

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware )  
corporation, )  
 ) C.A. No. 08-862-JJF  
Plaintiff-Counterdefendant, )  
 )  
 )  
v. )  
 )  
FACEBOOK, INC., a Delaware ) **PUBLIC VERSION**  
corporation, )  
 )  
 )  
Defendant-Counterclaimant. )  
 )  
 )

**LEADER TECHNOLOGIES, INC.'S OPPOSITIONS TO  
FACEBOOK, INC.'S MOTIONS *IN LIMINE* NOS. 1-11**

**OF COUNSEL:**

Paul J. André  
Lisa Kobialka  
KING & SPALDING LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, CA 94065  
(650) 590-0700

Dated: May 27, 2010  
Public Version: June 3, 2010

Philip A. Rovner (#3215)  
Jonathan A. Choa (#5319)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza  
P. O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)  
[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)

*Attorneys for Plaintiff  
Leader Technologies, Inc.*

Doc. 495

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 1

A. Doctrine of Equivalents Is Properly Asserted In This Case -- Leader's Opposition to Facebook's Motion in Limine No. 1 ..... 1

1. Relevant Background Regarding Facebook's Motion in Limine No. 1 ..... 1

2. Leader Should Not Be Precluded From Providing Evidence Regarding The Doctrine of Equivalents ..... 4

B. Leader's Infringement Theories Should Not Be Narrowed – Leader's Opposition to Facebook's Motion in Limine No. 2 ..... 6

1. Relevant Background Regarding Facebook's Motion in Limine No. 2 ..... 6

2. Facebook's Motion in Limine Should be Denied Because It Ignores What Was Disclosed in Dr. Vigna's Report ..... 10

C. Platform Is Another Word to Refer to The Underlying Architecture of the Facebook Website That Is Accused Of Infringement – Leader's Opposition to Facebook's Motion in Limine No. 3 ..... 13

1. Relevant Background Regarding Facebook's Motion in Limine No. 3 ..... 14

2. Leader Should Not Be Restricted From Using the Word "Platform" During Trial ..... 15

D. Mr. Parr's Opinion Properly Concerns Damages, Not Infringement—Leader's Opposition to Facebook's Motion in Limine No. 4 ..... 16

1. Relevant Background Regarding Facebook's Motion in Limine No. 4 ..... 17

2. Facebook's Motion To Preclude The Testimony of Mr. Parr With Regard to Damages Relating to Facebook's Internal Use of the Facebook Website Should be Denied ..... 17

E. [REDACTED] ..... 18

[REDACTED] ..... 19

2.	[REDACTED]	.....20.
F.	[REDACTED]	.....22
1.	[REDACTED]	.22
2.	[REDACTED]	.25
G.	Leader Is Entitled To Use Previous Deposition Testimony As Impeachment Evident—Leader’s Opposition to Facebook’s Motion <i>in Limine</i> No. 7.....	27
H.	[REDACTED]	.....28
1.	[REDACTED]	.....28
2.	[REDACTED]	.....31
3.	[REDACTED]	.....33
I.	Mr. McKibben Should Be Permitted To Testify About His Invention – Leader’s Opposition to Facebook’s Motion <i>in Limine</i> No. 10 .....	35
J.	Leader Should Be Able To Discuss Its Competing Technology At Trial— Leader’s Opposition to Facebook’s Motion <i>in Limine</i> No. 11 .....	35
1.	Relevant Background Regarding Facebook’s Motion <i>in Limine</i> No. 11 ..	35
2.	[REDACTED]	.....36
III.	CONCLUSION .....	38

## TABLE OF AUTHORITIES

### CASES

<i>AquaTex Indus., Inc. v. Techniche Solutions</i> , 479 F.3d 1320 (C.A. Fed. 2007).....	5
<i>Georgia-Pacific Corp. v. United States Plywood Corp.</i> , 318 F. Supp. 1116 (S.D.N.Y. 1970) .....	37
<i>Graver Tank &amp; Mfg. Co. v. Linde Air Prods. Co.</i> , 339 U.S. 605 (1950) .....	5
<i>Honeywell Intern., Inc. v. Universal Avionics Sys. Corp.</i> , 347 F.Supp.2d 129 (D. Del. 2004) .....	6
<i>In re Seagate Tech., LLC</i> , 497 F.3d 1360 (Fed. Cir. 2007) (en banc) .....	31
<i>PC Connector Solutions LLC v. SmartDisk Corp.</i> , 406 F.3d 1359 (Fed. Cir. 2005) .....	5
<i>Sauder Indus., Inc. v. Carborundum Co.</i> , No. Civ. C77-898, 1980 WL 324461 (N.D. Ohio Nov. 20, 1980).....	21
<i>United States v. Lindsey</i> , Criminal Action No. 08-97-JJF, 2009 .....	34
<i>United States v. Piqua Eng'g, Inc.</i> , 152 F.R.D. 565 (S.D. Ohio 1993).....	21

### STATUTES AND RULES

35 U.S.C. §102(b).....	24, 25
Fed. R. Evid. 402 .....	34
Fed. R. Evid. 403 .....	13, 28, 33, 34
Fed. R. Civ. P. 30(e) .....	20, 21
Fed. R. Evid. 404(b) .....	33-34

## I. INTRODUCTION

Leader Technologies, Inc. ("Leader") files this single brief opposing Facebook, Inc.'s ("Facebook") eleven motions *in limine* ("Motion") which are conclusory and devoid of evidence. In many instances, there is simply no law to support Facebook's positions. As described below, the actual evidence undermines many of Facebook's motions which are premised on purported facts that simply do not exist.

## II. ARGUMENT

### A. Doctrine of Equivalents Is Properly Asserted In This Case -- Leader's Opposition to Facebook's Motion *in Limine* No. 1

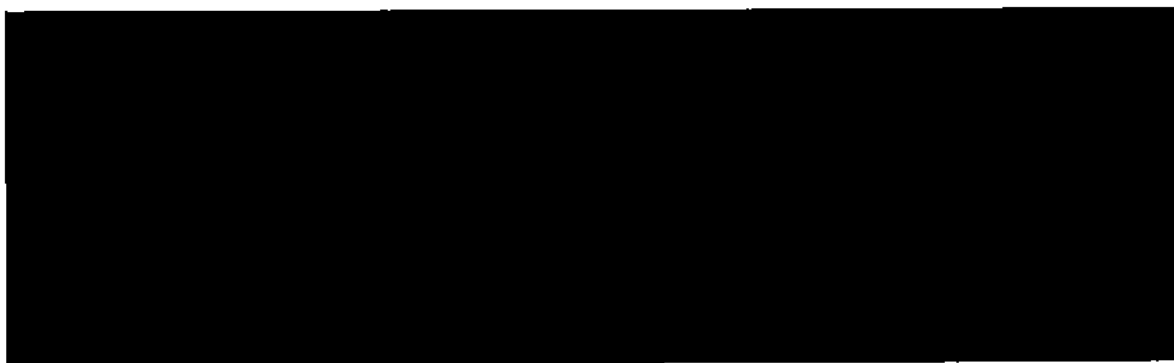
The actual evidence undermines Facebook's assertions in its first Motion *in Limine*. Facebook's primary assertion is that Leader's expert on issues of infringement, Dr. Giovanni Vigna, did not provide a doctrine of equivalents analysis and that his "report discloses no limitation-by-limitation analysis." Motion at 2. A cursory review of Dr. Vigna's expert report, however, reveals that Dr. Vigna provided over twenty-five pages of analysis relating to the doctrine of equivalents, including at least four paragraphs of analysis regarding the doctrine of equivalents for every claim element. As such, Dr. Vigna should be permitted to offer testimony regarding the doctrine of equivalents.

#### 1. Relevant Background Regarding Facebook's Motion *in Limine* No. 1

Leader filed its complaint against Facebook on November 19, 2008 alleging willful infringement of United States Patent No. 7,139,761 ("the '761 Patent"). D.I. 1. On February 18, 2009, Facebook served its First Set of Interrogatories in which Interrogatory No. 1 asked Leader to identify the basis for Facebook's infringement of the '761 Patent. Leader timely responded, identified the doctrine of equivalents as a basis for infringement and provided a detailed claim chart illustrating Facebook's infringement of the '761 Patent. Declaration of James Hannah in

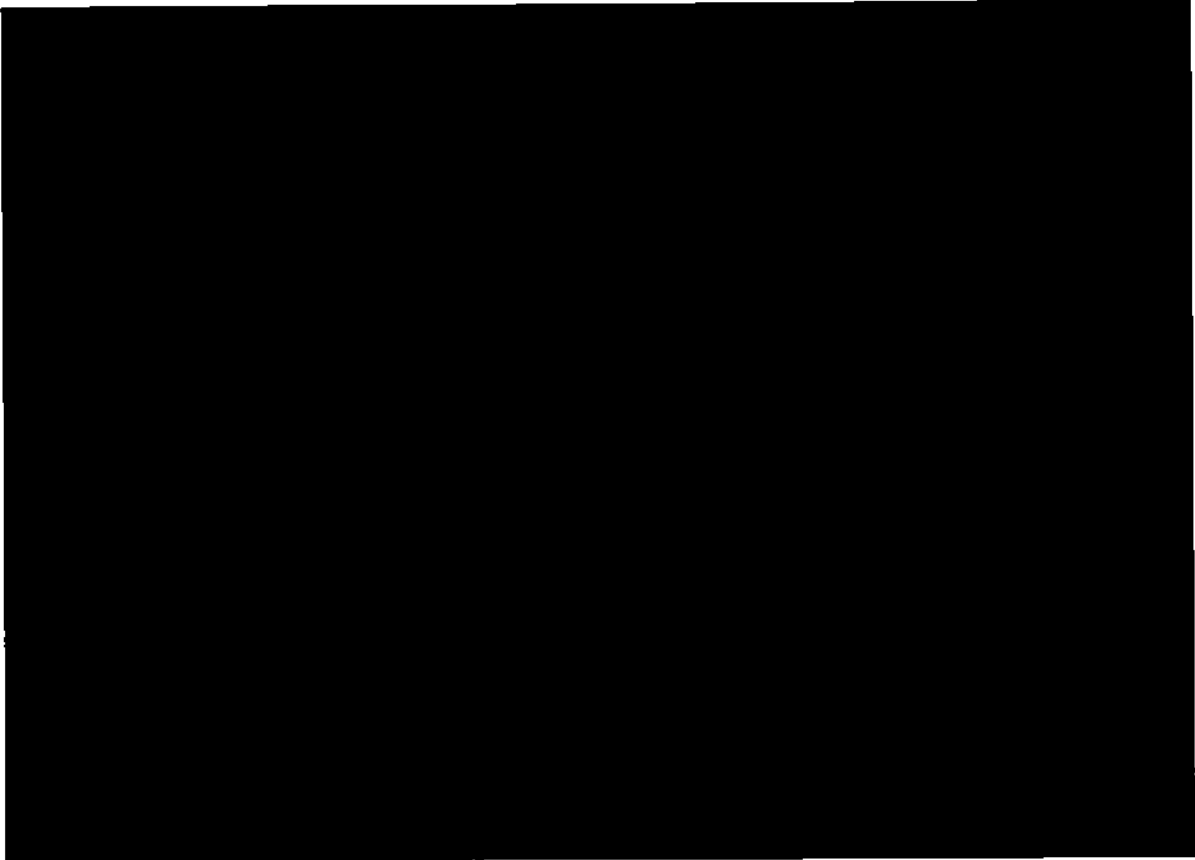
Support of Leader's Oppositions to Facebook's Motions *In Limine* Nos. 1-11 ("Hannah Decl.") filed herewith, ¶ 2, Ex. 1 at 6-23). Since then, Leader has supplemented its response to Facebook's interrogatories four times. In each of those responses, Leader alleged that Facebook infringed the '761 Patent under the doctrine of equivalents, and provided detailed claim charts illustrating Facebook's infringement.<sup>1</sup> See Hannah Decl., ¶¶ 3-6, Exs. 2-5. Leader provided Facebook with ample notice that Facebook's infringement included liability under the doctrine of equivalents as an alternative to literal infringement.

Over a year later, on April 8, 2010, Leader served the expert report of Dr. Giovanni Vigna. D.I. 413 (Declaration of Melissa Keyes in Support of Facebook, Inc.'s Motions *In Limine* and *Daubert* Motions ("Keyes Decl."), ¶ 2, Ex. 1 ("Vigna Report")). Dr. Vigna provided an extremely detailed analysis regarding Facebook's infringement, including his analysis of Facebook's infringement under the doctrine of equivalents. Specifically, following each claim element of the asserted claims, Dr. Vigna provided his opinion and analysis that the element is met under the doctrine of equivalents because it performs substantially the function, in substantially the same way, to obtain substantially the same result. For example, with reference to the first element of Claim 1 (the context component), Dr. Vigna provided the following analysis:

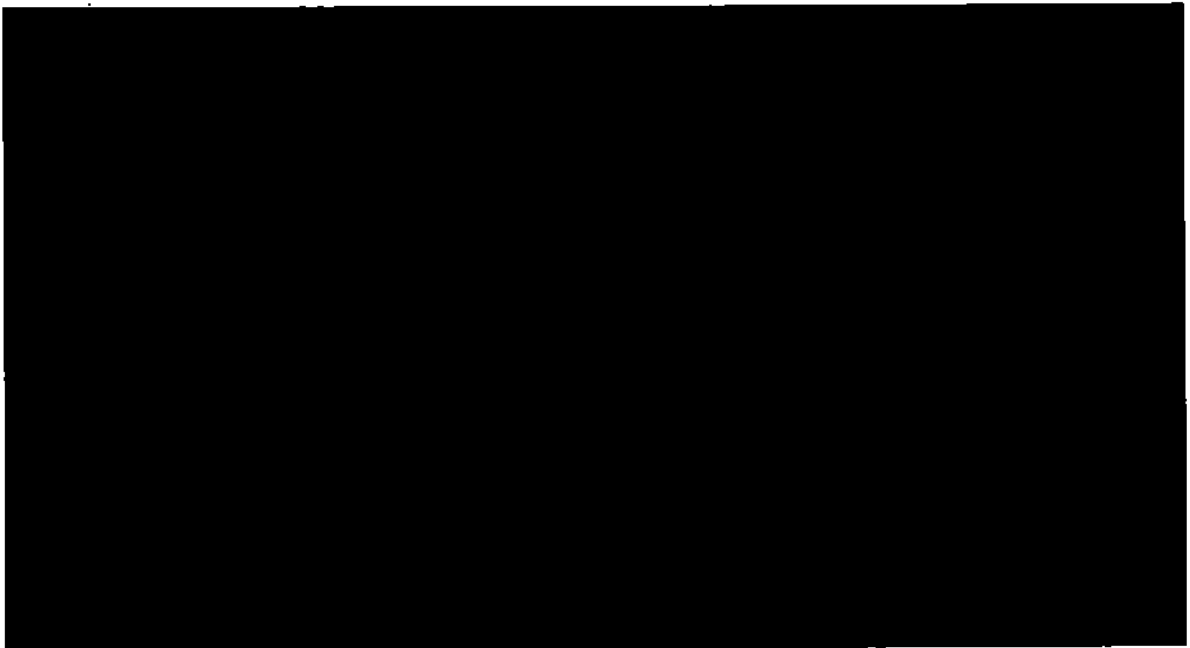


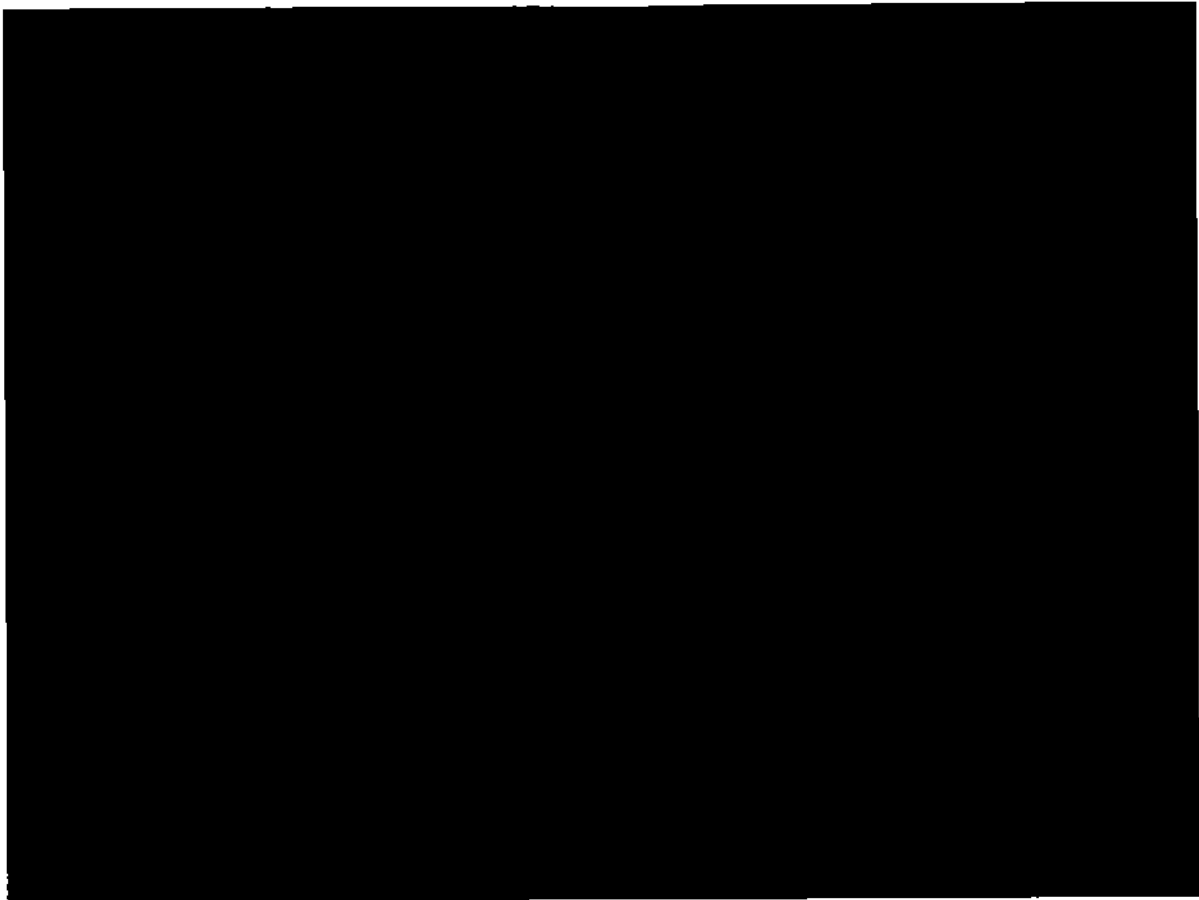
---

<sup>1</sup> Leader also objected to the interrogatory to the extent it sought the subject matter of expert testimony.



*See* Keyes Decl., ¶ 2, Ex. 1 (Vigna Report, ¶¶ 86-89). For the second element of Claim 1 (the tracking component), Dr. Vigna provides the following analysis with respect to the doctrine of equivalents:





*See id.* at ¶¶ 104-07. These are just two examples of the type of analysis that Dr. Vigna did for every element of the asserted claims.

**2. Leader Should Not Be Precluded From Providing Evidence Regarding The Doctrine of Equivalents**

As described above, Leader disclosed to Facebook detailed evidence of Facebook's infringement under the doctrine of equivalents during fact and expert discovery. Since it responded to Facebook's very first interrogatory, Leader has consistently asserted that Facebook infringed the '761 Patent under the doctrine of equivalents. Dr. Vigna's subsequent extensive disclosure regarding Facebook's infringement under the doctrine of equivalents also undermines Facebook's allegations that Leader did not provide proper notice of its doctrine of equivalents allegations.



Furthermore, Dr. Vigna should be permitted to testify regarding the doctrine of equivalents because he disclosed an extensive doctrine of equivalents analysis in his expert report. The primary test for the doctrine of equivalents is whether the accused device performs substantially the same function in substantially the same way to obtain substantially the same result. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608-09 (1950). As shown above with two examples from Dr. Vigna's report, this is precisely what Dr. Vigna did. Dr. Vigna linked specific infringement evidence on a limitation-by-limitation basis, analyzing whether each claim element performed substantially the same function, in substantially the same way, to achieve substantially the same result. *See* Keyes Decl., ¶ 2, Ex. 1 (Vigna Report, ¶¶ 118, 127, 152-55, 167-70, 178-81, 193-96, 207, 211, 232-35, 247-50, 258-61, 271-74, 291, 313-16, 329-32, 344, 348, and 359).

It speaks volumes that Facebook did not provide any evidence or point to any part of Dr. Vigna's report to support its argument, as it cannot. Not only is Facebook's argument improper because it is not supported by any evidence, it simply does not reflect the facts and the actual disclosure provided by Dr. Vigna. Further, the cases Facebook relies upon simply do not apply here. For example, unlike the extensive disclosure that Dr. Vigna provided to Facebook, the experts in the *Aquatex* and *PC Connector Solutions* cases failed to provide *any* analysis of doctrine of equivalents in their respective infringement reports. *See, e.g., AquaTex Indus., Inc. v. Techniche Solutions*, 479 F.3d 1320, 1329 (C.A. Fed. 2007) ("The only evidence presented by AquaTex on the issue of equivalents was the deposition testimony of Doug Frost, Techniche's Chief Executive Officer.") (emphasis added); *see also PC Connector Solutions LLC v. SmartDisk Corp.*, 406 F.3d 1359, 1362 (Fed. Cir. 2005) (the defendant charged that patentee was "fatally deficient for failing to include *an analysis* under the doctrine of equivalents.") (emphasis added).

*Honeywell* is also inapposite as the doctrine of equivalents analysis in the *Honeywell* merely used the same conclusory statements for two different accused products. *Honeywell Intern., Inc. v. Universal Avionics Sys. Corp.*, 347 F.Supp.2d 129, 134 n.18 (D. Del. 2004)('[Patentee]'s doctrine of equivalents 'argument' with regard to the accused Universal and Sandel products is substantially identical in his reports on each defendants' products.'). For these reasons, Facebook's motion should be denied.

**B. Leader's Infringement Theories Should Not Be Narrowed -- Leader's Opposition to Facebook's Motion *in Limine* No. 2**

On its face, Facebook's Motion *in Limine* No. 2 seeks to limit the testimony of Leader's expert, Dr. Vigna, to the opinions expressed in his expert report. As a preliminary matter, no expert should be permitted to offer testimony which is not disclosed in his or her respective expert report. Any attempt to do so is something that will be timely objected to at trial. A careful reading of Facebook's motion, however, reveals that Facebook simply ignores entire sections of Dr. Vigna's report in an effort to attempt to preclude opinion testimony that *is disclosed* in Dr. Vigna's expert report.

**1. Relevant Background Regarding Facebook's Motion *in Limine* No. 2**

Dr. Vigna's April 8, 2010 expert report detailed the reasons why Facebook infringes the '761 Patent. Dr. Vigna's opinion is that "the underlying architecture of the Facebook website infringes the asserted claims." See Keyes Decl., ¶ 2, Ex. 1 (Vigna Report, ¶ 25). It is this architecture or platform that facilitates what a user can do and which is accused of infringing. A majority of the asserted claims cover the underlying architecture on the back end of the Facebook website.

To demonstrate how the underlying architecture of the Facebook website infringes the asserted claims, Dr. Vigna provided a number of exemplary use cases. These use cases "are

written from the perspective of a user using the Facebook website.” Motion at 7. Nonetheless, Dr. Vigna explained that “the permissible actions of a user using the Facebook website and the content displayed (*in correlation with knowledge of and information about the back-end functionality*) demonstrate that the Facebook website [REDACTED] that meet all of the elements set forth in the asserted claims.” See Keyes Decl., ¶ 2, Ex. 1 (Vigna Report, ¶ 26)(emphasis added). In other words, the “use cases” are examples of what the Facebook website can do. [REDACTED]

[REDACTED] See, e.g., *id.*, ¶¶ 68-71, 75-78, 82-83, 93, 96-98, 101-02, 109-13, 116, 120, 122, 125, 139-41, 144-46, 149-50, 156-58, 161-62, 165, 171-72, 174, 183-84, 186-88, 190-91, 198-99, 201-02, 204-05, 207, 219-21, 224-26, 229-30, 237-38, 241-42, 245, 248-50, 252, 254, 256, 263-64, 266, 268-69, 276-79, 281-84, 286-91, 296-300, 303-07, 310-11, 318-19, 321-23, 325-27, 333-35, 337, 339-42, 346, 350-58. Each of these detailed analyses compares the underlying architecture to the elements of the asserted claims. It is these disclosures in Dr. Vigna’s report that Facebook ignores in its motion.

Dr. Vigna’s report is separated into three discrete sections entitled “Use Case” Nos. 1-3. Each section, however, contains multiple uses cases within it and therefore is not truly just limited to three use cases, as Facebook suggests. Hannah Decl., ¶ 7, Ex. 6 (Deposition of Giovanni Vigna (“Vigna Depo.”) at 92:9-93:18). [REDACTED]

[REDACTED]

[REDACTED]

See Keyes Decl., ¶ 2, Ex. 1

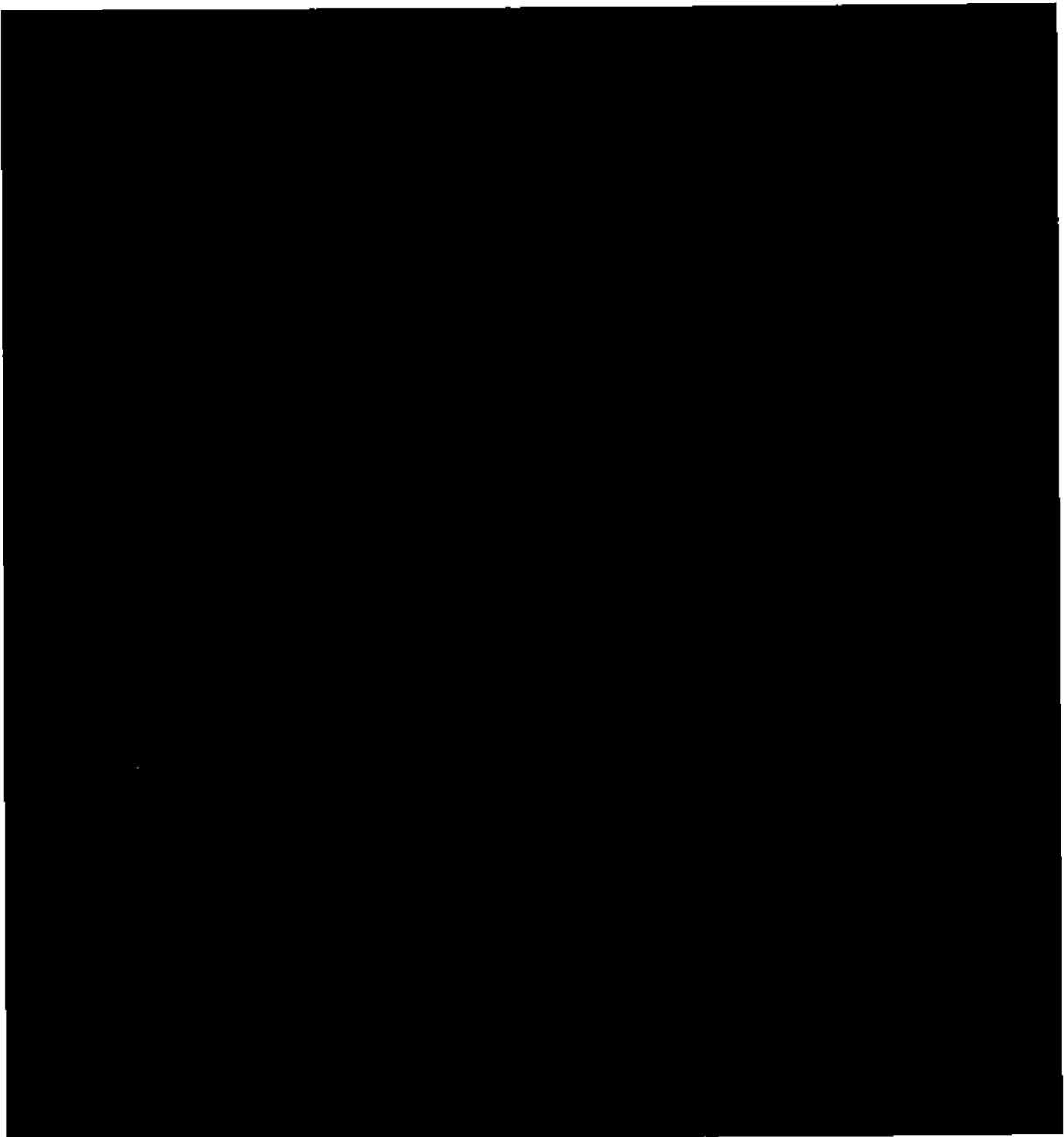
(Vigna Report, generally).

[REDACTED]

[REDACTED]

*Id.*, ¶ 30.

[REDACTED]



*Id.*, ¶ 102. In fact, Dr. Vigna analysis of News Feed is contained in over 20 pages of analysis throughout his report. [REDACTED]

[REDACTED] 2

**2. Facebook’s Motion *in Limine* Should be Denied Because It Ignores What Was Disclosed In Dr. Vigna’s Report**

Facebook’s Motion *in Limine* No. 2, which seeks to limit the testimony of Dr. Vigna, should be denied because it attempts to preclude testimony that Dr. Vigna actually disclosed in his expert report. For example, Facebook argues that Dr. Vigna does not opine that the Facebook architecture infringes the ‘761 Patent and, in passing, requests an order to preclude such testimony. This argument is in direct contradiction to Dr. Vigna’s report in which he states “[a]s described in detail below, the underlying architecture of the Facebook website infringes the asserted claims.” *Id.* at 7. Dr. Vigna follows this opinion with *pages upon pages* of analysis which describe why the architecture of the Facebook website infringes the ‘761 Patent. *See, e.g., id.*, ¶¶ 68-71, 75-78, 82-83, 93, 96-98, 101-02, 109-13, 116, 120, 122, 125, 139-41, 144-46, 149-50, 156-58, 161-62, 165, 171-72, 174, 183-84, 186-88, 190-91, 198-99, 201-02, 204-05, 207, 219-21, 224-26, 229-30, 237-38, 241-42, 245, 248-50, 252, 254, 256, 263-64, 266, 268-69, 276-79, 281-84, 286-91, 296-300, 303-07, 310-11, 318-19, 321-23, 325-27, 333-35, 337, 339-42, 346, 350-58. [REDACTED]

[REDACTED]

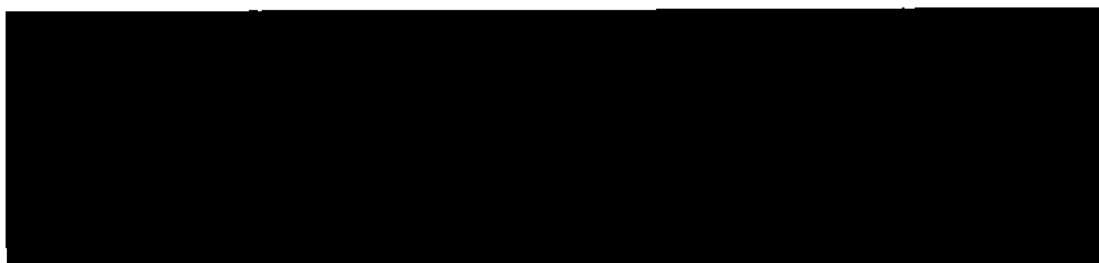
Facebook's arguments seem to be based on a fundamental misunderstanding of the purpose of a "use case" and an attempt to mischaracterize Dr. Vigna's opinion. Facebook continuously characterizes the "use cases" as a "set of actions on the Facebook website [that] allegedly infringe the patent." Motion at 6. However, as Dr. Vigna explained in his report and during deposition, the "use cases" are examples that demonstrate infringement based on what is happening on the back-end of the Facebook website. *See id.*, ¶ 25; *see also* Hannah Decl., ¶ 7, Ex. 6 (Vigna Depo. at 48:3-16, 52:22-53:7, 57:3-15, 72:21-73:7, 92:22-93:18, 95:8-96:10, 99:9-17, 101:23-102:7, 104:16-25). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See, e.g.,* Keyes Decl., ¶ 2, Ex. 1 (Vigna Report, ¶¶ 68-71, 75-78, 82-83, 93, 96-98, 101-02, 109-13, 116, 120, 122, 125, 139-41, 144-46, 149-50, 156-58, 161-62, 165, 171-72, 174, 183-84, 186-88, 190-91, 198-99, 201-02, 204-05, 207, 219-21, 224-26, 229-30, 237-38, 241-42, 245, 248-50, 252, 254, 256, 263-64, 266, 268-69, 276-79, 281-84, 286-91, 296-00, 303-07, 310-11, 318-19, 321-23, 325-27, 333-35, 337, 339-42, 346, 350-58). As such, Dr. Vigna should not be restricted to testify only regarding the actions of the user performing any of the "use cases" as Facebook argues, but should be allowed to testify regarding the infringement of the underlying architecture, as described in Dr. Vigna's expert report.

Further evidence of Facebook's mischaracterization of Dr. Vigna's opinion is its citation to his deposition testimony.<sup>3</sup> First, the citations provided by Facebook completely ignore the previous 50 pages of deposition testimony in which Dr. Vigna explained the purpose of the various "use cases" which are provided in his report. Hannah Decl., ¶ 7, Ex. 6 (Vigna Depo. at 48:3-16, 52:22-53:7, 57:3-15, 72:21-73:7, 92:22-93:18, 95:8-96:10, 99:9-17, 101:23-102:7, 104:16-25). With regard to the specific deposition citations provided in Facebook's motion, Dr. Vigna diligently asked for clarification as to the scope of Facebook's imprecise questions in which it appears Facebook attempted to trick Dr. Vigna into testifying that it is the use cases that infringe the '761 Patent. For example:



*Id.* at 97:17-98:1.

Rather than explaining the questions, Facebook's counsel simply reiterated the same questions over-and-over. Because Dr. Vigna did not fall for Facebook's ploy, Facebook is now attempting to claim that he was non-responsive or evasive to these wholly improper questions, which did not reflect Dr. Vigna's opinion in the first place. Facebook simply ignored Dr. Vigna's actual response and opinion that the "use cases" are "an exemplification of how the website uses the data," as it is the underlying architecture of the Facebook website that is truly at issue. *Id.* (Vigna Depo. at 48:3-16, 52:22-53:7, 57:3-15, 72:21-73:7, 92:22-93:18, 95:8-96:10, 99:9-17, 101:23-102:7, 104:16-25).

---

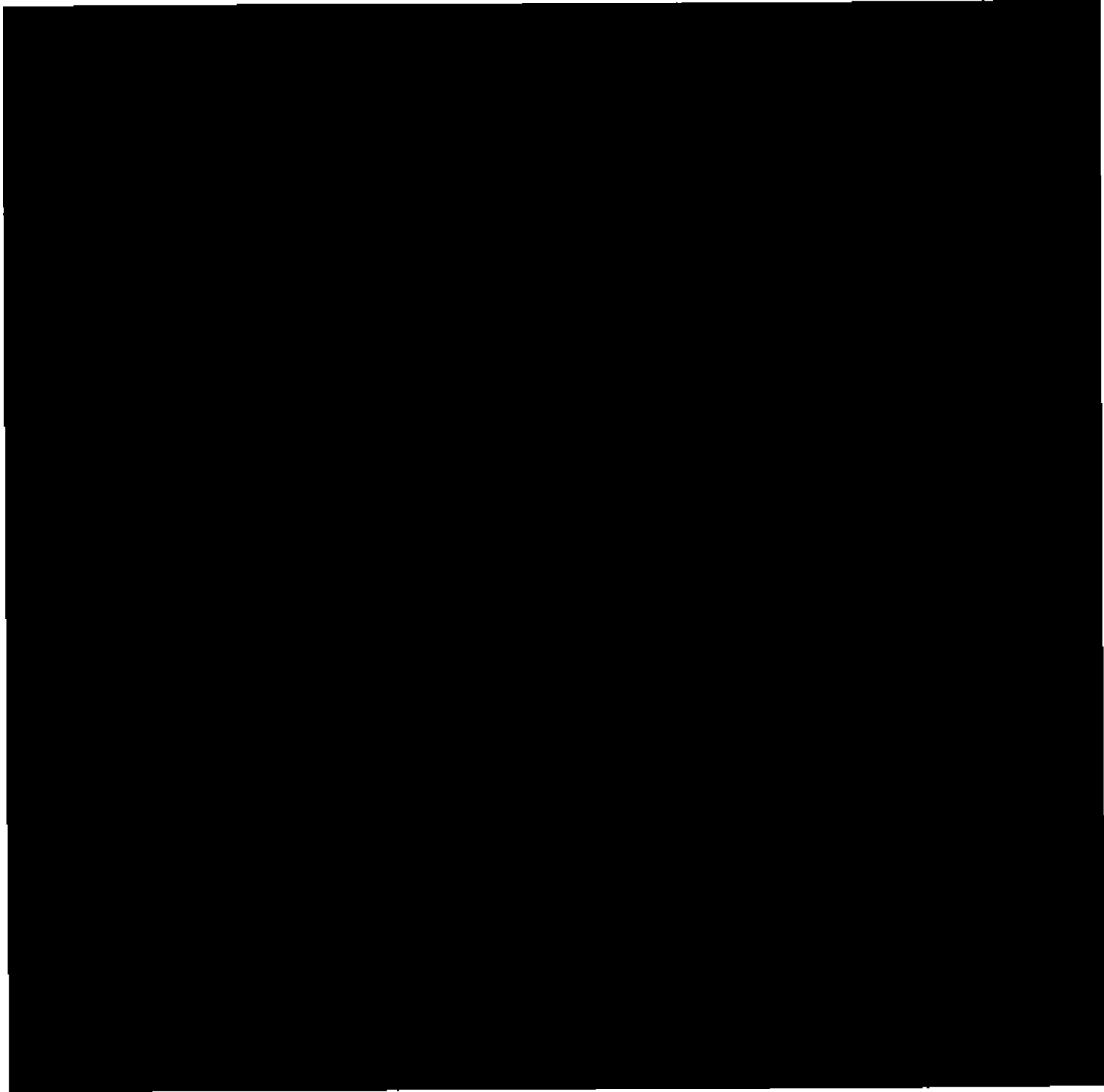
<sup>3</sup> Facebook consistently mischaracterizes Dr. Vigna and his deposition testimony. These comments were apparently made out of frustration, as Dr. Vigna would not change his opinion during deposition, no matter how many times he was asked the same question.



**C. Platform Is Another Word to Refer to The Underlying Architecture of the Facebook Website That Is Accused Of Infringement -- Leader's Opposition to Facebook's Motion *in Limine* No. 3**

Facebook's Motion *in Limine* No. 3 is, for lack of a better word, bizarre and an attempt to preclude Leader from presenting its infringement case against it. Taken literally, Facebook requests that the Court order Leader to redact over 30% of the documents on Leader's exhibit list, including Facebook's own documents and a substantial amount of the deposition testimony because of the use of the word "platform." It is Facebook, not Leader, which calls the infringing product the "Facebook Platform." The fact that the asserted claims also recite a "web-based computing platform" is no reason to preclude Leader from using the word "platform" during trial. To be excluded, relevant evidence must be substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Fed. R. Evid. 403. As Facebook uses the term "platform" to describe their own system, there is no possibility of unfair prejudice, let alone any prejudice that substantially outweighs the materials relevance.

**1. Relevant Background Regarding Facebook's Motion *in Limine* No. 3**



Dr. Vigna disclosed a detailed analysis of the underlying architecture or platform of the Facebook website in his expert report which included analysis of Facebook's publically available API. Dr. Vigna explained the purpose and function of an API and even provided technical details about the information that can be retrieved using Facebook's API. Keyes Decl., ¶ 2, Ex. 1 (Vigna Report, ¶¶ 13-14). Dr. Vigna goes even further and confirms that his testimony "will

include an application that [he] will build on Facebook's publically available API." *Id.* at ¶ 12. Dr. Vigna also analyzed dozens of technical papers which discussed the Facebook platform in his element-by-element analysis of the asserted claims. *Id.* at ¶¶ 43, 52, 60, and Ex. B.

## **2. Leader Should Not Be Restricted From Using the Word "Platform" During Trial**

Leader provided ample notice and a thorough discussion in expert discovery regarding how the underlying architecture or platform of the Facebook website infringes the asserted claims. *Id.* (Vigna Report, generally). Facebook's attempt to preclude the use of the word "platform" is a veiled attempt to prevent Leader from presenting its infringement case. The fact that the claims recite a platform is not a legitimate reason to preclude Leader from using the term and Facebook cites to no case law in support of its position.

Moreover, Facebook uses the word "platform" to refer to the architecture of its website. Hannah Decl., ¶ 8, Ex. 7 (Facebook web page, available at <http://www.facebook.com/platform>). In an attempt to confuse the issues, Facebook refers to its API. There is no question, however, that Facebook's API is relevant to disclosing how the underlying architecture or platform of the Facebook website works. The purpose of the API is to grant third party developers information regarding the underlying architecture of the Facebook website without disclosing the confidential back end information, such as source code modules and the database schema. Because the API is relevant to demonstrating Facebook's infringement, Dr. Vigna discussed and analyzed the API in his expert opinion.

Facebook's argument that "platform applications" are not accused of infringement and therefore use of the term "platform" should be precluded from trial is a red herring. Even if platform applications are not accused on infringement, there is no debate that the underlying architecture or platform of the Facebook website is accused of infringement. Use of the word

platform is not one that will confuse or mislead the jury given the specific allegations of infringement in this case. As discussed above, the Facebook website is a platform which provides public access to the context and tracking components that are accused of infringement. Thus, whether platform applications are infringing is immaterial because, as set forth in Dr. Vigna's expert report and supported by Facebook's documents, it is the underlying Facebook platform which infringes the asserted claims. Accordingly, Leader should not be precluded from using the term "platform" at trial.

**D. Mr. Parr's Opinion Properly Concerns Damages, Not Infringement -- Leader's Opposition to Facebook's Motion *in Limine* No. 4**

Facebook's Motion *in Limine* No. 4 is based on a misapprehension of Leader's theories of infringement and the role of a damages expert. Facebook's motion is premised on its incorrect claim that Leader has two separate claims of infringement, infringement caused by the use of the website by members of the public and infringement caused by the use of the website by Facebook employees. *See* Motion at 8. Facebook is wrong. Leader's infringement claims are directed to the Facebook website itself and are not dependent on who is using Facebook's website. *See* Hannah Decl., ¶ 6, Ex. 5 at 2 ("Leader asserts that the Facebook Website (as defined in Leader's First Set of Requests for Documents and Things) infringes, literally or in the alternative, infringes under the doctrine of equivalents, the following Claims: Claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, 32 of the '761 Patent."). In Mr. Parr's damages opinion he assumed, as he must, infringement of the asserted claims. Consequently, just as Leader's infringement claims are not dependent on who is using Facebook's website, neither is Mr. Parr's damages opinion. Facebook's attempt to preclude Leader's damages expert from offering an opinion regarding damages based on a theory that Facebook infringes sometimes, but not all the time, is without merit.

**1. Relevant Background Regarding Facebook's Motion *in Limine* No. 4**

In his expert report, Mr. Parr “conducted an independent analysis of the reasonable royalty that likely would have emerged from a hypothetical negotiation between a willing licensor and a willing licensee on the date the patent issued.” Keyes Decl., ¶ 3, Ex. 2 (Expert Damages Report of Russell L. Parr, CFA, ASA (“Parr Report”) at 2-3). To establish this hypothetical negotiation, Mr. Parr “assumed [that] the patent at issue is valid, enforceable and infringed by Facebook.” *Id.* at 2. Mr. Parr clearly stated that he has “not been asked to provide, and do[es] not have any opinion regarding the validity, enforceability or infringement of the patent at issue in this case.” *Id.*

**2. Facebook's Motion To Preclude The Testimony of Mr. Parr with Regard to Damages Relating to Facebook's Internal Use of the Facebook Website Should be Denied**

It is not clear what Facebook is asking in its motion. While the title of this section of Facebook's motion seeks to preclude any evidence of “internal use” by Facebook employees, the first line of its motion seeks to preclude Mr. Parr from offering an opinion regarding damages related *solely* to Facebook's internal use of the Facebook website. Motion at 8. The last line of Facebook's argument, however, requests the Court to exclude *any evidence* or opinion about damages based on internal use of the Facebook website by Facebook employees.<sup>4</sup> *Id.* at 9. Apart from the inconsistent nature of its motion, none of Facebook's arguments has any merit.

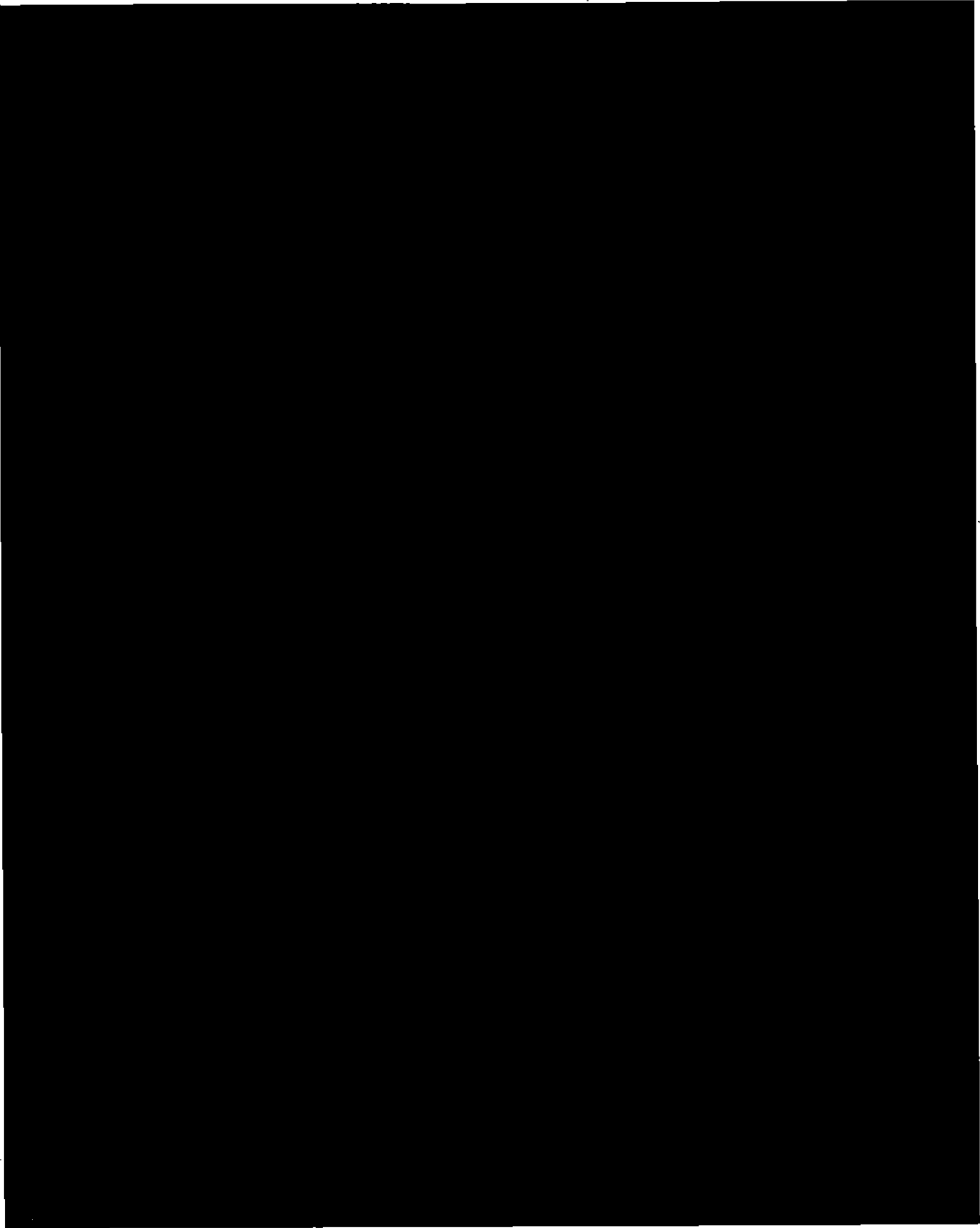
As an initial matter, Facebook's motion is premised on the erroneous claim that Leader has two separate theories of infringement, one based on “use of the website by end-users” and another based on “internal use of the website by Facebook employees.” Motion at 8. As

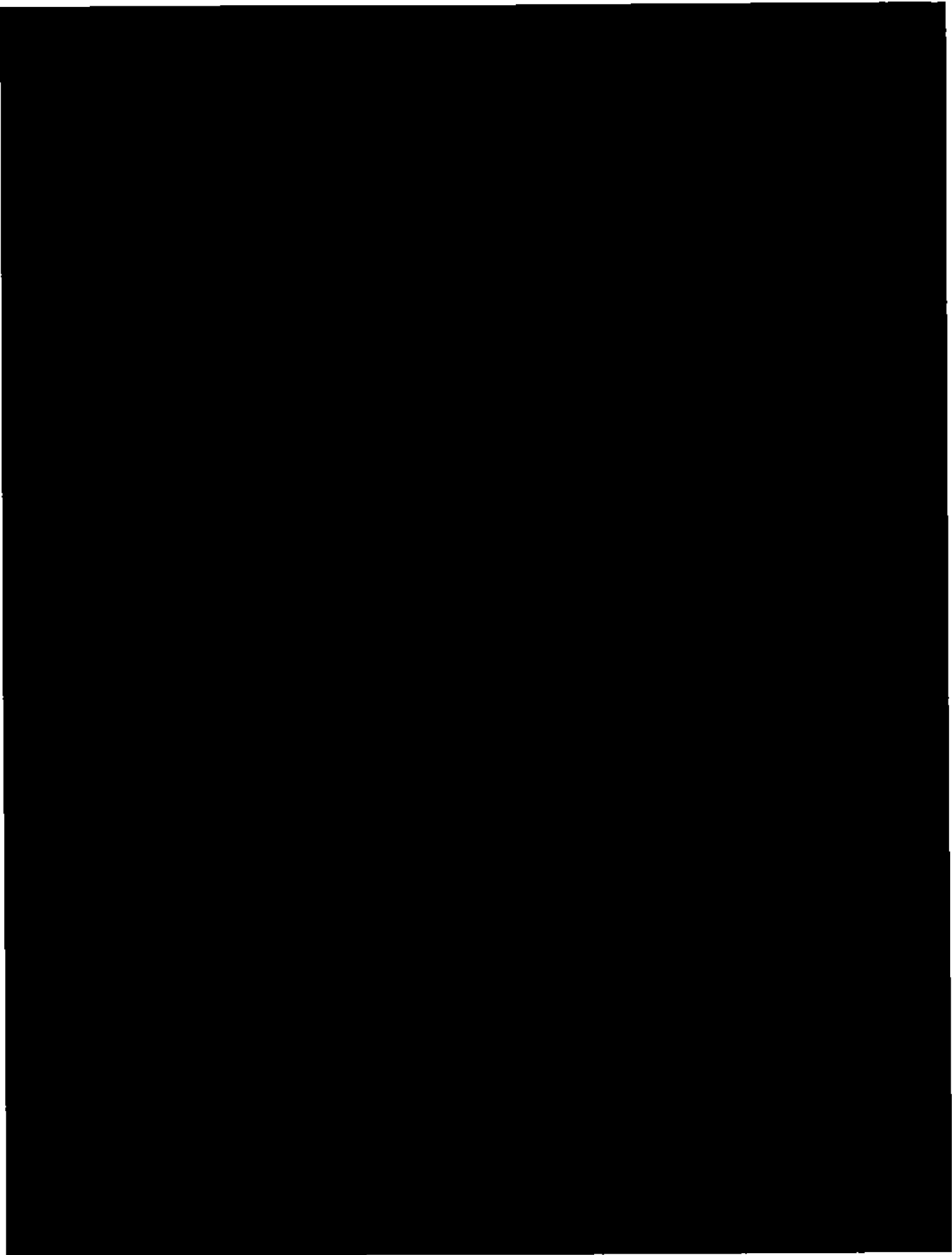
---

<sup>4</sup> While the body of the motion refers to internal use of the Facebook website in relation to damages, any attempt to preclude all testimony regarding Facebook's use of the Facebook website would be improper because Facebook's internal use is set forth in detail in the report of Leader's infringement expert, Dr. Giovanni Vigna.

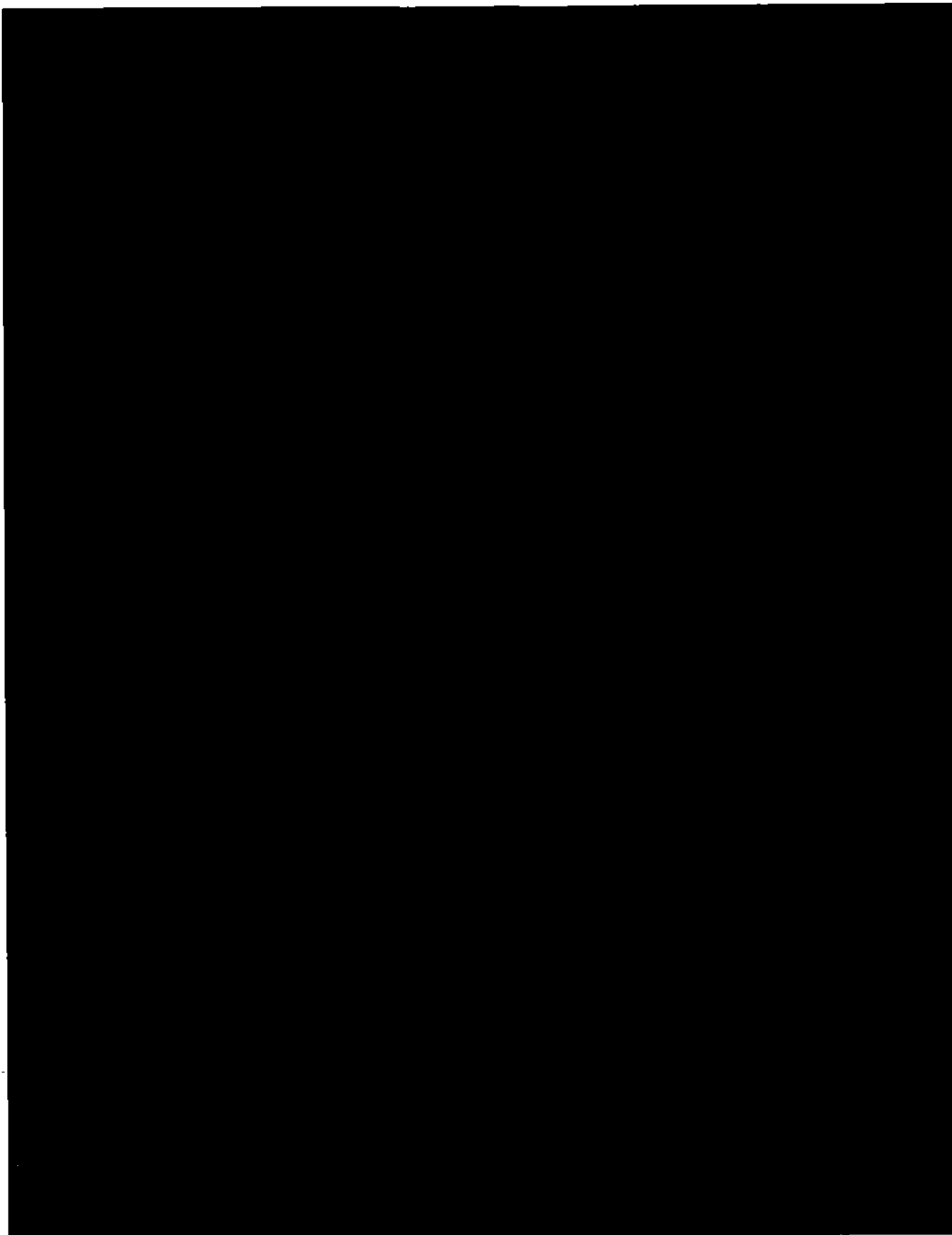
discussed above in great detail, Leader has consistently asserted that the underlying architecture of the Facebook website infringes the '761 Patent. Some of these claims are system claims and computer readable medium claims and therefore use by end-users are not necessary for infringement of some of the asserted claims. At no time has Leader articulated two separate theories of infringement based upon who is using the Facebook website in the manner that Facebook suggests, evident from the fact that Facebook has cited no discovery responses to the contrary.

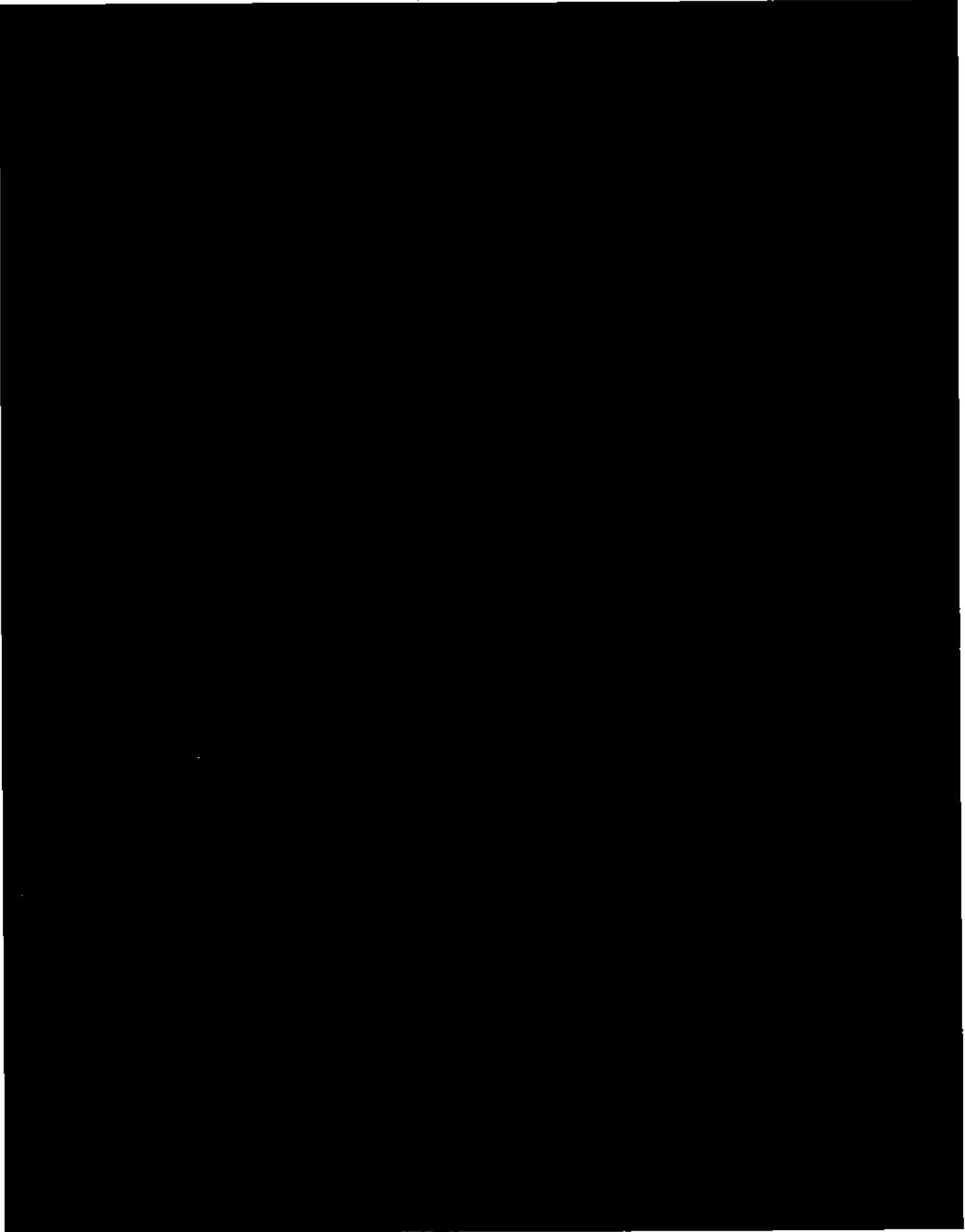
Mr. Parr properly assumed that the '761 Patent is valid, enforceable and infringed by Facebook. Keyes Decl., ¶ 3, Ex. 2 (Parr Report at 2). His opinion is also based on Leader's theory that it is Facebook's website that infringes, regardless of who is using it. Thus, it was not necessary or proper for Mr. Parr to break down his damages theory based upon whether the website was being used by a member of the public or by a Facebook employee. Thus, Facebook's argument that Mr. Parr was required to parse Leader's infringement theories is wrong as a matter of law and should be ignored. Accordingly, Facebook's motion should be denied.

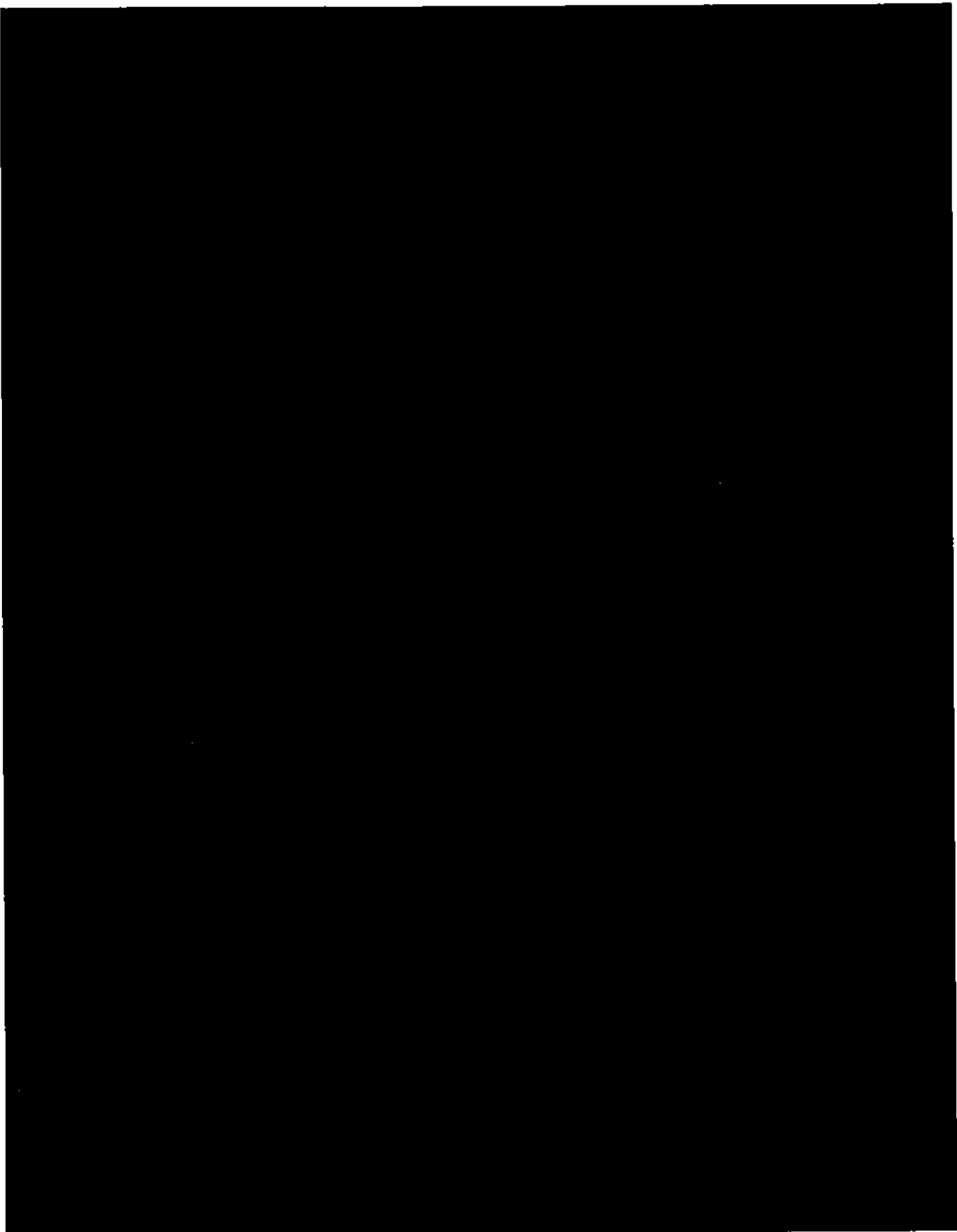


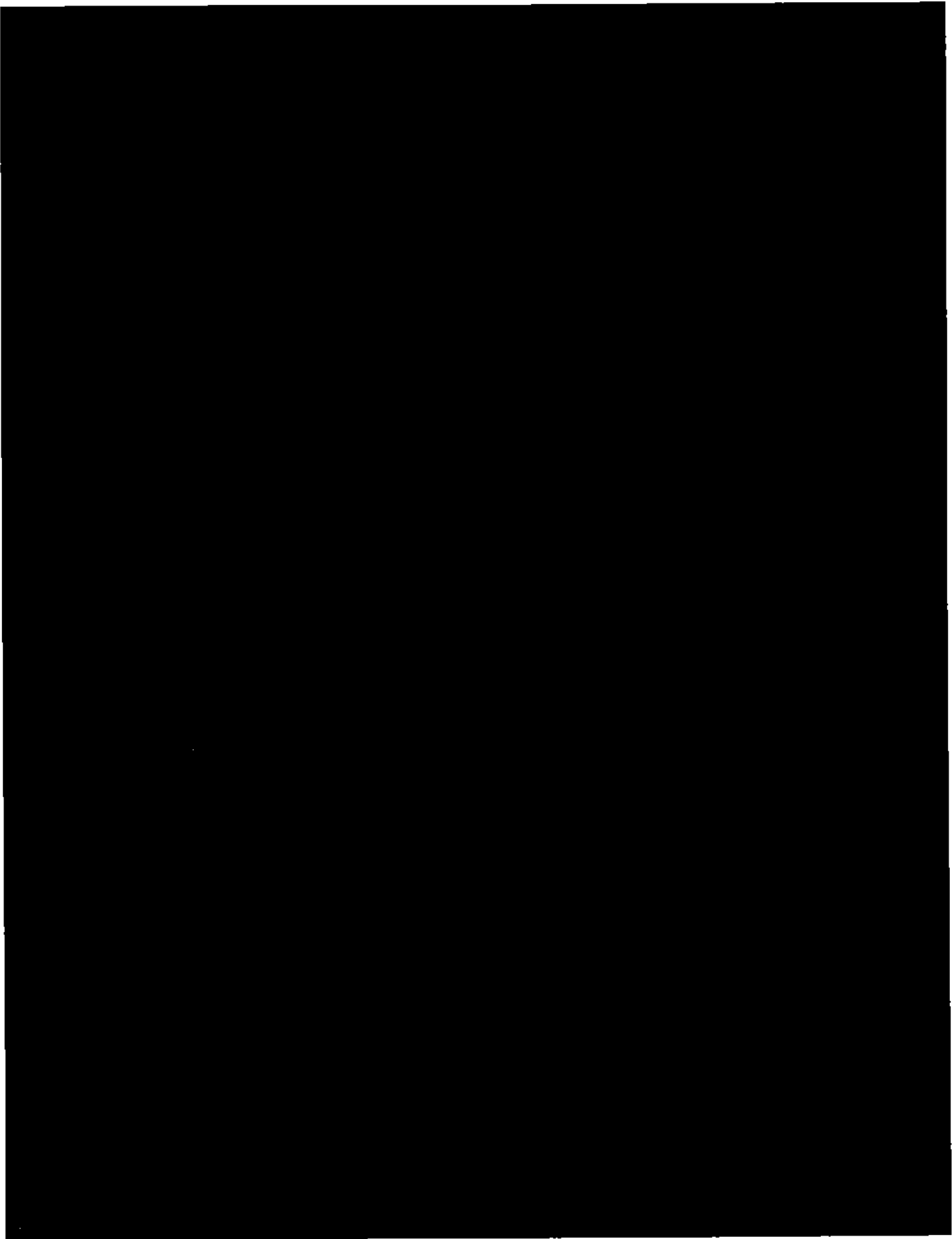


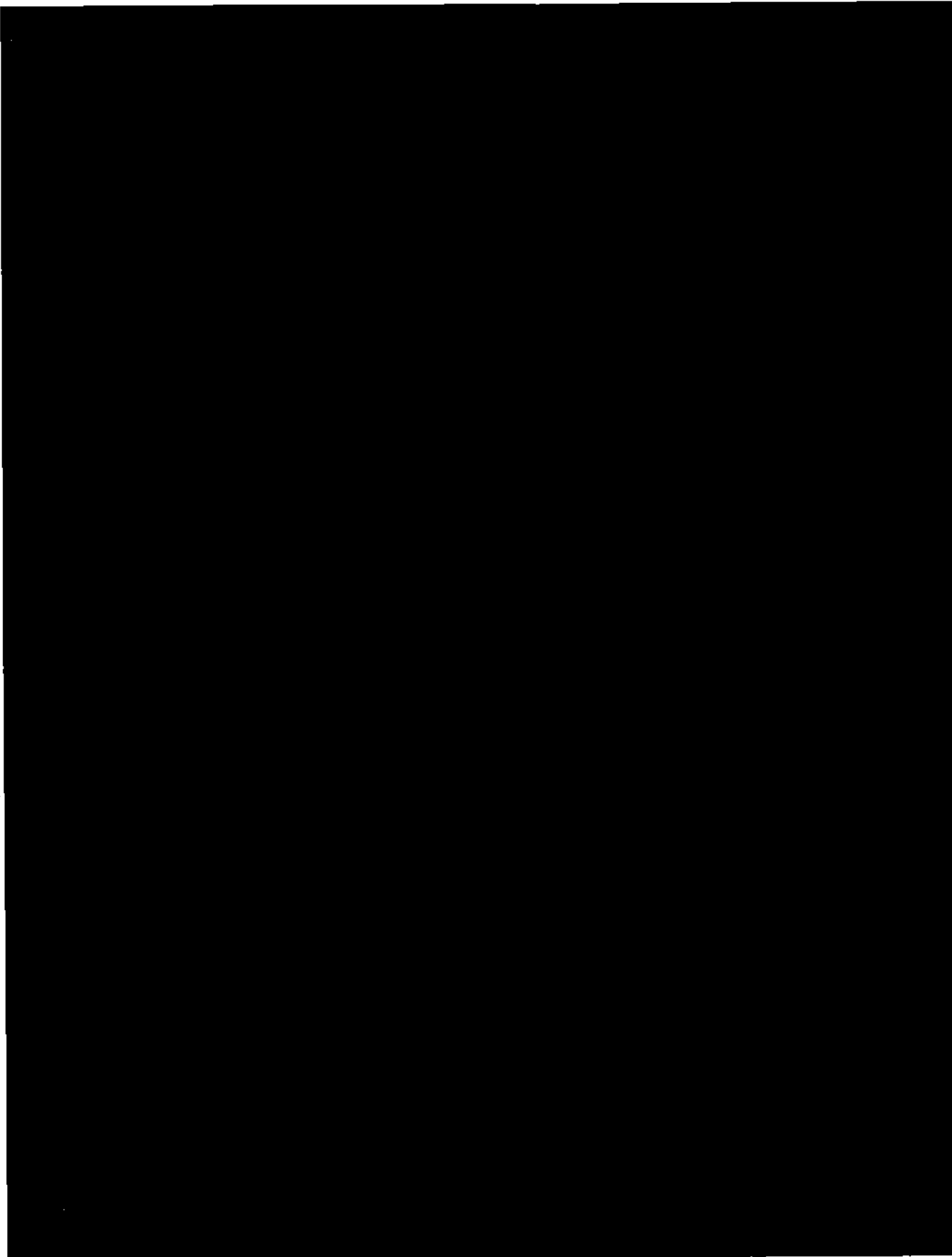


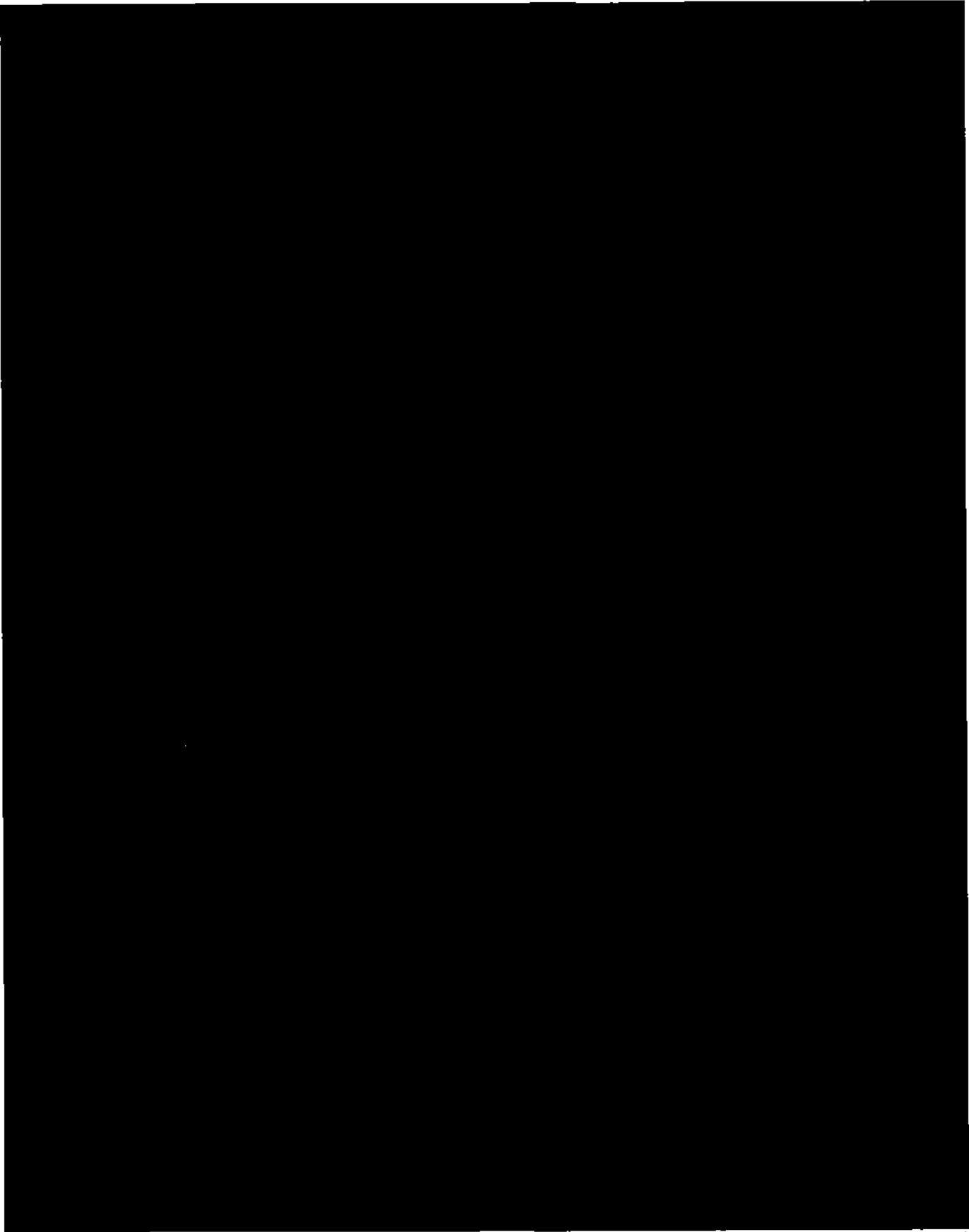


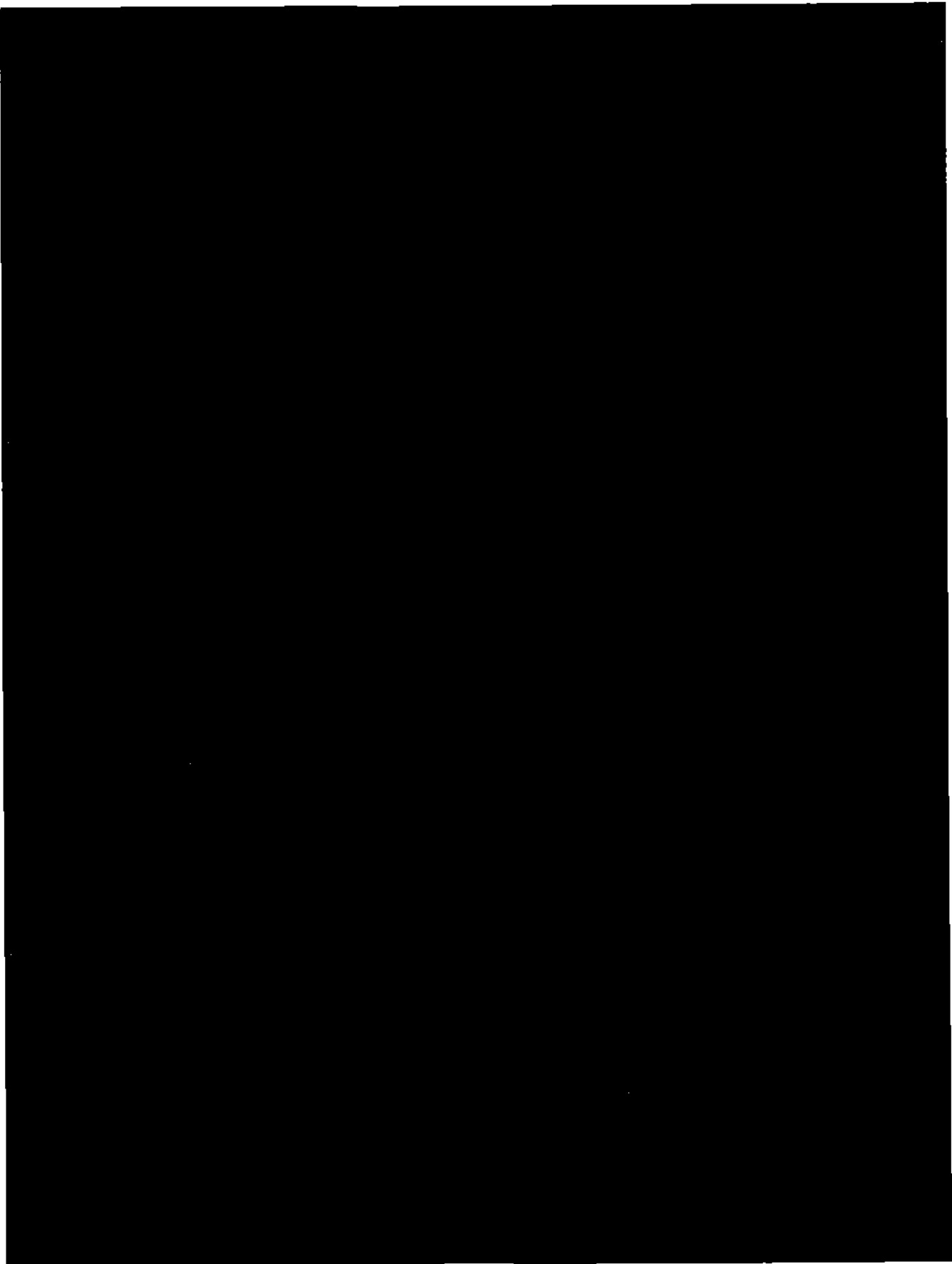


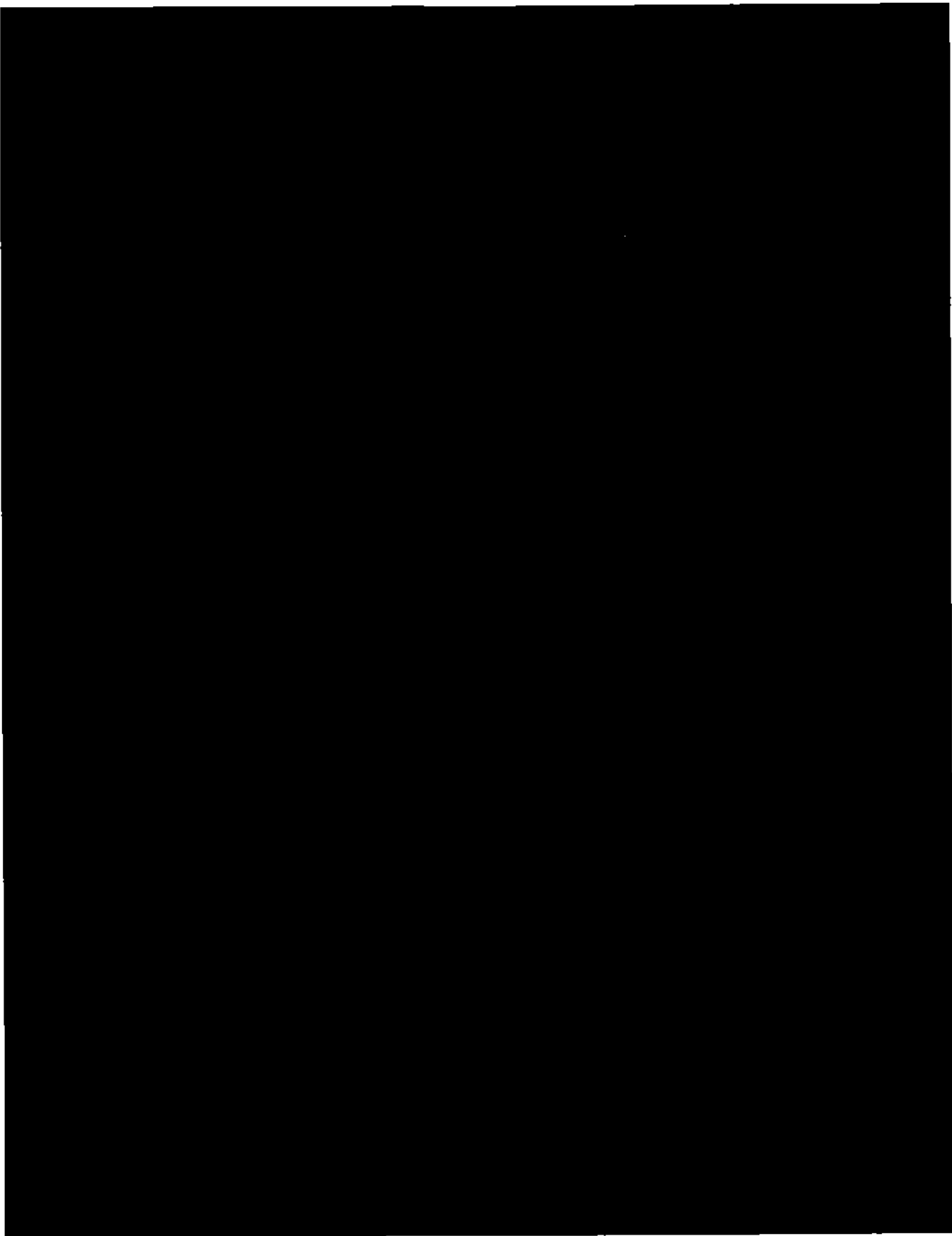




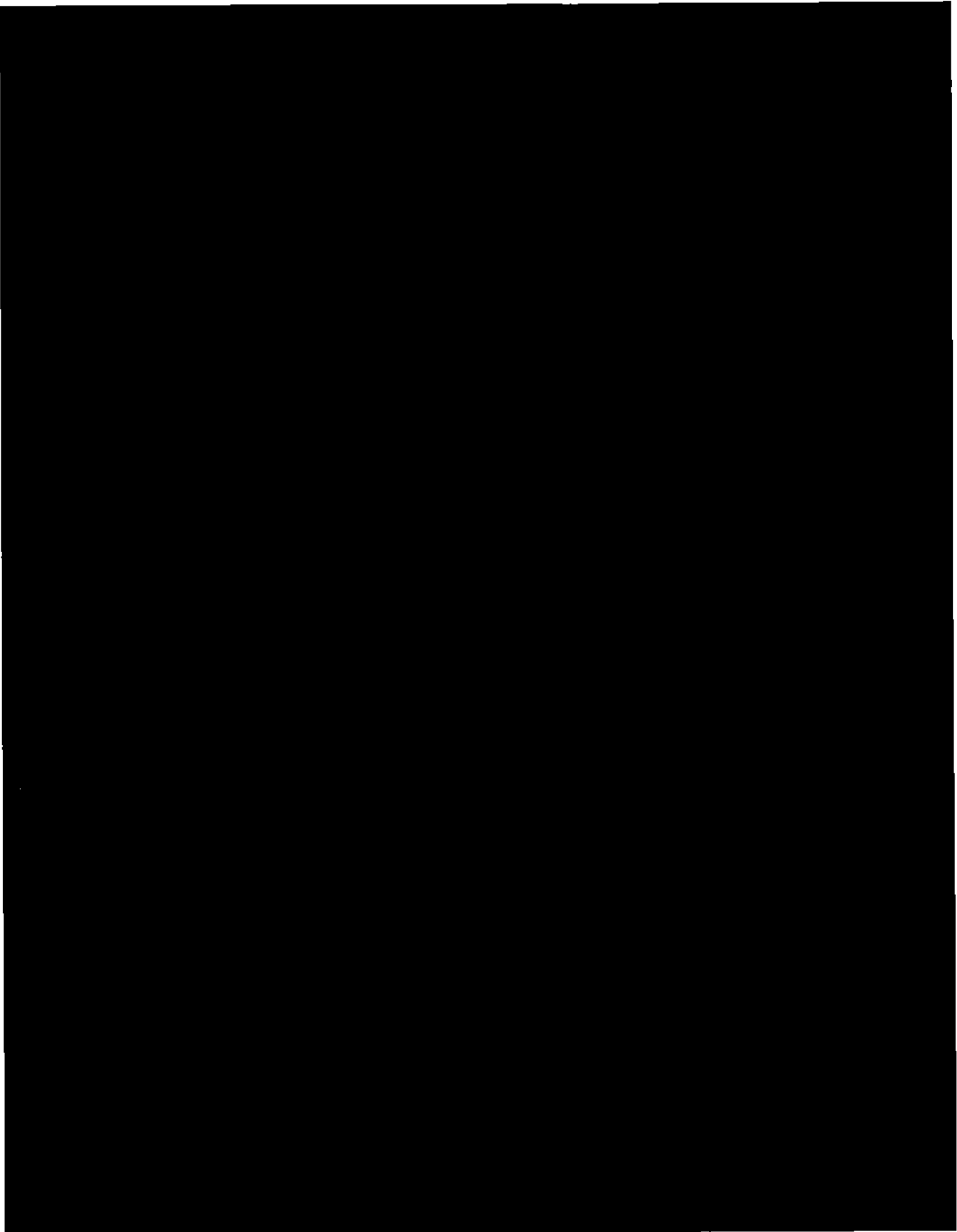


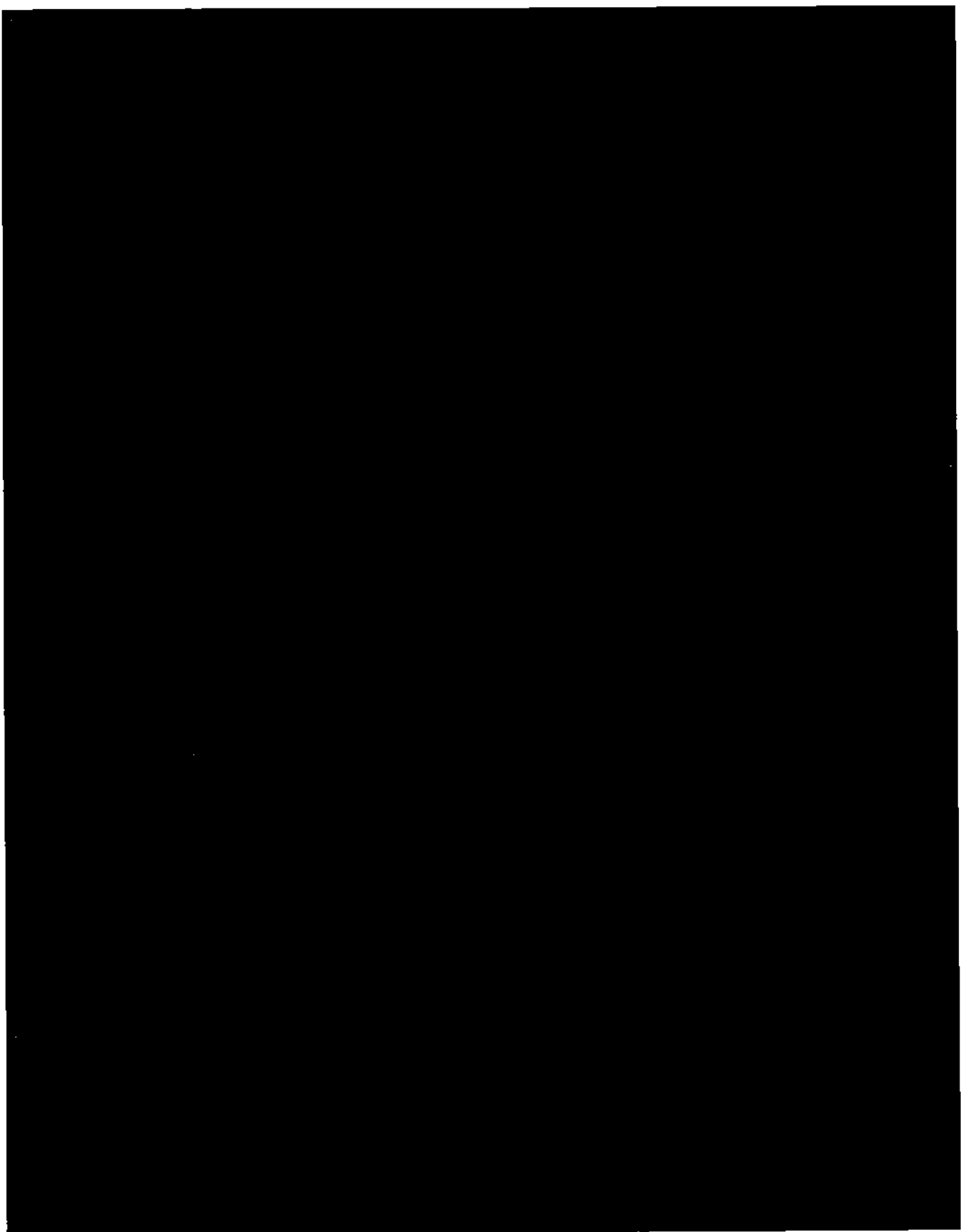


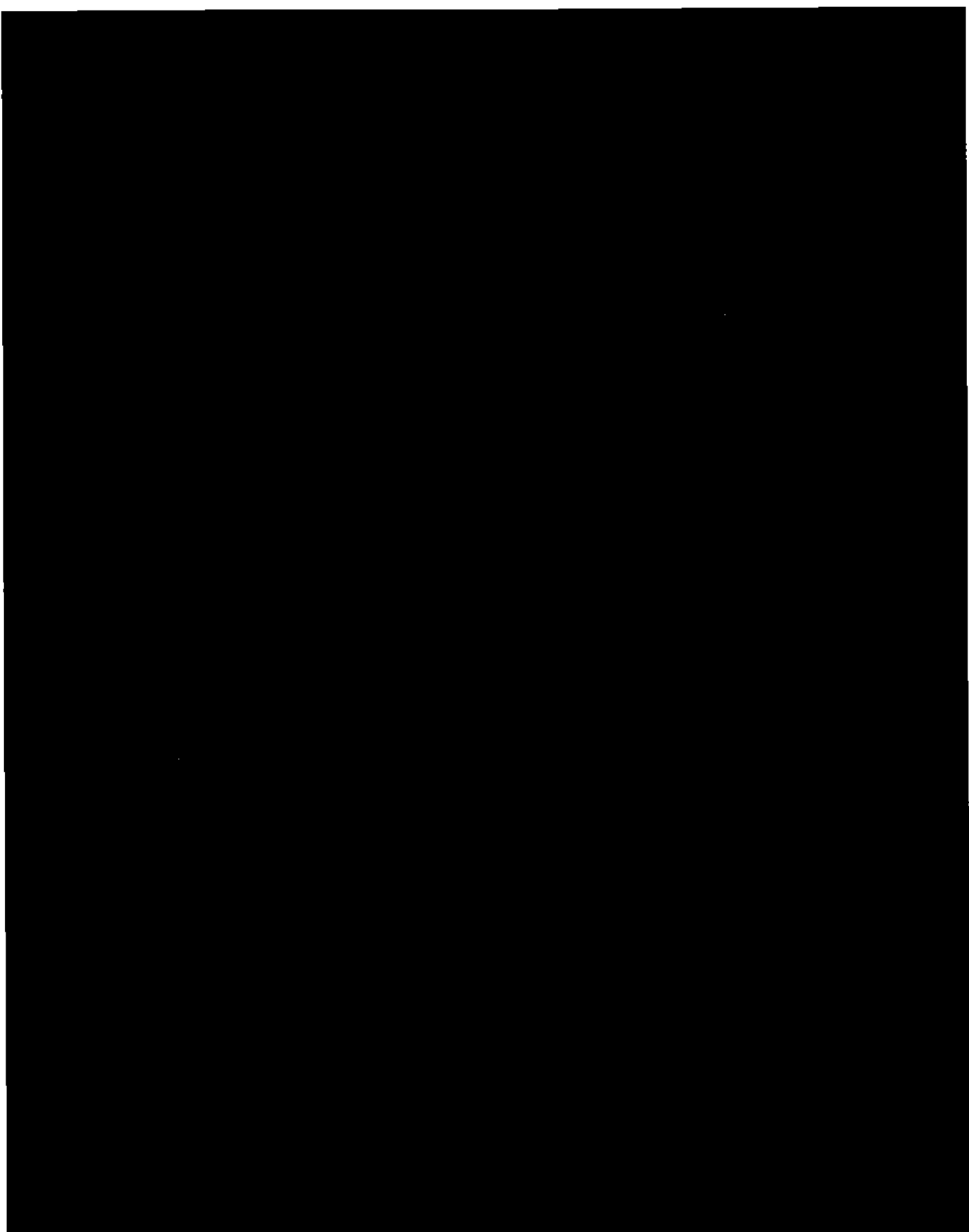


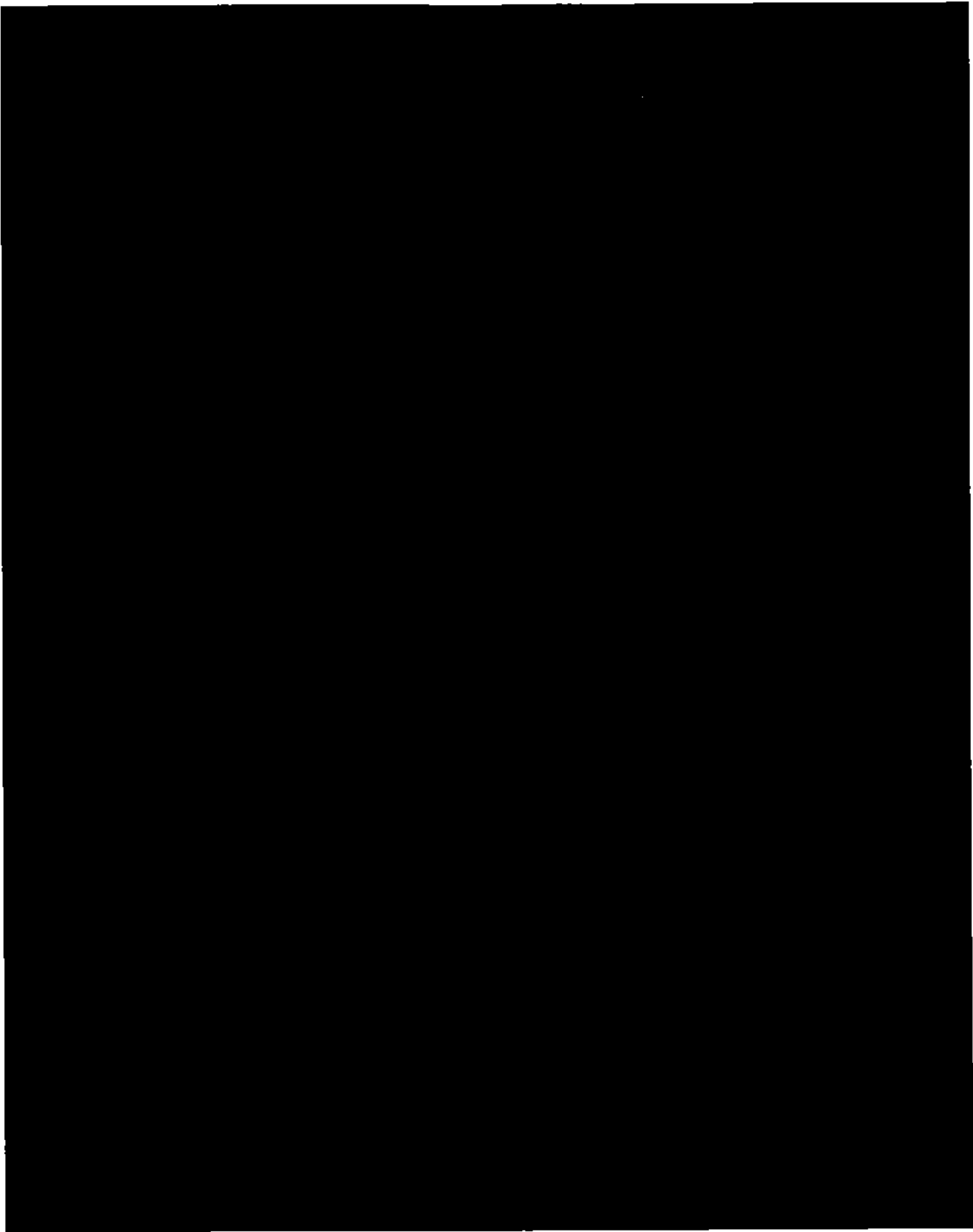


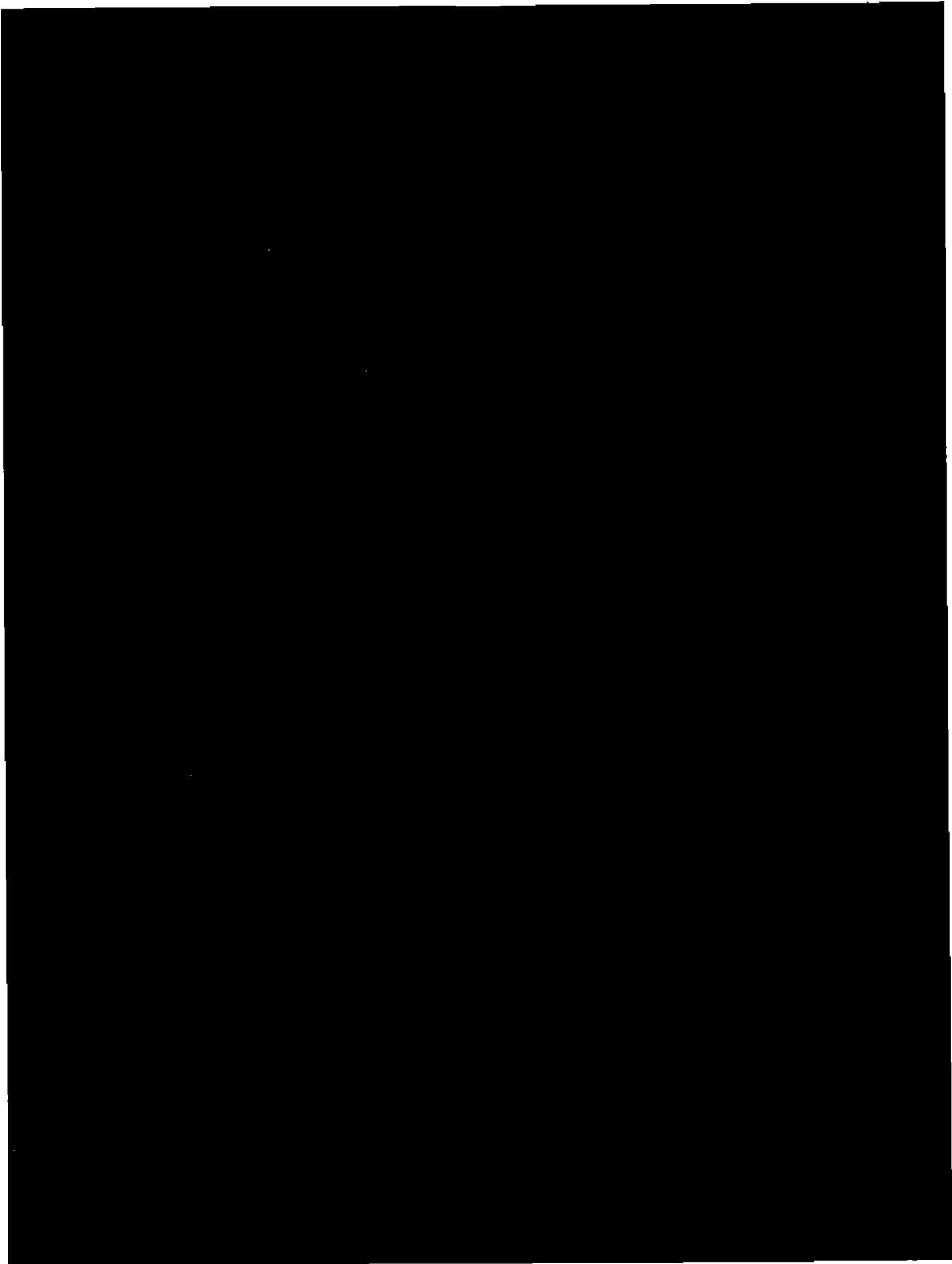


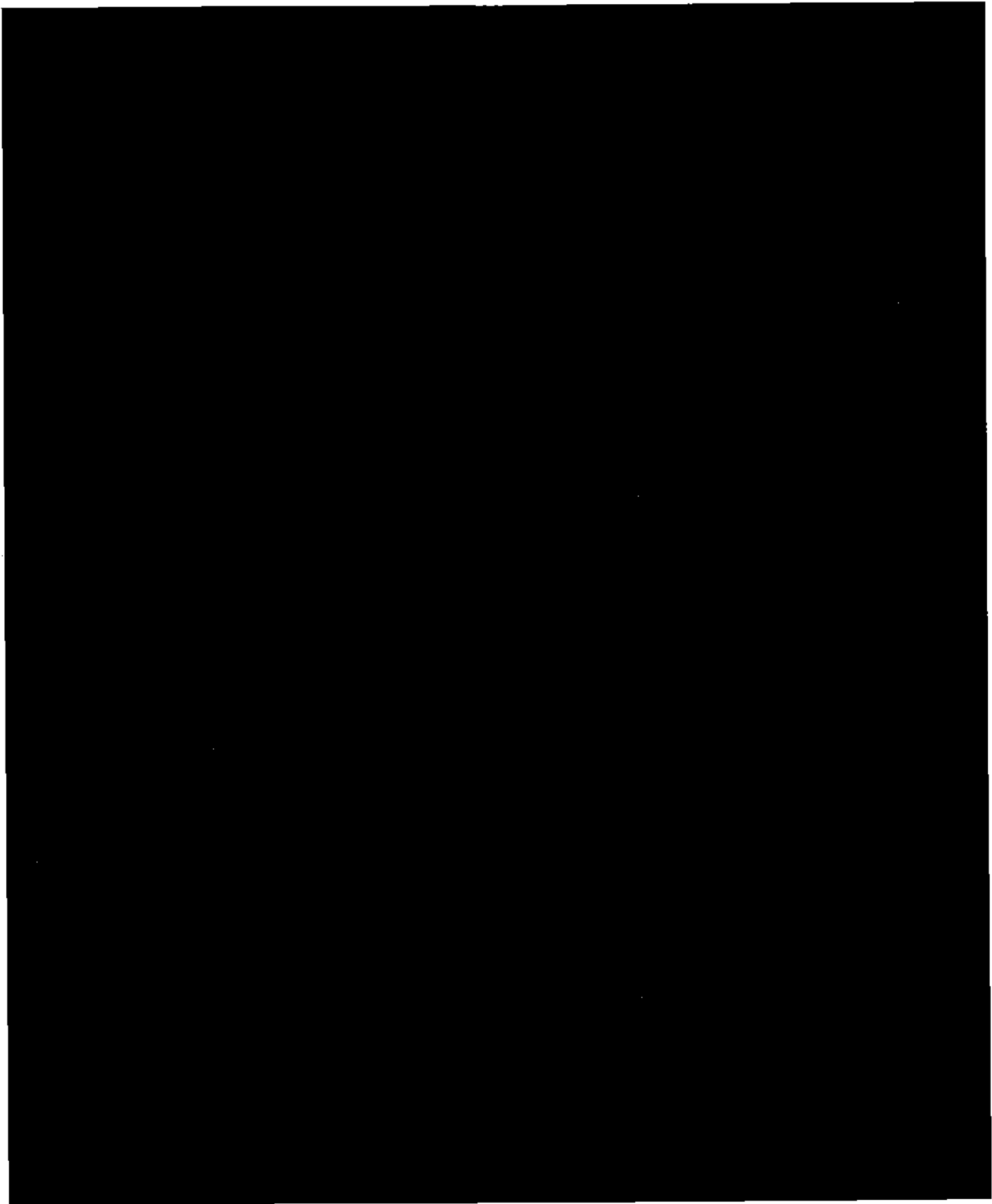













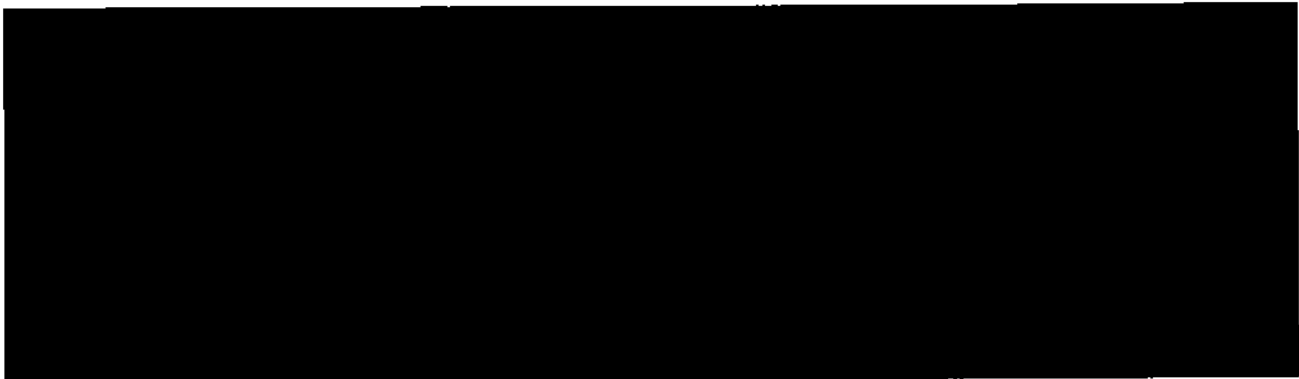


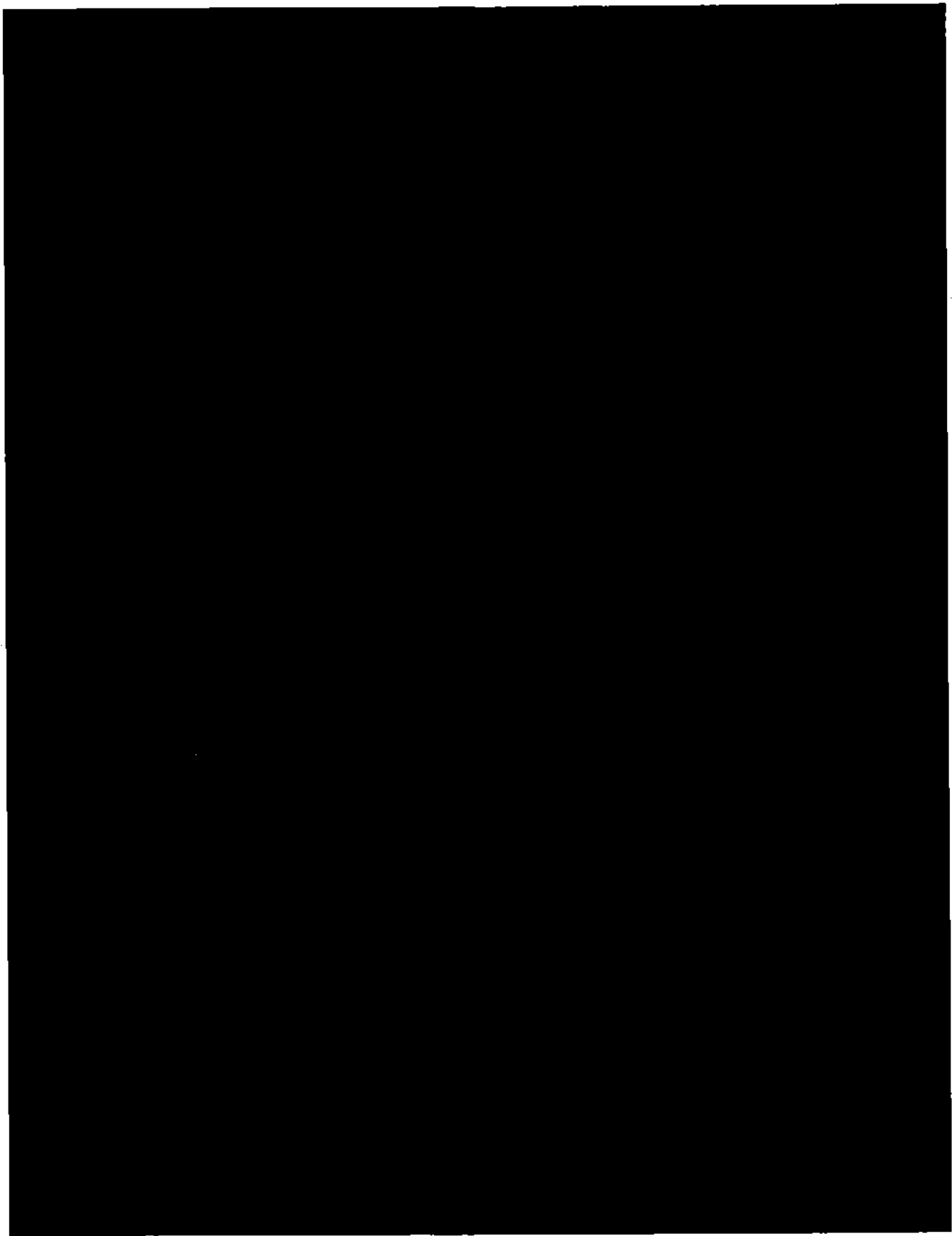
**I. Mr. McKibben Should Be Permitted To Testify About His Invention -- Leader's Opposition to Facebook's Motion *in Limine* No. 10**

During his deposition, Facebook asked Mr. McKibben to give his *opinion* about what he believed made his invention novel or distinguished over the prior art. In addition to the fact that the questions called for a legal conclusion, Mr. McKibben was not able to answer those questions without revealing attorney-client communications. Leader does not intend to elicit Mr. McKibben's opinion on such topic at trial, and it is almost certain that the Court would prohibit this type of testimony -- such opinions are for qualified experts. Leader does intend to have Mr. McKibben testify on factual issues regarding his invention, and is concerned that Facebook will attempt to expand any ruling on this issue to cover Mr. McKibben's proper factual testimony. Since Leader stipulates not to elicit Mr. McKibben's opinions of novelty, this motion *in limine* should be moot and no ruling necessary.

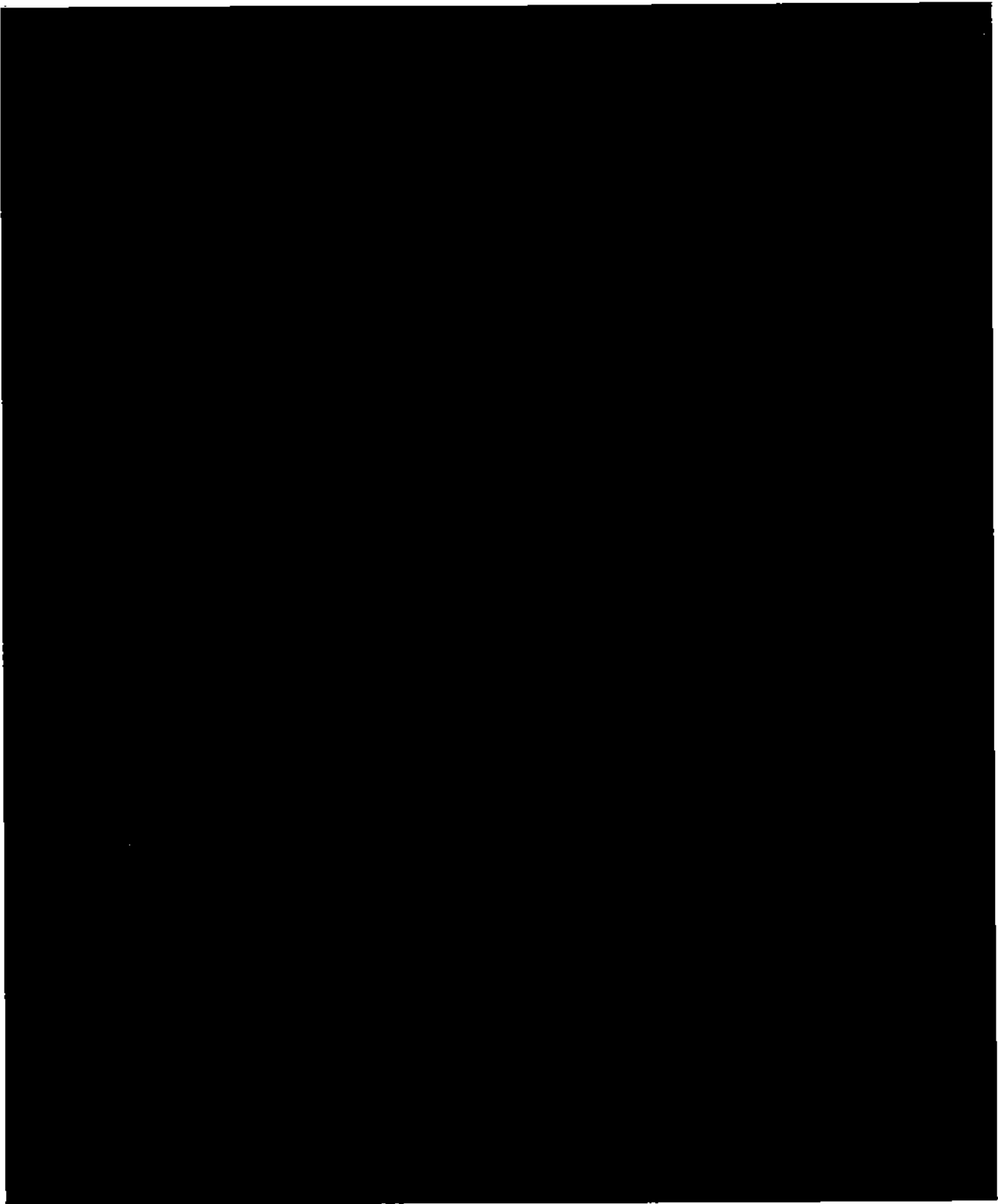
**J. Leader Should Be Able To Discuss Its Competing Technology At Trial -- Leader's Opposition to Facebook's Motion *in Limine* No. 11**

While most, if not all, of Facebook's motions *in limine* are frivolous, it saved its most baseless one for last. Facebook has not articulated a single legitimate reason why Leader should not be permitted to discuss the use of its patented technology at trial.









### III. CONCLUSION

Accordingly, Leader requests that the Court deny Facebook's Motions *in Limine* Nos. 1-

11.

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Paul J. André  
Lisa Kobialka  
King & Spalding, LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065-6109  
(650) 590-7100

Dated: May 27, 2010  
968359

By: /s/ Philip A. Rovner  
Philip A. Rovner (#3215)  
Jonathan A. Choa (#5319)  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
provner@potteranderson.com  
jchoa@potteranderson.com

*Attorneys for Plaintiff  
Leader Technologies, Inc.*

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

**CERTIFICATE OF SERVICE**

I, Philip A. Rovner, hereby certify that on June 3, 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.

**BY CM-ECF AND E-MAIL**

Thomas P. Preston, Esq.  
Steven L. Caponi, Esq.  
Blank Rome LLP  
1201 Market Street  
Wilmington, DE 19801  
[Preston-T@blankrome.com](mailto:Preston-T@blankrome.com)  
[caponi@blankrome.com](mailto:caponi@blankrome.com)

I hereby certify that on June 3, 2010 I have sent by E-mail the foregoing document to the following non-registered participants:

Heidi L. Keefe, Esq.  
Mark R. Weinstein, Esq.  
Jeffrey Norberg, Esq.  
Melissa H. Keyes, Esq.  
Cooley LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
[hkeefe@cooley.com](mailto:hkeefe@cooley.com)  
[mweinstein@cooley.com](mailto:mweinstein@cooley.com)  
[jnorberg@cooley.com](mailto:jnorberg@cooley.com)  
[mkeyes@cooley.com](mailto:mkeyes@cooley.com)

/s/ Philip A. Rovner \_\_\_\_\_  
Philip A. Rovner (#3215)  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P. O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
[provner@potteranderson.com](mailto:provner@potteranderson.com)