IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware corporation,

Plaintiff and Counterdefendant,

v.

FACEBOOK, INC., a Delaware corporation,

Defendant and Counterclaimant.

Civil Action No. 1:08-cv-00862-JJF

PUBLIC VERSION

CONFIDENTIAL - FILED UNDER SEAL

MEMORANDUM IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

[Motion 3]

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FOR THE DISTRICT OF DELAWARE

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Plaintiff and Counterdefendant,	)	**No. 1:08-cv-00862-JJF**
v.	)	
FACEBOOK, INC., a Delaware corporation,	)	
Defendant and Counterclaimant.	)	**CONFIDENTIAL FILED UNDER SEAL**

FACEBOOK INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

[MOTION NO. 3 OF 6]

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I. NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff Leader Technologies, Inc. ("LTI") filed its complaint against defendant Facebook, Inc. ("Facebook") in this action on November 19, 2008. Discovery is closed and trial is set for June 28, 2010. (D.I. 30, Rule 16 Scheduling Order).

II. SUMMARY OF THE ARGUMENT

LTI cannot establish that Facebook infringes the '761 patent because at least one element of each asserted claim is missing from the accused Facebook website.

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LTI cannot establish infringement either literally or under the doctrine of equivalents and summary judgment of non-infringement should therefore be entered.

There are no genuine issues of material fact that would prevent summary judgment. The operation of the accused Facebook website is, for purposes of this motion, not in dispute.

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If the Court agrees with Facebook's interpretation of the asserted claims – which Facebook respectfully submits is the only reasonable interpretation – LTI's infringement claim fails as a matter of law on summary judgment.

III. UNDISPUTED MATERIAL FACTS

A. Background of the '761 Patent

U.S. Patent No. 7,139,761, entitled "Dynamic Association of Electronically Stored Information with Iterative Workflow Changes" ("'761 patent"), purports to disclose a data management tool. Declaration of Mark R. Weinstein ("Weinstein Decl."), Ex. A at Col. 3:16-19. The patent further claims that the invention relates to "structures and methods for creating relationships between users, applications, files, and folders." *Id.* at Col. 1:21-23. In the section entitled "Background of the Invention," the specification criticizes prior art methods of organizing data and communications claiming that they are "limited and fragmented" and "wholly inadequate" because "[a]utomation of the organization of communications is non-existent." *Id.* at Col. 1:47-58. The Background complains that "[t]he recipient must do all the work of organization and categorization of the communications rather than the system itself do [sic] that work," *id.* at Col. 1:54-56, and concludes that "a need still exists for a communications tool that associates files generated by applications with individuals, groups, and topical context *automatically*." *Id.* at Col. 3:2-4 (emphasis added).

The patent attempts to address the perceived deficiencies of the prior art by providing a data management tool that allows a user to create data in a first context, environment or workspace. When the user moves to a second context, environment or workspace, the user's data and applications *automatically* follow the user there. As explained in the Summary of the Invention:

> When a user logs in to the system that employs the tool, the user enters into a personal workspace environment. This workspace is called a board, and is associated with a user context. From within this board,

> the tool makes accessible to the user a suite of applications for creating and manipulating data.
>
> * * *
>
> Data created within the board is immediately associated with the user, the user's permission level, the current workspace, any other desired workspace that the user designates, and the application. *This association is captured in a form of metadata and tagged to the data being created. The metadata automatically captures the context in which the data was created as the data is being created.*
>
> * * *
>
> *As a user* creates a context, or *moves from one context to at least one other context, the data created and applications used previously by the user automatically follows the user to the next context. The change in user context is captured dynamically.*

Weinstein Decl., Ex. A at Col. 3:32-37, 44-50; col. 4:1-5 (emphasis added).

This process mentioned above is further described in the section entitled "Detailed Description of the Invention." Figure 2 and the corresponding text in that section describe a process in which a user creates data within a first context and then moves to another context. Immediately upon that move, and in response to it, the system automatically associates the user's data with the second context. *See* Ex. A, Fig. 2 & Col. 7:23, 7:31-35 ("At [step] **200**, a user is associated with a first context. . . . At **204**, the user performs a data operation. At **206**, the user changes context from the first context to a second context. *At **208**, the data and application(s) are then automatically associated with the second context.* The process then reaches a Stop block.") (emphasis added).

B. The Asserted Claims of the '761 Patent

LTI has asserted claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31 and 32 of the '761 patent against Facebook. Only four of those claims (*i.e.* claims 1, 9, 21 and 23) are independent claims. This motion will focus on the independent claims because if those claims are not

infringed, which they are not for the reasons expressed below, the dependent claims likewise are not infringed. *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 1383 (Fed. Cir. 2000) (dependent claim not infringed where the claim from which it depends is not infringed).

All four of the independent claims asserted by LTI require that when a user moves to a second context, user environment or user workspace, the user's movement is tracked and the metadata associated with the user's data is automatically updated in response to that tracked movement. For example, claim 1 reads as follows:

> 1. A computer-implemented network-based system that facilitates management of data, comprising:
>
> a computer-implemented context component of the network-based system for capturing context information associated with user-defined data created by user interaction of a user in a first context of the network-based system, the context component dynamically storing the context information in metadata associated with the user-defined data, the user-defined data and metadata stored on a storage component of the network-based system; and
>
> a computer-implemented tracking component of the network-based system for tracking a change of the user from the first context to a second context of the network-based system and **dynamically** updating the stored metadata based on the change, wherein the user accesses the data from the second context.

Weinstein Decl., Ex. A at claim 1 (emphasis added).

This Court's claim construction order construed the term "dynamically" to mean "automatically and in response to the preceding event." (D.I. 280, Memorandum Opinion, at 25-26). The claim requirement "dynamically updating the stored metadata based on the change," therefore, clearly requires updating the stored metadata automatically and in response to the preceding event in the claim, *i.e.*, the change of the user from the first to a second context. This limitation also derives from the plain

language of the claim requiring "updating the stored metadata based on the change."

This requirement is also present in claim 9, a method claim that recites a number of steps that are similar to the functions performed by the "context component" and "tracking component" of claim 1 above. Claim 9 reads:

> 9. A computer-implemented method of managing data, comprising computer-executable acts of:
>
> creating data within a user environment of a web-based computing platform via user interaction with the user environment by a user using an application, the data in the form of at least files and documents;
>
> dynamically associating metadata with the data, the data and metadata stored on a storage component of the web-based computing platform, the metadata includes information related to the user, the data, the application, and the user environment;
>
> tracking movement of the user from the user environment of the web-based computing platform to a second user environment of the web-based computing platform; and
>
> **dynamically** updating the stored metadata with an association of the data, the application, and the second user environment wherein the user employs at least one of the application and the data from the second environment.

Weinstein Decl., Ex. A at claim 9 (emphasis added). As with claim 1 discussed earlier, claim 9 requires "dynamically updating the stored metadata," *i.e.*, automatically and in response to the user's tracked movement from the first user environment to a second user environment.

Claim 21 likewise reflects this same requirement:

> 21. A computer-readable medium for storing computer-executable instructions for a method of managing data, the method comprising:
>
> creating data related to user interaction of a user within a user

workspace of a web-based computing platform using an application;

dynamically associating metadata with the data, the data and metadata stored on the web-based computing platform, the metadata includes information related to the user of the user workspace, to the data, to the application and to the user workspace;

tracking movement of the user from the user workspace to a second user workspace of the web-based computing platform;

dynamically associating the data and the application with the second user workspace in the metadata such that the user employs the application and data from the second user workspace; and

indexing the data created in the user workspace such that a plurality of different users can access the data via the metadata from a corresponding plurality of different user workspaces.

Id. at claim 21 (emphasis added). This claim clearly requires updating of the metadata (*i.e.* "associating the data and the application with the second user workspace in the metadata") automatically and in response to the movement of the user to a second user workspace.

Finally, claim 23 reflects this same requirement and limitation:

23. A computer-implemented system that facilitates management of data, comprising:

a computer-implemented context component of a web-based server for defining a first user workspace of the web-based server, assigning one or more applications to the first user workspace, capturing context data associated with user interaction of a user while in the first user workspace, and for dynamically storing the context data as metadata on a storage component of the web-based server, which metadata is dynamically associated with data created in the first user workspace; and

a computer-implemented tracking component of the web-based server for tracking change information associated with a change in access of the user from the first user workspace to a second user workspace, and **dynamically** storing the change information on the

storage component as part of the metadata, wherein the user accesses the data from the second user workspace.

Id. at claim 23 (emphasis added).

Claim 23 requires a "tracking component" similar to the one recited in claim 1. Claim 23 requires that the tracking component "dynamically store the change information" (*i.e.*, the information reflecting the user's movement from the first to a second user workspace), automatically and in response to the tracked movement of the user from the first to a second user workspace.

All of the independent claims of the '761 patent asserted in this case, therefore, are infringed only by systems or methods in which the metadata associated with the user's data is updated automatically and in response to the user's movement to a second context, user environment or user workspace. As shown in the next section, LTI has not and cannot show that this requirement is performed by Facebook.

C. LTI's Purported Infringement Claims Against Facebook

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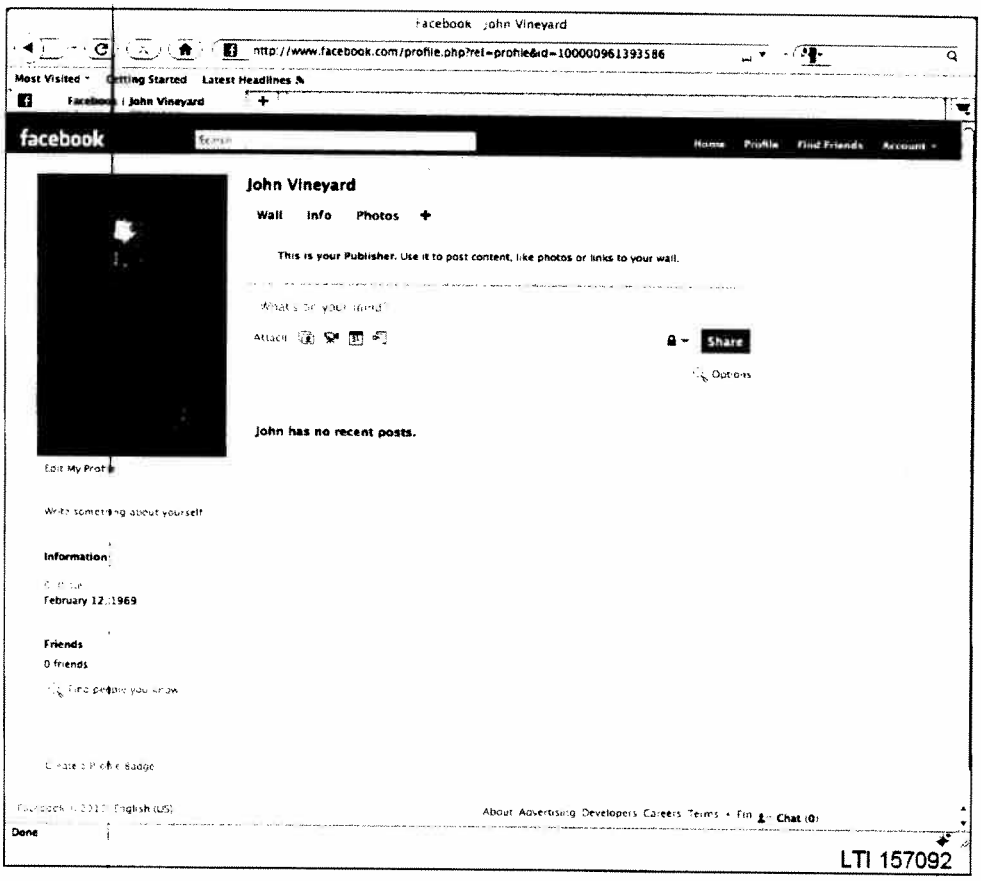

Figure 1: User's Profile Page Showing Profile Photo

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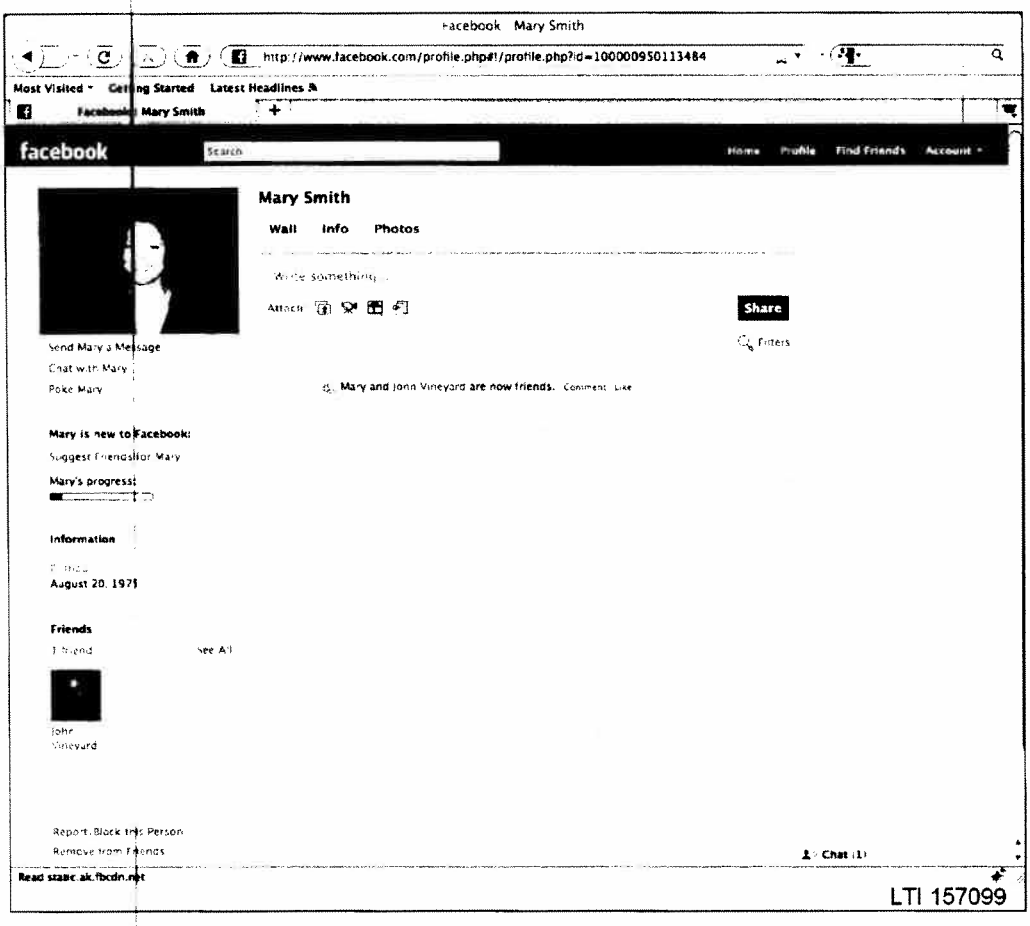

Figure 2: "John Vineyard" Navigates to Profile Page of "Mary Smith"

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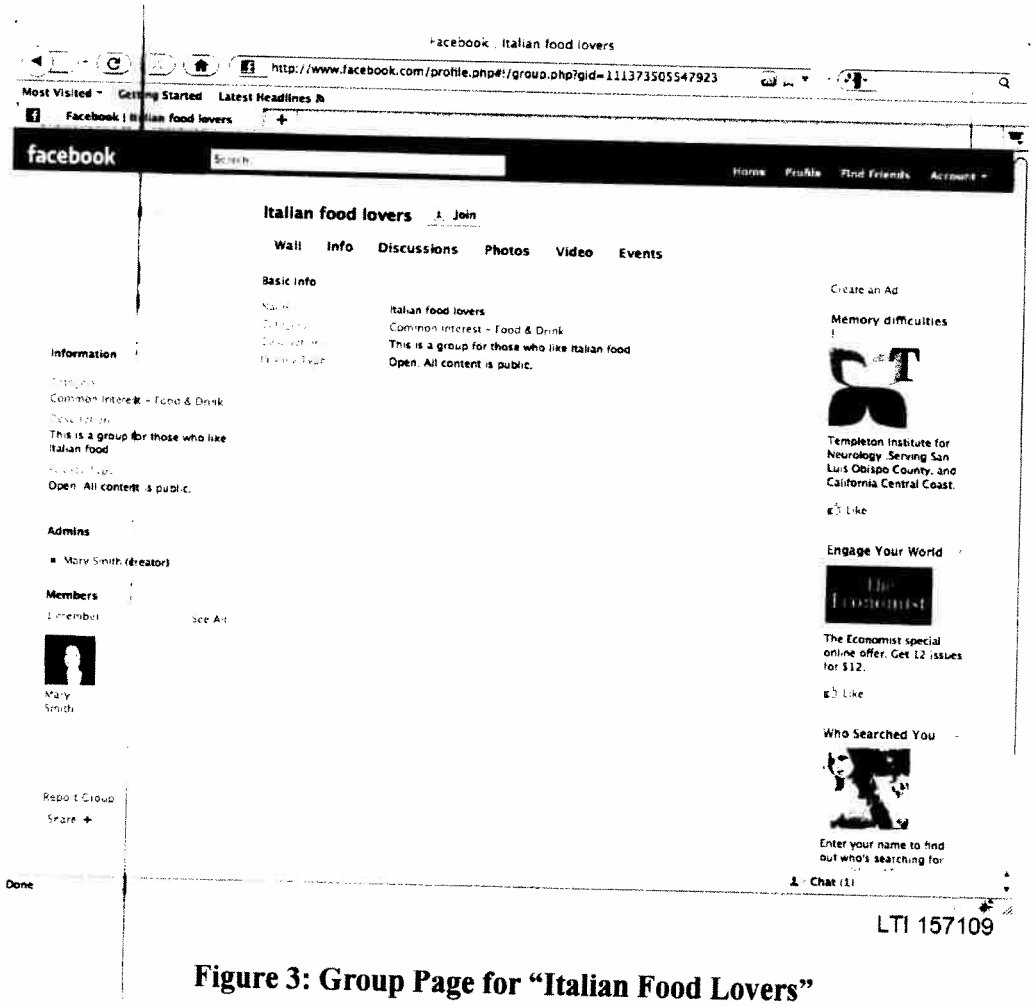

Figure 3: Group Page for "Italian Food Lovers"

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IV. ARGUMENT

"Summary judgment is as appropriate in a patent case as it is in any other case." *Desper Prods., Inc. v. QSound Labs., Inc.*, 157 F.3d 1325, 1332 (Fed. Cir. 1998). Federal Rule of Civil Procedure 56 requires entry of summary judgment where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a), (c)(2).

LTI bears the burden of proving that Facebook satisfies each and every element of the asserted claims. *See Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1330 (Fed. Cir. 2001). The absence of even a single limitation from the accused system will preclude a finding of infringement. *Id.* "Summary judgment of noninfringement is appropriate where the patent owner's proof is deficient in meeting an essential part of the

legal standard for infringement, since such failure will render all other facts immaterial." *Id.* at 1323. Summary judgment should be granted because LTI cannot show that Facebook meets each and every element of any asserted claim.

A. Facebook Does Not Literally Infringe Claims 1, 9, 21 or 23.

"Literal infringement of a claim occurs when every limitation recited in the claim appears in the accused device, i.e., when the properly construed claim reads on the accused device exactly." *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1331 (Fed. Cir. 2001) (quotations omitted; citation omitted).

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B. Facebook Does Not Infringe Claims 1, 9, 21 or 23 Under the Doctrine of Equivalents.

LTI similarly cannot establish infringement under the doctrine of equivalents. "Infringement under the doctrine of equivalents requires that the accused product contain each limitation of the claim or its equivalent." *DeMarini Sports, Inc.*, 239 F.3d at 1331. "An element in the accused product is equivalent to a claim limitation if the differences between the two are 'insubstantial' to one of ordinary skill in the art." *Id.* at 1331-32. The doctrine of equivalents is unavailable as a matter of law for a number of reasons.

First and perhaps foremost, LTI has offered no evidence, nor even alleged, that the absence of the "dynamically updating" element in Facebook is an insubstantial

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difference. "To avoid a grant of summary judgment of non-infringement by equivalents, the patentee must present "particularized evidence and linking argument as to the 'insubstantiality of the differences' between the claimed invention and the accused device, or with respect to the 'function, way, result' test." *Motionless Keyboard Co. v. Microsoft Corp.*, 486 F.3d 1376, 1382 (Fed. Cir. 2007) (citation omitted).

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The doctrine of equivalents is also unavailable as a matter of law under the doctrine of prosecution history estoppel.

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Under the doctrine of prosecution history estoppel, "[n]arrowing the claims in response to a rejection during prosecution creates a presumption that the applicant surrendered the territory between the original claims and the amended claims." *Lucent Techs., Inc. v. Gateway, Inc.*, 525 F.3d 1200, 1218 (Fed. Cir. 2008) (citing *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 740 (2002)).

Summary judgment should therefore be granted. *See Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 344 F.3d 1359, 1368 (Fed. Cir. 2003) (en banc) (holding that "the determinations concerning whether the presumption of surrender has arisen and whether it has been rebutted are questions of law for the court, not a jury, to decide.").

Yet another legal doctrine precludes application of the doctrine of equivalents here. Federal Circuit law is also clear that "the doctrine of equivalents cannot be employed in a manner that wholly vitiates a claim limitation." *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1346 (Fed. Cir. 2001); *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 29 (1997) ("It is important to ensure that the application of the doctrine, even as to an individual element, is not allowed such broad play as to effectively eliminate that element in its entirety.").

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" To do so would entirely erase that limitation from the claims. For all of these reasons, the doctrine of equivalents cannot salvage LTI's infringement claim and summary judgment of non-infringement should be granted as to all claims.

C. Facebook Does Not Infringe Any Dependent Claim.

It is well-established that "[a] claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." 35 U.S.C. § 112 ¶ 4. Because LTI cannot show that Facebook infringes any of the asserted independent claims, either literally or under the doctrine of equivalents, LTI's

infringement claim as to the asserted dependent claims necessarily fails as a matter of law. *See Jenkric/Pentron, Inc.*, 205 F.3d at 1383 (noting the "fundamental principle of patent law that dependent claims cannot be found infringed unless the claims from which they depend have been found to have been infringed.") (citation omitted).

V. CONCLUSION

For the reasons stated above, Facebook respectfully requests that this Court grant summary judgment that Facebook does not infringe the '761 patent.

Dated: May 14, 2010

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