

EXHIBIT 18

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

1 competitor with Facebook is in dispute. Do you
2 agree with that?

3 MR. ANDRE: I believe it will be in
4 dispute, Your Honor. Yes.

5 THE COURT: And do you agree that
6 Facebook is entitled to make the best possible
7 case to support the position that you're not
8 competitors?

9 MR. ANDRE: Your Honor, of course,
10 any party can make their best case in any
11 contested legal element. Of course.

12 THE COURT: And so your position is
13 that simply by providing technical documents
14 without access to your product and without access
15 to your source code is a sufficient basis, is
16 fair enough for -- as a basis for Facebook to
17 make the argument that you're not a competitor?

18 I guess that's your position.

19 MR. ANDRE: Your Honor, if they're a
20 competitor or not, it's our burden. I will say
21 that.

22 And our burden is to show that they
23 are competitors in the marketplace. We plan on
24 doing that using our documents that we put

1 forward and provided them already.

2 If we cannot meet that burden, then
3 it's on us. And Facebook will not be a
4 competitor in that circumstance if we can't meet
5 our burden.

6 What they're trying to do is say
7 that not only do we have to prove that they're
8 competitors, but that somehow the products are
9 identical or that we had to prove infringement of
10 our own patent. That's not what the Federal
11 Circuit has set forward in the test.

12 They say if they're a market
13 competitor, our patent gives us a right to
14 exclude them from the market. That's an
15 irreparable harm issue.

16 That's the only issue they bring us
17 up on. Are we competitors for the issue of
18 irreparable harm? If we can't prove it with the
19 documents we've provided them already and the
20 documents we produced in this case and the
21 testimonial evidence and whatever -- anything
22 else we put forward in this case, we will fail
23 our burden. But we believe we can prove it with
24 the documents we've put forward.

1 If they can show in any way that
2 we're not competitors, that's not their burden.
3 The burden is on us.

4 THE COURT: But they have made out
5 representations that they can show that you're
6 not competitors, if only they have access to your
7 product and your source code. So what am I to
8 make of that?

9 MR. ANDRE: Well, the only purpose
10 they would -- what they're really saying is not
11 that we're not competitors, what they are saying
12 is that we don't practice our invention, that we
13 do not have a -- they're going to go in and try
14 to put in evidence that our product is not
15 infringing our patent.

16 That is not a competitor basis.
17 That's not how you determine if one party is a
18 competitor of the other party. The products will
19 look different. Whether our product is covered
20 by our patent or not can be determined by the
21 documents we've produced and the testimony that
22 we're willing to give.

23 This is not a case where they're
24 accusing us of infringing their patent, and

1 therefore, they get a look at our product in that
2 level. This is a case where all they're saying
3 is that we're not competitors.

4 Well, if they can prove that in the
5 market -- in the marketplace, that's where the
6 determination is. That's what the Federal
7 Circuit has said. That is what courts have said
8 throughout the country is a marketplace
9 determination.

10 If we can't prove we're competitors
11 in the marketplace, then we will not be able to
12 achieve the first prong of the four-part test for
13 getting to injunction. This is an issue where --
14 obviously an equitable issue that Judge Farnan
15 will decide.

16 I think at this point in the case,
17 there's absolutely no reason to open up our
18 source code, which is very sensitive to us, to
19 Facebook, especially in light of the fact that
20 we've produced ten times the documents about our
21 product than they've produced to us.

22 THE COURT: All right. Ms. Keefe,
23 you may go ahead at this point.

24 MS. KEEFE: Thank you, Your Honor.

1 Not much to add.

2 They've told -- they've represented
3 to us and the Court that they do practice their
4 patent. They've marked their product with the
5 patent number. All of their documentation says
6 that the product is patented by the '761 patent.

7 And they use that in order to try to
8 establish that we're a competitor. One factor in
9 determining competition is whether or not you
10 know both products practice the same claim.
11 That's one way that you can be a competitor.

12 Regardless of whose burden it is to
13 establish competition, we still deserve the right
14 to be able to challenge the fact of competition.
15 And one of the things we need to investigate is
16 what their product does. And we can't do that
17 without a membership to this service. We can't
18 even use the product right now.

19 THE COURT: Well, is that what you
20 mean by your request for a fully functioning
21 version of the product? Fully functioning
22 includes some type of membership, I take it?

23 MS. KEEFE: I believe so, yes.

24 THE COURT: Okay. All right.

1 Well, I'm prepared to rule on this
2 one. And having weighed the competing arguments,
3 I am persuaded that Facebook is entitled to some
4 relief on this issue, and specifically I am going
5 to order that Leader provide fully functioning
6 copies of the Leader to Leader, and I guess
7 Leader to Leader Enterprise social networking
8 products.

9 I'm looking specifically at
10 Facebook's Request for Production Number 65 and
11 66, which are attached as Exhibit 18 to Docket
12 Entry 182.

13 So with respect to 65 and 66, I'm
14 overruling Leader's objections and I'm granting
15 the motion to compel of Facebook. I do believe
16 that while the burden of proving competition in
17 connection with the request for an injunction and
18 other types of damages or damages relief, while
19 that burden is on Leader, a defendant here,
20 Facebook, has a right to defend itself, not
21 solely by arguing that the plaintiff has failed
22 to meet its burden, but also by, if it can,
23 proactively proving that the two companies, in
24 this case, are not competitors.

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

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

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

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

8 So that's my ruling on that issue.

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

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

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

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

20 Is that correct, Ms. Keefe?

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

23 THE COURT: Just one second.

24 Mr. Andre, were there any other issues in the

1 State of Delaware)
2 New Castle County)

5 CERTIFICATE OF REPORTER

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

15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and seal this 30th day of December,
17 2009, at Wilmington.

20 _____
21 Heather M. Triozzi, RPR, CSR
22 Cert. No. 184-PS
23
24

EXHIBIT 19

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.)	

Friday, March 12, 2010
3:31 p.m.
Oral Argument

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.
BY: JAMES HANNAH, ESQ.

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APPEARANCES CONTINUED:

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BY: STEVEN L. CAPONI, ESQ.

-and-

WHITE & CASE
BY: HEIDI L. KEEFE, ESQ.

Counsel for Defendant

Hawkins Reporting Service

715 North King Street - Wilmington, Delaware 19801
(302) 658-6697 FAX (302) 658-8418

1 single engineering roadmap produced in this
2 case.

3 So the burden here is going to be
4 very light. We're asking for very -- a very
5 focused set of documents from a few individuals.
6 So the burden on Facebook is next to none.

7 They have been stonewalling us on
8 this document production since discovery began
9 on this case. And at this point, it's getting
10 to a point where it's going to be prejudicial to
11 us. And the burden versus the prejudice is --
12 the weighing is not even close.

13 THE COURT: Okay.

14 MR. ANDRE: Thank you, Your Honor.

15 THE COURT: Let's move on now to
16 the final issue, which is Facebook's effort to
17 compel access to the Leader source code. We
18 will hear from Facebook on this one.

19 MS. KEEFE: We will be very brief
20 on this one. The last time we were before Your
21 Honor, we said that we needed access to Leader's
22 product, because they're claiming to be a
23 competitor. So we need to understand if, in
24 fact, they are a competitor, if in fact, they do

1 practice the patent.

2 Your Honor said, Let's go back and
3 look at what happened with you guys and your
4 source code. I'll give you access to the
5 product itself.

6 And if by using the product, you
7 find that you can't do the analysis without
8 access to the underlying source code, we can
9 revisit it. That's where we are here today.

10 Mr. Weinstein has used the
11 service. I used the service. And we absolutely
12 cannot figure out which metadata is being stored
13 by using the front-end facing portions of the
14 website.

15 Very similar to what Leader's
16 expert found when using our own website.
17 Similarly, just to make sure that there wasn't
18 something that we were missing, that there was
19 something in the product that made it easier, we
20 asked Mr. Fathbruckner, who is one of the
21 engineers who worked on the Leader to Leader
22 product whether or not he could tell us, looking
23 at the screen shots, what metadata was being
24 stored. And he said, No. He said, you'd

1 probably have to look at the code or something
2 else, because it wasn't within the service
3 itself.

4 So we're here, Your Honor, asking
5 for access to that source code so that we can
6 make the analysis that we asked for before.

7 THE COURT: So Leader argues that
8 in addition to Mr. Fathbruckner, there were
9 other witnesses you could have asked a whole
10 bunch of technical questions to, and that that
11 would be less burdensome than producing their
12 whole source code.

13 Were there other witnesses? And
14 if so, why didn't you ask them these questions?

15 MS. KEEFE: There were no other
16 witnesses that I can think of that I could have
17 asked that question of. I may have been able to
18 ask Mr. Lamb. Mr. Lamb is no longer an employee
19 and so no longer has access to their source
20 code.

21 And so I did -- I wasn't -- I
22 wouldn't have been able to ask him, And where
23 would you find it in that, because he doesn't
24 see where it exists today or what it is today.

1 THE COURT: And what's
2 Mr. Fathbruckner's position?

3 MS. KEEFE: He's currently one of
4 their engineers. He's an engineer at the
5 company.

6 THE COURT: What about the
7 argument that they can be your competitor, even
8 if they're not practicing their own patent?

9 MS. KEEFE: You know, Your Honor,
10 the case law is pretty specific. In order to be
11 a competitor, you actually -- in order to be a
12 competitor within the realm of the patent
13 itself, you actually have to be practicing it.

14 I'm not sure -- I'm sure there may
15 be a way that someone might be able to show that
16 they are a competitor. They don't use this
17 exact piece of technology.

18 But you always are head to head
19 with each other on pinches and sales. And maybe
20 they could do that.

21 But this is certainly an extremely
22 relevant factor. We also have a false marking
23 claim in this case.

24 And in order to determine whether

1 or not their product was properly marked, we
2 would also need to analyze the product.

3 THE COURT: Okay. Thank you.

4 MS. KEEFE: Thank you, Your Honor.

5 THE COURT: Let me hear from
6 Leader, please.

7 MR. ANDRE: Your Honor, what is
8 being involved since the day this case began,
9 it's a product-to-product comparison. That's
10 what they're looking to do here.

11 THE COURT: But I can prevent that
12 at trial, right, just by letting them see the
13 source code? I mean, the jury's never going to
14 see the source code of your product.

15 MR. ANDRE: I agree, Your Honor.
16 And one of the things that we -- that is a
17 little bit surprising about their talk about
18 they want to know how the metadata is stored, it
19 doesn't matter how it's stored, just that it is
20 stored. That's what's relevant here.

21 They did have other sources.
22 Mr. McKibben, who's the lead inventor, founder
23 of the company, designer of our product, was
24 also our 30(b)6 witness on this specific topic.

1 We designated him. He was ready to testify on
2 this specific topic.

3 We had Leader to Leader up and
4 running on their computer. We activated it for
5 them for his deposition both days.

6 THE COURT: You had the program or
7 the source code?

8 MR. ANDRE: We had the actual
9 program running. He could show on the program
10 itself.

11 You can actually see the questions
12 that were asked, how the metadata is being
13 updated and things of that nature. So they had
14 that information available to them.

15 More importantly, and I apologize
16 to Your Honor, but this was inadvertently left
17 off as an exhibit to our letter. We were rushed
18 in getting this out.

19 We actually gave them a printout
20 on the database file. This is something they put
21 on their stand-alone computer that has
22 everything.

23 This is a document that's been
24 produced to them. This has the database schema.

1 It actually has right here how the metadata is
2 being updated.

3 I would kill to get this from
4 Facebook. They won't give it to me.

5 But we gave it to them. So they
6 have everything.

7 They have the database schema on
8 their stand-alone computer. We talked about the
9 stand-alone computer.

10 We can't mark that out. We can't
11 mark it as an exhibit in this case.

12 We show it, but we can't print it
13 out and use it. We can't take it home with us
14 and study it back within our office.

15 So we had given them not only the
16 database schema, all the development emails we
17 had on our server developing the product, which
18 we didn't get a single email from them, from any
19 of their developers as they developed their
20 product.

21 Those emails identified
22 individuals who they had subpoenaed and
23 cancelled the deposition.

24 THE COURT: I don't know why you

1 don't give them the source code if you gave them
2 all that. Why --

3 MR. ANDRE: I don't understand why
4 we should have to. That's my point.

5 It's something --

6 THE COURT: Are you intending to
7 tell the jury, in one fashion or another, that
8 you practice your patent?

9 MR. ANDRE: Yes.

10 THE COURT: So then why aren't
11 they allowed to test out and determine for
12 themselves whether you really practice the
13 patent?

14 MR. ANDRE: It's not a case
15 whether our product is infringing the patent or
16 not.

17 THE COURT: No, but you're going
18 to make a representation to the jury or attempt
19 to prove a premise to the jury, We practice our
20 patent. Our Leader-to-Leader product practices
21 or is an embodiment of our patent.

22 They're allowed to defend
23 themselves with respect to that premise, are
24 they not?

1 MR. ANDRE: Well, and we've given
2 them the information to do so, Your Honor. The
3 source code, in this particular instance, is
4 something that because our product is not being
5 accused of infringement, as that's what this is
6 turning into. It's turning into is our product
7 infringing our own patent, and it just keeps
8 going further and further down this road. So
9 that's our concern.

10 You asked if there's a major -- an
11 issue of prejudice to us. The prejudice to us
12 is and why we don't produce it is because we
13 produced everything. The inequities of this
14 discovery in this case is getting to be
15 burdensome.

16 So if they get source code, that
17 means we're going to have to set up a system to
18 put our source code on a stand-alone computer,
19 have it set up for them to come to visit the
20 computer how many times they want to come visit.

21 They have deep pockets and they
22 can suck a lot of our resources from us. They
23 have every single document they need.

24 They have more than -- we've

1 provided them more information about our product
2 than they provided about their product. So I
3 think this is just one of those unduly
4 burdensome requests by Facebook in this
5 particular instance.

6 THE COURT: Okay.

7 MR. ANDRE: Thank you, Your Honor.

8 THE COURT: Thank you. Ms. Keefe,
9 anything else?

10 MS. KEEFE: Just to say, Your
11 Honor, I do know that we have the database
12 schema and it's not sufficient. That just shows
13 how it's stored, not what causes it to be
14 stored. And the code would help us do that.

15 So thank you, Your Honor.

16 THE COURT: Okay. We're going to
17 take a short recess, and I'll come back and give
18 you at least some rulings. Okay.

19 THE CLERK: All rise.

20 (A brief recess was taken.)

21 THE CLERK: All rise. You may be
22 seated.

23 THE COURT: Unless you all have
24 dissolved any of these issues in the last few

1 everything that Leader's expert will need in
2 order to undertake that task.

3 Finally, Facebook moves to compel
4 access to Leader's source code. And I'm going
5 to grant this request of Facebook's.

6 I am convinced that Facebook does
7 need access to Leader's source code in order to
8 evaluate the premise that Leader claims and will
9 claim in front of the jury that Leader itself
10 and the Leader-to-Leader product practices the
11 patent.

12 Facebook is not obligated to rely
13 on that premise. It can challenge that premise.

14 And I'm persuaded that in order to
15 have fair opportunity to challenge that premise,
16 it needs not just technical documents, but it
17 needs access to the source code for all the same
18 reasons that I was persuaded earlier in the
19 case, that Leader needed access to Facebook's
20 source code.

21 I understand the concern about
22 this case in front of the jury not turning into
23 a product-by-product comparison. There's only
24 one product in the case. I believe it's only

1 one.

2 There's only Facebook products in
3 the case that are alleged to have infringed.
4 And that's what the trial will primarily be
5 about.

6 But for purposes of analyzing the
7 contention of Leader that they are practicing
8 their own patent, that they're a competitor and
9 perhaps for other reasons as well, it's relevant
10 for Facebook to have a chance to determine for
11 themselves if Leader does practice the patent.

12 And I think that any burden on
13 Leader is fully taken care of the advantage by
14 the protective order, which of course, remains
15 in place and will apply to the same, to access
16 to Leader's source code, that it applies to
17 access to Facebook's source code.

18 So that is my ruling on the issues
19 that are before us today. As you heard me say
20 on the phone, I don't want to have any argument.
21 We've had plenty of argument.

22 But I do want to make sure I am
23 clear in what I have ruled. Mr. Andre?

24 MR. ANDRE: Just the timing, Your

1 State of Delaware)
2)
3 New Castle County)
4

5 CERTIFICATE OF REPORTER
6

7 I, Heather M. Triozzi, Registered
8 Professional Reporter, Certified Shorthand Reporter,
9 and Notary Public, do hereby certify that the
10 foregoing record, Pages 1 to 80 inclusive, is a true
11 and accurate transcript of my stenographic notes
12 taken on March 12, 2010, in the above-captioned
13 matter.
14

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 19th day of March, 2010, at
17 Wilmington.
18

19
20
21 _____
22 Heather M. Triozzi, RPR, CSR
23 Cert. No. 184-PS
24

Hawkins Reporting Service
715 North King Street - Wilmington, Delaware 19801
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Exhibit 20

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

Exhibit 21

KING & SPALDING

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Tel: (650) 590-0700
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VIA UPS OVERNIGHT AND E-MAIL

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April 14, 2009

Craig W. Clark
White & Case LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

Re: **Leader Technologies, Inc. v. Facebook, Inc., 1:08-cv-00862-JJF (D. Del)**

Dear Craig:

Enclosed please find a CD containing documents produced by Leader Technologies, Inc. in Civil Action No. 1:08-cv-00862-JJF bearing Bates Nos. LTI 000913 to 074166.

Pursuant to Delaware L.R. 26.2, Facebook is required to limit the disclosure of all documents produced by Leader at this time to "members and employees" of trial counsel. These documents are produced and designated in accordance with the confidentiality provisions established in the [Proposed] Stipulated Protective Order transmitted by counsel for Leader to counsel for Facebook on April 8, 2009. These confidentiality of these documents will be governed by the Stipulated Protective Order at such time that it is entered by the Court.

Contrary to some of your recent correspondence, Leader has never purported to withhold documents until such time that the Court enters the Protective Order. As we informed you during our last call, this was an assumption Facebook made but never discussed with Leader. Because Leader's production contains a substantial number of documents, Leader chose to produce the documents once it was certain the parties were close to finalizing the Protective Order and the parties had reached agreement as to the confidentiality designations to be affixed to documents under the Protective Order. Leader did not want to make such a large production only to have to re-produce the documents with different confidentiality designations in the future. Such re-production would have forced Leader to ensure that Facebook destroyed and/or returned all previously produced electronic and paper versions of the documents and would clearly have been a waste of the parties' resources. As the parties have no agreed to the exact

Craig W. Clark
April 14, 2009
Page 2

form of the confidentiality designations to be affixed to documents produced in this matter,
Leader makes the production enclosed herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Meghan Wharton", with a long horizontal flourish extending to the right.

Meghan Wharton

MW:ks
Enclosure

Exhibit 22

KING & SPALDING

King & Spalding LLP
333 Twin Dolphin Drive
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Redwood Shores, CA 94065
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Gladys Tong
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gtong@kslaw.com

August 3, 2009

VIA E-MAIL & OVERNIGHT DELIVERY

Craig W. Clark, Esq.
White & Case LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

Re: *Leader Technologies, Inc. v. Facebook, Inc.*
Civil Action No. 1:08-cv-00862-JJF

Dear Craig:

Enclosed please find 2 DVDs containing Leader Technologies, Inc.'s document production bearing bates numbers LTI074167 through LTI134198. Please note that some of these documents have been designated "Confidential" or "Highly Confidential - Attorneys' Eyes Only" pursuant to the Stipulated Protective Order.

Very truly yours,



Gladys Tong

Enclosures (via overnight delivery)

Exhibit 23

KING & SPALDING

King & Spalding LLP
333 Twin Dolphin Drive
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Redwood Shores, CA 94065
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gtong@kslaw.com

August 18, 2009

VIA E-MAIL & OVERNIGHT DELIVERY

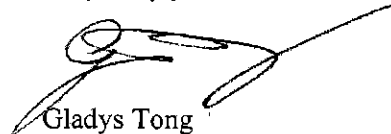
Craig W. Clark, Esq.
White & Case LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

Re: *Leader Technologies, Inc. v. Facebook, Inc.*
Civil Action No. 1:08-cv-00862-JJF

Dear Craig:

Enclosed please find a DVD containing Leader Technologies, Inc.'s document production bearing bates numbers LTI134199 through LTI145927. Please note that some of these documents have been designated "Confidential" or "Highly Confidential - Attorneys' Eyes Only" pursuant to the Stipulated Protective Order.

Very truly yours,



Gladys Tong

Enclosures (via overnight delivery)