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 FACEBOOK, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION
 14

15 BLADEROOM GROUP LIMITED, et al.,

16 Plaintiffs,

17 v.

18 FACEBOOK, INC., EMERSON ELECTRIC
 19 CO., EMERSON NETWORK POWER
 SOLUTIONS, INC. and LIEBERT
 20 CORPORATION,

21 Defendants.

Case No. 15-cv-01370 EJD

**~~PROPOSED~~ AMENDED LETTER OF
 REQUEST FOR NICK VANEY**

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 23 **Redacted Version of Document Sought To Be Sealed**
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1 **REQUEST FOR JUDICIAL ASSISTANCE PURSUANT TO THE**
2 **HAGUE CONVENTION ON THE TAKING OF EVIDENCE ABROAD**
 IN CIVIL OR COMMERCIAL MATTERS CONCLUDED 18 MARCH 1970

3 To: Senior Master of the Queen's Bench Division
4 For the attention of the Foreign Process Section
5 Room 16
6 Royal Courts of Justice
7 Strand
8 London, England WC2A 2LL

9 From: Howard R. Lloyd, United States Magistrate Judge
10 United States District Court for the Northern District of California

11 Re: Request for Judicial Assistance Pursuant to the Hague Convention on the Taking
12 of Evidence Abroad in Civil or Commercial Matters Concluded 18 March 1970

13 **I. Information provided pursuant to Convention Article 3(a).**

14 A. Requesting Court.

15 In conformity with Article 3 of the Hague Convention on the Taking of Evidence Abroad
16 in Civil or Commercial Matters, concluded 18 March 1970 (the "Convention"), the United States
17 District Court for the Northern District of California (United States District Judge Edward J.
18 Davila and United States Magistrate Judge Howard R. Lloyd presiding), respectfully requests the
19 assistance of your honorable court with regard to the matters set forth below.

20 The Court considers that the evidence sought is directly relevant to the issues in dispute
21 and is not pre-trial discovery within the meaning of Article 23 of The Hague Evidence
22 Convention, that is, discovery intended to lead to relevant evidence for trial. The evidence sought
23 is to be used—and would be admissible—in the trial in California.

24 B. Full title of action.

25 The full title of the action in which international judicial assistance is requested is:
26 Bladeroom Group Limited and Bripco (UK) Limited v. Facebook, Inc., Emerson Electric
27 Co., Emerson Network Power Solutions, Inc., and Liebert Corporation.

28 The case number of the action in the United States District Court for the Northern District
of California is 15-cv-1370-EJD.

1 **II. Information provided pursuant to Convention Article 3(b).**

2 A. Names of the parties to the action.

3 The plaintiffs in this action are Bladeroom Group Limited (“BRG”) and Bripco (UK)
4 Limited (“Bripco”) (together, “Plaintiffs”). BRG is a privately held company organized under the
5 laws of England with a registered office at Stella Way, Bishop’s Cleeve, Cheltenham,
6 Gloucestershire GL52 7DQ. Bripco is a privately held company organized under the laws of
7 England with a registered office at Stella Way, Bishop’s Cleeve, Cheltenham, Gloucestershire
8 GL52 7DQ.

9 Plaintiffs are represented in this action by the law firm Farella Braun + Martel LLP, 235
10 Montgomery Street, 17th Floor, San Francisco, California, 94104.

11 The defendants in this action are Facebook, Inc. (“Facebook”), Emerson Electric Co.
12 (“Emerson”), Emerson Network Power Solutions, Inc. (“ENPS”), and Liebert Corporation
13 (“Liebert”) (collectively, “Defendants”). Facebook is a publicly traded company organized under
14 the laws of Delaware with a principal place of business at 1601 Willow Road, Menlo Park,
15 California 94025. Emerson is a privately held company organized under the laws of Missouri
16 with a principal place of business at 8000 West Florissant Avenue, St. Louis, Missouri, 63136.
17 ENPS is a privately held company organized under the laws of Delaware with a principal place of
18 business at 1050 Dearborn Drive, Columbus, Ohio 43085. Liebert is a privately held company
19 organized under the laws of Ohio with a principal place of business at 1050 Dearborn Drive,
20 Columbus, Ohio 43085.

21 Facebook is represented in this action by the law firm Cooley LLP, 101 California Street,
22 5th Floor, San Francisco, CA 94111-5800.

23 Emerson, ENPS and Liebert (collectively, “Emerson Defendants”) are represented in this
24 action by the law firm Procopio, Cory, Hargreaves & Savitch LLP, 1117 S. California Ave., Suite
25 200, Palo Alto, CA 94304.

26 **III. Information provided pursuant to Convention Article 3(c).**

27 Plaintiffs make the following allegations in their Second Amended Complaint
28

1 (“Complaint” or “Compl.”), the operative pleading in this action.¹ Defendants deny they have
2 engaged in any wrongful conduct with respect to Plaintiffs.

3 Facebook provides online services that allow users to stay connected with friends and
4 family, to discover what’s going on in the world and to share and express what matters to them.
5 Among other things, users can use the Facebook platform to upload photos and videos, and share
6 comments and other content. Facebook stores this data in multiple data centers containing
7 thousands of servers globally, including data centers in Prineville, Oregon (U.S.) and Luleå,
8 Sweden. Compl., ¶¶ 2, 33, 50. Data centers are specialized buildings engineered to securely
9 house servers, which have particular climate requirements in order to run without overheating.
10 *Id.*, ¶¶ 22-23.

11 Plaintiff BRG constructs and sells data centers it calls “BladeRooms”. *Id.*, ¶ 4. Plaintiff
12 Bripco owns the alleged intellectual property associated with BRG’s methodology for
13 constructing data centers and licenses it to BRG. *Id.*, ¶ 5. Plaintiffs call this methodology the
14 “BRG Methodology.” *Id.*, ¶¶ 4-5. Various aspects of the BRG Methodology are subject to
15 patents, some aspects are publicly known, and other aspects are allegedly kept confidential or as
16 trade secrets. *Id.*, ¶ 4.

17 The BRG Methodology uses “modular” construction techniques. *Id.*, ¶ 22. Modular
18 construction involves manufacturing some or all components of a building off-site and
19 transporting it to the desired location, as opposed to traditional “stick built” construction methods
20 in which materials are assembled and the structure is erected on site. *Id.*, ¶¶ 22-24. Plaintiffs’
21 alleged trade secrets and confidential information (collectively, the “BRG Alleged Trade
22 Secrets/Confidential Information”) are contained in Exhibit B to the Complaint.² *Id.*, ¶¶ 28, 29.

23 In October 2011, BRG first contacted Facebook to promote its data centers. *Id.*, ¶ 37. On

24
25 ¹ *Exhibit 1* is a copy of the publicly available version of the Complaint. With Court
26 approval, the law permits the parties to redact confidential information from publicly filed
27 pleadings. The publicly filed Complaint redacts information one or more of the parties have
28 designated as confidential.

² Plaintiffs filed Exhibit B to the Complaint under seal, with Court approval, and thus
Exhibit B to the Complaint is not publicly available.

1 November 3, 2011, representatives of Facebook and BRG (including Nick Vaney) participated in
2 a telephone conference where the parties discussed the BRG Methodology and Facebook's
3 existing data center technology. BRG and Facebook subsequently executed a mutual non-
4 disclosure agreement ("NDA"). *Id.*, ¶ 38.

5 In March and June 2012, Facebook's representatives met with BRG's representatives at
6 BRG's facilities in Cheltenham, England. *See id.*, ¶¶ 50-51, 60-61. Plaintiffs allege that, during
7 these meetings, BRG disclosed the BRG Alleged Trade Secret/Confidential Information to
8 Facebook. *Id.*

9 In May 2012, BRG's representatives met with Facebook's representatives, and the
10 representatives of various data center construction and architecture firms already working with
11 Facebook, at Facebook's data center campus in Prineville, Oregon. *See id.*, ¶ 56. Plaintiffs allege
12 that during that meeting, BRG disclosed the BRG Alleged Trade Secret/Confidential Information
13 to the meeting attendees. *Id.*, ¶ 57.

14 In August 2012, Facebook met with the Emerson Defendants, which had an existing data
15 center business. *Id.*, ¶ 75. In October 2012, Facebook hosted a five-day meeting with modular
16 construction experts for the purpose of designing a modular data center concept for Facebook.
17 *Id.*, ¶ 80. In January 2014, at an industry conference, Facebook presented to the public its
18 modular data center concept, termed the Rapid Deployment Data Center ("RDDC"). *Id.*, ¶ 87.

19 By mid-2014, BRG had submitted several proposals to Facebook for various data center
20 projects, including projects located in Prineville, Oregon and Luleå, Sweden. *Id.*, ¶¶ 3, 49, 57, 69,
21 71, 81. Plaintiffs allege that these proposals contained the BRG Alleged Trade
22 Secrets/Confidential Information. *Id.* In May 2014, Facebook announced that it had selected
23 Emerson to construct a version of the RDDC on Facebook's data center campus in Luleå,
24 Sweden.

25 On March 23, 2015, Plaintiffs filed this civil action against Facebook in the United States
26 District Court for the Northern District of California. On April 18, 2016, Plaintiffs were granted
27 leave to file the Complaint that, among other things, added the Emerson Defendants as
28 defendants. The Complaint asserts the following claims against all Defendants: (1) breach of

1 contract; (2) misappropriation of trade secrets; and (3) unfair competition. Each of Plaintiffs'
2 claims has distinct legal elements.

3 **1. Breach of Contract**

4 A breach of contract claim requires Plaintiffs to prove: (1) a contract existed; (2) Plaintiffs
5 have performed or had their performance excused; (3) Defendant breached the contract; and (4)
6 Plaintiffs suffered damages on account of the breach. Plaintiffs allege Facebook breached the
7 NDA by engaging in unauthorized use or disclosure of their confidential information. Compl.,
8 ¶ 120.

9 **2. Misappropriation of Trade Secrets**

10 A misappropriation of trade secrets claim requires Plaintiffs to prove: (1) the existence of
11 a trade secret; (2) Plaintiffs own the alleged trade secret; (3) Facebook improperly used or
12 disclosed that trade secret; and (4) Plaintiffs suffered harm from the improper use or disclosure.
13 Cal. Civ. Code 3426.1 *et seq.* Plaintiffs allege “Facebook improperly used Bripco UK’s trade
14 secrets, for example, in its development of the RDCC” and “in the construction of the second
15 phase of its Lulea data center campus.” Compl., ¶¶ 132, 134.

16 **3. Unfair Competition**

17 A claim under the California Unfair Competition Law (UCL) requires Plaintiffs to prove:
18 (1) Facebook engaged in an (a) unlawful; or (b) unfair; or (c) fraudulent business practice; and
19 (2) Plaintiffs lost money or property as a result. Cal. Bus. & Prof. Code § 17200, *et seq.*
20 Plaintiffs allege Facebook engaged in unlawful and unfair business acts by, for example, using
21 the alleged trade secrets “to develop the RDCC approach,” publicly disclosing Plaintiffs’
22 Confidential Information, and “compet[ing] with BRG as a data center design provider and
23 innovator.” Compl., ¶¶ 151, 153.

24 Additionally, Plaintiffs brought a claim against Facebook for false designation of origin
25 under the Lanham Act. However, the Court has dismissed that claim from the case. *See Exhibit*
26 *2.* The Court has also dismissed a sub-set of Plaintiffs’ breach of contract claims against the
27 Emerson Defendants, those arising from alleged breach of the covenant of good faith and fair
28 dealing. *See Exhibit 3.* Defendants have denied Plaintiffs’ claims but have not filed any

1 counterclaims against Plaintiffs.

2 The Court has not set a trial date, but has set a trial setting conference for May 11, 2017.

3 *See Exhibit 4.*

4 **IV. Information provided pursuant to Convention Article 3(d).**

5 A. Evidence to be obtained.

6 It is necessary for the due determination of the matters in dispute between the parties in
7 the matter pending before the United States District Court for the Northern District of California
8 that you cause the witness listed below, who is resident within your jurisdiction, to be subject to
9 oral examination for use at the trial of this matter.

10 This letter of request is issued at the request of Defendant Facebook, Inc.

11 **V. Information provided pursuant to Convention Article 3(e).**

12 A. Name and address of the witness.

13 The name and last known address of the witness from whom testimony is sought is listed
14 below:

15 Nick Vaney
16 19 Parklands, Freeland, Witney, Oxon, OX29 8HX

17 **VI. Information provided pursuant to Convention Article 3(f).**

18 A. Testimony to be provided by the witness.

19 Mr. Vaney is a mechanical engineer. From at least 2011 to the present he has been
20 employed by Red Engineering Design Ltd. ("Red Engineering") in London. Red Engineering is
21 BRG's consultant. Mr. Vaney has knowledge of the BRG Methodology, and he is claimed as the
22 inventor on two patent applications concerning a method of cooling a data center. [REDACTED]

23 [REDACTED]
24 Therefore, the Court requests that you cause Mr. Vaney to give testimony on the
25 following subjects:

- 26 1. His educational background, employment history, professional qualifications,
27 and personal preparation for the examination.
28 2. The development of the BRG Alleged Trade Secrets/Confidential Information.
Mr. Vaney's testimony on this subject is relevant to issues in this civil action,

1 including but not limited to, whether the BRG Alleged Trade
2 Secrets/Confidential Information qualifies for protection as trade secret(s) or
3 confidential information.³

- 3 3. His knowledge of BRG's efforts to maintain the secrecy and confidentiality of
4 the BRG Alleged Trade Secrets/Confidential Information. Mr. Vaney's
5 testimony on this subject is relevant to issues in this civil action, including but
6 not limited to, whether, and, if so, the extent to which, BRG had undertaken
7 reasonable efforts to maintain the secrecy (if any) of the BRG Alleged Trade
8 Secret/Confidential Information such that it could qualify for protection as
9 trade secret(s) or confidential information under applicable law.
- 10 4. BRG's patent applications on which he is named as an inventor.
11 ((US2013/699,350; PCT/GB2011/050987). Mr. Vaney's testimony on this
12 subject is relevant to issues in this civil action, including but not limited to,
13 whether and, if so, the extent to which, the BRG Alleged Trade
14 Secrets/Confidential Information is disclosed in such patents and thus is not
15 secret or confidential under applicable law.
- 16 5. Mr. Vaney's email and telephonic communications with Facebook, [REDACTED]
17 [REDACTED] regarding the
18 BladeRoom Methodology and Facebook's existing data center technology.
- 19 6. BRG's contemplated and actual bids and proposals to Facebook that Mr.
20 Vaney received, created, or helped create.

21 In the course of the examination of Mr. Vaney, Facebook intends to show documents to
22 Mr. Vaney, all of which relate to the subject matters set forth in Section VI of this letter of
23 request. If so ordered by the Court, Facebook will prepare a selection of such documents for Mr.
24 Vaney to review prior to his examination.

25 **VII. Information provided pursuant to Convention Article 3(h).**

26 **A. Form of the examination.**

27 The witness should be examined under oath. I respectfully request that you: cause the
28 evidence of the witness to be reduced into writing; cause all documents produced on such
examinations to be duly marked for identification; and cause copies of the documents to be made.
I further request that you authenticate such examinations by the seal of your Court in such way as
is in accordance with your procedure, and return the written evidence and documents produced to

³ To qualify for protection as a "trade secret" under applicable law, the information must (1) derive independent value from not being generally known to the public or other persons who can obtain economic value from its use or disclosure, and (2) be the subject of reasonable efforts to maintain its secrecy. Cal. Civ. Code § 3426.1(d).

1 me at the following address:

2 Howard R. Lloyd, United States Magistrate Judge
3 Robert F. Peckham Federal Building
4 S 1st Street
5 San Jose, California 95113

6 **VIII. Information provided pursuant to Convention Article 3(i).**

7 A. Procedure.

8 The testimony should be given before an examiner of the court. The witness should give
9 an oath or affirmation before testifying; the testimony should be transcribed by a stenographer;
10 and the testimony should be recorded on video by a videographer. In addition, I request that the
11 attorneys for all parties to this action should be permitted to be present and to conduct
12 examination and cross-examination of the witness. For the avoidance of doubt, I request that
13 attorneys for Defendants be permitted to cross-examine this witness.

14 B. Specification of privilege or duty to refuse to give evidence under the laws of the
15 state of origin.

16 Under the laws of the United States, a party has a privilege to refuse to give evidence if
17 the evidence discloses a confidential communication between that party and an attorney for that
18 party that was made for the purpose of obtaining legal advice and which privilege has not been
19 waived explicitly or implicitly. (Parties also enjoy limited privileges on other grounds not
20 relevant here such as communications between physician and patient, psychotherapist and patient,
21 husband and wife, or clergy and penitent.)

22 The laws of the United States also recognize a privilege against self-incrimination.

23 Outside the strict area of privilege, certain limited immunities are available that may place
24 restrictions on the giving of evidence, such as the limited protection against the disclosure of
25 documents and tangible things prepared in anticipation of litigation or for trial by or for a party or
26 a party's representative.

27 C. Details.

28 It is proposed that the examination take place at the offices of Cooley (UK) LLP,
Dashwood, 69 Old Broad Street, London, EC2M 1QS, United Kingdom, on dates to be agreed

1 between the parties and the witness, but in any event no later than the close of the fact discovery
2 period, currently scheduled to conclude on June 30, 2017.

3 Any correspondence regarding this Letter of Request should be sent to the parties'
4 attorneys and also be copied to Facebook's English attorneys, Cooley (UK) LLP, Dashwood, 69
5 Old Broad Street, London, EC2M 1QS, United Kingdom marked for the attention of Mark Deem
6 (mdeem@cooley.com) and Chimé Dorjee (cdorjee@cooley.com).

7 D. Fees and costs.

8 The fees and costs incurred which are reimbursable under the second paragraph of Article
9 14 or under Article 26 of the Convention will be borne by Facebook.

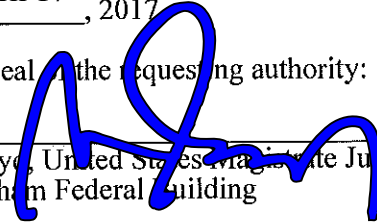
10 **IX. Conclusion**

11 This Court expresses its appreciation for this assistance, states that the courts of the United
12 States are authorized by Section 1782 of Title 28 of the United States Code to extend similar
13 assistance to the Courts of England and is prepared to provide reciprocal assistance to the English
14 courts in any circumstances in which it may be required.

15 This Court extends to the judicial authorities of England the assurances of the highest
16 consideration.

17 Date of request: April 17, 2017

18 Signature and seal of the requesting authority:

19 
20 _____
21 Howard R. Lloyd, United States Magistrate Judge
22 Robert F. Peckham Federal Building
23 280 S 1st Street
24 San Jose, California 95113

25 Done in Chambers in San Jose, California, this 17th day of April, 2017.

26 [Seal of the Court]

27 Howard R. Lloyd
28 United States Magistrate Judge

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Dated: April 4, 2017

COOLEY LLP

/s/ Heidi L. Keefe
Heidi L. Keefe

Attorneys for Defendant
FACEBOOK, INC.

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