

EXHIBIT D2

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Brief Statement of What Facebook Intends To Prove in Support of Its Defenses and Counterclaims, Including the Details of Its Damages Defenses and Claims

Defendant and Counterclaim-Plaintiff Facebook, Inc. (“Facebook”) submits the following statement of intended proof setting forth a description of what Facebook intends to prove at trial in support of its defenses, counterclaims and damages pleas. The following statement is not exhaustive and Facebook reserves the right to prove any matters identified in its Second and/or Third Amended Answers, its responses to Leader’s Interrogatories, its responses to Leader’s Requests for Admission, and its experts’ opening and rebuttal reports. Facebook also intends to offer proof as to the issues of fact and issues of law identified in the parties’ Joint Pretrial Order. Facebook further intends to offer proof to rebut items that the Plaintiff and Counterclaim-Defendant Leader Technologies, Inc. (“Leader”) offers. Facebook reserves the right to amend and supplement this statement in response to Leader’s pre-trial activities or any subsequently produced discovery. Facebook incorporates by reference its experts’ reports in support of any proof to be presented by expert testimony.

1. NON-INFRINGEMENT

- a.** In defense of Leader’s claim of infringement, Facebook will show that Leader has failed to carry its burden to prove that Facebook has infringed any claim of the ’761 patent, either literally or under the doctrine of equivalents in violation of 35 U.S.C. §§ 271 (a)-(c).
- b.** In support of its declaratory judgment claim, Facebook will prove by a preponderance of the evidence that Facebook has not and does not infringe any claim of the ’761 patent, either literally or under the doctrine of equivalents in violation of 35 U.S.C. §§ 271 (a)-(c).

- c. If Facebook is found to infringe the '761 patent, Facebook will show that Leader has failed to carry its burden to prove that Facebook has willfully infringed the '761 patent under 35 U.S.C. § 284.

2. INVALIDITY

- a. Facebook will prove by clear and convincing evidence that the '761 patent is invalid, and therefore unenforceable, for failure to meet one or more of the conditions of patentability specified in 35 U.S.C. §§ 101-103 and/or 112.

3. INEQUITABLE CONDUCT

- a. Facebook will prove by clear and convincing evidence that the '761 patent is unenforceable because of Leader's and the inventors' inequitable conduct during prosecution of the patent.

4. FALSE MARKING

- a. Facebook will prove by a preponderance of the evidence that Leader falsely marked products that do not practice the claims of the '761 patent under the terms of 35 U.S.C. § 292.
- b. If Leader is found to have falsely marked products under the terms of 35 U.S.C. § 292, Facebook will prove that it serves the interests of justice to assess a specific monetary penalty against Leader and that Facebook is entitled to recover a portion of that penalty under the terms of § 292.
- c. If Leader is found to have falsely marked products under the terms of 35 U.S.C. § 292, Facebook will prove that it is entitled to costs, including attorneys' fees, under 35 U.S.C. § 285.

5. OTHER DEFENSES TO LEADER'S CLAIM OF INFRINGEMENT

- a. Facebook will prove by a preponderance of the evidence that Leader is barred from pursuing its claims by the doctrine of laches.

6. DEFENSES TO LEADER'S REQUESTED REMEDIES

- a. If Facebook is found to have infringed the '761 patent, Facebook will show that Leader has failed to carry its burden to prove that it is entitled to damages in the amount set forth by the Expert Damages Report of Russell L. Parr, CFA, ASA.
- b. If Facebook is found to have infringed the '761 patent, Facebook will show that Leader has failed to carry its burden to prove that it is entitled to treble or otherwise enhanced damages based on Facebook's willful infringement under 35 U.S.C. § 284.
- c. If Facebook is found to have infringed the '761 patent, Facebook will show that Leader has failed to carry its burden to prove that Leader is entitled to a permanent injunction.
- d. If Facebook is found to have infringed the '761 patent, Facebook will show that Leader has failed to carry its burden to prove that it is entitled to costs and prejudgment interest, or that this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Leader to attorneys' fees.
- e. If the '761 patent is held to be unenforceable or not infringed, Facebook will show that this case is exceptional under 35 U.S.C. § 285.
- f. Any other relief that the Court deems just.