

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LEADER TECHNOLOGIES, INC., a Delaware corporation,	)	
	)	
Plaintiff-Counterdefendant,	)	Civil Action No. 08-862-JJF/LPS
	)	
v.	)	
	)	<b>PUBLIC VERSION</b>
FACEBOOK, INC., a Delaware corporation,	)	
	)	
Defendant-Counterclaimant.	)	

**DECLARATION OF YURIDIA CAIRE IN SUPPORT OF PLAINTIFF LEADER TECHNOLOGIES, INC.'S OBJECTIONS TO MARCH 12, 2010 ORDER OF MAGISTRATE JUDGE STARK**

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*Attorneys for Plaintiff  
Leader Technologies, Inc.*

Dated: March 26, 2010  
Public Version: April 1, 2010

1. I am an attorney with the law firm King & Spalding LLP, counsel for Plaintiff Leader Technologies, Inc. ("Leader"). I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts. I make this declaration in support of Plaintiff Leader Technologies, Inc.'s Objections to Magistrate Judge Stark's March 12, 2010 Order.

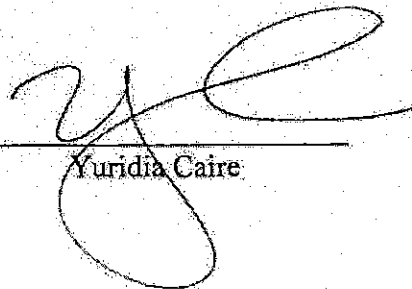
2. Attached hereto as Exhibit 1 is a true and correct copy of pages 21-22, 48, and 65-75 from the March, 12, 2010 hearing transcript.

3. Attached hereto as Exhibit 2 is a true and correct copy of September 4, 2009 hearing transcript.

4. Attached hereto as Exhibit 3 is a true and correct copy of page 18 from the October 23, 2009 hearing transcript.

5. Attached hereto as Exhibit 4 is a true and correct copy of pages 186-189, 207-208, and 278-286 from the transcript of the deposition of Joshua Wiseman, taken February 25, 2010.

I declare under penalty of perjury under the laws of the State of California and the United States that each of the above statements is true and correct. Executed on March 26, 2010 in Redwood Shores, California.



Yuridia Caire

# **EXHIBIT 1**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

## **EXHIBIT 2**

1                   IN THE UNITED STATES DISTRICT COURT  
 2                   FOR THE DISTRICT OF DELAWARE

3  
 4 LEADER TECHNOLOGIES,           )  
 5 INC., a Delaware                )  
 6 corporation,                    )  
 7                                    )  
 8                   PLAINTIFF,        )  
 9                                    )  
 10                   v.                ) C.A. No. 08-862 JJF  
 11                                    )  
 12 FACEBOOK, INC., a                )  
 13 Delaware corporation,            )  
 14                                    )  
 15                   DEFENDANT.        )

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16  
 17                                   Friday, September 4, 2009  
 18                                   11:00 a.m.  
 19                                   Telephone Conference  
 20                                   Chambers of Judge Stark  
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Counsel for Plaintiff

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(APPEARANCES CONTINUED)

BLANK & ROME, LLP  
BY: STEVEN L. CAPONI, ESQ.

COOLEY, GODWARD & KRONISH, LLP  
BY: HEIDI L. KEEFE, ESQ.  
BY: MARK WEINSTEIN, ESQ.

Counsel for Defendant

1 THE COURT: Good morning,  
2 everyone. This is Judge Stark. Who is on the  
3 line, please?

4 MR. ROVNER: Good morning, Your  
5 Honor. This is Phil Rovner from Potter  
6 Anderson. With me on the line from King and  
7 Spaulding are Paul Andre, Lisa Kobialka, and  
8 James Hannah.

9 MR. CAPONI: Good morning, Your  
10 Honor. Steven Caponi from Blank Rome for  
11 Facebook. Also with me today: Heidi Keefe and  
12 Mark Weinstein from Cooley Godward.

13 THE COURT: Okay. Good morning to  
14 all of you. I have a court reporter with me, of  
15 course, and for the record, this is our case of  
16 Leader Technologies, Inc., versus Facebook, Inc.  
17 It is civil action number 08-862-JJF-LPS.

18 And we're here today because there  
19 are two new discovery disputes, one from each  
20 party, and I have reviewed your letters and have  
21 -- really only need to hear a tiny bit more, I  
22 think, before I'll be in a position to resolve  
23 those two new disputes, and let's turn first to  
24 Leader's concern about the scheduling order and



1 the issue as to when fact depositions can begin.

2 And here I want to first hear from  
3 Facebook, and I want to understand Facebook's  
4 position as to when exactly you think fact  
5 discovery ends in this case and whether or not I  
6 should make that clear when that is. Let me  
7 hear from Facebook in response to that question,  
8 please.

9 MR. CAPONI: Your Honor, Steven  
10 Caponi.

11 We think the scheduling order put  
12 in place by Judge Farnan is unambiguous.  
13 November 20th, I believe, is the date that fact  
14 discovery ends, to where depositions can  
15 proceed.

16 THE COURT: So when can fact  
17 depositions begin, and when do they have to end  
18 by?

19 MR. CAPONI: Sorry, Your Honor. I  
20 think I spoke a little too generally.

21 I think written discovery should  
22 be interrogatories, document requests, exchange  
23 of documents, review of documents -- would end  
24 by November 20th and then following that,

1 deposition discovery of both fact and experts.  
2 Fact would proceed and then experts pursuant to  
3 the schedule for experts.

4 THE COURT: So when do you think  
5 fact depositions need to be completed by?

6 MR. CAPONI: Your Honor, we did  
7 not have a specific date in mind for when they  
8 need to be completed by. It's just a cut-off  
9 for when they need to end.

10 THE COURT: Any reason why I  
11 should not go ahead and amend the scheduling  
12 order to indicate a date to end fact  
13 depositions?

14 MR. CAPONI: Your Honor, I don't  
15 think there's any reason not to do that. I  
16 guess my preference would be, since it's an  
17 issue that's being raised for the first time,  
18 the parties may want to confer to see if we can  
19 agree on a date to end all fact discovery.  
20 Parties never discussed the issue.

21 THE COURT: All right.

22 Leader. Whoever wants to speak  
23 for Leader, do you want to respond on that  
24 issue, please.

1 MR. ANDRE: Your Honor, this is  
2 Paul Andre. I'll respond to that.

3 This has been raised several  
4 times. We didn't want to bring this issue to  
5 Your Honor's attention because we just wanted to  
6 know what their position on this was, and they  
7 would not give it to us.

8 Our position was -- our concern  
9 was that they were going to do the bait and  
10 switch and then on November 21st say, "Fact  
11 discovery has ended. You have no right to take  
12 depositions."

13 We think it would be a good idea  
14 to put in a fact-depositions date, when those  
15 have to be completed, and we'd be amenable to  
16 any time early into 2010.

17 THE COURT: Okay.

18 MR. ANDRE: If we get that coming  
19 from Facebook, I think we could work this out.  
20 When we had our meet-and-confers, a couple of  
21 them, they would not agree to that.

22 THE COURT: But Leader's belief is  
23 if fact depositions were done by, say, the end  
24 of January 2010, that could keep the case on

1 track to ultimately have trial in June 2010; is  
2 that correct?

3 MR. ANDRE: Absolutely, Your  
4 Honor.

5 THE COURT: Mr. Caponi, do you  
6 have any disagreement with that, that a  
7 fact-depositions cut off of January 31st, 2010,  
8 would allow this case to stay on track for trial  
9 in June 2010?

10 MR. CAPONI: Appreciating my  
11 limitations, Your Honor, I will defer to  
12 Ms. Keefe on that, who will be taking the  
13 depositions.

14 THE COURT: Okay. Go ahead,  
15 Ms. Keefe.

16 MS. KEEFE: Good morning, Your  
17 Honor.

18 The only worry I have about  
19 January is we're talking about a compressed time  
20 frame with holidays, including potential  
21 third-party depositions, and so from  
22 November 20th until just the end of January,  
23 we've got Thanksgiving, Christmas, New Year's  
24 holiday.

1                   So I would ask that we set it for  
2                   March because that accommodates the possibility  
3                   of third parties not being able to get things  
4                   done.

5                   THE COURT: All right.

6                   Mr. Andre, any objection to  
7                   March 1st.

8                   MR. ANDRE: Your Honor, I don't  
9                   have an objection for fact depositions going up  
10                  to the day before trial. That's okay with me as  
11                  long as we don't miss the trial date.

12                  One thing we talked about with  
13                  Facebook as well is regarding third parties --  
14                  the idea here is that Judge Farnan wanted all  
15                  the written discovery between the parties to be  
16                  completed and then fact depositions go  
17                  thereafter.

18                  But with third parties, we could  
19                  begin taking third-party depositions tomorrow.  
20                  If we don't get documents from them, if we  
21                  subpoena documents, we can take the depositions.  
22                  There's nothing that would preclude us from  
23                  finishing up the third-party depositions in  
24                  2009.

1 MR. CAPONI: Your Honor, Steve  
2 Caponi.

3 I don't think we would agree with  
4 Mr. Andre's characterization of the scheduling.  
5 I think it's been pretty clear, as with Judge  
6 Farnan's practice developed over many years,  
7 that you have many wasteful depositions and  
8 retaking depositions when parties jump the gun a  
9 little early; therefore, you close exchange of  
10 paper discovery. We have a set record with  
11 which to move forward on depositions, third  
12 party and party.

13 THE COURT: I'm not going to get  
14 into an issue that's not actually in front of me  
15 right now, but with respect -- which is the  
16 third-party depositions issue -- I'm going to  
17 hope that the parties can work that out by  
18 taking a look at the language of the scheduling  
19 order.

20 But what I am going to rule with  
21 respect to the -- let's call it -- Leader's  
22 request to modify the scheduling order, I am  
23 going to modify it, and I will get something out  
24 in writing to you. But just so you know, I'm

1 not going to be modifying Paragraph 4(d), which  
2 is the one that refers to depositions beginning  
3 after paper fact discovery is done. But I am  
4 going to add to the scheduling order that all  
5 fact depositions are to be completed in this  
6 case by March 1st, 2010.

7 Let's move next to Facebook's  
8 request that the Court compel a further response  
9 to Interrogatory Number 9, and I want to start  
10 on this one, again, with Facebook.

11 And first, I'd like to know where  
12 in the record I can find the evidence that you  
13 adequately met and conferred with respect to the  
14 extent of the relief being requested now from  
15 the Court, is that the patentee, Leader here,  
16 provide the claim charts showing in detail where  
17 they practice -- where their products practice  
18 their claims.

19 Whoever is going to take this for  
20 Facebook, please start there.

21 MR. WEINSTEIN: Thank you, Your  
22 Honor. This is Mark Weinstein.

23 I'm going to refer to a couple  
24 exhibits and a couple different letter briefs

1 because they raise the meet-and-confer issue in  
2 their responsive letter brief, to which we  
3 didn't have an opportunity to respond, but there  
4 is ample evidence in the record and some of the  
5 letter briefs.

6 The first letter brief would be  
7 attached as Exhibit E to Leader's August 27th  
8 letter to Your Honor. It's a letter to Lisa  
9 Kobialka following a meet-and-confer discussion.

10 On page three of the letter --  
11 this is following up on a telephonic meet and  
12 confer -- here is the following statement. This  
13 is memorializing a telephonic meet and confer  
14 that took place the day before:

15 "You said LTI was going to  
16 identify LTI products that allegedly  
17 embody the invention, but were unwilling  
18 to provide claim charts."

19 The letter goes on to describe the  
20 reasons why the claim chart is relevant, and  
21 essentially, it is a mirror of the arguments  
22 that are before Your Honor today.

23 There was a second meet-and-confer  
24 conference conducted with a different lawyer at



1 the King and Spalding firm, Megan Wharton, and  
2 that's memorialized in Exhibit C to Leader's  
3 letter of September 3rd to Your Honor. That's  
4 an e-mail to Megan Wharton, and if you look at  
5 paragraph four, a second meet and confer, their  
6 position was the same:

7 "LTI is willing to identify the  
8 LTI products it contends practice the  
9 claimed invention in response to  
10 Facebook (inaudible), and it will  
11 explain how those products allegedly  
12 embody the invention. However, it will  
13 not provide claim charts."

14 So there are two instances in  
15 which telephonic meet and confers reached an  
16 impasse.

17 Beyond that, Your Honor, in August  
18 we asked them on two separate occasions to  
19 supplement their response to the interrogatory,  
20 and their response in both cases was that their  
21 response is complete and no further  
22 supplementation was required.

23 I think, Your Honor, that another  
24 piece of evidence is borne out by the record,

1       which is that parties are certainly at an  
2       impasse with respect to Interrogatory Number  
3       nine.  If you look carefully at your letter, you  
4       don't see them arguing that they're going to  
5       supplement their response or that they are going  
6       to waver in any way to the position that they've  
7       taken at least two or three times previously.

8                       I guess last point, Your Honor, is  
9       the day before they filed their letter brief,  
10      they had -- one of their lawyers had sent me a  
11      letter saying, "We don't think you've met and  
12      conferred."

13                      I responded about an hour later  
14      this week and said, "We think we have."

15                      We attached the relevant  
16      correspondence, and we heard nothing further  
17      from them until we got their letter brief to  
18      Your Honor dated yesterday.

19                      So as far as we're concerned, Your  
20      Honor, the meet-and-confer obligations are more  
21      than satisfied, the parties are clearly at an  
22      impasse, and this matter is clearly ripe for  
23      adjudication by Your Honor.

24                      THE COURT:  Let's assume for a

1 moment that I agree with you on that point.

2 Explain to me what the possible  
3 relevance would be of the question of whether  
4 Leader practices through its products or  
5 services any of the claims of its patent that  
6 are not asserted in this case.

7 MR. WEINSTEIN: Your Honor, as to  
8 claims that are not asserted, we would agree not  
9 to pursue a response as to those claims. We  
10 would pursue a request as the claims that are  
11 asserted. We have no objection to an order  
12 compelling them only to address the asserted  
13 claims.

14 THE COURT: All right.

15 And then help me out on what is  
16 the basis, and is there any authority -- because  
17 I haven't seen any in your letters -- for  
18 requiring a patentee to do detailed claim charts  
19 showing how that patentee believes its own  
20 products and services practice the patent at  
21 suit?

22 Assume for the moment I agree with  
23 you that there is relevance to whether or not  
24 the patentee practices the patent. I need help

1 on what authority there is for imposing on the  
2 patentee the burden of doing a detailed claim  
3 chart.

4 MR. WEINSTEIN: I think the simple  
5 answer to that, Your Honor, is that in the vast  
6 majority of patent cases, this issue comes up  
7 repeatedly because patentees, as we explained in  
8 our letter, they have the possibility of  
9 enjoying additional benefits, possibly  
10 additional remedies, if they practice the claims  
11 of their own patents.

12 The issue typically comes up where  
13 the plaintiff states the products that practice  
14 the invention, and in almost every case I've had  
15 -- in fact every case I've had before this one  
16 -- it really is not a disputed issue of fact.

17 The patent is relatively  
18 straightforward, and the manner in which the  
19 patent -- it covers the products is not really  
20 in dispute because after all, the plaintiff  
21 presumably wrote its own patent to cover its own  
22 products.

23 This is an unusual case, Your  
24 Honor, because there is a factual dispute here

1 as to whether or not the patent, in fact, covers  
2 their products. It is our contention that the  
3 patent is exceedingly narrow in its scope. We  
4 think, obviously, it doesn't cover Facebook's  
5 products. We also don't think it covers  
6 Leader's products either, and that's going to be  
7 a contested, factual issue we're going to bring  
8 to the Court.

9 We're entitled to know -- if they  
10 claim it's practicing it, we're entitled to know  
11 what their explanation is so we can have our  
12 experts and witnesses rebut their theory and  
13 prove, in fact, that their patent is not  
14 practiced by their products, and, therefore,  
15 they're not entitled to those legal benefits.

16 I think their main argument, Your  
17 Honor, relates to the question of overbreadth.  
18 They claim it's overly broad to do that. I  
19 think the short answer to that concern, which is  
20 the majority of their letter, is that all of the  
21 information needed to respond to this is in  
22 their possession. This is their own product,  
23 their own patent. It's not like they need  
24 discovery from a third party.

1                   And second of all, Your Honor,  
2                   they're out there in the market telling people  
3                   that their Digital Leaderboard technology is  
4                   covered by their patent. If you go to their web  
5                   site, their patent number is marked on every  
6                   page of every one of their products.

7                   They certainly have a theory.  
8                   They certainly have some idea of why their  
9                   products are practiced by the patents. All  
10                  we're asking them to do is tell us what that  
11                  theory is so we can challenge it in this  
12                  litigation.

13                  THE COURT: Do you have access to  
14                  their product?

15                  MR. WEINSTEIN: No, I don't have  
16                  access to their product. I have access to their  
17                  web site materials, where they tout their patent  
18                  and discuss the products that are practiced by  
19                  it. It's the same products that are identified  
20                  in their interrogatory.

21                  THE COURT: Have you sought in  
22                  discovery to have access to their product?

23                  MR. WEINSTEIN: I just -- I'm not  
24                  sure, Your Honor. Ms. Keefe is writing me

1 notes. She thinks that's the case, but sitting  
2 here now, I'm not exactly sure.

3 THE COURT: I guess what I'm  
4 having trouble with is, I understand why you  
5 need to know which products it is that Leader  
6 has that they believe practice their own patent.

7 But once they disclosed them to  
8 you and provided that you had sufficient access  
9 to those products, I'm not understanding why the  
10 burden at this stage in the proceedings isn't  
11 properly placed on you to begin to prepare your  
12 case as to why you think you're not direct  
13 competitors and why you think they can't show  
14 irreparable harm on the grounds that they don't  
15 practice their own patent.

16 MR. WEINSTEIN: The problem with  
17 that, Your Honor, is it's basically asking us to  
18 prove a negative.

19 If, in fact, it's the case that  
20 they're going to seek permanent injunctive  
21 relief in this case -- and by every indication  
22 they've indicated that they're going to --  
23 they're the plaintiff in the case. They're  
24 going to have to prove entitlement to a

1 permanent injunction. They're going to have a  
2 burden of proof to show that they are  
3 competitors and that their products do practice  
4 the patent.

5 We, of course, would respond to  
6 that allegation and say, "We don't believe we're  
7 competitors. We're in different markets, and  
8 our products, in fact -- your products, in fact,  
9 do not practice your patent."

10 They will have to make some  
11 initial showing. It's very difficult for us to  
12 try to rebut an allegation when we don't know  
13 what the basis of their allegation is.

14 THE COURT: I want to talk to  
15 Leader on this issue now.

16 Is it going to be you, Mr. Andre?

17 MR. ANDRE: It is, Your Honor.  
18 Regarding meet and confer, Ms. Kobialka will  
19 speak, but on the other issues, I'll speak.

20 THE COURT: Let me start with you  
21 then.

22 First off, is Leader to Leader,  
23 powered by Digital Leaderboard, the only Leader  
24 product or service that practices the 761



1 patent?

2 MR. ANDRE: Yes, Your Honor.

3 THE COURT: Are you able to state  
4 at this point which of the asserted claims that  
5 the 761 patent, that that product practices?

6 MR. ANDRE: No, Your Honor.

7 THE COURT: All right.

8 And how long would you need to be  
9 able to put yourselves on the record as to which  
10 of the asserted claims the product you just  
11 identified practices?

12 MR. ANDRE: It would be a fairly  
13 large burden, Your Honor. We'd have to go  
14 through and do an entire analysis of proving  
15 infringement of our own product.

16 THE COURT: I understand your  
17 contention that you would have to do an entire  
18 analysis if I required you to do the detailed  
19 claim chart that they're asking for.

20 But if all I required you to do  
21 was let them know which of the asserted claims  
22 you believe your product practices, how hard can  
23 that be, and when could you get it done?

24 MR. ANDRE: Your Honor, that would

1 with a simpler task, and we could get that done  
2 within a week.

3 THE COURT: Okay.

4 And so tell me why I should not  
5 order you to do that, and in the alternative,  
6 why should I not order you to do the claim  
7 chart?

8 MR. ANDRE: Your Honor, the actual  
9 relevance for us naming our product is not  
10 whether we're practicing our invention or not.  
11 It is if we are direct competitors.

12 Look at Federal Circuit precedent  
13 regarding the irreparable harm issue for an  
14 injunction. The issue there is: Are we  
15 competitors? Are they taking sales away from us  
16 in our market share? That's our irreparable  
17 harm.

18 The patent gives a right to  
19 exclude people, but it's not a one-for-one,  
20 product-by-product comparison. The claim chart  
21 they're asking for can only be used to try to  
22 flip the case.

23 The next thing that happens, they  
24 would be trying to prove our product doesn't

1 infringe our patent. Will they have expert  
2 reports on this? I don't know.

3 There's absolutely no relevance  
4 whatsoever for us to go through an infringement  
5 analysis element by element with supporting  
6 documentation as they request to try to prove  
7 our own product infringes our patent.

8 So with respect to naming which  
9 claims that we've asserted against them that is  
10 also covered by our product, Your Honor, we're  
11 willing to do that. I have no problem with  
12 that. I think that's something we can do in  
13 short order.

14 But to take a position as to why  
15 each element is covered, all they can use this  
16 for is to try to do a product-by-product  
17 comparison, which is improper, or use it in some  
18 kind of claim construction, which is also  
19 improper.

20 There's absolutely no relevance,  
21 and there's a lot of potential shenanigans that  
22 might take place with this type of discovery.

23 THE COURT: Let me hear from  
24 Ms. Kobiaalka on the meet-and-confer issue,

1 please.

2 MS. KOBIALKA: Thank you, Your  
3 Honor.

4 The way that the meet and confer  
5 had occurred was the parties were having  
6 discussions way back in April, and there was a  
7 bit of correspondence that went back and forth,  
8 and I was involved in those particular  
9 meet-and-confer discussions.

10 And at that time we specifically  
11 discussed this issue of claim charts, and I  
12 requested they provide me with some law to  
13 support their position that it would be  
14 appropriate for the patentee to bear the burden  
15 of preparing claim charts and said that we would  
16 supplement our interrogatory response.

17 All of the correspondence we had  
18 leading up to our supplemental interrogatory  
19 response, we did specifically discuss that, but  
20 it was dropped after we served our supplemental  
21 interrogatory response on April 17.

22 The subsequent meet and confers  
23 that have come up since April 17th and the ones  
24 that Mr. Weinstein had referred to in August

1 were all surrounding the allegation that  
2 Facebook claimed we needed to change our  
3 interrogatory response for number nine because  
4 they said our response was inconsistent with our  
5 document production.

6 We kept informing them we do not  
7 believe our response is inconsistent with the  
8 documents. To the extent they thought that was  
9 the case, we would invite them to go ahead and  
10 ask additional discovery requests to understand  
11 -- so they could understand what was going on  
12 behind it.

13 But as their Interrogatory Number  
14 9 is written, it did not require us to provide  
15 an explanation when they just disputed what we  
16 said in our interrogatory.

17 And that is borne out, actually,  
18 on Exhibit C, that correspondence that we  
19 attached to our letter dated September 3rd, in  
20 which we specifically said our Interrogatory  
21 Number 9 response is complete and is not  
22 inconsistent with the documents produced,  
23 contrary to what Facebook has been saying to us,  
24 and that there was nothing additional that we

1 needed to supplement at this time if they wanted  
2 information regarding these claims of  
3 inconsistencies between the documents produced.

4 And their response is they could  
5 go ahead and request that in additional  
6 discovery. So all of our meet-and-confer  
7 efforts were then surrounding the substance of  
8 the response, but we've never discussed claim  
9 charts, and to this day, we've yet to get any  
10 legal support whatsoever because there is none.  
11 There is no law that says the patentee should  
12 bear the burden of providing the claim chart.

13 THE COURT: Mr. Weinstein, do you  
14 want to respond to anything you heard?

15 MR. WEINSTEIN: Just briefly, Your  
16 Honor.

17 The issue was never dropped, ever.  
18 It was raised twice in two separate telephonic  
19 meet and confers. Their position was very  
20 clear.

21 In fact, those meet and confers  
22 are what resulted in the supplemental  
23 interrogatory response that is the subject of  
24 our motion to compel.

1           Their position has always been the  
2 same: We're not going to provide claim charts.  
3 They've never wavered in that position.

4           The theory that we somehow dropped  
5 our request for claim chart is simply unfounded,  
6 and the exhibits I cited to you -- Exhibit E to  
7 the August 27th letter and then Exhibit C to the  
8 September 3rd letter -- bear that out.

9           THE COURT: Okay.

10          Well, on this one -- and again I  
11 will get something out in writing to you -- I'm  
12 going to grant in part and deny in part the  
13 request to compel a further response from Leader  
14 to Interrogatory Number 9.

15          I'm granting it to the extent that  
16 I am requiring Leader to confirm that it has  
17 disclosed the identity of all of its products  
18 and services it believes practice its 761  
19 patent, and, further, to require within ten days  
20 of today that Leader provide Facebook with an  
21 indication as to which of the asserted claims in  
22 this case are practiced by that product or  
23 products.

24          I'm denying the request for a

1 claim chart. I've yet to hear any authority to  
2 support a requirement that a patentee undertake  
3 the burden, at this stage of discovery, to prove  
4 through detailed claim charts that its own  
5 products practice its own patent.

6 I recognize that this is an  
7 unusual case, but I think, recognizing the  
8 unusual nature of it, and weighing the relative  
9 burdens -- not just burden of proof, but the  
10 burden of time expended that would be necessary  
11 -- and factoring in the relevance and at what  
12 point in these proceedings these issues are  
13 going to become most relevant -- weighing all  
14 that together, I conclude that the result that  
15 I've come up with properly considers all of  
16 those factors and places the right amount of  
17 burden on the patentee.

18 That's all that this call is  
19 scheduled to address. I am mindful, as I'm sure  
20 the parties are, that I have received a latest  
21 round of letters relating to the ongoing dispute  
22 as to when Leader is going to have access to the  
23 full source code of Facebook, if ever. And  
24 those letters have been helpful, and I plan to



1 get you an answer to that question soon.

2 I don't want to turn this into a  
3 long argument over that issue, but knowing that  
4 those letters are out there and knowing that I'm  
5 going to be deciding that issue very soon, I  
6 want to give you each a chance, if you want,  
7 just for a few minutes to say whatever you want  
8 to say on that issue.

9 So, Leader, you can have that  
10 opportunity first.

11 MR. ANDRE: Thank you, Your Honor.  
12 This is Paul Andre. I'll be speaking for  
13 Leader.

14 In the letters what we tried to  
15 show the Court was that we have disclosed the  
16 public information that is available to us that  
17 shows that the Facebook web site actually  
18 infringes these patents. We've gone through and  
19 laid out element-by-element analysis.

20 They were not happy with our  
21 interrogatories early in this case. They moved  
22 to compel earlier in front of Judge Farnan.  
23 Judge Farnan denied it and said these are  
24 sufficient for the time being, but that we will

1 need to supplement once we get the confidential  
2 documents.

3 We've been waiting now for six  
4 months to get a single confidential document or  
5 any type of information that would help us  
6 complete these and give them more substantive  
7 responses.

8 So at this point we are confident  
9 that we've exhausted the public information, and  
10 now we are just waiting to get the actual  
11 information we get in every litigation.

12 This case has been going on for  
13 quite some time. Discovery has been going on  
14 for six months, and they have yet to produce a  
15 single confidential document.

16 In the call earlier today, I heard  
17 Counsel for Facebook say they are confident, and  
18 they know what this claim means, and they don't  
19 infringe, and they don't think our product  
20 infringes.

21 They have an understanding what  
22 this claim talks about, what this patent talks  
23 about. They have an understanding what we're  
24 accusing because we laid out very clearly the

1 information.

2 I think that's clear from the  
3 briefs and the letters we've provided, and we've  
4 explained our case to them. And I think the  
5 purpose of these letters was to set forth, have  
6 we explained to them our theory of the case?  
7 And I think it's pretty clear that we have.

8 Thank you, Your Honor.

9 THE COURT: Sure.

10 Facebook, anything of a brief  
11 nature you wish to add on this dispute?

12 MR. WEINSTEIN: Your Honor, we  
13 obviously disagree with Mr. Andre, but we think  
14 the letter briefs speak for themselves.

15 If you have any specific  
16 questions, I'd be happy to answer them, but I  
17 think the record is pretty complete on this  
18 issue.

19 THE COURT: I agree. The record  
20 is pretty complete. And again I thank you. The  
21 letters are detailed and helpful.

22 I will be entering an order on  
23 that issue soon, but I am going to continue the  
24 stay of my order, which is Docket Entry Number

1 78, the one that had required Facebook to  
2 provide access to the full source code by a  
3 date. I think it was in August.

4 I'm going to continue that stay  
5 until I get my written order out to you  
6 resolving the issue as best I can.

7 Thank you all very much for your  
8 time.

9 MR. ANDRE: Thank you, Your Honor.

10 MR. WEINSTEIN: Thank you.

11 (Proceeding ended at 11:32 a.m.)  
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24

## C E R T I F I C A T I O N

I, DEANNA WARNER, Professional Reporter, certify that the foregoing is a true and accurate transcript of the foregoing proceeding.

I further certify that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this proceeding was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

---

DEANNA WARNER

Professional Reporter and Notary Public

# **EXHIBIT 3**

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC.,  
a Delaware corporation,  
Plaintiff and Counterclaim  
Defendant,  
v.  
FACEBOOK, INC.,  
a Delaware Corporation,  
Defendant and Counterclaim  
Plaintiff. No. 08-862-JJF-LPS

Wilmington, Delaware  
Friday, October 23, 2009  
11:30 a.m.  
Telephone Conference

BEFORE: HONORABLE LEONARD P. STARK, U.S.M.J.

APPEARANCES:

PHILIP A. ROVNER, ESQ.  
Potter Anderson & Corroon LLP  
-and-  
PAUL J. ANDRE, ESQ., and  
JAMES R. HANNAH, ESQ.  
King & Spalding  
(Silicon Valley, CA)  
Counsel for Leader  
Technologies, Inc.

11:34:22 1 little bit late starting this morning. As I am sure you all  
11:34:28 2 know, we are very busy over here, the judges, and the court  
11:34:32 3 reporters as well. I know that you are all busy, also. I  
11:34:34 4 do apologize for having to move the call back a bit to track  
11:34:38 5 down a court reporter.

11:34:40 6 The purpose of the call today is to talk about  
11:34:44 7 the latest discovery disputes that the parties have put in  
11:34:48 8 front of me. Both sides are complaining about certain  
11:34:52 9 aspects of the other side's discovery to date. I have, of  
11:34:56 10 course, reviewed the letters, and I do want to give you all  
11:35:00 11 a chance to add a little bit more, if you wish, to what you  
11:35:04 12 set out in the letters.

11:35:06 13 Let's start with Facebook's complaint and your  
11:35:14 14 request that there be more complete responses to your  
11:35:18 15 Interrogatories Nos. 4 and 11 regarding the allegation of  
11:35:22 16 willful infringement. And I want to hear first from  
11:35:26 17 Facebook on that, please.

11:35:26 18 MS. KEEFE: Thank you very much, Your Honor.  
11:35:28 19 Good morning.

11:35:28 20 Your Honor, it is interesting, having read the  
11:35:32 21 opponent's opposition brief, I might be able to  
11:35:34 22 short-circuit some of this.

11:35:38 23 This is another case where we had asked for more  
11:35:40 24 information and received more information in their  
11:35:42 25 opposition brief than we had in the original response. If

1 APPEARANCES CONTINUED:

2 STEVEN L. CAPONI, ESQ.  
Blank Rome LLP  
3 -and-  
4 HEIDI L. KEEFE, ESQ., and  
MARK R. WEINSTEIN, ESQ.  
Cleary Godward & Kronish LLP  
5 (Palo Alto, CA)

6 Counsel for Facebook, Inc.

11:33:44 13 THE COURT: Good morning, everyone. This is  
11:33:44 14 Judge Stark. Who is there, please?

11:33:46 15 MR. ROVNER: Good morning, Your Honor. This is  
11:33:48 16 Phil Rovner from Potter Anderson on behalf of the plaintiff.  
11:33:52 17 With me on the line is Paul Andre and James Hannah from King  
11:33:56 18 & Spalding.

11:33:58 19 MR. CAPONI: Good morning, Your Honor. Steve  
20 Caponi from Blank Rome. With me on the phone is also Heidi  
21 Keefe and Mark Weinstein from Cleary Godward.

11:34:08 22 THE COURT: Good morning to everyone.  
11:34:08 23 For the record, this is Leader Technologies,  
11:34:12 24 Inc. v. Facebook, Inc., Civil Action 08-862-JJF-LPS.

11:34:20 25 I want to start just by apologizing. We are a

11:35:46 1 Your Honor would be willing to simply order that the facts  
11:35:50 2 contained in the opposition letter be their interrogatory  
11:35:56 3 response, I think we would be satisfied, since they have  
11:36:00 4 said in their opposition letter that these facts are all  
11:36:02 5 they have. Those are more than in their response. If they  
11:36:06 6 are all concatenated and turned into a response, I think we  
11:36:10 7 would be satisfied.

11:36:10 8 THE COURT: Let's stop you there and see what  
11:36:12 9 the plaintiff's position is, just on what you have said so  
11:36:16 10 far.

11:36:16 11 MR. ANDRE: Your Honor, I think most of what we  
11:36:20 12 put in our letter brief was a response. We have no problem  
11:36:24 13 supplementing a response to that level. The big issue with  
11:36:30 14 this is that willfulness is really an examination of the  
11:36:32 15 defendant's activity. We haven't had a chance to do that  
11:36:36 16 yet. We can supplement our interrogatory with what's in our  
11:36:38 17 letter brief and make this issue go away.

11:36:44 18 THE COURT: Ms. Keefe, if I order Leader to  
11:36:48 19 supplement its interrogatories, let's say, by next  
11:36:54 20 Wednesday, to incorporate the contents of its letter, that  
11:36:58 21 is the end of this dispute and you withdraw your request for  
11:37:02 22 a stay with respect to willful infringement discovery?

11:37:04 23 MS. KEEFE: Not quite, Your Honor. Close.

11:37:06 24 What I heard Mr. Andre say was that he is  
11:37:10 25 willing to continue to put that in but everything is still

11:54:18 1 documents. I have been doing this a long time. I have seen  
 11:54:22 2 a lot of different patent cases involving this technology.  
 11:54:24 3 I have never seen such a small production of technical  
 3 4 documents.  
 11:54:30 5 My guess is, on the e-mail side, they have not  
 11:54:34 6 done anything to search for technical documents that would  
 11:54:38 7 normally happen in the course of this type of litigation.  
 11:54:40 8 When we start taking these depositions, my guess is that the  
 11:54:44 9 engineers are going to start identifying a lot of documents  
 11:54:46 10 that they have that they used that we do not have access to.  
 11:54:50 11 The only thing we have at this point other than  
 11:54:52 12 the 390 pages is the source code. We can't use the source  
 11:54:54 13 code in deposition. We are lawyers. We are not technical  
 11:54:58 14 experts.  
 11:55:00 15 So it is something that puts us at a huge  
 11:55:04 16 disadvantage by them just, you know, not fulfilling their  
 11:55:06 17 obligations under the Federal Rules.  
 11:55:08 18 E-mails, as Your Honor knows, are required to be  
 11:55:12 19 produced. They are relevant documents under the Federal  
 11:55:16 20 Rules of Civil Procedure. Just because they haven't done it  
 11:55:20 21 in the last eight months and it will be a burden on them to  
 11:55:22 22 do it now, it seems to be prejudicial to us. We produced  
 11:55:24 23 our e-mails. It was a burden. But that's what the rulings  
 11:55:28 24 call for.  
 11:55:28 25 I am more concerned with the technical documents

11:55:32 1 than the e-mails, given search terms for e-mails, to run a  
 11:55:36 2 search five or ten times. But the technical documents I  
 11:55:40 3 have a huge concern with, because we have to identify some  
 11:55:42 4 of the engineers based on 398 pages, but I don't know how  
 11:55:46 5 many more there are out there that we should be looking at.  
 11:55:50 6 That is my big issue.  
 11:55:50 7 THE COURT: But what is it that is in the record  
 11:55:54 8 other than your prior experience in other cases with other  
 11:55:56 9 types of companies that should cause me to doubt the  
 11:56:00 10 repeated representations from Facebook that they have  
 11:56:02 11 provided the responsive technical documents, send you off to  
 11:56:06 12 do your depositions? If you find there is more, that would  
 11:56:10 13 show that Facebook didn't comply with its discovery  
 11:56:14 14 obligations, they are going to have to produce them then,  
 11:56:18 15 and maybe you will be moving for sanctions. I don't know.  
 11:56:20 16 What do you have today that should cause me,  
 11:56:22 17 other than your past experience, to believe that they are  
 11:56:26 18 not being forthcoming when they insist that they are?  
 11:56:28 19 MR. ANDRE: The declarations provided by the  
 11:56:32 20 attorney, the search method they used, they really just  
 11:56:34 21 looked at the wicking. It is something ---these cases come  
 11:56:40 22 along, you generally talk to the engineers who work on this.  
 11:56:42 23 You then have e-mails to the company, saying do you have  
 11:56:46 24 relevant documents? What are your design documents?  
 11:56:48 25 They had in-house attorneys and outside counsel

11:56:52 1 do searches, that is about it. That declaration was not  
 11:56:54 2 what I would call going to the level needed to produce  
 11:56:58 3 documents in this type of case.  
 11:57:00 4 As far as e-mail goes, they didn't try to search  
 11:57:04 5 for technical documents. I mean, I wish e-mails were not  
 11:57:08 6 part of discovery, I really do, because they are the biggest  
 11:57:10 7 pain in discovery in these types of cases.  
 11:57:14 8 But that is not the rules at this point.  
 11:57:14 9 E-mails are part of the documents that you have to collect.  
 11:57:16 10 And there was no agreement between the parties that e-mails  
 11:57:20 11 would not be collected.  
 11:57:22 12 So at this point, we are being prejudiced  
 11:57:26 13 because we spent the hours, hundreds of attorney hours  
 11:57:30 14 reviewing e-mails, producing them, and they didn't try,  
 11:57:34 15 other than the fact they didn't even try to look at for  
 11:57:40 16 technical information in the e-mails, but then their  
 11:57:42 17 declaration was such that they have outside counsel do the  
 11:57:46 18 search.  
 11:57:46 19 Other than my own experience, that is what I  
 11:57:50 20 rely on.  
 11:57:50 21 THE COURT: I am prepared to rule on this. I am  
 11:57:58 22 denying Leader's request for production of further technical  
 11:58:04 23 documents. I believe, considering the fact that we have had  
 11:58:08 24 extensive discussions and analysis of what technical  
 11:58:14 25 documents and what access to source code Facebook was going

11:58:18 1 to have to provide, given how we got here, given that that  
 11:58:26 2 access to the entire source code has been provided and that  
 11:58:30 3 there can be no better discovery for plaintiff in trying to  
 11:58:38 4 prove infringement in a case like this than to have the  
 11:58:42 5 access to the source code, and mindful of the fact that  
 11:58:46 6 plaintiff's expert indicated in a declaration that he needed  
 11:58:50 7 full access to the source code, along with technical  
 11:58:54 8 documents in order to make a meaningful discovery of the  
 11:58:58 9 source code, and that I thereafter ordered that to happen,  
 11:59:02 10 and that that happened, I am satisfied at this point,  
 11:59:06 11 weighing what I find to be the likely very minimal relevance  
 11:59:14 12 of additional documents from Facebook, technical documents,  
 11:59:18 13 that is, and particularly the very minimal relevance of any  
 11:59:24 14 e-mails. Weighing that against the burden that I believe  
 11:59:28 15 would be imposed if Facebook were required to do anything  
 11:59:32 16 more than the searches that it has already indicated it has  
 11:59:36 17 done for e-mails, particularly by searching for keywords on  
 11:59:42 18 the most relevant keywords related to this case, that  
 11:59:46 19 balance favors, in my view quite strongly, Facebook at this  
 11:59:52 20 point in this case.  
 11:59:54 21 I am mindful that depositions will be starting I  
 11:59:58 22 think about three or four weeks from now that will include  
 12:00:02 23 30(b)(6) depositions. I agree with Facebook that Leader can  
 12:00:08 24 designate some of these topics on 30(b)(6). They can get  
 12:00:12 25 their answers and you can depose engineers and ask them if



# **EXHIBIT 4**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I, Philip A. Rovner, hereby certify that on April 1, 2010, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

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