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VIA HAND AND ELECTRONIC FILING

The Hon. Leonard P. Stark,
U.S. District Court, District of Delaware
844 N. King Street, Unit 26, Room 6100
Wilmington, DE 19801-3556

FILED UNDER SEAL

Re: Leader Technologies, Inc. v. Facebook, Inc., Civ. No. 08-862-JJF-LPS

Dear Judge Stark:

During the December 23 hearing, in defense of a motion to compel, LTI represented that it had produced or logged every document related to the '761 patent. Ex. 1 at 31-35. Facebook noted, however, that numerous relevant LTI documents that had been produced by third parties could not be found in LTI's production or log. The Court responded by ordering a "test" requiring LTI to identify in its production or privilege log: , ,

redacted

redacted LTI's response failed this test and reaffirms serious questions regarding the integrity of LTI's log and production. Facebook thus seeks the relief requested below.

LTI Failed the Court's Test

First,

redacted

The date and description in the entry do not match nor does the "to" field. LTI similarly failed the test

redacted

Once again, the date of the document listed on the entry above differs six weeks; no recipient or requestor is listed, redacted

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LTI offers no explanation for these discrepancies other than to suggest the inconsistent dates were "metadata dates" rather than the dates on the faces of the documents themselves. Ex. 6. More troubling, LTI has completely ignored the other discrepancies. Exs. 5, 6. It is clear that LTI's privilege log cannot be believed, as the information it reflects does not remotely describe the documents it purports to log.

redacted

The privilege log entries identified by LTI, however, do not appear to be related in any way to the documents. The dates and/or recipients do not match.

redacted

The aforementioned failures raises serious questions as to LTI's log, production, and its statement to the Court that it has produced or logged every document related to the '761 patent.

redacted

redacted

LTI refused to provide an explanation. Ex. 6. Facebook therefore undertook a detailed analysis comparing the documents produced by other third-parties against LTI's production and log. The results of Facebook's analysis - attached as Exhibit 12 - show that a substantial majority of the documents produced by third-parties have never been produced or logged by LTI.

Requested Relief

redacted

After unsuccessfully attempting to pry complete privilege log information from LTI since at least September of last year, and with less than a month left in discovery, Facebook respectfully requests that this Court order LTI to produce the following documents from its privilege log:

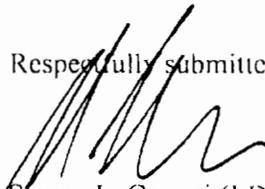
- All communications with and documents sent to third-parties, regardless of whether the document states on its face that it was sent to a third-party, LTI's common-interest claim is contrary to the law of this district (*Corning v. SRU Biosystems*, 223 F.R.D. 189, 190 (D Del. 2004)) and LTI's production of all such documents will assist Facebook and the Court in determining whether LTI has destroyed relevant documents.

redacted

- Communications between LTI and attorneys who were never retained by LTI, many of whom were representing third parties.
- A 30(b)(6) deposition on this topic that does not count against the previously set limits.

redacted

Respectfully submitted,


Steven L. Caponi (I.D. No. 3484)
Attorney for Defendant Facebook, Inc.