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 14 Networks GmbH and Holtzbrinck Ventures GmbH

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

GREENBERG GLUSKER FIELDS CLAMAN
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 1900 Avenue of the Stars, 21st Floor
 Los Angeles, California 90067-4590

18 FACEBOOK, INC.,
 19 Plaintiff,

20 v.

21 STUDIVZ LTD., VERLAGSGRUPPE
 22 GEORG VON HOLTZBRINCK GmbH,
 23 HOLTZBRINCK NETWORKS GmbH,
 24 HOLTZBRINCK VENTURES GmbH, and
 25 DOES 1-25,

26 Defendants.

Case No. 5:08-CV-03468 JF
 Assigned To: Hon. Jeremy Fogel

**DECLARATION OF DR. ANTON G.
 MAURER IN SUPPORT OF STUDIVZ'S
 PARTIAL OPPOSITION TO
 FACEBOOK'S MOTION TO STAY
 HEARING OF MOTIONS TO DISMISS**

[*Partial* Opposition, and Declaration of
 Stephen S. Smith Filed Concurrently Herewith]

Complaint Filed: July 18, 2008

DECLARATION OF DR. ANTON G. MAURER

I, Dr. Anton G. Maurer declare:

1. I am an attorney at law duly licensed to practice law in Germany, and I am in good standing with my local bar, which is the bar of Stuttgart, Germany. I am a partner with CMS Hasche Sigle, the largest German law firm, and my office is located at Schoettlestrasse 8, 70597 Stuttgart, Germany. I am counsel of record for StudiVZ Ltd. (“StudiVZ”) in the action pending as case no. 17 O 423/08 in the *Landgericht Stuttgart* (district court Stuttgart) in Stuttgart, Germany that was brought by StudiVZ against Facebook, Inc. (the “German Action”). I have been practicing law since 1982 and have represented German and foreign clients in corporate and commercial disputes, among others, in the *Landgericht Stuttgart* and *Oberlandesgericht Stuttgart* (Stuttgart court of appeal). From April 1984 through March 1985, I worked as a foreign lawyer with the law firm of Johnson & Swanson in Dallas, Texas. On May 17, 2009, I will graduate with an LL.M. in U.S. and Global Business Law from Suffolk University, located in Boston, Massachusetts. I make this declaration in support of StudiVZ’s *Partial Opposition* to Facebook’s Motion to Stay Hearing. I am fluent in both German and English. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto under oath.

2. On March 24, 2009, Facebook, Inc. (“Facebook”) filed an Opposition to Defendant’s Motion for Administrative Relief. In support thereof, Facebook presented a declaration from Dr. Katharina Scheja dated March 24, 2009. In its brief, Facebook argues that the German action pending at the *Landgericht Köln* (District Court of Cologne) is a creature of StudiVZ’s making. This is not true. Facebook also argues that its lawsuit in Cologne is a direct response to StudiVZ’s filing of a declaratory judgment at the *Landgericht Stuttgart*. This is not true either.

3. StudiVZ filed its declaratory judgment action in Germany on July 18, 2008 before Facebook filed its action in California; this is not very hard since, due to the time difference of 9

1 hours in favor of Germany, on the same day it is already 6:00 p.m. in Germany when it is 9:00
2 a.m. in California.

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4 4. In the fourth paragraph of her declaration, Dr. Scheja declares that the “U.S.
5 Complaint filed by Facebook before this Court was different in scope and asserted different
6 claims than the StudiVZ writ filed in Stuttgart.” Looking at the real matter in dispute, this
7 declaration is not true. The motions are different, but the basic substantive issues are the same.
8 If the *Landgericht Stuttgart* would find that StudiVZ did not copy the software of Facebook and
9 did not infringe any other intellectual property right of Facebook, then all allegations of any
10 infringement of an intellectual property right under any statute become moot notwithstanding the
11 different formulations of the motions. No damages and no injunction can be awarded if there is
12 no infringement. The legal issues to be decided at the *Landgericht Stuttgart* are the preliminary
13 legal issues before a court can decide upon a damages claim.

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15 5. Also in the fourth paragraph of her declaration, Dr. Scheja declares that Facebook
16 had to respond to StudiVZ’s declaratory judgment writ at the *Landgericht Stuttgart*. This is true.
17 However, when Dr. Scheja declares, in the fifth paragraph of her declaration, that Facebook had
18 to start a new trial in response to the declaratory relief action, then this declaration is not true.
19 Facebook could have defended its case within the negative declaratory judgment action at the
20 *Landgericht Stuttgart*. It also could have filed a counterclaim at the *Landgericht Stuttgart*. In
21 such a case the parties would be involved only in two litigations, one in this Court and one at the
22 *Landgericht Stuttgart*. However, it is known that the Landgericht Stuttgart is rather speedy in its
23 litigation calendar. In my opinion, Facebook for tactical reasons decided to start a second lawsuit
24 in Germany at the *Landgericht Köln* (District Court of Cologne) to delay a judgment in Germany.

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26 6. Dr. Scheja states that the court in Cologne is “considered a more experienced forum
27 for the claims in the case.” It is not true that the *Landgericht Cologne* is a more experienced forum
28 for the claims in this case. At best, it is correct to say that the *Landgericht Cologne* has to handle

1 more similar cases because it is more relaxed in issuing preliminary injunctions in comparison to
2 other German district courts. However, it is not more competent. Many German district courts
3 have specialized chambers dealing with Competition and IP law issues, including trademarks.
4 This is true for the chamber (bench of three judges) at the *Landgericht Stuttgart* which is dealing
5 with StudiVZ's negative declaratory judgment claim as it is true for the chamber dealing with the
6 complaint filed by Facebook with the *Landgericht Cologne*.

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8 I declare under penalty of perjury under the laws of the State of California and the United
9 States that the foregoing is true and correct to the best of my knowledge, and that this declaration
10 was executed in Stuttgart, Germany on March 25, 2009.

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13 Dr. Anton G. Maurer
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