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I. INTRODUCTION

This Counterstatement is made pursuant to the Court's standing Memorandum Order that allows a party opposing a Rule 56 summary judgment motion to file a Counterstatement certifying that genuine issues of material fact exist and setting out the material facts in dispute. This Counterstatement is filed in lieu of an answering brief in response to defendant Facebook, Inc.'s ("Facebook") motion for summary judgment of non-infringement. D.I. 391. Accordingly, Leader Technologies, Inc. ("Leader") certifies that there are genuine issues of material fact in dispute that preclude granting Facebook's motion under the standards set forth in Fed. R. Civ. P. 56. Leader reserves the right to later dispute any and all material facts identified by Facebook that are not specifically addressed herein.

In its Statement certifying that no genuine issues of material facts exist with regard to the facts argued in support of its motion, Facebook did not enumerate the facts it alleges to be undisputed. Accordingly, in this Counterstatement, Leader will identify the disputed facts that Facebook relies upon in its memorandum in support of this motion. Because Facebook's motion for summary judgment of non-infringement is based on these disputed issues of material fact, Facebook's motion should be denied.

II. COUNTERSTATEMENT OF DISPUTED MATERIAL FACTS

A. Facebook's Alleged "Undisputed Facts" Are Disputed as They Mischaracterize the Background of the '761 Patent

1. Facebook states that "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."

This fact is DISPUTED to the extent Facebook implies that this is all that the '761 Patent discloses.

2. Facebook states that “The patent further claims that the invention relates to “structures and methods for creating relationships between users, applications, files, and folders.”

This fact is DISPUTED to the extent that it takes quotes out of context. Rather than the “claims,” this quote was taken from the “Technical Field” section of the specification.

3. Facebook states that ‘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.’”

This fact is DISPUTED to the extent Facebook misstates what is actually written in the ‘761 Patent. In fact, the specification states that “typical methods for organization of communications are limited and fragmented.” D.I. 392, Ex. A, ‘761 Patent at Col. 1:47-48.

4. Facebook states that “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).

This fact is DISPUTED to the extent that it takes quotes out of context and places emphasis on certain words not emphasized in the actual specification of the ‘761 Patent.

5. Facebook states that “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.”

This fact is DISPUTED to the extent it attempts to mischaracterize the invention claimed in the ‘761 Patent. For example, the invention is for multiple users, not “a user.” Furthermore,

none of the claims use the terms “first environment” or “first workspace,” as implied by Facebook. Instead, Claim 9 uses the term “first user environment” while Claims 21 and 23 use the term “first user workspace.” Claim 9 also uses the term “second *user* environment” while Claims 21 and 23 use the term “second *user* workspace.”

6. Facebook states: “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. This process mentioned above is further described in the section entitled "Detailed Description of the Invention."”

This fact is DISPUTED as Facebook's statement omits the requirement of creating “data” or context in order for “data and applications to automatically follow the user. The quotations of the '761 Patent that Facebook's uses in its Summary Judgment motion demonstrate the fundamental flaw in Facebook's statement:

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 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.”

See D.I. 391 at 2-3. Additionally, none of the asserted claims use the terms “board,” “second environment,” or “second workspace,” as implied by Facebook’s statement. Instead, Claim 9 uses the term “second user environment” while Claims 21 and 23 use the term “second *user* workspace.”

7. Facebook states “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).”

This fact is DISPUTED as its “immediately upon” requirement is merely Facebook’s own creation. The claimed invention does not require that the system automatically associate the user’s data with the second context “immediately upon” a user’s movement. For example, none of the tracking limitations of claims 1, 9, 21, and 23 requires this “immediately upon that move” creation by Facebook:

Tracking Limitation of Claim 1:

- 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.

Tracking Limitations of Claim 9:

- 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.

Tracking Limitations of Claim 21:

- 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;

Tracking Limitation of Claim 23:

- 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.

D.I. 392, Ex. A at claims 1, 9, 21, and 23. Even Figure 2 does not require Facebook's "immediately upon that move" creation. The patent makes clear that Figure 2 "is to be understood and appreciated that the present invention is not limited by the order of acts, as some acts may, in accordance with the present invention, occur in a different order and/or concurrently with other acts from that shown and described herein." Indeed, the patent further illustrates the non-limiting nature of Figure 2 by stating, "not all illustrated acts may be required to implement a methodology in accordance with the present invention":

"Referring now to FIG. 2, there is illustrated a flow chart of a process of the present invention. While, for purposes of simplicity of explanation, the one or more methodologies shown herein, e.g., in the form of a flow chart, are shown

and described as a series of acts, it is to be understood and appreciated that the present invention is not limited by the order of acts, as some acts may, in accordance with the present invention, occur in a different order and/or concurrently with other acts from that shown and described herein. For example, those skilled in the art will understand and appreciate that a methodology could alternatively be represented as a series of interrelated states or events, such as in a state diagram. Moreover, not all illustrated acts may be required to implement a methodology in accordance with the present invention.

Thus, it is inappropriate for Facebook to use this example to imply that any of the claims of the '761 Patent requires Facebook's "immediately upon that move" creation. Facebook also inaccurately omits steps 200, 202, and 210 from the actual description of Figure 2:

At 200, a user is associated with a first context. This can occur by the user logging in to a system and automatically entering a user workspace, which workspace is associated with the first context. At 202, the user assigns applications for use in the user context. This can occur explicitly by the user manually selecting the application(s) for association with the context, or implicitly by the user launching an application and performing data operations within the 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.
As the user performs data operations in the first and second contexts, the system automatically creates and updates context data, as indicated at 210. This occurs transparently to the user, as indicated by the dashed line."

As the actual description of Figure 2 in the '761 Patent's specification includes steps 200, 202 and 210 and the non-limiting nature of the figure is clear, Facebook's attempt to limit the claimed invention with Figure 2 is inappropriate. Furthermore, nothing in the '761 Patent supports Facebook's "immediately upon" requirement.

B. Facebook's Alleged "Undisputed Facts" Are Disputed as They Mischaracterize the Asserted Claims of the '761 Patent

8. Facebook states "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 fact is undisputed for the purposes of this motion.

9. Facebook states “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].”

This fact is DISPUTED because it is not a fact. It is merely Facebook’s argument, which is evidenced by Facebook’s use of case law to support its argument.

10. Facebook states “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.”

This fact is DISPUTED. Facebook’s flawed assertion visibly fails to consider the entirety of each limitation of claims 1, 9, 21, 23 as Facebook’s motion provides no analysis of the connected requirement of accessing or employing data. As a result, Facebook’s statement inappropriately rewrites claims 1, 9, 21, and 23. Specifically, Facebook’s statement rewrites the tracking limitation of Claim 1 to omit the requirement of, “wherein the user access the data from the second context”:

Tracking Limitation of Claim 1:

- 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.**

Facebook also rewrites the tracking limitations of Claim 9 by omitting consideration of the connected claim language, “wherein the user employs at least one of the application and the data from the second environment”:

Tracking Limitations of Claim 9:

- 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.**

Facebook also rewrites the tracking limitations of Claim 21 by omitting consideration of the connected claim language, “such that the user employs the application and data from the second user workspace”:

Tracking Limitations of Claim 21:

- 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;**

Facebook also rewrites the tracking limitation of Claim 23 by omitting consideration of the connected claim language, “such that the user employs the application and data from the second user workspace”:

Tracking Limitations of Claim 23:

- 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.**

Furthermore, Facebook’s “user movement” assertion contradicts the ‘761 Patent and Facebook’s own arguments. For example, rather than “user movement,” the ‘761 Patent states:

“The metadata automatically captures the context in which the data was created as the data is being created.” (emphasis added).

D.I. 391 at 3; D.I. 392, Ex. A. Moreover, Facebook’s claim construction brief not only makes

the same citation, it also goes on to provide the following explanation of it:

“This is the essence of what it means for an event to occur “dynamically within the ‘761 patent - an event occurs automatically (i.e. capturing the context in which the data is created) in response to a preceding act (i.e., the data being created by a user).”

Additionally, Facebook’s own expert, Dr. Saul Greenberg, contradicts Facebook’s “user’s movement” requirement. For example, Dr. Greenberg’s claim charts demonstrate that he reads the claims of the ‘761 Patent to require the dynamic update of metadata to actually occur when data or a document is accessed or employed:

“Seliger discloses a computer-implemented tracking component of the network-based system (e.g. method for auditing) for tracking a change of the user from a first context (e.g. a first software application) to a second context (e.g. a second software application), and dynamically updating the stored metadata based on the change (e.g. recording the data access event) ...”

“a ‘data-access event’ is almost any event corresponding to an action by a user or a machine which causes data(including context and application data) to be moved from one location to another or to be retrieved from memory.”

See Greenberg Expert Report, Exhibit C-7 at 51-52.

“Hubert discloses an example of the tracking component tracking a change from the first context to a second context (transmission of document from the first source 30 to a second source 32 via the Internet) and dynamically updating the stored metadata based on the change (for example, a record of copying that the document was received, recommendations from reviewers)....”

“Hubert provides an example where the dynamic update (in this case the knowledge ‘pollen’) is done in response to a user sending email of the meta-document, or downloading the meta-document, or attempts to save the meta-document.”

See Greenberg Expert Report, Exhibit C-5 at 10.

“In addition, Swartz discloses how the context and metadata is tracked as a ‘knowledge path,’ where the recording of information across the context of different transactions is done dynamically, i.e., automatically in response to dynamic links to the source information of that transaction.

See Greenberg Expert Report, Exhibit C-6 at 7.

As Facebook’s “user’s movement” assertion contradicts the ‘761 Patent, its own claim

construction arguments, and its own validity expert, it is certainly without basis and disputed.

11. Facebook states "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."

This fact is DISPUTED to the extent that it selectively adds emphasis to terms without basis. As such, claim 1 does not "read as follows" as asserted by Facebook. In fact, the actual claim 1 as written in '761 Patent does not place emphasis on any certain terms or phrases this enabling one of skill in the art to give proper weight to the entirety of each claim limitation:

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."

12. Facebook states "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 fact is DISPUTED as Facebook’s conclusion is based on an analysis of claim 1 that fails to consider the entirety of each claim limitation which requires “wherein the user access the data from the second context”:

“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.”

In fact, Facebook’s motion is devoid of any analysis of the connected claim language of claim 1 that requires, “wherein the user access the data from the second context.” As a result Facebook’s statement inappropriately rewrites the tracking limitation of claim 1 to ignore the required “accessing the data” language. Furthermore, Facebook’s own citations to the ‘761 Patent used to support its current motion contradict Facebook’s current “user’s movement” assertion. For example, Facebook’s motion reproduces the following citation from the ‘761 Patent:

“The metadata automatically captures the context in which the data was created as the data is being created.” (emphasis added).

D.I. 391 at 3.

Moreover, Facebook’s claim construction brief not only makes the same citation, it also goes on to provide the following explanation of it:

“This is the essence of what it means for an event to occur “dynamically within the ‘761 patent - an event occurs automatically (i.e. capturing the context in which the data is created) in response to a preceding act (i.e., the data being created by a user).”

Additionally, Facebook’s own expert, Dr. Saul Greenberg, contradicts Facebook’s “user’s

movement” requirement. For example, Dr. Greenberg’s claim charts demonstrate that he reads the claims of the ‘761 Patent to require the dynamic update of metadata to actually occur when data or a document is accessed or employed:

“Seliger discloses a computer-implemented tracking component of the network-based system (e.g. method for auditing) for tracking a change of the user from a first context (e.g. a first software application) to a second context (e.g. a second software application), and dynamically updating the stored metadata based on the change (e.g. recording the data access event)...”

“a ‘data-access event’ is almost any event corresponding to an action by a user or a machine which causes data(including context and application data) to be moved from one location to another or to be retrieved from memory.”

See Greenberg Expert Report, Exhibit C-7 at 51-52.

“Hubert discloses an example of the tracking component tracking a change from the first context to a second context (transmission of document from the first source 30 to a second source 32 via the Internet) and dynamically updating the stored metadata based on the change (for example, a record of copying that the document was received, recommendations from reviewers)...”

“Hubert provides an example where the dynamic update (in this case the knowledge ‘pollen’) is done in response to a user sending email of the meta-document, or downloading the meta-document, or attempts to save the meta-document.”

See Greenberg Expert Report, Exhibit C-5 at 10.

“In addition, Swartz discloses how the context and metadata is tracked as a ‘knowledge path,’ where the recording of information across the context of different transactions is done dynamically, i.e., automatically in response to dynamic links to the source information of that transaction.

See Greenberg Expert Report, Exhibit C-6 at 7.

As Facebook’s “user’s movement” assertion contradicts its own citations, claim construction argument, and validity expert, it is certainly without basis and disputed.

Furthermore, Facebook’s assertion is disputed to the extent that Facebook implies that Dr. Vigna did not rely upon the Court’s claim construction. Indeed, Dr. Vigna’s report properly used every claim term as dictated by this Court’s claim construction order including the term

“dynamically.” For example, paragraph 16 of Dr. Vigna’s report states, “[f]or the purposes of this report, I am using the following definitions for terms in the claims of the ‘761 Patent, *as provided by the Court in this litigation.*” D.I. 392, Ex. B at ¶ 16 (emphasis added). Dr. Vigna even provides a chart of the claim constructions he used, which are identical to the Court’s claim construction. *Id.* Furthermore, as the Court has already conducted claim construction, it is inappropriate for Facebook to use its new “user’s movement” construction as the basis for asserting non-infringement.

13. Facebook states “This limitation also derives from the plain language of the claim requiring ‘updating the stored metadata based on the change.’”

This fact is DISPUTED as it is merely illustrates Facebook’s flawed argument from the preceding sentence. Notably, Facebook admits that its assertion only considers the terms “dynamically” and “updating the stored metadata based on the change,” as these are the only terms of the claim language that Facebook uses to “derive” its alleged limitation. As Facebook plainly ignores “wherein the user accesses the data from the second context” from the tracking limitation in claim 1, Facebook has rewritten the tracking limitation of claim 1.

14. Facebook states “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.”

This fact is DISPUTED as Facebook’s alleged “requirement” for claim 9 is based on the same failure to consider each claim limitation in its entirety as Facebook did in claim 1. For claim 9, Facebook’s alleged requirement fails to consider the connect claim language “wherein the user employs at least one of the application and the data from the second environment.”

15. Facebook states "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)."

This fact is DISPUTED to the extent that Facebook only focuses on certain portions of the claim limitation which is not how the actual claim limitation is written. Notably, for the fourth claim limitation, "dynamically updating the stored metadata with an association of the data, the application, and the second user environment" is emphasized while the connected claim language of "wherein the user employs at least one of the application and the data from the second environment" is not. In contrast to Facebook's depiction of claim 9, the actual claim 9 as written in '761 Patent does not place emphasis on any certain terms or phrases, thus enabling one of skill in the art to give proper weight to the entirety of each claim limitation.

16. Facebook states "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."

This fact is DISPUTED. Facebook's conclusion is based on an analysis of claim 9 that

fails to consider the entirety of the claim. Specifically, Facebook's motion is devoid of any analysis of the connected claim language of claim 9 that requires, "wherein the user employs at least one of the application and the data from the second environment." As such, Facebook's statement inappropriately rewrites claim 9 to omit the requirement of "wherein the user employs at least one of the application and the data from the second environment":

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.**

Furthermore, Facebook's own citations to the '761 Patent used to support its current motion contradict Facebook's current "user's movement" assertion. For example, Facebook's motion reproduces the following citation from the '761 Patent:

"The metadata automatically captures the context in which the data was created as the data is being created." (emphasis added).

D.I. 391 at 3.

Moreover, Facebook's claim construction brief not only makes the same citation, it also goes on to provide the following explanation of it:

"This is the essence of what it means for an event to occur "dynamically within the '761 patent - an event occurs automatically (i.e. capturing the context in which the data is created) in response to a preceding act (i.e., the data being created by a user)."

Additionally, Facebook's own expert, Dr. Saul Greenberg, contradicts Facebook's "user's movement" requirement. For example, Dr. Greenberg's claim charts demonstrate that he reads the claims of the '761 Patent to require the dynamic update of metadata to actually occur when data or a document is accessed or employed:

"Seliger discloses a computer-implemented tracking component of the network-based system (e.g. method for auditing) for tracking a change of the user from a first context (e.g. a first software application) to a second context (e.g. a second software application), and dynamically updating the stored metadata based on the change (e.g. recording the data access event)..."

“a ‘data-access event’ is almost any event corresponding to an action by a user or a machine which causes data(including context and application data) to be moved from one location to another or to be retrieved from memory.”

See Greenberg Expert Report, Exhibit C-7 at 51-52.

“Hubert discloses an example of the tracking component tracking a change from the first context to a second context (transmission of document from the first source 30 to a second source 32 via the Internet) and dynamically updating the stored metadata based on the change (for example, a record of copying that the document was received, recommendations from reviewers)...”

“Hubert provides an example where the dynamic update (in this case the knowledge ‘pollen’) is done in response to a user sending email of the meta-document, or downloading the meta-document, or attempts to save the meta-document.”

See Greenberg Expert Report, Exhibit C-5 at 10.

“In addition, Swartz discloses how the context and metadata is tracked as a ‘knowledge path,’ where the recording of information across the context of different transactions is done dynamically, i.e., automatically in response to dynamic links to the source information of that transaction.”

See Greenberg Expert Report, Exhibit C-6 at 7.

As Facebook’s “user’s movement” assertion contradicts its own citations, claim construction argument, and validity expert, it is certainly without basis and disputed.

17. Facebook states “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.

This fact is DISPUTED to the extent that Facebook only focuses on a certain portion of the claim limitation which is not how the actual claim limitation is written. Notably, for the fourth claim limitation, “dynamically associating the data and the application with the second user workspace in the metadata” is emphasized while the connected claim language of “such that the user employs the application and data from the second user workspace” is not. In contrast to Facebook’s depiction of claim 21, the actual claim 21 as written in ‘761 Patent does not place emphasis on any certain terms or phrases, thus enabling one of skill in the art to give proper weight to the entirety of each claim limitation.

18. Facebook states “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.”

This fact is DISPUTED. Facebook’s conclusion is based on an analysis of claim 21 that fails to consider the entirety of the claim. Indeed, Facebook’s motion is devoid of any analysis of the connected claim language of claim 21 that requires “such that the user employs the application and data from the second user workspace”:

“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**”

As such, Facebook’s statement inappropriately rewrites claim 21 to omit the requirement of “such that the user employs the application and data from the second user workspace.”

Furthermore, Facebook’s own citations to the ‘761 Patent used to support its current motion

contradict Facebook's current "user's movement" assertion. For example, Facebook's motion reproduces the following citation from the '761 Patent:

"The metadata automatically captures the context in which the data was created as the data is being created." (emphasis added).

D.I. 391 at 3.

Moreover, Facebook's claim construction brief not only makes the same citation, it also goes on to provide the following explanation of it:

"This is the essence of what it means for an event to occur "dynamically within the '761 patent - an event occurs automatically (i.e. capturing the context in which the data is created) in response to a preceding act (i.e., the data being created by a user)."

Additionally, Facebook's own expert, Dr. Saul Greenberg, contradicts Facebook's "user's movement" requirement. For example, Dr. Greenberg's claim charts demonstrate that he reads the claims of the '761 Patent to require the dynamic update of metadata to actually occur when data or a document is accessed or employed:

"Seliger discloses a computer-implemented tracking component of the network-based system (e.g. method for auditing) for tracking a change of the user from a first context (e.g. a first software application) to a second context (e.g. a second software application), and dynamically updating the stored metadata based on the change (e.g. recording the data access event)..."

"a 'data-access event' is almost any event corresponding to an action by a user or a machine which causes data(including context and application data) to be moved from one location to another or to be retrieved from memory."

See Greenberg Expert Report, Exhibit C-7 at 51-52.

"Hubert discloses an example of the tracking component tracking a change from the first context to a second context(transmission of document from the first source 30 to a second source 32 via the Internet) and dynamically updating the stored metadata based on the change (for example, a record of copying that the document was received, recommendations from reviewers)..."

"Hubert provides an example where the dynamic update(in this case the knowledge 'pollen') is done in response to a user sending email of the meta-document, or downloading the meta-document, or attempts to save the meta-document."

See Greenberg Expert Report, Exhibit C-5 at 10.

“In addition, Swartz discloses how the context and metadata is tracked as a ‘knowledge path,’ where the recording of information across the context of different transactions is done dynamically, i.e., automatically in response to dynamic links to the source information of that transaction.”

See Greenberg Expert Report, Exhibit C-6 at 7.

As Facebook’s “user’s movement” assertion contradicts its own citations, claim construction argument, and validity expert, it is certainly without basis and disputed.

19. Facebook states “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 25 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).”

This fact is DISPUTED to the extent that Facebook only focuses on a certain portions of the claim limitation which is not how the actual claim limitation is written. Notably, for the fourth claim limitation, “dynamically storing the change information on the storage component as part of the metadata” is emphasized while the connected claim language of “wherein the user accesses the data from the second user workspace” is not. In contrast to Facebook’s depiction of claim 23, the actual claim 23 as written in ‘761 Patent does not place emphasis on any certain terms or phrases, thus enabling one of skill in the art to give proper weight to the entirety of each

claim limitation.

20. Facebook states "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."

This fact is DISPUTED. Facebook's conclusion is based on an analysis of claim 23 that fails to consider the entirety of each claim limitation. Indeed, Facebook's motion is devoid of any analysis of the connected claim language of claim 23 that requires, "such that the user employs the application and data from the second user workspace":

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.**

As such, Facebook's statement inappropriately rewrites claim 23 to omit the requirement of "such that the user employs the application and data from the second user workspace."

Furthermore, Facebook's own citations to the '761 Patent used to support its current motion contradict Facebook's current "user's movement" assertion. For example, Facebook's motion reproduces the following citation from the '761 Patent:

"The metadata automatically captures the context in which the data was created as the data is being created." (emphasis added).

D.I. 391 at 3.

Moreover, Facebook's claim construction brief not only makes the same citation, it also goes on to provide the following explanation of it:

"This is the essence of what it means for an event to occur "dynamically within the '761 patent - an event occurs automatically (i.e. capturing the context in

which the data is created) in response to a preceding act (i.e., the data being created by a user).”

Additionally, Facebook’s own expert, Dr. Saul Greenberg, contradicts Facebook’s “user’s movement” requirement. For example, Dr. Greenberg’s claim charts demonstrate that he reads the claims of the ‘761 Patent to require the dynamic update of metadata to actually occur when data or a document is accessed or employed:

“Seliger discloses a computer-implemented tracking component of the network-based system (e.g. method for auditing) for tracking a change of the user from a first context (e.g. a first software application) to a second context (e.g. a second software application), and dynamically updating the stored metadata based on the change (e.g. recording the data access event) ...”

“a ‘data-access event’ is almost any event corresponding to an action by a user or a machine which causes data(including context and application data) to be moved from one location to another or to be retrieved from memory.”

See Greenberg Expert Report, Exhibit C-7 at 51-52.

“Hubert discloses an example of the tracking component tracking a change from the first context to a second context (transmission of document from the first source 30 to a second source 32 via the Internet) and dynamically updating the stored metadata based on the change (for example, a record of copying that the document was received, recommendations from reviewers)...”

“Hubert provides an example where the dynamic update (in this case the knowledge ‘pollen’) is done in response to a user sending email of the meta-document, or downloading the meta-document, or attempts to save the meta-document.”

See Greenberg Expert Report, Exhibit C-5 at 10.

“In addition, Swartz discloses how the context and metadata is tracked as a ‘knowledge path,’ where the recording of information across the context of different transactions is done dynamically, i.e., automatically in response to dynamic links to the source information of that transaction.

See Greenberg Expert Report, Exhibit C-6 at 7.

As Facebook’s “user’s movement” assertion contradicts its own citations, claim construction argument, and validity expert, it is certainly without basis and disputed.

21. Facebook states “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.”

This fact is DISPUTED. Facebook’s flawed assertion visibly fails to consider the entirety of each limitation of claims 1, 9, 21, 23. As a result, Facebook’s assertion rewrites claims 1, 9, 21, and 23. For example, Facebook’s analysis rewrites the tracking limitation of Claim 1 by omitting consideration of the connected claim language, “wherein the user access the data from the second context”:

Tracking Limitation of Claim 1:

- 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.**

Facebook’s analysis also rewrites the tracking limitations of Claim 9 by omitting consideration of the connected claim language, “wherein the user employs at least one of the application and the data from the second environment”:

Tracking Limitations of Claim 9:

- 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.**

Facebook’s analysis also rewrites the tracking limitations of Claim 21 by omitting consideration of the connected claim language, “such that the user employs the application and data from the second user workspace”:

Tracking Limitations of Claim 21:

- 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;**

Facebook's analysis also rewrites the tracking limitation of Claim 23 by omitting consideration of the connected claim language, "such that the user employs the application and data from the second user workspace":

Tracking Limitations of Claim 23:

- 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.**

Furthermore, Facebook's "user movement" assertion contradicts the '761 Patent and Facebook's own arguments. For example, rather than "user movement," the '761 Patent states:

"The metadata automatically captures the context in which the data was created as the data is being created." (emphasis added).

D.I. 391 at 3.

Moreover, Facebook's claim construction brief not only makes the same citation, it also goes on to provide the following explanation of it:

"This is the essence of what it means for an event to occur "dynamically within the '761 patent - an event occurs automatically (i.e. capturing the context in which the data is created) in response to a preceding act (i.e., the data being created by a user)."

Additionally, Facebook's own expert, Dr. Saul Greenberg, contradicts Facebook's "user's movement" requirement. For example, Dr. Greenberg's claim charts demonstrate that he reads the claims of the '761 Patent to require the dynamic update of metadata to actually occur when

data or a document is accessed or employed:

“Seliger discloses a computer-implemented tracking component of the network-based system (e.g. method for auditing) for tracking a change of the user from a first context (e.g. a first software application) to a second context (e.g. a second software application), and dynamically updating the stored metadata based on the change (e.g. recording the data access event)...”

“a ‘data-access event’ is almost any event corresponding to an action by a user or a machine which causes data(including context and application data) to be moved from one location to another or to be retrieved from memory.”

See Greenberg Expert Report, Exhibit C-7 at 51-52.

“Hubert discloses an example of the tracking component tracking a change from the first context to a second context (transmission of document from the first source 30 to a second source 32 via the Internet) and dynamically updating the stored metadata based on the change (for example, a record of copying that the document was received, recommendations from reviewers)...”

“Hubert provides an example where the dynamic update (in this case the knowledge ‘pollen’) is done in response to a user sending email of the meta-document, or downloading the meta-document, or attempts to save the meta-document.”

See Greenberg Expert Report, Exhibit C-5 at 10.

“In addition, Swartz discloses how the context and metadata is tracked as a ‘knowledge path,’ where the recording of information across the context of different transactions is done dynamically, i.e., automatically in response to dynamic links to the source information of that transaction.”

See Greenberg Expert Report, Exhibit C-6 at 7.

As Facebook’s “user’s movement” assertion contradicts the ‘761 Patent, its own claim construction arguments, and its own validity expert, it is certainly without basis and disputed.

22. Facebook states that “As shown in the next section, LTI has not and cannot show that this requirement is performed by Facebook.”

This fact is DISPUTED as Facebook’s alleged “requirement” is based on a flawed premise that rewrites the claims. Dr. Vigna’s Infringement Report provides 177 pages of factual basis that demonstrates that Facebook performs every requirement of the asserted claims of the

'761 Patent, including every tracking limitation which uses the term "metadata." See Exhibit A attached hereto for an example of Dr. Vigna's infringement analysis of the tracking limitations of claims 1, 9, 21, and claim 23. As such, Facebook's assertion regarding Leader's infringement theory is disputed.

C. Facebook's Alleged "Undisputed Facts" Are Disputed as They Mischaracterize Dr. Vigna's Infringement Analysis

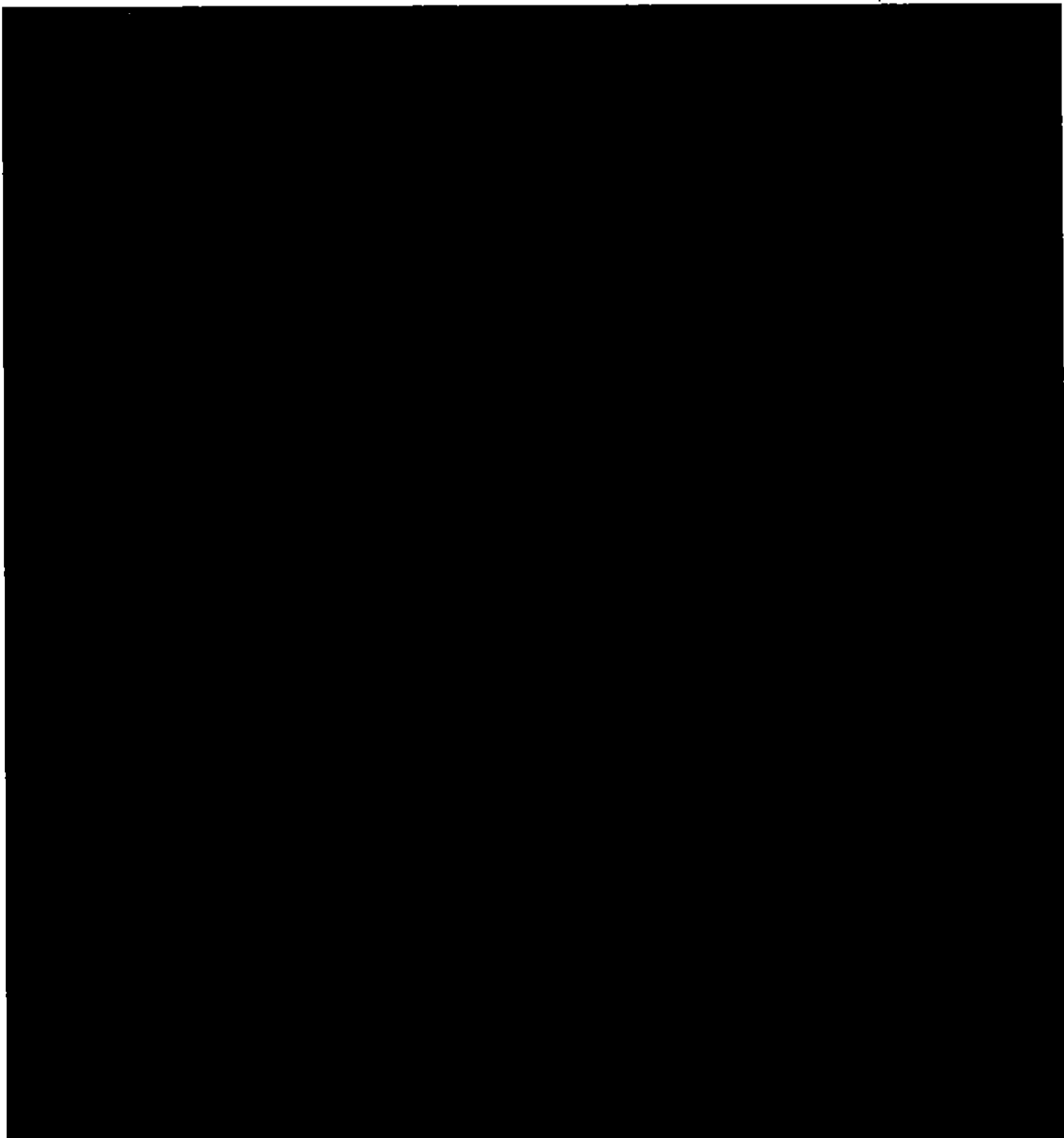
23. Facebook states that "LTI's infringement claims against Facebook are based on three purported 'Use Cases' described in the expert report of its technical expert, Giovanni Vigna."

This fact is DISPUTED as it is contrary to Dr. Vigna's report which makes clear that it is "the underlying architecture of the Facebook website [that] infringes the asserted claims." See D.I. 392, Ex. B, Dr. Vigna's Report at ¶ 25. Furthermore, paragraph 25 of Dr. Vigna's Infringement Report states that the "description of the use cases below is not intended to be limiting, but rather an example of the multiple ways in which the Facebook website is based on an infringing architecture":



Moreover, paragraphs 26-27 of Dr. Vigna's report demonstrate that Leader's infringement claims are not limited to merely three use cases:





Id. at ¶¶ 26-27. As such, Facebook’s characterization of Leader’s infringement claims is incorrect.

24.



See Weinstein Decl., Ex. B, Disclosure of Expert Testimony for Giovanni

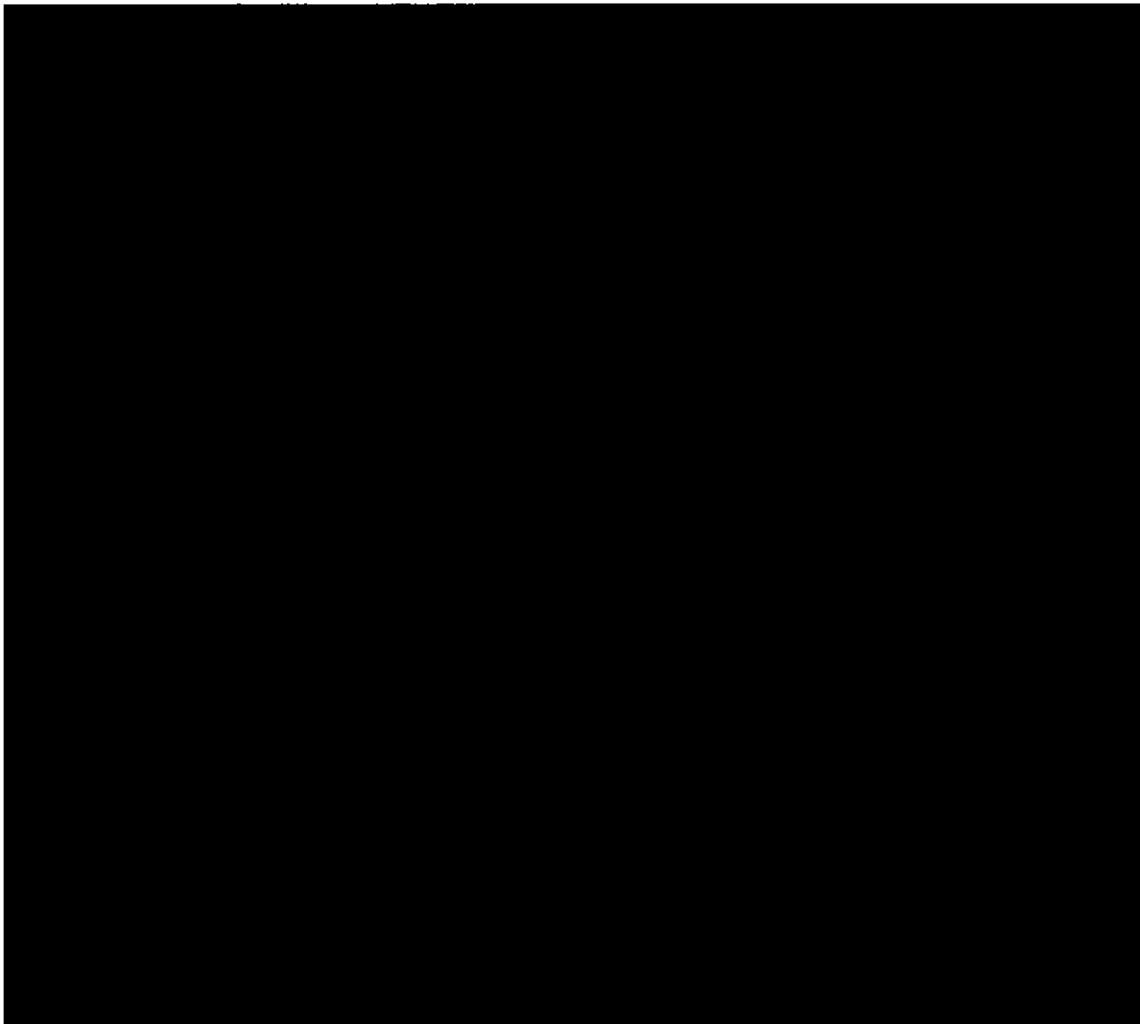
Vigna, Ph.D Pursuant Fed. R. Civ. P. 26(a)(2), ¶¶ 35-42,44-51, 53-59.”

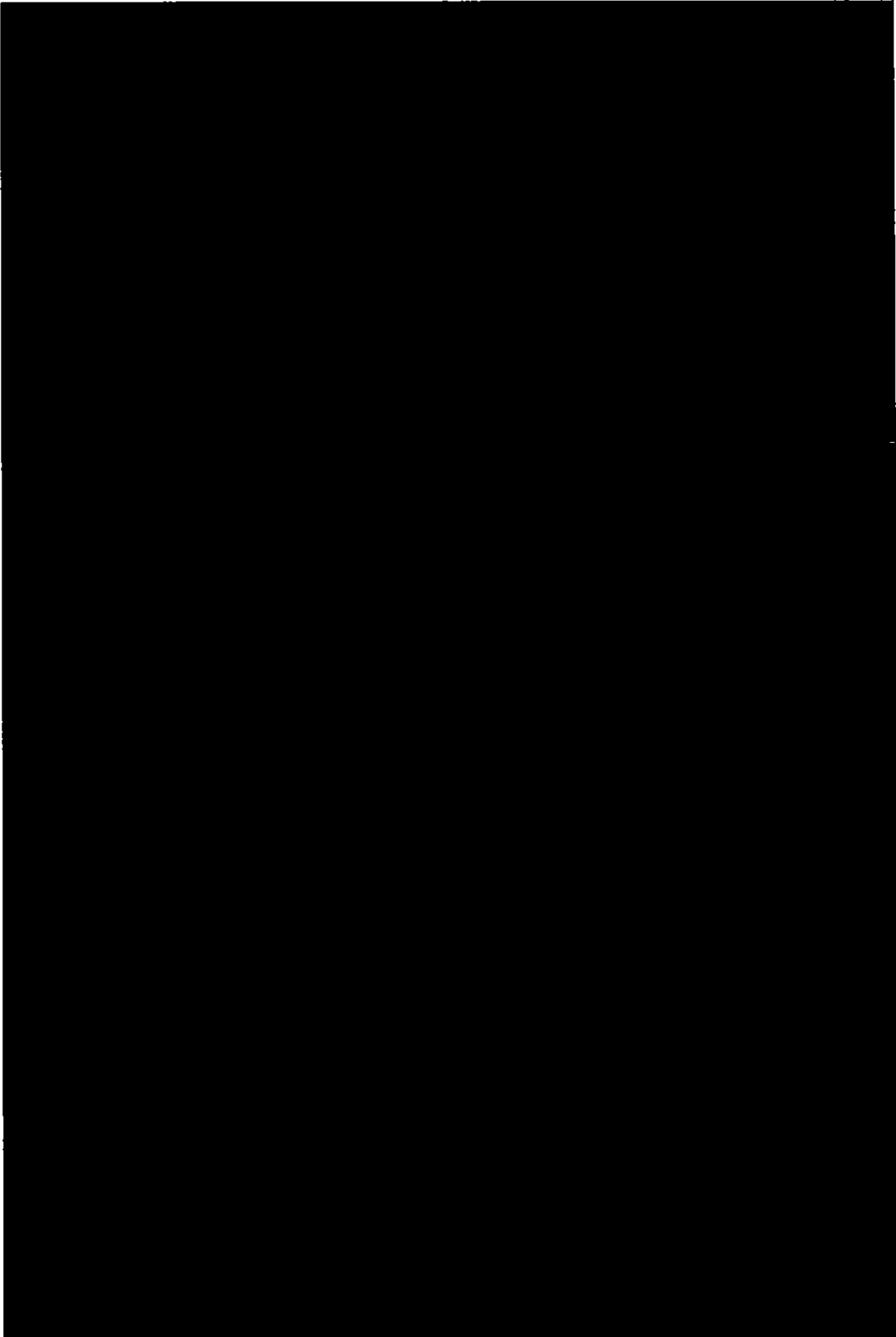
This fact is DISPUTED to the extent Facebook implies that Dr. Vigna's general description of use cases constitutes Dr. Vigna's infringement analysis. Notably, Facebook cites to paragraphs 35-59 for its assertion. Yet, paragraph 35 of Dr. Vigna's report makes clear that paragraphs 36-60 merely "present three use cases that exemplify common scenarios [REDACTED]

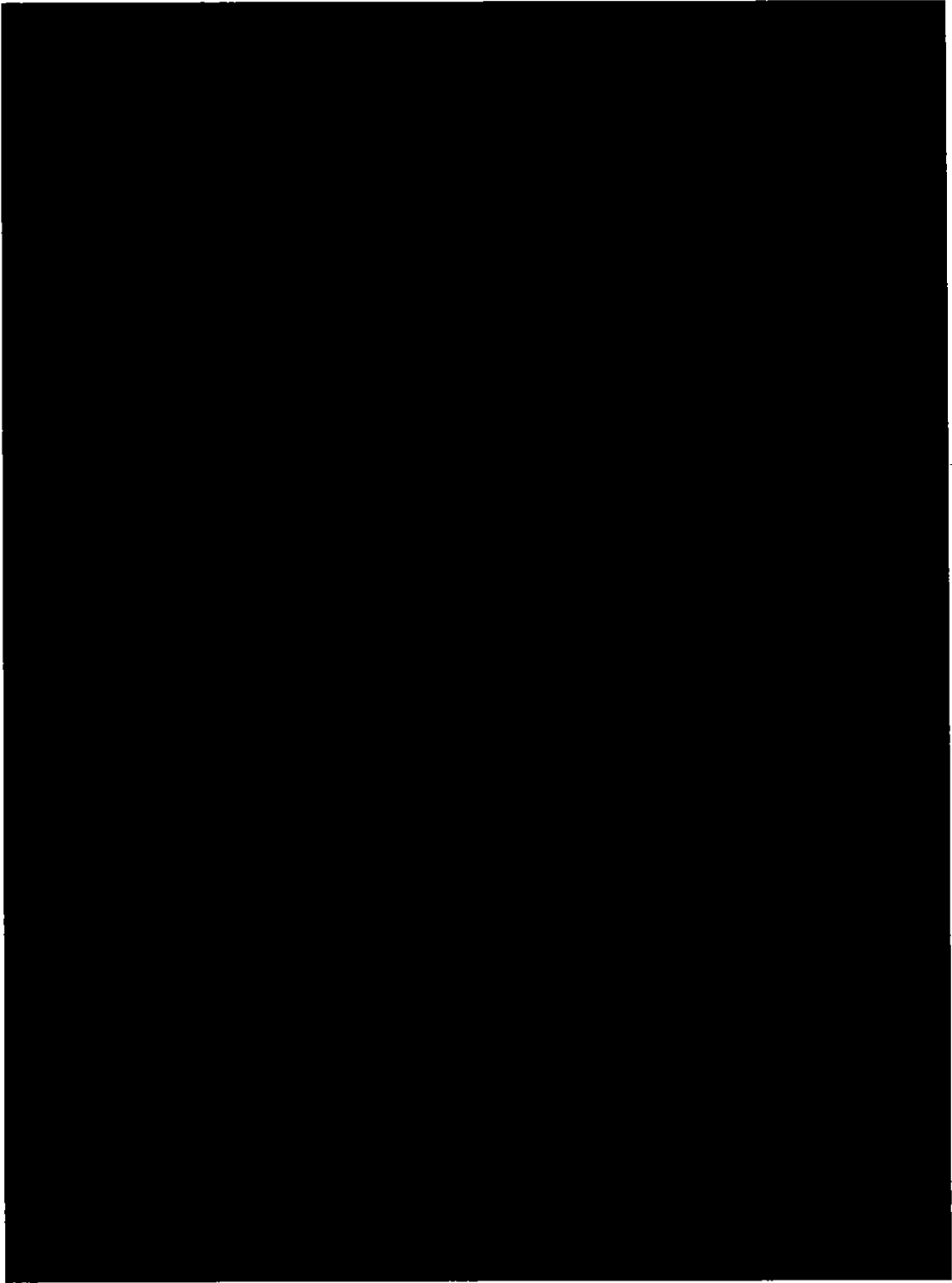
[REDACTED] See D.I. 392, Ex. B, Dr. Vigna's Report at ¶ 35; *see also* Dr. Vigna's deposition transcript 104:16-105:22. Dr. Vigna's report goes on to provide an element by element infringement analysis for all of the asserted claims. *See* D.I. 392, Ex. B, Dr. Vigna's Report at ¶¶ 61-359. Furthermore, each of Facebook's citations of Dr. Vigna's report omit a critical paragraph, for each use case. Indeed Dr. Vigna's Report, paragraphs 43, 52, and 60 describe Facebook's technical documents, and deposition transcripts from Facebook's engineers. *See id.* at ¶¶ 43, 52, and 60.

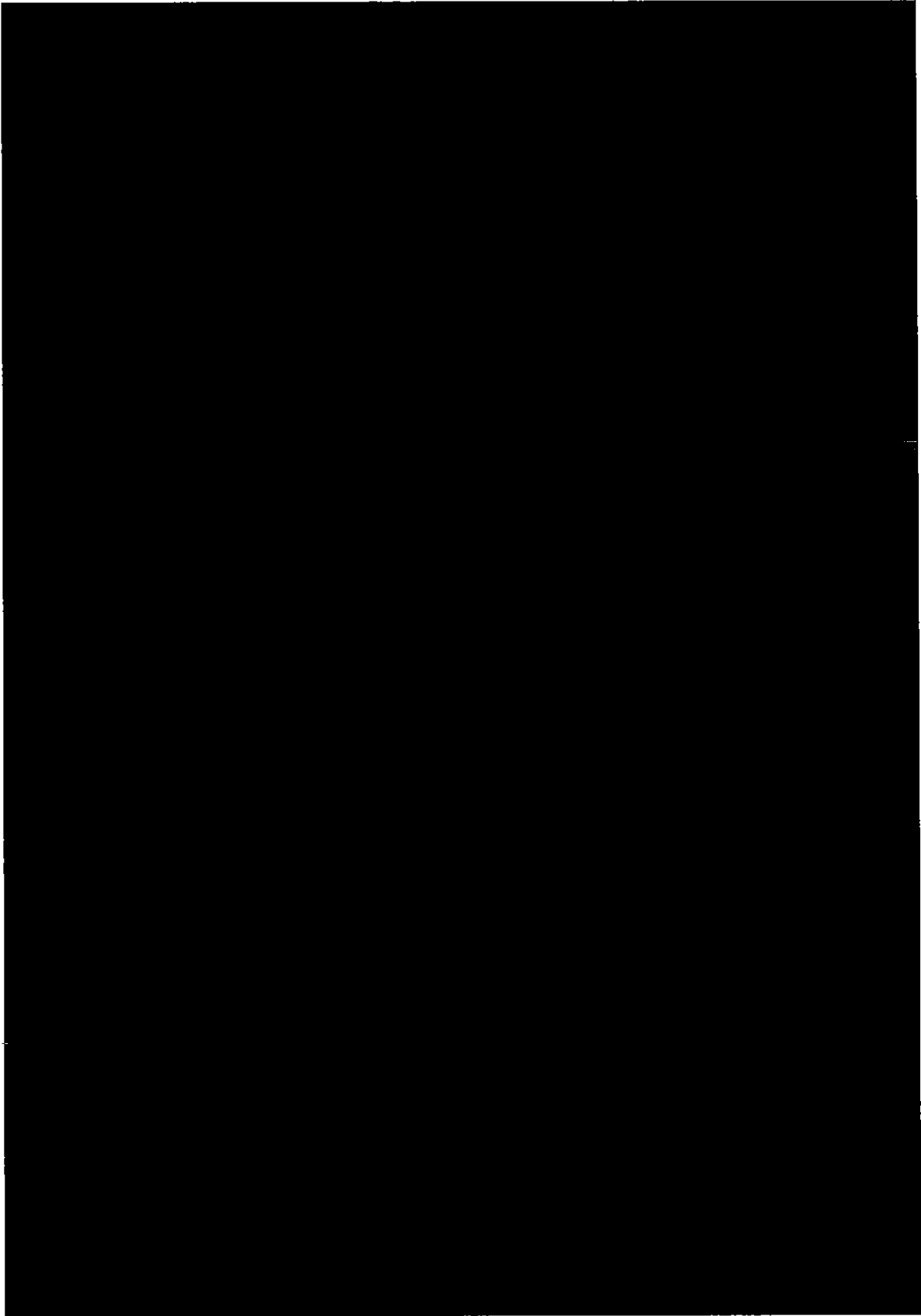
25. [REDACTED]

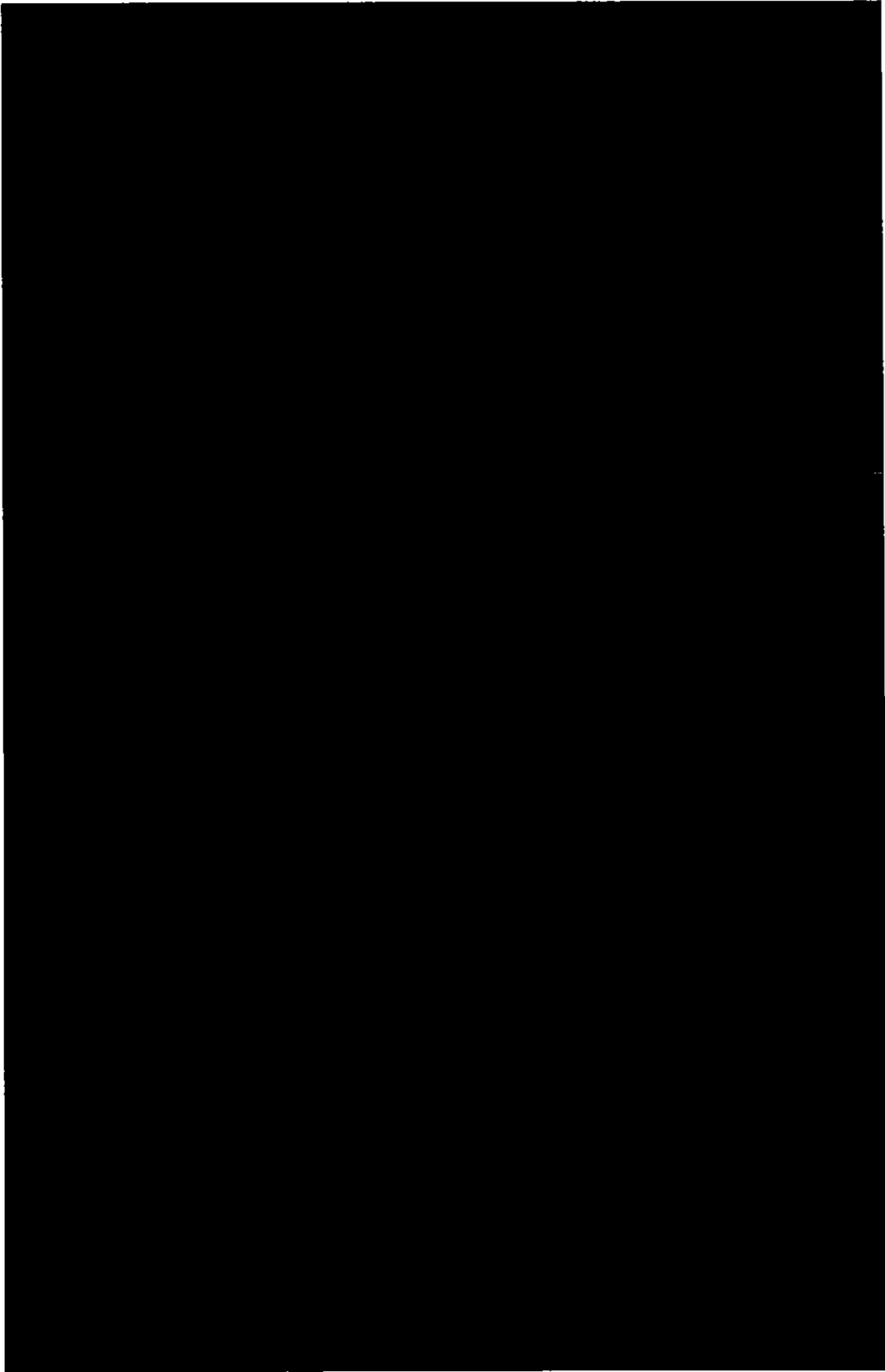
This fact is DISPUTED as it mischaracterizes and abbreviates Dr. Vigna's exemplary use cases. All of the paragraphs cited merely provides general descriptions of Use Case Nos. 1, 2, and 3. These descriptions do not represent Dr. Vigna's infringement analysis of the claims. Indeed, detailed infringement analysis of particular claims of the '761 Patent is described later in the report. *See* D.I. 392, Ex. B, Dr. Vigna's Report at ¶¶ 61-359. Furthermore, Facebook's attempt to simplify these use cases results in mischaracterization of Dr. Vigna's actual

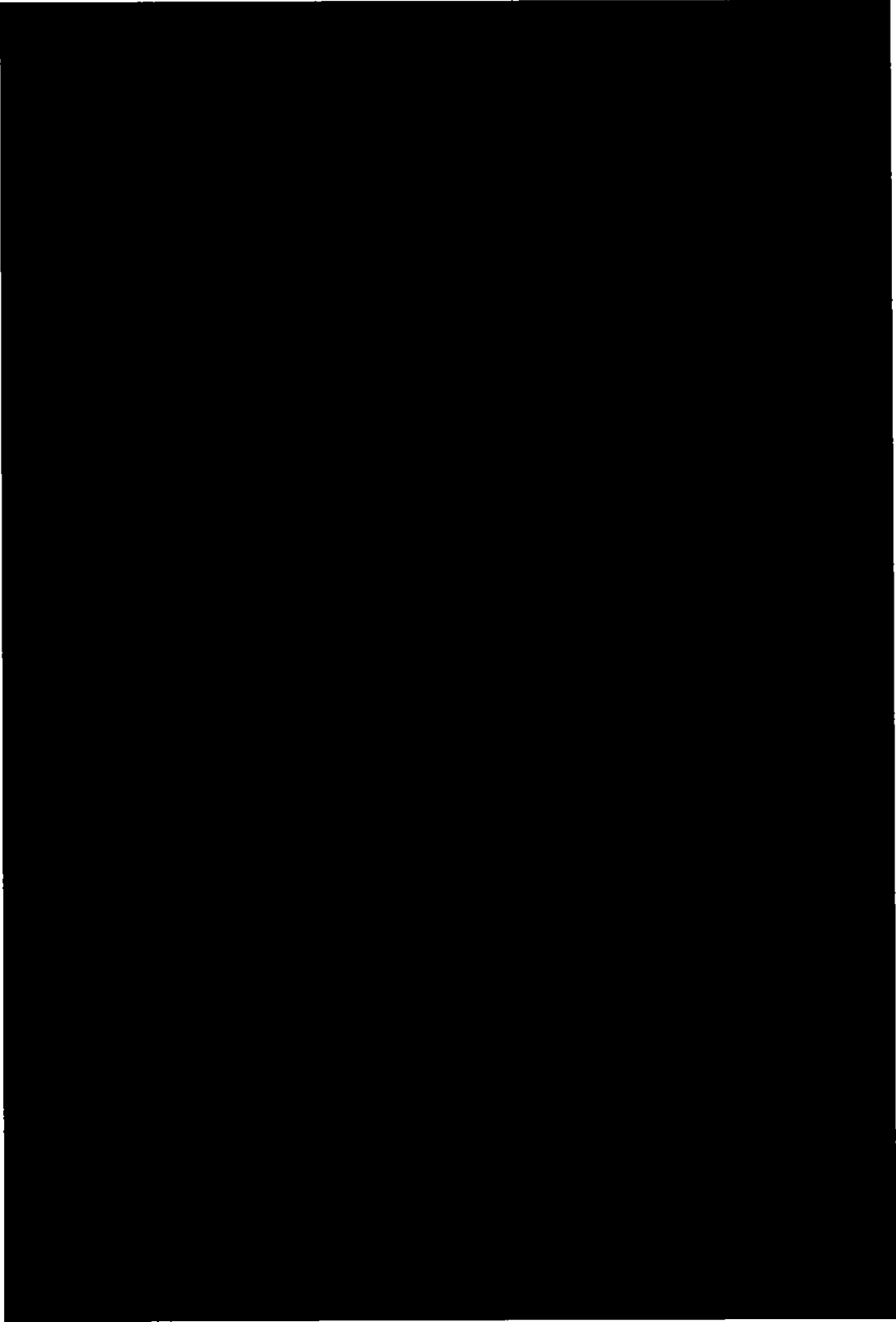


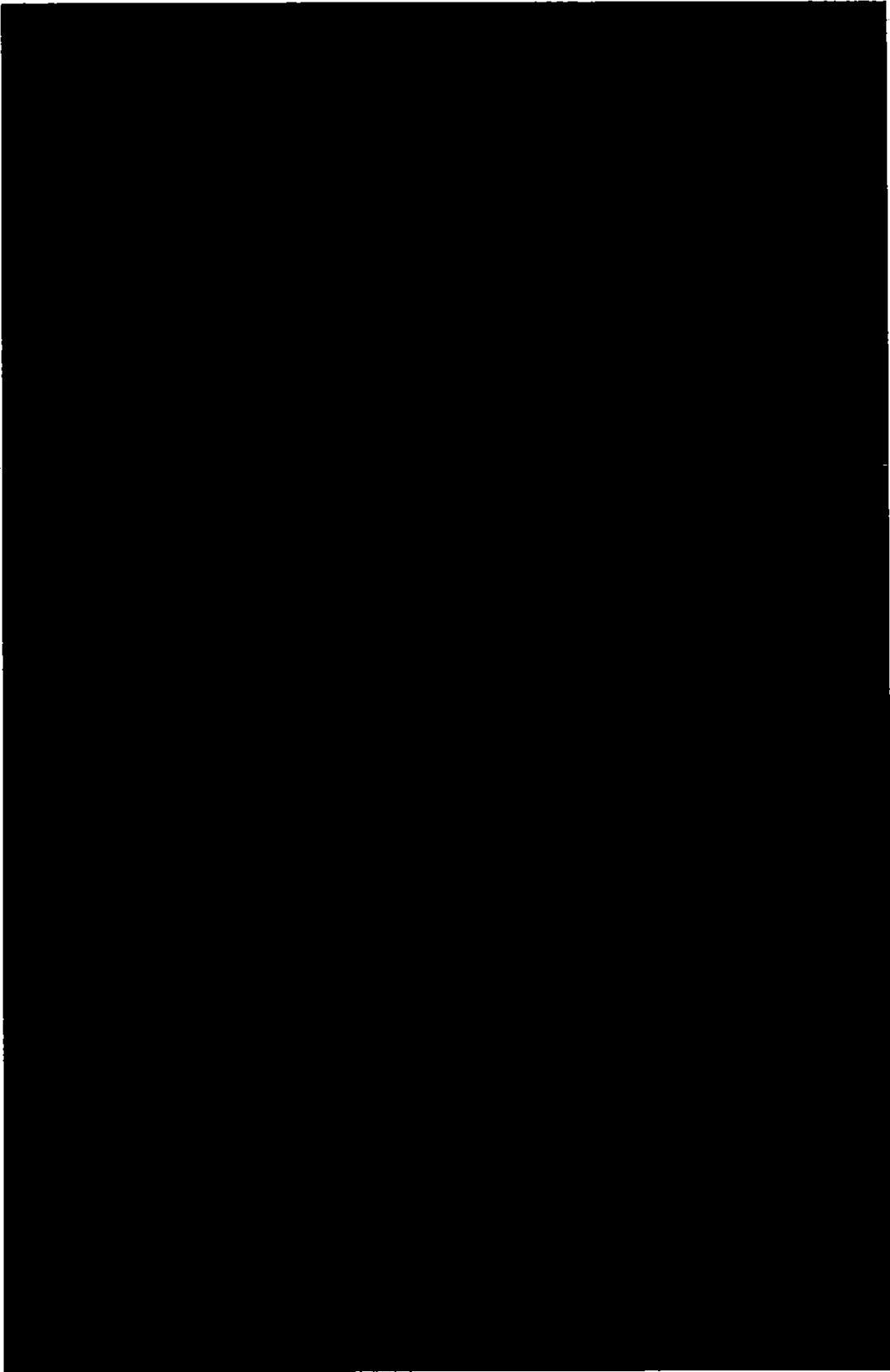


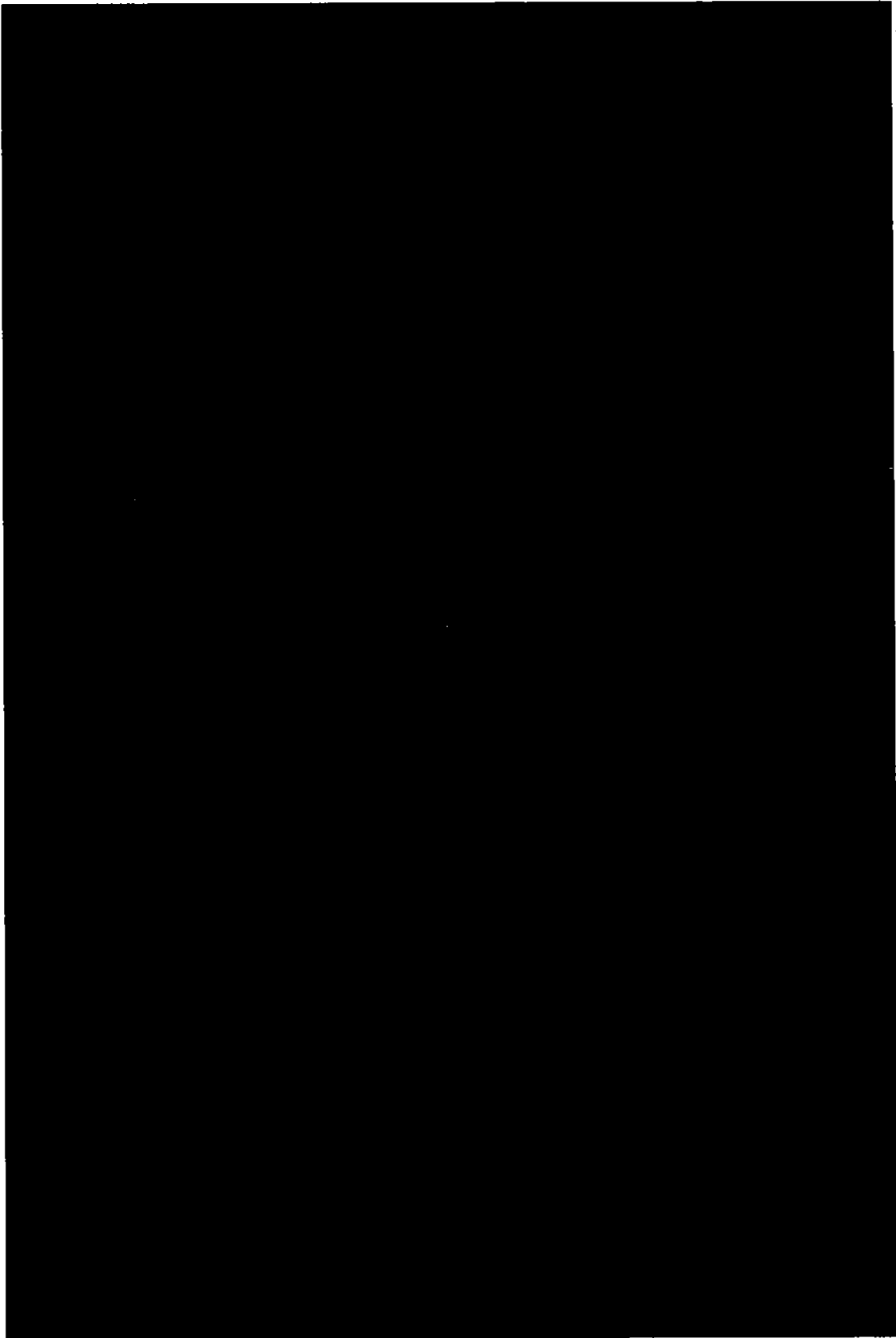






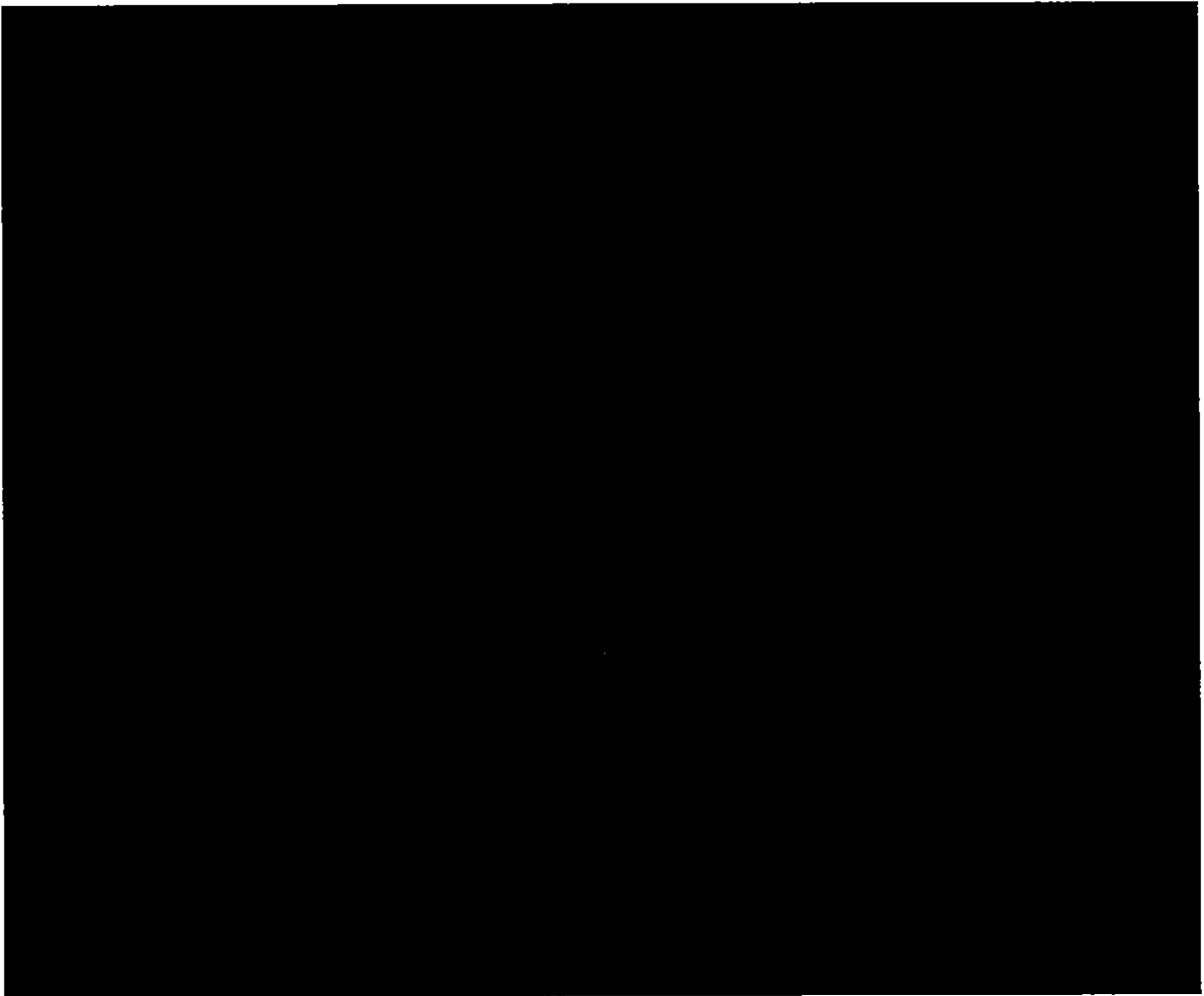


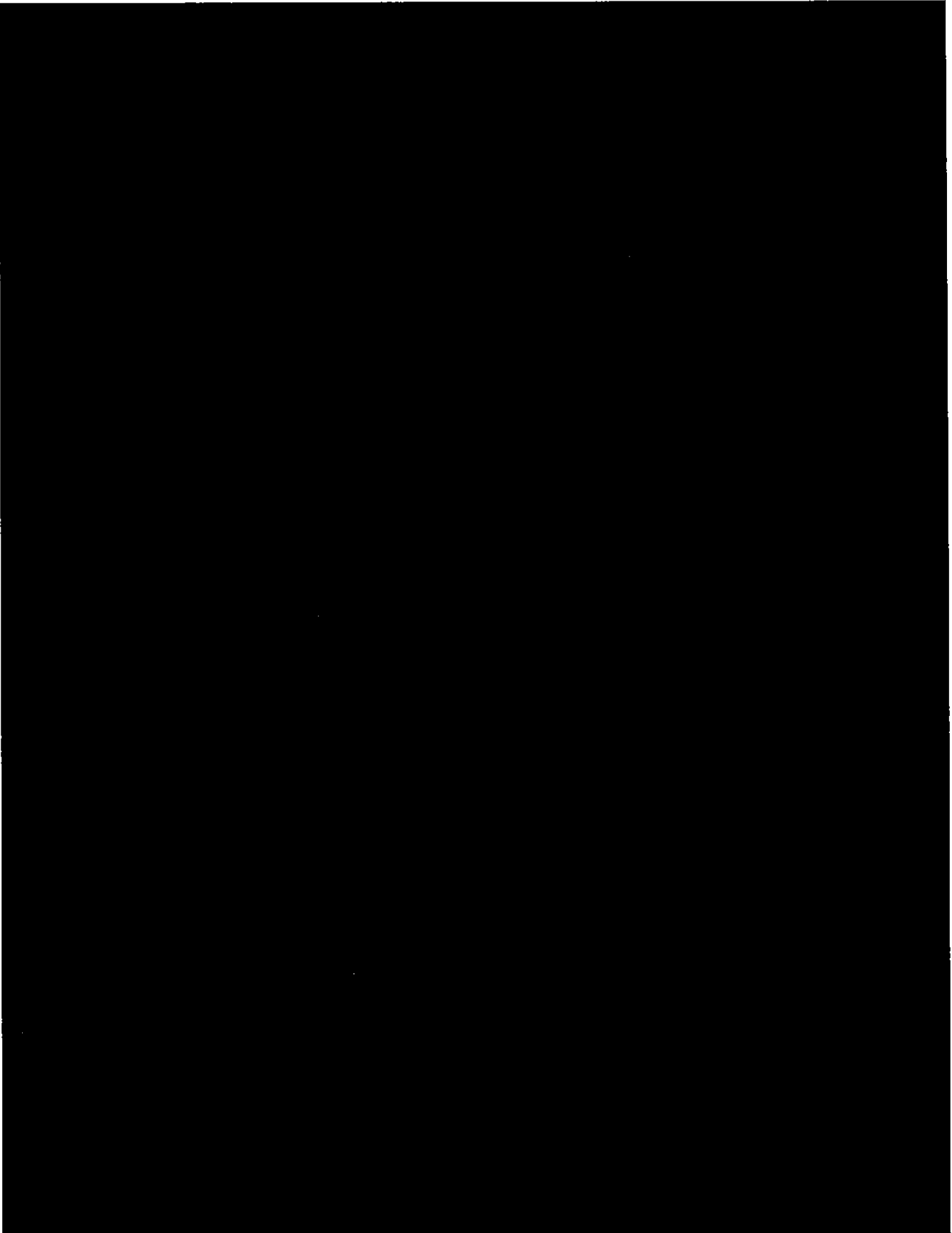






D.I. 392, Ex. B, Dr. Vigna's Report at ¶¶ 36-59.





Id. at ¶ 93. A similar analysis is found throughout Dr. Vigna's report for all of the identified use cases. *Id.* at ¶¶ 61-359. Additionally, comparable analysis which thoroughly addressed the tracking limitations of the remaining claims was also disclosed in Dr. Vigna's report. *See, e.g., id.* at ¶¶ 171-207, 251-274, 317-332. Thus, Facebook's assertion that Dr. Vigna's report does not discuss tracking user movement or dynamically updating metadata is disputed.

1. **Facebook Mischaracterizes Dr. Vigna's Use Case No. 1**

28. Facebook states [REDACTED]

[REDACTED]
[REDACTED] As shown in Figure 1 below, which is a screenshot that was created by LTI and served with its expert report, [REDACTED]

[REDACTED] Weinstein Decl., Ex. C at LTI 157092.”

This fact is DISPUTED as it mischaracterizes Dr. Vigna's description of Use Case No. 1 to be merely limited to [REDACTED]

[REDACTED] Looking at the citation Facebook uses reveals the source of the problem.

Indeed, paragraphs 36-43 of Dr. Vigna's report merely used to provide a general description of

Use Case No. 1. Detailed infringement analysis of particular claims of the '761 Patent is

described later in the report. *See* D.I. 392, Ex. B, Dr. Vigna's Report at ¶¶ 61-359. Thus

Facebook's utilization of merely Dr. Vigna's use case descriptions leaves out critical details. For

example, in contrast to Facebook's assertion, [REDACTED]

[REDACTED] Indeed, the Dr. Vigna's infringement analysis clearly states:

[REDACTED]
See id. at ¶ 72. Furthermore, even Dr. Vigna's general description of Use Case No. 1 provides

alternatives to Facebook's assertion that requires a [REDACTED]

[REDACTED] In fact Dr. Vigna's actual description of Use Case No. 1 [REDACTED]

[REDACTED] *See id.* at ¶ 37.

Dr. Vigna's Report goes on to give examples:

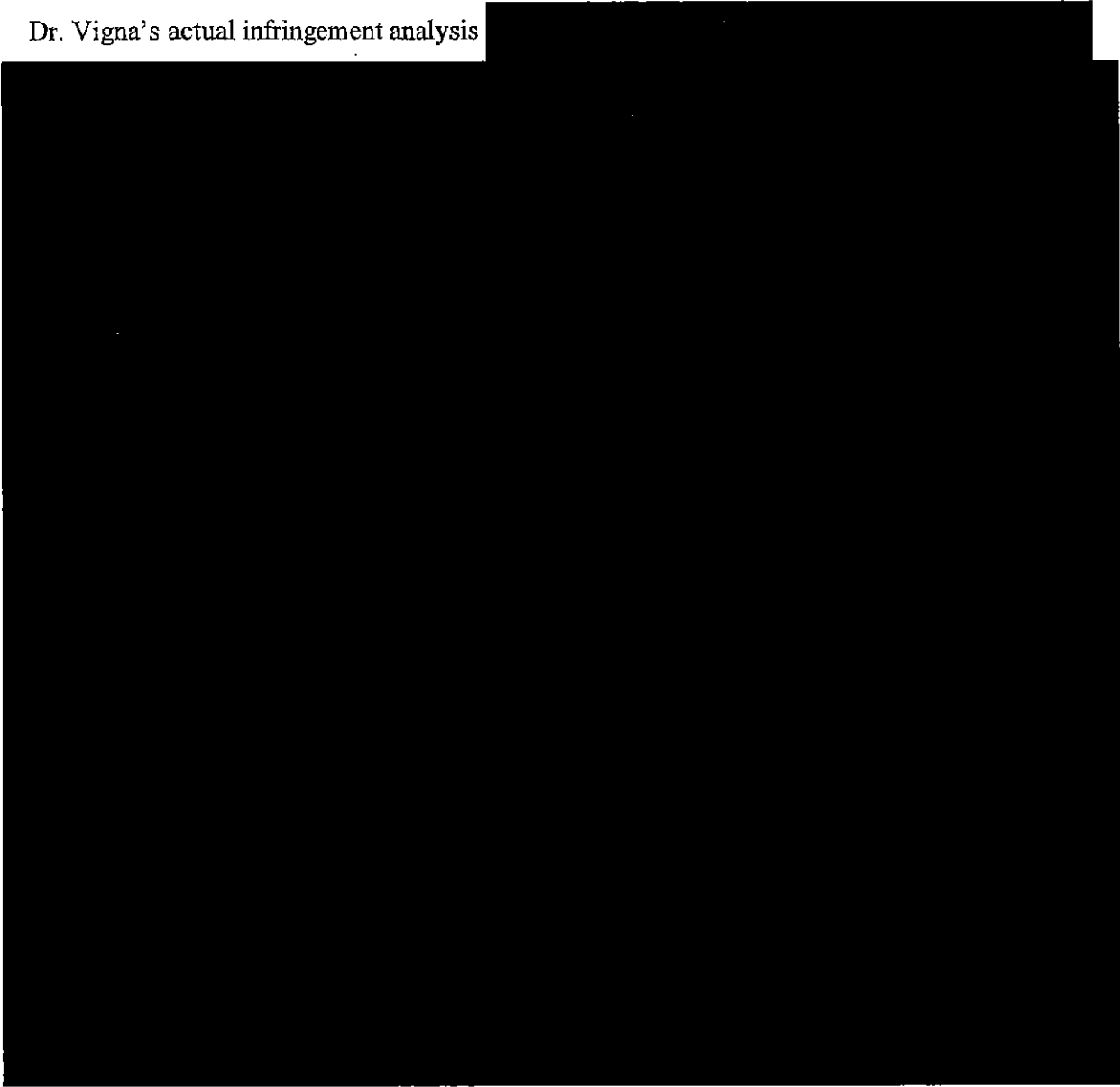
[REDACTED]

See id. at ¶ 39. Therefore, Facebook's description is wrong as it is clearly inconsistent with the actual description of Use Case No. 1 as written in Dr. Vigna's report. Furthermore, Facebook's use of Dr. Vigna's screenshot, bearing bates number LTI 157092, does not support Facebook's statement as [REDACTED]

[REDACTED]

This fact is DISPUTED. In contrast to Facebook's requirement of "capturing metadata," claim 1 requires that the context component "capture context information" then store that

“context information” in “metadata.” As such, Facebook’s nonsensical statement is disputed. Furthermore, Facebook’s statement mischaracterizes Dr. Vigna’s infringement analysis regarding Use Case No. 1 as Facebook’s description as being solely user focused. In contrast, Dr. Vigna’s actual infringement analysis



See id. at ¶ 71. Because Facebook’s nonsensical statement requires the omission of all underlying architecture details, it mischaracterizes the actual infringement analysis that Dr.

Vigna's report describes and does not represent Leader's contentions. Thus Facebook's statement is disputed.

30. Facebook states [REDACTED]

[REDACTED]

This fact is DISPUTED as it mischaracterizes Dr. Vigna's infringement analysis. First of all it is unclear which use case Facebook is referring to as its term "Use Case" does not identify any particular use case. [REDACTED]

[REDACTED]

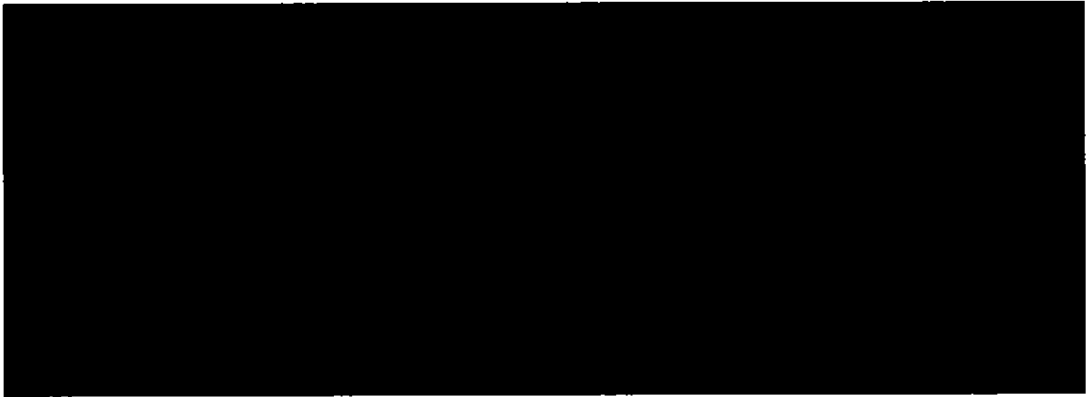
of Dr. Vigna's report is merely used to provide a general description of Use Case No. 1. Detailed infringement analysis of the particular claims of the '761 Patent is described later in the report. *See* D.I. 392, Ex. B, Dr. Vigna's Report at ¶¶ 61-359. Thus, Facebook's utilization of merely Dr. Vigna's general use case descriptions to represent Leader's contentions is inappropriate. Furthermore, the screenshot cited by Facebook does not stand for Facebook's assertion. To be clear, Dr. Vigna's report provided numerous screenshots to illustrate particular functionality within the underlying architecture of the Facebook's website. As such, each set of screenshots is particularly cited in Dr. Vigna's report to correspond to a particular sequence of actions to demonstrate Facebook's infringement. Notably, omits any of the corresponding screenshots and takes merely one screenshot out of context. As such, Facebook mischaracterizes Dr. Vigna's infringement analysis and the screenshot bearing bates number LTI 157099.



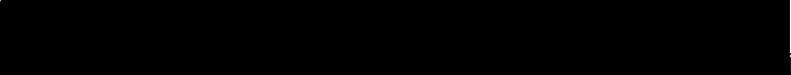
This fact is DISPUTED as Dr. Vigna's infringement analysis [redacted]

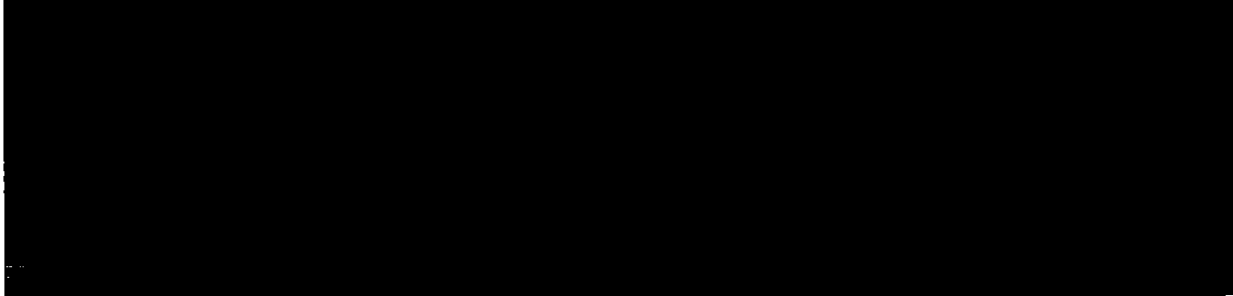


[redacted] Without support, Facebook resorts to misquoting Dr. Vigna's report. Indeed, Facebook selectively pieces together mere fragments of Dr. Vigna's sentences. As a result, Dr. Vigna's actual analysis is inappropriately manipulated. Indeed, when the full analysis is revealed, it is unmistakable that [redacted]




See D.I. 392, Ex. B, Dr. Vigna's Report at ¶ 172. As Facebook's assertion requires the omission of such details, its mischaracterizes the actual infringement analysis Dr. Vigna report describes.


32. Facebook states 



This fact is DISPUTED. Facebook's analysis so far in 



As such, Facebook's assertion has no basis 



See Exhibit A attached hereto for an example of Dr. Vigna's infringement analysis of the tracking limitations of claims 1, 9, 21, and claim 23. As such, Facebook's statements regarding Leader's infringement theory is disputed.

33. Facebook states [REDACTED]

[REDACTED]

This fact is DISPUTED as the actual questions asked of Dr. Vigna during his deposition did not make any sense. For example, the quote that Facebook uses in this motion demonstrates that the question asked by [REDACTED]

[REDACTED] D.I. 391 at 12. This question is not only technically imprecise, it is referring to a hypothetical limitation which is completely absent from the claim. The pattern continues as many of the questions that Facebook cites from Dr. Vigna's deposition are hypothetical questions which are completely outside the scope of Dr. Vigna's report.

34. Facebook states [REDACTED]

[REDACTED]

[REDACTED] See Weinstein Decl. Ex. D at 143:23-144:7, 163:7-9; *id.* Ex. B, e.g., ¶ 93 at 37

[REDACTED]

This fact is DISPUTED. With no evidence to support its position, Facebook plainly resorts to mischaracterizing Dr. Vigna's deposition testimony. Indeed, a plain reading of Dr. Vigna's deposition testimony demonstrates that Dr. Vigna never stated [REDACTED]

[REDACTED]

[REDACTED] Furthermore, Facebook's counsel actually asked Dr. Vigna two different questions. The first question was:

[REDACTED]

Leader's counsel then made the appropriate objection:

MR. HANNAH: Objection; vague.

Then Dr. Vigna plainly objected to such a vague question:

THE WITNESS: Has to take an objection.

Facebook's counsel then asked a completely different question:

[REDACTED]

D.I. 392, Ex. D at 143:22-144:9.

Deceivingly, the citation that Facebook utilized in its Summary Judgment motion failed to include Dr. Vigna's entire answer. As Dr. Vigna was plainly asked two completely different questions and examining Dr. Vigna's answers in their entirety, it is unmistakable that Dr. Vigna's deposition testimony does not support Facebook's assertion. Furthermore Facebook's assertion is impossibly vague as it fails to explain which of Facebook's "metadata" it is referring to. To be clear, [REDACTED]

[REDACTED] Without providing any identification of any particular "metadata" mentioned in Dr. Vigna's report, Facebook's non-infringement position is unreasonably inaccurate. As Facebook's statement regarding Dr. Vigna's deposition testimony is incorrect, it is disputed.

35. Facebook states [REDACTED]

[REDACTED]

[REDACTED] *Id.* Ex. D at 143:23-146:11. For example, he testified:

[REDACTED]

Id. at 145:20-146:11.

This fact is DISPUTED as the questions asked of Dr. Vigna during his deposition, which Facebook reproduced in its motion, did not make any sense (which is why Dr. Vigna was having a difficult time understanding them). For example, the question asked by Facebook's counsel

[REDACTED] D.I.

391 at 12. This question is not only technically imprecise, it also refers to a hypothetical limitation which is completely absent from the claim. The pattern continues as many of the questions that Facebook cites from Dr. Vigna's deposition are hypothetical questions which are completely outside the scope of Dr. Vigna's report. With the appropriate background and knowing that the questions were outside the scope of Dr. Vigna's opinion, it becomes apparent why Dr. Vigna asked for the source code to provide a sensible answer to Facebook's questions. Furthermore as described in the next section, Dr. Vigna in fact did analyze every limitation of all asserted claims including the tracking limitations of claims 1, 9, 21, and 23.

36. Facebook states "Dr. Vigna's inability to answer this question was not surprising,

[REDACTED]

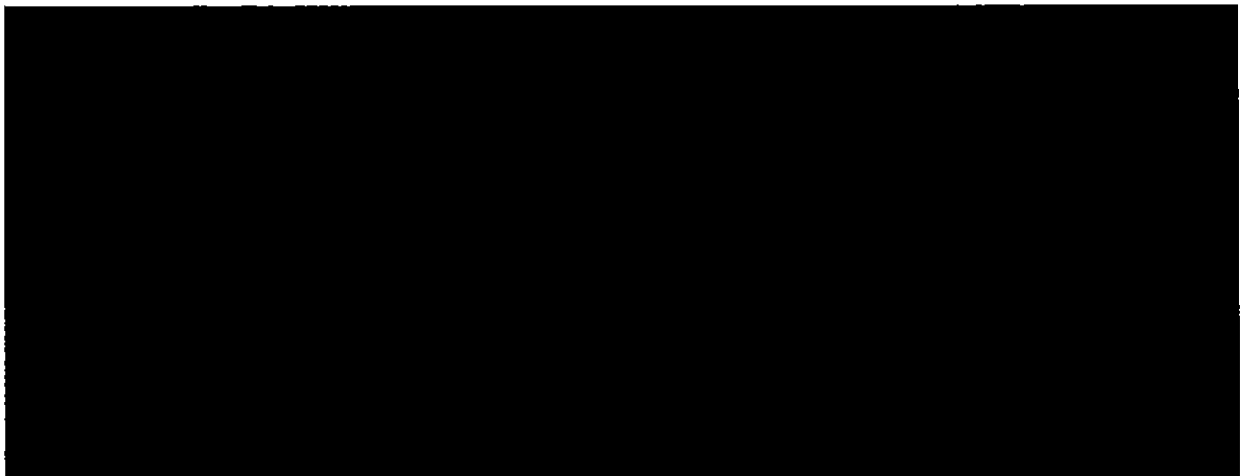
therefore cannot establish infringement of any asserted claim."


This fact is DISPUTED as Facebook plainly mischaracterizes Dr. Vigna's deposition testimony. As previously established, Facebook's hypothetical questions were nonsensical. Thus with the appropriate background and knowing that Facebook's questions were outside the scope of Dr. Vigna's opinion, Dr. Vigna asked for the source code to provide a sensible answer to Facebook's questions.

Furthermore, in contrast to Facebook's assertion, Dr. Vigna's report actually establishes that Facebook infringes every asserted claim. Facebook is also incorrect in alleging that Dr. Vigna does not discuss [REDACTED] For example, with reference to paragraph 91 reproduced above, Dr. Vigna provides the following opinion that [REDACTED]

[REDACTED]


D.I. 392, Ex. B at ¶ 91.



Id. at ¶ 93. A similar analysis is found throughout Dr. Vigna's report for all of the identified use cases. *Id.* at ¶¶ 61-359. Additionally, comparable analysis which thoroughly addressed the tracking limitations of the remaining claims was also disclosed in Dr. Vigna's report. *See, e.g., id.* at ¶¶ 171-207, 251-274; 317-332. 



2. Facebook Mischaracterizes Dr. Vigna's Use Case No. 2 and Use Case No. 3

37. Facebook states 



[REDACTED]

[REDACTED]

Weinstein Decl., Ex. C at LTI 157109.”

This fact is DISPUTED as it mischaracterizes Dr. Vigna’s infringement report. All of the paragraphs cited merely provides general descriptions of Use Case Nos. 2 and 3, thus these descriptions do not represent Dr. Vigna’s infringement analysis of the claims. Indeed, detailed infringement analysis of particular claims of the ‘761 Patent is described later in the report. Furthermore, Facebook’s flawed attempt to group Dr. Vigna’s use cases results in mischaracterization of Dr. Vigna’s report.

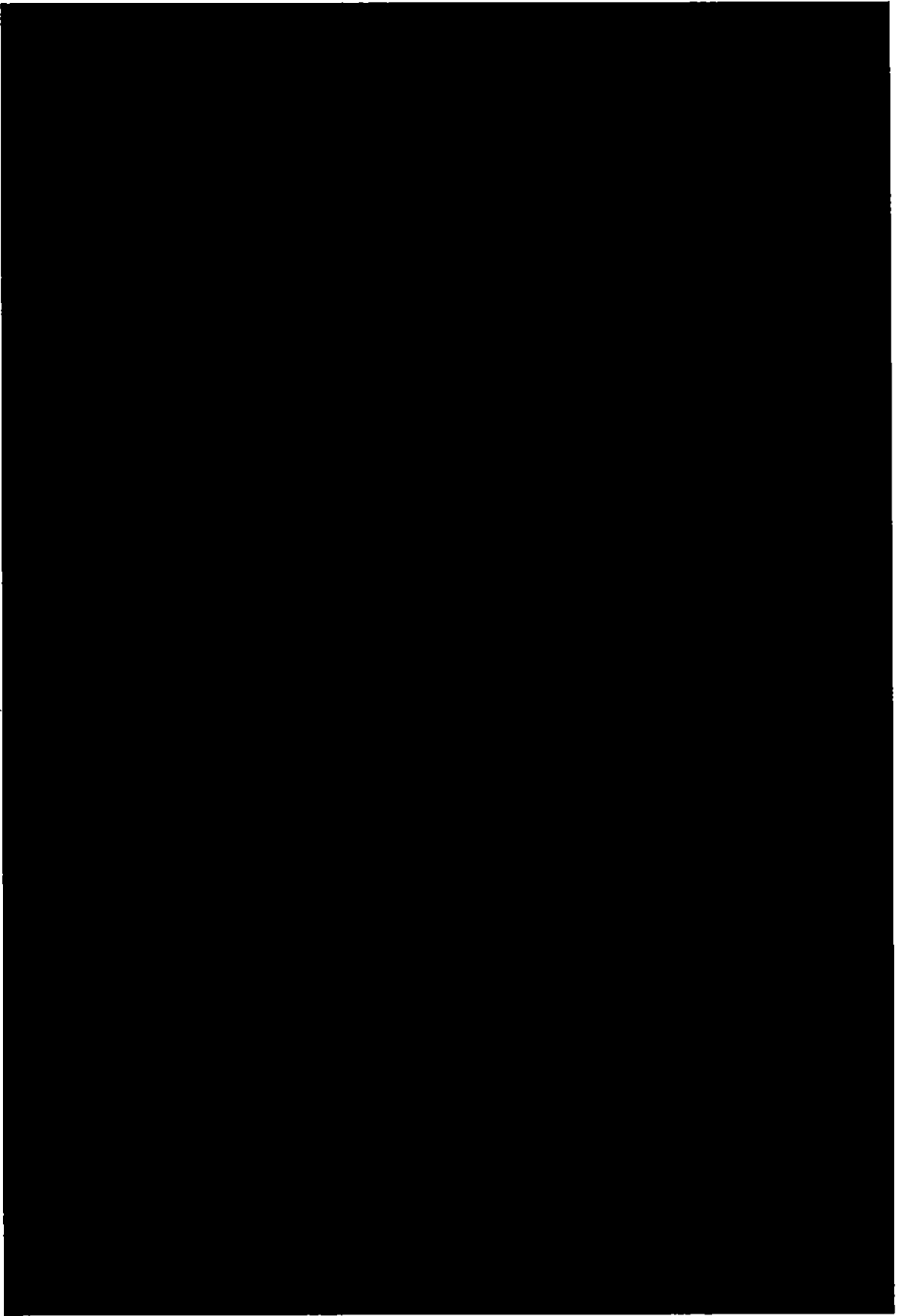
[REDACTED]

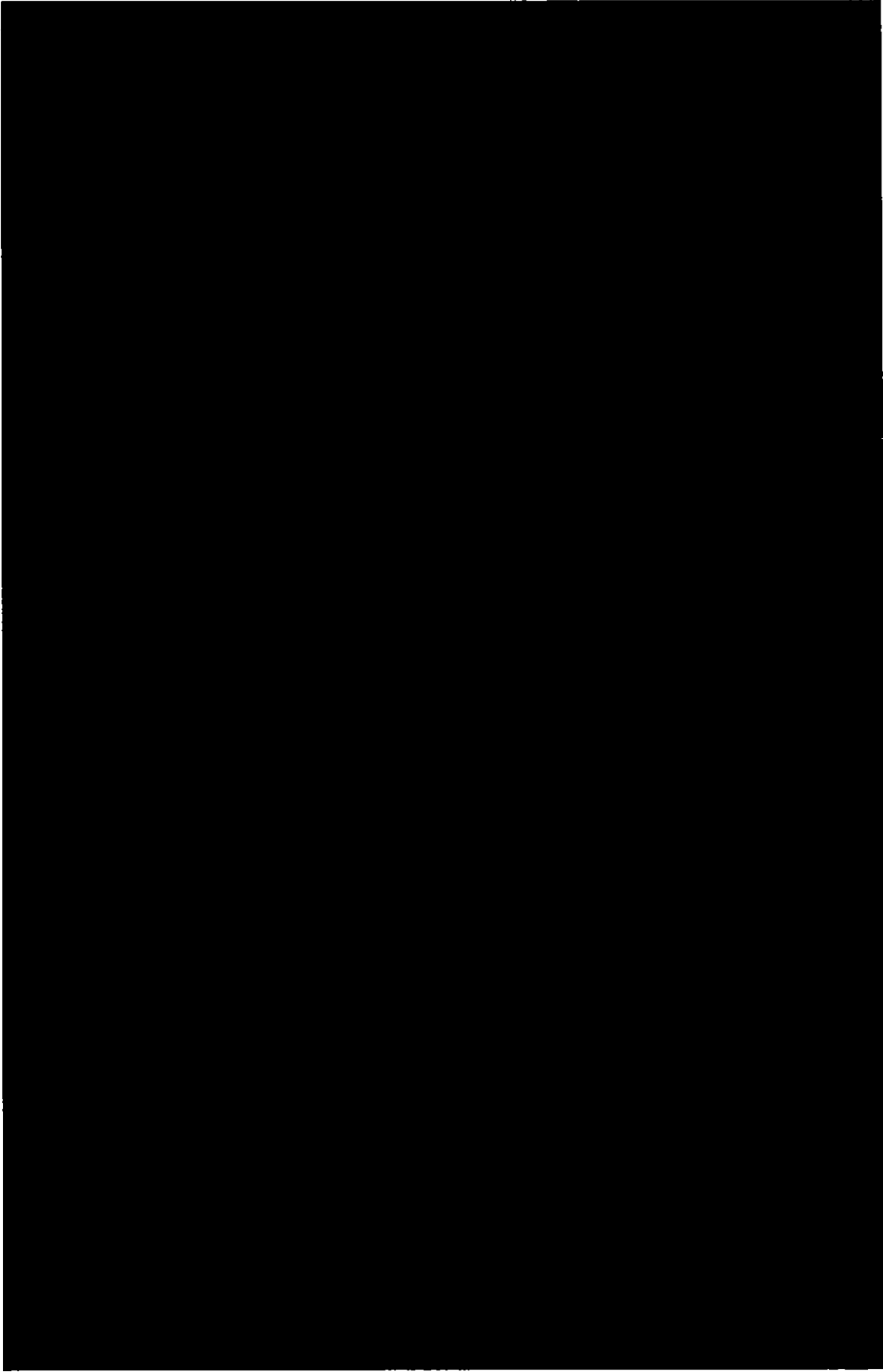
[REDACTED]

Furthermore, Facebook’s description of Dr. Vigna’s screenshot LTI 157109 leaves out the detailed infringement analysis of

[REDACTED]

[REDACTED]





D.I. 392, Ex. B at ¶¶ 337-338. Without any mention of Facebook's [REDACTED]

Facebook's description of the screenshot bearing bates number LTI 157109 does not reflect how it is used in Dr. Vigna's report.

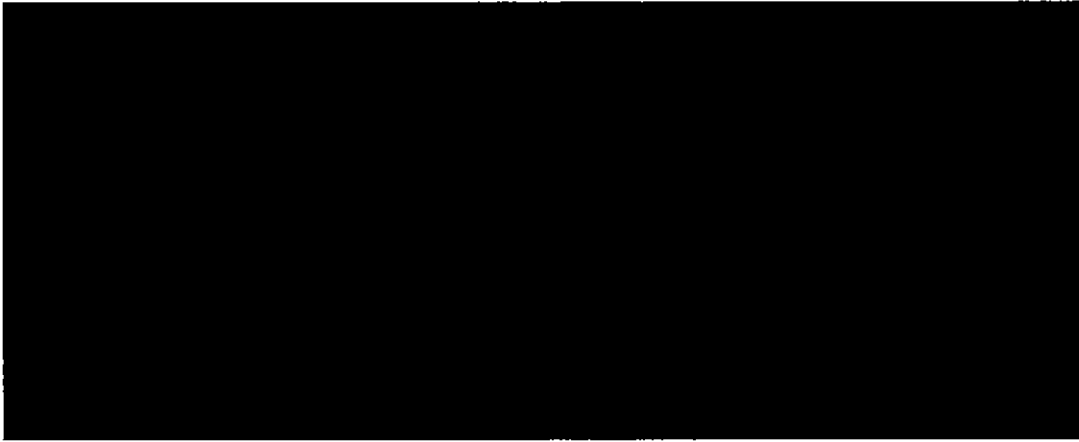
38. Facebook states [REDACTED]

[REDACTED]

This fact is DISPUTED as Facebook mischaracterizes Dr. Vigna's infringement analysis as being based on user's actions. Indeed, the majority of the [REDACTED]

[REDACTED] Without support, Facebook resorts to misquoting Dr. Vigna's report. Indeed, Facebook selectively pieces together mere fragments of Dr. Vigna's sentences. As a result, Dr. Vigna's actual analysis is inappropriately manipulated. Indeed, when the full analysis revealed, it unmistakable that Dr. Vigna's analysis is focused on the Facebook's

[REDACTED] For example, Facebook mischaracterizes Dr. Vigna's infringement analysis of Use Case No.2 by leaving the [REDACTED]



See D.I. 392, Ex. B, Dr. Vigna's Report at ¶ 95. As Facebook's assertion requires the omission of such details, its mischaracterizes the actual infringement analysis Dr. Vigna has provided.

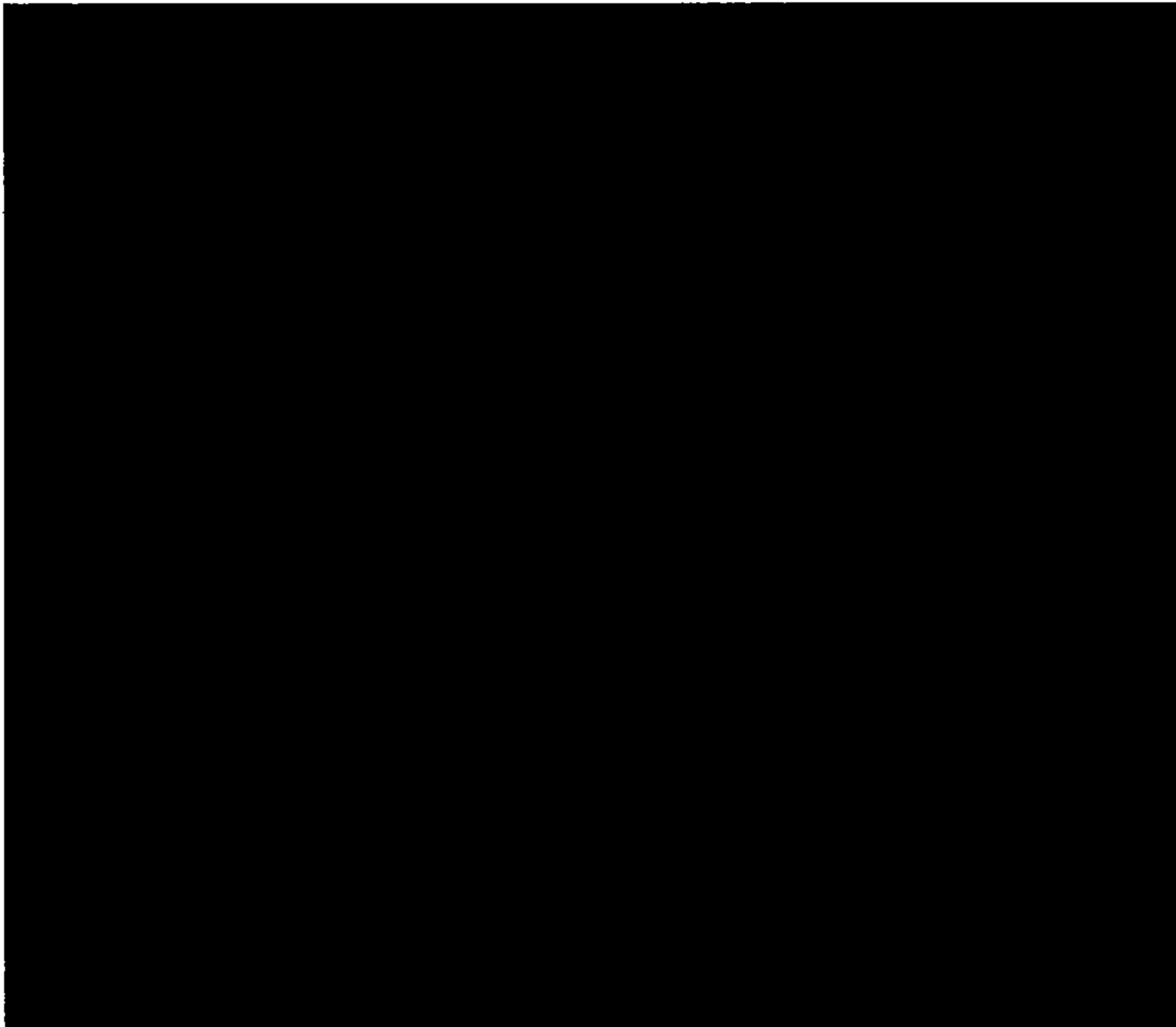
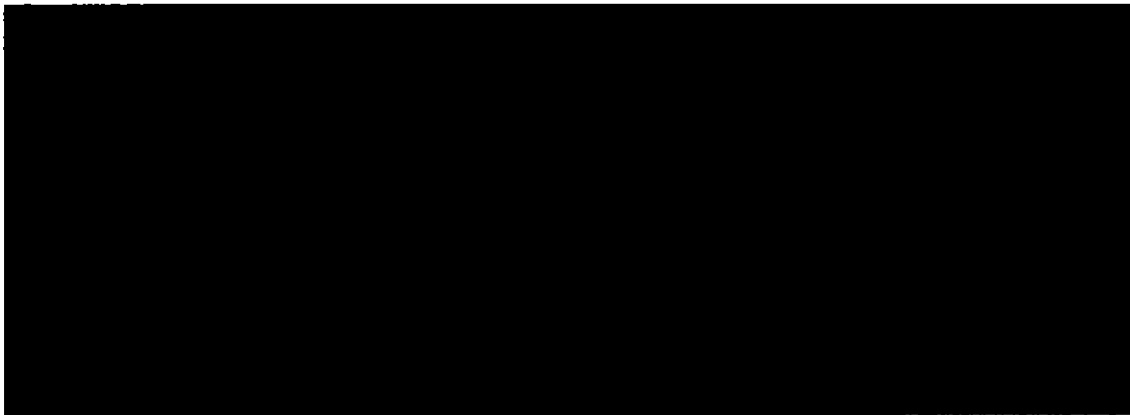



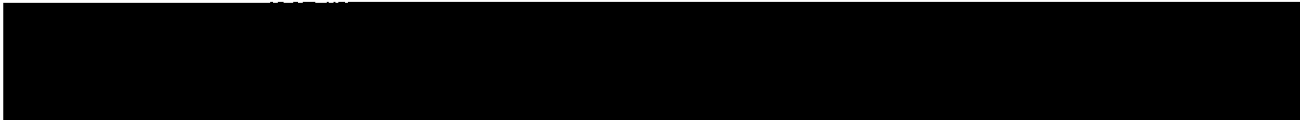


Exhibit A attached hereto for an example of Dr. Vigna's infringement analysis of the tracking limitations of claims 1, 9, 21, and claim 23. As such, Facebook's statement regarding Leader's infringement theory is disputed.

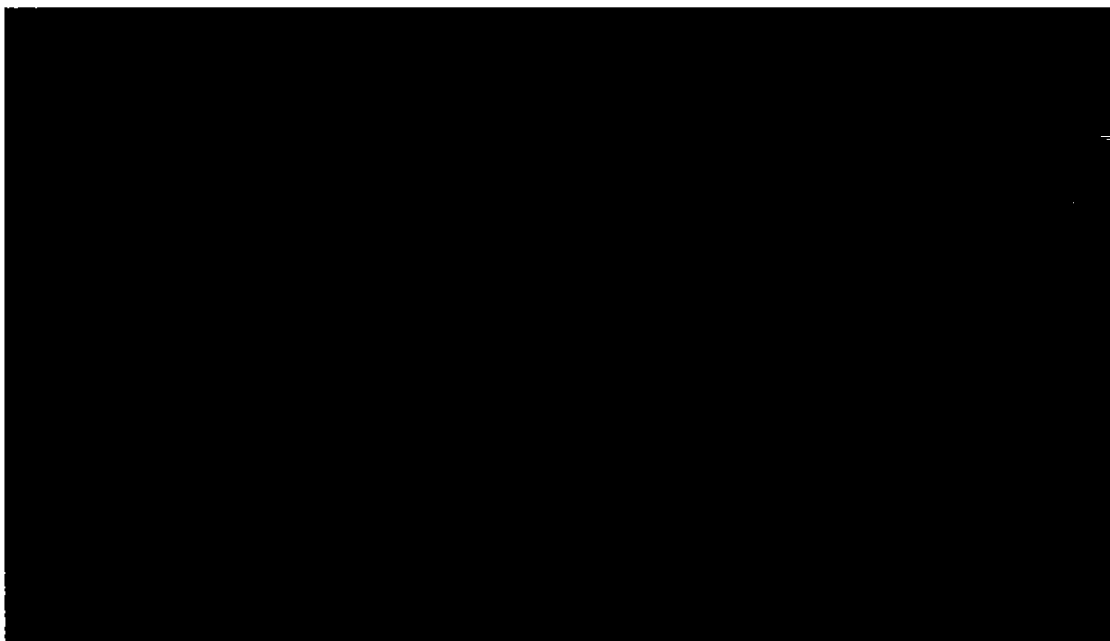
40. Facebook states "When asked at his deposition whether he had an opinion on this point, LTI's expert testified as follows:



Dr. Vigna's inability to answer this question was similarly unsurprising because, as discussed in connection with 



This fact is DISPUTED as the questions asked of Dr. Vigna during his deposition did not make any sense (which is why Dr. Vigna was having a difficult time understanding them). Here, Facebook's mischaracterizes Dr. Vigna's deposition testimony by leaving out the premise of Facebook's counsel's question from its motion. The following reveals that Facebook's question was premised on its absurd "example" requiring "metadata to be dynamically updated in the second context."



D.I. 392, Ex. D at 146:12-147:7 (emphasis added). With the appropriate background and knowing that the questions were outside the scope of Dr. Vigna's opinion, it becomes apparent why Dr. Vigna asked for the source code to provide a sensible answer to Facebook's questions. Accordingly, Facebook's assertion regarding Dr. Vigna's deposition testimony is disputed.

III. CONCLUSION

For the reasons noted above, Facebook's motion for summary judgment of non-infringement is based on disputed issues of material fact, and should be denied

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EXHIBIT A

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

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

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on June 11, 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.

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