

IN THE UNITED STATES COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC.,)	
a Delaware corporation,)	CIVIL ACTION
)	
Plaintiff and Counterdefendant,)	No. 1:08-cv-00862-JJF
)	
v.)	
)	
FACEBOOK, INC.,)	
a Delaware corporation,)	
)	
Defendant and Counterclaimant.)	
)	

**FACEBOOK, INC.’S RESPONSE TO LEADER TECHNOLOGIES, INC.’S
“COUNTERSTATEMENT OF DISPUTED MATERIAL FACTS” TO
FACEBOOK’S MOTION FOR SUMMARY JUDGMENT OF INVALIDITY**

[MOTION NO. 1 OF 6]

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I. INTRODUCTION

Facebook's motion presents the purely legal question of whether claims 1, 21 and 23 of U.S. Patent No. 7,139,761 (the "'761 patent") improperly claim both an apparatus and a step involving its use, rendering them invalid under *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377 (Fed. Cir. 2005). There are no facts whatsoever underpinning Facebook's motion, let alone any genuine issue of material fact that would preclude summary judgment. Facebook's ten-page motion did not attach any witness declaration, cite to any evidence or attach any document other than a copy of the '761 patent. This is because the only "fact" relevant to this motion is the undisputed language of the asserted claims.

LTI's gargantuan Counter-Statement, spanning 95 pages, attempts to create the illusion of factual issues by grossly mischaracterizing legal arguments from Facebook's motion as "disputed facts" and by raising collateral issues that have nothing to do with the issues presented. The Counter-Statement, for example, spends dozens of pages quoting from each party's expert reports regarding whether the accused Facebook website infringes the '761 patent, despite the fact that the operation of Facebook's website has no relevance whatsoever to this motion. LTI also spends six pages disputing a sentence from Facebook's opening brief that identifies the number and title of the '761 patent and quotes a statement from the summary section of the patent specification. These and the other examples addressed below illustrate the lengths to which LTI is willing to go to manufacture non-existent factual disputes in a vain attempt to avoid a simple legal issue.

LTI should simply have conceded that Facebook's motion presents no factual issues and argued its positions on the legal issues. The Counter-Statement instead

attempts to convey the false impression that a disputed fact must exist somewhere within its 95 pages of rambling and grossly repetitive text, but none exist. The Court should reject LTI's tactics and proceed to adjudicate this motion on its merits.

II. SUMMARY OF RESPONSE

Federal Circuit law is clear that apparatus claims that also include a step involving use of that apparatus are indefinite and therefore invalid under *IPXL Holdings*. 430 F.3d at 1384. LTI cannot dispute that the indefiniteness of claims 1, 21 and 23 presents a pure question of law for this Court to resolve. *See id.* at 1380; *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005) (“A determination of claim indefiniteness is a legal conclusion that is drawn from the court’s performance of its duty as the construer of patent claims”) (internal quotations and citation omitted).

Claims 1, 21 and 23 are invalid as a matter of law under *IPXL Holdings* based purely on their plain language. Claims 1 and 23 recite two system components (*i.e.* a “context component” and a “tracking component”), followed by the step that “the user accesses the data from the second context” (claim 1) or “the user accesses the data from the second user workspace” (claim 23), respectively. (Emphasis added). Claim 21 similarly covers a computer-readable medium for storing computer-executable instructions, but also claims the step in which “the user employs the application and data from the second user workspace.” (Emphasis added).

The vast majority of LTI's Counter-Statement is devoted to raising collateral issues that have no bearing on the outcome of this motion. The law on summary judgment is clear, however, that “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary

judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

LTI’s only discernable argument, after sifting through dozens of pages of irrelevant material, is one of claim construction. LTI’s basic argument is that claims 1, 21 and 23 are not invalid under *IPXL Holdings* because the method step in each claim (shown underlined above) merely recites a “functional limitation” that describes how the system responds to specific user actions. *See* D.I. 513 at 5-6. LTI’s own case law, however, establishes the fallacy of this argument. In *Collegenet, Inc. v. XAP Corp.*, 442 F. Supp. 2d 1036 (D. Or. 2006), cited in LTI’s Counter-Statement, the court noted that “[a] ‘functional limitation’ is ‘an attempt to define something by what it does, rather than by what it is (*e.g.*, as evidenced by its specific structure or specific ingredients).” *Id.* at 1062 (quoting MANUAL OF PATENT EXAMINING PROCEDURE § 2173.05(g) (8th ed., 2001, rev. 2005)). The method steps in claims 1, 21 and 23, however, are not functional limitations – they neither define what the claimed system “is” nor “what it does.” They instead describe a separate step in which “the user accesses” or “employs” data from the second context or second workspace.

The cases relied upon by LTI involve the situation in which the disputed claim limitation merely recites a *capability* or function of a claimed apparatus, not a step to be taken by a user. *See Microprocessor Enhancement Corp. v. Texas Instruments, Inc.*, 520 F.3d 1367, 1375 (Fed. Cir. 2008) (“Claim 7 of the ’593 patent, however, is clearly limited to a pipelined processor possessing the recited structure and *capable* of performing the

recited functions, and is thus not indefinite under *IPXL Holdings*.”¹ The rationale behind these cases is that a limitation stating the capability or function of the claimed apparatus does not actually recite a method step and is therefore permissible under *IPXL Holdings*. This reasoning might have relevance had the asserted claims of the ’761 patent been written to recite a system in which “the user *can* or *has the ability* to access the data from the second workspace,” but they were not. Claims 1, 21 and 23 plainly require a separate act performed by the user in which it “accesses” or “employs” data. The use of present tense verbs in these claims clearly indicates a step that the user performs, not merely an action the claimed system makes possible.

Claims 1, 21 and 23 are, in this respect, legally indistinguishable from the claim found invalid in *IPXL Holdings*. This is shown by the chart below comparing the claim found invalid in *IPXL Holdings* next to the relevant portions of claim 1:

Claim Invalidated by <i>IPXL Holdings</i>	Claim 1 of ’761 Patent
<p>The <u>system of claim 2</u> [including an input means] wherein the predicted transaction information comprises both a transaction type and transaction parameters associated with that transaction type,</p> <p><u>and the user uses the input means</u> to either change the predicted transaction information or accept the displayed</p>	<p><u>A</u> computer-implemented network-based <u>system</u> that facilitates management of data, comprising: [a context component]; and [a tracking component] for tracking a change of the user from the first context to a second context . . . , wherein</p> <p><u>the user accesses the data</u> from the second context. (Emphasis added).</p>

¹ See also *Ricoh Co. v. Katun Corp.*, 486 F. Supp. 2d 395, 402-03 (D.N.J. 2007); *Yodlee, Inc. v. CashEdge, Inc.*, No. 05-01550 SI, 2006 WL 3456610, at *6 (N.D. Cal. Nov. 29, 2006); *Sienna, LLC v. CVS Corp.*, No. 06 Civ. 3364 (DLC), 2007 WL 13102, at *8 (S.D.N.Y. Jan. 3, 2007); *Toshiba Corp. v. Juniper Networks, Inc.*, No. Civ. 03-1035-SLR, 2006 WL 1788479, at *4 (D. Del. June 28, 2006). LTI’s citation to *Collaboration Properties, Inc. v. Tandberg ASA*, No. C 05-01940 MHP, 2006 WL 1752140, at *3-4 (N.D. Cal. June 23, 2006) is inapposite because that case addressed whether a *method* claim could recite steps involving the use of a particular apparatus. Such a “reverse *IPXL*” problem is not presented by this motion.

transaction type and transaction parameters. (Emphasis added).	
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Critically, claim 1 of the '761 patent and the invalidated claim from *IPXL Holdings* both recite a system and include a step in which “the user” performs a particular act. Claims 1, 21 and 23 are invalid because, precisely like the claim from *IPXL Holdings*, they impermissibly cover an apparatus and a user-performed step involving its use.

LTI’s argument that claims 1, 21 and 23 recite a “functional claim element” is further undermined by claim 22 of the '761 patent, which has not been asserted in this case. Claim 22 is an independent claim that includes requirements similar to the other independent claims asserted in this case. But unlike claims 1, 21 and 23, claim 22 does not conclude with a step involving actual use of the claimed system:

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

computer-implemented means for creating data by interaction of a user within a user workspace of a server using an application;

computer-implemented means for associating metadata with the data, the metadata stored in association with the data on storage means of the server, the metadata includes information related to a user of the user workspace, to the data, to the application and to the user workspace;

computer-implemented means for tracking movement of the user from the user workspace to a second user workspace of the server; and

computer-implemented means for dynamically associating the data and the application with the second user workspace in the metadata such that the user can employ the application and data from the second user workspace.

'761 patent at Col. 23:1-19 (emphasis added).

The final clause of claim 22 above, that “the user can employ the application and data,” stands in stark contrast to claims 1, 21 and 23, which do not use the word “can” and instead plainly require that “the user accesses” or “the user employs” the data or the application. These differences confirm that if LTI had actually intended to merely claim an apparatus for giving the user the *capability* to employ the data from a second context or user workspace, it certainly knew how to do so and would have employed such language when it prosecuted claims 1, 21 and 23.

LTI also attempts to rewrite the claims through an implausible interpretation. With respect to claim 1, for example, LTI argues that it “includes a tracking component which performs a function of tracking the user as the user moves and dynamically updating the stored metadata based on the change **when** the user accesses the data from a second context.” D.I. 513 at 5-6 (emphasis added). This argument ignores the plain language of the claim.

LTI also argues that claims 1, 21 and 23 are not invalid because the patent examiner allowed those claims to issue. *See* D.I. 513 at 14.² But the same can be said of any claim that is challenged on the grounds of indefiniteness. Every claim found

² LTI claims that the patent examiner “requested the limitation before permitting allowance.” D.I. 513 at 14. There is no evidence, however, that the limitation was requested by the examiner. The amendment was part of a broader Examiner’s Amendment that was specifically discussed in an Interview between LTI’s representative and the examiner two weeks before the Notice of Allowability was issued. *See* Declaration of Kathryn Robinson in Support of Defendant Facebook, Inc.’s Reply to Leader Technologies, Inc.’s Counterstatements to Motions for Summary Judgment (“Robinson Decl.”), Ex. 1 (“Applicant and Examiner discussed amending claims 18, 26, 36, 41, 45 and 52 to overcome the prior art by an Examiner’s Amendment (attached)”). This interview followed several other extensive interviews between LTI and the patent examiner for which there is no record in the prosecution file. There is nothing in the prosecution record to indicate precisely how the amendments came about or who originally suggested them.

indefinite by a federal court was necessarily a claim previously found patentable by a patent examiner. The apparatus claim found invalid in *IPXL Holdings*, for example, was obviously found patentable by a patent examiner or it could not have issued and resulted in an infringement suit. In the present case, the fact that the patent examiner allowed claims 1, 21 and 23 has no bearing on whether those claims are indefinite under 35 U.S.C. § 112 ¶ 1. There is no evidence from the prosecution record that the examiner ever considered or was even aware of the indefiniteness issue presented in this motion.

III. RESPONSE TO LTI'S COUNTER-STATEMENT

LTI's Counter-Statement includes 37 numbered paragraphs that purport to identify allegedly "disputed" facts in Facebook's opening brief. As shown in the analysis below, however, these paragraphs do not identify a single factual statement in Facebook's opening brief, let alone any genuine issue of material fact.

A. Response to Paragraph 1 (Pages 1-4)

The only statement to which Paragraph 1 of the Counter-Statement purports to respond is the first sentence of the Summary of the Argument section of Facebook's opening brief: "This motion presents a pure question of law and application of the Federal Circuit's decision in *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377 (Fed. Cir. 2005)." D.I. 384 at 1. LTI claims that this is a "disputed fact" and uses this purported "fact" as an excuse to bulk up its Counter-Statement with lengthy and rambling quotations from the report of its infringement expert (Giovanni Vigna), followed by differing opinions by Facebook's expert (Michael Kearns). *See* D.I. 513 at 1-4.

LTI's misleading presentation of the parties' infringement experts is nothing more than a straw man argument designed to create the fantasy that there is some kind of factual dispute. The fact of the matter is that LTI's infringement claims have nothing to

do with this motion and raise no material factual issue that could preclude summary judgment. *See Anderson*, 477 U.S. at 248 (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”). This motion concerns only the question of whether the plain language of claims 1, 21 and 23 are indefinite and therefore invalid as a matter of law, irrespective of any attempt to apply them to an accused system. Nothing about the accused Facebook website has any relevance to the question of indefiniteness under *IPXL Holdings*, and LTI’s attempt to confuse the Court with irrelevant (and largely incoherent) excerpts from expert reports should be ignored.

B. Response to Paragraph 2 (Pages 4-14)

Paragraph 2 of the Counter-Statement purports to respond to the second sentence of the Summary of the Argument section of Facebook’s opening brief: “Claims 1, 21 and 23 of the ’761 patent are impermissible ‘hybrid’ claims that recite both an apparatus and a method of using it, rendering them invalid under *IPXL Holdings* and 35 U.S.C. § 112 ¶ 2.” D.I. 384 at 1. This statement, on its face, is simply an argument relating to the scope of claims 1, 21 and 23 and the applicability of controlling Federal Circuit authority. It is not a “fact” susceptible of dispute, as LTI claims.

Paragraph 2 of LTI’s Counter-Statement spans 11 pages and again presents a series of immaterial and repetitive detours relating to LTI’s infringement claims, interspersed with legal arguments regarding the applicability of *IPXL Holdings* and the scope of claims 1, 21 and 23. LTI’s legal and claim construction arguments were addressed in Part II of this Response, above. LTI’s other arguments pertaining to its infringement claims against Facebook do not raise any genuine issue of material fact because they are irrelevant to this motion. *See Anderson*, 477 U.S. at 248 (“Only

disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”).

C. Response to Paragraph 3 (Pages 14-17)

Paragraph 3 of the Counter-Statement purports to respond to the third sentence of the Summary of the Argument section of Facebook’s opening brief: “In particular, claims 1 and 23 purport to cover both an apparatus or system for facilitating management of data and a method for using it (*i.e.*, ‘the user accesses the data from the second’ context or workspace).” D.I. 384 at 1. This statement is simply a description of what the claims cover, not a disputed fact. The words of the claims speak for themselves. The Counter-Statement goes on to repeat the same legal arguments presented in connection with Paragraphs 1-2, *supra*, regarding the scope of claims 1 and 23. Nothing in Paragraph 3 raises any genuine issue for trial.

D. Response to Paragraph 4 (Pages 17-19)

Paragraph 4 purports to respond to the fourth sentence of the Summary of the Argument section of Facebook’s opening brief: “Claim 21 purports to cover both a computer readable medium (such as a DVD) and a method of using it (*i.e.*, ‘the user employs the application and data from the second user workspace’).” D.I. 384 at 1. As with Paragraph 3 above, this statement is merely a description of what claim 21 covers, not a disputed “fact” as LTI claims. This paragraph of LTI’s Counter-Statement is largely a cut-and-paste of the legal arguments above. Paragraph 4 raises no genuine issue for trial.

E. Response to Paragraph 5 (Page 19)

Paragraph 5 of LTI’s Counter-Statement purports to respond to the fifth sentence of the Summary of the Argument section of Facebook’s opening brief: “The Federal

Circuit in *IPXL Holdings* has squarely held that these hybrid claims are invalid because they are ‘not sufficiently precise to provide competitors with an accurate determination of the ‘metes and bounds’ of [the] protection involved.’” D.I. 384 at 1 (quoting from *IPXL Holdings, L.L.C.*, 430 F.3d at 1384). This statement is simply an assertion of law and a quote, not a disputed “fact” as LTI claims. LTI’s legal arguments regarding the applicability of *IPXL Holdings* were addressed in Part II of this Response, above.

F. Response to Paragraph 6 (Pages 20-23)

Paragraph 6 of LTI’s Counter-Statement purports to respond to the sixth sentence of the Summary of the Argument section of Facebook’s opening brief: “Claims 1, 21 and 23 (and all of their asserted dependent claims) are therefore invalid.” D.I. 384 at 1. LTI’s Counter-Statement simply presents a rehash of the same legal arguments presented in Paragraph 2, which were addressed in Part II of this Response, above.

G. Response to Paragraphs 7-8 (Pages 23-25)

Paragraphs 7 and 8 of LTI’s Counter-Statement purport to respond to the first and second sentences of the second paragraph of the Summary of the Argument section of Facebook’s opening brief: “This pure question of law is particularly suitable to summary judgment. There is no genuine issue as to any material fact because the language of the asserted claims – the only evidence relevant to this motion – is undisputed.” D.I. 384 at 1. The truth of these two statements is made evident by LTI’s fruitless attempts to rebut them, which attempt to manufacture a factual dispute through the differing opinions of the parties’ respective expert witnesses on infringement issues unrelated to indefiniteness. But as explained above, LTI’s infringement claims are immaterial to this motion.

H. Response to Paragraph 9 (Pages 25-28)

Paragraph 9 of LTI's Counter-Statement purports to respond to the third sentence of the second paragraph of the Summary of the Argument section of Facebook's opening brief: "The sole issue is whether claims 1, 21 and 23 incorporate a method step directed to using the claimed apparatus or structure, and therefore impermissibly 'recite[] both a system and the method for using that system,' *IPXL Holdings*, 430 F.3d at 1384." D.I. 384 at 1-2. This sentence recites the sole issue presented by Facebook's motion, and LTI's Counter-Statement, which merely repeats the same legal arguments that were previously addressed in Part II of this response above, is without merit.

I. Response to Paragraph 10 (Pages 28-33)

LTI devotes six pages of its Counterstatement to disputing the following benign sentence from Facebook's opening brief: "U.S. Patent No. 7,139,761, entitled 'Dynamic Association of Electronically Stored Information with Iterative Workflow Changes,' purports to disclose a data management tool for use in 'communications, organization, information processing, and data storage.'" D.I. 384 at 2 (quoting '761 patent at Col. 3:16-19). The first part of this sentence is simply the patent number and title from the face of the patent, and the second part is a direct quote from the "Summary of the Invention" of the '761 patent. LTI uses this background statement as an excuse to pad its Counter-Statement with extensive quotations from irrelevant portions of the specification and conclusory excerpts from the expert report of one of LTI's experts (James Herbsleb). Nothing in the six pages that LTI wastes on Paragraph 10 of its Counter-Statement raises any genuine issue of material fact. The '761 patent speaks for itself and LTI does not raise any material issue of fact to preclude summary judgment by disputing quotes.

J. Response to Paragraph 11 (Page 33)

Paragraph 11 quibbles with the indisputably true statement from Facebook's opening brief that: "The patent specification states that the invention relates to 'structures and methods for creating relationships between users, applications, files, and folders.'" D.I. 384 at 2 (quoting '761 patent at Col. 1:21-23). LTI's attempt to dispute this statement, which was based on a direct quote from '761 patent, shows the lengths to which it is willing to go to manufacture supposed factual disputes. Clearly there is no disputed fact raised here.

K. Response to Paragraph 12 (Pages 33-34)

Paragraph 12 attempts to dispute the statement from Facebook's opening brief that: "Claim 1 and 23 are apparatus claims, and claim 21 covers a computer readable medium." D.I. 384 at 2. LTI states that "[t]his fact is DISPUTED," then uses that false assertion as an excuse to waste two more pages quoting the entirety of claims 1, 21 and 23. D.I. 513 at 33. Tellingly, LTI does not identify any inaccuracies with Facebook's statement that claims 1 and 23 are both apparatus (system) claims and claim 21 covers a computer-readable medium. Thus, no issues are raised here, either.

L. Response to Paragraph 13 (Pages 34-38)

Paragraph 13 of the Counter-Statement incredibly spends four pages disputing the statement that: "This motion concerns claims 1, 21 and 23 and all asserted claims that depend from them." D.I. 384 at 2. This statement is neither a "fact," nor is it "disputed" as LTI contends. It is simply a statement regarding the scope of the issues Facebook addressed in its motion for summary judgment. LTI's response on pages 34-38 is just a duplication of arguments made earlier, which were addressed above. Nothing here precludes summary judgment.

M. Response to Paragraph 14 (Pages 38-46)

Paragraph 14 of LTI's Counter-Statement spends nine pages purporting to dispute the following statement from Facebook's opening brief: "As explained below, those claims [1, 21 and 23] are invalid 'hybrid' claims because they purport to cover both an apparatus or computer medium and a method of using it." D.I. 384 at 2. LTI's response to this legal argument primarily consists of a cut-and-paste duplication of the exact arguments LTI presented in connection with Paragraphs 1 and 2 of its Counter-Statement, which were addressed above.

LTI also argues that claims 1, 21 and 23 are not indefinite because Facebook's invalidity expert, Dr. Saul Greenberg, "was able to prepare an invalidity expert report applying several pieces of prior art to the claims without apparent problem." D.I. 513 at 43. This argument misses the point for several reasons. First, neither Dr. Greenberg nor any other expert in this case has offered any opinion on whether or not the asserted claims of the '761 patent are indefinite. This is because the applicability of *IPXL Holdings* is a pure question of law for which expert testimony would not be helpful.

Moreover, the indefiniteness issue presented by this motion is very different from the typical one in which a defendant contends that a particular word or phrase in a claim is so ambiguous as to render it indefinite. Claims 1, 21 and 23 are indefinite not because a particular word or phrase is unclear, but because there is a fundamental flaw in the structure of the claims and irreconcilable confusion as to what they cover. Because claims 1, 21 and 23 merge apparatus components and method steps, a competitor cannot determine if those claims are infringed by the mere manufacture, use or sale of the claimed network-based system or computer-readable medium, or only when an end-user actually accesses or employs the data from the second context or user workspace. This

distinction, while rendering the claims indefinite under *IPXL Holdings*, was unimportant to Dr. Greenberg's analysis because all of the prior art references he relied upon disclose both the claimed system/computer medium and the use of that system as recited in claims 1, 21 and 23. The fact that Dr. Greenberg did not opine on an indefiniteness issue that was irrelevant to his analysis of the prior art and raises no issue of material fact.

N. Response to Paragraphs 15-25 (Pages 46-57)

Paragraphs 15-25 of LTI's Counter-Statement attempt to respond to statements appearing between pages 2 through 5 of Facebook's opening brief that merely summarize the subject matter of the asserted claims. The language of the asserted claims is undisputed as the patent speaks for itself. LTI's disagreement with Facebook's description of the claims cannot change their plain language and does not raise any genuine issue of material fact that would preclude summary judgment.

O. Response to Paragraphs 26-27 (Pages 57-65)

Paragraphs 26 and 27 of the Counter-Statement purport to respond to the following two sentences from Facebook's opening brief: "Claims 1, 21 and 23 are invalid because each claim improperly combines at least two statutory classes. In particular, claims 1 and 23 improperly recite both an apparatus and a method of use of the apparatus, while claim 21 recites both a computer-readable medium and a method of using it." D.I. 384 at 6. LTI's response to these statements is nothing more than a near-verbatim duplication of the legal arguments presented in earlier paragraphs of LTI's Counter-Statement, which were addressed in detail above. Nothing in those arguments raises any factual issues.

P. Response to Paragraph 28 (Page 65)

Paragraph 28 of the Counter-Statement purports to respond to the statement in Facebook’s opening brief that: “Claims 1, 21 and 23 are strikingly similar in structure to the claim found invalid in *IPXL Holdings*.” D.I. 384 at 8. This is a legal argument regarding the scope of the asserted claims, not a “disputed” fact as LTI claims. As explained in Part II above, there are no material differences between the claim in *IPXL Holdings* found invalid and claims 1, 21 and 23. But even if LTI disagrees with this assertion, it presents at best an issue of law for the Court to resolve, not a genuine issue of material fact.

Q. Response to Paragraph 29 (Pages 65-68)

Paragraph 29 of LTI’s Counter-Statement attempts to respond to a statement appearing on page 8 of Facebook’s opening brief that accurately summarizes claims 1 and 23 of the ’761 patent. The language of these claims is undisputed: LTI’s disagreement with Facebook’s description of that claim language does not change the language and does not raise any genuine issue of material fact. LTI’s arguments within this paragraph simply repeat its earlier legal arguments, which were addressed above.

R. Response to Paragraph 30 (Pages 68-70)

Paragraph 30 of LTI’s Counter-Statement purports to dispute the statement from Facebook’s opening brief that: “Both claims [1 and 23] therefore improperly combine statutory classes by reciting a step that must be performed by the user of the earlier claimed apparatus.” D.I. 384 at 8. LTI’s Counter-Statement responds to this statement, which is a purely legal argument based on the language of the claims, by rehashing the arguments addressed in Part II, *supra*. Nothing here raises any genuine issue of material fact.

S. Response to Paragraph 31-33 (Pages 71-74)

Paragraphs 31 through 33 of LTI's Counter-Statement purport to respond to similar statements with respect to claim 21 of the '761 patent. These paragraphs add nothing beyond mere repetition of earlier arguments from LTI's Counter-Statement, and they raise no genuine issue of material fact.

T. Response to Paragraphs 34-36 (Pages 74-91)

Paragraphs 34-36 of LTI's Counter-Statement attempt to respond to the following legal arguments from Facebook's opening brief:

Claims 1, 21 and 23 do not reasonably convey their scope to potential competitors because it is unclear what, if anything, would constitute infringement. As with the claim rejected in *IPXL Holdings*, it is unclear whether claims 1, 21 and 23 are infringed by the mere making, using or selling of the claimed network-based system or computer readable medium, or if infringement occurs only when an end-user actually accesses the data from the second context or user workspace of such system or medium. As in *IPXL Holdings*, because of the combination of two separate statutory classes of invention within a single claim, a manufacturer or seller of the apparatus or computer-readable medium of claims 1, 21 or 23 of the '761 patent "would not know from the claim whether it might also be liable for contributory infringement because a buyer or user of the apparatus later performs the claimed method of using the apparatus." 430 F.3d at 1384 (citation omitted).

D.I. 384 at 8-9. The passage shown above makes a legal argument regarding the application of *IPXL Holdings* to the undisputed language of claims 1, 21 and 23 of the '761 patent. It presents no facts capable of dispute, but only legal arguments for the Court to resolve. LTI's response struggles mightily to create a mirage of factual disputes through verbatim repetition of earlier arguments, but LTI does not raise any genuine issue of material fact that would preclude summary judgment.

U. Response to Paragraph 37 (Pages 91-95)

The final paragraph of LTI's Counter-Statement purports to respond to the final portion of Facebook's opening brief, which argues that dependent claims 4, 7, 25, 31 and 32 are indefinite because the claims from which they depend are also indefinite. *See* D.I. 384 at 9. LTI's Counter-Statement merely reproduces earlier legal arguments regarding the independent claims, while failing to address the dependent claims. Nothing in this paragraph raises any genuine issue of material fact.

IV. CONCLUSION

For the reasons stated above, Facebook respectfully requests that this Court reject LTI's "Counter-Statement of Disputed Material Facts" and order LTI to file an answering brief and proceed to decide the merits of Facebook's motion for summary judgment.

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