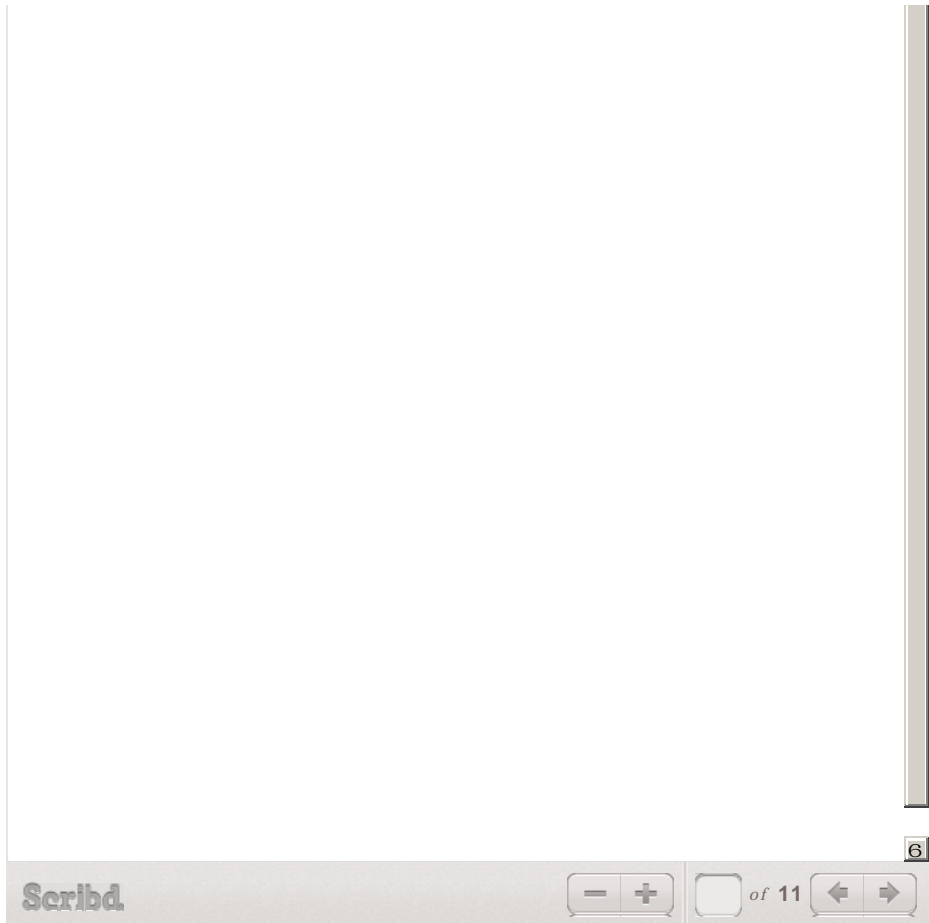
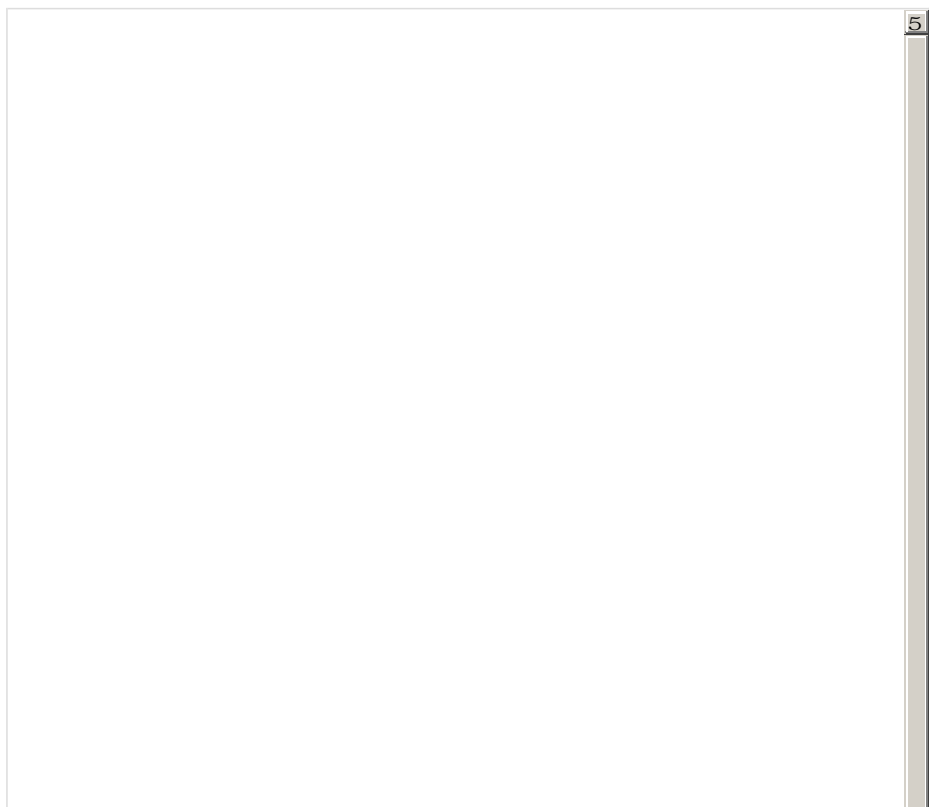


Fig. 6 – Selected documents from the “patent wrapper” for **U.S. Patent No. 7,756,945 Andreessen et al**, filed Aug. 2, 2005, issued Jul. 13, 2010. Highlighted here is page 9 of this set showing a Feb. 8, 2010 “Argument/Remarks Made in an Amendment” **submitted by Christopher P. King, Reg. No.: 60,985 on behalf of Andreessen**. **NOTE: This USPTO filing occurred just 15 days before Facebook added their “on sale bar” claim in *Leader v. Facebook*. Hmmmmm. More coincidences!!! IT IS NOW APPARENT THAT MR. KING IS REPRESENTING HIMSELF TO THE USPTO USING TWO DIFFERENT NAMES.** Under “**Christoher P.**” he believes Leader’s patent to be a relevant social networking reference (at did the Patent Examiner) for Andreessen, but under “**Christopher-Charles**” he does not for Zuckerberg. How convenient. These documents are publicly accessible from <http://portal.uspto.gov/external/portal/pair>.

9. Mark Zuckerberg promised in an oath to the American public that he would tell the truth about his patenting activity and claims

[USPTO Patent Wrapper for Mark Zuckerberg U.S. 7.669.123 – Fenwick and West LLP – Mar. 23, 2012](#)



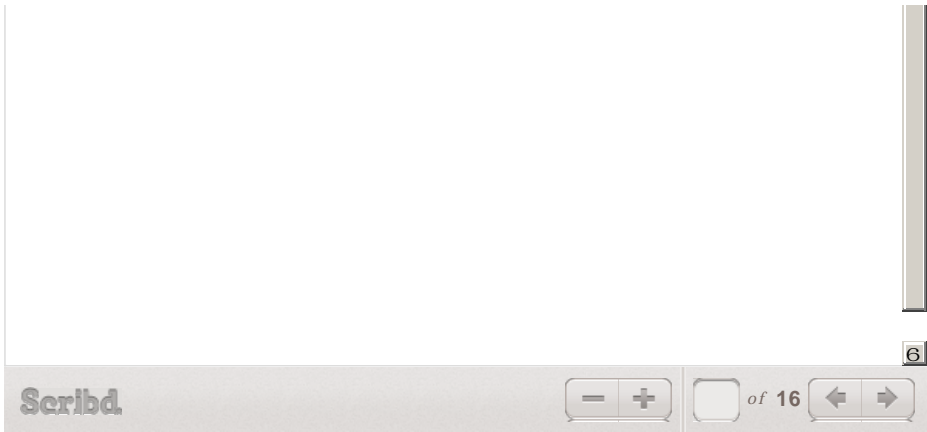


Fig. 7 – Selected documents from the “patent wrapper” for **U.S. Patent No. 7,669,123 Zuckerberg et al**, filed Aug. 11, 2006, issued Feb. 23, 2010. Highlighted here is page 7 of this set showing the Applicant’s “Oath or Declaration Filed” identifying filed on Nov. 02, 2006 where **Mark Zuckerberg and fellow patentees swear under oath to tell the truth to the U.S. Patent Office**. These documents are publicly accessible from <http://portal.uspto.gov/external/portal/pair>.

“I hereby declare that all statements made herein of my own knowledge are true . . . and that willful false satement and the like so made are punishable by fine and imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the application or any patent issued thereon.”

Mark Zuckerberg
Oath and Declaration to the US Patent Office
Sep. 28, 2006

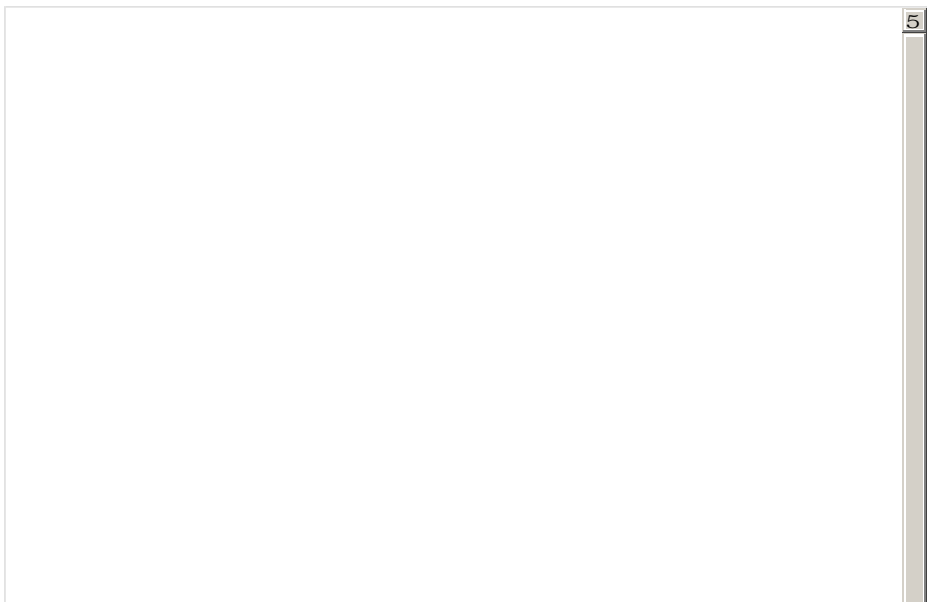
10. Court records *prove* Facebook concealed its beliefs from the USPTO from Feb. 19, 2010

If all the evidence above were not enough. The trial court record in *Leader v. Facebook* reveals yet another smoking gun. The judge’s Jun. 24, 2004 Order said on page 2 (PDF below, p. 3):

“**Facebook contends that it learned during the February 19, 2010** deposition of Jeffrey Lamb, one of the inventors of the '761 patent, that the priority date of the '761 patent is actually December 10, 2003, not December 10, 2002” (emphasis added).

11. Here’s Judge Leonard Stark’s Order allowing Facebook to amend its complaint to add on sale bar

[Leader v. Facebook – Doc. No. 559 – Order Granting Facebook AMENDMENT for ON SALE BAR](#)



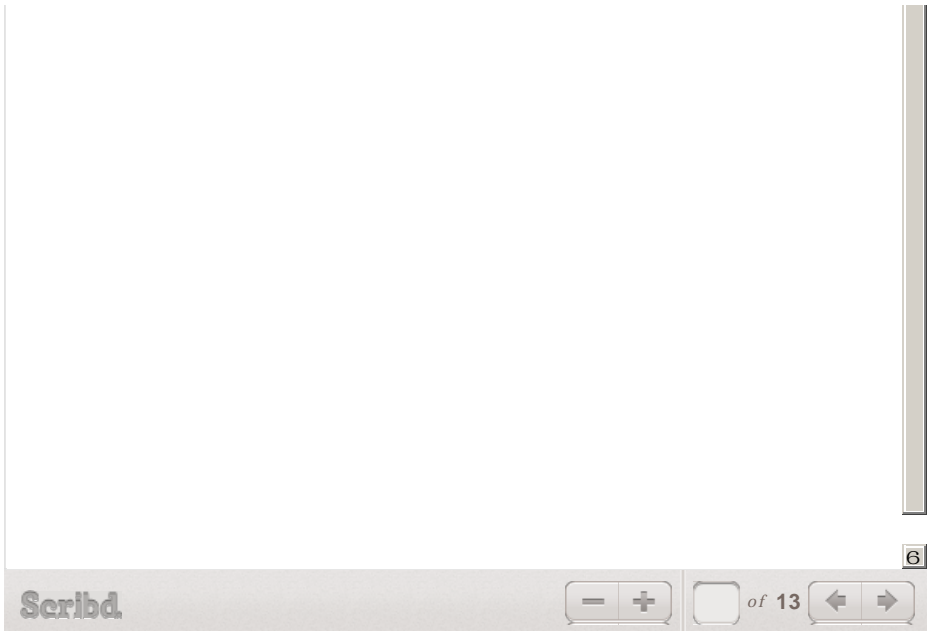


Fig. 8 – Judge Leonard P. Stark’s Order on Jun. 24, 2010 granting Facebook’s motion to amend their counterclaim to include an on sale bar accusation in *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008). Page 2 (PDF, p.3) discloses that Facebook believed that Leader’s U.S. Patent No. 7,139,761 was innovative enough to have breached on sale bar at least by Feb. 19, 2010—**five days before the award of Facebook’s first U.S. Patent No. 7,660,123 on Feb. 23, 2010**. Facebook did not disclose this belief to the U.S. Patent Office in this or any other of its patent filings that have been evaluated by this blog to date.

Facebook’s argument about Leader’s priority date is *prima facie* evidence that they **believed** that the Leader invention was novel at least by Feb. 19, 2010. [Click here](#) to read USPTO documents about on sale bar. However, Facebook did not disclose this belief to the Patent Office in its patent application that was granted as U.S. Patent No. 7,669,123 Zuckerberg et al five days later on Feb. 23, 2010!!! He He He He! Attorneys couldn’t keep their stories straight?



QUADRUPLE GOTCHA !!!!

12. Hey Facebook, Feb. 19, 2010 is BEFORE Feb. 23, 2010

Does not Facebook’s own *Leader v. Facebook* testimony prove that they wilfully withheld material information about Leader’s U.S. Patent No. 7,139,761 McKibben et al from the Patent Office, thus *inducing* the Patent Office to grant Facebook’s patent(s) inequitably?

Facebook’s Cooley Godward attorney Michael Rhodes accused Leader inventor Michael McKibben of “threading the needle” regarding his testimony about when Leader’s invention was ready for patenting. Now who is threading the needle Mr. Rhodes? Do all of your 700+ patents and patent applications have these potentially fatal problems? Oh, but I suppose you don’t considered these risks material do you? We’re just muppets. HaHaHa.

Meep Meep!

* * *

Footnotes:

[^Back](#) [1] **MORE PATENT LAW FOR MUPPETS** (See, it’s not that hard! I figured it out!) See “[Expert witness practiced ‘dark arts’](#)” for an analysis of another segment of the *Leader v. Facebook* trial where Facebook attorneys further confused the jury with **Dr. Saul Greenberg’s bad science testimony**. Such testimony is supposed to



be discarded under the theory that a lay jury (the “trier of fact”) must be able to rely upon the truthfulness of the facts presented by experts.



Dr. Saul Greenberg,
University of Calgary;
Expert witness for
Facebook in *Leader v.*
Facebook.

Mathematically speaking, Dr. Greenberg violated the [principle of bivalence](#)—stating two contradictory truth values when only one can be true. He first said in early hand waiving that he couldn’t decipher the source code in Leader’s provisional patent, then later waxed eloquent about certain elements. See Fig. 9. An expert is not permitted to first say a box is empty, and then proceed to describe its contents. That is like saying the lake is empty, but my swim in it was refreshing. A reasonable person knows that one cannot swim in an empty lake. Dr. Greenberg did just that. [Here’s a link](#) to the actual trial transcript. (Note that Dr. Greenberg used “wild guess,” “guess” and “guessing” six times! “The lady doth protest too much, methinks?” — Hamlet, Act III, scene II; start at about Trial Tr. 10903:10.) See Fig. 9.

At
[Leader v. Facebook – Trial Transcript, Fri. Jul. 23, 2010](#)

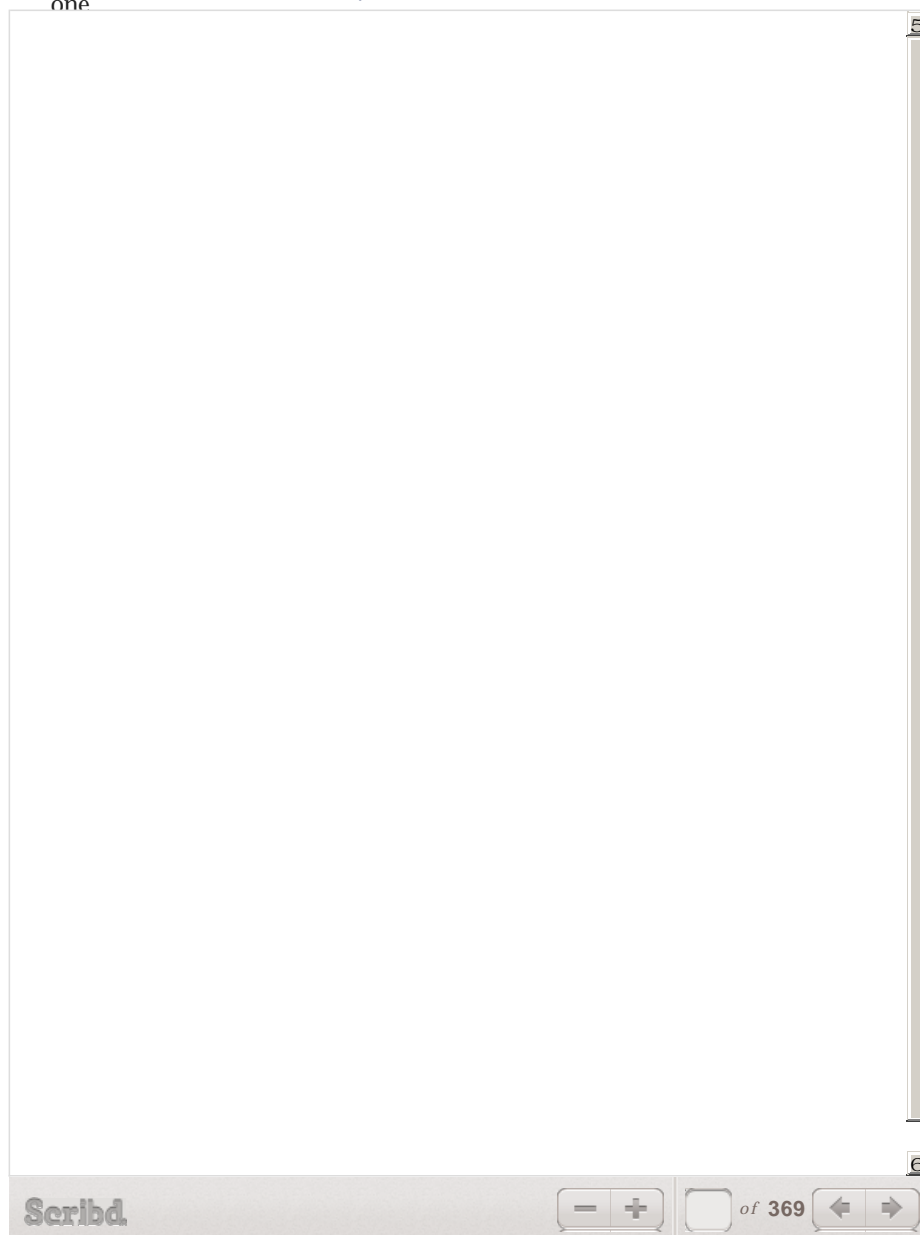


Fig. 9 Trial Transcript, Fri. Jul. 23, 2010; *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Der. 2008). This post focuses on the expert testimony of **Dr. Saul Greenberg** regarding Leader’s provisional patent and his “**wild guessing**” (PDF p. 166, Tr. 10903:10) that suddenly morphed into detailed technical analysis

"using my knowledge of programming" (PDF p. 167, Tr. 10904:17-18) to support elements of the source code that Dr. Greenberg believed supported Facebook's assertions. This change violated the scientific principle of bivalence—that a box cannot be declared empty, then the contents of that box then described in detail. Also during this testimony he makes the incredible statement that Leader's source code contained a FACEBOOK utility program "asp.facebook.util" (PDF p. 167, Tr. 10903:9). This inclusion would have been a miracle since Mark Zuckerberg was only a 17-year old high schooler at the time. The job of the court is to protect juries from expert testimony that uses bad science. See [this blog](#) for more analysis of Dr. Greenberg's testimony.

used

by Facebook to convince the jury that Leader should not be given the benefit of its earlier provisional patent filing date of Dec. 11, 2002. This opened the door for Facebook's "on sale bar" attack. Tellingly, Facebook **DID NOT DEPOSE A SINGLE RECIPIENT OF THESE ALLEGED OFFERS** which they had vociferously argued and the judge described in Fig. 8 above as the justification for adding the "on sale bar." Remarkably, not even Dr. Greenberg offered testimony about on sale bar—which in every other court would've been a hard evidence requirement to prove the technical contents of the alleged offers. "*In confusion there is profit?*" HmMMM.

My GOTCHA meter is overloading!

A well-known lawyer "dark arts" tactic in patent infringement trials is for the infringer to find an expert witness willing to mislead the jury. Since a lay jury cannot assess the reliability of the science presented, it is the duty of the trial court judge to disqualify unreliable expert testimony. This new judge did not do that (it was his first federal trial). *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579 (Supreme Court 1993) at 595-597 (the trial judge must ensure the reliability of scientific testimony).


Meep, meep.


Credits:

1. Mr. Cricket Graphic. [Beatrice the Biologist](#). Oct. 21, 2010. Accessed Mar. 30, 2012.
2. Pinocchio Graphic. Ownership unknown. [Eringer33](#). Accessed Mar. 30, 2012.
3. Photos of *Leader v Facebook* expert witnesses were obtained from their public websites.
4. Christopher P. King biography obtained from the [Fenwick & West LLP](#) website. Accessed Mar. 23, 2012.
5. Scribd documents are all marked as public domain. [Scribd](#). Accessed Mar. 31, 2012.
6. Beaker is a Muppet character that is believed to be owned [The Walt Disney Company](#). Accessed Mar. 30, 2012.
7. Dominos Photo. [Commonlawblog.com](#). Accessed Mar. 31, 2012.
8. Post-trial pleadings in *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008). [Summary of Post-Trial Motions](#). Accessed Mar. 31, 2012.
9. Federal Circuit Appeal Briefs by Leader ([White Brief](#), [Gray Brief](#)) and Facebook ([Red Brief](#)) in *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.). Accessed Mar. 31, 2012.
10. Legal Analysis of *Leader v. Facebook*. [Origin of Facebook's Technology?](#) Accessed Mar. 31, 2012.


{ 12 }


Comments

1. **BG761** | March 29, 2012 at 2:05 pm | [Permalink](#) 

How can Facebook file for patents and say they are about their core technology, social media, when they don't even have a patent on their core technology?
Examples, Microsoft, Adobe, and etc. all have their own core technology. In fact the "core" technology that drives Facebook is not even Zuckerberg's invention! It has already been proven in court that it is Leader Technologies Inc. software. It is evident that the SEC by their silence in this matter would rather have to cleanup a financial disaster for potential investors than try and prevent it. Even the new articles out about Facebook's amended S-1, proves these statements to be true!
2. **SEC Watchdog** | March 29, 2012 at 10:24 pm | [Permalink](#) 


Facebook pretends to comply with "materiality" disclosures, and the SEC pretends to oversee them. It is a shell game. This is more proof that we could fire half the bureaucrats in this country, and we would have no worse services than we're getting now.

I hope the SEC is receiving copies of this blog, so that when Facebook's games catch up to them, we'll have the proof that the SEC was warned and chose to turn a blind eye. Call me cynical, but no doubt these same SEC regulators will most likely have matriculated to Goldman Sachs or JP Morgan. They'll be easy to find.
3. **Steve Williams** | March 30, 2012 at 4:12 pm | [Permalink](#) 

Have no fear! Once the circuit court of appeals throws this whole case in Leaders direction, the "SEC and allllll corrupt individuals within" will have no choice but to acquiesce. In this age of serfdom, beware, oh King, for thine head is not impervious to being lopped off!
Corruption only hides in dark spaces, and the light of justice shall find you wanting.
4. **Justice must prevail** | March 30, 2012 at 5:11 pm | [Permalink](#) 


My thoughts and prayers go out to federal appeals judges Lourie, Moore and Wallach—that they will do the right thing and expose Facebook's conduct for the fraud that it is. Mr. Zuckerberg promised to tell the truth, in writing,

in the document you just uncovered Donna. You are one resourceful cookie! Good going!


5. **Michael Kennedy** | March 30, 2012 at 5:29 pm | 

[Permalink](#)

“Steve Williams” comment, I couldn’t have said it better myself! Thanks Steve you hit the nail on the head!!


6. **Tex** | March 31, 2012 at 7:55 am | [Permalink](#) 

There are too many mistakes by the Facebook folks for this to be an accident. Sadly, part of the decision at the Appeals court has be the fallout and its ramifications if Leader prevails.The facts are obvious as to the verdict but the damages will be staggering if “fair” to Leader. Without question in my mind, some form of “triple” damages may also be involved. The media has seen bits and pieces of this lawsuit but are fearful of tackling Facebook. They are fearful that no matter which party prevails ,they can not win the public love by reporting the fraud that is Facebook.

7. **Jules** | March 31, 2012 at 10:13 am | [Permalink](#) 

The whole point of patent law is to incentivize inventors to invent by protecting them from thieves and thugs. Our current legal process clearly favors the big infringer. Steal it. Sell it. Use the ill-gotten gain to fend off legal attacks. Hire unscrupulous attorneys to fool unsuspecting jurors with doctored evidence and court room parlor tricks. Settle with the inventor with his/her own money for pennies. Retire to the Bahamas. Laughing all the way.

C’mon people. This is America. We gotta do better than this legal extortion we put our inventors through currently. If we hope to reinvigorate our economy, this must change!!! What Facebook, Accel Partners, Goldman Sachs, and Fenwick & West have done is nothing but thuggery in my opinion. Gimme a break. Now they’re doctoring their first names at the USPTO to avoid detection!!! Nobody is too big to fail when they are corrupt.

8. **Steve Williams** | March 31, 2012 at 12:40 pm | 

[Permalink](#)

Amen to all the above! We all know corruption when we see it, and this is obviously no exception to the rule. After reading over the courtroom briefs, and especially listening to the audio transcripts, there is nothing that I have seen or heard that would even remotely convince myself that the courts can justify not overturning this case.This patent has been Mike McKibben’s (CEO of Leader Technologies) all along; even the USPTO office recognizes him as such. And now for Facebook to knowingly and fraudulently, try to patent something that they know isn’t even THEIRS, definitely shows arrogance on their part, let alone legal-stupidity. I only hope the SEC, and

especially the presiding justices, are keeping their eyes open to all of these posts and comments. It's the little guys that built this nation of laws, so how about some legal cover for us for a change? Lord knows we deserve something these days!!!

9. **winston smith** | March 31, 2012 at 1:15 pm |



[Permalink](#)

I have been following this case for some time now. Frankly, it was bewildering to have learned of the injustices that were allowed in the initial court hearing. Very sad, Judge Stark! You need to go back to law school. All other legal personnel should have done their homework as well, and not let so much fall through the cracks. Is there anyone out there that does the right thing anymore? Judge Stark and all that had participated with the initial ruling, should be BARRED. Let's all take a breath.. Think real hard and long of how would it be if you put all your hard earned money, time..and sweat into something only to have it torn from you (HACKED, I MEAN) from a Thief and a Liar..And then watch your idea make billions, for that thief/liar.. How would you like that?? Let's make this wrong a right for all of us seeking a hard earned, justified, honest living!

10. **Donna Kline** | March 31, 2012 at 5:38 pm |



[Permalink](#)

Hi Winston, While I share your frustration, allow me to suggest another view about Judge Stark. This was Judge Stark's first federal trial. Perhaps we should give him some slack and point the finger at Facebook's attorney misconduct instead. They threw in everything but the kitchen sink to try and obscure their misdeeds. While I too think his appoint by Pres. Obama during this case and the President's 25 million "Likes" on Facebook raises an eyebrow, the record also shows he was blasted with a fire hose with every obfuscation in the "dark arts" book. This is why we have an appeals process. Hindsight is 20-20. I hear that he puts up with less attorney shenanigans these days. Too bad he had to learn these lessons on Leader's dime.

My concerns too were raised when I learned that after the verdicts the jurors told the judge and the attorneys that they made the on sale bar decision *without any evidence*. That's right. They did. I don't get how the judge could have heard that and NOT have decided to set it aside. Doesn't that take the concept of "the jury heard the facts" too far? The only "evidence" he could find to support his decision was a doctored Interrogatory No. 9, an interpretation of Michael McKibben's testimony that was obviously wrong, and an 1800's ruling against a murderer for legal support.

I heard the following in person at the appeals hearing:

When Federal Circuit Judge Kimberly Moore, in her incredulous "[does it have a coffee stain on it?](#)" remark, asked Facebook's attorney why they didn't produce Leader's source code as evidence, his best argument was

that “it was not pristine.” **WOW, THAT’S CONVINCING!!!**

Like I said, I understand the frustration, but more experienced Federal Circuit judges should fix these judicial errors. Thanks for sharing your concerns and perspectives. Keep posting!

11. **BradH** | April 1, 2012 at 12:31 am | [Permalink](#)



Sweet Sassy Molassay!! What is it with Christopher P. King hyphenating his name in midlife? To be cool, or to escape searches? If he has some garbage to hide (as I opine he most certainly does), would it not have been easier for him to have just purchased a one way ticket to Honduras, or Nauru? What are the partners at Fenwick & West LLP doing? I wonder if a single one of them ever thinks of the altruism of Greg Smith. Destined for less income forever, but taking the higher road, as he no longer believed was offered by Goldman Sachs.

With our dead regulators, the lack of self policing by even those sworn to uphold the Constitution, we are screwed.

As for Wall Street, as for the cowardly, silent partners at the law firms who so easily abrogate laws, I hope your offspring thank you for the roles you played! How sad those roles will have played a part in our not being able to compete with Cambodia someday!

As an ex chieftain of companies, large and small, private and public, and trained well in the vagaries of taking patents to the market, I have never seen activities such as Ms Kline has uncovered. I am proud that I have had the skills that may have afforded me far greater wealth than the players in this egregious play happily accepted. I avoided these temptations as so many others did. Sad that today, we seem to be a vanishing breed. To say that the players in this Greek (er, “Greed”) tragedy were “forgetful” of their lines would be a compliment! The word “vile”, or “accomplice” would better befit!

Ms. Kline, I had hoped you were misinformed, or unaware of all the details on this case. Per my own further research, I now salute you!

I hope that your findings aren’t ignored by others. To all who may be reading my words, whether patent thief, lawyer, banker, or judge presiding, I hope you all begin to protect a species endangered by the lure of money: Conscience.

12. **Darren Mitchell** | April 3, 2012 at 11:33 pm |



[Permalink](#)

When have attorneys been allowed to pass their Reg. # to another attorney? Especially when involved in Patent applications!! Or do you just change your middle name and add a “hyphen” so that the odds of not being discovered with a search engine are increased astronomically!!!!!! The majority of people that do this have something to hide. Does Mr. King have something to hide other than the fact that he apparently omitted important disclosure information to the USPTO when

applying for Facebook patents but included the Leader patent “7,193,761” in the application for Marc Andreessen (founder of Netscape) patents! Why haven’t the SEC, FTC and the U.S. Patent Office looked into this? How many “coincidences” will it take to get the mainstream media involved?

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

Submit comment

[« **/// MF GLOBAL + JP MORGAN + GOLDMAN SACHS + HARVARD GRADS + POLITICS = A BIG MESS**](#)

[**/// FACEBOOK “LIKED” LEADER’S SOURCE CODE ... BEFORE IT DIDN’T »**](#)

Exhibit F

/// Market Impact in an Evolving World

By Donna Kline — www.DLKIndustries.com

Donna Kline *Now!*



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg* New York.

LEADER V.

FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Muppet Chat (PDF)

MOBILE QR-CODE:



Follow @DonnaKline1

Tweet

Tweet #TwitterStories

Tweet to

@DonnaKline1

RECENT POSTS

/// Facebook “Liked”
Leader’s source code ...
before it didn’t

{ 2012 04 01 }

/// Facebook “Liked” Leader’s source code ... before it didn’t

This web page contains a number of embedded documents and may load slowly. Just being patient is one solution (as long as the little disk in the tab is spinning, it is still loading data). You may also be able to speed things up by: (a) deleting temporary Internet files, and/or (b) changing your browsing history Internet options settings to “Every time I visit the webpage.” Also, try using a different browser than INTERNET EXPLORER, like FIREFOX, GOOGLE CHROME, OPERA, or SAFARI. Also, pressing the F5 key will refresh your browser, as will using your browser Refresh function. Remember, everytime you click something, you send an instruction out to the cloud. Clicking something multiple times slows you down! So wait for your instruction to come back from the cloud before clicking again.



After digging up Facebook’s bad-science “prior art / provisional patent” expert testimony from Dr. Saul Greenberg in the *Leader v. Facebook* trial record ([click here](#)), I decided to see what else I could find. Rather than put them all in one big blog, I’m going to post them one at a time. To make it easy for you, I will embed the actual trial record and even queue up to the pages I reference. You are welcome. 😊

1. Facebook’s attorney Mark R. Weinstein admitted to the judge six months before trial, on Jan. 27, 2010, that he could not prove anything without Leader source code

“in order to analyze whether or not it practices the ’761 patent . . . Facebook would require . . . the source code for Leader2Leader.”

— *Mark Weinstein*, Facebook attorney



Judge Stark gave Facebook access to Leader’s source code based on Weinstein’s argument. However, Facebook did not produce ANY of that source code at trial. Instead of hard evidence, they offered tomfoolery: a doctored Interrogatory No. 9, and a tricked-up video clip. [Click here](#) for a video explaining this.

Since Facebook produced no source code, by their own admission, they did not prove their “on sale bar” case. **GOTCHA.**

[Leader v Facebook – Source Code Order and Weinstein Written Admission – Doc. No. 283, Mar. 9, 2010 at p. 11.](#)

/// Proof Fenwick &
West LLP did not
disclose Leader as prior
art to Facebook
/// MF Global + JP
Morgan + Goldman
Sachs + Harvard Grads
+ Politics = A big mess
/// What Facebook,
Accel Partners,
Goldman Sachs and
Fenwick & West don't
want us "muppets" to
know
/// Make up your
mind, Fenwick & West
LLP
/// Muppet Mania
/// Haughtiness in the
face of "literal
infringement"
/// Facebook *ordered*
pharma users to allow
comments, yet will not
return phone calls now
/// First thoughts after
leaving courthouse
March 5, 2012
/// Judges Selected
/// San Francisco CBS-
TV KPIX Coverage
/// NBC-TV4
(Columbus) Interview
with Leader founder
Michael McKibben
/// How Facebook
tricked the jury –
YouTube
/// New friends?
/// Did Someone Prod
the Media?
/// Facebook: The New
'Too Big To Fail?'
/// Big trouble ahead
for the Facebook IPO?
– PBR / *YouTube*
/// What happens on
March 5th, 2012?
/// More on FB's S-1
omissions & other
conflicts of interest
/// Big trouble ahead

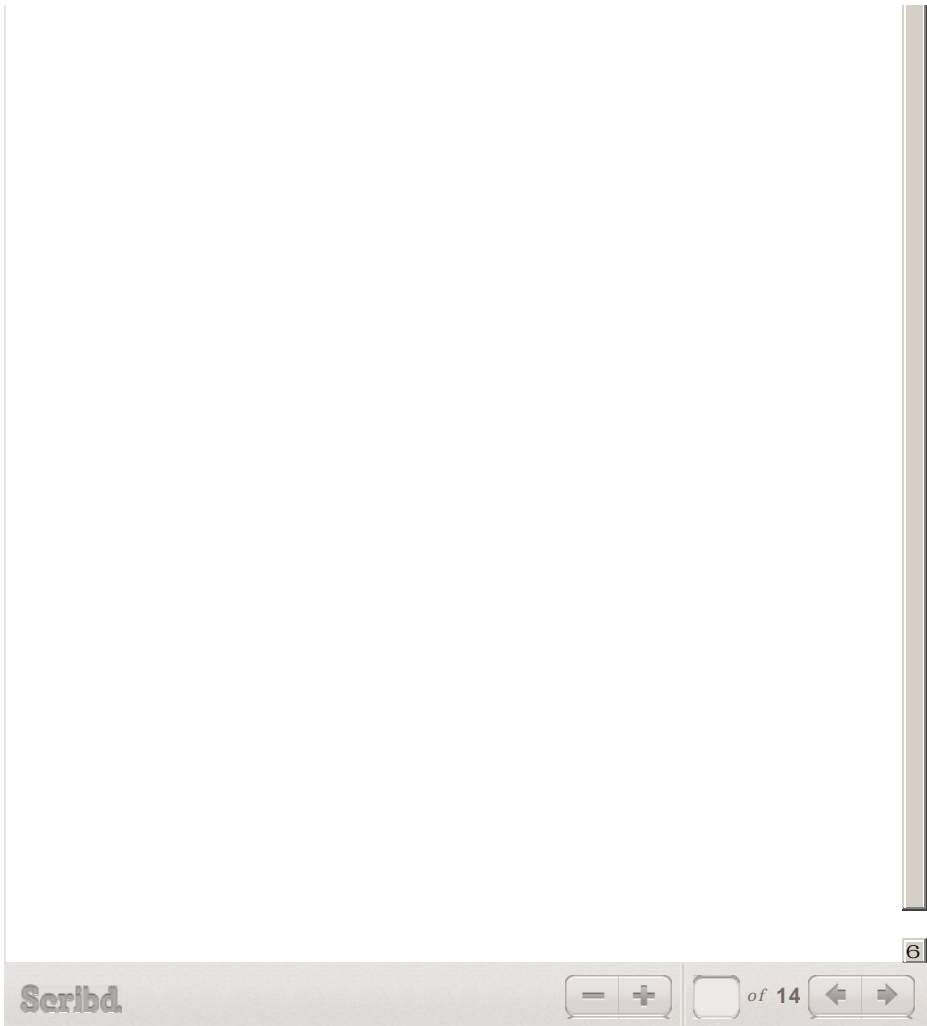


Fig. 1 – *Leader v. Facebook* Doc. No. 283 showing Cooley Goward LLP attorney Mark R. Weinstein's admission that Facebook could not prove whether or not Leader2Leader contained the invention without analyzing the Leader source code.

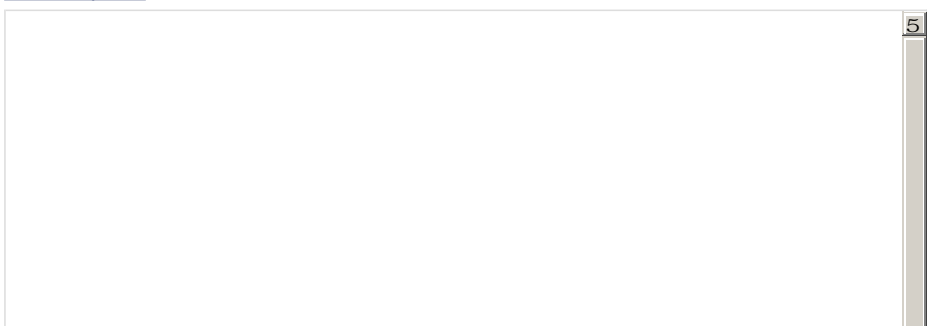
2. On Why Facebook did not put Leader's source code in evidence.

■ “[We] were never given a pristine copy of the code.”

– **Thomas Hungar**, *Facebook attorney*, *Tr. 24:8-24*.



[Leader Tech v. Facebook, Case No. 2011-1366 \(Fed. Cir.\) Hearing Transcript, Mar. 5, 2012, at p. 24.](#)



CALENDAR:

April 2012

M T W T F S S

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

« Mar

ARCHIVE OF POSTS

Select Month **6**

RECENT

COMMENTS

Adelle Grayson on ///

Facebook "Liked"

Leader's source code ...

before it didn't

BCaine on ///

Facebook "Liked"

Leader's source code ...

before it didn't

RobertC on ///

Facebook "Liked"

Leader's source code ...

before it didn't

Darren Mitchell on ///

Proof Fenwick & West

LLP did not disclose

Leader as prior art to

Facebook

Linda W on ///

Facebook "Liked"

Leader's source code ...

before it didn't

Steve Williams on ///

Facebook "Liked"

Leader's source code ...

before it didn't

Donna Kline on ///

New friends?

tabata on /// New

friends?

BradH on /// Proof

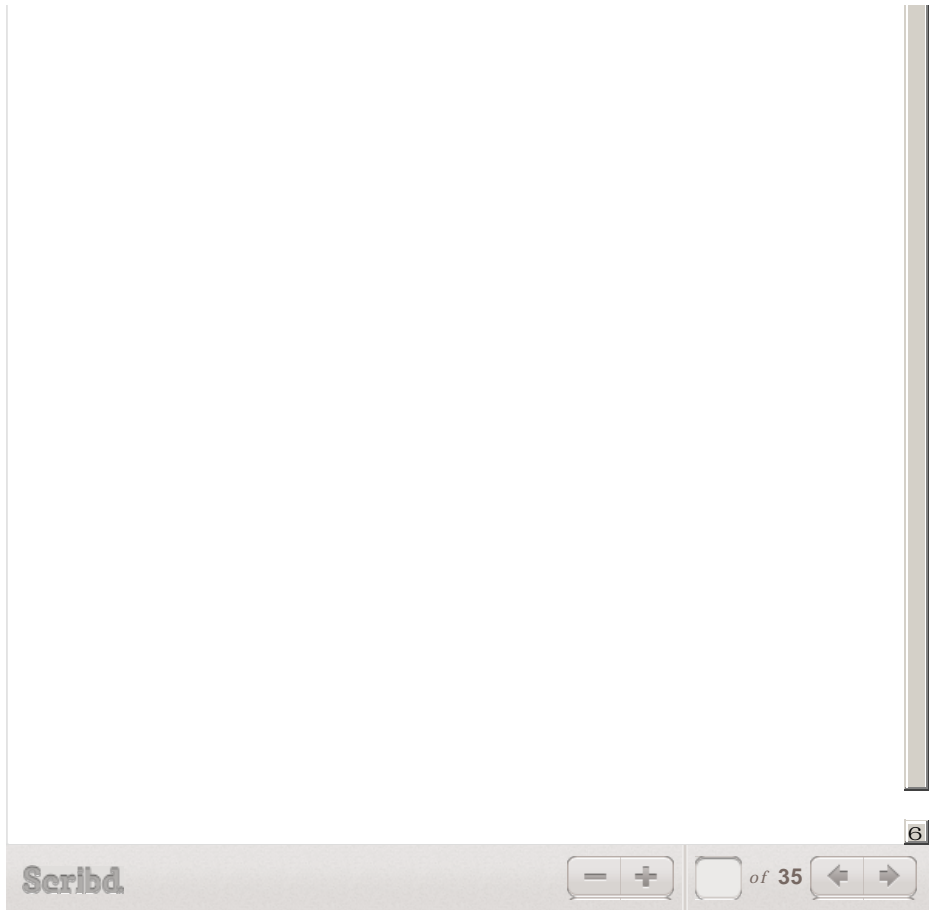


Fig. 2 – *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.) Hearing Transcript, Tr. 24:8-24, where Facebook explains their reason for not producing Leader source code to prove “on sale bar.”

3. Judge Moore: “I have no clue what you even mean by that.”

“You’re up here on appeal complaining that you didn’t have a pristine copy. I have no clue what you even mean by that. And, that that somehow justifies why you, you didn’t include it as any of the evidence?”

– **Judge Kimberly A. Moore**, Federal Circuit



A pristine snowfall



of pristine source code?



Facebook’s Mark Weinstein was

given access to Leader’s source code—no complaints. Facebook’s Thomas Hungar on appeal (who wasn’t even on the case then)—complained it wasn’t ‘pristine.’

Fenwick & West LLP did not disclose Leader as prior art to Facebook
Donna Kline on ///
Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
winston smith on ///
Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Steve Williams on ///
Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Jules on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Tex on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Michael Kennedy on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Justice must prevail on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Steve Williams on ///
Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
SEC Watchdog on ///
Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
BG761 on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook

[Leader Tech v. Facebook, Case No. 2011-1366 \(Fed. Cir.\) Hearing Transcript, Mar. 5, 2012, at p. 26.](#)



Fig. 3 – *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.) Hearing Transcript, Tr. 26:11-15, where Facebook explains their reason for not producing Leader source code to prove “on sale bar.”

4. Weinstein was granted access to the Leader source code, failed to deliver it as evidence at trial, and only now raises the “pristine” issue on appeal. Hmrrrrrr.

Judge Stark granted Facebook’s Mark Weinstein access to Leader’s source code for Leader2Leader. But, according to Facebook’s newly-minted Federal Circuit argument, because it was not “pristine,” it was not produced as the ONLY evidence that could prove whether or not the 2002 version of Leader2Leader practiced the invention. (BTW, no motion was



Kayce Maria on ///
Haughtiness in the face
of “literal infringement”

CATEGORIES

Current Positions
Economic Analysis
Investigation

SEARCH BLOG

Search Now

META

Log in
Entries RSS
Comments RSS
WordPress.org



ever filed by Facebook complaining of the lack of pristine-ness of Leader’s source code. Therefore, it appears that it *was* pristine enough before trial, but suddenly became *un-pristine* at the Federal Circuit appeal hearing. How does that happen??? HA HA HA HA.)

Judge Moore did not know what Facebook’s “pristine” explanation even meant.

Neither do the rest of us.

If this is “clear and convincing” evidence, then **the moon is made of green cheese.**

5. Leader’s CEO Michael McKibben finally gives some “on sale bar” context that a layman can actually understand!!!

I contacted Leader’s Chairman & CEO, Mike McKibben, and he was kind enough to explain to me—in layman’s terms—what this alleged Wright-Patterson offer was all about. His answers are from my notes. I include more detail than normal because I think it important for readers to understand how Facebook took advantage of a complex set of circumstances to *hoodwink the jury*—circumstances closely tied to Leader’s efforts to help the nation in response to the 9/11 terrorist attacks.

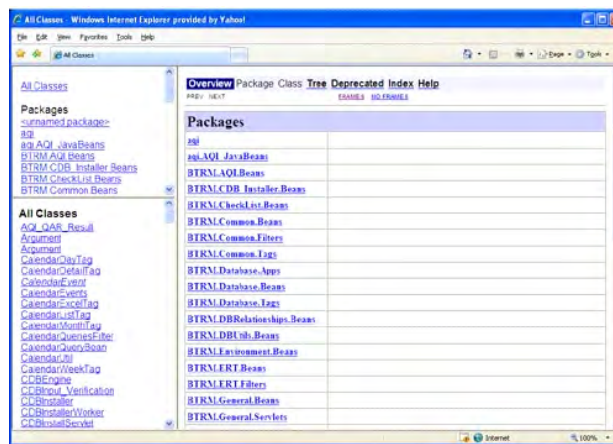


Sponsored by
Facebook

Question #1:

DLK: “I have obtained the Facebook letter which requested the Leader source code. Explain to me what Leader *did* provide in response to the letter and how it was delivered again?”

Mr.



JavaDocs Source Code Tree

McKibben “The day Judge Stark issued the order, we made a mirror-image copy of our developer’s “source code tree” on a CD-ROM and overnighted it to our attorneys. They provided it to Facebook on a dedicated computer. This is a common procedure.

Mr. Hungar’s comment about our code not being “pristine” was news to me. He implied we had somehow altered it. We did no such thing. They saw everything. It contains many 100’s of thousands of lines of code. If we had been intent on doctoring it, such activity would have taken months, if not years. Ask an author about editing a manuscript. It is a continuous work-in-process. It’s no different with source code. A change in one place often creates a ripple effect of changes throughout the work. Such changes are ten times more complex with programming code where more than 20 developers contributed over multiple years. The alleged changes to our source code never happened.”

Question #2:

DLK: “During the appeal process, there was a reference to an “offer” to Wright-Patterson that supposedly occurred in January 2002. This is the critical part of the case, can you tell me more about this?”



September 11, 2011

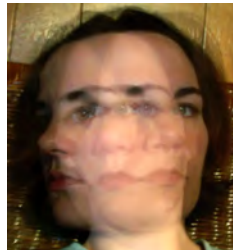
Mr. McKibben: “Facebook made a habit of making up stories to suit their innuendo, then repeating it—even when the evidence proved their stories bogus. For example, one of their favorite fabrications was our research and development activity with Wright-Patterson Air Force Base in Dayton, Ohio.

We were working with WPAFB and the University of Dayton



Forward-looking 'What If' Projections

to get a research and development grant funded in the aftermath of the 9/11 tragedy. We were working on practical ways to prevent such tragedies in the future. We were all trying to find ways to help out. It is ironic that Facebook attacked us regarding this effort to aid our country in time of crisis. Those were anxious times for everyone. We were also seeing terrorist activity on our telephony technology at the time. Such proposals require forward-looking 'what if' projections. In other words, *if* the cutting-edge research is successful (and there are no guarantees that the proposal would be accepted, or that the research would be successful), what *could* the government expect to pay for the hypothetical end result? Such projections are common in the research world, but foreign to most people in my experience, including our jury. Facebook counted on getting the juror's heads spinning with technical, financing, business and legal jargon.

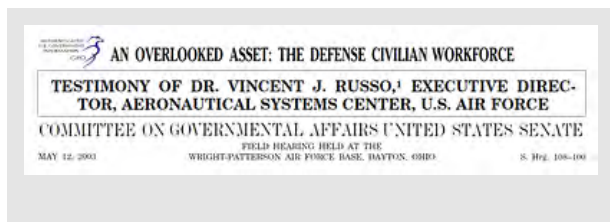


Juror listening to Facebook's 'on sale bar' arguments

The first point of confusion was the government's *requirement* that we use the word 'Offeror' in the proposal. Anyone who has ever responded to a government proposal request can tell you how picky they get over following their instructions to a 'T.' Missing punctuation can sometimes disqualify proposals! Even though the requirements stated that the proposal had to be non-commercial and was not a 'buyer/seller' relationship, Facebook ignored that and kept playing the 'offer for sale' innuendo like a broken record. In short, these proposals

sought to extend the boundaries of science. In the English language we use the word 'offer' in many ways, like offer you a suggestion, a hand, food, advice, new ideas, etc. Every time 'offer' appears it doesn't mean we've made a commercial offer for sale! Our lay jury can be excused for getting confused since government proposals are complicated, and business lingo like 'sell' and 'deal' can mean different things depending on the context. Facebook worked hard to keep the jury's heads spinning regarding 'on sale bar.'

Second, our first meeting with a Wright-Patterson official



was with
its
Executive
Director
Dr.
Vincent
J. Russo

Fig. 4 – Congressional Record that proves Dr. Vincent Russo was Executive Director at Wright-Patterson on Apr. 2, 2001. Facebook's appeal brief accused Leader's Michael McKibben of lying about Dr. Russo's association with WPAFB. This public record proves Facebook's accusation is unfounded (and easily provable as false – HECK, I FOUND THIS EVIDENCE – C'MON FACEBOOK, YOU GOTTA DO BETTER THAN THAT!!!).

on April
2, 2001. Prior to that meeting Dr. Russo signed a nondisclosure agreement that contained a common term called a 'no-reliance' clause where the parties agree that no discussion will have any 'legal effect' until reduced to writing and signed in a formal contract. A second such agreement was signed a week later before the second meeting. Facebook's appeal brief spent a whole page calling me a liar about Dr. Russo's association with Wright-Patterson (since he signed the nondisclosure agreement personally). [DLK: To see it [click here](#).] However, the Congressional Record proves he was, indeed, the Executive Director of WPAFB then. To use your term Donna—GOTCHA.

5. You understand that Leader has endeavored to include in the information those materials which are believed to be reliable and relevant for the purpose of your evaluation, but you acknowledge that neither Leader nor any of its representatives makes any representation or warranty as to the accuracy or completeness of the information. You agree that neither Leader nor any of its representatives shall have any liability to you or to any of your representatives as a result of the use of the information by you or your representatives, it being understood that only those particular representations and warranties which may be made in any definitive agreements, when, as and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreements, shall have any legal effect.

Fig. 5 – Leader NDA No-reliance Clause. Contract law says if two parties agree that preliminary discussions cannot be construed contractually, then that agreement shall govern all subsequent communications. No-reliance governed ALL WPAFB exploratory communications. GOTCHA AGAIN!

This no-reliance agreement meant that none of our communications could be construed as an offer for sale. Facebook ignored this too; evidently counting on the jury and many attorneys not knowing how a no-reliance clause works. It is a legal agreement that prevents either party from

claiming a verbal offer before a written agreement is signed, for example.

Third, Facebook played up forward-looking verbiage in the proposal where we were making statements about our technology. Here is where Facebook really confused the jury. We were exploring MANY development ideas with WPAFB. We were using the brand name 'Leader2Leader' as an umbrella reference to many of these ideas. At that stage, we had some elements of our technology working, others close, others further off, and still others in the idea stage. That is the nature of software R&D. It would have been too confusing to give every idea a separate name, so we lumped it altogether into a 'suite' of products and branded the suite as 'Leader2Leader.'

Since we had parts of our technology fully working, we could make the claim that those pieces were 'fully-developed.' However, that never meant that future or fledgling ideas were fully developed. At trial we used the example of a Corvette in 2002 did not have Bluetooth, but it did in 2009. Chevrolet could make the claim that the Corvette was fully developed in 2002 even though it did not contain Bluetooth at that stage. Similarly, the technology we were discussing with WPAFB had many fully-developed and working components, it's just that it did not yet have the patented invention plug-in, because it was not perfected until about Dec. 11, 2002.



2009 Chevrolet Corvette



Facebook's 'clear and convincing' burden of proof was to produce *hard* evidence that we offered the patented invention to Wright-Patterson. All they offered was a doctored interrogatory, several video snippets taken out of context, speculation and brand names. No source code, no engineering documents, no expert testimony, no nothing that was real evidence—instead, they offered only smoke

'Witches brew of
innuendo, speculation
and surmise'

and mirrors. At one point six months before trial even they argued to the judge that they couldn't prove *anything* without the source code. This was *after* Mark Weinstein actually used our 2009 version of Leader2Leader

himself (that *did* practice the invention). They said they needed the source code to look 'under the hood,' as it were, to find the invention; which is correct by the way. Without source code, one cannot tell what the gears and pulleys of a piece of software look like or how they function. Even so, they didn't produce any source code as evidence at trial because the internal dates in it *prove* unequivocally that they are wrong. It would have destroyed their witches brew of innuendo, speculation and surmise."

See links [here](#), [here](#), Section 5 [here](#), and [here](#) for a WPAFB BAA/PRDA Industry Guide similar (if not identical) to what the jury saw. These are documents and other writings to which Mr. McKibben is referring.

Meep, meep.



Credits:

1. Don't Like button. [Design Resources Box](#). Accessed Apr. 3, 2012.
2. Pristine Snowfall Photo. [Photobucket.com](#). Accessed Apr. 2, 2012.
3. Green Cheese Indeed... Graphic. [Shawndubin](#). Accessed Apr. 2, 2012.
4. "I plead guilty, Your Honor, but only in a nice, white-collar sort of way." [The New Yorker](#). Accessed Apr. 3, 2012.
5. Crystal Ball. [Photobucket](#). Accessed Apr. 3, 2012.
6. 2009 Corvette. [Chevrolet](#). Accessed Apr. 3, 2012.
7. Witches Brew. [Blogspot.com](#). Accessed Apr. 3, 2012.
8. Confused juror photo. [momology.blogspot.com](#). Accessed Apr. 4, 2012.
9. Hoodwink Festival 2000 graphic. [TicketsInventory.com](#). Accessed Apr. 4, 2002.
10. JavaDocs Screen. [Keener Tech](#). Accessed Apr. 3, 2012.
11. The New York Times 9/11/2001 Front Page. [The New York Times](#). Accessed Apr. 4, 2012.
12. S. Hrg. 108-100 – AN OVERLOOKED ASSET: THE DEFENSE CIVILIAN WORKFORCE, 108th Cong. III, SuDoc. CI. No. Y 4.G 74/9, p. 11 (2003) (testimony of Dr. Vincent J. Russo), [GPO ABSTRACT](#), [PDF version](#) (6 MB), [TXT version](#) (174KB). [GPO Authenticity Certificate](#). Dr. Russo's testimony places him at WPAFB on Apr. 2, 2001. Accessed Apr. 3, 2012


Posted by [Donna Kline](#) on Sunday, April 1, 2012, at 4:40 pm.


Filed under [Investigation](#).


Follow any responses to this post with its [comments RSS](#) feed.


{ 5 }


Comments

1. **Steve Williams** | April 3, 2012 at 5:35 pm |  [Permalink](#)

Sounds to me like Facebook has a case of the (John Kerry's); "I voted for that before I voted against it". Talk about flip-flopping!! And why would Facebook even ask for the source code when they had no intention of presenting it as evidence? (Maybe a case of putting the cart before the horse perhaps?) At any rate, this whole silliness of these courtroom theatrics has made a mockery of not only our judicial system, but are a testament to the phrase "educated idiots"!! And how incredulous and arrogant, once again, that the system itself tends to look down on its own citizenry as a bunch of mindless buffoons. We have at this point in time evolved above grunting and eating our own droppings.
2. **Linda W** | April 3, 2012 at 11:20 pm |  [Permalink](#)

These lawyers get away with this crap because the good guy-lawyers don't feel free to report them, and the disciplinary system won't go after white collar misconduct (who has gone to jail from the meltdown? I prove my point!!!) Us muppets are left to pay the bill when their petty games fall apart. Put a majority of laypeople in charge of the disciplinary system and I bet things would change. Dignity. Honor. Integrity. Competency. Are these traits possible in the legal profession?
3. **RobertC** | April 4, 2012 at 8:11 am |  [Permalink](#)

Well Linda, one thing is for sure: Attorneys aren't going to CHOOSE to bring laymen into their little professional clique to regulate their conduct and discipline. If this is going to get done, this will have to be a lay movement. Ever wondered why their ethics rules are so detailed? Perhaps because their Mamas didn't raise them to know the difference between right and wrong?
4. **BCaine** | April 4, 2012 at 4:34 pm |  [Permalink](#)

The Audacity of Arrogance? Just today is was announced that these same junk yard dogs, sorry, attorneys, have been assigned to the Yahoo lawsuit. Did you notice Donna that Facebook is using the Fenwick & West patents that don't disclose Leader's inventions that you exposed in the previous posts??? Do I smell a deal between Leader and Yahoo to put down this rabid dog called Facebook?
5. **Adelle Grayson** | April 5, 2012 at 8:14 pm |  [Permalink](#)

Facebook's business model is hacking, a fact that Facebook users seem willing to forgive and forget. But if the foundation of the company is criminal, why should it surprise anyone to learn that Mark Zuckerberg also violated Leader's patent and stole its software platform?

Adelle

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

Submit comment

[« /// PROOF FENWICK & WEST LLP DID NOT DISCLOSE LEADER AS PRIOR ART TO FACEBOOK](#)

Exhibit G

/// Market Impact in an Evolving World

By Donna Kline — www.DLKIndustries.com

Donna Kline Now!



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg New York*.

LEADER V. FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Muppet Chat (PDF)

MOBILE QR-CODE:



Follow @DonnaKline1

Tweet

Tweet #TwitterStories

Tweet to

@DonnaKline1

RECENT POSTS

/// Facebook countersues Yahoo with bogus patents?

{ 2012 04 06 }

/// Facebook countersues Yahoo with bogus patents? Confirms reckless mindset.

This web page contains a number of embedded documents and may load slowly. Just being patient is one solution (as long as the little disk in the tab is spinning, it is still loading data). You may also be able to speed things up by: (a) deleting temporary Internet files, and/or (b) changing your browsing history Internet options settings to "Every time I visit the webpage." Also, try using a different browser than INTERNET EXPLORER, like FIREFOX, GOOGLE CHROME, OPERA, or SAFARI. Also, pressing the F5 key will refresh your browser, as will using your browser Refresh function.

Two posts ago ([click here](#)) I exposed Facebook patents filed for them by Fenwick & West LLP that uniformly failed to disclose Leader's patent in the "references." As a reminder, the "references" on a patent are prior works in the related patent field that the patentee discloses to the Patent Office, or which the patent examiner finds on that might be prior art. It is the patentee's legal duty to disclose related works, otherwise the patent application could be invalidated due to "inequitable conduct" (a fancy way of saying lying to or withholding evidence from the Patent Office).

Facebook just countersued Yahoo. See Law.com. Two things are notable about the countersuit. (1) Facebook uses two of its questionable patents as the foundation of its countersuit, and (2) they are using the same Cooley Godward LLC attorneys that pulled all the shenanigans in *Leader v. Facebook*. Scroll down the left side of my blog to review past posts about these attorneys.

Who drank Facebook's Kool-Aid?

I think I have adequately addressed the problems with Facebook's use of those questionable patents as the basis for their countersuit—which is probably great news for Yahoo. The use of the Cooley Godward LLP attorneys (the same ones as in *Leader v. Facebook*) is as interesting since it further clarifies the cabal of players inside Facebook who drank the Kool-Aid of recklessness: Facebook, Fenwick & West LLP, Cooley Godward LLP, Goldman Sachs, Digital Sky, Peter



Fig. 1 – Facebook's counterclaims in *Yahoo v. Facebook* are dubious given their failure to disclose Leader Technologies' U.S. Patent No. 7,139,761 and Fenwick & West LLP's conflicts of interest as former counsel for Leader in 2001-2003, then securities and patent counsel from 2006 for Facebook.

Confirms reckless mindset.
/// Facebook “Liked”
Leader’s source code ...
before it didn’t
/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
/// MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess
/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don’t want us “muppets” to know
/// Make up your mind, Fenwick & West LLP
/// Muppet Mania
/// Haughtiness in the face of “literal infringement”
/// Facebook *ordered* pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012
/// Judges Selected
/// San Francisco CBS-TV KPIX Coverage
/// NBC-TV4 (Columbus) Interview with Leader founder Michael McKibben
/// How Facebook tricked the jury – *YouTube*
/// New friends?
/// Did Someone Prod the Media?
/// Facebook: The New “Too Big To Fail?”
/// Big trouble ahead for the Facebook IPO? – PBR / *YouTube*
/// What happens on

Thiel, Mark Zuckerberg, Harvard Alum (dubbed the “[Acela Mafia](#)” after the express train between Washington D.C. and Boston linking East Coast Ivy Leaguers) and Accel Partners (peopled with West Coast Ivy Leaguers).

- **Accel Partners** and **Peter Thiel** are the boy-band leaders whose original contacts with **Mark Zuckerberg** at **Harvard** in 2003-2004 are murky. [Click here](#), [here](#), and [here](#).
- **Goldman Sachs** and **Russia’s Digital Sky** provide an unregulated \$3 billion “IPO supplement;” locking out American investors who had bailed out Goldman from oblivion. [Click here](#), and [here](#).
- Russia’s Digital Sky provides the leadership for the future of **Facebook Credits** (unregulated world currency?) transactions. [Click here](#).
- **Fenwick & West** files a flurry of dubious patents in the name of the **King of Hackers**; patents that use their former client’s invention as the basis. [Click here](#), and [here](#), [here](#), and [here](#).
- Fenwick & West prepares the S-1 for general Muppet consumption while the **SEC** sends out form letters and turns a blind eye. [Click here](#) and [here](#).
- **Cooley Godward** practices “[lawfare](#)” by disrespecting the courts with fabricated evidence, trial theater and [frivolous](#) motion practice.” [Click here](#).

If you doubt me, what follows is a quote from Cooley Godward’s Heidi Keefe, as recorded by a court reporter in *Leader v. Facebook*. Also see Fig. 2 below.

Facebook dragged its feet on discovery throughout the first six months of 2009. For example, Facebook would say they would not provide a document, but when Leader filed a motion to compel the document, Facebook would then provide the document in their opposition to the motion—the very document that they had just said they would not provide. Leader had provided two-and-a-half times more documents to Facebook than Facebook provided to Leader. Judge’s Conference, May 28, 2009, Tr. 1062:12-24. See Fig. 2 below.

[“I don’t want Facebook to be trashed . . . I love my company”](#)

[—Heidi Keefe, Cooley Godward LLP, Facebook attorney, Leader v. Facebook Judge’s Conference, May 28, 2009.](#)



Keefe

Heidi

[Facebook counsel Heidi Keefe’s argument for giving Leader limited access to Facebook’s documents was “I don’t want Facebook to be trashed.” Judge Farnan replied “Don’t be so defensive.” to which Ms. Keefe responded “I love my company.” *Id.*, Tr. 1063:18-23.](#)

[Leader v Facebook Doc No 72 – Heidi Keefe: “I Love My Company” May 28 2009, at p. 27.](#)

March 5th, 2012?

/// More on FB's S-1

omissions & other
conflicts of interest

CALENDAR:

April 2012

M T W T F S S

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

« Mar

ARCHIVE OF POSTS

Select Month

RECENT

COMMENTS

Adelle Grayson on ///

Facebook "Liked"

Leader's source code ...

before it didn't

BCaine on ///

Facebook "Liked"

Leader's source code ...

before it didn't

RobertC on ///

Facebook "Liked"

Leader's source code ...

before it didn't

Darren Mitchell on ///

Proof Fenwick & West

LLP did not disclose

Leader as prior art to

Facebook

Linda W on ///

Facebook "Liked"

Leader's source code ...

before it didn't

Steve Williams on ///

Facebook "Liked"

Leader's source code ...

before it didn't

Donna Kline on ///

New friends?

Scribd

- +

of 44 < >

6

Fig. 2 – *Leader v. Facebook*, Judge's Conference, May 28, 2009, Tr. 1062:12-24. Here's Facebook's Cooley Godward attorney Heidi Keefe drops her "independent professional judgement" in efforts to oppose Leader's discovery requests.

Call me crazy, but doesn't that sound like a lawyer that drank her client's Kool-Aid?



Has Cooley Godward's Heidi Keefe drunk the Kool-Aid?

Facebook's Yahoo countersuit proudly boast their assignment of "I love my company" Heidi Keefe to the Yahoo litigation. [The Model Rules of Professional Conduct, Rule 2.1: Advisor](#), state:

"In representing a client, a lawyer shall exercise **independent professional judgment** and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as **moral**, economic, social, and political factors, that may be relevant to the client's situation."

Do ya think Heidi Keefe is telling the emperor he has no moral clothes? Ha Ha Ha Ha. Didn't think so.

Open defiance of American, Canadian and international law . . . not to mention common decency?

Most concerning is the level to which this cabal of players are willing to do each other's dirty work in almost open defiance of the law, professional ethics and common decency. They're ready to steal patents, raise billions without regulation, call black white, cheat and steal from former clients, flagrantly ignore ethic oaths, lie, fabricate evidence, enrich with funds of dubious origins, conduct



tabata on /// New friends?
BradH on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Donna Kline on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
winston smith on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Steve Williams on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Jules on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Tex on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Michael Kennedy on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Justice must prevail on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
Steve Williams on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
SEC Watchdog on /// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
BG761 on /// Proof Fenwick & West LLP

lawfare, switch identities to avoid detection, fail to disclose material information, never return calls, ignore FTC privacy concerns, withholding material SEC disclosures, extol theft of intellectual property while simultaneously becoming one of the most prolific patent filers on the planet, take the low moral ground at every turn, disrespect privacy, label Facebook's security "the best there is" (Milner), no-show at investor meetings, etc. etc. etc.

Fig. 3 – Lloyd Blankfein (left) and (Jamie Dimon (right) promising to tell the [Harvard?] truth to the U.S. Senate Financial Crisis Inquiry Commission on January 13, 2010. The punishments are worse for [plagiarism](#) on a term paper than the wholesale bankrupting of the US economy by a Harvard man. The body language speaks volumes. Are these guys getting ready to tell the truth? Source: [Business Week](#). See also [previous post](#).

Two words describe such conduct: **audaciously reckless**.

From my research, it does not appear to me that Yahoo has much to be concerned about with Facebook's counterclaims. Pundits tell me that the patents that are the foundation of the counterclaim, namely 7,827,208 and 7,945,653, can likely be invalidated because they failed to disclose Leader's patents as references of potential prior art, then the other eight patents in the Yahoo counterclaim would likely fall off their two-legged stool. See Fig. 1 above.

More coming! Stay tuned.

Meep, meep.

* * *

Posted by [Donna Kline](#) on Friday, April 6, 2012, at 2:27 pm.

Filed under [Investigation](#).

Follow any responses to this post with its [comments RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

[« /// FACEBOOK "LIKED" LEADER'S SOURCE CODE ... BEFORE IT DIDN'T](#)

did not disclose Leader
as prior art to Facebook
Kayce Maria on ///
Haughtiness in the face
of “literal infringement”

CATEGORIES

Current Positions
Economic Analysis
Investigation

SEARCH BLOG

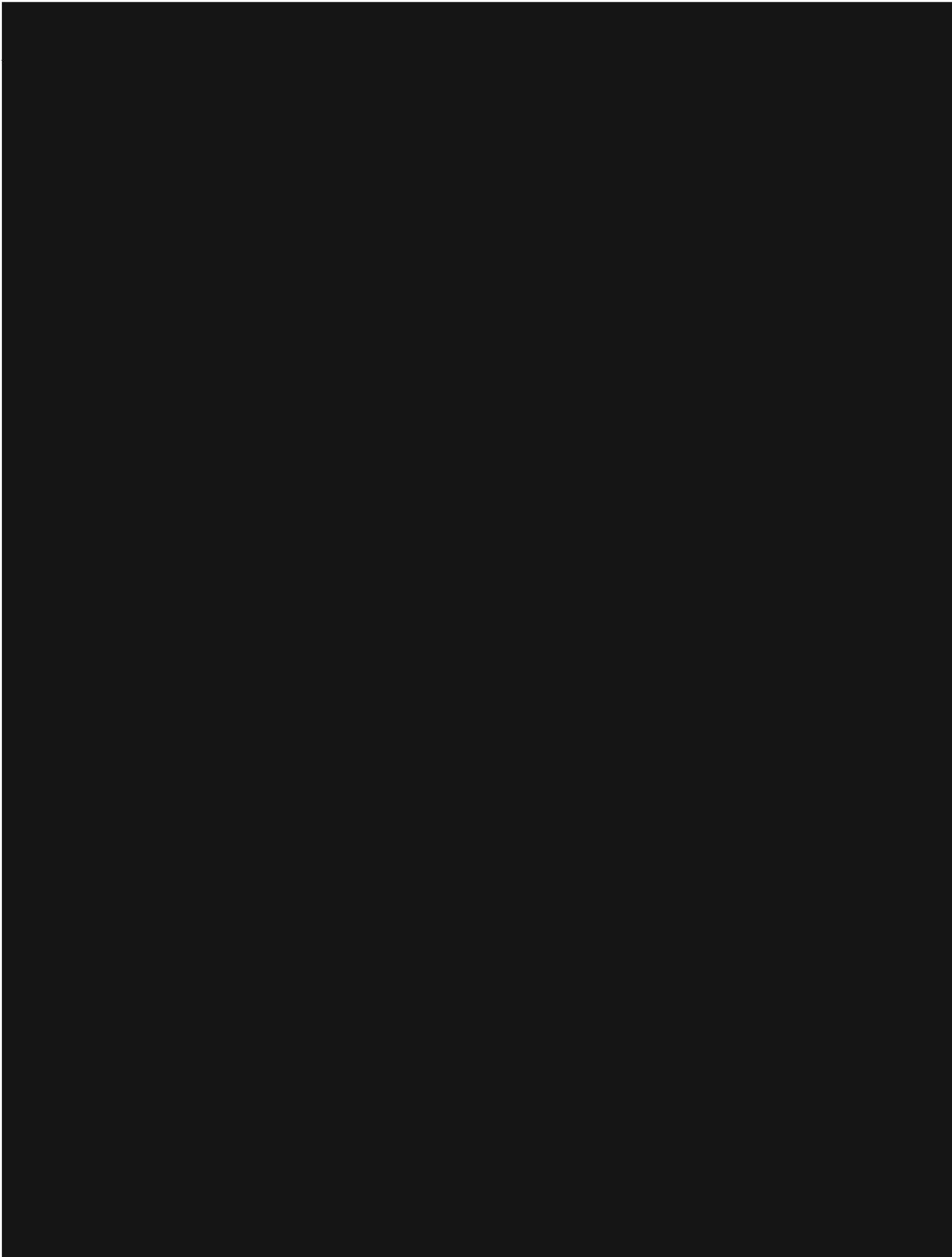
Search Now

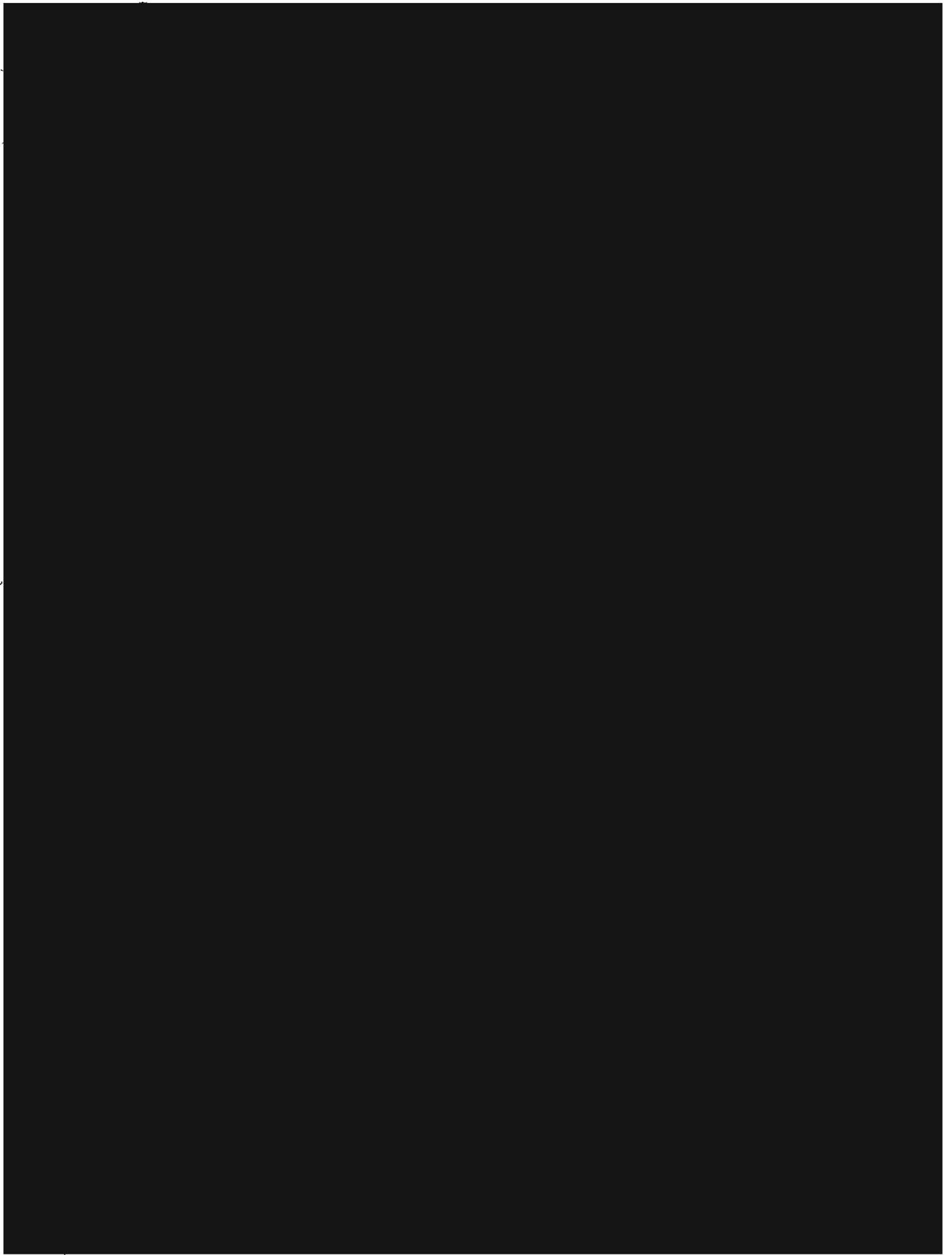
META

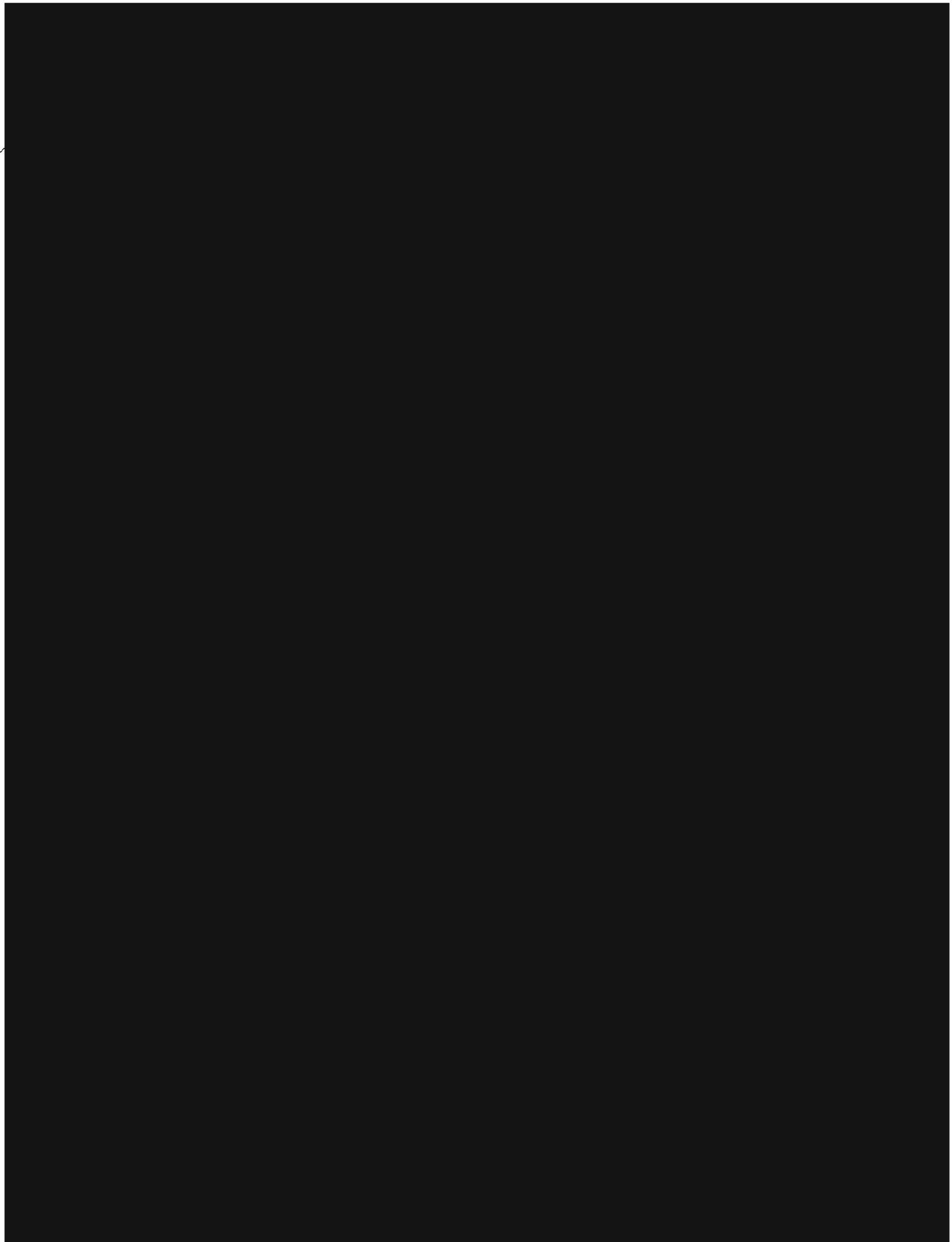
Log in
Entries RSS
Comments RSS
WordPress.org



Exhibit H







U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CERTIFIED MAIL

Print

TCR Submitted Successfully - Reference Number: TCR1334705074400

Tell us about your complaint

Please select the option that best describes your complaint

Material misstatement or omission in a company's public filings or financial statements, or a failure to file

Please select the specific category that best describes your complaint

False/misleading offering documents

Provide additional details about your complaint:

My complaint concerns Facebook, Inc.'s S-1 disclosure and related business activity. This complaint concurrently involves, in my opinion, a fraudulent investment scheme, making private markets in unregistered securities under the guise of a limited-purpose SEC exemption from the 500 shareholder rule (2008), manipulation of a security, insider trading, improper payments, and perhaps bribery. This information is based upon the best reasonable information available. This information may change based upon new information. This form has certain technical



Are you having or have you had difficulty in getting access to your funds or securities?



Did you suffer a loss?



Enter amount of loss to nearest dollar without characters (e.g., 15000, not \$15,000.00):



When did you become aware of the alleged conduct? (mm/dd/yyyy)



When did the alleged conduct begin? (mm/dd/yyyy)



Is the alleged conduct ongoing?

Yes

Has the individual or firm acknowledged the alleged conduct?



What is the source of your information? You may select more than one



Have you taken any action regarding your complaint? You may select more than one



Who did you contact and what action did you take?

[REDACTED] patent infringement lawsuit against Facebook. See <http://www.leader.com/newsroom-facebook.htm>

Who are you complaining about?

Are you complaining about an individual or a firm?

Firm

Select the title that best describes the individual or firm that you are complaining about:

Private/closely held company

If you are complaining about an entity or individual that has custody or control of your investments, have you had difficulty contacting that entity or individual?

Yes

Firm Name:

Facebook, Inc.

Street Address:

1601 Willow Rd

City:

Menlo Park

State / Province:

CALIFORNIA

Zip / Postal Code:

94025

Country:

USA

Telephone:

Work:

(650) 853-1300

Website:

<http://www.facebook.com>

Identifier Type:

Unknown

Are you or were you associated with the individual or firm when the alleged conduct occurred?

[REDACTED]

Products involved

Select the type of product involved in your complaint:

[REDACTED]

Please select the category that best describes your security product:

[REDACTED]

For other, please provide more information:

Facebook has been judged to be in "literal infringement" on 11 of 11 patent claims. In other words, the engine that drives Facebook's revenue is [REDACTED]

Enter the product name(s):

U.S. Patent No. 7,139,761

About you

***Are you submitting this tip, complaint or referral pursuant to the SEC's whistleblower program?**

[Redacted]

***Are you submitting this tip, complaint or referral anonymously? Being able to contact you for further information or clarification may be helpful.**

[Redacted]

****Are you represented by an attorney in connection with your submission?**

[Redacted]

Submitter Information

****First Name:**

[Redacted]

Middle Name:

[Redacted]

****Last Name:**

[Redacted]

Street Address:

[Redacted]

Address (Continued):

[Redacted]

City:

[Redacted]

State / Province:

[Redacted]

Zip / Postal Code:

[Redacted]

Country:

USA

Home Telephone:

[Redacted]

Work Telephone:

[Redacted]

Email Address:

[Redacted]

What is the best way to contact you?

[Redacted]

Select the profession that best represents you:

[Redacted]

About you

***Are you submitting this tip, complaint or referral pursuant to the SEC's whistleblower program?**

[Redacted]

***Are you submitting this tip, complaint or referral anonymously? Being able to contact you for further information or clarification may be helpful.**

****Are you represented by an attorney in connection with your submission?**

Submitter Information

****First Name:**

Middle Name:

****Last Name:**

Street Address:

Address (Continued):

City:

State / Province:

Zip / Postal Code:

Country:

USA

Home Telephone:

Work Telephone:

Email Address:

What is the best way to contact you?

Select the profession that best represents you:

For Other, please specify:

Whistleblower Declarations

***1. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Public Company Accounting Oversight Board, any law enforcement organization, or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?**

***2. Are you, or were you at the time you acquired the original information you are submitting to us, a**

member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

[REDACTED]

***3. Did you acquire the information being submitted to us through the performance of an engagement required under the federal securities laws by an independent public accountant?**

[REDACTED]

***4. Are you submitting this information pursuant to a cooperation agreement with the SEC or another agency or organization?**

[REDACTED]

***5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?**

[REDACTED]

***7a. Are you submitting this information before you (or anyone representing you) received any investigative request, inquiry, or demand that relates to the subject matter of your submission from the SEC, Congress, or any other federal, state, or local authority, any self regulatory organization, or the Public Company Accounting Oversight Board?**

[REDACTED]

7b. If the answer to question 7a is 'no,' please provide details.

[REDACTED]

***8a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?**

[REDACTED]

***9a. Did you acquire the information being provided to us from any person described in questions 1 through 8?**

[REDACTED]

10. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

[REDACTED]

***I declare under penalty of perjury under the laws of the United States that the information contained in this submission is true, correct, and complete to the best of my knowledge, information, and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.**

[REDACTED]

Whistleblower Declarations

***1. Are you, or were you at the time you acquired the original information you are submitting to us, a**

member, officer, or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Public Company Accounting Oversight Board, any law enforcement organization, or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?

[REDACTED]

*2. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

[REDACTED]

*3. Did you acquire the information being submitted to us through the performance of an engagement required under the federal securities laws by an independent public accountant?

[REDACTED]

*4. Are you submitting this information pursuant to a cooperation agreement with the SEC or another agency or organization?

[REDACTED]

*5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?

[REDACTED]

*7a. Are you submitting this information before you (or anyone representing you) received any investigative request, inquiry, or demand that relates to the subject matter of your submission from the SEC, Congress, or any other federal, state, or local authority, any self regulatory organization, or the Public Company Accounting Oversight Board?

[REDACTED]

7b. If the answer to question 7a is 'no,' please provide details.

[REDACTED]

*8a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?

[REDACTED]

*9a. Did you acquire the information being provided to us from any person described in questions 1 through 8?

[REDACTED]

10. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

[REDACTED]

*I declare under penalty of perjury under the laws of the United States that the information contained in this submission is true, correct, and complete to the best of my knowledge, information, and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in

connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.



May 2, 2012

Mark Shuman, Director (202) 551-3462
Barbara Jacobs, Asst. Director (202) 551-3730
Mark Kronforst, Assoc. Director (202) 551-3870
U.S. Securities & Exchange Commission
Legal and Textual Disclosure Matters
Information Technologies and Services
100 F Street NE, 4th Floor
Washington DC 20549

Dear SEC Directors,

Re: Facebook, Inc.'s S-1 Disclosure
TCR Submission Reference Number: TCR1334705074400
First Submission on April 17, 2012

I believe the SEC has a unique opportunity to establish a broad set of new guidelines for ethical conduct in free markets. The conflicts of interest, self-dealing, double-dealing exhibited by the participants in the Facebook S-1 are of a monumental scale, as I believe this information illustrates.

It seems evident that the principals in Facebook rely on a byzantine web of business and investing relationships as a way to *confuse regulators*. The flip side for regulators is that once these potential conflicts of interest are identified, the information learned will provide grist for an updated set of more effective regulations.

I for one am observing that these Facebook players care little about the securities regulations, morals or ethics that the rest of us follow. Are they to be allowed to play by a different set of rules? I hope you act now and do not allow that.

For example, I met last week with an investor who told me that he invested \$30 million in an offer of Facebook's shares by Goldman Sachs. He quizzed me [REDACTED] *Leader v. Facebook* patent infringement lawsuit, and he seemed truly disturbed that the Goldman prospectus *did not have a single word of disclosure about the risks to his investment* [REDACTED] *lawsuit*.¹ I recommend that the SEC may want to ask to review a copy of that prospectus. Alternatively, I am willing to ask this Florida resident to share his copy with you if needed. It appears to me that Goldman and Facebook are abusing an exemption that they received back in 2008.²

¹ *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008) and *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.).

² Facebook Section 12(g) exemption <http://www.sec.gov/Archives/edgar/vpr/08/9999999997-08-043090>.

Goldman cannot claim ignorance of *Leader v. Facebook*. [REDACTED] licensed [REDACTED] broker [REDACTED] wrote to the Goldman Sachs compliance officer asking if the Goldman prospectus disclosed the risks of *Leader v. Facebook*. The officer promised to get back to [REDACTED] in a follow up phone call, but never did. [REDACTED] has given me permission to include his letter to Goldman in this letter. Exhibit A.

Investigative [REDACTED] has already identified one substantive example of how Facebook Director **Marc L. Andreessen** was on both sides of the recent \$1 billion Facebook-Instagram deal.³ Are we to believe the kinds of double-dealing by Mr. Andreessen, a Facebook Director, will not continue once Facebook is public? And is isolated to him? *See* Figs. 1-5. Indeed, Mr. Lawrence Summers is now a director in Mr. Andreessen's company. *See* below.

Another example is the duplicitous disclosure in the S-1 regarding director independence. In one place they indicate that they are a "Controlled Company" while in the next section they state that their directors are independent.⁴

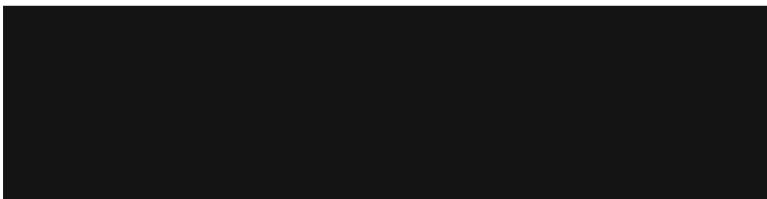
Does Facebook have a shadow management?

What follows is an illustration of the byzantine conflicts that should be investigated before the public can be at all confident that these individuals truly are independent. For example, a new revelation is that an unseen hand of [REDACTED] former **Treasury Secretary Larry Summers** is actually managing Facebook. IT is certain that he has considerable undisclosed influence over his former student and employee, Facebook's COO Sheryl Sandberg. None of this is disclosed in the S-1.⁵

What follows in the enclosed figures are relationships that need to be thoroughly vetted before foisting the legion of probable hidden agendas onto the public, in my opinion.

I hope you will take these concerns seriously and not permit the Facebook IPO to go forward without being satisfied that the web of conflicts will not harm the public interest.

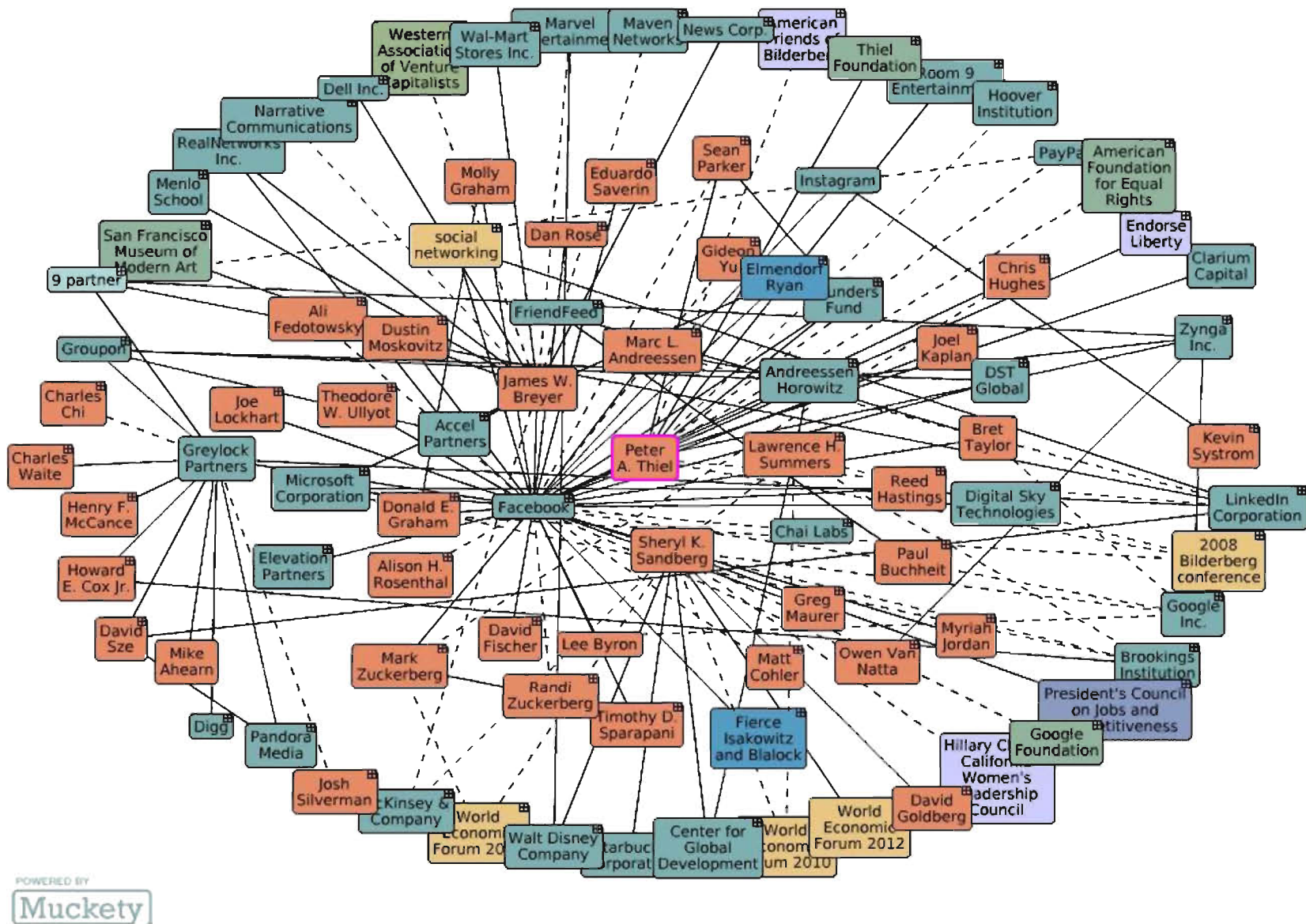
I have not yet received an independent acknowledgment that you have received my previous information. I would appreciate such an acknowledgement. Please feel free to contact me anytime at [REDACTED] for further information.



³ Donna Kline. "Instagram-scam?" *Donna Kline Now!*. Accessed May 1, 2012 <<http://www.donnaklinenow.com/investigation/instagram-scam>>.

⁴ *Id.*, Sec. 3.

⁵ Donna Kline. "James W. Breyer's tangled web of insider trading – AKA – 'You've been Breyer-ed.'" *Donna Kline Now!*. Accessed May 1, 2012 <<http://www.donnaklinenow.com/investigation/james-w-breyers-tangled-web-of-insider-trading-aka-youve-been-breyered>>.



POWERED BY
Muckety

Figure 2 - Peter Thiel's Undisclosed Conflicts
<http://www.muckety.com/121625BFC847259862D2B1BE93AAEB6F.map>

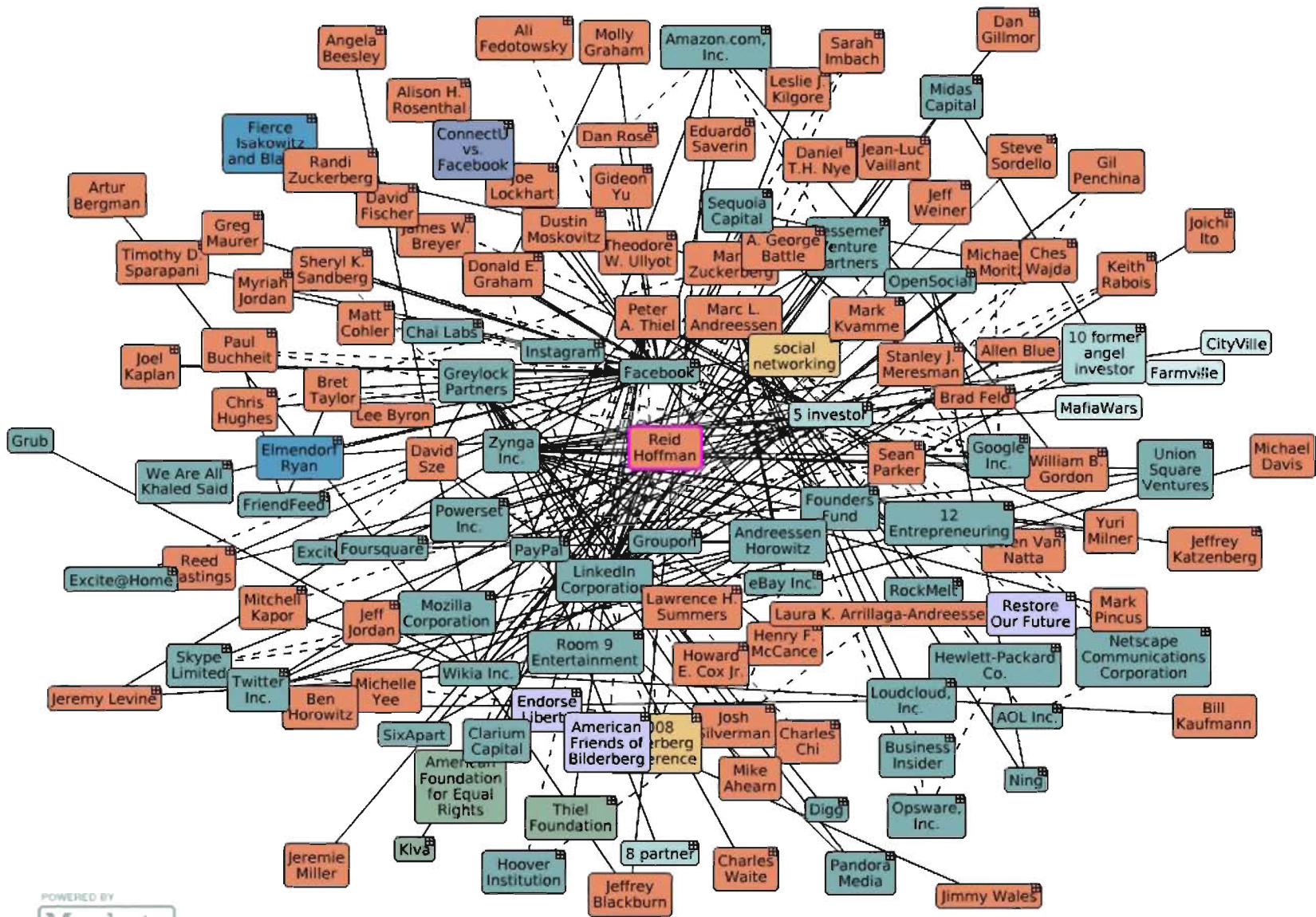
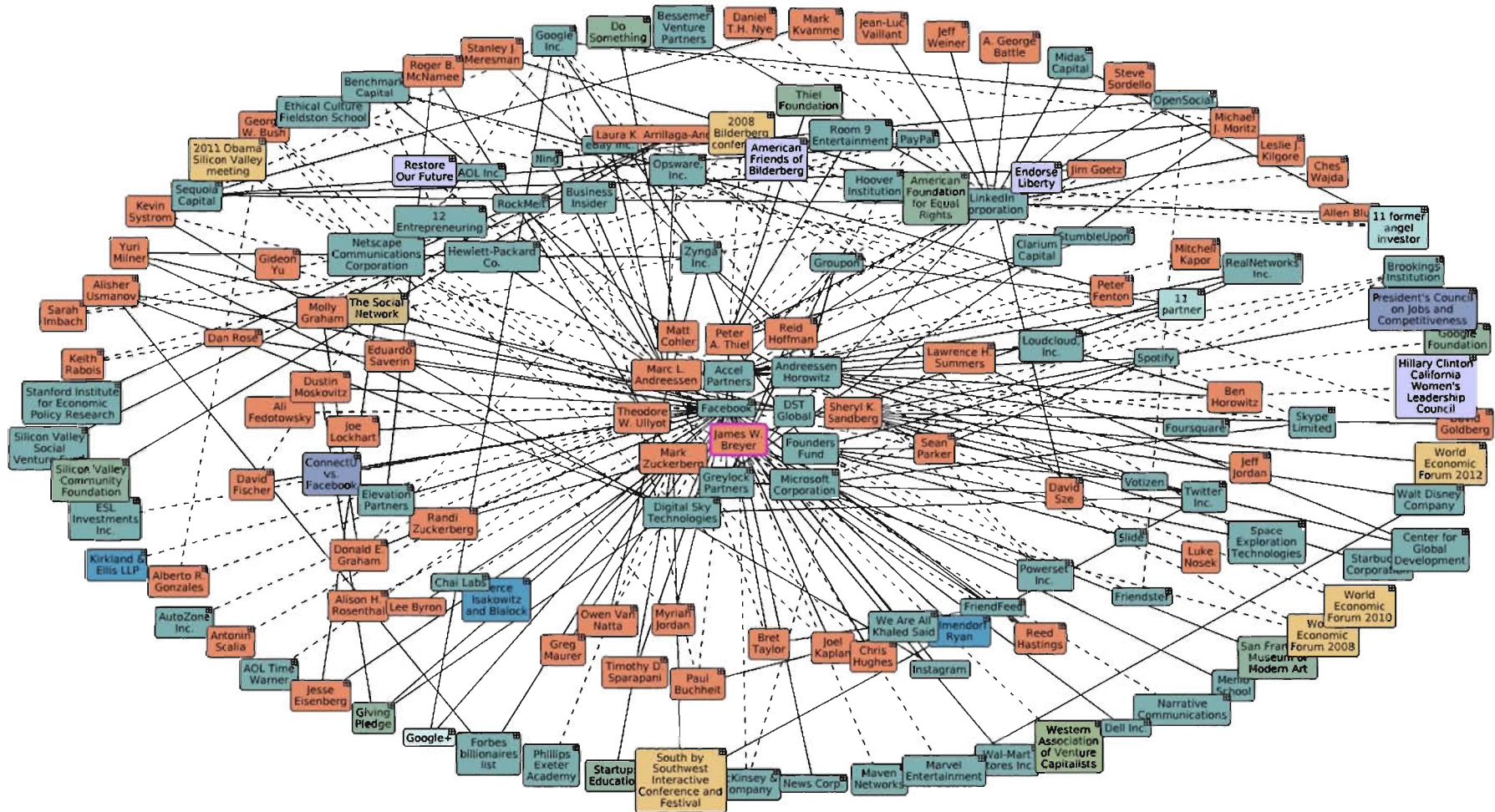


Figure 3 - Reid Hoffman's Undisclosed Conflicts

<http://www.muckety.com/E901316B894ADD08AD9D2805AC51CFDE.map>



POWERED BY
Muckety

Figure 4 - James W. Breyer's Undisclosed Conflicts

<http://www.muckety.com/E533C05DE2FBF06847DEAE37B2A62273.map>

Exhibit A



Securities

January 24, 2011

Investor Relations

Goldman, Sachs & Co.
200 West Street, 29th Floor
New York, NY 10282
USA

Dear Goldman Sachs,

Re. Undisclosed risk in investing in Facebook?

I own a registered broker-dealer firm in [REDACTED] and, with some of my clients, have made investments with Leader Technologies, Inc., an Ohio-based technology company that is currently in patent infringement litigation with Facebook, Inc. *Leader Technologies, Inc. v. Facebook, Inc.*, Case No. 08-CV-0862-JJF/LPS (Delaware U.S. District Court).¹ The recent press regarding Goldman Sachs' investment banking activities with Facebook gives me concern that Facebook may not have fully disclosed to Goldman information about Facebook's potential liability with regard to the ongoing Leader patent infringement case.

Are you aware that Facebook was judged to be "literally infringing" Leader's patent? What in Facebook's technology is infringing? The primary engine driving the entire Facebook site is the infringing technology according to the court records. It's the technology that tracks a user's movement as they navigate from one friend/fan page to another and leave posts; upload, share and annotate photos; click on advertising, target advertising, etc. Facebook's lawyers have sealed most of their filings in what seems to me to be a concerted attempt at obfuscation

Are you aware that Facebook failed to prove at trial that any "prior art" existed before Leader's invention (contrary to Facebook's claims)? Are you aware that Facebook just lost its *Ex Parte* Patent Reexamination challenge of Leader's patent at the U.S. Patent & Trademark Office?² Are you aware that an injunction and damages trial with the specter of treble damages for willful infringement is a clear possibility in this ongoing litigation?

¹ *Leader v. Facebook* complaint. Last accessed Jan. 21, 2011. <<http://www.scribd.com/doc/8436369/Leader-Tech-y-Facebook-Complaint>>.

² "Claims 1-16, 21-26, 29 and 31-34 are confirmed." Jan. 6, 2011. Application No. 95/001,261. LTI0002-RXM, 707/100 re. U.S. Patent No. 7,139,761 B2. Last accessed Jan. 21, 2011.
<http://portal.uspto.gov/external/PA_PeaiPair/view/BrowsePdfServlet?objectId=GINI6NCSPPOPPYS&lang=DINO>.

I took note early last week that Goldman made a decision not to offer Facebook private placement investing in the United States. However, American citizens or not, is Goldman aware of and disclosing the investment risks associated with the ongoing *Leader v. Facebook* patent infringement litigation to investors, foreign or otherwise? Foreign investors may not be aware of the seriousness of this American patent infringement case. The *NTP v. RIM* (Blackberry) \$612.5 million settlement comes to mind as one example of the potential undisclosed risk.³

The *Leader v. Facebook* patent infringement trial resulted in a split verdict. While Leader won on literal infringement and no prior art, the jury ruled against them for allegedly having engaged in premature selling activity—unrelated to infringement. However, as the court record shows, Facebook presented no evidence to prove this,⁴ and resorted to courtroom arguments which appear to have confused the jury; resulting in the jury ignoring the judge's instructions on those matters.⁵ Facebook's attorney's arguments are not evidence.⁶ Therefore, Facebook's "victory" at trial hangs by a thread and appears to have a high likelihood of being set aside by the judge or on appeal for lack of evidence.

It seems to me that if Facebook hasn't fully disclosed the pending litigation with Leader to Goldman Sachs or prospective new investors, it should consider settling the case and moving on with its business. To do otherwise, raises major red flags in this investment broker's mind.

Of course, this is all my personal opinion, but I would appreciate hearing your view on these matters.

Very truly yours,



³ *NTP, Inc. v. Research in Motion, Ltd.*, 270 F. Supp. 2d 751 - Dist. Court, ED Virginia 2003.

NTP, Inc. v. Research in Motion, Ltd., 392 F. 3d 1336 - Court of Appeals, Federal Circuit 2004.

NTP, Inc. v. Research in Motion, Ltd., 418 F. 3d 1282 - Court of Appeals, Federal Circuit 2005.

⁴ "Facebook continues to fail to come to grips with its burden of proof." Leader's Reply Brief to Facebook's Opposition to Leader's Judgment as a Matter of Law. *Leader Technologies, Inc. v. Facebook, Inc.*, Case No. 08-CV-0862-JJF/LPS (Delaware U.S. District Court). Section I. Sep. 27, 2010. Last accessed Jan. 21, 2011. <<http://www.leader.com/leader-v-facebook-cv-08-862-JJF-LPS/leader/2010-09-27-Leader-v-Facebook-Leader-Reply-Brief-to-Facebook-Opposition-to-Leader-JMOL-September-27-2010.pdf>>.

⁵ "When Facebook's reliance on non-existent admissions and other diversions are stripped away, this is a very simple case for judgment as a matter of law ("JMOL"). Facebook bore the heavy burden of proving invalidity by clear and convincing evidence, but produced no evidence on crucial points. Facebook's invalidity case rests on speculative inferences, not hard facts." *Id.*

⁶ "Facebook relied on sheer speculation and attacks on Leader's witnesses. If there is any inference to be drawn, it is that the reason Facebook did not attempt to prove its case on this issue is that it knew it was wrong. Attacking Mr. McKibben's credibility may have been effective theater before a jury, but as a matter of law it cannot make up for Facebook's lack of affirmative evidence." *Id.*, at (1)(b), ¶13.

From: [REDACTED]

Sent: Monday, January 24, 2011 4:17 PM

To: [REDACTED]

Subject: FW: Facebook Full Disclosure

[REDACTED]

[REDACTED]

This email, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this email is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this email is prohibited. If you have received this email in error, please notify the sender by replying to this message and delete the email immediately. The sender of this email does not accept or assume any liability for any error or omissions arising as a result of this transmission. [REDACTED] Securities Incorporated monitors all incoming and outgoing email messages. [REDACTED] Securities Incorporated does not provide tax or legal advice to clients, all tax and legal matters should be brought to the attention of your accountant and/or legal counsel.

From: [REDACTED]

Sent: Monday, January 24, 2011 1:03 PM

To: gs-investor-relations@gs.com

Subject: Facebook Full Disclosure

[REDACTED]

[REDACTED]

This email, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this email is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this email is prohibited. If you have received this email in error, please notify the sender by replying to this message and delete the email immediately. The sender of this email does not accept or assume any liability for any error or omissions arising as a result of this transmission. [REDACTED] Securities Incorporated monitors all incoming and outgoing email messages. [REDACTED] Securities Incorporated does not provide tax or legal advice to clients, all tax and legal matters should be brought to the attention of your accountant and/or legal counsel.

Print

TCR Submitted Successfully - Reference Number: TCR1335967891507

Tell us about your complaint

Please select the option that best describes your complaint

Material misstatement or omission in a company's public filings or financial statements, or a failure to file

Please select the specific category that best describes your complaint

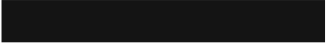
False/misleading offering documents

Provide additional details about your complaint:

Please see my longer information in TCR1334705074400 first submitted on Apr. 17, 2012, and a 2nd follow-up



Are you having or have you had difficulty in getting access to your funds or securities?



Did you suffer a loss?



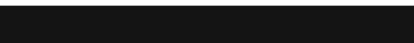
Enter amount of loss to nearest dollar without characters (e.g., 15000, not \$15,000.00):



When did you become aware of the alleged conduct? (mm/dd/yyyy)



When did the alleged conduct begin? (mm/dd/yyyy)



Is the alleged conduct ongoing?

Yes

Has the individual or firm acknowledged the alleged conduct?




What is the source of your information? You may select more than one



Have you taken any action regarding your complaint? You may select more than one

Complained to SEC; 

Who did you contact and what action did you take?

 patent infringement lawsuit: Leader Technologies, Inc., v. Facebook, Inc., 08-cv-862-JJF-LPS (D.Del. 2008) and Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.)

member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

[REDACTED]

***3. Did you acquire the information being submitted to us through the performance of an engagement required under the federal securities laws by an independent public accountant?**

[REDACTED]

***4. Are you submitting this information pursuant to a cooperation agreement with the SEC or another agency or organization?**

[REDACTED]

***5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?**

[REDACTED]

***7a. Are you submitting this information before you (or anyone representing you) received any investigative request, inquiry, or demand that relates to the subject matter of your submission from the SEC, Congress, or any other federal, state, or local authority, any self regulatory organization, or the Public Company Accounting Oversight Board?**

[REDACTED]

***8a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?**

[REDACTED]

***9a. Did you acquire the information being provided to us from any person described in questions 1 through 8?**

[REDACTED]

10. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

[REDACTED]

***I declare under penalty of perjury under the laws of the United States that the information contained in this submission is true, correct, and complete to the best of my knowledge, information, and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.**

Agree

***Are you submitting this tip, complaint or referral pursuant to the SEC's whistleblower program?**

***Are you submitting this tip, complaint or referral anonymously? Being able to contact you for further information or clarification may be helpful.**

****Are you represented by an attorney in connection with your submission?**

Submitter Information

****First Name:**

Middle Name:

****Last Name:**

Street Address:

Address (Continued):

City:

State / Province:

Zip / Postal Code:

Country:

USA

Work Telephone:

Email Address:

What is the best way to contact you?

Select the profession that best represents you:

Whistleblower Declarations

***1. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Public Company Accounting Oversight Board, any law enforcement organization, or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?**

***2. Are you, or were you at the time you acquired the original information you are submitting to us, a**

member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

[REDACTED]

***3. Did you acquire the information being submitted to us through the performance of an engagement required under the federal securities laws by an independent public accountant?**

[REDACTED]

***4. Are you submitting this information pursuant to a cooperation agreement with the SEC or another agency or organization?**

[REDACTED]

***5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?**

[REDACTED]

***7a. Are you submitting this information before you (or anyone representing you) received any investigative request, inquiry, or demand that relates to the subject matter of your submission from the SEC, Congress, or any other federal, state, or local authority, any self regulatory organization, or the Public Company Accounting Oversight Board?**

[REDACTED]

***8a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?**

[REDACTED]

***9a. Did you acquire the information being provided to us from any person described in questions 1 through 8?**

[REDACTED]

10. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

[REDACTED]

***I declare under penalty of perjury under the laws of the United States that the information contained in this submission is true, correct, and complete to the best of my knowledge, information, and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.**

Agree

May 3, 2012

Mark Shuman, Director (202) 551-3462
Barbara Jacobs, Asst. Director (202) 551-3730
Mark Kronforst, Assoc. Director (202) 551-3870
U.S. Securities & Exchange Commission
Legal and Textual Disclosure Matters
Information Technologies and Services
100 F Street NE, 4th Floor
Washington DC 20549

Dear SEC Directors,

Re: Facebook, Inc.'s S-1 Disclosure
TCR Submission Reference Number: TCR1334705074400
First Submission on April 17, 2012

Former Bloomberg Investigative Reporter Donna Kline has just posted an expose on "Who really controls Facebook? Shhhh." **Exhibit A**.

This report emphasizes the manner in which Facebook's S-1 and conduct is making a mockery of the Business Judgment Rule.

It seems to me that if we are to expect stability in our financial markets, the kinds of conduct we are seeing out of Goldman Sachs, Accel Partners, Facebook, Morgan Stanley, Russian Digital Sky, and others cannot be permitted or approved.

For example, I am hearing a hue and cry about the way Goldman Sach and Facebook have made a mockery of the 500 shareholder rule. On this point alone, how can you possibly allow the IPO to go forward until this flagrant breach of the rules has been rectified? Not to do so will send a clear signal to the whole securities world that the 500 rule is a ruse that one does not have to pay attention to.

Another example, on disclosure, Goldman made a \$3 billion unregulated, private market in Facebook stock which Russian Juri Milner called in Europe "an IPO supplement." If Goldman and Facebook are permitted to move forward with that \$3 billion in the rearview mirror, what kind of signal does that send to the rest of the market?

I understand that the government and the courts have a policy of not interfering in business except where there has been an abuse of discretion. I believe that the facts show that such an abuse on a monumental scale has and is occurring here.

We understand that this is a difficult thing you are confronting and ask you to do the right thing. I fear the cynicism that might occur if this IPO is permitted to move forward as it is currently structured.

Please feel free to contact me anytime at (614) 890-1986 for further information.

Yours sincerely,

A handwritten signature in cursive script that reads "Michael T. McKibben". The signature is written in dark ink and is positioned above the typed name.

Michael T. McKibben
Chairman & Founder
Leader Technologies

P.S. I was in the former Soviet Union within weeks of their fledgling stock market starting. The trading desks were folding tables. The oligarchy that has arisen since then mocks our American securities rules—they call American investors “muppets.” Goldman Sachs has teamed up with these people in London and Moscow, outside the reach of US laws. I know well the individuals with whom Goldman has teamed and can assure you, they do not have American values and American sovereignty as part of their priority set.

Exhibit A

{ 2012 05 03 }

/// Are Facebook insiders mocking the Business Judgment Rule?

Who really controls Facebook? Shhhh.



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg New York*.

LEADER V.

FACEBOOK PRESS BACKGROUND

1. Brief Summary (PDF)
2. Background (PDF)
3. Facebook Secrets (PDF)
4. Instagram-scam? (PDF)
5. USPTO-gate? (PDF)
6. Zynga-gate? (PDF)
7. Insider Trading (PDF)

SEARCH BLOG

Search Now

MOBILE QR-CODE:



Please donate to the cause!

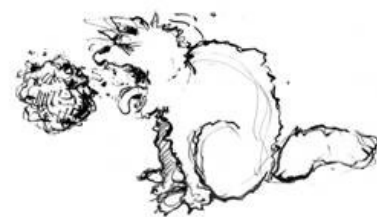
This blog has become a grassroots effort. My *Leader v.*



Fig. 1 – The Facebook S-1 says that Mark Zuckerberg has voting control of Facebook. However, all signs point to an undisclosed ‘shadow management’ that really runs the company, perhaps led by former Obama Administration bail out chief Lawrence Summers. Given the insider dealings to sell billions of dollars of shares *before* the public offering, (yes, *before the IPO*, in private issuance via Goldman Sachs), can these people be trusted? From left to right, Mark Zuckerberg (CEO), Lawrence Summers (Director), Sheryl Sandberg (COO), Lloyd Blankfein (Goldman Sachs), Marc Andreessen (Director), James Breyer (Director), Peter Thiel (Director), Reid Hoffman (Director) and Juri Milner (largest investor; based in Moscow Russia) title=“Who really controls Facebook? Mark Zuckerberg is the ‘tethered doggy’ of the Facebook cabal? A cabal consisting of Lawrence Summers, Sheryl Sandberg, Marc Andreessen, James Breyer, Peter Thiel, Reid Hoffman and Juri Milner (Goldman Sachs Partner)? – [Click here](#) for *Forbes* article discussing their relationship.)

The Facebook S-1 says Mark Zuckerberg is the controlling shareholder in Facebook. However, the reality *appears* to be very different: A “shadow cabinet” is emerging with a very different dynamic to its decision-making than that disclosed in the S-1. What we see are directors who, on the one hand, claimed to have known nothing about Mark Zuckerberg’s transfer of \$1 billion (with a “B”) to Matt Cohler (a former early Facebook employee with potentially damaging knowledge of Zuckerberg’s 2004 shenanigans). Yet, while confessing utter ignorance, Facebook Director Marc Andreessen and his new partner Former Obama economic architect Lawrence Summers pocketed untold hundreds of millions from that deal. See my previous post, [click here](#).

Further exploration reveals that Facebook’s COO Sheryl Sandberg has been employed almost continuously for the last 20 years by Larry Summers—since the early 1990’s. This puts Sandberg on both sides of any deal involving Summers and his friends—including most especially any deal benefiting Andreessen’s investment company. **NONE of these conflicts of interest are disclosed in the S-1.** Indeed, Facebook officers and board of directors seems to



Facebook patent infringement interview ([click here](#)) has mushroomed into a *major investigation*. Will you donate to the cause? Your donations will enable me to sustain this important news effort. Thank you! MEEP MEEP — Donna



Follow @DonnaKline1

Tweet

Tweet #TwitterStories

Tweet to

@DonnaKline1

PREVIOUS POSTS

/// Are Facebook insiders mocking the Business Judgment Rule?
 /// James W. Breyer’s tangled web of insider trading – AKA – “You’ve been Breyered”
 /// Wal-Mart – Zynga – Facebook: Oh, the webs we weave
 /// Facebook forces reexam order of Leader’s patent through USPTO Director’s office in wake of Instagram controversy
 /// Instagram-scam?
 /// Facebook’s Orwellian (black-is-white) definition of “clear and convincing” evidence
 /// Facebook countersues Yahoo with bogus patents? Confirms reckless mindset.
 /// Facebook “Liked”

be nothing but a hairball of conflicts of interest. *Gack.*

The Business Judgment Rule

The [Business Judgment Rule](#) is the ethical gold standard for company officers and directors. The landmark case *Grobow v. Perot*, 539 A.2d 180 (Del. 1988) established the guidelines. Directors in a business should:



1. act in [good faith](#). See also [duty of care](#)
2. act in the best interests of the corporation
3. act on an informed basis
4. not be wasteful
5. not involve self-interest ([duty of loyalty](#) concept plays a role here)

The purpose of a Form S-1 disclosure is to provide sufficient business and financial information so that prospective investors in a public offering can make informed decisions. Part of that disclosure involves discussing potential risks in more detail than vague “boilerplate” lawyer language that may, in fact, *mask material risks* behind [sophistry](#). Another purpose is to allow the prospective investors to determine if the officers and directors of the company are trustworthy.

The standard for judging the [trustworthiness](#) of officers and directors is the Business Judgement Rule. Judge for yourself whether the current slate of Facebook officers and directors are worthy of your trust.

Facebook’s Business Judgment Rule checklist:

Business Judgment Rule	Facebook’s Conduct
<p>1. act in good faith (sincere, honest intention or belief, regardless of the outcome of an action);</p>	<p> The real management structure of Facebook is hidden from the public. Where is Lawrence Summers’s influence over COO Sheryl Sandberg and Director Marc Andreessen and his network of relationships disclosed? “regardless of the outcome . . .” Facebook has systematically refused to disclose the investment risks associated with Leader Technologies, Inc. v. Facebook, Inc., 08-cv-862-JJF-LPS (D.Del. 2008) to prospective investors – do they find it embarrassing? – As I see it, <i>Facebook could very easily lose the case</i>, and this may dissuade investors. See my previous posts “What Facebook doesn’t want us to know” and “Proof Fenwick & West did not disclose Leader.”</p>
<p>2. act in the best interests of the corporation;</p>	<p>Directors like Marc Andreessen and adviser Larry Summers are making deals using borrowed money on both sides of those deals; such double-dealing is not in the best interests of shareholders. Neither is employing <i>political</i> influence to illicit improper</p>

Leader's source code ...
before it didn't
///
Proof Fenwick &
West LLP did not
disclose Leader as prior
art to Facebook
///
MF Global + JP
Morgan + Goldman
Sachs + Harvard Grads
+ Politics = A big mess
///
What Facebook,
Accel Partners,
Goldman Sachs and
Fenwick & West don't
want us "muppets" to
know
///
Make up your
mind, Fenwick & West
LLP
///
Muppet Mania
///
Haughtiness in the
face of "literal
infringement"
///
Facebook ordered
pharma users to allow
comments, yet will not
return phone calls now
///
First thoughts after
leaving courthouse
March 5, 2012
///
Judges Selected
///
San Francisco CBS-
TV KPIX Coverage
///
NBC-TV4
(Columbus) Interview
with Leader founder
Michael McKibben
///
How Facebook
tricked the jury –
YouTube
///
New friends?
///
Did Someone Prod
the Media?
///
Facebook: The New
"Too Big To Fail?"
///
Big trouble ahead
for the Facebook IPO?
– PBR / YouTube
///
What happens on

actions by the director of a federal entity. See my previous posts "[Instagram-scam?](#)," "[Wal-Mart, Zynga, Facebook – Oh the webs we weave](#)" and "[Facebook forces reexam order of Leader's patent through USPTO Director's office in wake of Instagram controversy.](#)"

3. act on an informed basis;

Recent Facebook leaks say that the Facebook directors were not *informed* about the \$1 billion Intstagram deal (cough), yet they apparently *approve* of the deal. See my previous post "[Instagram-scam?](#)"

4. not be wasteful; and

Facebook used borrowed money to buy Instagram for \$1 billion—a company with 13 employees and no revenue while offering *nothing* to Leader Technologies to license a patent on which Facebook is "literally infringing" and I believe Facebook is *behind the eight ball* in the current Federal Circuit Appeal. See my previous post "[Big trouble ahead for Facebook IPO?](#)"

5. not involve self-interest (duty of loyalty concept plays a role here).

Self-interest defines the web of conflicting interests among the Facebook principals and their various investments and direct business associations which are a tangle probably meant to discourage regulators from taking the time to identify the conflicts. See my previous posts "[Instagram-scam?](#)," "[Wal-Mart, Zynga, Facebook – Oh the webs we weave](#)" and "[James W. Breyer's tangled web of insider trading – AKA – 'You've been Breyer-ed'.](#)"



U.S. courts disdain getting involved in business matters unless the directors are abusing their discretion. It is inconceivable how Marc Andreessen's and Larry Summers's recent participation on *both sides* of the Facebook-Instagram deal—lining their pockets as well as their insider friends—is anything other than an abuse of discretion. It is in such circumstances that the courts and regulators must act in the best interests of the public to stop such double-dealing. Otherwise, why should anyone follow securities rules? They are in place because of the excesses of the past. It appears that the current Facebook management believe they can ignore securities rules and they will not be held accountable.

March 5th, 2012?

/// More on FB's S-1

omissions & other
conflicts of interest

/// Big trouble ahead
for Facebook IPO?

Backgrounder

/// My take on the MF

Global debacle: It could
have been a customer

/// Comments on EU
reform announced Oct
27, 2011

/// Post Crackdown

Update

ARCHIVE OF POSTS

Select Month

CALENDAR:

May 2012

M T W T F S S

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

« Apr

RECENT

COMMENTS

Tex on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

Linda on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

Fourleaf Tayback
on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

Tex on /// James W.
Breyer's tangled web of

Can any reasonable person believe that the Facebook officers and directors will suddenly stop their insider double-dealing once Facebook is public? (Remember, the same SEC rules that allowed the insider sale of Zynga stock are listed in Facebook's S-1. See [this post](#) for more on THAT one.)

What do you think?

The Comment section below is open for business!

Meep, meep.

* * *

Credits:

1. Cat coughing hairball. [Blognoble](#). Accessed May 3, 2012.
2. Trust. [Radical Marketing Solutions](#). Accessed May 3, 2012.
3. Conflicts of interest must be disclosed in advance of others relying on your representations. [Cartoon Stock](#). Accessed May 3, 2012.

Posted by [Donna Kline](#) on Thursday, May 3, 2012, at 12:49 pm.

Filed under [Investigation](#).

Follow any responses to this post with its [comments RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

« [/// JAMES W. BREYER'S
TANGLED WEB OF INSIDER
TRADING – AKA – “YOU'VE
BEEN BREYER-ED”](#)

insider trading – AKA –
“You’ve been Breyer-
ed”

brad on /// James W.
Breyer’s tangled web of
insider trading – AKA –
“You’ve been Breyer-
ed”

Donna Kline on ///
James W. Breyer’s
tangled web of insider
trading – AKA –
“You’ve been Breyer-
ed”

derek on /// James W.
Breyer’s tangled web of
insider trading – AKA –
“You’ve been Breyer-
ed”

Steve Williams on ///
James W. Breyer’s
tangled web of insider
trading – AKA –
“You’ve been Breyer-
ed”

glenn on /// James W.
Breyer’s tangled web of
insider trading – AKA –
“You’ve been Breyer-
ed”

newbe on /// James W.
Breyer’s tangled web of
insider trading – AKA –
“You’ve been Breyer-
ed”

newbe on /// Proof
Fenwick & West LLP
did not disclose Leader
as prior art to Facebook

Tex on /// James W.
Breyer’s tangled web of
insider trading – AKA –
“You’ve been Breyer-
ed”

Bill on /// James W.
Breyer’s tangled web of
insider trading – AKA –
“You’ve been Breyer-
ed”

derek on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

Mike Kennedy on ///
James W. Breyer's
tangled web of insider
trading – AKA –
“You've been Breyer-
ed”

Tex on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

Amy on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

derek on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

Mike Kennedy on ///
James W. Breyer's
tangled web of insider
trading – AKA –
“You've been Breyer-
ed”

Bill on /// James W.
Breyer's tangled web of
insider trading – AKA –
“You've been Breyer-
ed”

CATEGORIES

Current Positions
Economic Analysis
Investigation

READER

LOCATIONS:



OPINION

This is an opinion blog.
Any information
contained or linked
herein should be
independently verified
and should be
considered the sole
opinion of the writer.
Free Speech and
Freedom of the Press
are protected by the
First Amendment of
the U.S. Constitution
and other local, state,
national and
international laws.

META

[Log in](#)
[Entries RSS](#)
[Comments RSS](#)
[WordPress.org](#)

© 2012 [Donna Kline](#) | Thanks, [WordPress](#) | [Barthelme](#) theme by [Scott](#) | Standards Compliant [XHTML](#) & [CSS](#) | [RSS Posts](#)
& [Comments](#)

Print

TCR Submitted Successfully - Reference Number: TCR1336081478379

Tell us about your complaint

Please select the option that best describes your complaint

Material misstatement or omission in a company's public filings or financial statements, or a failure to file

Please select the specific category that best describes your complaint

False/misleading offering documents

Provide additional details about your complaint:

This is my fourth submission regarding Facebook's S-1. My original TCR 1334705074400, submitted Apr. 17, 2012. It is my belief that a fraud of immense proportions is about to be perpetrated upon the American public.

[Redacted]

Are you having or have you had difficulty in getting access to your funds or securities?

[Redacted]

Did you suffer a loss?

[Redacted]

Enter amount of loss to nearest dollar without characters (e.g., 15000, not \$15,000.00):

[Redacted]

When did you become aware of the alleged conduct? (mm/dd/yyyy)

[Redacted]

When did the alleged conduct begin? (mm/dd/yyyy)

[Redacted]

Is the alleged conduct ongoing?

[Redacted]

Has the individual or firm acknowledged the alleged conduct?

[Redacted]

What is the source of your information? You may select more than one

[Redacted]

Have you taken any action regarding your complaint? You may select more than one

[Redacted]

Who did you contact and what action did you take?

[Redacted] patent infringement lawsuit Leader Technologies, Inc., v. Facebook, Inc., 08-cv-862-JJF-LPS (D.Del. 2008) and Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.)

Who are you complaining about?

Are you complaining about an individual or a firm?

Firm

Select the title that best describes the individual or firm that you are complaining about:

Private/closely held company

If you are complaining about an entity or individual that has custody or control of your investments, have you had difficulty contacting that entity or individual?

Yes

Firm Name:

Facebook, Inc.

Street Address:

1 Hacker Way

Address (Continued):

Suite A

City:

Menlo Park

State / Province:

CALIFORNIA

Zip / Postal Code:

94025

Country:

USA

Telephone:

Home:

650-853-1300

Website:

www.facebook.com

Identifier Type:

Unknown

Are you or were you associated with the individual or firm when the alleged conduct occurred?

[Redacted]

Products involved

Select the type of product involved in your complaint:

[Redacted]

Please select the category that best describes your security product:

[Redacted]

For other, please provide more information:

Infringed U.S. Pat. No. 7,139,761

Enter the product name(s):

U.S. Pat. No. 7,139,761

About you

***Are you submitting this tip, complaint or referral pursuant to the SEC's whistleblower program?**

[Redacted]

***Are you submitting this tip, complaint or referral anonymously? Being able to contact you for further information or clarification may be helpful.**

****Are you represented by an attorney in connection with your submission?**

Submitter Information

Title:

****First Name:**

Middle Name:

****Last Name:**

Street Address:

Address (Continued):

City:

State / Province:

Zip / Postal Code:

Country:

USA

Home Telephone:

Work Telephone:

Email Address:

What is the best way to contact you?

Select the profession that best represents you:

For Other, please specify:

Whistleblower Declarations

***1. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Public Company Accounting Oversight Board, any law enforcement organization, or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?**

[REDACTED]

***2. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?**

[REDACTED]

***3. Did you acquire the information being submitted to us through the performance of an engagement required under the federal securities laws by an independent public accountant?**

[REDACTED]

***4. Are you submitting this information pursuant to a cooperation agreement with the SEC or another agency or organization?**

[REDACTED]

***5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?**

[REDACTED]

***7a. Are you submitting this information before you (or anyone representing you) received any investigative request, inquiry, or demand that relates to the subject matter of your submission from the SEC, Congress, or any other federal, state, or local authority, any self regulatory organization, or the Public Company Accounting Oversight Board?**

[REDACTED]

***8a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?**

[REDACTED]

***9a. Did you acquire the information being provided to us from any person described in questions 1 through 8?**

[REDACTED]

10. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

[REDACTED]

***I declare under penalty of perjury under the laws of the United States that the information contained in this submission is true, correct, and complete to the best of my knowledge, information, and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.**

[REDACTED]

May 7, 2012

Mark Shuman, Director (202) 551-3462
Barbara Jacobs, Asst. Director (202) 551-3730
Mark Kronforst, Assoc. Director (202) 551-3870
U.S. Securities & Exchange Commission
Legal and Textual Disclosure Matters
Information Technologies and Services
100 F Street NE, 4th Floor
Washington DC 20549

Dear SEC Directors,

Re: Facebook, Inc. 's S-1 Disclosure

First Submission on April 17, 2012

I forwarded to you on May 3, 2012 a blog report by Former Bloomberg Investigative Reporter Donna Kline has just posted an expose on "Who really controls Facebook? Shhhh." I now include an *updated version* of that blog that contains new information. **Exhibit A**.

Summarizing, we have a monumental nondisclosure of conflicts of interest in the Facebook S-1 represented by the *prior association* of former Treasury Secretary **Lawrence Summers** (now a Facebook director Marc Andreessen "adviser"); **Sheryl Sandberg**, Facebook COO (an almost continuous employee of Summers over 20 years), and **Juri Milner**, Facebook's second largest investor (and former associate of Summers and Sandberg at the **World Bank** from 1991-1993).

*** None of these associations were disclosed in the Facebook S-1. ***


A Commenter to Ms. Kline's blog just dropped a bombshell this morning, in my opinion. Here is the post verbatim:

"Russian Juri Milner's meteoric rise into the Facebook cabal felt strange to me, so I have done some digging. I have just triangulated three current Facebook figures to the same point in time 20 years ago.

World Bank, 1991-1993

1. Lawrence Summers, Chief Economist, working on the Russian bailout
2. Sheryl Sandberg, Research Assistant to Larry Summers
3. Juri Milner, Russian banking specialist

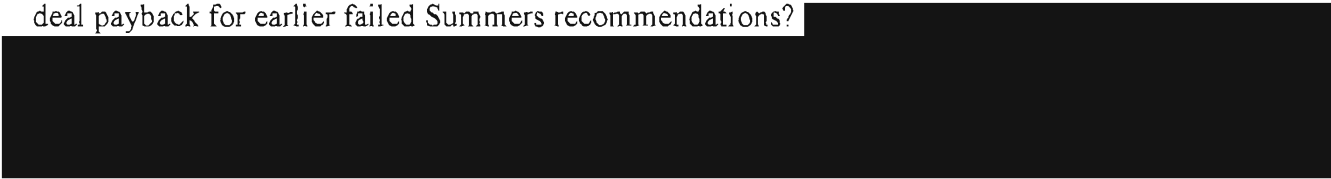
As Tex says, another Texas koinky-dink.



Follow the links off Wikipedia.
http://en.wikipedia.org/wiki/Yuri_Milner
http://en.wikipedia.org/wiki/Lawrence_Summers
http://en.wikipedia.org/wiki/Sheryl_Sandberg¹

As Ms. Kline points out in her blog, *In re. Oracle Corp Derivative Litigation*, 824 A.2d 917 (Del.Ch. 2003) says that directors must recuse themselves when they have “personal or other relationships” that may impact their independence.


Mr. Summers was overseeing support of the fledgling Russian banking system at the World Bank back when Mr. Milner was a young “Russian banking specialist.” Pundits know that such a Milner title back then was a euphemism for “we know nothing about banking” since the USSR was just emerging from eighty years of Communism. Pundits also know that Mr. Milner’s Harvard-led recommendations to the new Russian government utterly failed. Is this Facebook deal payback for earlier failed Summers recommendations?



Bottom line is that the business agenda at Facebook appears to be hidden from public view. **Until these conflicts of interest are fully disclosed, is it advisable to allow the Facebook IPO to go forward?**

Please feel free to contact me anytime at  for further information.

Yours sincerely,



Attachments: **Exhibit A**

¹ Donna Kline. “Are Facebook insiders mocking the Business Judgment Rule?” *Donna Kline Now!* May, 3, 2012, Comment 21 (Sally Bishop). Accessed May 7, 2012 <<http://www.donnaklinenow.com/investigation/are-facebook-insiders-mocking-the-business-judgment-rule/comment-page-1#comment-1172>>. Also attached in Exhibit A.

Exhibit A

PDF: <http://www.scribd.com/doc/92687197/Donna-Kline-Now-Are-Facebook-Insiders-Mocking-the-Business-Judgment-Rule>

HTML: <http://www.donnaklinenow.com/investigation/are-facebook-insiders-mocking-the-business-judgment-rule>

Donna Kline Now!



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg New York*.

LEADER V.
FACEBOOK PRESS
BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Facebook Secrets (PDF)
4. Instagram-scam? (PDF)
5. USPTO-gate? (PDF)
6. Zynga-gate? (PDF)
7. Insider Trading (PDF)

SEARCH BLOG

Search Now

MOBILE QR-CODE:



Please donate to the cause!

{ 2012 05 03 }

/// Are Facebook insiders mocking the Business Judgment Rule?

Who really controls Facebook? *Shhhh.*

Updated! 5/5/12 9:38 PM EST



Facebook S-1:
"Mark Zuckerberg controls a majority of our outstanding voting power"

Fig. 1 – The Facebook S-1 says that Mark Zuckerberg has voting control of Facebook. However, all signs point to an undisclosed 'shadow management' that really runs the company, perhaps led by former Obama Administration bail out chief Lawrence Summers. Given the insider dealings to self billions of dollars of shares before the public offering, (yes, before the IPO, in private issuance via Goldman Sachs), can these people be trusted? From left to right, Mark Zuckerberg (CEO), Lawrence Summers, Sheryl Sandberg (COO), Lloyd Blankfein (Goldman Sachs), Marc Andreessen (Director), James Breyer (Director), Peter Thiel (Director), Reid Hoffman (Director) and Jun Milner (largest investor; based in Moscow Russia).

Who really controls Facebook? Is Mark Zuckerberg the "leathered doggy" of the Facebook cabal? A cabal consisting of Lawrence Summers, Sheryl Sandberg, Marc Andreessen, James Breyer, Peter Thiel, Reid Hoffman and Jun Milner (Goldman Sachs Partner? – [Click here](#) for *Forbes* article discussing their relationship.)

The Facebook S-1 says Mark Zuckerberg is the controlling shareholder in Facebook. However, the reality *appears* to be very different: A "shadow cabinet" is emerging with a very different dynamic to its decision-making than that disclosed in the S-1. What we see are directors who, on the one hand, claimed to have known nothing about Mark Zuckerberg's transfer of \$1 billion (with a "B") to Matt Cohler (a former early Facebook employee with potentially damaging knowledge of Zuckerberg's 2004 shenanigans). Yet, while confessing utter ignorance, Facebook Director Marc Andreessen and his new partner Former Obama economic architect Lawrence Summers pocketed untold hundreds of millions from that deal. See my previous post, [click here](#).

Further exploration reveals that Facebook's COO Sheryl Sandberg has been employed almost continuously for the last 20 years by Larry Summers— since the early 1990's. This puts Sandberg



This blog has become a grassroots effort. My *Leader v. Facebook* patent infringement interview ([click here](#)) has mushroomed into a *major investigation*. Will you donate to the cause? Your donations will enable me to sustain this important news effort. Thank you! MEEP MEEP — Donna



Follow @DonnaKline1

Tweet

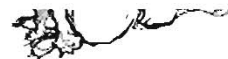
Tweet #TwitterStories

Tweet to @DonnaKline1

PREVIOUS POSTS

- /// Are Facebook insiders mocking the Business Judgment Rule?
- /// James W. Breyer's tangled web of insider trading – AKA – “You’ve been Breyered”
- /// Wal-Mart – Zynga – Facebook: Oh, the webs we weave
- /// Facebook forces reexam order of Leader’s patent through USPTO Director’s office in wake of Instagram controversy
- /// Instagram-scam?
- /// Facebook’s Orwellian (black-is-white) definition of “clear and convincing” evidence
- /// Facebook countersues Yahoo with bogus patents? Confirms reckless

on both sides of any deal involving Summers and his friends—including most especially any deal benefiting Andreessen’s investment company. **NONE of these conflicts of interest are disclosed in the S-1.** Indeed, Facebook officers and board of directors seems to be nothing but a hairball of conflicts of interest. *Gack.*



The Business Judgment Rule

The Business Judgment Rule is the ethical gold standard for company officers and directors. The landmark case *Grobou v. Perot*, 539 A.2d 180 (Del. 1988) established the guidelines. Directors in a business should:



1. act in good faith. See also duty of care
2. act in the best interests of the corporation
3. act on an informed basis
4. not be wasteful
5. not involve self-interest (duty of loyalty concept plays a role here)

Another precedent-setting case is *Smith v. Van Gorkom*, 488 A. 2d 858 (Del: Supreme Court 1985). It states “the business judgment rule is a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Wikipedia also provides a useful overview, [click here](#).

The purpose of a Form S-1 disclosure is to provide sufficient business and financial information so that prospective investors in a public offering can make informed decisions. Part of that disclosure involves discussing potential risks in more detail than vague “boilerplate” lawyer language that may, in fact, *mask material risks* behind sophistry. Another purpose is to allow the prospective investors to determine if the officers and directors of the company are trustworthy.

The standard for judging the trustworthiness of officers and directors is the Business Judgment Rule. Judge for yourself whether the current slate of Facebook officers and directors are worthy of your trust.

New! 5/5/12 9:38 PM EST Facebook attorneys believe in director independence . . . when it suits them

The Delaware Chancery Court denied a motion by an Oracle director committee to dismiss insider trading allegation. See summary of *In re Oracle Corp. Derivative Litigation*. [Click here](#) for the actual case. The court found the committee members, two Stanford University professors, had investigated fellow Oracle directors (one being a fellow Stanford professor and the other two significant Stanford benefactors). The court determined that the close




mindset.
 /// Facebook "Liked"
 Leader's source code ...
 before it didn't
 /// Proof Fenwick &
 West LLP did not
 disclose Leader as prior
 art to Facebook
 /// MF Global + JP
 Morgan + Goldman
 Sachs + Harvard Grads
 + Politics = A big mess
 /// What Facebook,
 Accel Partners,
 Goldman Sachs and
 Fenwick & West don't
 want us "muppets" to
 know
 /// Make up your
 mind, Fenwick & West
 LLP
 /// Muppet Mania
 /// Haughtiness in the
 face of "literal
 infringement"
 /// Facebook ordered
 pharma users to allow
 comments, yet will not
 return phone calls now
 /// First thoughts after
 leaving courthouse
 March 5, 2012
 /// Judges Selected
 /// San Francisco CBS-
 TV KPIX Coverage
 /// NBC-TV 4
 (Columbus) Interview
 with Leader founder
 Michael McKibben
 /// How Facebook
 tricked the jury -
 YouTube
 /// New friends?
 /// Did Someone Prod
 the Media?
 /// Facebook: The New
 "Too Big To Fail?"
 /// Big trouble ahead
 for the Facebook IPO?

ties among these individuals prevented the committee from being unbiased. Most importantly for this Summers-Sandberg 20+ year relationship is the court's statement that a director could be compromised . . . by virtue of "personal or other relationships." *These Oracle misdeeds pale in comparison to the hairball of Facebook officer and director conflicts.* Is there a standard for everyone else, then a special one for Facebook?

The Delaware court said that the determination of director independence is factually driven. Is the SEC assessing these facts or giving these astounding conflicts a pass? If the SEC turns a blind eye, will these conflicts eventually pull the company down with shareholder derivative suits over the director conflicts *already known*? Is this not the BEST TIME to address these conflicts? BEFORE the inevitable happens???! See [White & Case "Director independence; alive and well under Delaware law."](#) White & Case is/was a Facebook attorney in *Leader v. Facebook*.

Facebook's Business Judgment Rule checklist:

Business Judgment Rule	Facebook's Conduct
<p>1. act in <u>good faith</u> (sincere, honest intention or belief, regardless of the outcome of an action); See also <u>duty of care</u>.</p>	<p> The real management structure of Facebook is hidden from the public. Where is Lawrence Summers's influence over COO Sheryl Sandberg and Director Marc Andreessen and his network of relationships disclosed? "regardless of the outcome . . ." Facebook has systematically refused to disclose the investment risks associated with <i>Leader Technologies, Inc. v. Facebook, Inc., 08-cv-862-JJF-LPS (D.Del. 2008)</i> to prospective investors – do they find it embarrassing? – As I see it, <i>Facebook could very easily lose the case</i>, and this may dissuade investors. See my previous posts "What Facebook doesn't want us to know" and "Proof Fenwick & West did not disclose Leader."</p>
<p>2. act in the best interests of the corporation;</p>	<p>Directors like Marc Andreessen and adviser Larry Summers are making deals using borrowed money on both sides of those deals; such double-dealing is not in the best interests of shareholders. Neither is employing <i>political</i> influence to illicit improper actions by the director of a federal entity. See my previous posts "Instagram-scam?", "Wal-Mart, Zynga, Facebook – Oh the webs we weave" and "Facebook forces reexam order of Leader's patent through USPTO Director's office in wake of Instagram controversy."</p>
<p>3. act on an informed basis;</p>	<p>Recent Facebook leaks say that the Facebook directors were not <i>informed</i> about the \$1 billion Instagram deal (cough), yet they apparently <i>approve</i> of the deal. See my previous post "Instagram-scam?"</p>
<p>4. not be wasteful; and</p>	<p>Facebook used borrowed money to buy Instagram for \$1 billion—a company with 13 employees and no revenue while offering <i>nothing</i> to Leader Technologies to license a patent on which Facebook is</p>

– PBR / YouTube
 /// What happens on March 5th, 2012?
 /// More on FB's S-1 omissions & other conflicts of interest
 /// Big trouble ahead for Facebook IPO? Backgrounder
 /// My take on the MF Global debacle: It could have been a customer
 /// Comments on EU reform announced Oct 27, 2011
 /// Post Crackdown Update

ARCHIVE OF POSTS

Select Month

CALENDAR:

May 2012

M T W T F S S

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

« Apr

RECENT

COMMENTS

Sally Bishop on /// Are Facebook insiders mocking the Business Judgment Rule?

Tex on /// Are Facebook insiders mocking the Business Judgment Rule?

Sally Bishop on /// Are Facebook insiders mocking the Business Judgment Rule?

Julie on /// Are Facebook insiders mocking the Business

5. not involve self-interest (duty of loyalty concept plays a role here).

“literally infringing” and I believe Facebook is *behind the eight ball* in the current Federal Circuit Appeal. See my previous post “[Big trouble ahead for Facebook IPO?](#).”

Self-interest defines the web of conflicting interests among the Facebook principals and their various investments and direct business associations which are a tangle probably meant to discourage regulators from taking the time to identify the conflicts. See my previous posts “[Instagram-scam?](#),” “[Wal-Mart, Zynga, Facebook – Oh the webs we weave](#)” and “[James W. Breyer’s tangled web of insider trading – AKA – ‘You’ve been Breyer-ed.’](#)”

Table 1 – Comparison of Facebook’s directorial and officer conduct against the Business Judgment Rule. Facebook conduct fails on practically every key principle of the Business Judgment Rule.



U.S. courts disdain getting involved in business matters unless the directors are abusing their discretion. It is inconceivable how Marc Andreessen’s and Larry Summers’s recent participation on *both sides* of the Facebook-Instagram deal—lining their pockets as well as their insider friends—is anything other than an abuse of discretion. It is in such circumstances that the courts and regulators must act in the best interests of the public to stop such double-dealing. Otherwise, why should anyone follow securities rules? They are in place because of the excesses of the past. It appears that the current Facebook management believe they can ignore securities rules and they will not be held accountable.

Can any reasonable person believe that the Facebook officers and directors will suddenly stop their insider double-dealing once Facebook is public? (Remember, the same SEC rules that allowed the insider sale of Zynga stock are listed in Facebook’s S-1. See [this post](#) for more on THAT one.)

What do you think?

The Comment section below is open for business!

Meep, meep.

Judgment Rule?
 Tootall on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 bg761 on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 bg761 on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Kathy on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Tex on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Mike Kennedy on ///
 Are Facebook insiders
 mocking the Business
 Judgment Rule?
 Incredulous on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 glenn on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Sally Bishop on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Tex on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Derek on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?
 Tex on /// Are
 Facebook insiders
 mocking the Business
 Judgment Rule?

SEC Rules on Conflicts of Interest (that Facebook et al appear to be ignoring)

SEC Rule 2720 on Conflicts of Interest “prohibits a member [brokerage] firm with a conflict of interest from participating in a public offering, unless the nature of the conflict is prominently disclosed.” It further requires “prominent disclosure” for any member who has “the power to direct or cause the direction of the management or policies of an entity.”

See [SEC 2720 Opinion](#).
 See also [FINRA 2720 Publication](#).

Now let’s look at just a few public facts.

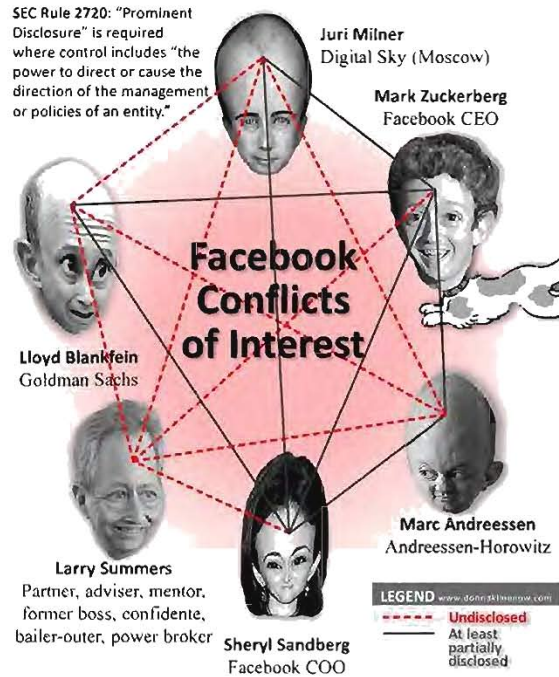


Fig. 2 – Facebook’s S-1 is required to provide “prominent disclosure” of all conflicts of interest where those interests have “the power to direct or cause the direction of the management or policies of an entity” according to SEC Rule 2720. This figure illustrates the many undisclosed conflicts of interest among Facebook stakeholders, including Mark Zuckerberg, Sheryl Sandberg, Marc Andreessen, Lawrence (Larry) Summers, Lloyd Blankfein (Goldman Sachs) and Juri Milner (Digital Sky Technologies, Moscow, Russia).

Updated! 5/5/12 9:38 PM EST A Web of Undisclosed Influences and Hidden Agendas?

1. Foreign Influence? Goldman Sachs owns an undisclosed stake in a Moscow-based Russian company called Digital Sky Technologies and is partnered with Russian oligarch Alisher Usmanov. Digital Sky is the second largest shareholder in Facebook. Mark Zuckerberg has stated publicly that he is looking to Digital Sky for his transaction software capability. *Fortune* magazine has identified strong ties between Asimov and the Russian government. How could these investors influence the use of proceeds from the offering? See [Fortune](#) article. See [Juri Milner / Alisher Usmanov](#).

2. Attorney Misconduct? Fenwick & West LLP claims to have filed over 700 patents for Facebook. However, Fenwick did not disclose Leader Technologies’ invention as a prior art reference; even though they were (a) Leader former attorney in 2002 with clear knowledge of the technology, and (b) had disclosed it as a prior art reference in two Marc Andreessen patents filed earlier. Nowhere is the risk of “inequitable conduct” disclosed. Neither did Fenwick disclose the risks of having represented Leader Technologies during the critical 2002 period that Facebook attacked at trial. Fenwick claims no wrong doing. What do you think? See “PREVIOUS POSTS” on the left sidebar. See “[Proof Fenwick knew.](#)”



3.

Winston Smith on ///

Are Facebook insiders mocking the Business Judgment Rule?

Jill on ///

Are Facebook insiders mocking the Business Judgment Rule?

Tex on ///

Are Facebook insiders mocking the Business Judgment Rule?

Kathy on ///

Are Facebook insiders mocking the Business Judgment Rule?

CATEGORIES

Current Positions

Economic Analysis

Investigation

READER

LOCATIONS:



OPINION

This is an opinion blog. Any information contained or linked herein should be independently verified and should be considered the sole opinion of the writer. Free Speech and Freedom of the Press are protected by the First Amendment of the U.S. Constitution and other local, state, national and international laws.

META

Log in

Entries RSS



In confusion there is profit?

Misrepresentations to Current Investors? Goldman Sachs has made a \$3 billion unregulated private market in Facebook insider stock, presumably taking the number of shareholders well over the 500 shareholder rule for a private company. (They were given special permission by the SEC to do so; see [Muppet Mania](#).) None of the risks associated with these financings have been disclosed. Goldman also failed to disclose to investors Facebook's "literal infringement" of Leader Technologies' U.S. Patent No. 7,139,761 in *Leader Technologies, Inc. v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008) and *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.). See [Big Trouble Ahead for Facebook IPO?](#)

4. Goldman owes

Summers? Goldman Sachs "owes a big one" to new Facebook adviser and former Obama economic adviser Lawrence Summers for saving Goldman from extinction with the 2008 Government bail out. Is Summers calling in markers to help his political associates?



Fig. 3 – Is Mark Zuckerberg propped up like a [Potemkin Village](#)?

5. Sheryl Sandberg's very close association with Lawrence Summers.

Lawrence Summers has employed Facebook COO Sheryl Sandberg almost continuously since he was her college thesis adviser at Harvard in the early 1990's. His influence over her and *potentially* how his involvement might be attempting to sway the coming Presidential election, are undisclosed. See "[Facebook attorneys sometimes believe in director independence](#)". See also [Forbes](#) for an indication of how cozy the relationships are.

6. Attempt to use undue political influence at the Patent Office?

Did friends of Facebook use political influence to cajole Patent Office Director David Kappos to issue a dubious order to throw Leader Technologies' patent into reexamination for a *third time*? An order, no matter how dubious, that could delay a damages trial if Leader prevails at the Federal Circuit (a decision that is imminent)? And, if Leader does not prevail, delays their further appeals (*en banc* to the 12 Federal Circuit judges, then the U.S. Supreme Court). See "[Suspicious Reexam Order](#)". See also [Kappos Stanford interview](#) "system of innovation is more important than ever" (at 23:25), "if I were king for a day" at (22:03) and "innovations have changed... we must work together cross-culturally" (at 10:43). His lifetime-IMBer big company bias is evident. Is he punishing Leader for not complying with his vision of globalization? Is that the Director's charge? Doesn't he work for us?





7. Attempt to influence the election?

Lawrence Summers recently left President Obama's employ and reappeared in Silicon Valley employed as a partner in Facebook Director Marc Andreessen's investment firm



Pres. Obama appointed Larry Summers to be Director of the National Economic Council in Jan. 2009. Sheryl Sandberg was Summers's Chief of Staff when he was U.S. Treasury Secretary under President Clinton.

where he and Andreessen recently raked in hundreds of millions from a dubious \$1 billion Instagram purchase. See [Self-dealing](#). Summers compensation and involvement in this deal are unknown. Remember, Obama has 26 million "Likes" on Facebook as compared to Romney's 1.6 million. [Click here](#) to read why this is an important fact. Here's [Gawker's](#) point of view on Summers. See [this Feb. 13, 2012 USEmbassy.gov](#) release about Sandberg if you don't think the White House is not ALREADY vested in this IPO. See also [Bloomberg](#) on Sandberg's fundraiser for Obama.

8. Whose the real boss at Facebook? Sheryl Sandberg? Larry Summers? Lloyd Blankfein? Facebook's Sheryl Sandberg now does practically all of Mark Zuckerberg's talking for him, yet Facebook's S-1 says Zuckerberg "controls a majority of our outstanding voting power." Does anyone expect us to take this S-1 disclosure seriously? See "[A Real Mess.](#)"

* * *

Credits:

1. Cat coughing hairball. [Blognoble](#). Accessed May 3, 2012.
2. Trust. [Radical Marketing Solutions](#). Accessed May 3, 2012.
3. Conflicts of interest must be disclosed in advance of others relying on your representations. [Cartoon Stock](#). Accessed May 3, 2012.
4. Mask graphic. [Maskz.com](#). Accessed May 4, 2012.
5. Maze photo. [Flickr.com](#) Accessed May 4, 2012.
6. Pres. Obama / Lawrence (Larry) Summers photo. [The Wall Street Journal](#). Accessed May 4, 2012.
7. Pres. Obama / Sheryl Sandberg photo. [Indiana Times](#). Accessed May 5, 2012.
8. Independent Directors of a Corporation cartoon. [Stu's Views](#). Accessed May 6, 2012.

Posted by [Donna Kline](#) on Thursday, May 3, 2012, at 12:49 pm.


Filed under [Investigation](#).


Follow any responses to this post with its [comments RSS](#) feed.

You can [post a comment](#) or [trackback](#) from your blog.

{ 23 }


Comments

1. **brent** | May 3, 2012 at 10:37 pm | [Permalink](#) 
I was speaking last week with a fund manager who invested over \$30 million in Goldman Sach's private placement of Facebook's insider stock last fall. Somehow we got on the subject of Leader Technologies and I asked him if he knew about the Leader v. Facebook patent infringement verdict of literal infringement against Facebook. He was in disbelief that the litigation had not been disclosed. He didn't believe me until I showed him this site and all the actual documents. He called me later after returning to his office in total disbelief, he said "The b_____ds disclosed nothing in their prospectus about this risk."


2. **Tex** | May 4, 2012 at 7:53 am | [Permalink](#) 
Donna, you surely don't believe that "enforcing the rules" fits the agenda of either the Zucksters ,their banker boys at Goldman, or the POTUS and his crack legal team at DOJ..... Rules, schmools.,why do we need rules ? To mention a few.that we seemed to have overlook lately.....US borders, sanctuary cities, Fast and Furious, EPA enforcement sans Congress, Jon Corzine, the vetting of Elizabeth Warren, Obamacare passed with arcane Senate rules in the middle of the night,Not only does this case (Leader vs Facebook) deserve high court review on the civil side, the actions of the Zucksters also deserve review from a legitimate DOJ on the criminal side. Somehow I recall in my experience in real life that "theft and perjury" were crimes to be investigated and prosecuted by those we trust to enforce the law. The problem appears to be that the DOJ boys are too busy sitting in front of Congress explaining the "guns in Mexico" thing, and trying to prove Roger Clemens used a steroid to throw a baseball through a wall. Of course there is a chance that FB and the Zucksters are innocent and if the courts reach that conclusion, so be it. Just once, I would love to see Obama actually spend time on creating an environment of trust and integrity in our new cyberspace businesses and less time bashing oil companies and those of us that actually created jobs and businesses the old fashioned way.....

3. **Linda** | May 4, 2012 at 8:35 am | [Permalink](#) 
Let's see. Facebook has a Fenwick & West law firm that lies to the Patent Office and uses tricky language in the S-1 to dance around "materiality." They have a Cooley Godward law firm that fabricates evidence and tricks juries. They have a Goldman Sachs underwriter that makes a \$3 billion private market in Facebook stock, eventually locks out American investors (who bailed them out), then takes in billions from shady characters with foreign underworld ties. They have directors who consistently double-deal. Isn't this the definition of "bad faith." WHERE IS THE BUSINESS JUDGMENT RULE IN ALL THIS? IT'S NON-EXISTENT. If this IPO is


allowed to go forward I am not sure what I will do with my political activism. I hear now that various federal agencies are attempting to muzzle the media with regulatory threats not unlike the stunt that USPTO Director David Kappos just pulled with the Leader patent. Are they going to get away with this? Muppet Nation must rise up and no longer give these yahoos any benefit of the doubt. They're crooks.

4. **Kathy** | May 4, 2012 at 8:49 am | [Permalink](#) 

Hey Tex, you said "Of course there is a chance that FB and the Zucksters are innocent and if the courts reach that conclusion, so be it." What was in your Texas coffee this morning? The evidence is all out there from the case to read. (Besides Donna's site, here's another detailed one on the case <http://facebook-technology-origins.blogspot.com/>) Zuck and his cadre of handlers are as guilty as sin IMHO. If our courts screw up, then hopefully Leader will appeal this all the way to the Supreme Court if needed. All our geese are cooked in our courts if Facebook's fabricated "coffee stain" evidence passes for "clear and convincing."

5. **Tex** | May 4, 2012 at 9:51 am | [Permalink](#) 


Good morning , Miss Kathy.....We drink "humbleness" in Texas...HAHA.I watched the big black limo`s on TV this AM as CNBC gushed over the greatness of the FB IPO.....inside those limo`s were the Zucksters and probably the stacks of new stock certificates for the lathered -up crowd of (meep,meep) folks waiting to buy a company that was stolen from a highly skilled engineer by a boy genius who ,incidentally, claims that an inspiration from above was the source of this great innovation, which , ironically came just as he hacked McKibbens email....Hey Derek,did I see you driving one of those big black beasts. If not, I apologize.....don`t sue me. The biggest problem that the appellate court may be facing is the "value" of the crime perpetrated on Leader by FB....well, the Zucksters just gave the court a baseline...\$96,000,000,000. Let me repeat, the greatest "private, non governmental theft" in historyand we have seen some really good ones lately..

6. **Jill** | May 4, 2012 at 10:07 am | [Permalink](#) 

Donna, I'm sorry but you really do not understand the Business Judgment Rule. The BJR is not a "rule", as it does not require any affirmative conduct by a board of directors. Instead, it is a presumption—namely a presumption that when undertaking an action, a company's management has acted in the best interests of the company, on an informed basis, etc. All this means is that when someone sues a company for mismangement, the BJR kicks in as a presumption that the company's actions were properly undertaken. It is then up to the

plaintiff filing the lawsuit to overcome that presumption.

This notion that Facebook has somehow violated an abstract rule and is therefore culpable in some way is just ridiculous and completely out of line with how the legal system actually works. There is no liability for "violating" the BJR.

7. **Winston Smith** | May 4, 2012 at 5:07 pm | 

[Permalink](#)

Jill, Whats your background that you have such great eagerness to share your wonderful enlightening thoughts with us? Did you happen to take the time to download the information that Donna researched on her main blog on BJR? It's very informative if you choose to read up on it. Leader has already met the requirements of your so-called "presumptions" when Facebook was found guilty on 11 of 11 counts of literal infringement! And while we are on the subject of BJR's, do you think Facebook did their board members right by buying Instascam..I mean Instagram, and then telling the board members how to vote on it after the fact? I think that **HARDLY** falls within any ethical guidelines!"Abstract Rule" that sounds synonymous with the " Dark arts" that the jury had to decipher back in 2008!

8. **Tex** | May 4, 2012 at 5:59 pm | [Permalink](#) 

So let's see..... a rule is less than a law but more than a presumption thus the Zucksters can hack emails, create diversions, play hide and seek with the SEC, forego complete S-1 disclosures, and be perfectly able to go along their merry way.....now I find it fascinating that Jill would call the actions of these guys OK (that's Texan for within acceptable Board and management protocol) while she calls Donna's reporting "just ridiculous and out of line".. All I can say is , Jill , go over all of the facts presented in this blog and think about what you just posted.....Donna is presenting a very well researched and thoroughly documented history of the years leading up to the largest IPO in history. There is a case before the second highest court in the land that could cost the new shareholders of FB potentially billions of hard earned money. Shouldn't that be disclosed ? The potential insider conflicts are everywhere. Shouldn 't that be disclosed? You are probably connected to the Zucksters either as a lawyer or a communications consultant....I hope you see the very scary cliff in front of you.

9. **Derek** | May 4, 2012 at 7:01 pm | [Permalink](#) 


Jill! You ROCK!!


Finally someone besides myself to counter these half truths! Are you single? Where do live? Dinner somewhere in the Valley?


What these hillbillies here don't seem to get is that Facebook will have enough setbacks in it's own future


without these distractions. Let's let FB get stronger, not weaker! It can foment change in the world, as it already has, it may even help ward off cyberwars in the future from rogue nations! Sometimes people have to realize that one can justify the means by the end! If there is any truth here that Zuck coincidentally had code that looked so much like Leader's or that he liked the idea, so what if a few rules were forgotten? Look at the results from waterboarding, and how maybe our own CIA had to push the rules a bit. It was worth it, and we ultimately nailed Bin Laden! Let FB prosper, I say! If some fund managers are bellyaching over the lack of disclosure over this petty little case, they won't be when the stock sails up after the IPO! Go Jill! Go Facebook!


Donna, and the rest of you complainers, lighten up! I thought I was done with this hokey, but I am glad to be back now that I know I am not the only person posting here with some intelligence.

10. [Tex](#) | May 4, 2012 at 9:01 pm | [Permalink](#) 
And that my friends, is the meaning of liberalism !!!!! Nice job, Derek !!

11. [Sally Bishop](#) | May 4, 2012 at 9:10 pm | [Permalink](#) 
How can so much appalling conduct be perpetrated by one group of people? We are watching the emergence of a Silicon Vally oligarchy every bit as corrupt as those in Russia. I agree with other posters that this will go down as the biggest American scam of all time. The latest scam is that the insiders are all going to sell stock to "pay their taxes." Gack! Can anyone say political donations?

12. [glenn](#) | May 5, 2012 at 12:45 pm | [Permalink](#) 
Well Derek I guess that you can justify anything .

13. [Incredulous](#) | May 5, 2012 at 1:11 pm | [Permalink](#) 
Derek,
Are you high, insane, or were you raised by wolves?
Since when is theft okay? The chance that the Zuckster "coincidentally" (in a couple of weeks, while studying for finals) generated the same code as McKibben is more far-fetched than you walking down the street and encountering a stranger with the exact same DNA as you!
McKibben should be very highly compensated for a theft that not only took his technology but the many years he has had to devote to reclaiming what is rightfully his.
Shame on the national media for not publicizing this case.

14. [Mike Kennedy](#) | May 5, 2012 at 4:34 pm | [Permalink](#) 
SHHHHHH! Quiet "Incredulous," the SEC and the Media

are sleeping. Don't want to wake anyone up and cause any rocking of this IPO boat. To many people stand to make a fortune off of one of the (if not the) biggest scams in history. So please try and keep this really, really quiet.

15. **Tex** | May 5, 2012 at 4:55 pm | [Permalink](#)



Been digesting some of the posts by Donna, Jill, and Derek over the past couple of days..... First of all, Derek , did you think that this was an online dating site? Keep firing shots, maybe something will work for ya'.....hillbilly women are very susceptible to guys like you. (just a joke ladies !) Secondly, I am wondering what Jill thinks about Donna's other findings and the fact that FB is under the microscope in the US Appellate Court system for very serious and nefarious actions by FB representatives . Is hacking an email, stealing it's contents, and making false statements about the whole shooting' match illegal in your opinion? Or should that be a non-rule ? Derek ,are these actions really OK if it helped the " company" achieve it's goals? One more question....why did McKibben develop this platform which cost millions of dollars and thousands of hours if he wasn't planning on monetizing it ? In order to create a new concept of such intricate detail, an inventor must have a vision. So why do you folks think Zuckerberg is the only man on the planet that could have built Facebook ? He saw the value after he stole it.....Anyone could have that vision. Thoughts?

16. **Kathy** | May 6, 2012 at 12:48 pm | [Permalink](#)



Why is the image of Russian Roulette coming to mind? We have a President and an administration sworn to uphold the Constitution who are turning a blind eye to the rights of Michael McKibben, a real American innovator, while giving a smug nod to the "America Invents Act" which he trumpeted would protect the American inventor... all the while propping up The Great Infringer. Oh, what was I thinking? Those are just empty words meant for the muppets. We are only supposed to trust those words until after the election. Then afterwards, like he told Russia's Medvedev, he'll have MORE flexibility.

To do what??? Do I hear the Constitution and our laws being torn to shreds? Oh, I forgot again, Derek tells us you have to do that now and again for therapeutic reasons. Gack!

<http://www.guardian.co.uk/world/video/2012/mar/27/obama-medvedev-mic-nuclear-video?intcmp=239>

17. **bg761** | May 6, 2012 at 12:51 pm | [Permalink](#)



Are the words of Peter Thiel (a Facebook Director and early 2004 investor) truthful and prophetic (about HIMSELF) when he states in an interview with Forbes Magazine, "One of the related themes to this is that we're

heading towards a much more transparent world. People are often nervous about it, because privacy's being lost. On the other hand, it's a more open world. What strikes me as very good about this increased transparency world is that certain types of bad actors will find it much harder to get away with it. You have a disturbingly large number of politicians and business leaders [who] are sociopaths and psychopaths. Something like 30% to 50% are borderline really bad people. You can get away with that in a world where you jump between places. That's going to be much harder in a world that's more networked and more transparent." ☹

See

<http://www.forbes.com/sites/rvanmac/2012/05/02/reid-hoffman-and-peter-thiel-share-the-secrets-of-breaking-into-techs-most-exclusive-network/3/>

Privacy being lost??? I thought your privacy was safe on Facebook!! 30%-50% of Politicians and "Business leaders" are Sociopaths and Psychopaths unless they are open and transparent! Since this is about business leaders, let's see:

1. Mark Zuckerberg: open and transparent about the origins of the software for Facebook. (most inventors are proud of their original code)
2. Facebook's S-1: open and transparent about Facebook's infringement of Leader's patent?
3. Fenwick & West: open and transparent about Leader's invention?
4. Goldman Sachs: open and transparent about pre-IPO stock transactions and misrepresentations?
5. ... Add any additional name to the list and ask the same question.

So which category do these questions put these "Business leaders" in? ☹

18. **bg761** | May 6, 2012 at 3:46 pm | [Permalink](#)







One category I left out that is important in the previous post.

6. Facebook: open and transparent? Facebook hides evidence. For example, they told Leader that they lost their early source code, but the Ceglia case currently discusses the existence of this source code that they had

earlier told both Leader and ConnectU didn't exist (wait, after a settlement with the Winklevosses, they suddenly found it!!!!). So which of your observations about untrustworthy persons do you fall, Mr. Thiel? You say "certain types of bad actors [NOT YOU?] will find it much harder to get away with it." 🤔

If you want to see court records on this, go to *ConnectU, Inc. v. Facebook, Inc. et al*, Doc. 177, Feb 12, 2008 [[click here](#), you're welcome] and *Ceglia v Facebook*, Doc. 232, Nov. 20, 2011 [[click here](#), you're welcome].

19. **Tootall** | May 7, 2012 at 7:15 am | [Permalink](#) 
Donna, keep up the good work! It's nice to see that we still have credible reporters in the good ole USA. Thank God Leader has excellent attorneys in King & Spalding and Krauner Levin who are real professionals when it comes to patent law & the protection of an American inventor.
20. **Julie** | May 7, 2012 at 8:24 am | [Permalink](#) 
Stanford, Harvard, Silicon Valley . . . did their mothers and fathers NOT teach these children basic morals? What's with these so-called "prestigious" universities? As Donna says, its the M-O-N-E-Y. Did they stop teaching ethics too? Oh, I forgot. Ethics are for muppets (so the others can play behind the covers of a kid). Peekaboo, I see you.
21. **Sally Bishop** | May 7, 2012 at 9:35 am | [Permalink](#) 
Russian Juri Milner's meteoric rise into the Facebook cabal felt strange to me, so I have done some digging. I have just triangulated three current Facebook figures to the same point in time 20 years ago.
World Bank, 1991-1993
1. Lawrence Summers, Chief Economist, working on the Russian bailout
2. Sheryl Sandberg, Research Assistant to Larry Summers
3. Juri Milner, Russian banking specialist
As Tex says, another Texas koinfy-dink.
Follow the links off Wikipedia.
http://en.wikipedia.org/wiki/Yuri_Milner
http://en.wikipedia.org/wiki/Lawrence_Summers
http://en.wikipedia.org/wiki/Sheryl_Sandberg
22. **Tex** | May 7, 2012 at 11:21 am | [Permalink](#) 
We must all remember that a few Russians made great wealth (billions) very quickly the last twenty years. They managed to stay "WAAYYYY" under the radar through the takeover of the oil and gas resources and other Russian markets. They apparently needed a way to legitimize their new wealth and get it out of Russia. At the

same time, the Zucksters apparently had some issues on numbers of shareholders allowed, certain disclosures tied to FB's history, and other potential conflicts with US securities laws.....let's add the fact that overseas markets were attractive to Goldman and the other vulture capitalists because the laws are less onerous. The Russians didn't seem to mind those barriers and conflicts.....and who knew the Russians? Summers and his followers. BINGO, my little pea brain thinks that a relationship was hatched that was cleverly convoluted and purposely opaque.....not open and transparent as they claim.and now the Roadshow !! They all look so young and innocent.....The hacking of Leaders technology is tantamount to the Zucksters stealing the Coca Cola formula or the recipe for Kentucky Fried Chicken and taking it to Wallstreet, all the while, ballyhooing their brilliance.....the wider the scandal the more difficult it becomes to unravel. This one is global !!!!

23. **Sally Bishop** | May 7, 2012 at 11:28 am |



[Permalink](#)

This finally explains how the Zuck received so much Harvard Crimson coverage between August 2003 and September 2004 (more than Presidents Clinton and Bush) — Larry Summers was PRESIDENT OF HARVARD then and custom-ORDERED the coverage. James Breyer and the other Harvard boys at Accel Partners probably told him about Leader's technology and said they wanted it for their own. So, they cooked up the boy-genius story and the Zuck was willing to do it for the cabal. He has lived a blessed life ever since. Would that real entrepreneurship like McKibben and his team did for real were so easy.

Here's all the Harvard Crimson coverage the 19-year old Zuck garnered:

<http://www.donnaklinenow.com/investigation/what-facebook-accel-partners-goldman-sachs-and-fenwick-west-dont-want-us-muppets-to-know#comment-814>

Here's more discussion on that:

<http://facebook-technology-origins.blogspot.com/2011/08/mark-zuckerberg-used-leader-white-paper.html>

Post a Comment

*Your email is never published nor shared. Required fields are marked **

Name *

Email *

Website

Comment

Submit comment

**« [/// JAMES W. BREYER'S
TANGLED WEB OF INSIDER
TRADING – AKA – “YOU’VE
BEEN BREYER-ED”](#)**

© 2012 [Donna Kline](#) | Thanks, [WordPress](#) | [Barthelme](#) theme by [Scott](#) | Standards Compliant [XHTML](#) & [CSS](#) | [RSS Posts](#)
& [Comments](#)

Print

TCR Submitted Successfully - Reference Number: TCR1336411301942

Tell us about your complaint

Please select the option that best describes your complaint

Material misstatement or omission in a company's public filings or financial statements, or a failure to file

Please select the specific category that best describes your complaint

False/misleading offering documents

Provide additional details about your complaint:

This complaint involves multiple categories above, but your online form only allows for one radio button choice. I would place this complaint additionally in Fraudulent investment scheme; Unregistered securities offering; Manipulation of a security; Insider trading; A special market event. My attached document further explains what has been uncovered that reveals a material nondisclosure by principals in the Facebook S-1. Certain (many actually) prior relationships among the Facebook players are not being disclosed to the public. Among them is a 20-year prior association among former Treasury Secretary and World Bank executive Lawrence Summers, Facebook COO Sheryl Sandberg, and Juri Milner, CEO of Moscow-based Digital Sky, second largest shareholder in Facebook. NOTE: [REDACTED]

Are you having or have you had difficulty in getting access to your funds or securities?

[REDACTED]

Did you suffer a loss?

[REDACTED]

Enter amount of loss to nearest dollar without characters (e.g., 15000, not \$15,000.00):

[REDACTED]

When did you become aware of the alleged conduct? (mm/dd/yyyy)

[REDACTED]

When did the alleged conduct begin? (mm/dd/yyyy)

[REDACTED]

Is the alleged conduct ongoing?

Yes

Has the individual or firm acknowledged the alleged conduct?

[REDACTED]

What is the source of your information? You may select more than one

[REDACTED]

Have you taken any action regarding your complaint? You may select more than one

[REDACTED]

Who did you contact and what action did you take?

[REDACTED] patent infringement lawsuit captioned Leader Technologies, Inc. v. Facebook, Inc., 08-cv-862-JJF-LPS (D.Del. 2008) and Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.)

Who are you complaining about?

Are you complaining about an individual or a firm?

Firm

Select the title that best describes the individual or firm that you are complaining about:

Private/closely held company

If you are complaining about an entity or individual that has custody or control of your investments, have you had difficulty contacting that entity or individual?

Yes

Firm Name:

Facebook, Inc.

Street Address:

1 Hacker Way

Address (Continued):

Suite A

City:

Menlo Park

State / Province:

CALIFORNIA

Zip / Postal Code:

94025

Country:

USA

Telephone:

Work:

650-853-1300

Website:

www.facebook.com

Identifier Type:

Unknown

Are you or were you associated with the individual or firm when the alleged conduct occurred?

[Redacted]

Products involved

Select the type of product involved in your complaint:

[Redacted]

Please select the category that best describes your security product:

[Redacted]

For other, please provide more information:

U.S. Patent

Enter the product name(s):

U.S. Patent No. 7,139,761

About you

*Are you submitting this tip, complaint or referral pursuant to the SEC's whistleblower program?

[Redacted]

*Are you submitting this tip, complaint or referral anonymously? Being able to contact you for further

information or clarification may be helpful.

[Redacted]

****Are you represented by an attorney in connection with your submission?**

[Redacted]

Submitter Information

****First Name:**

[Redacted]

Middle Name:

[Redacted]

****Last Name:**

[Redacted]

Street Address:

[Redacted]

City:

[Redacted]

State / Province:

[Redacted]

Zip / Postal Code:

[Redacted]

Country:

USA

Home Telephone:

[Redacted]

Work Telephone:

[Redacted]

Email Address:

[Redacted]

What is the best way to contact you?

[Redacted]

Select the profession that best represents you:

[Redacted]

For Other, please specify:

[Redacted]

Whistleblower Declarations

***1. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Public Company Accounting Oversight Board, any law enforcement organization, or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?**

[Redacted]

***2. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or**

instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

[REDACTED]

***3. Did you acquire the information being submitted to us through the performance of an engagement required under the federal securities laws by an independent public accountant?**

[REDACTED]

***4. Are you submitting this information pursuant to a cooperation agreement with the SEC or another agency or organization?**

[REDACTED]

***5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?**

[REDACTED]

***7a. Are you submitting this information before you (or anyone representing you) received any investigative request, inquiry, or demand that relates to the subject matter of your submission from the SEC, Congress, or any other federal, state, or local authority, any self regulatory organization, or the Public Company Accounting Oversight Board?**

[REDACTED]

7b. If the answer to question 7a is 'no,' please provide details.

[REDACTED]

***8a. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?**

No

***9a. Did you acquire the information being provided to us from any person described in questions 1 through 8?**

[REDACTED]

10. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

[REDACTED]

***I declare under penalty of perjury under the laws of the United States that the information contained in this submission is true, correct, and complete to the best of my knowledge, information, and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.**

Agree