

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

LEADER TECHNOLOGIES, INC., a  
Delaware corporation,

Plaintiff and Counterdefendant,

v.

FACEBOOK, INC., a Delaware  
corporation,

Defendant and Counterclaimant.

Civil Action No. 1:08-cv-00862-JJF

**PUBLIC VERSION**

**CONFIDENTIAL - FILED UNDER SEAL**

**FACEBOOK, INC.'S RESPONSE TO LEADER TECHNOLOGIES, INC.'S  
"COUNTERSTATEMENT OF DISPUTED MATERIAL FACTS" TO  
FACEBOOK'S MOTION FOR JUDGMENT OF NON-INFRINGEMENT**

**[MOTION NO. 3 OF 6]**

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FOR THE DISTRICT OF DELAWARE**

LEADER TECHNOLOGIES, INC.,	)	
a Delaware corporation,	)	<b>CIVIL ACTION</b>
	)	
Plaintiff and Counterdefendant,	)	<b>No. 1:08-cv-00862-JJF</b>
	)	
v.	)	
	)	<b>CONFIDENTIAL -</b>
FACEBOOK, INC.,	)	<b>FILED UNDER SEAL</b>
a Delaware corporation,	)	
	)	
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Dated: June 11, 2010

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**I. INTRODUCTION**

Facebook’s motion for summary judgment of non-infringement is based on a simple three-part argument:

- (1) Redacted
  
- (2) LTI has no evidence that Facebook satisfies that requirement; therefore
  
- (3) LTI has not and cannot establish infringement.

To avoid any possible factual disputes, the only evidence Facebook relied upon in its opening brief was that proffered by LTI in the expert report and deposition testimony of its own expert, Giovanni Vigna. Even the screenshots of Facebook’s website came from Dr. Vigna’s own report to avoid giving LTI any opportunity to object. LTI’s own purported “proof” indisputably established LTI’s complete failure to prove that the accused Facebook website Redacted

LTI’s prolix Counter-Statement ignores this claim requirement entirely and instead seeks to distract the Court with dozens of pages of ancillary technical details that have no bearing on this single, missing claim element. LTI manages to raise objections, often frivolous ones, to virtually every statement in Facebook’s opening brief, including quotations from LTI’s own patent. Tellingly, however, nowhere does LTI identify any instance Redacted

Therefore, Facebook respectfully requests that the Court reject LTI’s

“Counter-Statement,” proceed to adjudicate this motion on its merits, and enter summary judgment that Facebook does not infringe the ’761 patent.

## II. SUMMARY OF ARGUMENT

Although many limitations of the asserted claims are not satisfied by the accused Facebook website, Facebook’s motion for summary judgment focuses exclusively on the requirement of all independent claims Redacted

It is well-established that LTI bears the burden of proving that Facebook satisfies this claim element. *See Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1330 (Fed. Cir. 2001).

LTI spends the majority of its Counter-Statement block-quoting excerpts from its expert report that have nothing to do with this claim element, hoping the Court will somehow focus on other claim elements and ignore the single one at issue here. The Counter-Statement appears to have been designed to appear overwhelmingly voluminous in the hopes that the Court would simply throw up its hands and conclude that there must be a disputed fact in there somewhere.<sup>1</sup> LTI’s tactics should be rejected. Summary judgment is mandated when, as here, “the patent owner’s proof is deficient in meeting an essential part of the legal standard for infringement, since such failure will render all other facts immaterial.” *Id.* at 1323. LTI’s attempted distractions and obfuscations do not change the fact that it has Redacted

.... As such, summary judgment should therefore be granted.

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<sup>1</sup> The Counter-Statement includes such nonsensical statements as “[t]his fact is DISPUTED because it is not a fact” (D.I. 509 ¶ 9), and goes as far as labeling – as a factual dispute – a direct quotation of the language of the claims of the ’761 patent simply because Facebook underlined a portion of the claim for emphasis (which Facebook noted using an appropriate “emphasis added” notation) (*id.* ¶ 11).

### **III. RESPONSE TO LTI'S COUNTER-STATEMENT**

LTI's Counter-Statement includes 40 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 disputed factual statement in Facebook's opening brief, let alone any genuine issue of material fact.

#### **A. Response to Paragraphs 1-7 (Pages 1-6)**

The first seven paragraphs of LTI's Counter-Statement purport to "dispute" the section of Facebook's opening brief entitled "Background of the '761 Patent," which contains a description of the system disclosed in the specification of the patent-in-suit based entirely on disclosures in the patent itself. *See* D.I. 391 at 2-3. LTI's only "disputes" relate to which portions of the specification are discussed and emphasized in this portion of Facebook's opening brief. The explicit disclosures in the '761 patent specification are obviously undisputed. The patent specification speaks for itself and LTI's dissatisfaction with the statements in the patent raise no genuine issue of material fact that could preclude summary judgment.

#### **B. Response to Paragraph 8 (Page 6)**

In what is perhaps the only statement from Facebook's opening brief with which LTI does not take issue, LTI concedes "for the purposes of this motion" that Facebook has accurately identified the asserted claims of the '761 patent.

#### **C. Response to Paragraph 9 (Page 7)**

Paragraph 9 of the Counter-Statement purports to respond to the following statement from Facebook's opening brief: "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." D.I. 391 at 3-4 (citing

*Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 1383 (Fed. Cir. 2000)). LTI inexplicably responds to this benign statement with the following: “This fact is DISPUTED because it is not a fact.” D.I. 509 ¶ 9. But as LTI’s nonsensical response makes clear, this statement is merely an identification of the issues addressed in Facebook’s Motion, and the obvious legal consequences of the conclusion that an independent claim is found not to infringe. LTI’s *non sequitur* regarding a legal issue does not raise a genuine issue of material fact.

**D. Response to Paragraph 10 (Pages 7-10)**

Paragraph 10 of the Counter-Statement purports to address the following statement from Facebook’s opening brief:

Redacted

. This is simply an identification of what the independent claims cover. LTI’s purported factual “disputes” conspicuously ignore the Court’s claim construction

Redacted

But in any case, LTI’s assertions present nothing more than legal arguments about claim construction that are for this Court, not for a jury, to decide. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996).

With respect to claim construction, LTI appears to argue that the claims of the ’761 patent do not require

Redacted

LTI argues that Facebook’s construction does not account for the final step of claim 1, “wherein the user



accesses the data from the second context,” and similar steps in claims 21 and 23. *See* D.I. 509 at 7-8. But LTI does not explain how these claim steps have anything to do with

Redacted

LTI also cites irrelevant portions of the expert report of Dr. Saul Greenberg, Facebook’s expert on invalidity.

Redacted

**E. Response to Paragraph 11 (Page 10)**

In a clear example of the lengths to which LTI will strive to create the illusion of a factual dispute, Paragraph 11 of the Counter-Statement actually takes issue with a portion of Facebook’s opening brief that merely reproduces, verbatim, the language of claim 1. *See* D.I. 391 at 4. LTI wastes a page of its Counter-Statement quibbling with the fact that Facebook underlined portions of the claim language for emphasis (which Facebook indicated with an appropriate “emphasis added” notation). *Id.* LTI’s attempt to conjure a factual dispute out underlining plain language from the claims should be rejected. There is simply no factual dispute here.

**F. Response to Paragraphs 12-13 (Page 10-13)**

Paragraphs 12-13 of the Counter-Statement attempt to argue that the following passage from Facebook’s opening statement presents facts that are “disputed:”

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 limitation also derives from the plain language of the claim requiring “updating the stored metadata based on the change.”

D.I. 391 at 4-5.

Redacted

At best, it presents LTI’s *post hoc* disagreements with a claim construction that this Court has already decided as a matter of law. Again, there is no factual issue here.

**G. Response to Paragraphs 14-21 (Pages 13-24)**

Paragraphs 14-24 of the Counter-Statement purport to respond to Facebook’s description of claims 9, 21 and 23,

Redacted

LTI’s

Counter-Statement simply recycles and reproduces the exact same arguments presented in connection with claim 1 above for each of the claims 9, 21 and 23. Those arguments relate, at best, solely to a legal claim construction issue and not a “disputed” factual issue.

*See also* Part III.F, above.

**H. Response to Paragraph 22 (Pages 24-25)**

Paragraph 22 of the Counter-Statement purports to respond to the following transitional statement on page 6 of Facebook’s opening brief: “As shown in the next section, LTI has not and cannot show that this requirement is performed by Facebook.” D.I. 391 at 7. LTI points to Dr. Vigna’s expert report which, according to LTI, “provides 177 pages of factual basis...” D.I. 509 at 24.

Obviously the length of Dr. Vigna’s expert report has nothing to do with whether he addressed the particular claim element that Facebook’s opening brief shows is missing. As with its other “disputes,” LTI does not address what is clearly missing from that report, as discussed below. LTI has again raised no genuine issue of material fact precluding the summary judgment Facebook seeks.

**I. Response to Paragraphs 23-24 (Pages 25-27)**

Paragraphs 23-24 of LTI’s Counter-Statement purport to respond to the following two sentences from Facebook’s opening brief:

Redacted

D.I. 391 at 7.

Redacted

.....  
Redacted

As explained in Facebook’s pending Motion *in Limine* No. 2 (D.I. 415), Dr. Vigna’s expert report was required to provide “a complete statement of all opinions the witness will express and the basis and reasons for them.” Fed. R. Civ. P. 26(a)(2)(B)(i).

Redacted

Facebook’s motion for summary judgment, therefore, would dispose of the entirety of LTI’s claim of infringement against Facebook. Perhaps LTI now wishes its expert

report contained more, but wishes are not facts. LTI's attempt to now try to argue that its expert report contains more is also not an issue of fact.

**J. Response to Paragraph 25 (Pages 27-36)**

Paragraph 25 of LTI's Counter-Statement attempts to dispute the following statement from Facebook's opening brief, " . . .

":

Redacted

D.I. 391 at 7-8. . .

Redacted

LTI's reproduction of the text of Dr. Vigna's report – containing an overwhelming mountain of details that have no relevance to this motion – seems to have been designed to create an illusion of a factual dispute.

Redacted

Redacted

Redacted

**K. Response to Paragraph 26 (Page 36)**

Paragraph 26 of the Counter-Statement purports to dispute the following statement from Facebook's opening brief:

Redacted

Redacted

•

•

•



Redacted

**L. Response to Paragraph 27 (Pages 37-38)**

Paragraph 27 of the Counter-Statement purports to respond to the following statements in Facebook's opening brief:

Redacted

D.I. 391 at 8.

LTI does not directly address this statement in its Counter-Statement. LTI instead mischaracterizes this statement and uses it as an excuse to discuss other details of its infringement analysis

Redacted

Redacted

**M. Response to Paragraph 28 (Pages 38-39)**

Paragraph 28 of the Counter-Statement purports to create a factual dispute out of

Redacted

Redacted

**N. Response to Paragraph 29 (Pages 39-41)**

Paragraph 29 of the Counter-Statement purports to create a factual dispute out of

Redacted

Redacted

LTI has no good faith basis to claim that these statements are inaccurate, as they were derived directly from quotations of Dr. Vigna's expert report, as shown above. LTI also complains that Facebook's description omits "underlying architecture details," D.I. 509 at 40, but does not explain how those purported "details" would create any genuine issue of material fact related to this motion. Facebook's opening brief properly focused on those aspects of LTI's infringement theory that were material,

Redacted

LTI's attempt to cite other aspects of its infringement analysis is unavailing, as its failure of proof on this critical claim element "necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

**O. Response to Paragraph 30 (Page 41)**

LTI's next attempts to take issue with the following statement from Facebook's opening brief:

Redacted

Redacted

LTI raises various other objections to this sentence that are equally baseless to the point that they warrant only brief comment.

Redacted

LTI's attempt to distract the Court with details that do not affect the outcome of Facebook's motion should be rejected.

**P. Response to Paragraph 31 (Pages 42-43)**

LTI then attempts to manufacture a purported factual dispute in Paragraph 31 of its Counter-Statement, which takes issue with the following statement from Facebook's opening brief:

Redacted

LTI does not quarrel with the accuracy of this statement, nor can it as it derives directly from cited and quoted portions of Dr. Vigna's expert report, as indicated above. LTI instead complains that the focus of Facebook's argument somehow misstates Dr. Vigna's opinions, but LTI does not explain how.

Redacted

claim 9 (“tracking movement of the user from the user environment . . . to a second user environment . . .”); claim 21 (“tracking movement of the user from the user workspace to a second user workspace . . .”); claim 23 (“tracking change information associated with a change in access of the user from the first user workspace to a second user workspace . . .”) (emphasis added).

Redacted

None of the other details identified by LTI in this paragraph of its Counter-Statement have anything to do with

Redacted

LTI's attempt to defeat summary judgment through discussion of irrelevant claim elements should be rejected.

**Q. Response to Paragraph 32 (Page 43)**

One need not look beyond Paragraph 32 of LTI's Counter-Statement for confirmation that LTI has raised no genuine issues of material fact, and that Facebook is

entitled to summary judgment. Paragraph 32 of LTI's Counter-Statement attempts to address the following statements from Facebook's opening brief:

Redacted

D.I. 391 at 11.

LTI has remarkably little to say in response to this critical paragraph of Facebook's opening brief.

Redacted

LTI also claims that it "speaks volumes" that Facebook did not submit evidence from its own non-infringement expert or its own witnesses in support of its motion. *See* D.I. 509 at 43. This argument misses the point for at least two reasons. First, although Facebook certainly could have submitted evidence from its own witnesses in support of its non-infringement position (and will do so if this case reaches trial), there can be no better evidence to support this motion than the expert report and deposition testimony of

LTI's own expert.

Redacted

Second, LTI's argument misunderstands the purpose of the summary judgment process. Because LTI bears the burden of proof on the issue of infringement, Facebook is not required to submit affirmative evidence negating LTI's infringement allegations. Facebook is merely required to point out that LTI cannot prove an essential element of a claim for which it bears the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 322-23; *Telemac Cellular Corp.*, 247 F.3d at 1323 ("Summary judgment of noninfringement is appropriate where the patent owner's proof is deficient in meeting an essential part of the legal standard for infringement, since such failure will render all other facts immaterial"). Facebook's reliance on LTI's own purported "evidence" leaves LTI unable to identify any genuine issue of material fact.

**R. Response to Paragraphs 33-36 (Pages 44-48)**

Paragraphs 33-36 of the Counter-Statement attempt to address the discussion of Dr. Vigna's deposition testimony appearing on pages 11-12 of Facebook's opening brief. Dr. Vigna's deposition testimony speaks for itself and LTI's attempt to obfuscate clear admissions is without merit.

Redacted



LTI's other arguments amount to little more than an attempt to rewrite Dr. Vigna's testimony.

Redacted

Redacted

LTI essentially admits this by asserting that the questions asked during the deposition were “outside the scope of Dr. Vigna’s opinion.” D.I. 509 at 46. Again, LTI raises no genuine issue of material fact.

**S. Response to Paragraph 37 (Pages 48-52)**

Redacted

Redacted

**T. Response to Paragraph 38 (Pages 52-53)**

LTI next takes issue with the following statement from Facebook's opening brief:

Redacted

LTI's attempt to defeat summary judgment through irrelevant material should be rejected.

**U. Response to Paragraph 39 (Pages 53-54)**

As with Paragraph 32 above, Paragraph 39 of LTI's Counter-Statement also alone confirms that LTI has raised no genuine issues of material fact and that Facebook is entitled to summary judgment. Paragraph 39 of LTI's Counter-Statement attempts to address the following statements from Facebook's opening brief:

Redacted

expert admitted that he had no opinion as to whether Facebook satisfied this requirement. *See* D.I. 391 at 14-15.

LTI also claims, as it did with Use Case No. 1 above, that it “speaks volumes” that Facebook did not submit evidence from its own non-infringement expert or its own witnesses in support of its motion. *See* D.I. 509 at 54. As discussed in Part III.Q regarding Paragraph 32 above, this argument should be summarily rejected. LTI’s own proof is the best confirmation of the absence of a genuine issue of material fact, and has been properly used as such here.

**V. Response to Paragraph 40 (Pages 54-55)**

The final paragraph of LTI’s Counter-Statement attempts to address the discussion of Dr. Vigna’s deposition testimony appearing on pages 14-15 of Facebook’s opening brief. Once again, Dr. Vigna’s deposition testimony speaks for itself, and LTI’s attempt to disavow his clear admissions is without merit.

It is unclear what complaints LTI has with Facebook’s reliance on Dr. Vigna’s testimony.

Redacted

Redacted

#### 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.

Dated: June 11, 2010

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