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[Leader Tech Inv. Prot. Act 00-0000,  
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**UNITED STATES SENATE AND  
HOUSE OF REPRESENTATIVES**

**Leader Technologies Inventor  
Protection Act**

**AGENCY:** U.S. Legislature

**ACTION:** Notice of proposed act to (a) correct a Supreme Court decision that threatens American innovation and the credibility of the U.S. patent system, (b) investigate the judicial corruption that led to the failed decision, and (c) expand 28 U.S.C. § 455 on judicial disqualification to require a Certification on Conflicts Interest for judges and judicial employees in all branches of government.

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**SUMMARY:** In accordance with constitutional powers granted to Congress in Article I, Section 8, Congress proposes this Act regarding patent protection and related judicial ethics matters to protect the general welfare.

A seminal patent infringement case captioned *Leader Techs, Inc. v. Facebook, Inc.*, 770 F. Supp. 2d 686 (D.Del. 2011) determined that Facebook was in literal infringement on 11 of 11 claims of Leader Technologies' social networking invention. In short, the court determined that the engine running Facebook is Columbus-OH-based Leader Technologies' invention.

Despite the infringement decision against Facebook, the court invalidated Leader's patent on an obscure on-sale bar. That claim was added by Facebook and permitted by the judge just one month before trial. The judge *blocked* Leader from additional discovery to prepare defenses on this new claim—a breach of due process.

Facebook did not put forward any computer source code or expert witnesses to prove their new claim. No well-settled on-sale bar tests were performed, most notably *Pfaff v. Wells Electronics, Inc.*

The invalidation has survived solely on attorney-fabricated evidence and argument—not on hard evidence. Despite the lack of evidence, much less clear and convincing evidence, all subsequent appeals through to the U.S. Supreme Court declined to overturn the district court. Worse, the Federal Circuit fabricated new evidence and argument for Facebook, without a hearing, after Facebook's argument fell apart. The Federal Circuit even fabricated new evidence not even put forward at trial by Facebook—also a breach of due process.

Subsequently, an unprecedented third reexamination of Leader's patent was ordered by the Director of the U.S. Patent Office (ten years after issuance) and assigned to a judge who was formerly employed by Microsoft and IBM, two large Facebook stockholders and stakeholders. Facebook lost both of the previous two reexamination on all counts.

A Freedom of Information Act (FOIA) request to the Patent Office was assigned to a Patent Office deputy FOIA counsel formerly employed by Facebook's attorney. That person redacted most of the contents and claimed "executive communication privilege."

Investigators suspicious of misconduct have uncovered numerous breaches of ethics and law on the part of the courts. Chief among those breaches is judge bias based on financial holdings. Required judicial financial disclosures revealed that the district court judge, each of the judges in the Federal Circuit three-judge panel, and the Chief Justice of the

Supreme Court all held/hold stock in Facebook that was/is notoriously known in the public record.

The purpose of this Act is to (a) remove the taint of corruption that hangs over this case by fully validating Leader Technologies' patent property, (b) investigate and punish the wrongdoers, and (c) upgrade the judicial ethics laws from the lessons learned. Congress believes that compliance with the Act will help restore public confidence in the patent system, and the justice system in general.

**FOR FURTHER INFORMATION**

**CONTACT:** Congressman Pat Tiberi at (202) 225-5355 Fax: (202) 226-4523

**SUPPLEMENTARY INFORMATION:**

In accordance with powers granted to Congress in the U.S. Constitution, Article I, Section 8, Congress proposes this Act regarding patent protection and related matters to protect the general welfare. The U.S. Constitution grants Congress power to "lay and collect Taxes...to pay the Debts and provide for the common Defense and general Welfare of the United States." It also grants Congress "Power To...promote the Progress of Science and useful Arts, by security for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries..."

Small business inventors' creativity is the lifeblood of American innovation. However, the misconduct of the federal courts in *Leader Technologies, Inc. v. Facebook, Inc.* No. 12-617 (U.S. Nov. 16, 2012)(cert. denied) will have a chilling effect on the future of American inventiveness, unless Congress acts to right the wrongs committed at the hands of judges who chose personal financial gain and cronyism over justice.

Large and small inventors must be confident of a level playing field when they come to the federal courts to protect their intellectual property and patents. Otherwise, the incentive to invent and share those innovations with the public through the filing of patents will dry up.

On Apr. 2, 2013, President Obama stated in his BRAIN INITIATIVE press release: "Ideas

are what power our economy. It's what sets us apart... every dollar we spent on the human genome has returned \$140 to our economy." The judicial misconduct in *Leader v. Facebook* has a chilling effect on this goal.

No small inventor can compete with a well-funded infringer who is permitted to corrupt the federal patent system with cronyism, bribery and undue influence. Federal ethics laws are already on the books, but they were not followed in *Leader v. Facebook*.

Instead we witnessed Judges with conflicts of interest due to their financial holdings; Judges ignored well-settled precedent law; due process was violated. Government stimulus funds looped back to Facebook attorneys and their cronies during the proceedings. The White House even interfered in a patent reexamination. Such impropriety cannot be tolerated if the public is to have any trust in our legal system.

#### **LEADER TECHNOLOGIES INVENTOR PROTECTION ACT**

The Leader Technologies Inventor Protection Act declares the patent invalidating decisions of the Delaware District Court, the Federal Circuit Court of Appeals and U.S. Supreme Court petition denial for *Writ of Certiorari* improper. It fully recognizes **U.S. Patent No. 7,139,761** and its rightful owner, Leader Technologies and its lead inventor, Michael T. McKibben. Further, the Act affirms the jury decision on literal infringement by Facebook on 11 of 11 claims.

The Act remands the matter to the District Court to complete the unprosecuted parts of the trial, namely, damages, injunction and willful infringement—matters that were bifurcated from the trial previously. The new proceedings shall occur under the jurisdiction of an unbiased judge who has followed the certification procedures described herein.

#### **CERTIFICATION OF CONFLICTS OF INTEREST FOR JUDGES AND JUDICIAL EMPLOYEES**

The Act also establishes a new statutory procedure for all federal judges and judicial employees in all branches (including but not limited

to court clerks, interns, law clerks, clerk administrators) to provide a Certification on Conflicts of Interest *before* they hear or are otherwise involved in a case (e.g., a court clerk, interns, law clerks, clerk administrators, etc.)

The Act requires judges and judicial employees to fully comply with the provisions of 28 USC § 455, including, but not limited to (b)(5) ("He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person.")

*Leader v. Facebook* has shined a spotlight that proves federal judges are not self-policing their ethical requirements, and that they need specific procedures to follow.

The Certification of Conflicts of Interest should specifically include disclosure of financial holdings of not only the judge and his/her spouse or significant other, but it must also include family members and relevant business associates to the "third degree of relationship" as already prescribed by 28 USC 455.

Existing ethics regulations, as well as the new regulation mandated in this Act regarding judicial disqualification, must be followed and docketed timely in the normal course of bringing forward a legal matter. Clerks, interns and clerk administrators of any kind that touch a case must also comply. In short, no judicial employee is exempt.

At the moment a judge is assigned to a case, he or she and all staff employed who may become involved shall file the Certification of Conflicts of Interest with his/her court. The litigants shall have 28 days to evaluate the certification and file any motions regarding that disclosure. No response shall be deemed acceptance of that judge's oversight of the case.

If changes in court staffing are required during a case, the litigants shall be given the opportunity to evaluate each new person's disclosure pursuant to the procedures of this Act. The litigants will be given 28 days to evaluate the new case administrator proposed.

#### **CONFLICTS EVALUATION COUNCIL**

All motions related to the Certification of Conflicts of Interest

shall be evaluated and ruled upon by a seven-member Judicial Conflicts Evaluation Council. This council shall be comprised of a majority of non-lawyer members appointed to one-year, non-renewing, staggered terms by the Congressperson for the district in which that court or tribunal operates.

The involvement of the elected Congressperson in the composition of the Conflicts Evaluation Council helps create public accountability over the decisions regarding judicial conflicts of interest. It also removes the temptation among the much-loathed "old boy" network of attorneys and judges to otherwise excuse unethical conduct.

Having a majority of laypeople injects another layer of public accountability and common sense into an often unintelligible legal process. This process is for the citizens, and not for an otherwise privileged class of legal practitioners. The Founding Fathers rejected the notion of a privileged class. Despite this, judges are all too tempted to excuse themselves from accountability, which in itself is an exclusive privilege to which they are not entitled under the Constitution.

#### **NO MAN SHALL HAVE EXCLUSIVE PRIVILEGES**

Founding Father John Adams wrote in Article VI of the Massachusetts Constitution: "No man . . . [shall] have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community." He wrote in Article V: "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."

Judges too, are accountable to the people. The "reasonable person" test guides much of law. Having those reasonable persons on the Council brings that reasonable person "in real life" directly to the ethical situations that arise, in lieu of having lawyers and judges discuss these reasonable persons as abstract third party objects

No exemptions shall be permitted to this procedure. Family privacy concerns of the judges have been raised, including requests to permit redactions of such information. Congress is disinclined to permit redactions to these public disclosures, since that will inevitably lead to abuses and cronyism.

Judges permit the public disclosure of personal records on a daily basis. Other public officials make conflicts disclosures. The Business Judgment Rule requires such disclosures of company directors. Turnabout is only fair play.

The argument that lack of redactions will have a chilling effect on the willingness of candidates to stand for a judgeship is counterbalanced by the public's need to know if that candidate and his/her family relationships make that person fit for public office. Without information with which to evaluate conflicts of interest, the public is in the dark and the old system of cronyism and looking the other way returns.

#### **A JUDGE IS A SACRED TRUST**

If a person does not want this level of public scrutiny, then he or she should not stand for judge. The position of judge is one of Democracy's most sacred trusts. It cannot be permitted to deteriorate into a game of sniggers, winks, charades and confidence tricks.

The Act mandates this public certification so that the public itself may become more active in the process of checking judges as public officials against judicial abuses like those encountered in *Leader v. Facebook*.

All of the judges in the *Leader v. Facebook* case held stock in Facebook during the proceedings. Propriety and common sense dictate that Congress cannot let such a flagrant breach of the law, morals, ethics, common sense and decency pass without redress.

The Act will help level the playing field in American courts and act as a further check against influence peddling.

#### **INDEPENDENT INVESTIGATOR ON JUDICIAL AND ATTORNEY CORRUPTION**

The Model Rules of Professional Conduct Preamble [6] states "a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

Canon 2(A) of the Code of Conduct for U.S. Judges and Judicial Employees states "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 2(B) of the Code states "A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge."

These codes of ethics were ignored egregiously in *Leader v. Facebook*. Therefore, the Act instructs Congress to appoint and adequately staff an independent, special investigator to investigate the conduct of each judge, judicial employee and attorney in *Leader v. Facebook*.

The investigation should be completed within 12 months. The results of these investigations and recommendations for discipline and sanctions, if any, shall be submitted to the House Oversight Committee on Government Reform, and the Judiciary Committees of the House and Senate for further action. All investigation results and recommendations shall be accessible to the public at all times. This is required to avoid further cronyism and undue influence.

#### **CITATIONS**

*Leader Technologies, Inc. v. Facebook, Inc.* No. 12-617 (U.S. Nov. 16, 2012)(cert. denied).

*Leader Techs, Inc. v. Facebook, Inc.*, 678 F.3d 1300 (Fed. Cir. 2012).

*Leader Techs, Inc. v. Facebook, Inc.*, 770 F.Supp. 2d 686 (D.Del. 2011).