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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MEKIKI CO., LTD and MEKIKI CREATES
CO., LTD.,

Plaintiffs and
Counter-Defendants,

v.

FACEBOOK, INC.,

Defendant and
Counterclaimant.

Case No. 5:10-cv-2721-LHK (HRL)

JOINT CASE MANAGEMENT STATEMENT

1 In accordance with Fed.R.Civ.P. 26(f) and Local Rule 16-9, Plaintiffs Mekiki Co., Ltd. and
2 Mekiki Creates Co., Ltd. ("Mekiki") and Defendant Facebook, Inc. ("Facebook") respectfully submit
3 the following Joint Case Management Statement in preparation for the November 5, 2010 Initial Case
4 Management Conference. Counsel for the parties conducted a teleconference on September 1, 2010.
5 Harold Barza, Chris Mathews, and Scott Florance participated on behalf of Mekiki. Heidi Keefe,
6 Adam Pivovar, and Reuben Chen participated on behalf of Facebook.

7 1. Jurisdiction and Service: This Court has jurisdiction over the subject matter of
8 Mekiki's claims of patent infringement and Facebook's patent-related counterclaims under the laws of
9 the United States, including statutes of United States Code Titles 28 and 35. The parties' pleadings
10 were filed in the District of Delaware between October 7, 2009 and January 21, 2010. (D.I. 1, 6, 13.)
11 The case was transferred to the United States District Court for the Northern District of California on
12 June 21, 2010, and ultimately assigned to this Court. (D.I. 39, 47, 52.)

13 2. Facts: This is a patent infringement suit. Mekiki's Complaint alleges infringement of
14 United States Patent Nos. 6,879,985 ("the '985 patent"), 7,493,342 ("the '342 patent") and 7,496,603
15 ("the '603 patent"), each entitled "Human Relationships Registering System, Method and Device For
16 Registering Human Relationships, Program For Registering Human Relationships, and Medium
17 Storing Human Relationships Registering Program and Readable by Computer" (collectively the
18 "Patents-in-Suit"), and Facebook has asserted corresponding defenses and counterclaims.

19 3. Legal Issues:

20 (a) ***Mekiki's Statement***: Mekiki contends that Facebook's technologies utilize Plaintiffs'
21 fundamental and patented social networking intellectual property. For example, Facebook's utilities
22 that (1) allow a user to establish a relationship with a friend of an existing friend, (2) identify to a user
23 the mutual friends shared by that user and an existing friend, and (3) suggest potential new friends to a
24 user, infringe the Patents-in-Suit. Facebook has infringed the claims of the Patents-in-Suit at least by
25 making, using or selling the inventions claimed in the Patents-in-Suit.

26 (b) ***Facebook's Statement***: Facebook denies that it infringes any valid and enforceable
27 claim of the Patents-in-Suit. Facebook further contends that Plaintiffs' claims for relief are barred
28 because the claims of the Patent-in-Suit are invalid, unenforceable, and fail to comply with statutory

1 or regulatory requirements. On these same grounds, Facebook seeks a declaratory judgment of non-
2 infringement, invalidity, and unenforceability of the Patents-in-Suit.

3 3.1 Disputed Points of Law:

4 (a) Whether Facebook's accused products, processes, or services infringe any of the claims
5 of the Patents-in-Suit.

6 (b) Whether any of the claims of the Patents-in-Suit are invalid or unenforceable.

7 (c) The meaning of the terms of the Patents-in-Suit.

8 (d) If any valid and enforceable claim of the Patents-in-Suit is infringed by Facebook (and
9 not invalid or unenforceable), what damages and/or other relief would be appropriate.

10 4. Motions: The parties anticipate that summary judgment motions will be filed at least
11 on the issues of infringement or non-infringement, invalidity, and unenforceability.

12 5. Amendment of Pleadings:

13 (a) **Mekiki's Statement:** At this time, Plaintiffs do not anticipate amending the pleadings.
14 On Friday, September 17, 2010, Facebook sent Mekiki's counsel a letter stating that it would seek
15 leave to amend its declaratory judgment counterclaims to add two unasserted Mekiki patents to this
16 case unless Mekiki grants Facebook "an unconditional covenant not to sue" on those patents "based on
17 the current and past systems, methods, operations, and features of Facebook's products and services."
18 At the time of filing this joint statement, Mekiki was in the process of reviewing Facebook's request,
19 and had informed Facebook that it will respond to Facebook in due course.

20 (b) **Facebook's Statement:** Plaintiffs are the assignees of two additional patents that are
21 part of the same family, share the same title, and share extensive overlap in claimed subject matter as
22 the Patents-in-Suit, but which Plaintiff has not included in the Complaint. Before transfer, Mekiki
23 indicated that it intended to add one of these patents to its Complaint, but has since decided otherwise.
24 To avoid the threat of duplicative suits, Facebook has asked Mekiki to add the patents to its complaint
25 or to grant a Facebook covenant not to sue on the additional patents. Unless Mekiki agrees to grant a
26 covenant not to sue, Facebook will be forced to supplement its pleadings to add all of Plaintiffs'
27 patents to this suit, resulting in a case with all five (5) of Mekiki's patents (collectively, "Mekiki's
28 Five Patents").

1 6. Evidence Preservation: The parties confirm that they have discussed and taken steps to
2 preserve electronically stored information consistent with the requirements of the Federal Rules of
3 Civil Procedure. Each party shall take reasonable affirmative steps to preserve evidence related to the
4 parties' claims, defenses, and counterclaims. Such affirmative steps shall include the following:

5 (1) Distribution of Document Retention Notice. All persons who are reasonably likely to
6 be in possession of documents related to the parties claims, defenses, and counterclaims in this action
7 shall be instructed to preserve all such evidence.

8 (2) Document Retention and/or Destruction Policies. Any policy in place by a party
9 regarding the retention or destruction of information that is in effect at the time of commencement of
10 the action shall be maintained in a similar manner that complies with the obligations set forth by the
11 Federal Rules of Civil Procedure throughout the litigation, subject to parts (1) and (3) of this
12 paragraph 6.

13 (3) Networked Archiving of Electronic Information. Any policy of a party regarding the
14 redundant storage or archiving of electronic information using computer networks, hard-drives,
15 magnetic tapes, or similar means, shall be maintained in a similar manner that complies with the
16 obligations set forth by the Federal Rules of Civil Procedure throughout this litigation. If such policy
17 provides for the regular or periodic destruction of information (such as through re-cycling or re-use of
18 the media after a certain period of time), the implementation of the periodic destruction, recycling, or
19 reuse of backup and archive media may continue throughout the litigation.

20 7. Disclosures: Mekiki and Facebook served their initial disclosures on May 3, 2010.
21 Each party reserves its right to amend such disclosures as discovery progresses.

22 8. Discovery:

23 Agreement Regarding Depositions In Languages Other Than English: For any deposition that
24 occurs substantially in a language other than English, to allow for translation, only half of the time of
25 such deposition shall count toward the applicable deposition time limits.

26 Agreement Regarding the Scope of Discovery From Experts: The parties agree that expert
27 reports exchanged between the parties and the information relied on by the experts to form the
28 opinions in the exchanged reports are discoverable. Attorney communications to and from an expert,

1 draft reports, and notes of experts relating to communications to or from attorneys do not need to be
2 logged in a privilege log and are not discoverable unless the expert has relied on the attorney
3 communications to form an opinion stated in the expert's exchanged report. Further, the substance of
4 attorney communications with an expert in preparation for the expert's deposition or trial testimony
5 are not discoverable unless the expert has relied on the attorney communications to form an opinion
6 stated in the deposition or trial testimony.

7 Agreement Regarding Production of Electronic Documents: The parties also agree to work in
8 good faith to determine whether certain specific documents need to be produced in "native" format.
9 With respect to any documents produced in native format, the parties propose that native format
10 documents need not bear unique identifying control numbers on each page.

11 Except to the extent the parties agree that certain specific documents need to be produced in
12 "native" format, as set forth above, the parties agree to produce documents in TIFF file format with an
13 appropriate load file and document-level OCR text for documents or in a form or forms in which it is
14 ordinarily maintained.

15 The parties further propose not to produce metadata, but that each party expressly reserves the
16 right to specific and focused requests for metadata or native file formats for particular documents, and
17 each party expressly reserves the right to object to such requests.

18 Protective Order and Privilege Log: The parties intend, in the near future, to submit an agreed
19 proposed protective order. This protective order will contain the parties' agreed-upon procedures for
20 post-production claims of privilege or protection as attorney work-product or trial preparation
21 materials. The parties agree that privileged documents created after the date this action was initiated
22 (October 7, 2009) need not be logged on a privilege log.

23 Agreement Regarding Location of Depositions: Except as the parties otherwise specifically
24 agree, the parties agree that any depositions of (1) employees, officers, or directors of a party or (2)
25 any person designated by a party pursuant to Rule 30(b)(6), shall be conducted within the judicial
26 district of a United States District Court in which the deponent resides. With respect to deponents that
27 reside outside of the United States, Mekiki shall: (1) make Hikaru Deguchi, a co-inventor of the
28 Patents-in-Suit and party witness, available for deposition in Los Angeles, California; (2) make any

1 person Mekiki designates pursuant to Rule 30(b)(6) available for deposition in Los Angeles,
2 California; (3) make a good faith effort to make Kenichi Ninomiya, a co-inventor of the Patents-in-
3 Suit and non-party witness, available for deposition in Los Angeles, California; and (4) make a good
4 faith effort to make Mr. Ninomiya available for deposition in a United States embassy in Japan, if
5 Mekiki is unable to secure the deposition of Mr. Ninomiya in Los Angeles, California.

6 (a) ***Mekiki's Further Position:*** All other limitations on discovery imposed by the Federal
7 Rules of Civil Procedure ("FRCP") shall apply, absent a stipulation by the parties and the Court's
8 approval.

9 Facebook's Proposed Discovery "Limits": Facebook's proposed further modifications of the
10 FRCP set forth below are inappropriate. First, Facebook's sole basis for its proposed modifications—
11 Mekiki's purported service of jurisdictional discovery on Facebook—is unfounded. Although for
12 discussion purposes Mekiki informally sent Facebook draft discovery relevant to Facebook's transfer
13 motion, no written discovery was ever served nor were any depositions taken. There is no reason to
14 limit either party's right to discovery under the FRCP at this early stage in the case. Second,
15 Facebook's proposals related to depositions are inequitable and prejudicial because their practical
16 effect provides Facebook more deposition time and Mekiki less deposition time than the FRCP
17 permits. For example, under Facebook's proposals, Facebook can spend 136 hours deposing
18 Plaintiffs, their employees, and the two named inventors, and then spend an additional 70 hours
19 deposing third parties in search of potential prior art, for a total of 206 hours of depositions. In sharp
20 contrast to this, under Facebook's proposals the two Mekiki entities together would only get 50 hours
21 to depose both Facebook and its knowledgeable employees. For these reasons, rather than arbitrarily
22 implementing discovery limits at this time, Mekiki believes that the parties should proceed under the
23 FRCP and agree to discuss any further extensions of applicable discovery limits as the need arises.

24 Documents In Languages Other Than English: Mekiki proposes that all documents ordinarily
25 maintained in a language other than English may be produced in the other language without
26 translation, or that the party requesting translation of a foreign-language document bear the costs
27 associated with translation to English. Mekiki does not agree that it should be forced to bear the cost
28

1 of translating all of its Japanese documents into English, as Facebook requests.

2 Mekiki further proposes that, subject to the privileges provided by Fed. R. Civ. P. 26(a)(3), the
3 parties shall produce any translations in their possession of any portion of non-English documents or
4 excerpts of documents produced in this action, in a manner that identifies the original non-English
5 document or excerpt that the translation pertains to.

6 (b) ***Facebook's Further Position:***

7 Discovery Limits: In response to Facebook's motion for transfer, Mekiki served Facebook
8 with 118 requests for admission, 5 "special" interrogatories, 18 requests for production, and
9 deposition notices for Facebook's attorney, a declarant, and a 30(b)(6) witness on 10 topics.
10 Consequently, there is a need for reasonable limits to be placed on discovery in this case. Facebook
11 proposes the following limits: 25 Interrogatories; 50 Requests for Admission, excluding requests to
12 authenticate documents; and 75 Requests for Production from a Party. On deposition discovery,
13 Facebook proposes: Each inventor shall be subject to deposition for a maximum of 18 hours; All
14 party depositions, including those pursuant to Fed. R. Civ. P. 30(b)(6) and party-employees, shall be
15 limited to 50 hours; and All third party depositions shall be limited to a total of 70 hours per party.

16 Depositions of Individuals Associated with Mekiki: Facebook proposes that: (1) Mekiki make
17 a good faith effort to make any foreign non-party witness (a) that is represented by Mekiki's counsel,
18 (b) whose counsel is paid for by Mekiki, or (c) who has any financial relationship with Mekiki,
19 available for deposition in Los Angeles, California; (2) Mekiki make a good faith effort for any
20 foreign non-party witness (a) that is represented by Mekiki's counsel, (b) whose counsel is paid for by
21 Mekiki, or (c) who has any financial interest in Mekiki, available for deposition in a United States
22 embassy, if Mekiki is unable to secure such deposition in Los Angeles, California, and (3) Mekiki
23 shall pay for all costs and make all logistical arrangements for such embassy-based depositions.

24 Facebook proposes that any non-English documents or non-English excerpts of documents that
25 have been translated in whole or in part by a producing party, shall be produced in both non-English
26 and English together and in a manner that identifies the original non-English document or excerpt with
27 the corresponding translated to English document or excerpt. As part of a party's production of non-
28 English documents, Facebook proposes that the initial production of non-English documents or

1 excerpts include electronically translated copies of all non-English documents and that such
2 electronically translated documents be produced such that the original non-English and corresponding
3 electronically translated version be identified. If additional post-electronic translations are performed
4 by the producing party, those additional translations shall also be produced in a manner that allows
5 them to be identified with the original non-English and electronically translated to English documents.

6 Facebook proposes that the party producing documents in a language other than English pay
7 the costs for translating the documents to English.

8 9. Class Action: This is not a class action.

9 10. Related Cases: Currently, there are no related cases.

10 11. Relief:

11 (a) ***Mekiki's Statement***: Mekiki is seeking the following relief: (1) an entry of judgment in
12 favor of Mekiki and against Facebook; and (2) an award of damages adequate to compensate Mekiki
13 for Facebook's infringement, together with prejudgment interest from the date infringement began,
14 but in no event less than a reasonable royalty as permitted by 35 U.S.C. §285; and (3) an entry of a
15 permanent injunction restraining and enjoining Facebook from infringing the Patents-in-Suit.

16 (b) ***Facebook's Statement***: Facebook seeks an entry of declaratory judgment that none of
17 their products, processes, or services infringe the Patents-in-Suit, and that the Patents-in-Suit are
18 invalid and/or unenforceable.

19 12. Settlement and ADR: The parties participated in an ADR Phone Conference scheduled
20 for September 15, 2010. (D.I. 59.) The parties have agreed to file a stipulation prior to the Case
21 Management Conference indicating that they intend, subject to the Court's approval, to participate in a
22 private mediation within 60 days after the Court issues its claim construction ruling.

23 13. Consent to Magistrate Judge For All Purposes: The parties will not consent to a
24 magistrate judge for trial in this case.

25 14. Other References: The parties agree that this case is not suitable for reference to
26 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

27 15. Narrowing of Issues:

28 (a) ***Mekiki's Statement***: To streamline this case, Mekiki proposes that (1) this case remain

1 focused on the three Patents-in-Suit, (2) in an attempt to moot Facebook's efforts to broaden this case,
 2 the parties should continue their discussions on Facebook's request for a covenant not to sue on the
 3 two additional unasserted Mekiki patents; and (3) the parties should resume their discussions
 4 regarding possibly limiting the number of asserted claims, number of asserted prior art references
 5 and/or obviousness combinations, and number of patent claim terms to be construed by the Court after
 6 Mekiki serves its Infringement Contentions. Other than these proposals, Mekiki is not currently aware
 7 of any other issues that can be narrowed by agreement or motion, or suggestions to expedite the
 8 presentation of evidence at trial.

9 (b) **Facebook's Statement:** Mekiki's Five Patents all share the same specification, priority
 10 date, and title, and have 123 total claims that have substantial overlapping subject matter.
 11 Accordingly, Facebook proposes that Mekiki be required to limit the number of claims it may assert in
 12 this case to 10 claims in order to streamline the litigation in the face of the extensive duplication in the
 13 claims. Mekiki may substitute claims for assertion in this case by obtaining leave of court and making
 14 a timely showing of good cause. Any substitution of claims will also be required to comply with the
 15 Amendment to Contention requirements of Pat. L.R. 3-6.

16 16. Expedited Schedule: The parties do not believe that this type of case can be handled on
 17 an expedited basis with streamlined procedures.

18 17. Scheduling: The parties propose the following dates for scheduling in this case, with
 19 each party's position stated where there is no current agreement on the proposed date:

Event	Proposed Dates
Disclosure of Asserted Claims and Infringement Contentions and accompanying document production [Pat. L.R. 3.1-3.2]	November 19, 2010
Invalidity Contentions and accompanying document production [Pat. L.R. 3.3-3.4]	January 10, 2011 [modified from January 3, 2010 by adding 7 days]
Exchange of Proposed Terms and Claim Elements for Construction [Pat. L.R. 4.1.a-b.]	January 24, 2011
<u>Deadline to Amend Pleadings</u>	January 28, 2011
<u>The parties meet and confer to discuss list of proposed terms and claim elements for construction</u>	February 4, 2011
Simultaneous Exchange of Preliminary Claim Constructions and Preliminary Identifications of Extrinsic Evidence [Pat. L.R. 4.2.a-b.]	February 14, 2011
<u>The parties meet and confer to discuss preliminary claim constructions and extrinsic evidence</u>	February 23, 2011

Event	Proposed Dates
Simultaneous Exchange of Responsive Claim Constructions	March 4, 2011
Filing of Joint Claim Construction and Prehearing Statement [Pat. L.R. 4.3]	March 11, 2011
Completion of Claim Construction Discovery [Pat. L.R. 4.4]	April 8, 2011
Opening Claim Construction Brief [Pat. L.R. 4.5.a.]	April 25, 2011
Responsive Claim Construction Brief [Pat. L.R.4.5.b]	May 23, 2011 [modified from May 9, 2011 by 14 days]
Reply Claim Construction Brief [Pat. L.R. 4.5.c]	June 1, 2011 [modified from May 30, 2011 by 2 days]
Tutorial	Mekiki: June 14, 2011, Subject to Court's availability Facebook: June 1, 2011, Subject to Court's availability
Claim Construction Hearing [Pat. L.R. 4.6]	June 15, 2011, Subject to Court's availability
Disclosure of Advice of Counsel [Pat. L.R. 3.7]	50 days after issuance of Claim Construction Order
Close of Fact Discovery	3 months after issuance of Claim Construction Order
Exchange of Initial Expert Reports for which party bears burden	Mekiki: 3 months + 2 weeks after issuance of Claim Construction Order Facebook: 5 months after issuance of Claim Construction Order
Exchange of Rebuttal Expert Reports	Mekiki: 5 months after issuance of Claim Construction Order Facebook: 6 months + 2 weeks after issuance of Claim Construction Order
Close of Expert Discovery	Mekiki: 6 months after issuance of Claim Construction Order Facebook: 8 months after issuance of Claim Construction Order
Deadline to File Dispositive Motions and any motion to limit or exclude Expert Testimony	Mekiki: 8 months after issuance of Claim Construction Order Facebook: 10 months after issuance of Claim Construction Order
Suggested Date of Pretrial Conference	Mekiki: 10 months after issuance of Claim Construction Order Facebook: 12 months after issuance of Claim Construction Order

18. Trial: The parties have requested that this case be tried to a jury. The parties both believe they can present their cases in chief in approximately 4-6 days each (8-12 days total).

19. Disclosure of Non-party Interested Entities or Persons: The parties have filed their L.R. 3-16 certifications. (D.I. 51; 54.) Mekiki Co., Ltd. owns 20% of the stock of Mekiki Creates

1 Co., Ltd. No other publicly traded company owns 10% or more of Facebook's or Mekiki's stock.
2 The parties are not otherwise aware of any persons, firms, partnerships, corporations or other entities
3 that have a financial interest in the subject matter of this proceeding, or any other kind of interest that
4 could be substantially affected by the outcome of this proceeding.

5 20. Other Matters: The parties also discussed the following topics from Pat. L.R. 2-1(a):
6 Proposed Modifications of Obligations and Deadlines in Local Patent Rules: To accommodate
7 the holidays and Mekiki counsel's trial schedule, the parties have proposed modifications of the
8 deadlines of Pat. L.R. 3-3 and 4-5.

9 Scope and Timing of Claim Construction Discovery: The parties may use expert witnesses in
10 support of their claim construction positions. If so, each party will make any mandated disclosures in
11 accordance with Patent L.R. 4-2 and 4-3 (as modified above), and propose that claim construction
12 discovery (including depositions) close in accordance with Pat. L.R. 4-4.

13 Format of Claim Construction Hearing: The parties do not anticipate live testimony at the
14 Claim Construction hearing, and anticipate that Plaintiffs will proceed with its argument, followed by
15 Defendant. The parties anticipate that at least one-half day and not more than one full day will be
16 required for argument by all parties at the Claim Construction hearing.

17 How the Parties Intend to Educate the Court on the Technology at Issue: To educate the court
18 on the technology at issue, the parties are amenable to a variety of means. The parties have included
19 in the proposed schedule a tutorial before the Claim Construction Hearing. The parties request to
20 discuss this issue further with the Court at the case management conference.

21
22 Dated: September 22, 2010

23 QUINN EMANUEL URQUHART &
24 SULLIVAN, LLP

COOLEY LLP

25 /s/ Harold A. Barza

26 Harold A. Barza (Bar No. 80888)
27 Attorneys for Plaintiff and Counter-Defendants
MEKIKI CO., LTD and MEKIKI CREATES CO.,
LTD.

/s/ Heidi L. Keefe

Heidi L. Keefe (178960)
Attorneys for Defendant and Counterclaimant
FACEBOOK, INC.

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ATTESTATION CLAUSE

I, Chris Mathews, hereby attest in accordance with General Order No. 45.X(B) that Heidi L. Keefe, counsel for Defendant and Counterclaimant Facebook, Inc., and Harold A. Barza, counsel for Plaintiffs and Counter-Defendants Mekiki Co. Ltd and Mekiki Creates Co., Ltd. have provided their concurrence with the electronic filing of the foregoing document.

Dated: September 22, 2010

By: /s/ Chris Mathews

Chris Mathews