

# EXHIBIT A

IN THE UNITED STATES COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC.,  
a Delaware corporation,

Plaintiff,

v.

FACEBOOK, INC.,  
a Delaware corporation,

Defendant.

)  
) **CIVIL ACTION**  
)  
) **No. 1:08-cv-00862-JJF**  
)  
) **JURY TRIAL DEMANDED**  
)  
) **FACEBOOK'S THIRD AMENDED**  
) **ANSWER TO COMPLAINT FOR**  
) **PATENT INFRINGEMENT,**  
) **AFFIRMATIVE DEFENSES, AND**  
) **COUNTERCLAIMS**  
)

Defendant and Counterclaimant FACEBOOK, INC. ("Facebook"), by and through its undersigned counsel, hereby submits its Third Amended Answer and Counterclaims to the Complaint for Patent Infringement filed by plaintiff LEADER TECHNOLOGIES, INC. ("LTI"):

**ANSWER**

**The Parties**

1. Facebook lacks sufficient information to admit or deny the allegations set forth in paragraph 1 of the Complaint and therefore denies them.

2. Facebook admits that it is a company organized and existing under the laws of the State of Delaware. Facebook denies that its corporate headquarters are located at 165 University Avenue, Palo Alto, California 94301. Facebook's principal place of business is located at 1601 S. California Avenue, Palo Alto, CA 94304-1111.

**Jurisdiction and Venue**

3. Admitted.

4. Facebook admits that venue is authorized in this judicial district under 28 U.S.C.

§§ 1391(b) and 1400(b), and that this Court has personal jurisdiction over Facebook. Except as expressly admitted herein, Facebook denies the remaining allegations of paragraph 4 of the Complaint.

**The Asserted Patent**

5. Facebook admits that United States Patent No. 7,139,761 (the '761 patent") is entitled "Dynamic Association of Electronically Stored Information with Iterative Workflow Changes." Facebook admits that a copy of the '761 patent was attached to the Complaint as Exhibit A. Facebook denies that the '761 patent was duly and legally issued. Except as expressly admitted herein, Facebook lacks sufficient information to admit or deny the remaining allegations of paragraph 5 of the Complaint and therefore denies them.

6. Facebook lacks sufficient information to admit or deny the allegations of paragraph 6 of the Complaint and therefore denies them.

**Alleged Infringement**

7. Facebook admits that it operates a web site that can be found on the World Wide Web at <http://www.facebook.com>. Except as expressly admitted herein, Facebook denies the remaining allegations of paragraph 7 of the Complaint.

**First Cause of Action**

**(Alleged Infringement of the '761 Patent)**

8. Facebook incorporates by reference all preceding paragraphs of this Answer as if fully set forth herein.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

**Prayer For Relief**

13. Facebook incorporates by reference all preceding paragraphs of this Answer as if fully set forth herein. Facebook denies that LTI is entitled to any relief sought in LTI's Prayer for Relief against Facebook, or otherwise.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense: Non-Infringement**

14. Facebook is not infringing and has not infringed any claim of the '761 patent, either literally or under the doctrine of equivalents.

**Second Affirmative Defense: Invalidity**

15. On information and belief, each claim of the '761 patent is invalid for failure to meet one or more of the conditions of patentability specified in 35 U.S.C. §§ 101-103 and/or 112.

**Third Affirmative Defense: Failure to State a Claim**

16. The Complaint fails to state a claim upon which relief can be granted.

**Fourth Affirmative Defense: Laches**

17. The Complaint and each of the allegations therein do not entitle plaintiff to relief on the grounds that, on information and belief, LTI's claims are barred by the doctrine of laches due to LTI's knowledge of Facebook's allegedly infringing actions, LTI's inexcusable failure to pursue its infringement claims diligently and timely from the time it became aware it had claims against Facebook, and by virtue of the fact that Facebook has been both economically and materially prejudiced and/or injured from LTI's inexcusable lack of diligence, including (but not limited to) through the loss of records of third parties pertaining to the prior art, and the

unreliability of the memories of witnesses who otherwise possess knowledge of the technology at issue.

**Fifth Affirmative Defense: No Injunctive Relief**

18. Plaintiff's demand to enjoin Facebook is barred, as plaintiff has suffered neither harm nor irreparable harm from Facebook's actions.

**Sixth Affirmative Defense: Prosecution History Estoppel**

19. On information and belief, prosecution history estoppel and/or prosecution disclaimer precludes any finding of infringement.

**Seventh Affirmative Defense: Marking of the '761 Patent**

20. Plaintiff's pre-lawsuit claims for damages are barred, in whole or in part, for failure to comply with 35 U.S.C. § 287.

**Eighth Affirmative Defense: Unenforceability of the '761 Patent  
(Inequitable Conduct)**

21. On December 10, 2003, attorney Eric D. Jorgenson, on behalf of Michael McKibben and Jeffrey Lamb (collectively "the applicants") filed U.S. Patent Application No. 10/732,744 (the "'744 Application"), the application that later matured into the issued '761 patent. This application purports to claim priority to U.S. Provisional Application No. 60/432,255, filed on December 11, 2002, but the '761 patent is not entitled to the filing date of the earlier provisional application because the provisional application does not support or disclose the subject matter of the issued claims.

22. In connection with the '744 Application, the applicants submitted a Declaration and Power of Attorney stating under penalty of perjury that they had "reviewed and understood the contents" of the patent specification, and that that each "acknowledge[d] the duty to disclose all information which is material to patentability as defined in 37 CFR 1.56."

23. As explained in particularity below, in violation of their duty of disclosure under 37 C.F.R. § 1.56 and with intent to deceive, the applicants failed to disclose information that was material to the patentability of the claimed invention.

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### **COUNTERCLAIMS**

Defendant and counterclaimant FACEBOOK, INC. ("Facebook"), by and through their undersigned counsel, hereby allege the following counterclaims against plaintiff and counterclaim-defendant LEADER TECHNOLOGIES, INC. ("LTI"):

#### **The Parties**

1. Facebook is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 1601 S. California Avenue, Palo Alto, CA 94304-1111.

2. Facebook is informed and believes and on that basis alleges that counterclaim-defendant LTI is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 921 Eastwind Drive, Suite 118, Westerville, Ohio 43081.

#### **Jurisdiction and Venue**

3. This is a civil action seeking relief under two federal statutes: the Declaratory Judgment Act, 28 U.S.C.A. § 2201 *et seq.*, regarding allegations of patent infringement arising under the patent laws of the United States; and the federal patent false marking statute, 35 U.S.C. § 292. This Court has subject matter jurisdiction over these matters pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

4. The Court has personal jurisdiction and venue over LTI because LTI consented to personal jurisdiction and venue by filing the Complaint in this action.

#### **Actual Controversy**



5. LTI claims to be the assignee of the complete interest in United States Patent No. 7,139,761 (the “’761 patent”), entitled “Dynamic Association of Electronically Stored Information with Iterative Workflow Changes.” LTI has alleged that Facebook has infringed and is infringing the ’761 patent, a contention Facebook denies.

6. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Facebook and LTI. Facebook seeks a declaration that it does not infringe the ’761 patent, that the ’761 patent is invalid, and that LTI’s claims under the ’761 patent are barred.

**Count I**  
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,139,761)**

7. Facebook incorporates by reference all preceding paragraphs of this Counterclaim as if fully set forth herein.

8. Facebook does not infringe and has not infringed any claim of the ’761 either literally or under the doctrine of equivalents and therefore is not liable for infringement thereof. Furthermore, LTI’s claims under the ’761 Patent are barred for the reasons set forth in Facebook’s Affirmative Defenses set forth above.

**Count II**  
**(Declaratory Judgment of Invalidity and/or Unenforceability of U.S. Patent No. 7,139,761)**

9. Facebook incorporates by reference all preceding paragraphs of this Counterclaim as if fully set forth herein.

10. The ’761 patent and each claim thereof are invalid and/or unenforceable for the reasons set forth in Facebook’s Affirmative Defenses set forth above.

**Count III**  
**(False Marking under 35 U.S.C. § 292)**

11. Facebook incorporates by reference all preceding paragraphs of this Counterclaim as if fully set forth herein.

12. LTI has designed and sold, among other things, several products and/or services including LeaderPhone, LeaderAlert, LeaderMeeting, LeaderDialog, and Leader2Leader (the latter also referred to as “Leader2Leader® powered by Digital Leaderboard®”).

13. On information and belief, following issuance of the '761 patent in November 2006, LTI marked all of its products, as well as advertising, marketing and promotional materials for those products, with the '761 patent. Moreover, LTI marked each of its public pages accessible from its Internet web site (<http://www.leader.com>) with the number for the '761 patent, effectively contending that all of its products and even its web page practiced the alleged invention claimed in the '761 patent.

14. LTI has claimed that its Leader2Leader product practices the alleged invention claimed in the '761 patent, but has admitted that the other products that it marked (e.g., LeaderPhone, LeaderAlert) do not and have not practiced the alleged invention claimed in the '761 patent. On information and belief, LTI has been aware that its products did not practice the invention claimed in the '761 patent.

15. On information and belief, LTI has falsely affixed the '761 patent number to its products and its advertising, marketing and promotional materials for its products, for the purpose of deceiving the public and suppressing competition.

16. Pursuant to 35 U.S.C. § 292(b), Facebook is entitled to sue for the penalty for such false marking and receive one-half of such penalty.

**Count IV**  
**(Declaratory Judgment of Unenforceability of U.S. Patent No. 7,139,761)**  
**(Inequitable Conduct)**

17. Facebook incorporates by reference all preceding paragraphs of this Counterclaim as if fully set forth herein.

18. Title 37 of the Code of Federal Regulations (“CFR”) § 1.56 and the Manual for Patent Examination (“MPEP”) § 2000.01, *et seq.* impose a duty of candor and good faith on each individual associated with the filing and prosecution of a patent application before the USPTO, requiring that he or she disclose to the USPTO all information that is material to the patentability of the application under examination. Breach of this duty of candor and good faith with an intent to deceive the USPTO constitutes inequitable conduct so as to render the affected patent unenforceable.

20. On December 10, 2003, attorney Eric D. Jorgenson, on behalf of Michael McKibben and Jeffrey Lamb (collectively “the applicants”) filed U.S. Patent Application No. 10/732,744 (the “’744 Application”), the application that later matured into the issued ’761 patent. This application purports to claim priority to U.S. Provisional Application No. 60/432,255, filed on December 11, 2002, but the ’761 patent is not entitled to the filing date of the earlier provisional application because the provisional application does not support or disclose the subject matter of the issued claims.

21. In connection with the ’744 Application, the applicants submitted a Declaration and Power of Attorney stating under penalty of perjury that they had “reviewed and understood the contents” of the patent specification, and that that each “acknowledge[d] the duty to disclose all information which is material to patentability as defined in 37 CFR 1.56.”

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**Prayer For Relief**

WHEREFORE, Facebook prays that this Court enter judgment:

- A. In favor of Facebook, and against LTI, thereby dismissing LTI's Complaint in its entirety, with prejudice, with LTI taking nothing by way of its claims;
- B. Declaring and adjudging that Facebook does not infringe the '761 patent;
- C. Declaring and adjudging that the '761 patent is invalid and/or unenforceable;
- D. Adjudging that LTI has falsely marked the Leader2Leader product in violation of 35 U.S.C. § 292;
- E. Ordering plaintiff to pay all costs incurred by Facebook in responding to this action, including Facebook's reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- F. Ordering plaintiff to pay the statutory penalty of up to \$500 for every offense of false marking;
- G. Awarding one-half of the penalty assessed for violation of 35 U.S.C. § 292 to Facebook; and
- H. Awarding Facebook all other relief the Court deems just and proper.

**JURY DEMAND**

Facebook demands a trial by jury as to all issues so triable.

Dated: March 23, 2010

BLANK ROME LLP

*/s/ Steven L. Caponi*

By: \_\_\_\_\_

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