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The Honorable Leonard P. Stark
J. Caleb Boggs Federal Building
U.S. District Court for the District of Delaware
844 N. King Street, Unit 26, Room 6100
Wilmington, DE 19801-3556

Re: *Leader Technologies, Inc. v. Facebook, Inc.*, Civ. No. 08-862-JJF-LPS

Dear Magistrate Judge Stark:

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This new testimony confirms what Facebook had suspected since LTI belatedly disclosed the existence of thousands of NDAs: that there are potentially hundreds of third-party witnesses with as-yet undiscovered information that could end this case without the need for a trial. Facebook therefore respectfully requests that this Court reopen discovery and grant at least a 60 day continuance of the trial date to allow Facebook to pursue this potentially case dispositive discovery.

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These NDAs were highly relevant to the issue of whether LTI made any pre-critical date offers to sell or public disclosures of the alleged invention, which would invalidate all of the claims of LTI's patent under 35 U.S.C. §102(b). Facebook's answer in this case asserts that every claim of the patent is invalid under Section 102(b), and Facebook issued numerous document requests that would have called for these NDAs. *See* Exhibits 3-4 to April 7, 2010 Letter to Judge Stark, D.I. 322, 323. LTI's withholding of them until *after* the close of document discovery was improper and prevented Facebook from contacting these third-parties to determine whether LTI had, in fact, made any invalidating disclosures or offers to sell.

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. Shortly thereafter Facebook requested, and the Court granted, an order allowing Facebook to pursue discovery from six of the third-parties identified by LTI and three additional third-parties identified by Facebook. Ex. D at 21:15-24:3.

One of the three parties Facebook identified was Benjamin Zacks of The Zacks Law Group. Mr. Zacks, who had never been identified by LTI, was one of LTI's co-founders and attorney for LTI during the critical 1997 through 2002 time period. Ex. A at 11:19-24:19.

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In addition to this testimony, Mr. Zacks produced more than 30 boxes of highly relevant documents from the critical 1997-2002 time period, many of which had never been produced in the case despite being LTI documents.

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LTI's withholding of these documents until after the close of discovery combined with its misrepresentation regarding the number of third-parties who received confidential information regarding the alleged invention has denied Facebook a full opportunity to develop this defense.[1]

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Facebook therefore respectfully requests that this Court reopen discovery to allow Facebook to issue discovery on the issues raised by LTI's discovery misconduct, and to continue the trial date by at least 60 days.

Finally, Facebook further requests that this Court order LTI to provide a privilege log for four boxes of documents that LTI has designated "privileged" in the Zacks Law Group documents. Before producing documents to Facebook, Mr. Zacks allowed counsel for LTI to review and segregate any documents it considered to be privileged. After several days of review, LTI's counsel designated approximately four boxes of documents as "privileged" and requested that Mr. Zacks withhold them. Mr. Zacks honored LTI's request, but LTI's counsel has refused to provide a privilege log for them.

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Under Federal Rules of Civil Procedure 45(d)(2)(A)(ii), LTI as the party asserting the privilege must provide information sufficient to sustain that claim. Facebook therefore respectfully requests that this Court order LTI to provide a privilege log or declare that any unlogged documents are not privileged.

Respectfully,

Thomas P. Preston
(I.D. No. 2548)

[1] LTI has complained that Facebook has not yet taken the second deposition of Mr. McKibben, which this Court also authorized.

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