

LEADER'S PROPOSED JURY INSTRUCTION NO. 4.2
PRIOR ART

Previously known subject matter in the field of a claimed invention for which a patent is being sought is referred to as "prior art." For example, previous devices, methods, publications or patents are "prior art" if they existed before the invention date. The effective filing date of the patent application can also determine what is considered prior art. The parties contest this date. Depending on which dates you determine, an alleged "prior art" may or may not effect the validity of the '761 Patent.

I will give you instructions later regarding how to determine these dates.

If you find that the effective filing date is December 11, 2002, then only the following references can be considered prior art:

- (1) European Patent No. EP 1087306 ("Hubert '306")
- (2) U.S. Patent No. 6,236,994 ("Swartz '994")
- (3) iManage DeskSite 6.0 User Reference Manual, July 26, 2001
- (4) U.S. Patent No. 6,434,403 B1 ("Ausems '403")

If you find that the effective filing date is December 10, 2003, then only the following references can be considered prior art:

- (1) European Patent No. EP 1087306 ("Hubert '306")
- (2) U.S. Patent No. 6,236,994 ("Swartz '994")
- (3) iManage DeskSite 6.0 User Reference Manual, July 26, 2001
- (4) Leader's Leader2Leader product ("Leader2Leader")
- (5) U.S. Patent No. 6,434,403 B1 ("Ausems '403")

Once you have determined what can be considered prior art, then you must consider whether Facebook has met its burden of proving by clear and convincing evidence that such prior art affects the validity of the '761 Patent, which I will instruct you on later.