

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 50(a) and to the Court’s instruction, Leader Technologies, Inc. (“Leader”) hereby submits and respectfully moves the Court for a judgment as a matter of law against Facebook, Inc. (“Facebook”) with regard to: (1) its counterclaim that Claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31 and 32 (the “Asserted Claims”) of U.S. Patent No. 7, 139, 761 (“the ‘761 Patent”) are invalid due to anticipation and/or obviousness; and (2) its assertion that each and every element of the Asserted Claims of the ‘761 Patent are not enabled by the disclosures of U. S. Provisional Patent No. 60/432,255; and for Leader on its claims that the Facebook Website infringes the Asserted Claims of the ‘761 Patent pursuant to 35 U.S.C. § 271. The grounds supporting the instant FRCP 50(a) motion were given in open Court on July 26, 2010. Trial Tran. 1713:11-1718:17. Leader requested, and was granted leave to file this written FRCP 50(a) motion. *Id.* at 1733:24-1734:12.

I. Judgment as a Matter of Law Regarding Facebook’s Legally Insufficient Evidentiary Basis that the Asserted Claims are Invalid

A. Judgment as a Matter of Law that the Asserted Claims of U.S. Patent No. 7,139,761 Were Not Anticipated by Prior Art and are Therefore Not Invalid for that Reason

Facebook has presented no legally sufficient evidentiary basis whereby a reasonable jury could find that Facebook proved under a clear and convincing standard that the Asserted Claims of the ‘761 Patent are invalid due to anticipation. Specifically, and at the very least, Facebook failed to present a legally sufficient evidentiary basis that the alleged prior art, the iManage DeskSite 6.0 User Reference Manual (“iManage Manual”), U.S. Patent No. 7,590,934 (“Hubert ‘934”) and U.S. Patent No. 6,236,994 (“Swartz ‘994”), anticipated any of the Asserted Claims of the ‘761 Patent, let alone disclosed each and every claim element of the Asserted Claims.

Facebook also failed to rebut the evidence presented by Leader that the iManage Manual was not enabling and was not publically available to one skilled in the art.

Therefore, based on at least the foregoing, there is no legally sufficient evidentiary basis whereby a reasonable jury could consider the iManage Manual, Hubert '934, and Swartz '994 as anticipatory prior art.

B. Judgment as a Matter of Law that the Asserted Claims of U.S. Patent No. 7,139,761 Are Not Obvious In Light of the Prior Art and Are Therefore Not Invalid for that Reason

Facebook failed to present a legally sufficient evidentiary basis that the iManage Manual, Hubert '934, and Swartz '994 references could alone or in combination render the Asserted Claims of the '761 Patent invalid due to obviousness. Nor did Facebook present a legally sufficient evidentiary basis that U.S. Patent No. 6,434,403 ("Ausems '403") could be combined with the iManage Manual, Hubert '934, and Swartz '994 references to render Claim 16 invalid due to obviousness. For example, none of the references disclose any of the claim elements of the Asserted Claims, either alone or in combination.

For at least the foregoing reasons, Facebook never presented a legally sufficient evidentiary basis to the jury so as to allow a reasonable finding of invalidity of any Asserted Claims of the '761 Patent due to obviousness.

C. Judgment as a Matter of Law that the Invention Covered By Any of the Asserted Claims of U.S. Patent No. 7,139,761 Was Not In Public Use Or On Sale by Leader Technologies More Than One Year Prior to the Effective Filing Date and the Asserted Claims of U.S. Patent No. 7,139,761 Are Therefore Not Invalid for That Reason

Facebook failed to offer a legally sufficient evidentiary basis that Leader sold, offered for sale or publically used the invention disclosed in the Asserted Claims of the '761 Patent more than one year prior to the effective filing date. Facebook never presented a legally sufficient

evidentiary basis that any product, including the “Leader2Leader” product, contained the invention of the ‘761 Patent or that any such product was sold, offered for sale, or publically used prior to the effective filing date. Facebook also failed to submit legally sufficient evidence of any kind that a commercial offer for sale occurred. Moreover, Leader presented uncontested evidence showing that there was no legal commercial offer for sale of the product in question, there was no public use of the ‘761 Patent without a non-disclosure agreement and that any alleged offer for sale was legally untenable due to beta or experimental testing of the product in question. Facebook wholly failed to rebut such evidence.

For at least the foregoing reasons, Facebook failed to present a legally sufficient evidentiary basis to the jury so as to allow a reasonable finding of invalidity of any Asserted Claims of the ‘761 Patent due to an on-sale or public use bar.

- D. Judgment as a Matter of Law that Facebook Has No Defense to Infringing the Asserted Claims of U.S. Patent No. 7,139,761 Patent Under the Doctrine of Equivalents, Including But Not Limited to, That Facebook Has Not Demonstrated That Infringement Under the Doctrine of Equivalents Results in the Asserted Claims Ensnaring the Prior Art, as Facebook Has Failed to Provide a Hypothetical Claim as Required to Prove Ensnarement

Facebook failed to present a legally sufficient evidentiary basis of ensnarement or of a hypothetical claim. Thus, as a matter of law, Facebook has failed to carry its burden on such defenses to the doctrine of equivalents.

- E. Judgment as a Matter of Law that the Unasserted Claims of the ‘761 Patent are Valid

Leader seeks a judgment as a matter of law that the claims of the ‘761 Patent that were not asserted in this case are valid because Facebook presented no evidence that such unasserted claims are invalid due to anticipation and/or obviousness under the applicable law.

II. Judgment as a Matter of Law Regarding Facebook's Legally Insufficient Evidentiary Basis that U.S. Provisional Patent Application 60/432,255 Does Not Support the Asserted Claims, and that U.S. Patent No. 7,139,761 Properly Relies on the December 11, 2002 Priority Date of the 60/432,255 Provisional Patent Application

Leader presented a legally sufficient evidentiary basis that each and every element of the Asserted Claims of the '761 Patent are enabled by the disclosures of U. S. Provisional Patent No. 60/432,255 ("255 Provisional"). For example, such evidence included expert and lay testimony that supported the contention that each and every element of the Asserted Claims of the '761 Patent are supported by the '255 Provisional. In addition, Leader presented evidence of an actual experiment that was done which conclusively proved that the '255 Provisional supports the Asserted Claims of the '761 Patent. Facebook failed to present a legally sufficient evidentiary basis to rebut Leader's evidence that the '255 Provisional enabled the Asserted Claims of the '761 Patent and thus failed to rebut Leader's legally sufficient evidence that the correct effective filing date is the date of filing of the '255 Provisional.

III. Facebook Infringes Claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32 of U.S. Patent No. 7,139,761

Leader proved by a preponderance of the evidence that the Facebook Website literally infringes, or, in the alternative, infringes under the doctrine of equivalents, the Asserted Claims of the '761 Patent pursuant to 35 U.S.C. § 271(a). Leader's expert testified and the exhibits admitted into evidence demonstrated that there are multiple ways that the Facebook Website infringes each and every limitation of the Asserted Claims of the '761 Patent. Facebook failed to rebut this testimony or Leader's other evidence. Therefore, Leader seeks a judgment as a matter of law that Facebook infringes claims 1, 4, 7, 9, 11, 16, 21, 23, 25, 31, and 32 of the '761 Patent.

A. Facebook Infringes Claim 1

No reasonable jury could find that the Facebook Website does not literally infringe Claim 1 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 1 were found in the Facebook Website. Facebook failed to rebut this evidence. In fact, often Facebook's own witnesses verified the evidence. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 1 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 1 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

B. Facebook Infringes Claim 4

No reasonable jury could find that the Facebook Website does not literally infringe Claim 4 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 4 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 4 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 4 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

C. Facebook Infringes Claim 7

No reasonable jury could find that the Facebook Website does not literally infringe Claim 7 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 7 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 7 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 7 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

D. Facebook Infringes Claim 9

No reasonable jury could find that the Facebook Website does not literally infringe Claim 9 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 9 were found in the Facebook Website. Facebook failed to rebut this evidence. In fact, often Facebook's own witnesses verified the evidence. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 9 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 9 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

E. Facebook Infringes Claim 11

No reasonable jury could find that the Facebook Website does not literally infringe Claim 11 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 11 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 11 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 11 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

F. Facebook Infringes Claim 16

No reasonable jury could find that the Facebook Website does not literally infringe Claim 16 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 16 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 16 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 16 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

G. Facebook Infringes Claim 21

No reasonable jury could find that the Facebook Website does not literally infringe Claim 21 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 21 were found in the Facebook Website. Facebook failed to rebut this evidence. In fact, often Facebook's own witnesses verified the evidence. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 21 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 21 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

H. Facebook Infringes Claim 23

No reasonable jury could find that the Facebook Website does not literally infringe Claim 23 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 23 were found in the Facebook Website. Facebook failed to rebut this evidence. In fact, often Facebook's own witnesses verified the evidence. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 23 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 23 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

I. Facebook Infringes Claim 25

No reasonable jury could find that the Facebook Website does not literally infringe Claim 25 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 25 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 25 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 25 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

J. Facebook Infringes Claim 31

No reasonable jury could find that the Facebook Website does not literally infringe Claim 31 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 31 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 31 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 31 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

K. Facebook Infringes Claim 32

No reasonable jury could find that the Facebook Website does not literally infringe Claim 32 of the '761 Patent. Leader put forward a legally sufficient evidentiary basis in the form of expert testimony, percipient witnesses, and documentary evidence that all elements of Claim 32 were found in the Facebook Website. Facebook failed to rebut this evidence, or even address any dependent claims. Therefore, no reasonable jury could fail to find that Facebook literally infringes Claim 32 of the '761 Patent.

In addition, Leader produced a legally sufficient evidentiary basis that Facebook infringes Claim 32 at least under the doctrine of equivalents by demonstrating that the Facebook Website performs each of the elements of each claim with substantially the same function, in the same way, and with the same result as the claim.

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

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on August 2, 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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