Citation links updated Mar. 13, 2014: On Fri. Mar. 7, 2014, the document service *Scribd* removed all documents cited herein that had been accessible from *Scribd* for two years. Some of the documents had over 10,000 reads. *Scribd* principals Trip Adler and Jared Friedman have Harvard associations with Mark Zuckerberg. The documents have been moved and the links updated herein. No content changes have been made.

Docketing irregularities: On Aug. 7, 2012, Clerk staffer, Valerie White, told Marion, Ohio caller Steve Williams that the court had no record of receiving this brief on Jul. 10, 2012, and had never docketed it for public review.

When Ms. White was shown the USPS delivery receipt, she seemed puzzled and promised to investigate. The next day, her phone extension was disconnected, and she has not returned follow-up phone calls from Mr. Williams.

Nonetheless, this *amicus curiae* brief was accepted at **10:39am** on **Jul. 10, 2012**, never docketed, and denied under the signature of "Jan Horbaly Clerk" on **Jul. 11, 2012**, less than 24 hours later.

CLICK HERE to see the delivery receipt and Horbaly denial attached.

GREEN BRIEF

2011-1366

United States Court Of Appeals for the Federal Circuit

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Delaware in Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark

BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC*

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Lakshmi Arunachalam, Ph.D.

July 10, 2012

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is: **Lakshmi Arunachalam**
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 10, 2012

/S/
Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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MISCELLANEOUS

Ms. Lakshmi Arunachalam, Ph.D. ("Dr. Arunachalam") submits this brief as an *amicus curiae* pursuant to Fed. R.App. P. 29(a) and Rule 29(a) of this Court. This brief is accompanied by a motion for leave to file pursuant to Fed. R.App. P. 29(b). Dr. Arunachalam supports Leader Technologies' petition for rehearing and rehearing en banc. The consent of neither party has been sought to file this brief.

INTEREST OF *AMICUS CURIAE*

Ms. Lakshmi Arunachalam, Ph.D. ("Dr. Arunachalam") is the inventor of a portfolio of the earliest Internet patents that give control over any real-time web transaction from any web application. These patents give her control over the internet cloud and any cloud application. Her companies, Pi-Net International, Inc. and WebXchange, Inc., are practicing entities with the earliest products implementing web applications based on her patents. At First Data Corporation her software implementations were certified as ACH-certified for credit card and other transactions. Her web applications were installed as pilot trials and beta tests at Cisco, France Telecom, Lycos, Le Saffre, BNP Paribas and La Poste. Dr. Arunachalam invests 100% of her time in research and development (R&D) and in the patenting of new internet-based products. She bootstrapped her companies with self-funding and relies on her patent portfolio of over a dozen patents to protect those investments. *See* APPENDIX for curriculum vitae.

Dr. Arunachalam is a champion of property rights and has a vested interest in the outcome of *Leader Tech v. Facebook*, Case No. 2011-1366. She believes that Leader's invention is an epoch-making event that will help re-establish America's world leadership in innovation, help America stop borrowing money from former Third World countries, and help revive America's profound constitutional values of "life, liberty and the pursuit of happiness." She believes that the wholesale theft of Leader Technologies' intellectual property dwarfs the conspiracies of Bernard Madoff's Ponzi schemes and undermines America's fundamental values. She believes that such crimes should be punished rather than showered with fame, glory, wealth and power.

Dr. Arunachalam is a champion of intellectual property rights for true inventors, especially small inventors, from whom large companies often steal, using their superior resources to quickly exploit the invention and deprive the small inventors of their rewards. She has a strong interest in seeing well-settled patent law applied fairly in this case, and in every case, at every level.

For these reasons Dr. Arunachalam believes that every champion of property rights in the United States must stand behind Michael McKibben and Leader Technologies. She believes that such activity as jury trickery and other court manipulations cannot be permitted to validate theft of property rights. She believes

that such activity will dissuade innovators from participating in the patenting process and thus deprive the public of the benefit of their innovations.

Dr. Arunachalam would like this Court to acknowledge the fraud and trickery that has transpired in this case and not be tempted by admitted hackers and counterfeiters to look the other way. She would like to remind the Court of the wisdom of Matthews 7:26: "Everyone who keeps on hearing these messages of mine and never put them into practice is like a foolish man who built his house on sand." She believes America must rely on and support brilliant inventors and visionaries like Michael McKibben, and not on intellectual property thieves.

SUMMARY OF ARGUMENT

This Court has determined that on sale and public disclosure bars to patentability under 35 U.S.C. § 102(b) should be evaluated against the Uniform Commercial Code ("U.C.C."). This Court requires hard evidence to prove on sale and public disclosure bar based on the U.C.C. The patent community relies upon this prior body of case law. Surprisingly, the Court did not use its U.C.C. standard in this case. Such an abrupt shift in the Court's well-settled precedent is unfair and inequitable to Leader Technologies, will place a significant undue burden on all patent holders going forward, and will increase litigation costs dramatically—all simply because the Court did not apply its own standards.

Compelling reasons justify the existence of the hard evidence rule founded in the U.C.C. The standard was implemented to avoid an otherwise capricious interpretation of business words like "sell" and "deal" and "offer" that can have many meanings depending upon context. It was also established to avoid mere word chases through the record for uses of brand names without assessing whether real inventions lay beneath the mere words on a page. Jurors unfamiliar with the language of research and development can become confused and easily mistake an offer to sell something once it is invented with an offer for sale. Understandably, such forward-looking language can be misconstrued by a juror unfamiliar with the dynamics of as-yet-unrealized visionary possibility.

Indeed, one of the motivations for companies to invest in research and development is to be able to benefit from the result of that effort, *if* it is successful. However, there are no sure things in research and development. In short, selling a dream of an invention is not the same thing as selling an invention that *might* result from that effort. Indeed, the road to research and development success is paved with failures. **The precedent set in this case could *destroy* the ability of individual inventors to finance their research and development. This decision, as it stands, labels *prospective* conversations about *prospective* inventions as an offer for sale—even when these conversations occur under the protection of secrecy**

agreements where the parties have agreed that their conversations will have no legal effect.

By contrast, this very Court decided over a decade ago to look to the U.C.C. to evaluate whether or not an alleged offer "rises to the level of a commercial offer for sale." While the U.C.C. was not a "bright line," it certainly brought clarity and objectivity to the evaluation and placed the question squarely in the mainstream of contract law. Otherwise, a patent holder's future defenses against on sale and public disclosure bar will be left with no legal guidance. Dr. Arunachalam respectfully requests that this Court apply its U.C.C. standard in this case.

Compelling reasons also justify the existence of the "reasonable measures" test under 18 U.S.C. § 1839 to determine whether or not a patentee has maintained the secrecy of his or her invention under the 35 U.S.C. § 102(b) public disclosure bar. The test brought clarity to the maintenance of a trade secret prior to patenting. Otherwise, jurors would be guided only by mere personal opinion. Federal law mandates that reasonable measures involve both "words" and "deeds." The "reasonable measures" test was not performed on the evidence by this Court. One common measure to preserve trade secrets is the use of nondisclosure agreements.

Leader Technologies exhibited uncommon zeal with regard to nondisclosure agreements and secrecy practices, yet no statutory "deeds test" was performed. The research and development community will be thrown into turmoil if nondisclosure

agreements are no longer recognized as one reasonable means to protect trade secrets from public disclosure. Dr. Arunachalam respectfully requests that this Court perform a "deeds test" on the evidence.

Finally, compelling reasons justify the existence in "The Dictionary Act" under 1 USC § 1 of the provision "words used in the present tense include the future as well as the present." However, this Court did not apply the Act to its interpretation of Interrogatory No. 9's use of "is practiced." This case turns on this interpretation since without an interpretation of this interrogatory to the past, the Court has no legal basis for its decision. The patent community relies upon the prior body of case law on the use of tense. Such an abrupt shift in the Court's well-settled precedent is unfair and inequitable to the Plaintiff-Appellant, will place a significant undue burden on patent holders going forward, and will increase litigation costs dramatically since patent holders will no longer be able to rely upon "plain and ordinary meaning." Dr. Arunachalam respectfully requests that this Court apply the plain and ordinary meaning of the verb "is practiced" to mean the present tense with regard to its interpretation of Interrogatory No. 9. At that point, Facebook's on sale and public disclosure bar verdict must be set aside as a matter of law.

For these reasons, Dr. Arunachalam strongly urges the Court to grant Leader Technologies' petition, re-hear this case, set aside the on sale and public disclosure bar, and remand this case to the district court for further proceedings.

ARGUMENT

I. American Patent Property Rights Will Be Placed In Turmoil If This Decision Is Not Corrected.

Congress ratified the U.S. Constitution on September 15, 1787. The only property right given special attention by the framers was Article I, § 8, cl. 8, granting to the Congress the power

> "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . . ."

The current anti-patent and anti-small-inventor trend in our courts belies the lessons of history, which prove that American innovation is fueled by the individual inventor. It is only the predator, thief, counterfeiter, infringer, copycat, interloper, plagiarizer, the unthinking, and those who aid them, who would wish to destroy these most fundamental of American incentives to inventorship.

It has been said before and bears repeating that without the spark of invention in a society, the creative pace of new ideas slow. When creativity is not rewarded, entrepreneurship and job creation fall off. Fewer jobs mean a decrease in tax revenues, which in turn takes away society's ability to provide civil infrastructure and social services. When a government is unable to care for its citizens, civil unrest and the decline of that society is just around the corner. The framers of the U.S. Constitution were students of history and knew this. This is precisely why they

embedded patent property rights into the fabric of our democracy.[1] That fabric is being torn in this case.

Patent holders and those hoping to protect their inventions rely upon the Court's precedents in determining their courses of action in securing a patent. If not overturned, **this Court's decision** against Leader Technologies regarding the on sale and public disclosure bar **will place all patents in peril**.

This one decision:

(1) leaves patentees with no ability to rely upon the plain and ordinary meaning of the English language;

(2) leaves the patent process with no reasonable certainty about how to protect trade secrets prior to filing for a patent;

(3) opens the door wide for predators to cajole courts into ignoring precedential law capriciously; and

(4) gives *carte blanche* to infringers to misdirect the course of justice into trial theater, fabrication of evidence, tricky attorney argument, motion practice and undue influence upon the process itself based upon this precedent.

[1] *BD. OF TRUST. OF LELAND STANFORD v. ROCHE SYS.*, 131 S. Ct. 2188 (Supreme Court 2011) at 2200 ("Patents, for example, help to elicit useful inventions and research and to assure public disclosure of technological advances").

II. The Court Erred In Applying The Substantial Evidence Standard (Quantitative) Without *First* Applying The Clear And Convincing Evidence Standard (Qualitative) To Its Review.

Jury Instructions No. 1.11 specified the clear and convincing evidence standard. The Court can review the "substantial evidence" only in light of this instruction. It did not do that, because if it had it would have "exercise[d] its independent judgment on the evidence of record and weight it as a trial court" and used its precedential standards (e.g., *Group One*, *Linear*, *Allen*, *Helifix*). *Sub*.

Instead this Court sporadically dipped into the record looking for evidence to support a clearly predetermined outcome in favor of Facebook; conveniently issuing its decision within hours of the beginning of Facebook's IPO road show. In doing so, the Court ran roughshod over its own well-settled precedent for judging the sufficiency of evidence to support on sale and public disclosure bar.

The standard is not whether there was **substantial (. . .) evidence**. The standard is whether there was **substantial (clear and convincing) evidence**. Bottom line, the Court's opinion neglected the standard of review completely. In a *de novo* review the Court must think for itself and not simply try to justify a flawed jury conclusion—a conclusion elicited by deception and misconduct. *SSIH EQUIPMENT SA v. US Intern. Trade Com'n*, 718 F. 2d 365 (Fed. Cir. 1983) at 281 ("The court in 'de novo' review must exercise its independent judgment on the evidence of record and **weight it as a trial court**")(emphasis added).

III. The So-Called "Substantial Evidence" Is Not Convincing Grammatically, Logically or Scientifically; An Ambiguous Use Of Grammar For The Definition Of "Is Practiced" Can Never Satisfy The Clear And Convincing Evidence Standard.

Boiled down, Facebook's so-called "substantial evidence" is solely based (according to this Court's opinion) upon Leader's response to Facebook's question in 2009 about any claim of the '761 patent that "is practiced" by any Leader product and/or service. The Court has concluded that this is also an "inventor's admission" of the state of the invention back in 2002, seven years earlier.

This interpretation offends the senses in multiple ways.

Firstly, the present tense English verb "is practiced" cannot be used in reference to the past. This is the law as well as good grammar and plain common sense.

Secondly, as an inventor of internet software, Dr. Arunachalam considers it a fallacious notion to assume *without serious scientific investigation* (of the kind required by this Court's precedent) that a statement about the state of a piece of software in 2009 also applies to all times past. Any axiom that states that "the present state of a thing applies equally to all past states of the thing" is faulty. This Court must reject this faulty logic as the basis for the jury's beliefs about Interrogatory No. 9. No such logic exists in science or philosophy. A jury decision based on faulty logic or science must be set aside as a matter of law. *In re Bose Corp.*, 580 F. 3d 1240 (Federal Circuit 2009)("there is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the

charging party"). The jury *inferred* an improper meaning to the verb "is practiced" (*present* tense) that must be resolved against Facebook since, according to the Decision, the case turned on this question alone. (The question was not was practiced; *past* tense.) *All* the other so-called "substantial evidence" was contained in this leaky bucket.

Thirdly, stating the previous point a different way, the Court's interpretation belies the 2nd Law of Thermodynamics.[2] That law says that matter (and energy) is in a constant state of decay. Software is not exempt from this law. Software practitioners know that left unattended, software decays, breaks and stops working over time. Therefore, the notion that Leader's answer about the state of its software in 2009 applies equally to its state in 2002 is a ludicrous lapse of logic. It infers that nothing changed. Even if Leader's engineers never touched the software code between 2002 and 2009, entropy happened. Entropy alone changes things. Therefore, no 2009 answer about the software can, as a matter of science, imply anything about its previous 2002 state. Hard investigation is required. All Facebook presented was speculation, innuendo and surmise. Speculation is not evidence and this Court cannot overturn a validly issued US patent based upon speculation.

[2] The irreversible tendency over time toward the natural entropic dissolution of the system itself. Stated more popularly, "Matter is in a constant state of decay."

Clearly Facebook will keep repeating this speculation as long as the courts continue to turn a blind eye to its preposterousness.

Facebook's mere chase through the record for references in business documents to the Leader2Leader brand name did nothing to *prove* one way or the other whether Leader's invention remained exactly the same between 2002 and 2009. Further, the fact that Facebook's own expert witness argued that the only Leader source code put into evidence by Facebook *did not* practice the invention destroys their own argument

Why is this Court arguing for Facebook on both sides of the ball? Facebook is the adjudged infringer. Leader Technologies is the proven inventor. Remarkably, on the one hand, this Court supports Facebook's contention that the only source code in evidence ***did not*** contain the invention. And, on the other hand this Court *also* supports Facebook's contention that the same source code, the only source code shown to the jury, ***did*** contain the invention, and, was offered for sale prematurely. This duplicity defies common sense and is ambiguous at best. Facebook's own expert said the source code did not practice the invention, therefore, the invention could not have been offered for sale during the time in question. Ambiguity is not "clear and convincing."

What else did Facebook do during trial? They attacked the credibility of Michael McKibben, the true inventor, in front of an unsuspecting lay jury. They

called him a liar who was desperate to save his invention and implied (without any hard proof whatsoever) that he must have slipped up and tried to sell it too soon. This Court even added to the innuendo that Leader was "struggling financially." Decision 6. The record shows no analysis of Leader's financial statements anywhere. This statement by the Court as fact is pure hearsay that demeans the inventor and supports the infringer. This is unconscionable.

In short, Facebook played to the naiveté of an uncritical public to believe a lie. While a jury can be forgiven for being fooled, the purpose of this Court on appeal is to prevent such injustice. This Court's duty is to look for hard proof instead of simply relying upon the infringer's trial fiction. Facebook filled the jury's head full of gobbledygook.[3] Dr. Arunachalam prays that this Court does not reward such ignoble conduct any longer.

Where was the adjudged infringer Mark Zuckerberg in all this? Did the jury ever get to assess his credibility as compared to Mr. McKibben's? Remarkably no, because the district court refused to allow Leader Technologies to introduce his testimony or mention his name at trial. This makes absolutely no sense and was clearly prejudicial to Leader Technologies being able to tell the full story to the jury, and in being able to cross-examine the adjudged infringer in front of the jury.

[3] Merriam-Webster Dictionary: "wordy and generally unintelligible jargon;" Language that is meaningless or is made unintelligible by excessive use of abstruse technical terms; nonsense.

The Court's interpretation of the "is practiced" question is ambiguous at best. Therefore, as a matter of law, science and logic, an ambiguous premise *cannot* be the basis for a "clear and convincing" determination. Put another way, an ambiguous item of evidence, upon which all other alleged evidence is based,[4] cannot be the basis for overturning the presumption of validity of a patent issued in the United States of America.

By law, "is practice" cannot be applied in this case to any time prior to the time of the question, which was 2009. Therefore, Interrogatory No. 9 is not even ambiguous.

Even if one were to proceed down the path of reasoning that the fact finder might have believed the "is practiced" response applied to the past, this renders Facebook's interpretation ambiguous at best. Therefore, at best this response classifies as a mere "scintilla of evidence." *Sub*. The other so-called "substantial evidence" in support of this scintilla must, as items of logic, be considered as "sub-scintillas" of evidence, since their basis for validity relies upon the precedent scintilla and cannot themselves be elevated to a higher state of being than the scintilla parent. Then, adding up the lone scintilla with alleged "substantial" sub-

[4] The law of bivalence was breached by Facebook's assertion. A clear and convincing conclusion cannot be based upon a statement that can either be true or false (ambiguous). In fact, in law an ambiguous assertion is generally considered a false assertion for the purposes of impeachment.

scintillas, one cannot raise the sum state of this aggregate of evidence to the level of "clear and convincing" in law, science, logic or common sense. *Anderson v. Liberty Lobby, Inc.*, 477 US 242 (Supreme Court 1986) at 252 ("mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient").

An illustration of Facebook "scintilla" may help clarify the legal question. Here "S" represents a scintilla of *deficient* Facebook evidence:

$$S + S_{sub\text{-}scintilla_1} + S_{sub\text{-}scintilla_2} \ldots \neq \text{Clear and Convincing}$$

Now let's compare the legal standard of review for **substantial (clear and convincing) evidence** (Fig. 1) with Facebook's **substantial (deficient) evidence** whose sub-scintillas must be considered "gray" evidence at best (Fig. 2). "Gray" means the evidence is suspect at best since it is derived from a questionable premise. In Fig. 1 E_N represents an item of *clear and convincing* evidence.

E_1	E_2	E_3
E_4	E_5	E_6
E_7	E_8	E_9

Fig. 1 – *The Legal Standard of Review:* **Substantial (Clear and Convincing) Evidence**

Fig. 2 – Facebook's **Substantial (Deficient) Evidence**

This analysis illustrates the jury's and courts' confusion. Too much weight was given to the gobbledygook of Facebook's S(sub-scintillas) of evidence without first sorting out the S from the E(*n*) evidence. Without Interrogatory No. 9 there was no E evidence at all; *n*=null. Colloquially speaking, no attempt was made to separate the wheat from the chaff. Winnowing reveals that the evidence was *all chaff*—there was no wheat. Even a few grains of dodgy evidence is not clear and convincing.

Propriety dictates that a jury's belief about an ambiguous statement must be resolved in favor of validity (Leader Technologies, the real inventor). However, the fact is that Interrogatory No. 9 is not ambiguous as a matter of law. Therefore, Facebook fails to meet the clear and convincing burden of proof no matter how its deficient evidence is interpreted.

IV. The Court Neglected To Use Its Own Well-Settled Precedents To Test The Evidence—Precedents Upon Which The Entire Patent World Relies.

This Court is not a mere rubber stamp for district courts and juries. Its purpose is to take a critical look at what transpired in the lower courts for mistakes, prejudices and injustices, and make them right. This Court did not test *any* of Facebook's evidence against well-settled standards for assessing 35 U.S.C. 102(b) claims of on sale and public disclosure bar, including:

A. Element-by-Element Test: Did the Court perform an element-by-element prior art test against the alleged offers? **No.** *Advanced Display Sys., Inc. v.*

Kent State Univ., 212 F.3d 1272, 1282 (Fed. Cir. 2000)("describe every element of the claimed invention").

B. Uniform Commercial Code ("U.C.C.") Test: Did the Court evaluate the alleged offers against the U.C.C.? **No.** Do the alleged offers "rise to the level of a commercial offer for sale" pursuant to the U.C.C.? **No.** *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F. 3d 1041 (Fed. Cir. 2001) at 1047 ("we will look to the Uniform Commercial Code ("UCC")").

C. Reasonable Measures Secrecy Test: Did the Court perform the reasonable measures "deeds" test to determine if Leader had taken reasonable steps to protect its invention secrets from public disclosure? **No.** 18 U.S.C. §1839(3)(A)("reasonable measures to keep such information secret"); *US v. Lange*, 312 F. 3d 263 (7th Circuit 2002)("This makes it irrelevant that RAPCO does not require vendors to sign confidentiality agreements; it relies on deeds (the splitting of tasks) rather than promises to maintain confidentiality");[5]

D. No-Reliance Contractual Terms Test: Did the Court take notice of the no-reliance agreements in place through the signing of the nondisclosure agreements ("NDA") by alleged recipients of the offers; agreements that

[5] Leader Technologies involved leading experts in the field of intellectual property and trade secrets to help protect its secrets, namely law Professor James P. Chandler and Maj. Gen. James E. Freeze, U.S. Army (ret.). *See* p. 20; fn. 21.

contractually negated offers as a U.C.C. matter of law? **No.** U.C.C., Restatement (Second) Contracts (1981) §21 ("parties . . . may intend to deny legal effect to their subsequent acts");[6]

E. Experimental Use Test: Did the Court test the evidence to determine if the alleged offers were permitted experimental use and therefore exempt from the on sale and public disclosure bar? **No.** *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336 (Fed. Cir. 2002)(experimental use exemption).

F. Enablement Test of Brand References: Did the Court determine whether references to the Leader2Leader brand name "enables a person of ordinary skill in the art to practice the claimed method sufficient to prove on sale and public disclosure bar by clear and convincing evidence? **No.** *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F. 3d 1339 (Fed. Cir. 2000)("teaser" brand name references in selling documents do not trigger on sale bar because one of ordinary skill cannot build the invention from the mere reference to a brand name).

G. The Dictionary Act Test: Did the Court test the Interrogatory No. 9 evidence against the plain and ordinary meaning of English verb tense? **No.** *Carr v. US*, 130 S. Ct. 2229 (Supreme Court 2010) at 2234 ("the present tense form of the

[6] PTX-1058 at 5 (Wright Patterson NDA: only definitive agreements shall have any legal effect); DTX-725 (LTI-153002) at 5 (Vincent J. Russo NDA); S. Hrg. 108-100 (2003) (testimony places Dr. Russo at WPAFB on Apr. 2, 2001).

verb `to travel' . . ., which according to ordinary English grammar, does not refer to travel that has already occurred").

Inventors rely upon this Court to uphold patent property rights from infringers as a fundamental tenet of our democracy. If the Court does not uphold its own precedential standards, then all patent rights are thrown into disarray.

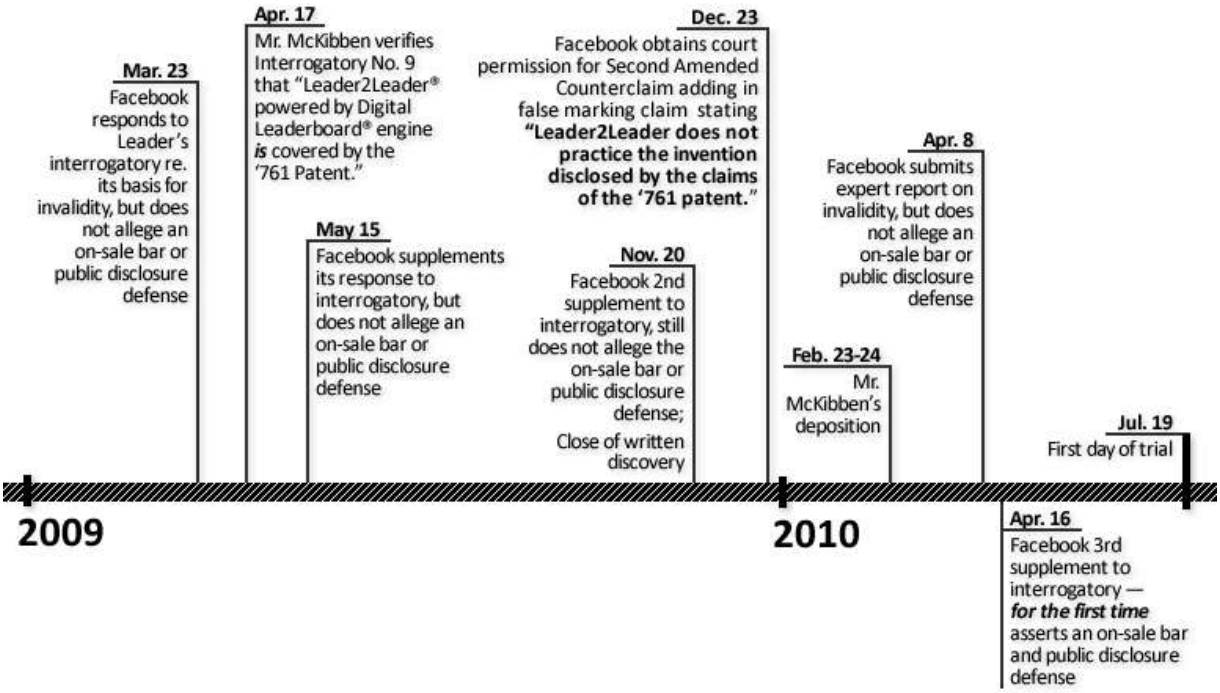
V. This Court Accepted Substantially Prejudicial Conduct In The Lower Court.

A. Prejudicially Late Claims Allowed. The district court changed judges just three months before trial. The new judge, as one of his first acts, allowed Facebook to amend its claims in an "about-face" and add on sale and public disclosure bar. Facebook should not have been permitted to claim on sale and public disclosure bar so close to trial. Besides being an illogical flip-flop in going from false marking (that no invention ever existed) to on sale and public disclosure bar (that an invention not only existed, but was offered for sale too early), this new claim was highly prejudicial since the district court did not allow any new discovery so that Leader could prepare its defenses. Such a decision crosses the line from judicial discretion to judicial prejudice.

For example, had Leader been allowed discovery, Leader would have been able to call expert witnesses including their former director law Professor James P. Chandler to testify on the subject of Leader's "reasonable measures" taken to

protect its trade secrets. He knew these facts from personal knowledge and involvement. Trial Tr. 10799:17-10800:22. The jury would have been unable to ignore Professor Chandler's authority and credibility since he was the chief author of the Federal Trade Secrets Act. His advice is relied upon by the U.S. Judiciary and Congress, among others. DTX-0179 ("Professor James Chandler, Director - President of the National Intellectual Property Law Institute and a principal security, intelligence and intellectual property advisor to over 202 jurisdictions worldwide"); S.Hrg. 104-499 (Economic Espionage); H.Hrg. Y 4.J 89/1:104/30 (Patents Legislation); H.Repts. 104-784, 788, 879, and 887; White House Press Sec., Jan. 18, 2001 (NIAC); DTIC-94-7-18-001.

Even a cursory review of Plaintiff-Appellant Leader's timeline (re-presented below) plainly shows the prejudice imposed on Leader Technologies by the late claim. Corrected Combined Petition 6.



Leader was unfairly surprised and the allowance of this untimely claim confused the proceedings, creating extreme prejudice against the inventor. *Sears, Roebuck & Co. v. Mackey*, 351 US 427 (Supreme Court 1956) at 437 ("any abuse of that [judicial] discretion remains reviewable by the Court of Appeals"); Fed. R.Evid. 403 (excluding evidence for prejudice and confusion); Fed. R.Civ. Proc. 26 (duty to disclose; prohibits unfair surprise).

B. Jury Binder / Interrogatory No. 9 Charade.

Facebook's court room theater surrounding Interrogatory No. 9 was highly prejudicial and went unchecked by the district court. The court allowed Facebook to present a heavily-redacted version of Leader's responses to Interrogatory No. 9

(over Leader's objection). Wigmore, Evidence, 3rd ed. ("Possibilities of error lie in trusting to a fragment of an utterance without knowing what the remainder was.").

To make matters worse, Facebook introduced the doctored interrogatory embedded deep inside a thick jury binder in a stunt that consumes *nine pages of trial transcript*. Tr. 10740:7-10749:3. Facebook handed the jury a heavy binder that contained a raft of Leader engineering drawings dated around 2000. Facebook's heavily-redacted few pages of Interrogatory No. 9 were buried in the back of the binder, forcing the jury to fold over many pages of engineering drawings to get to it. Each of the engineering drawings contained the Leader2Leader logo graphic. The evident innuendo was that these drawings *implied* that actual software programming code *may* lie behind them.

Then, in the *piece de résistance* the next morning, Facebook claimed it made a mistake, claimed they did not intend for the engineering drawings to be given to the jury, and asked for them to be removed before Leader could cross-examine the evidence. Over Leader's vehement objections the district court allowed the removal, at one point even suggesting that he tell the jury a lie as the reason for the removal. Tr. 10742:7-9 ("I've made an administrative mistake by admitting a large document when I meant to admit two pages"). Why would the judge offer to tell a fib for Facebook? Why would the judge allow such unvarnished prejudice? This conduct steps beyond judicial discretion into extreme prejudice.

By comparison, the district court in *Guy v. Crown Equipment Corp.*, 394 F. 3d 320 (5th Circuit 2004) at 2(b) excluded boxes of accident reports in a transparent attempt by the plaintiff to prejudice the defendant with innuendo by dumping boxes of documents on the jury. On appeal the judge's actions were affirmed, stating "The district court did not abuse its discretion in excluding all but the 360 accident reports for left-leg injuries incurred by operators of forklifts without doors. For starters, the court noted, and criticized, the 'theatrics' employed by Guy in offering the evidence — bringing boxes of accident reports into the courtroom, in the presence of the jury. Obviously, this was prejudicial. *See* Fed. R.Civ.Proc.103(c) (should not suggest inadmissible evidence to jury); Fed. R.Evid. 403."

C. Lack of Expert Witness Credibility.

Patent cases are often highly technical in nature, for this reason one of the solemn duties of the district court judge is to ensure the reliability of expert witnesses. It is the court's responsibility to disqualify unreliable science since the fact-finders rely on that testimony to assess the facts objectively. Without reliable expert testimony, the fact-finders cannot do their jobs, and their conclusions will be founded upon unreliable information. *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).

Facebook's expert witness Dr. Saul Greenberg's testimony regarding Leader's provisional patent was hopelessly flawed and unreliable. The district court had a duty to disqualify him and did not. Specifically, in a sad but somewhat humorous bit of hand waving, Dr. Greenberg first claimed that any comment he made about Leader's source code would be a "wild guess." Tr. 10903:10. Firstly, it is simply not credible for a Java programming expert such as Dr. Greenburg to claim not to know the general purpose of Java "import" statements. This alone was grounds for dismissal. Then, several transcript pages later he waxed eloquent "using my knowledge of programming" to assist Facebook with an opinion about that very code he said that he could not understand. Tr. 10904:8-10905:15. Such testimony is not credible. *See* also fn. 4 regarding the law of bivalence. Specifically, either he could or he could not understand the code. Both claims cannot be true. He claimed to later understand what he could not understand earlier. This ambiguous testimony should have been discarded by the district court.

Dr. Greenberg's contradictory claims discredit *all* of his testimony. Since his was the only testimony arguing against the validity of Leader's provisional patent, Facebook's on sale and public disclosure bar claim would have been moot without Greenberg's unreliable testimony. *Christophersen v. Allied-Signal Corp.*, 939 F. 2d 1106 (5th Circuit 1991) at 1127 ("If the record establishes a critical fact contrary to the expert's testimony, or if a court may take judicial notice of a fact that fatally

contradicts the assumptions of an expert, then his or her testimony ought to be excluded").

D. Leader Was Denied The "Crucible Of Cross-Examination" Of Mark Zuckerberg, The Adjudged Infringer.

The jury was never given the opportunity to hear from Mark Zuckerberg because the district court would not allow Leader to introduce his testimony or even mention his name at the trial. Facebook attacked the credibility of the true inventor of '761, Michael McKibben, but Leader's attorneys were not given the opportunity to put the adjudged infringer Mark Zuckerberg on the stand to test his credibility by comparison. Facebook called Mr. McKibben a liar. The jury was bent toward that unproven innuendo. How might the trial have gone if Leader were given the opportunity to inquire of Mr. Zuckerberg directly about where he obtained the Leader source code? It is quite likely the texture of this trial would have changed completely and the focus would have been rightly placed on the adjudged infringer and not solely on the rightful inventor.

How can any thinking person believe that disallowing Mark Zuckerberg's testimony at this trial was not prejudicial and did not step beyond the bounds of judicial discretion? *Davis v. Alaska*, 415 US 308 (Supreme Court 1974)("We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination"); *See* also *Crawford v. Washington*, 541 US 36 (Supreme Court 2004) at 61, 74

("testing in the crucible of cross-examination . . . cross-examination is a tool used to flesh out the truth, not an empty procedure").

Leader's constitutional right to test Mark Zuckerberg "in the crucible of cross-examination" was denied, leaving Facebook free to attack the true inventor's credibility with impunity. Such a denial is beyond judicial discretion.

New evidence is emerging in other venues that casts serious doubt on Mark Zuckerberg's veracity (veracity that the district court in this case refused to allow Leader Technologies to test). For example, Mr. Zuckerberg now claims for the first time in a sworn declaration that "I conceived of the idea for Facebook in or about December 2003."[7] However, a conflicting witness claims that Mr. Zuckerberg's claim is false.[8] This witness (who recently passed a lie detector test on this question) also says that Mark Zuckerberg sent him Leader Technologies' White Papers in February of 2003.[9] If this is true, then Mark Zuckerberg perjured himself in his Leader deposition since he answered "absolutely not" when asked if he had seen a

[7] Decl. of Mark Elliot Zuckerberg, *Paul D. Ceglia, v. Mark Elliot Zuckerberg and Facebook, Inc.*, 10-cv-569-RJA (W.D.N.Y. 2010), Doc. No. 46, June 1, 2011, Ex. B.

[8] Def. Mot. to Enforce, Jun. 27, 2012, Ex. D., Aff. of David London, No. 10(c), *Edward B. Detwiler et al, v. Leader Technologies, et al*, 09-CV-006857 (Franklin Co. (Ohio) C.P. 2009).

[9] *Id.*, No. 32.

copy of Leader's White Papers in 2003-2004, according to Leader attorneys.[10] The district court blocked Leader's attempt to introduce this evidence at trial.

Mr. Zuckerberg also claimed in 2006 testimony to have built the entire Facebook platform in "one to two weeks" while studying for Harvard final exams in January 2004.[11] However, this claim is now hotly contested by at least two witnesses. One witness claims that Mr. Zuckerberg was waiting for Leader's source code to be "debugged" all through 2003. If this is true, then Mr. Zuckerberg perjured himself again, and proof of patent infringement in this case becomes a *fait accompli*.[12] Another witness states that another heretofore unidentified person named "Jeff" was helping Mr. Zuckerberg, in late 2003[13] thus contradicting his *ConnectU* testimony where he claims to have done everything all by himself .[14]

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[10] Tr. 1107:8, Heidi Keefe, Judge's Conference, Jul. 24, 2009, Doc. No. 77.

[11] Zuckerberg Deposition, Tr. 41:10; 82:4, Apr. 25, 2006, , *ConnectU LLC v. Zuckerberg et al*, 1:04-cv-11923-DPW (D.Mass. 2004).

[12] *Detwiler* (fn. 9 above), Aff. of David London, No. 58.

[13] Amended Complaint, No. 39, Apr, 11, 2011, *Ceglia v. Zuckerberg* (Zuckerberg: "if you could send another $1000 for the facebook (sic) project it would allow me to pay my roommate or Jeff to help integrate the search code and get the site live before them").

[14] Zuckerberg Deposition, Tr. 37:15-20 (Q: "Were you the initial code writer of the initial code for Facebook? A. Yes. Q. Was there anybody else who assisted in writing the initial code for Facebook? A. No.").

Mr. Zuckerberg stated under oath in the *ConnectU* deposition that he had "other" sources for the first version of Facebook, but not surprisingly, he couldn't remember what they were. Was this "Jeff" one of those "other" sources? Facebook did not produce this Nov. 22, 2003 "Jeff" Email to Leader.[15]

Perhaps more egregious than anything else, Facebook provided no copies of Facebook's source code or computer hard drive information to Leader from the critical 2003-2004 timeframe during discovery. However, new information has surfaced that volumes of 2003-2004 information not only exist, but that **Facebook is currently attempting to have it destroyed**. That evidence was never produced to Leader Technologies and may include "at least five computers belonging to and used by Defendant Zuckerberg while a student at Harvard."[16] These computers contain things like "Instant Messaging logs" and source code from Mr. Zuckerberg' s activity at Harvard in 2003-2004 that was never produced to Leader.[17] This

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[15] *Id.*, Tr. 36:22 (Zuckerberg: "I'm sure there are other things").

[16] Temporary Restraining Order, Doc. No. 232, Nov. 25, 2011, *Ceglia v. Zuckerberg*, (to prevent Facebook's destruction of evidence)("Plaintiff has come across evidence that Defendants and defense counsel have suppressed evidence, made fraudulent arguments related to that suppressed evidence and actively sought, encouraged, urged and solicited destruction of that evidence from those whom [sic] have possession of it.");

[17] Motion Hearing, Tr. 19:21, Doc. No. 361-19, Jun. 2, 2008, *ConnectU, Inc. et al v. Facebook, Inc. et al*, 1:07-cv-10593-DPW, Aug. 19, 2011 (D.Mass. 2007).; *Id.*, Doc. No. 361-6, p. 7 ("To date, TheFacebook, Inc. (the "Facebook") has produced

withholding of evidence is unconscionable, especially with the specter that it would prove not only patent infringement, but outright theft.

Facebook's "song and dance" in *all* the litigation against them, including this one, has been that they don't understand the scope of the ligation.[18] This **predatory obfuscation tactic**[19] needs to be exposed by this Court for the whole world to see, understand, and no longer permit as a tactic of obstruction to prevent the rightful owners of patent properties from enjoying the fruits of their labors. Predators should be prevented from using the Rules of Civil Procedure to *hide* their theft of patent properties. **This predatory litigation technique will destroy the small American inventor by putting such disincentives in the way that they will no longer bother sharing their ideas with the public.** *See LELAND STANFORD*, fn. 1 above. As another case in point, the eventual discovery procedure of the Zuckerberg hard drives in *ConnectU* was so narrowly defined as to be able to cleverly avoid any surfacing of

---

three different versions of its source code, with file dates spanning from early to mid 2004 up through 2005").

[18] Tr. 1106:13, Paul Andre, Judge's Conference, Jul. 24, 2009, Doc. No. 77.

[19] Almost one year into the *Leader v. Facebook* litigation, Facebook's Cooley Godward LLP attorney Heidi Keefe continues the obstructive hand-waving mantra "we do not still actually have a good grasp on what they are accusing of infringement." *Id.* 1116:8-9. Similar discovery disputes in the *ConnectU* case went on for the first *two years* of the litigation.

the Leader Technologies' source code.[20] Leader should have been given an opportunity to study all of these hard drives for evidence of its source code and white papers that New Zealander David London testifies and verifies by reputable polygraph he received from Mr. Zuckerberg in Feb. 2003. See fn. 9.

All these discrepancies in Mr. Zuckerberg's story, the possibility that he actually stole Leader's source code, and the possible deliberate concealment of discovery information deserved to be explored by Leader, but Leader was denied that constitutional opportunity by the district court for such inquiry at trial. One of Leader's claims was willful infringement. They were prevented by Facebook's stealth in hiding behind the Rules of Civil Procedure, blocking a full confrontation of Mr. Zuckerberg on all these matters. Surely the spirit and intent of the Rules are not to *obstruct* justice as has occurred here. Such decisions by the lower court step well beyond the bounds of judicial discretion.

VI. The Efficacy of Nondisclosure Agreements Are Placed In Doubt By The Court's Decision.

Unless the Court changes its mind, its treatment of the efficacy of nondisclosure agreements throws the entire patent world into turmoil. Leader

[20] Order for Discovery of Computer Memory Devices, Doc. No. 361-18, Aug. 19, 2011, p. 4 of 22, *ConnectU v. Facebook* (Order restricting the search to only "PHP or HTML source code"). Leader Technologies' source code was written in Java and XML. Facebook was found guilty of infringing this Leader source code on 11 of 11 claims.

Technologies exhibited admirable diligence in protecting its secrets, even hiring eminent directors who are experts in the field of trade secrets and security. The record shows not just reasonable measures, but extraordinary measures to protect its inventions from public disclosure.[21]

If this Court continues to ignore Leader's reasonable measures deeds as well as their written nondisclosure agreements, the impact of this precedent on the patenting process will be devastating. This Court will be saying that secrecy agreements, no matter how diligently handled, are irrelevant to maintaining secrecy during the invention process. Every infringer from this day forward will attack rightful inventors over the irrelevance of their NDAs and will cite this case as precedent.

Many if not most small inventors seek financial backing to sustain their invention efforts. If secrecy agreements are rendered irrelevant by this case precedent, the small inventors will have no ability to raise research and development funds. This decision will have effectively made the invention patenting process the exclusive domain of large, well-funded companies who can

[21] For example, another Leader Director was Maj. Gen. James E. Freeze, U.S. Army (ret.), former head of the U.S. Army Security Agency; former Asst. Deputy Dir. of the National Security Agency (NSA); author of "The Freeze Report" on national laboratory security; H.Hrg. 106-148; GAO/RCED-93-10; H.Hrg. 100-T91BB192 (J. Tuck); DTX-0179 ("Major General James Freeze, US Army (ret.), Director - former head of the US Army Security Agency; Asst. Deputy Director of NSA; author of "The Freeze Report" on Department of Energy security").

afford to fund research internally. Such a change in the tenor of patent laws requires an Act of Congress based upon the will of the Citizens of the United States. Such a change in the interpretation of the U.S. Constitution Article I, § 8, cl. 8 is outside the jurisdiction of this Court.

CONCLUSION

For the reasons stated above, Dr. Arunachalam strongly urges the Court to grant Leader Technologies' petition, re-hear this case and rule in favor of Leader Technologies in this matter of critical importance to all inventors and patent holders, present and prospective.

Respectfully Submitted,

/S/

July 10, 2012

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for Amicus Curiae Dr. Arunachalam

APPENDIX

CURRICULUM VITAE

Lakshmi Arunachalam, Ph.D.
Amicus Curiae

Dr. Lakshmi Arunachalam is a thought leader, inventor and pioneer in Internet multimedia web applications. She is Founder, Chairman and CEO of WebXchange, Inc, an online web applications platform for real-time exchange of multimedia information on the net, connecting users and devices with multimedia content owners and applications on the net. She holds key Internet patents on Internet Channel Control and web applications. In recent times, she has been focusing on patent licensing.

Dr. Arunachalam is also Chairman and Founder of Pi-Net International, Inc., a professional services company specializing in IT, IP, software, networking, security and Internet-related technologies. Dr. Arunachalam is also Chairman and Founder of e-pointe, Inc, Nithya Innovations, Inc. and WebXmagnet, Inc.

Prior to her current positions, Dr. Arunachalam directed network architecture at Sun Microsystems, IBM, AT&T Bell Labs, Carnegie Mellon Andrew File System and NSFNET. She held leadership positions in the IEEE802 and IEEE

POSIX X.500 standards bodies. She also worked at NASA Johnson Space Center with MITRE Corporation.

In addition to her patent and intellectual property work and entrepreneurial ventures, Dr. Arunachalam has taught at the University of Toronto and University of Madras. Her courses study the effects of the Internet and media technology on society. She has also taught courses in physics and computer networks, as well as refereed for computer journals. Dr. Arunachalam was a post-doctoral fellow at Rice University, Houston, Texas. She received her Ph.D. in Electrical Engineering from Salford University, Manchester, England, and M.S. in Physics from Simon Fraser University, British Columbia, Canada, graduate courses in Computer Science from University of Houston, and a B.S. and M.S. in Physics from University of Madras, India. She has published several books and papers in computer networking and holds patents, namely U.S. Patent Nos. 5,778,178; 6,212,556; 7,340,506; 5,987,500; 7,930,340; 8,037,158; and 8,108,492. She also has patents pending, namely U.S. Patent Application Nos. 12/628066; 12/628,068 (Notice of Allowance issued); 12/628,069; 12/932,758; and 13/199,077.

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

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b), copies of the foregoing BRIEF OF *AMICUS CURIAE* LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC in green cover pursuant to Fed. R. App. P. 28.1(d) including a CERTIFICATE OF INTEREST and ENTRY OF APPEARANCE, were served on the following recipients by overnight mail:

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717 Madison Place, N.W.
Room 401
Washington D.C. 20439

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Attorney for Defendant-Appellee

A copy of the foregoing was also provided to Americans for Innovation at scribd/amer4innov for publication.

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Lakshmi Arunachalam, Ph.D.

July 10, 2012

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIRES, AND TYPE STYLE REQUIREMENTS

1. This BRIEF OF *AMICUS CURIAE* LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) or Federal Rule of Appellate Procedure 28.1(e). 2. The brief contains 6425 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) or Federal Rule of Appellate Procedure 28.1(e) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in 14 point Times New Roman.

Any noncompliance with the aforementioned Rules is purely inadvertent and will be corrected immediately upon notification.

July 10, 2012

/S/
Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

ENTRY OF APPEARANCE

Please enter my appearance:	Pro se
I am:	Amicus curiae
As amicus curiae, I support:	Petitioner / Plaintiff-Appellant Leader Technologies, Inc.
My address and telephone are:	Lakshmi Arunachalam, Ph.D. 222 Stanford Avenue Menlo Park, CA 94025 (650) 854-3393 laks@webxchange.com *for Amicus Curiae* Lakshmi Arunachalam, Ph.D.
Certificate of Interest:	See page 2.
July 10, 2012	/S/ Signature Lakshmi Arunachalam, Ph.D. *for Amicus Curiae* Lakshmi Arunachalam, Ph.D.

cc.

Paul Andre, Esq., KRAMER LEVIN LLP, Counsel for Leader Technologies, Inc.

Heidi Keefe, Esq., COOLEY GODWARD LLP, Counsel for Facebook, Inc.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is: **Lakshmi Arunachalam**
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

July 10, 2012

/S/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

V.

FACEBOOK, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Delaware in Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark

---

NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D. FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC*

Civil Appeal No. 2011-1366

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222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

July 10, 2012

MEMORANDUM IN SUPPORT

Inventor and patent holder Lakshmi Arunachalam, Ph.D. ("Dr. Arunachalam"), as *amicus curiae*, respectfully requests leave of this Court to file a BRIEF OF AMICUS CURIAE LAKSHMI ARUNACHALAM, PH.D. IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING *EN BANC* dated July 10, 2012.

Dr. Arunachalam is an inventor and holder of numerous patents in the field of Internet technologies with a principal place of business in Menlo Park, California. She comments in favor of the Petitioner-Appellants' Corrected Combined Petition For Panel Rehearing And Petition For Rehearing *En Banc* Of Plaintiff-Appellant Leader Technologies, Inc. dated June 12, 2012.

Dr. Arunachalam believes this petition raises important issues of patent law that are critical to the future of the patenting process, and most especially for those engaged in the protection of Internet software technologies. As grounds for this request, Dr. Arunachalam states that her *amicus curiae* brief would be of special assistance to the Court because this proceeding presents a number of constitutional, legal and procedures issues of critical importance to the holders of existing patents as well as to prospective patent holders.

Dr. Arunachalam offers a unique perspective as a long time inventor and patent holder who has been involved with protecting her inventions for more than a

decade against the predatory litigation tactics of large law firms which can often deceive busy courts and result in injustices against an inventor's rightful property and denial of rightful returns to their investors who support innovation.

For the foregoing reasons, Dr. Arunachalam, as *amicus curiae*, respectfully requests that this Court grant this motion. The Plaintiff-Appellant's petition is pending and this motion is being submitted in support of the Court's consideration of the petition. As such, no return date is applicable.

Dated: July 10, 2012
Menlo Park, California

Respectfully submitted

/S/

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

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b) I do hereby certify that twelve (12) copies of the foregoing NOTICE OF MOTION OF LAKSHMI ARUNACHALAM, PH.D. FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF LEADER TECHNOLOGIES' PETITION FOR REHEARING AND REHEARING EN BANC will be sent to the Clerk of the Federal Circuit at:

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

Pursuant to Fed. R. App. P. 31(b), copies of the foregoing were served on the following recipients by overnight mail:

Two (2) copies to:
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Lakshmi Arunachalam, Ph.D.

July 10, 2012

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NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2011-1366

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Delaware in case no. 08-CV-0862, Judge Leonard P. Stark.

ON MOTION

Before LOURIE, MOORE, and WALLACH, Circuit Judges.

ORDER

Lakshmi Arunachalam, Ph.D. moves for leave to file a brief as amicus curiae in support of Appellant's corrected combined petition for rehearing and rehearing en banc.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

July 11, 2012
Date

Jan Horbaly
Clerk

cc: Paul J. Andre, Esq.
Thomas G. Hungar, Esq.
Lakshmi Arunachalam, Ph.D.

U.S. Court of Appeals for the Federal Circuit
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