



1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
302 984 6000

www.potteranderson.com

**Philip A. Rovner**  
Partner  
provner@potteranderson.com  
(302) 984-6140 Direct Phone  
(302) 658-1192 Fax

January 29, 2010

**BY E-FILE**

The Honorable Joseph J. Farnan, Jr.  
U.S. District Court for the District of Delaware  
U.S. Courthouse  
844 North King Street  
Wilmington, DE 19801

Re: Leader Technologies, Inc. v. Facebook, Inc.,  
D. Del., C.A. No. 08-862-JJF

Dear Judge Farnan:

Pursuant to the Court's January 20, 2010, Order, Leader Technologies, Inc. ("Leader") respectfully submits its response letter to Facebook's identification of claim terms.

The parties agree that five terms proposed by Leader require construction. Of the proposed constructions of the five terms, only Leader's constructions comport with the intrinsic record. In contrast, the three terms identified in Facebook's letter do not require construction as they are understood by one of ordinary skill in the art. In essence, Facebook is now asking the Court to construe terms that do not give any assistance to the experts in developing their opinions on infringement. Accordingly, construction of Facebook's additional terms is unnecessary. Below is a response to Facebook's latest iteration of proposed terms:

Metadata: Both parties agree that the term "metadata" is a well-known term in computer science. As such, there is no reason to define the term because the construction will provide no additional insight as to the meaning of the claim term to one of skill in the art. See Leader's Opening Claim Construction Brief, D.I. 179 at 30-31; see also Leader's Reply to Facebook's Claim Construction Brief, D.I. 196 at 1-2, 18-19.

Despite the fact that "metadata" is a well-known term in the computer industry, Facebook argues that the patentee explicitly limited the construction of "metadata" in the prosecution of the '761 Patent. The first thing that should be noted about Facebook's argument is the complete failure to identify a clear disavowal of the ordinary meaning of "metadata" in the prosecution history. Because the applicant did not clearly disavow the scope of the claim term, "metadata" should be given its plain and ordinary meaning.

Secondly, Facebook's reliance on the prosecution history is misplaced. In fact, the prosecution history supports Leader's position that the term does not need construction because it is a common term in the art which is used in a variety of ways depending on the context. For example, the prosecution history provides in one context that "the metadata is a means of accumulating a history of all interaction information for any piece of data." May 5, 2006, Amendments and Remarks at 16 (LTI 000611), D.I. 180, Declaration of Paul J. Andre in Support of Leader's Opening Claim Construction Brief ("Andre Decl."), Ex. 4. In another context, "any data created by the user in the workspace can be searched via the metadata." *Id.* at 15 (LTI 000610). Notably, neither of these situations comport with Facebook's unjustifiably narrow construction.

The most glaring example of Facebook's attempt at reading in unwarranted limitations is found at the end of its proposed construction where it requests the Court to read in the limitation of the phrase "in which the user and the data currently reside." Nothing in the '761 Patent prosecution history or specification discusses such a limitation, and even Facebook's brief does not support the limitation regarding where "the user and the data currently reside." Apparently, Facebook cooked-up this limitation on its own and is trying to slip it in under its prosecution history argument.

The undisputed facts are that "metadata" is a term of art understood by computer scientists, and that the term is self-defined in the claims. For example, in Claim 1, "context information [is stored] in metadata." '761 Patent at 20:66-21:3. In Claim 9, "metadata includes information related to the user, the data, the application, and the user environment." *Id.* at 21:46-48. In Claim 23, "context data [is stored] as metadata." *Id.* at 23:25-28. Facebook ignores the self-defining nature of the claims, and instead attempts to incorporate all of the limitations from the independent claims into each other. Facebook's construction should be ignored because the term is self-defined in the claims and it is improper to conflate the limitations of the independent claims.

Because the term "metadata" is a well-know term to those skilled in the art, there is no basis for limiting the meaning of "metadata" in the prosecution history, and because the type of "metadata" is specifically defined by the claims, there is no need for the Court to construe the term by reading in unwarranted limitations. Thus, the ordinary meaning should apply.

Dynamically: "Dynamically" is well understood by one of ordinary skill in the art and does not require construction. *See* Leader's Opening Claim Construction Brief, D.I. 179 at 25; *see also* Leader's Reply to Facebook's Claim Construction Brief, D.I. 196 at 16-17. Accordingly, the term should be afforded its plain and ordinary meaning.

Facebook's primary argument rests on the prosecution history of the '761 Patent. However, Facebook continues to fail to point to a clear disavowal of the scope of the claim term. Without such evidence in the record, the term should be given its plain and ordinary meaning.

Instead of pointing to a clear disavowal of the claim scope, Facebook highlights an examiner's amendment made during the prosecution history. What Facebook fails to consider is that the amendment was made to make the claims consistent, not to limit the scope of the term.

Facebook's argument relies solely on the examiner's amendment to Claim 18. Looking at the amendment, it becomes clear that the examiner replaced "automatically" with "dynamically" because "dynamically" was introduced earlier in the claim. Notice of Allowability with Examiner's Amendment at 3-11 (LTI 000670-78), D.I. 180, Andre Decl., Ex. 4. Furthermore, the examiner's amendment to Claim 18 made the claim consistent with Claims 26, 40, 45 which already contained the term "dynamically." *Id.* In all likelihood, if the term "automatically" was introduced first in Claim 18, and Claims 26, 40 and 45 used the term "automatically," the examiner would have replaced "dynamically" with "automatically." Thus, the prosecution history does not support Facebook's unnecessary construction.<sup>1</sup>

The red flag of Facebook's proposed construction is the addition of the phrase "in response to the preceding event." It appears that this limitation was made from whole cloth as it is completely absent from both the file history and the specification. While it is improper to import limitations from the specification into the claims, it is highly improper to import limitations that are pulled from thin air.

Because "dynamically" is a well-know term to those skilled in the art and there is no basis for limiting the meaning of "dynamically," there is no need for the Court to construe the term. Accordingly, the plain and ordinary meaning should apply.

Access: "Access" is not a term that was originally proposed by Facebook as requiring construction. Instead, Facebook proposed two different constructions for the terms "accesses" and "accessed." At this point, it is not clear which term or construction Facebook is proposing.

In any case, "access," "accesses" and "accessed" are simple terms that need no construction as they are understood by persons skilled in the art and lay persons. *See* Leader's Opening Claim Construction Brief, D.I. 179 at 14-17; *see also* Leader's Reply to Facebook's Claim Construction Brief, D.I. 196 at 13-14. Facebook's constructions require the addition of several unsupported limitations which exclude the acts of creation, addition, and uploading. As set forth in Leader's briefing, none of these exclusionary limitations are found in the intrinsic record. Furthermore, as detailed in Leader's briefs, Facebook's construction renders the claims, in which the terms are used, nonsensical (even more so with the new proposed term "access").

In its brief and during the claim construction hearing, Facebook attempted to argue that "accesses" and "accessed" should be construed to be "distinct from uploading, adding or creating." Now, in Facebook's letter to the Court, it argues that "access" should be given a similar construction. However, Facebook's positions are simply not technically correct.

As the Court will remember, during the claim construction hearing, there was discussion of "accessing" a picture of a boat on the Internet. Facebook failed to explain why "accessing"

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<sup>1</sup> Moreoever, merely amending a claim, does not give rise to prosecution history estoppel. Instead the law is clear that a narrowing amendment is required "[b]ecause [patentee's] amendment did not satisfy the 'narrowing amendment' requirement of *Festo*, . . . we see no need to examine the reason why the applicant amended the claim." *See Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359-60 (Fed. Cir. 2001).

the picture was distinct from adding or creating the picture. The reason is simple; when the picture of the boat is “accessed” by a user on the Internet, the picture of the boat is created on, and added to, the user’s computer in order to view the picture. Therefore, Facebook’s attempt to narrow the scope of the term is not only improper because it is unsupported by the specification and file history, it also does not comport with how the term is used in computer science. Accordingly, “access,” “accesses” and “accessed” should be given their plain and ordinary meaning.

Even though the parties agree that the following five terms should be construed, only Leader’s constructions comport with the intrinsic record:

Context: Leader’s construction of “context” to mean “environment” is supported by the intrinsic record. Specifically, in the specification, the applicant repeatedly described a “context” as an “environment.” *See* Leader’s Opening Claim Construction Brief, D.I. 179 at 6-8; *see also* Leader’s Reply to Facebook’s Claim Construction Brief, D.I. 196 at 7-8. Moreover, Leader’s construction harmonizes the way the term is used throughout the claims. *Id.* Lastly, Leader’s construction is consistent with the way the term is used in computer science, as well as everyday language. *Id.*

On the other hand, Facebook’s construction attempts to import several unsupported limitations into the claim term. *See id.* From Facebook’s letter, it appears that Facebook is still attempting to incorporate limitations from the dependent claims, namely workspace, webs and applications, into the independent claims. Facebook’s attempt to conflate, and limit, the scope of claims is improper and should be ignored.

Facebook’s primary argument to support its proposed construction is Fig. 9 of the ’761 Patent. However, one only need to look directly below to Figure 10 to understand that Figure 9 is one of many embodiments presented in the ’761 Patent.

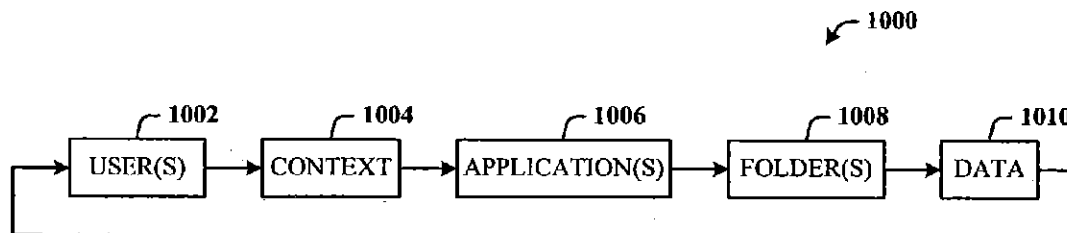


FIG. 10

Looking at Figure 10, and the corresponding description in the specification, this embodiment of a “context” is not associated in any way with a “web” or “workspace.” Further support can be found in Figures 1 and 2 which also describe a “context” but fail to mention a “web” at all. Because it is improper to limit the claims to a single embodiment, especially when

multiple embodiments are described, Facebook's construction should not be adopted. *Phillips Inc. v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005)

Component: Facebook's letter to the Court confirms that Leader's proposal is the proper definition of "component." In fact, Facebook stated that "the parties agree that the patentee defined the term in the specification." Facebook's January 22, 2010, Letter, D.I. 219 at 2. Inexplicably, however, Facebook seems to argue that the term is a means-plus-function element even though it is defined in the specification. While it is unclear whether Facebook has stipulated to the Leader's proposed construction, Facebook's argument that the term is governed by 35 U.S.C. § 112 is certainly incorrect as detailed in Leader's briefs. *See* Leader's Opening Claim Construction Brief, D.I. 179 at 8-9; *see also* Leader's Reply to Facebook's Claim Construction Brief, D.I. 196 at 4-6.

Ordering: Contrary to the proposed construction it presented during the claim construction briefing, Facebook's letter indicates that its previous construction of "ordering" should be modified to "placing items in a sequence." Nevertheless, Facebook's new construction remains flawed and should be rejected as it is completely unsupported by the intrinsic record. *See* Leader's Opening Claim Construction Brief, D.I. 179 at 9-10; *see also* Leader's Reply to Facebook's Claim Construction Brief, D.I. 196 at 8-9.

Traversing: Facebook's letter completely changes its previously proposed construction of "traversing" to now mean "crossing or moving over in a particular sequence/order." In addition to the prejudice to Leader, Facebook's new construction remains flawed as it is completely unsupported by the intrinsic record. Accordingly Facebook's construction should be rejected. In contrast, Leader's construction is consistent with intrinsic record. *See* Leader's Opening Claim Construction Brief, D.I. 179 at 10-11; *see also* Leader's Reply to Facebook's Claim Construction Brief, D.I. at 9-10.

Many-to-many functionality: Facebook's letter also identifies "many to many functionality" as a term that should be construed, yet Facebook proposes no construction for this term. Conversely, Leader's construction is fully supported by the specification. *See* Leader's Opening Claim Construction Brief, D.I. 179 at 11-13; *see also* Leader's Reply to Facebook's Claim Construction Brief, D.I. 196 at 10. As a result, Leader's construction should be adopted.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

PAR/mes/951556

cc: Steven L. Caponi, Esq. – By E-File and E-mail  
Heidi L. Keefe, Esq. – By E-mail  
Paul J. Andre, Esq. – By E-mail