Potter
Anderson
Corroon LLP

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

March 10, 2010

BY E-FILE AND HAND DELIVERY

PUBLIC VERSION
MARCH 17, 2010

The Honorable Leonard P. Stark
U.S. District Court for the District of Delaware
Wilmington, DE 19801-3556

Re: Leader Technologies, Inc. v. Facebook, Inc., C. A. No. 08-862-JJF(LPS)

Dear Judge Stark:

Leader Technologies, Inc. ("Leader") respectfully submits this letter brief in opposition to Facebook, Inc.'s ("Facebook") letter to this Court dated March 9, 2010, in which Facebook seeks an order compelling the production of Leader's Leader2Leader® product source code.

It is remarkable that Facebook contends that it lacks sufficient evidence to prove its claim of false marking and to defend itself against Leader's patent infringement claims. Leader produced thousands of pages, including emails between development engineers, of technical documents to Facebook. In stark contrast, Facebook, the accused infringer in this case, has only produced *398 pages* of outdated technical documents to Leader and refuses to update its production with more recent technical information regarding the accused product, the Facebook Website. It is unclear how Facebook can claim its paltry and limited production of documents of the actual accused product in this case is sufficient for Leader to prove its patent infringement claims while claiming that after review of the Leader2Leader® product, it needs the source code even though Leader2Leader® is not an accused product involved in the case. Now Facebook asks the Court to allow the sort of "fishing into the code" that it previously claimed Judge Farnan rejected. Ex. 7 at 7:1-9 (D.I. 110, 8/20/09 Hearing Trs.).

It is ironic that Facebook now seeks Leader's source code, given that Facebook strenuously fought disclosing its own source code to Leader, to the point of initially not complying with the Court's order to provide source code. D.I. 78 at ¶3 ("Facebook shall produce its entire source code, for Leader's review…no later than August 21, 2009.") Facebook continued to resist producing its source code, stating "Well, the harm is essentially that [Leader] would have access to information that they never should have had access to in the first instance." Ex. 7 at 8:15-18. The Court disagreed. *Id.* at 40:13-23 ("One thing needs to be understood…you don't get an opportunity to wait until your objections are ruled on to comply with the discovery order.") Now Facebook seeks Leader's source code, even though it believes that disclosure of such code to counsel suffers from "all the fallacies that human beings can undertake when they exchange sensitive information." *Id.* at 6:15-17. There can be no doubt that Facebook would agree that "a very strong showing" must be made before Leader's source code should be released. Ex. 8 at 64:21-65:7 (D.I. 207, 12/23/09 Hearing Trs.).

A. Facebook Failed to Seek the Information it Desires from Available Sources.

Facebook cannot make any showing to justify discovery of the source code for Leader's Leader2Leader product. Facebook was provided with thousands of pages of technical documents relating to Leader2Leader, all historical technical documentation on Leader's product that includes developer's emails, and has had access to current versions of Leader2Leader whenever it requested access. The specific information sought by Facebook is specifically disclosed in these documents. For example, produced documents describe Leader2Leader functionally as "the system automatically indexes that information within the context(s) it is received and used." Ex. 1 at 3. Clearly, this functionality is describing the capturing of context information ("indexes that information within context(s)"), and dynamically storing it in metadata ("automatically indexes"). Additional documents provide further information about Leader2Leader's functionality [redacted] Nonetheless, Facebook chooses to ignore the functional description of Leader2Leader found in these documents, and disclosed in the current version of the product.

Furthermore, Facebook has taken substantial discovery of the key individuals familiar with the functionality of the Leader2Leader® product. [redacted] To now claim that Facebook is somehow going to be prejudiced if it is not allowed to "bore into the source code," after ignoring the thousands of technical documents produced by Leader, and burying its head in the sand by neglecting to ask two of the inventors these questions, rings hollow. [redacted]

B. The Basis for Facebook's Source Code Request is Dubious.

[redacted]

[redacted]

C. There is No Legal Basis for Requiring Leader to Produce its Source Code.

Facebook is merely trying to get the Leader2Leader® source code so it can do an improper product to product comparison at trial. Facebook is conflating the law regarding permanent injunctions to support its fragile arguments. In order to obtain a permanent injunction, Leader would need to demonstrate each of the "well-established" four factors required to obtain such equitable relief. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

The first factor, irreparable harm, is indeed more readily obtained when plaintiff and defendant are competitors. But Facebook misunderstands this factor – Leader need not practice the patent at issue in order to be a competitor with Facebook. *See id.* at 393. Indeed, it is a bedrock patent principle that "the very essence of the right conferred by the patent... is the privilege of any owner of property to use or not use it, without question of motive." *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U.S. 405, 429 (1908)(citation omitted). The Federal Circuit has confirmed that irreparable harm can be found "despite the fact [the patent holder] does not currently practice the claimed invention[]." *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 703 (Fed. Cir. 2008)(finding irreparable harm where the patent holder did not sell or plan to sell an embodiment of the patent). Thus, Facebook's obsession that Leader must practice the patent at issue is misplaced. As in *Broadcom*, Facebook and Leader are competitors where "Competition for sales is not on a unit-basis...." *Id.* at 702. Facebook is decimating the market for the Leader2Leader® product in a similar fashion as to that found in Broadcom – by "detract[ing] from its efforts to establish its technology...." *Hynix Semiconductor Inc. v. Rambus Inc.*, 609 F. Supp. 2d 951, 969-70 (N.D. Cal. 2009), citing *Broadcom*, 543 F.3d at 703. Facebook's concern that it must establish that the patent at issue covers the Leader2Leader® product is simply not the law. Thus, it is unnecessary for Leader to produce its source code.

While the Leader2Leader® product is an embodiment of the patent at issue, it is a misreading of the law for Facebook to suggest that proving the converse somehow renders Facebook and Leader non-competitors. There is ample evidence in the record that, but for Facebook giving away Leader's patented technology, Leader could establish its technology. *See id.*

Contrary to Facebook's claim that it must have the source code in order to determine what Leader2Leader® does, Facebook already has that information. It has had for quite some time now thousands of technical and marketing documents that explain what Leader2Leader® does. Leader respectfully asks the Court to deny Facebook's motion to compel the source code for the Leader2Leader® product as duplicative of discovery already in Facebook's possession.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)
provner@potteranderson.com

PAR/mes/956635
Enc.
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

Public Version: March 17, 2010

Exhibit 1

LEADER2LEADER™

DETAILED PRODUCT INFORMATION

PATENTS PENDING

Leader2Leader™ – a full-features communications and collaboration environment incorporating email, voice, fax, web conferencing, video, audio, file sharing, web conferencing, IM, chat, news, etc.(see Figure N).

Past approaches to collaboration implemented an LDAP[1] database model that has prevented flexibility and scalability. As a result, these products floundered in the marketplace. It would be wrong for venture investors to conclude from those experiences that buyers don't want collaboration. They do, as the earlier discussion points out. As case in point, the most ubiquitous communications applications on the planet are collaboration tools like phone, fax, email, instant messaging and file sharing. The problem isn't in that people don't want to collaboration, it is in how those tools were delivered to them in the past… this is where the market missed the mark. The market's first foray into cross-platform collaboration occurred in the late 1990's when numerous "unified office" products tried to simply cobble together various LDAP applications and call them "collaboration suites."

Individual collaboration tools work adequately with one-to-one (e.g., I send you and email), one-to-many (e.g., I broadcast an email to a group) and many-to-one (e.g., many different people send me email to

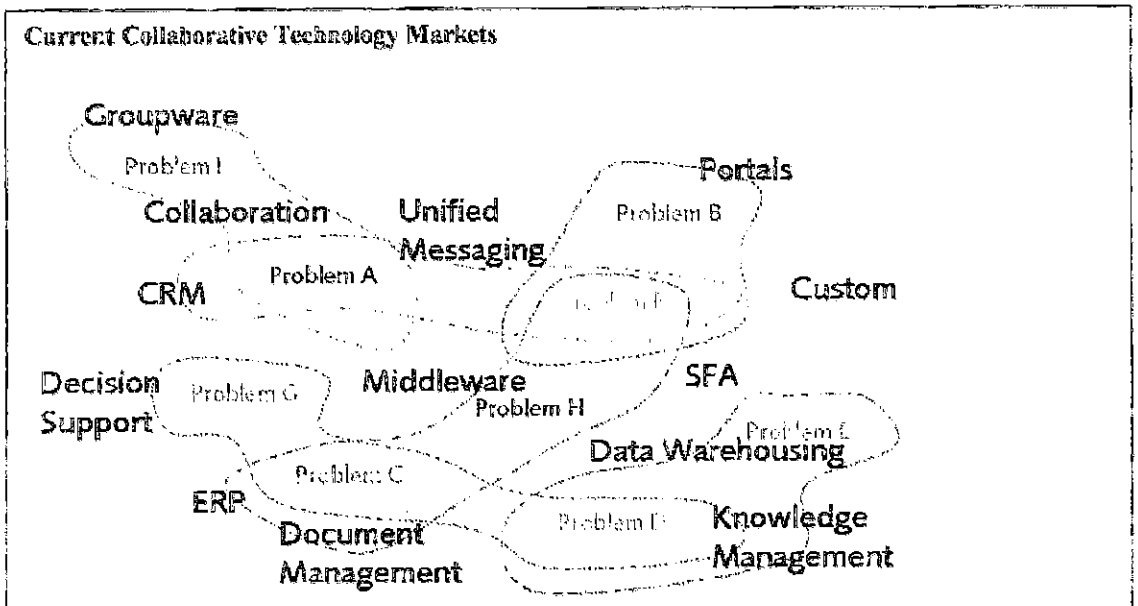


Figure A: How enterprises solve business problems today. Collaboration, communications and document sharing solutions use LDAP storage models almost exclusively. Implementation and support across all these "data silos" is expensive, time consuming and a source of increasing frustration to users who would rather do "real" work rather than be forced to learn how to use and manipulate various data silo applications just to do their work.

my Inbox) requirements. The rub comes when you need to relate this information to many different people

[1] Lightweight Directory Applications Protocol (files stored in folders).

and projects simultaneously (many-to-many). Add requirements for good levels of security, privacy, clear definitions of data ownership into this need and you have "real world" requirements for doing business that current communications tools do not accommodate… until Leader and Digital Leaderboard™ (which will be marketed under the brand name Leader2Leader™).

Truly scalable collaboration *must* include support for many-to-many relationships to be truly effective and flexible for enterprises. Past collaboration products have not accommodated many-to-many because the R&D requirements to build it right are immense. Leader's research discovered this Achilles heel and put a talented team of people together who designed and built it right. It took six years.

The need in practical terms is this: in my work on my enterprise priorities I work with many people on many inter-related topics using many different kinds of devices and networks. I multi-task. I move quickly among tools, topics, people and priorities. I move from place to place. My real-life world doesn't allow me

Organization of Collaborative Information
Pre-Leader = LDAP, No / Little Context

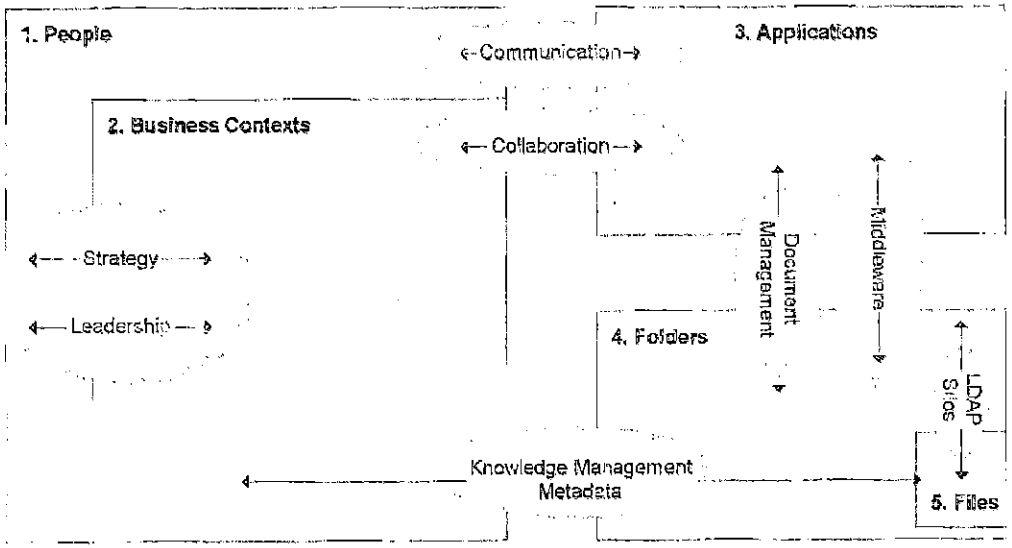


Figure B: How information flows in organizations today. LDAP filing structures are independent of their business context(s) except for single definitions of context (e.g., all files about Sally Smith go in the Sally Smith folder… but what if that file about Sally also is relevant to Bill, Tom, Joe, Beverly and Sylvia? Suddenly the folder storage methodology doesn't meet the need.

People (1) work in various **Business Contexts** (2). During the course of this work they use **Applications** (3) to create documents and perform tasks (e.g., email, voice mail, fax, file sharing, search, chat, IM, etc.) that store **Files** (5) created by those applications in **Folders** (4). This illustrates that Files are stored by Applications largely independent of any knowledge of the People and Business Contexts. Each of these Folders-Files data stores is associated with an Application. Applications are invoked totally independent of the Business Contexts in which they are used. This is the current state of the art.

the luxury of moving neatly in and out of discrete work silos, working with Email for two hours, then the phone for one hour, the fax for thirty minutes and meetings for two hours. The fact is, I am inter-relating information all day long, on the fly. My current silo applications often stand in the way.

Why, one might ask, have many-to-many relationships been a consistent oversight in communications technology? The short answer is because underlying data storage structures for collaboration devices have utilized a **files** and **folders** storage structure known as the LDAP protocol. Such structures are best suited to small-to-moderate-volume storage needs and relationships *other than* many-to-many relationships. For example, all account information about me is stored in a folder with my name on it. LDAP works fine for this need. Or, all training material for the XYZ training program is stored in the XYZ folder on ABC's hard drive. Again, LDAP works well for such applications, unless a lot of people need to get access to that folder, or if that information relates to more than one person or project. The later circumstances are when LDAP breaks down as the storage approach of choice.

Organization of Collaborative Information
The New Leader Approach =
Relational / Object-oriented, Context
(Patents Pending)

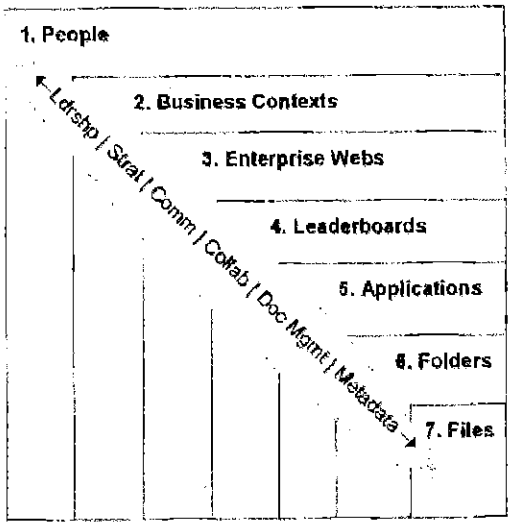


Figure C: How information flows with Digital Leaderboard™ -- With the new Leader patent pending context-sensitive storage methodology, Files (7) always contain a knowledge of their context (1 through 6). Leader has created a universal storage methodology and system, starting with Enterprise Webs, Leaderboards and Applications that will forever change the way applications like tasks email, voice mail, fax, file sharing, search, chat, IM, and custom apps inter-relate within a scalable, many-to-many storage requirements are best suited to relational and object database structures that can handle many relationships among data simultaneously and can handle large scale. That said, almost no communications applications have been written to a scalable, relational-object storage approach... until Digital Leaderboard™ - the first of a new breed of scalable, Internet-based communications platforms.

Once this many-to-many functionality chasm in collaborative technology was identified, the Leader team set to the task of identifying the key components of the needed new architecture. The Digital Leaderboard™ platform emerged.

What needs does the Digital Leaderboard™ platform solve that are not solved by existing collaborative tools? It enables large numbers of users to organize communications around many projects simultaneously. It can relate those projects to one another using whatever workflow model(s) are required, and it dynamically assigns modular communications tools (email, voice mail, fax, teleconferencing, document sharing, video, audio, chat etc.) to those many projects as needed. Then, the system automatically indexes that information within the context(s) it is received and used.[2] This way, when you search for information in the system, you not only get what you are looking for, you also see how it is currently being used by the other users and groups in the system. These results can only be achieved by a collaboration environment that supports many-to-many relationships.

[2] Patents are pending on this architecture.

Why are many-to-many relationships important? It is because they reflect the way business actually works. They are the way "real world" communications happens. Paraphrasing the movie Jurassic Park: "real communications finds a way." By this we mean that perhaps half of business communications doesn't

The Digital Leaderboard™ System (Patents Pending)

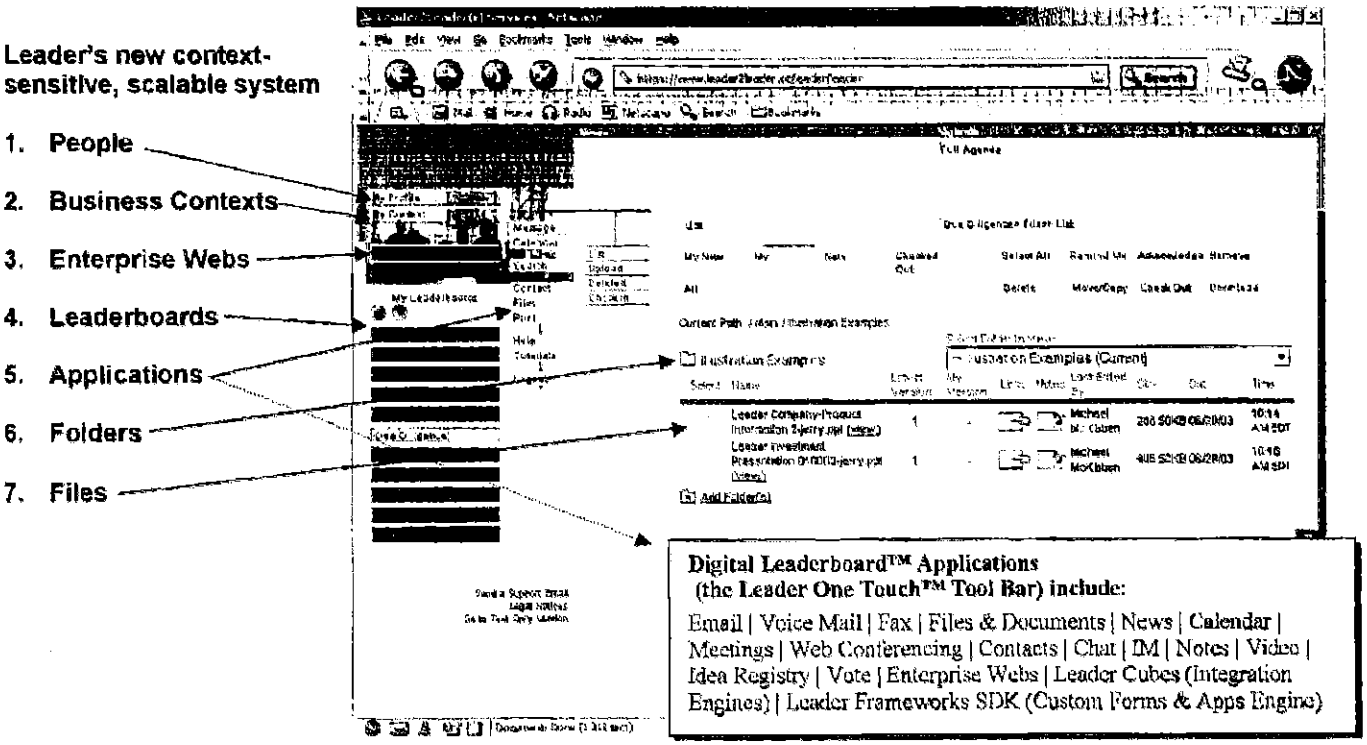


Figure D: Leader2Leader™ Web Console – Screen shot of the Digital Leaderboard™ illustrating how the system seamlessly place all information in its nature business context, automatically, by simply using the system to collaborate. Each person who logs in to the system gets their own real-time personalized view of all the Business Contexts within which they are a stakeholder. Access permissions are set by the host of any particular Leaderboard and can be defined granularly down to the individual file level.

fit into the LDAP files-in-folders silos that we currently use for communications storage and processing. Email goes in one silo. Fax goes into another, files go in yet another, and so on. What do you do with a document, for example, that relates to seven different projects simultaneously? In an LDAP world, you must store that document in seven different project folders and watch version control on edits become a nightmare. Alternatively, you must install and configure a groupware system that will automatically replicate changes across the network. In the Digital Leaderboard™ world that document is seamlessly linked to all seven projects.

The Digital Leaderboard™ contains powerful features for organizing and defining context. For example, each leaderboard can receive faxes right to the board. The system automatically OCRs (optical character recognition) the fax and stores all the keyword phrases in the fax with the fax image file. Now let's say that you determine that people in 4 other leaderboards need to see this fax immediately. Rather than creating 4 copies of the fax, you simply link each other leaderboard to this fax. Further, let's say this fax contained information about a Bill Smith, and you have no idea who Bill Smith is. He doesn't relate to your project. However, during a search of company documents, someone in Cleveland needs all information on Bill Smith. That person will search for Bill Smith and this fax will come up in the search. Knowledge linking becomes seamless with Digital Leaderboard™.

In the previous example, before Digital Leaderboard™ you would have received a physical fax, faxed it to 4 people in the other project groups, then stuffed it away in your project file. Each of those other

people would have to repeat this process with their copies of the fax, and the person in Cleveland would have never found this Bill Smith reference in his search. The improvements in productivity and workflow with Digital Leaderboard™ can be dramatic.

The following is a brief explanation of each contextual component of the Digital Leaderboard™

1. **People** – The creative focal point for all work accomplished in an enterprise.

2. **Business Contexts** – Multiple enterprises, an enterprise, divisions, departments work groups, teams, etc.

3. **Enterprise Webs** – Workflow structure(s) for Leaderboards

4. **Leaderboards** – Topical focal point and work space for an individual or team of people

5. **Applications** - Communications and collaboration tools needed for the individual or team in a leaderboard to do their work.

6. **Folders** – LDAP-like logial groupings of files within an Application

7. **Files** - Individual collaboration compoents, whether they be email, fax, voice mail, IM, files, chat, custom data types, etc.

Digital Leaderboard™ technology employs XML technology to implement this seamless information exchange among its components. It employs 128-bit data security. It supports any type of browser-based end user device, including wireless phones and hand held devices. It employs a Java-based processing engine that can run on any operating system (i.e., Windows 2000, Windows NT, Solaris, Unix, Linux, Apple, IBM AIX, etc.). It accommodates both relational and object-oriented databases (i.e., Oracle, DB2, Sybase, MySQL, Object Store, Objectivity, etc.). It handles both voice and data, utilizing its own internal voice engines. It requires nothing on the client side other than a simple browser. No plug-ins, downloads or installs are required.

The Digital Leaderboard™ system will be sold initially in two product configurations: **Leader2Leader™** (which is being described in the section) and **LeaderPhone®** (which is described in the next section).

The system's horizontal collaboration capability can be applied to numerous vertical applications, including:

Clinical Trials – Secure exchange of highly sensitive clinical trials data in the pharmaceutical industry.

Financial Services – Secure exchange of insurance data among customer, broker/agent and insurer; 401K Deduction data as an example.

Customer Service – Unified customer service center web console for processing customer service requests by Email, IM, and Voice and the simultaneous linkage to other customer information databases required for any given customer.

Government Services - Providing government call centers with a one-stop location for inquiries for information from governmental agencies.

Project Management – Secure exchange of large files, shared calendaring, voice mails and faxes among stakeholders in geographically dispersed projects in construction, architectural design, advertising, and product design

File & Document Sharing – Central repository for critical documents for dispersed and remote workgroups.

Sales Support – Central repository for product information, training resources, standard sales forms, procedures, policy, sales collaterals, etc.

Security– Central repository and remote monitoring console for digital, IP-based security camera signals. (Leader has built in cooperation with Lawrence Livermore National Laboratories, US Department of Energy a "smart camera" that can be used as an enabling device for Homeland Security applications.

Web Conferencing – Remote sharing of a desktop presentation. To be provided as a part of the acquisition of Linktivity and its flagship product, Web Demo.

Event Management -- Central project coordination resource for major national events, like major sporting events.

CLEC Wholesale Communications Services – As the unifying front end offering for CLEC providing one-stop functionality to building tenants, including, security cameras, IP phones, ISP service, teleconferencing, web conferencing, Email, Voice Mail, Fax, etc.

Application Tool Kit – Software development kit enabling customize linking of third party data sources and applications to the unified Leader2Leader™ presentation and storage framework.

Leader2Leader™ will be offered in two modes: (1) enterprise license, and (2) ASP. The enterprise license will be sold to larger companies. The ASP version will sell to medium and small business and be used as a marketing tool for selling enterprise licenses.

Exhibit 2

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

Exhibit 3

Leader
The Intellectual Capital Company®

White Paper

Leader2Leader® -- What convergence was meant to be.
By Michael T. McKibben, Chairman & Founder

How do you share information?

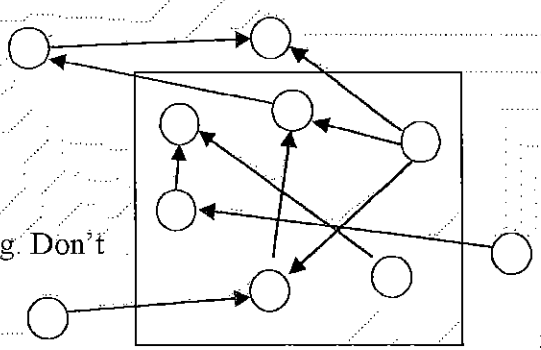


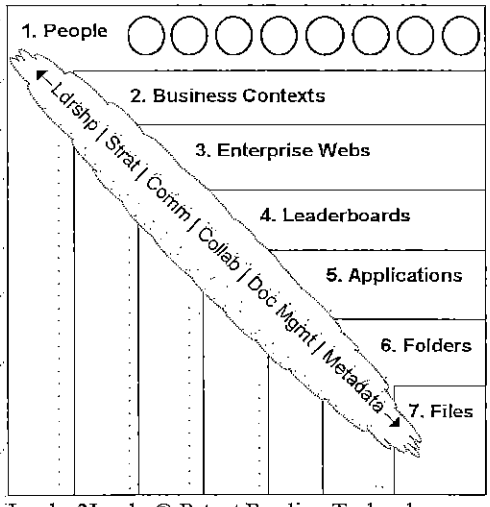
Figure 1: Information sharing happens

Do you collaborate using email, voice mail, chat, file sharing, conferencing calling and web conferencing among multiple teams, vendors and customers?

If so, you know how confusing it can be to keep track of everything. Don't you wish you had a way to streamline and organize your daily workflow, bringing organization to the chaos? Something that would work on ANY platform?

Now you can. Leader Technologies has developed a revolutionary new way for organizations to communicate, store and search for documents, set and coordinate tasks for individuals or teams, monitor the progress of a project or projects, easily share information with the entire organization or just a particular group, and share "best practices". Our technology allows all individuals in an organization to share and develop ideas freely. All of this happens easily via the Internet, without adding another layer of software to your network.

How could you share information?



Leader2Leader® Patent Pending Technology

Figure 2.

Leader2Leader® enables your organization to communicate, capture and store its most valuable asset, its intellectual capital. Leader® has invented a revolutionary web-based system for intellectual capital banking that is completely user organized. It can be rapidly implemented on every desktop in an enterprise of any size. Leader's products and services move the knowledge management dialog from theory to reality.

Leader2Leader® enables your organization (1) to facilitate better *leadership* and decision making, (2) to enable true *collaboration* up, down and across the company, and (3) seamlessly capture and then fully capitalize on the company's *intellectual capital*. The first step in making this happen was to design a tool that is very simple to use and to learn. The answer: use an Internet browser and one common data store. This would ensure that all of the information collected, documented and organized would be easily accessed by the user.

Leader Technologies Incorporated, 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (614) 890-1986, mmckibben@leader.com

Leader2Leader® offer users the ability to easily collaborate and share documents across the organization. The infrastructure of our technology uses a rock solid security and privacy model. All users will log in to there personal workspace, then easily move to shared workspaces, communications tools, company priorities and access all necessary documents to perform there job in a more productive and efficient manner — from anywhere on the planet.

What happens to the information you share?
A lot of valuable information inside of an organization is never captured, or if it is, it is stored on a person's PC hard drive or in email. With Leader2Leader® an employee can type questions, comments and new ideas easily that automatically get linked to the comments of others on the same topic. This valuable feedback is stored securely and becomes part of the "corporate mind" we call "intellectual capital". Just like physical capital, this intellectual capital is a part of what makes your organization valuable; according to many pundits, more so. That is, the knowledge of how to do something right is much more valuable than doing it right once or twice.

Your organization's information can be transformed from simple bits and bytes on a hard drive to a source of…

- Better Leadership
- Better Collaboration
- A Bank of Intellectual Capital
- A Bank of Best Practices

Leader2Leader® transforms information into knowledge; taking knowledge management from theory into practice.

Figure 3

For example, when people search on this topic in the future, your comments will be retrieved in the search. This enables an organization to gather and keep its "best practices" quickly and efficiently. With Leader2Leader® this can simultaneously involve voice mail, faxes, e-mail, documents, spreadsheets, conference calls, chats, notes and calendar items – whatever tools a business might use every day.

Leader's development model was straightforward: Design the system from the ground up with security and privacy a priority and use "best of breed" development tools and platforms. Six years later this patent pending technology has reinvented the entire collaboration software paradigm.

Turn that information into Intellectual Capital with Leader2Leader®

What is intellectual capital? In short, it is the critical ideas that flow within your organization, past, present and future.

How is intellectual capital generated? By people doing their work and interacting.

What forms does intellectual capital take? It is ideas generated and exchanged that are intangible in essence, but take practical form in our letters, emails, voice mails, faxes, instant messages, notes, reminders, meetings, conversations, conferences, surveys, brainstorming sessions, sticky notes, bulletins, news, documents, and files.

Tangible & Intangible Value Flows in an Organization:

Tangible:
$$$ Expense in Materials & Labor → Goods & Services → Increased $$$ Value in Revenue

Intangible (Intellectual Capital value flow):
$$$ Expense in People → Collaboration & Ideas → Increased $$$ Value in People

Pundits agree that the intangible "people value" of an organization that is its intellectual capital, while largely ignored on today's balance sheets, is the truer measure of an organization's real value. Leader2Leader® helps you actualize the value of your intellectual capital.

Figure 4.

Leader Technologies Incorporated, 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (614) 890-1986, mmckibben@leader.com

How is a voice mail, for example, intellectual capital? The voice mail itself is not. The content of the voice mail is. The value of a voice mail is not in the bits and bytes that make it, it is in the usefulness of the thoughts and ideas contained within. A voice mail that cost two cents to generate may contain ideas worth millions of dollars to your company. The more of this intellectual capital you can bank, the more valuable your company becomes. Why? Because that voice mail may be just the key piece of information your management team needs five years from now to beat the competition; information that might have otherwise been lost when the original recipient retired or changed jobs.

How does Leader2Leader® capture intellectual capital? The idea is simple. Let the system capture and catalog all your intellectual capital automatically; you just do your work. Leader2Leader®'s patent pending technology lets you quickly set up any number of users, projects, permissions and communications tools. It enables you to exchange voice, data and video seamlessly. Training is simple. The user interface is intuitive. In short, Leader2Leader® removes the hassle previously associated with setting up collaborative environments handling different kinds of data.

How does it handle my intellectual capital? As the users collaborate in Leader2Leader® the system captures context information. The system will automatically remember when and how files were shared, who updated them, how often they were accessed, what additional information it was linked to, etc. Meeting information is stored automatically: who attended, documents shared, instant messages captured, handouts, slides show, everything. Later searches will bring up all this information along with the context(s) within which it was generated and used. This is the kind of information that prevents costly "reinventing the wheel" by future work teams who would otherwise have to recreate all this knowledge and experience, costing you valuable time, money and opportunity.

Why is intellectual capital important to me? The more of these critical ideas that you are able to harness, the more valuable will be your company. Think of ideas like money. We talk about the million dollar idea. What if you were able to also capture all the $50, $100, $500, $1,000, $10,000, $100,000, $500,000 ideas also? Leader2Leader®'s patent pending technology enables your stakeholders to simply do their work while the system seamlessly captures your valuable intellectual capital.

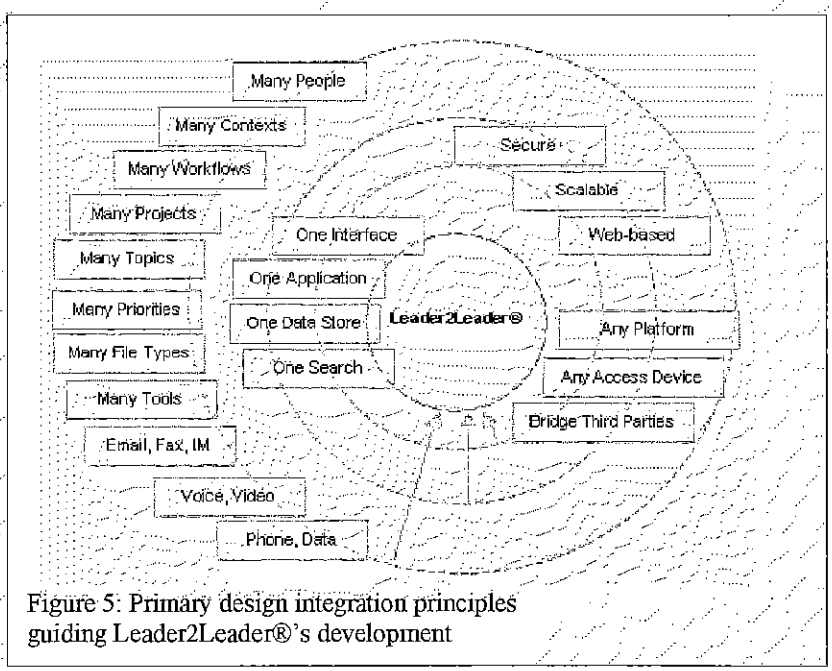


Figure 5: Primary design integration principles guiding Leader2Leader®'s development

How is Leader2Leader® different from "knowledge management" products from Microsoft, IBM and Lotus? First, Leader2Leader® can operate on Microsoft, IBM and Lotus platforms. Second, traditional solutions are burdened with "data silo" legacies that prevent interoperability across different kinds of collaborative data. These data silos do not tie voice, data and video together and prevent retrieval of intellectual capital by their very structure. Leader2Leader®'s patent pending technology has

overcome this fundamental problem faced by the leading vendors. That said, Leader2Leader® operates seamlessly on all these major platforms, including Windows, UNIX, Linux, Solaris and AIX.

How is Leader2Leader® more secure?
It is browser based and incorporates 128-bit secure socket layer (SSL) protocols. In practical terms this means the data stream between the computer you are using and the Leader2Leader® server is encrypted to a very strong encryption standard. In addition, the Leader2Leader® information that you view on your computer is not cached, which means there is no information footprint left on the machine after you log off. This important features enables you to access your information securely from virtually any Internet browser. The data exchange with the Leader2Leader® is itself encrypted and is stored on encrypted Leader2Leader™ servers. In short, from front to back, Leader2Leader® is secure and will likely comply with the highest levels of security requirements that may be required.

Leader2Leader®

How it works…

1. Turn on your computer or hand held device.
2. Access the Internet from anywhere on the planet.
3. Login by typing your UserID and Password.
   Leader2Leader® automatically starts encrypting your work at very strong 128-bit encryption.
4. ❶ Click on the Digital Leaderboard™ workspace you are interested in.
5. ❷ Click on the Leader One Touch™ communications tool you need
6. ❸ Retrieve or add information.

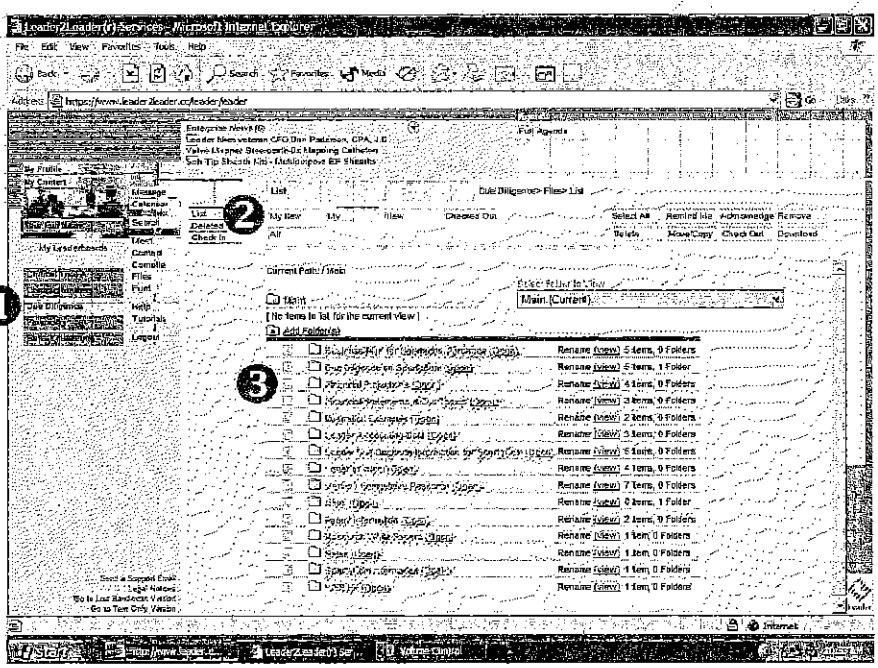


Figure 6. Leader2Leader® screen capture.

Leader Technologies Incorporated, 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (614) 890-1986, mmckibben@leader.com

Leader2Leader®

Feature	Benefit
Easy-to-use	Saves training $$$
Easy-to-support	Saves support $$$
Automatic indexing (metadata tagging)	Saves labor $$$
Integrated voice & data	Single data store; saves licensing and hardware $$$
User managed workspaces	Saves support $$$
XML/XSLT server technology	Saves support $$$
Document management w/ versioning	Saves deployment $$$
Presence awareness	Component level control
Teleconferencing built in	Saves labor and per minute $$$
Remind Me	Saves lost opportunity $$$
SQL/Object database support	Scalability; flexibility
Software development kit	Link third party applications
Web-based	Saves support $$$; no installs or downloads
Enterprise Webs	Saves time $$$; easily address multiple teams
Unified messaging (email, voice mail, fax)	Saves license $$$; seamless message enabling
Chat	Saves license $$$; integrates conversations into knowledge base
Calendar	Saves license $$$
Task	Saves labor and license $$$;
Vote	Saves labor and license $$$
Meet	Saves labor, license, per minute $$$
128-bit Encryption	Saves support $$$; private, secure
News	Saves labor and license $$$
OCR	Saves labor and license $$$

Product Comparisons

Historically, the features just mentioned are sold a discrete applications creating what are sometimes not so affectionately called "data silos" which are independent of one another. That independence can server certain vertical applications well. However, when a person, work group, division or company wants to mix and match the data from all these applications to solve a problem, they cannot. The data silos become decision-making barriers because they do not accommodate the natural linkages of data that are required to develop complete, well-informed decisions. Leader2Leader® creates a new class of collaboration software.

Leader Technologies Incorporated, 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (614) 890-1986, mmckibben@leader.com

	Voice & Data Integration	Quick Setup, Highly-secure File Sharing & Document Management with version control	Teleconferencing	Pure Web (HTML) Interface (no downloads or installs)	128-bit SSL Security (Standard)	Native XML	Cockpit Interface	SQL or Object Database	One Data Store
Leader2Leader®	X	X	X	X	X	X	X	X	X
Lotus Notes / WebSphere									
Microsoft Exchange / .NET									
Oracle / Collaboration Server									X

Do you need a collaboration solution?

If you answer **yes** to any of these questions, **you need Leader2Leader®**

1. **Locations** - Are your employees spread out in different locations?
2. **Email** - Does your team use Email to share all its files and documents?
3. **Complaints** - Do team members complain about phone tag, lost information, having to resend information constantly?
4. **Outside Experts** - Does your team need outside assistance from subject matter experts?
5. **Outside Coordination** - Are team projects slowed by poor coordination with the subject matter experts?
6. **Travel** - Do your employees often travel between offices to meet?
7. **Productivity** - Is employee productivity a problem in your organization?
8. **Communications** - Are your teams waste time from poor project communications and coordination?
9. **Suppliers** - Do your suppliers, vendors and customers complain about poor communications with your employees and project teams?

Leader Technologies Incorporated, 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (614) 890-1986, mmckibben@leader.com

Leader2Leader®

Platform Requirements

- Debian Linux, Sun Solaris, Windows NT, Windows 2000 operating systems
- Tomcat Web Server
- Broadband Internet
- Long distance provider (T1s, DS3) (if using teleconferencing, voice mail, fax)
- Server Hardware: Sun, IBM, Intel-compatible Architectures
- Mass Storage: EMC, Dell, HP, Network Appliance
- Natural Microsystems voice cards
- DataPower XA35 SSL/XSLT accelerator
- Oracle or Objectivity

Platform Standards

- Java
- XML/XSLT (Extensible Markup Language/Transforms)
- SSL (128-bit Secure Socket Layer)
- Java Virtual Machine 1.4
- SQL
- W3C OODBMS Standard
- HTML 1.0 through 4.0

Client Requirements

- Designed to work with all major browsers
- Extensive testing has been performed on IE4, IE5, IE5.5, IE6; Netscape 4.77, Mozilla and Opera on Linux, various Windows platforms, and Apple
- Designed for various handheld and wireless devices
- Extensively testing has been performed on Palm 7, 705i and Blackberry devices
- Session cookie required
- JavaScript supported by not required
- No downloads, no Java applets, no plug-ins, no ActiveX, no installs required

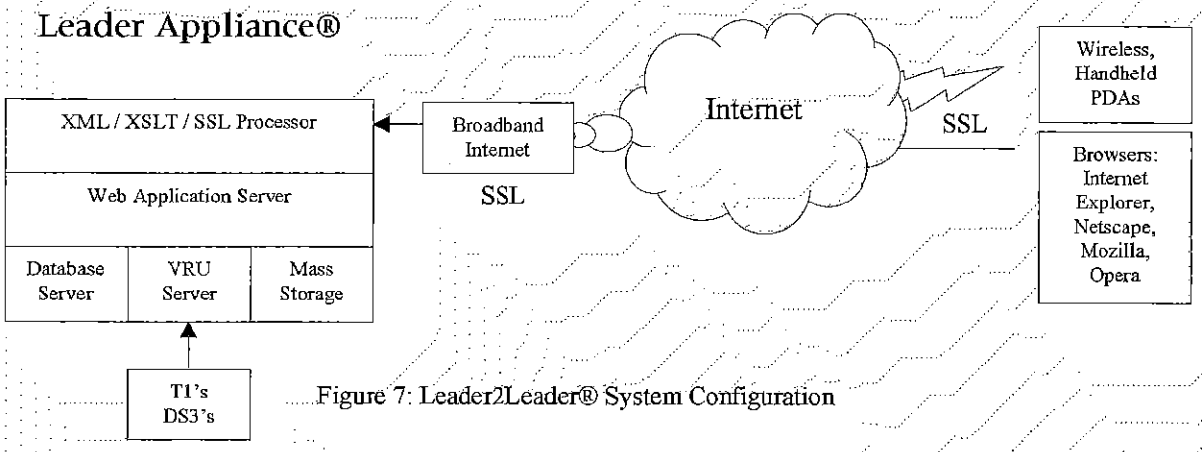


Figure 7: Leader2Leader® System Configuration

Leader Technologies Incorporated, 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081 (614) 890-1986, mmckibben@leader.com

Exhibit 4

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

Exhibit 5

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

Exhibit 6

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

Exhibit 7

Leader Technologies, Inc. v.
Facebook, Inc.

Hearing
August 20, 2009

Hawkins Reporting Service
715 King Street
Suite 200
Wilmington, DE 19801
(302) 658-6697

Original File 90820B~1.TXT, 45 Pages
Min-U-Script® File ID: 0928095666

Word Index included with this Min-U-Script®

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., : CV No. 08-00862(JJF)
: August 20, 2009
Plaintiff, : 2:05 p.m.
v. : Wilmington, DE
FACEBOOK, INC., :
Defendant. :

TRANSCRIPT OF TELEPHONE CONFERENCE

BEFORE THE HONORABLE LEONARD P. STARK

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: PAUL ANDRE, ESQ.
KING & SPALDING
1180 Peachtree Street, NE
Atlanta, GA 30309
(404) 572-2856
JAMES HANNAH, ESQ.
KING & SPALDING
333 Twin Dolphin Drive
Suite 400
Redwood Shores, CA 94065
(650) 590-0726
DAVID E. MOORE, ESQ.
POTTER ANDERSON & CORROON LLP
1313 N. Market Street
Sixth Floor
Wilmington, DE 19801
(302) 984-6147

For the Defendant: MARK R. WEINSTEIN, ESQ.
WHITE & CASE
5 Palo Alto Square
Ninth Floor
Palo Alto, CA 94306
(650) 213-0300

APPEARANCES: (Cont'd.)

For the Defendant: THOMAS P. PRESTON, ESQ.
BLANK ROME LLP
1201 N. Market Street
Suite 800
Wilmington, DE 19801
(302) 425-6400

Court Reporter: EDWARD N. HAWKINS, RMR
HAWKINS REPORTING SERVICE
715 N. King Street, Suite 3
Wilmington, DE 19801
(302) 658-6697

PROCEEDINGS

THE COURT: Good afternoon, everyone. This is Judge Stark. Who is there, please?

MR. PRESTON: Your Honor, good afternoon. This is Tom Preston, we represent Facebook, and I have with me on the line Mark Weinstein from White & Case.

THE COURT: Good afternoon.

MR. ANDRE: Good afternoon.

MR. MOORE: Good afternoon, Your Honor. David Moore on behalf of the plaintiff and with me today on the line is Paul Andre from King & Spalding.

THE COURT: Good afternoon to you as well.

This is the time for a teleconference regarding Facebook's request for a stay of a discovery order. And it's our case of Leader Technologies, Inc. versus Facebook. Civil Action Number 08-862-JJF-LPS.

I have, of course, reviewed the parties letters, and I have some questions and also, you know, want to give you each an opportunity to let me know whatever else you want me to consider as I consider the request.

Because it is Facebook's request, I want

to start with Facebook. Who will be speaking for Facebook?

MR. PRESTON: Your Honor, with your permission, Mr. Weinstein will be handling the argument.

THE COURT: That's fine.

And, Mr. Weinstein, let me ask you to begin your presentation by articulating for me as clearly as you can what the harm to Facebook would be from having to produce the entirety of its source code subject to a protective order.

And I want to especially make sure I understand your contention as to why that harm, if there is such, would not be irreparable in some way if Judge Farnan ultimately disagreed with my order.

MR. WEINSTEIN: Thank you, Your Honor.

The first point, Your Honor, is that the source code for the Facebook website is not something that we consider, you know, a standard sort of discovery matter.

This is the source code that runs the website for one of the most well-trafficked and well-known services in the world.

The source code is, essentially for us,

Page 5

the single-most critical and important asset of the company. And while we have made very clear throughout the case that we don't oppose the production of portions of the source code and the production of reasonable subsets of the code that the plaintiff needs to perform its analysis, the production of the entire source code is something that is, what we believe, is beyond what is necessary for this case.

As far as the harm to us, the not staying the enforcement of the order will effectively deny Facebook any meaningful judicial review.

Essentially it would be very difficult to unring the bell after the source code is produced because the order would require the production prior to the ability of Judge Farnan to review whether or not that production should have taken place in the first instance.

THE COURT: What I'm looking forward to understand better is what the harm is from producing the source code subject to all the protective order protections that are in place.

I understand and accept that the source code is the single most critical asset that the company has, but that doesn't to me articulate what

Page 6

the harm is from having, subject to certain protections in the course of discovery, to make production of it. That's what I'm hoping to hear from you better as to what that harm actually is to Facebook if they are ordered to do that.

MR. WEINSTEIN: Yes, Your Honor.

I think the bottom line, Your Honor, is yes, there are protections in place. There is a protective order in place. This was the argument that was actually made to Judge Farnan.

But obviously we understand that, you know, these protections are not always — you know, these protections are as good as we can make them. They are subject to human beings. They are subject to...they are subject to — you know, they're subject to all the fallacies that human beings can undertake when they exchange sensitive information.

I think this is not the typical case of just some confidential information that is being disclosed. It is — the information that is in the wrong hands would allow someone not only to compete with Facebook, it would allow them to perhaps breach the security of the Facebook website, etc.

I think the other harm that we're having

Page 7

here, Your Honor, is that when Judge Farnan established the original procedure, the idea was essentially to prevent sort of the fishing into the code, of just going full bore into the source code without having some articulated theory, and that was the original concepts behind what Judge Farnan established, and that would obviously be undermined by an order requiring the production of the entire source code.

THE COURT: All right. And what is it about the harm — I understand the argument that you would effectively lose your opportunity to get review. Put that aside.

What is it about the harm from the source code being produced that would not potentially be irreparable? Why could the bell not be unrung if, you know, you turn it over tomorrow and a couple of weeks from now Judge Farnan says I was wrong?

MR. WEINSTEIN: Well, because the portions — obviously the portions of the source code that — assuming Judge Farnan was to say, Okay, you need to go with a reasonable suspect, they will have had complete and unfettered access to the entire source code for that period of time. So you really

Page 8

can't unring the bell.

It's somewhat analogous to when privileged documents are produced or other kinds of sensitive information. Once it's been disclosed, you can't really pull it back, or they would have had the information in their possession, you know, before such time as Judge Farnan decides whether they should have had it in the first instance.

THE COURT: So then the harm you're articulating is Leader would have some advantage, some unfair advantage in the litigation because they might stumble onto an infringement theory that they don't otherwise have and wouldn't properly have access to? Is that the argument?

MR. WEINSTEIN: Well, the harm is essentially that they would be having access to information that they never should have had access to in the first instance.

I'm not necessarily — I'm not convinced they're going to find any infringement, no matter how much of the code they review, but it's the access to the information that is the issue.

THE COURT: I understand that you filed your objections in a timely manner, but nonetheless

Page 37

rock, and then be able to confirm their theory if they have one.

THE COURT: And the contention by Mr. Andre that they've not received a single technical document yet in this case; that's correct or incorrect?

MR. WEINSTEIN: I don't think that's correct, Your Honor.

I mean, just to give you an example. The PDF documents that they're talking about, they're actually loaded on the computer that was made available during the inspection. Those PDFs have been collected and are available on the computer.

So as to the other documents that were identified, not with specificity, I can't speak to those because they're just not defined with any level of clarity.

MR. ANDRE: Your Honor, this is Paul Andre, just real quickly.

Those PDFs there on the computer. Under the source code we are not permitted to print those out, so we don't have those documents. That was a source code review and a PDF is a part of that source code, and we are now allowed to print them out and we

Page 38

filed a protective order.

THE COURT: Mr. Andre, do you have a sense at this time yet when your expert is next available to go review the source code? And I'll certainly understand if he hasn't given you a date yet.

MR. ANDRE: Yeah. We got the word from him last night, and we've contacted him to see if the young baby Vigna has arrived yet and we have not received a word from him.

So I'm hoping that that mother and child are fine, but I don't know, to be honest with you. He's pretty responsive.

I know the time period — I don't know if he's teaching this summer or not, so he may do it in the next week or two.

THE COURT: All right. Anything further you want to add, Mr. Weinstein?

MR. WEINSTEIN: Not at this time, Your Honor. Thank you.

THE COURT: Well, I'm prepared to rule, but it is going to be a limited ruling.

I think it's fortuitous, undoubtedly a happy thing for the Vigna family, but I think happily

Page 39

for all of us that the original order, which provided access to Leader to the full Facebook source code starting tomorrow, is not an order that Leader is in a position to take advantage of, tomorrow anyway, and I do think that's fortuitous because I want to better understand the competing contentions about the specificity of the infringement theory that Leader is bringing here. And I will come back to that in a moment.

Let me say a few things before I get to that and to what the specific relief is that I'm going to grant.

One thing that needs to be understood is that as this case has been referred to me by Judge Farnan, he has referred all discovery disputes and management of discovery in its entirety to me.

Now, of course, that gives either side, if they're dissatisfied with the ruling from a Magistrate Judge on a discovery matter referred to him, that gives you a right to object, of course, but you don't get an opportunity to wait until your objections are ruled on to comply with the discovery order.

The discovery order of the Magistrate

Page 40

Judge is an order of the court. It's only going to be reversed if the District Court judge finds it's clearly erroneous, contrary to law or an abuse of discretion.

And the point is it's an order of the court, and sometimes it may happen that because discovery is moving more quickly than the objections' process can move, that you end up having to comply with the discovery order that otherwise you might have found you could of had reversed.

Further, it needs to be understood that I am not limited at this point to follow the procedure that Judge Farnan set forth when he was handling discovery in this case.

As I understand the referral, part of what's referred to me is to manage this process as it evolves. Nobody believed that it was going to just stand still. And so the fact that I view something differently than Judge Farnan is not an argument that limits my discretion in terms of how I'm going to handle discovery.

I want to further say the argument that Facebook is making — and I've given you every opportunity to articulate it today — that the

CERTIFICATE

I, EDWARD N. HAWKINS, Registered Merit Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

Edward N. Hawkins, RMR

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC.,	)	
Plaintiff,	)	C.A. No. 08-862-JJF-LPS
v.	)	
FACEBOOK, INC., a Delaware corporation,	)	
Defendant.	)	

Wednesday, December 23, 2009
11:00 a.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE LEONARD P. STARK
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPAULDING
BY: PAUL ANDRE, ESQ.

Counsel for Plaintiff

And I think that Facebook is entitled to access fully functioning access to the product that is the basis for the contention of Leader that the companies are competitors. Facebook's entitled to access to that product to determine if it may have a basis for arguing through the product that the two companies are not competitors.

At this point, I'm denying the request for relief under Production Request Number 67, which seeks a copy of the complete source code for Leader to Leader. I do recall fairly well the back and forth over many weeks or months and phone calls that we had which led ultimately to the production of the entire source code of Facebook to Leader.

And it may turn out that Facebook will persuade me that they need access to the entirety of Leader's source code. But seeing as Facebook has not yet even had access to a fully functioning version of the product, seeing as I'm sure Leader will view the source code as the most important commercial property, and seeing as I think, I would want a very strong showing before

I'm going to provide access to the source code just as I required when Leader was seeking Facebook's source code, I just don't think that showing has or can be made at this point given that Facebook has not even had a moment to access fully functioning access to the product to the Leader product.

So that's my ruling on that issue.

We should talk about the timing for when Leader can provide the fully functioning product. Mr. Andre, given the holidays, you want to suggest a date by which you could do this?

MR. ANDRE: Your Honor, I will endeavor to do all the issues you brought up by January 15th, if that's acceptable.

THE COURT: That is acceptable. So you'll do that by January 15th.

I believe that addresses all the issues raised in the letters.

Is that correct, Ms. Keefe?

MS. KEEFE: It does, Your Honor. I had one other question, if you don't mind.

THE COURT: Just one second. Mr. Andre, were there any other issues in the

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Heather M. Triozzi, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public, do hereby certify that the foregoing record, Pages 1 to 78 inclusive, is a true and accurate transcript of my stenographic notes taken on December 23, 2009, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of December, 2009, at Wilmington.

Heather M. Triozzi, RPR, CSR
Cert. No. 184-PS

Exhibit 9

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY