

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES,	)	Trial Volume 1
INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 08-862-JJF-LPS
v.	)	
	)	
FACEBOOK, INC., a	)	
Delaware corporation,	)	
	)	
Defendant.	)	

July 19, 2010  
9:00 a.m.

BEFORE: THE HONORABLE LEONARD P. STARK  
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP  
BY: PHILIP A. ROVNER, ESQ.

-and-

KING & SPALDING, LLP  
BY: PAUL ANDRE, ESQ.  
BY: LISA KOBIALKA, ESQ.  
BY: JAMES HANNAH, ESQ.

Counsel for Plaintiff

1 APPEARANCES CONTINUED:

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BLANK ROME, LLP  
BY: STEVEN L. CAPONI, ESQ.

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-and-

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COOLEY, GODWARD, KRONISH, LLP  
BY: MICHAEL RHODES, ESQ.  
BY: HEIDI L. KEEFE, ESQ.  
BY: JEFFREY T. NORBERG, ESQ.  
BY: MARK WEINSTEIN, ESQ.  
BY: MELISSA KEYES, ESQ.  
BY: ELIZABETH STAMESHKIN, ESQ.

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Counsel for Defendant

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1 THE CLERK: All rise. Court's now  
2 in session. The Honorable Leonard P. Stark  
3 presiding.

4 THE COURT: Good morning,  
5 everybody.

6 (Everyone said, Good morning, Your  
7 Honor.)

8 THE CLERK: Please be seated.

9 THE COURT: I see we have a big  
10 crowd this morning. We're here, of course, for  
11 start of trial.

12 Let's begin by having you all note  
13 your appearances on the record this morning.

14 MR. ANDRE: Good morning, Your  
15 Honor. Paul Andre representing Leader  
16 Technologies.

17 And with me today is Lisa  
18 Kobialka.

19 MS. KOBIALKA: Good morning, Your  
20 Honor.

21 MR. ANDRE: Phil Rovner.

22 MR. ROVNER: Good morning, Your  
23 Honor.

24 MR. ANDRE: And James Hannah.

1 MR. HANNAH: Good morning.

2 THE COURT: Good morning.

3 MR. RHODES: Good morning, Your  
4 Honor.

5 THE COURT: Good morning.

6 MR. RHODES: I'm Michael Rhodes.  
7 I'm from Cooley. I represent Facebook, the  
8 defendant.

9 With me at counsel table, of  
10 course, is Mr. Caponi. I brought senior  
11 executive and general counsel of Facebook, who  
12 will set with us at table with the Court's  
13 indulgence. This is Ted Ullyot. It's spelled  
14 U-L-L-Y-O-T.

15 You know my partner Heidi Keefe,  
16 of course.

17 MS. KEEFE: Good morning, Your  
18 Honor.

19 MR. RHODES: Mark Weinstein. And  
20 Jeff Norberg.

21 MR. NORBERG: Good morning, Your  
22 Honor.

23 MR. RHODES: And Mr. Kotarski who  
24 will be running the technology in the courtroom.

1 THE COURT: Thank you. Good  
2 morning.

3 MR. KOTARSKI: Good morning.

4 THE COURT: Let's just make sure  
5 we're all on the same page as to what happened  
6 over the weekend, of course.

7 Well, yesterday, the Court denied  
8 Facebook's motion to admit through an oral order  
9 that was docketed this morning. I'm sure you  
10 all saw yesterday.

11 On Saturday, the Court overruled  
12 Leader's objections to Facebook's proposed  
13 opening statement demonstratives. It was not in  
14 the nature of any explanation. I did want to  
15 give you the benefit of a little bit of  
16 explanation for that ruling.

17 Having reviewed the  
18 demonstratives, I concluded that the statements  
19 of law that are in the demonstratives are  
20 accurate and I felt not inappropriately  
21 argumentative.

22 With respect to claim  
23 construction, I thought that the proposed slides  
24 appear to adequately reflect the Court's ruling

1 as understood by Facebook's expert and explained  
2 what Facebook therefore believes the evidence is  
3 going to show. And fundamentally the Court, of  
4 course, instructs on the law and I'm confident  
5 that the jury will understand that the legal  
6 instructions that they are to apply are the  
7 instructions that the Court gives today at the  
8 end of trial.

9 And I'm also aware of my ability  
10 to instruct them throughout the trial if  
11 necessary. So I'm confident that the jury will  
12 not be confused as to what law to apply.

13 Let me next move on to the  
14 deposition designations which was an issue that  
15 also arose over the weekend. I'm afraid that I  
16 may have created some ambiguity as to the  
17 process I wanted you all to follow. I don't  
18 want or need any further argument, narrative, or  
19 anything with respect to the deposition  
20 designations. The potential designations are  
21 fixed with what you all gave me last week, so if  
22 what you gave me last week is not highlighted,  
23 then it's not in.

24 The only maximum designations that

1 will be allowed are those that were at least  
2 highlighted. I think the ambiguity arose  
3 because I anticipated that it may happen as did  
4 happen that the party designating testimony  
5 might decide to reduce what they ultimately  
6 offer, and that raises the question as to what  
7 does the other side get to do in that instance.

8 I just want to be clear, the other  
9 side does not get to write to me a whole bunch  
10 of stuff and try to explain what I should do.

11 What I want to happen is, and it  
12 will make this -- I'll give you until the end of  
13 the lunch break two days before the testimony is  
14 going to be offered, so you have until the end  
15 of the lunch break today to work this out for  
16 Wednesday.

17 What I need to know and I'll put  
18 the burden on the party that's offering the  
19 witness, all I need to know is the witness's  
20 name, the pages that are being designated to  
21 actually be put into evidence on Wednesday, and  
22 the counter-designation pages, so you'll have to  
23 confer with the other side in advance so you'll  
24 know what counter-designation pages to refer me

1 to.

2 So list for me all of the pages  
3 that are now being offered as designations as  
4 well as counter-designations and highlight for  
5 me where among those pages I can find objections  
6 so I can give you rulings on the objections.

7 What I can let you know and you'll  
8 see in my rulings I'm going to give you in a  
9 minute if what happens is the party offering the  
10 witness is no longer offering as much testimony  
11 as they originally designated, and the opposing  
12 party now wants to counter-designate some  
13 portion of what was originally designated by the  
14 offering party, you can do that as the opposing  
15 party, but only if you did not object to the  
16 portion of the testimony that the offering party  
17 originally offered.

18 So for instance, today, if  
19 Facebook wants to now counter-designate some of  
20 the yellow highlighted text that was previously  
21 designated by Leader, that's fine, unless  
22 Facebook had previously objected to that  
23 testimony, in which case you're not going to be  
24 permitted to counter-designate it. Hopefully



1 that's sufficiently clear and I trust that  
2 counsel will work together to make sure you  
3 comply with what I have directed.

4 With respect to the witnesses for  
5 Tuesday, let me give you my rulings. First,  
6 Mr. Zuckerberg, I am sustaining Facebook's  
7 objections. I found that the designated  
8 testimony lacks relevance to issues in this  
9 case.

10 Mr. Rose, Facebook's objections  
11 are overruled. The testimony goes to tracking,  
12 which is relevant. Facebook can put Mr. Rose's  
13 testimony and his purported lack of knowledge  
14 into context through other evidence.

15 Mr. Wang, there are no objections  
16 by Facebook to Leader's reduced designations.  
17 Facebook now seeks to designate portions of  
18 Leader's previous designations specifically at  
19 Page 15, Lines 4 to 17. I am sustaining  
20 Leader's objections to Facebook'  
21 counter-designation because that portion of the  
22 testimony was previously objected to by  
23 Facebook.

24 The other counter-designations of

1 Facebook are at Page 19 and Page 23. I'm also  
2 sustaining Leader's objections because that  
3 testimony is not any longer relevant.

4 There were originally lots of  
5 other portions of Mr. Wang's testimony that had  
6 been counter designated. That is, they were in  
7 blue highlighting.

8 Since they weren't mentioned in  
9 the email this weekend, I assumed that meant  
10 that Facebook was no longer counter designating  
11 that portion of the testimony.

12 MR. RHODES: We can confirm that.

13 THE COURT: If you're going to  
14 confirm that, then stand up so the court  
15 reporter can hear you.

16 MR. RHODES: My apology, but yes,  
17 you're right.

18 THE COURT: Okay. Thank you.

19 So that takes us to Mr. Weissman.  
20 There was only one specific Facebook objection  
21 to the new reduced designations of Leader that  
22 was at Page 91 and 92.

23 I'm overruling Facebook's  
24 objections. The witness appears to have

1 adequate knowledge to give that testimony.

2 There were three Facebook new  
3 counter-designations, all of which were  
4 previously designated by Leader. Only one of  
5 which Leader objects to. That's at Page 110 to  
6 111.

7 I'm sustaining Leader's objections  
8 to Facebook's new counter-designation because  
9 Facebook had previously objected to this portion  
10 of testimony.

11 Finally, Mr. Bosworth, the only  
12 objection is at Page 121. That objection is  
13 overruled. The witness appears to have adequate  
14 knowledge to give the answer there.

15 All right. That's it on the  
16 deposition designations.

17 One final thing from my  
18 perspective, on the voir dire, I'm going to add  
19 a question at the end, just a general catchall  
20 question whether the potential jurors think they  
21 have any other impairment or concern about  
22 serving on the jury.

23 Is there anything else that Leader  
24 wants to raise at this time?

1 MR. ANDRE: Your Honor, there's  
2 just a couple issues about the witness list that  
3 we sent to Your Honor yesterday. And with one  
4 particular issue with who will be looking at  
5 source code?

6 As you probably remember, Leader  
7 was concerned that Facebook would try to bring  
8 some percipient witnesses in and bring them as  
9 quasi experts. We believe that their actual  
10 expert, Dr. Kern, did not cite much of the  
11 source code in his expert report. In fact, very  
12 little.

13 They said they're going to bring  
14 in Mr. Cox and they're going to show him source  
15 code. Mr. Cox, I asked counsel this morning,  
16 what would it be shown, and they said not sure.

17 But Mr. Cox was an engineer from  
18 2005 to 2007. And then he went into the HR  
19 department at Facebook. And then he's now a  
20 product developer.

21 He's not actually writing source  
22 code from what he told me in his deposition. So  
23 we're concerned that they're going to try to  
24 bring in the source code through a lay witness

1 and have a lay opinion expressed on it.

2 To the extent they limit it to the  
3 source code he actually wrote, then I think  
4 that's fair game. But anything other than that,  
5 I think would be prejudicial.

6 And not allowing Facebook to couch  
7 a expert witness in -- I'm sorry. The court  
8 reporter at our last trial here she told me I  
9 speak too fast. I'm sorry.

10 The other issue we have with the  
11 witnesses and I'm just a little bit more  
12 confused than anything else was the Court's  
13 policy regarding Mr. McKibben and counsel's case  
14 that they informed us they wanted to bring Mr.  
15 McKibben live.

16 They've also designated  
17 substantial portions of their deposition to be  
18 played as well. And I don't know that it's  
19 appropriate to have Mr. McKibben basically  
20 present twice in counsel's case in chief if they  
21 can go over the same exact questions that they  
22 asked him in deposition and use the deposition  
23 to impeach him if he changes his answer,  
24 obviously.

1                   But it seems to be a way to try to  
2 project Mr. McKibben somehow in an awkward light  
3 for the jury because he'll be on the stand  
4 during some of the testimony and then they'll  
5 take him off the stand and play his video. To  
6 me that gives an impression of impropriety that  
7 something that he would not be wanting to  
8 testify to live or something. It just seems a  
9 bit unusual and somewhat prejudicial.

10                   And the second one is the  
11 designation of Mr. Lamb. Deposition testimony  
12 played also during Facebook's case. Mr. Lamb is  
13 going to be to be here live tomorrow as a  
14 witness and we are more than willing to let  
15 Facebook examine Mr. Lamb on the topics that  
16 they have designated in their deposition. In  
17 fact, they plan on covering it as well. So I  
18 don't know that having that type of redundancy,  
19 obviously it's their case and it's their time  
20 ticking away, but it would appear to be once  
21 again a way to try to project Mr. Lamb in a less  
22 than positive light.

23                   That's all we have, Your Honor.

24                   THE COURT: Let's hear a response

1 to that, please.

2 MR. RHODES: Good morning, Your  
3 Honor. Upon Mr. McKibben I believe the rules  
4 establish without much dispute that we can play  
5 his deposition without any adverse party, the  
6 Court had ruled that we just put him on for all  
7 purposes at one time, they didn't want to do  
8 that. I think that's entirely permitted. I  
9 looked at what we designated last night, it's  
10 like eighteen minutes or something. It's not  
11 terribly long. With respect to Mr. Lamb, he's  
12 legally unavailable to us. He was beyond the  
13 power of the Court. We properly designated his  
14 deposition in all of the prior trial pleadings,  
15 we sent that to them, we intend to play it in  
16 our case in chief. I don't think there is an  
17 objection to that.

18 They have voluntarily gotten him  
19 here. It's a bit of a catch 22 because before  
20 the trial he was legally unavailable to us, so  
21 he would satisfy the legal requirement of  
22 unavailability.

23 With respect to Cox, we are going  
24 to try to lay a foundation, Your Honor, that he

1 did, in fact, author portions of the source  
2 code. I suppose we should deal with this on the  
3 fly because if we go beyond that we can't lay  
4 the foundation. It sounds like you would  
5 sustain an objection that he's talking about  
6 code that he didn't write.

7 So I think Mr. Andre is correct  
8 that we're just trying to deal with the source  
9 code and we haven't decided if we are going to  
10 do it with him. But if we do it with him, it's  
11 only with respect to the code that he developed.

12 I have other things to raise with  
13 you.

14 THE COURT: Let me deal with these  
15 first and then we'll come back. On Mr. Cox, we  
16 will have to deal with that as it comes up. The  
17 Court agrees with both counsel that his  
18 testimony with respect to source code should not  
19 go beyond source code that he was personally  
20 involved in, and hopefully that's all that will  
21 be elicited with respect to source codes.

22 On the issue of whether witnesses  
23 can testify live and by deposition, I'm going to  
24 permit both to be done under the circumstances



1 here. If I develop a concern that any unfair  
2 adverse inference is going to be drawn from the  
3 fact that at times questions are being asked  
4 live and at other times somebody is pressing  
5 play on a machine, then I can always instruct  
6 the jury that they shouldn't draw such  
7 conclusions.

8 Let's move on to the issue that  
9 Facebook wants to raise. Another issue,  
10 Mr. Andre.

11 MR. ANDRE: Just a housekeeping  
12 issue, Your Honor. Are the objections to  
13 exhibits deemed admitted at this point when  
14 counsel offers exhibits up for admission, we had  
15 put objections on the record on the exhibit list  
16 obviously, are those deemed preserved for that  
17 purpose or do we need to make objections as they  
18 go in as well?

19 THE COURT: I believe I ruled on  
20 all of the objections, and so you made them at  
21 the time, they're all now ruled on, and you're  
22 free to offer the evidence into evidence.

23 MR. ANDRE: And then that just  
24 brings up the next issue, I guess would be an

1 issue, the publishing of the exhibits, we don't  
2 have moved in before we publish it to the jury  
3 on the screens and on the monitors.

4 THE COURT: Right. You need to  
5 present the evidence through a witness, but I  
6 have ruled on the objections so you know what's  
7 admissible and what is not.

8 Thank you. Mr. Rhodes.

9 MR. RHODES: Your Honor, I had a  
10 couple of probably stupid questions, but I  
11 wanted to ask your permission about various  
12 things. During the openings, what is the  
13 Court's policy about staying at the lectern? I  
14 would like to go to the screen sometimes. I  
15 won't go in that direction, but if the Court  
16 would allow, I would like to go to the screen  
17 sometimes to point out certain things if the  
18 Court will allow me.

19 THE COURT: Right. I don't want  
20 you to encroach on the jury which looks like it  
21 would be pretty difficult to do given the setup.  
22 It's fine as long as my court reporter is going  
23 to be able to hear you and I'm sure you're going  
24 to want the jury to be able to hear you.

1 MR. RHODES: Thank you, Your  
2 Honor. A couple of other things. The first  
3 witness in the case is Dr. Herbsleb. I have  
4 been mispronouncing his name. And he had two  
5 records, a very short one which I think they're  
6 going to sponsor first and then a much longer  
7 one on invalidity.

8 We would like to separate those  
9 two records. I had intended to take him with  
10 respect to the very small report. I'm not smart  
11 enough to do the big one. And Mr. Weinstein  
12 will do the big one, that will be in the  
13 rebuttal case. Does the Court have any  
14 objection to that?

15 THE COURT: Meaning that he would  
16 be examined by two different attorneys?

17 MR. RHODES: At two different  
18 times on two completely different reports.

19 THE COURT: Well, I'm going to  
20 give Leader a chance to respond to that. Hold  
21 on a second, though. Did you have any other  
22 issue you wanted to put on the table?

23 MR. RHODES: Yes. The only other  
24 issue I had with respect to examination is my

1 continuing objection to the so-called white  
2 paper. I think you probably heard me adnauseum  
3 on the subject at the moment, but this is the  
4 issues that we talked about on Friday.

5 Mr. Andre indicated that these two white papers  
6 from 2003 went to reduction of practice. The  
7 record prior to before the trial is that the  
8 reduction of practice took place not later than  
9 December 11, 2002, and we have been provided at  
10 various times over the weekend versions of one  
11 of the white papers without the legend that  
12 indicates it postdates the patent.

13 So I renew my objection to that.

14 I suspect I know what the Court's answer is, but  
15 I renew my objection to that.

16 THE COURT: Thank you.

17 Mr. Andre.

18 MR. ANDRE: With respect to Dr.  
19 Herbsleb, we have no objection to having  
20 counsel, different counsel examine him during  
21 the different time periods because it is during  
22 our case in chief during the tutorial and then  
23 in our rebuttal case as giving an expert witness  
24 on validity, so we have no objection to that,

1 Your Honor.

2 With respect to the white papers,  
3 counsel has taken a position that reduction of  
4 practice did not occur until 2003, December  
5 2003, that's their position. Our position is  
6 December 2002. We have the benefit of the  
7 provisional application. They say that we  
8 don't. So at the very least we have the right  
9 to show the reduction to practice in the  
10 alternative if it happened to go to their side  
11 that the reduction of practice act took place in  
12 December 2003.

13 Your Honor's ruled on this, and I  
14 think that we can use it for the limited  
15 purposes of showing, evidencing what you know  
16 Mr. McKibben did to demonstrate that he actually  
17 did reduce this invention to practice.

18 THE COURT: Thank you. With  
19 respect to Dr. Herbsleb, there is no objection  
20 and it will be fine to use the two attorneys at  
21 the different points in the case as is intended  
22 by Facebook.

23 With respect to the objections to  
24 the white paper, I'm not modifying my previous

1 rulings. The parties' positions have been well  
2 stated and we'll proceed according to my  
3 rulings.

4 Any further issues at this time  
5 before we bring the jury in, Mr. Rhodes?

6 MR. RHODES: I apologize, Your  
7 Honor, I had two, again somewhat lame questions.  
8 I know you alluded to this on Friday. How do  
9 you intend to advise us on time keeping?

10 And somebody asked me on my side  
11 of the house, how the counter-designations of  
12 depositions would or would not count. I mean,  
13 if we're getting down to that level of minutiae,  
14 we're probably in trouble.

15 I had a question about closing  
16 arguments, Your Honor. Are you going to  
17 instruct the jury before or after the closing  
18 argument?

19 THE COURT: Do you have a position  
20 or recommendation on that at this point?

21 MR. RHODES: Given the  
22 complexities of these kinds of issues, my  
23 preference would be that you instruct them  
24 before closing arguments. Both counsel would

1 have the opportunity to map the evidence of what  
2 the instruction would be, but that would be my  
3 recommendation, Your Honor. Thank you.

4 THE COURT: Mr. Andre, do you have  
5 a position on that last point?

6 MR. ANDRE: I tend to agree with  
7 Mr. Rhodes on that point, but you know, I defer  
8 to Your Honor's discretion.

9 THE COURT: Thank you. My plan  
10 right now would be to instruct before closing  
11 arguments. If my plan on that changes, I'll  
12 certainly let you know.

13 With respect to time keeping, my  
14 deputies up here are keeping track of everything  
15 that happens. You can confer with them I'm sure  
16 occasionally during the day. They don't want  
17 you to be bugging them all the time.

18 And then I would think that it  
19 would make sense at the end of the day as we're  
20 double-checking which evidence has been admitted  
21 for the day that you can also ask where  
22 everybody stands in terms of time.

23 With respect to deposition  
24 designations, what we're going to do is charge

1 the counter-designations against the party that  
2 has counter designated. My hope is that we're  
3 not on such a tight margin that that turns out  
4 to be important. But if it does turn out to be  
5 important, then that's how we're going to charge  
6 the time.

7 Anything further before we break  
8 to bring the jury in?

9 MR. ANDRE: One last thing, Your  
10 Honor. Once again, housekeeping.

11 We do have a small board we want  
12 to put up for opening statement and there's not  
13 really a good place to put it. I don't like  
14 blocking counsel's table, but I think the only  
15 place I can put it - here Your Honor wouldn't be  
16 able to see it. We'll have it projected at  
17 certain points.

18 But I'd like to keep it up and  
19 refer to it as other slides come up. I don't  
20 know if you have a -- we normally put it over  
21 there, but I don't know if I can make it over to  
22 the corner there.

23 THE COURT: I can't even see  
24 everybody that's in here.



1 Well, I'm going to ask you to see  
2 what you can do. And before we come in to  
3 actually do the openings, we'll revisit that  
4 issue with my staff one more time. And we'll  
5 see if we can come up with a better place --

6 MR. ANDRE: That would be great.

7 THE COURT: -- for you. Thank  
8 you.

9 Anything else, Mr. Rhoades?

10 MR. RHOADES: No, Your Honor.  
11 Just on the board, I don't want to be -- I'm  
12 small enough as it is. I don't want to be  
13 hiding behind a board.

14 THE COURT: Right. Right.

15 MR. RHOADES: I'm sure we can  
16 figure something out in this area.

17 THE COURT: I'm going to trust we  
18 can figure something out.

19 MR. RHODES: Nothing further.

20 THE COURT: There's a large number  
21 of other folks in the back of the courtroom.  
22 I'm going to -- we have a very large jury pool,  
23 I think close to 70 people. And so I'm going to  
24 have to ask all the folks in the back that when

1 the jury pool comes in, you all wait outside,  
2 let them all settle.

3 There may be seating for some or  
4 all of you, but it's of primary importance, no  
5 offense to all of you, that we get our jury pool  
6 in here so we can process them. And there will  
7 be plenty of room, I think, in the courtroom  
8 after we get through jury selection.

9 We'll take a brief recess to bring  
10 the jury pool in.

11 THE CLERK: All rise.

12 (Whereupon a brief recess was  
13 taken.)

14 THE CLERK: All rise. Court's now  
15 in session. The Honorable Leonard P. Stark  
16 presiding.

17 THE COURT: Good morning,  
18 everybody.

19 (Everyone said, Good morning.)

20 THE CLERK: Please be seated.

21 THE COURT: Good morning to our  
22 counsel and our potential jurors. My name is  
23 Leonard Stark.

24 I am the judge who has been

1 selected to preside in a civil action, which is  
2 the reason we've called you all in here. We  
3 appreciate you being here and participating in  
4 this very important civic duty that we all have  
5 as citizens.

6 We're going to be selecting a jury  
7 this morning. And before we begin that process,  
8 I need to first ask my deputy to swear all of  
9 you in.

10 THE CLERK: Members of the jury  
11 panel, please stand and raise your right hands.

12 Do each of you affirm that you  
13 will answer truthfully any questions you are  
14 asked pertaining to the matter now before the  
15 Court? The proper response is I do.

16 THE JURY PANEL: I do.

17 THE CLERK: Please be seated.

18 THE COURT: Thank you.

19 Now, what's going to happen first  
20 in this process is I'm going to read out and ask  
21 you all collectively a series of questions.  
22 They're all in the form of yes or no.

23 If your answer to any of these  
24 questions is yes, I just need you to raise your

1 hand just so we can get a sense as to how many  
2 of you are saying yes to that question.

3 I'll ask you to keep as best you  
4 can in your mind track of what questions you had  
5 a yes answer to. Then after I get through all  
6 of the questions, we will call back one by one  
7 into our jury room, which is behind me, so that  
8 we can have one-on-one discussions with any of  
9 you who had a yes answer to any of the  
10 questions.

11 And after that, we'll all return  
12 to the courtroom and we'll continue with the  
13 jury selection process. So I'm now going to  
14 read the questions.

15 There's a total of 17. And again,  
16 I'll ask you to raise your hand if you have a  
17 yes answer to the question, and then try to do  
18 your best to keep track as to what that question  
19 was about.

20 Let me first tell you this is an  
21 action for patent infringement. The parties in  
22 this case are Leader Technologies, Inc. and  
23 Facebook, Inc.

24 In this case, Facebook is accused

1 of infringing Leader's patent. Counsel will now  
2 introduce themselves and their clients and list  
3 the names of their potential witnesses.

4 After they do, I will ask you  
5 whether you or any member of your immediate  
6 family know of or have any current or former  
7 relationship with any of the attorneys, their  
8 law firms, their clients or their witnesses.  
9 Let me first turn to Leader.

10 MR. ANDRE: Thank you, Your Honor.  
11 May it please the Court, ladies and gentlemen,  
12 my name is Paul Andre. I'm the lead counsel for  
13 Leader Technologies. I am with the law firm of  
14 King & Spalding.

15 With me at counsel table is my  
16 partner Lisa Kobialka with King & Spalding. My  
17 colleague, Phil Rovner, who's a partner at  
18 Potter, Anderson & Corroon.

19 Representing Leader Technologies,  
20 it is their founder and CEO, Michael McKibben.  
21 And at the end of the table is my colleague  
22 James Hannah, who's also with King and Spalding.

23 We also have people in the  
24 audience here. Some of our attorneys are Shawn

1 Boyle, Yuri Caire, Michael Lee and Jonathan --  
2 Jonathan Choa. They are all associates. We  
3 will see them go throughout the case.

4 We also have representing Leader  
5 Technologies, Deb Weckerly, who is the financial  
6 officer and Steve Nester, who's their chief  
7 engineer.

8 The witnesses we expect to call in  
9 this case will be Mr. McKibben, his co-inventor  
10 Jeff Lamb. We have expert witnesses Dr. Don  
11 Vigna and Dr. James Herbsleb.

12 THE COURT: I'll call Facebook  
13 now.

14 MR. RHODES: Good morning, Your  
15 Honor. May it please the Court. Good morning  
16 to all of you.

17 My name is Michael Rhodes. I'm a  
18 lawyer in the firm called Cooley. And I am  
19 going to introduce everybody that's up here.

20 This is my partner, Heidi Keefe.  
21 With me at counsel table is Mr. Ted Ullyot as a  
22 senior executive with Facebook.

23 Over here is Steve Caponi. He's a  
24 lawyer right here in Wilmington. He works at

1 the law firm of Blank Rome.

2 Over here is Mark Weinstein. Mark  
3 is also one of my partners.

4 This is our technology guy who  
5 runs all the stuff in the courtroom. This is  
6 Ken Kotarski. And this is Sam Lore, another  
7 executive with Facebook.

8 Let me read you the names of our  
9 staff who may come in and out of the courtroom  
10 in the next couple of days just to see if any of  
11 these names ring a bell. And I apologize for  
12 turning my back to the court reporter.

13 Jeannine Douglas, Cassandra Reed.  
14 Jocelyn McIntosh. Mary LeVan.  
15 L-e-V-A-N.

16 Patti with an I Clark. And Yuval,  
17 Y-U-V-A-L Newman.

18 Our witnesses will be Christopher  
19 Cox. He is a senior Facebook employee.

20 Joshua Wiseman, W-I-S-E. He is an  
21 engineer at Facebook.

22 Andrew Bosworth, another engineer  
23 from Facebook.

24 Professor Michael Kearns. He's at

1 the University of Pennsylvania. He will be one  
2 of our expert witnesses.

3 Daniel Chai, C-H-A-I, who will be  
4 by videotape. Oh, we struck him?

5 Oh, okay. Well, I'm the first to  
6 know, Your Honor.

7 That one's okay; right?

8 It's always a good thing when the  
9 list gets shorter.

10 Dan rose, R-O-S-E. And finally,  
11 James Wang, W-A-N-G.

12 Thank you, Your Honor.

13 THE COURT: Thank you. I'll now  
14 ask the jury panel: Do you or any member of  
15 your immediate family know of or have any  
16 current or former relationship with any of the  
17 attorneys, their law firms, their clients or  
18 their witnesses? I just need a show of hands.

19 Okay.

20 MR. RHODES: Your Honor I missed  
21 one name. I --

22 THE COURT: Thank you. I'll now  
23 ask the jury panel, do you or any member of your  
24 immediate family know of or had have any current



1 or former relationship with any of the  
2 attorneys, their law firms, their clients or  
3 their witnesses? I just need a show of hands.

4 MR. RHODES: Your Honor, I missed  
5 one name.

6 THE COURT: You can add it now.

7 MR. RHODES: Counsel reminded me  
8 of that, Professor Greenberg.

9 Thank you.

10 THE COURT: Thank you. Let me ask  
11 again. Do any of you have, you or members of  
12 your immediate family have a relationship now or  
13 previously with any of the attorneys, the  
14 witnesses, or the law firms. By a show of hands  
15 again. Thank you.

16 Next question is have you heard or  
17 read anything about this case?

18 Have you or a member of your  
19 immediate family ever had a personal or a  
20 business relationship of any kind with either  
21 Leader or Facebook?

22 Do you have any opinions about  
23 either of these parties that would affect your  
24 ability to be a fair and impartial juror?

1                   We're up to question five. This  
2 trial is expected to last approximately six  
3 days. Does the length of the trial present any  
4 special problem for you?

5                   Question six. Do you have a user  
6 account for the Facebook website?

7                   Question seven. Do you typically  
8 use Facebook at least once a day?

9                   Question eight. Jurors in this  
10 case will not be permitted to use or access the  
11 Facebook website during the length of the trial.  
12 Does that present any special problem for you?

13                   Do you hold any opinions about  
14 Facebook, its policies or practices or the  
15 Facebook website that might keep you from being  
16 a fair and impartial juror?

17                   Do you own stock in or have any  
18 financial interest in either of these parties?

19                   Have you or anyone in your  
20 immediate family ever participated in a lawsuit?

21                   Do you have any reservations about  
22 serving on a jury in a case that will involve  
23 issues related to computer software and social  
24 networking?

1           Have you had any experience either  
2 personal or through business involving  
3 inventions and patents?

4           Have you or any of your immediate  
5 family members ever invented anything or applied  
6 for a patent?

7           Have you or any member of your  
8 family ever been employed by the United States  
9 Patent and Trademark Office?

10          Do you hold any opinions about  
11 patents or the United States Patent and  
12 Trademark Office that might keep you from being  
13 a fair and impartial juror?

14          And finally, do you have any other  
15 concern that might prevent you from serving on  
16 this jury?

17          Okay. What we're going to do now  
18 is some of the attorneys and my staff and a  
19 court reporter and I are going to return to the  
20 jury room and we will, my staff will help usher  
21 you in one by one, any of you who answered yes  
22 on one or more of the questions and I and the  
23 attorneys will probably have a few additional  
24 questions for you back in the jury room.

1 (A brief recess was taken.)

2 THE COURT: Good morning. Have a  
3 seat here, please. Tell us first your jury  
4 number.

5 THE JUROR: 53.

6 THE COURT: 53. So you are  
7 Mr. Reighart?

8 THE JUROR: That's right.

9 THE COURT: Tell us what questions  
10 you had yes answers to.

11 THE JUROR: The first one had to  
12 do with personal or business and I do have a  
13 Facebook account, which is why I raised my hand.  
14 And then that very question was asked later, do  
15 you have a Facebook account and I do. And there  
16 was a question, do you go on Facebook at least  
17 once a day and I typically do.

18 THE COURT: Is there anything  
19 about your daily Facebook use that you think  
20 would prevent you from being a fair and  
21 impartial juror?

22 THE JUROR: No.

23 THE COURT: No.

24 Any questions from Leader?

1 MR. ANDRE: How many friends do  
2 you have on Facebook, approximately?

3 THE JUROR: Compared to my  
4 brother's kids, who have 800 plus, I think I  
5 have like 312, or something like that.

6 MR. ANDRE: Do you store a lot of  
7 photographs on Facebook?

8 THE JUROR: Very few.

9 MR. ANDRE: That's all I have.

10 THE COURT: From Facebook.

11 MR. RHODES: No questions, Your  
12 Honor.

13 THE COURT: No questions. Thank  
14 you very much. You may return to the jury room.

15 THE JUROR: Thank you.

16 THE COURT: Are there any motions  
17 with respect to Mr. Reighart?

18 MR. ANDRE: No, Your Honor.

19 MR. RHODES: Pass for cause. No  
20 challenge.

21 THE COURT: No challenge. Thank  
22 you.

23 MR. RHODES: I apologize, Your  
24 Honor. My vernacular is probably geographic.

1 THE COURT: We'll work this out.  
2 We're not striking Mr. Reighart for cause, then.

3 You can bring the next person in.  
4 Good morning.

5 THE JUROR: Good morning.

6 THE COURT: What is your jury  
7 number?

8 THE JUROR: 11.

9 THE COURT: That would make you  
10 Mr. Dailey?

11 THE JUROR: That's correct.

12 THE COURT: Okay. And Mr. Dailey,  
13 what questions did you have yes answers to?

14 THE JUROR: I had yes answers to  
15 if I did business with Facebook. Yes answers to  
16 if it would be a hardship to be on a six-day  
17 trial. If I could go six days without being on  
18 Facebook. Have I ever applied for or knew  
19 someone that applied for a patent or a  
20 trademark.

21 THE COURT: Tell us some more  
22 about the hardship and your use of Facebook.

23 THE JUROR: I am self employed. I  
24 run a home building company down in Lewes,

1 Delaware. The home building market is very  
2 challenging. To be here for six days and not be  
3 able to run the operation, it would be very  
4 difficult.

5 We have a lot of business we use  
6 Facebook targeted advertising, which in our  
7 world we monitor that very frequently. We also  
8 use a couple of Facebook sites pretty heavily as  
9 part of our marketing campaign and a blog that  
10 updates regularly. I'm trying to think what my  
11 -- -- I'm also running for the Sussex County  
12 Recorder of Deeds. I have an announcement set  
13 for Thursday at The Circle in Georgetown. And  
14 again, that also relates to Facebook is one of  
15 the announcements is made on a Facebook  
16 campaign.

17 THE COURT: And tell us just  
18 briefly about the patent experience that you or  
19 a family member.

20 THE JUROR: My sister had, she  
21 works -- it was my stepsister. Excuse me.  
22 Works at the University of California San Diego  
23 in their computer science department and at  
24 points she had worked on a patent, I couldn't

1 explain it to you. It had to do with a router  
2 that was in the mid '90s. She has her Ph.D. in  
3 computer science and speaks languages. I build  
4 houses.

5 So that and also my company was  
6 involved in -- is currently ongoing involved in  
7 attempting a patent. I'm not sure if the patent  
8 is as relevant just to brand our logo, or  
9 trademark, I guess that would be a trademark.

10 THE COURT: Any questions from  
11 Leader?

12 MR. ANDRE: No questions, Your  
13 Honor.

14 THE COURT: Any questions from  
15 Facebook?

16 MR. RHODES: No, Your Honor.

17 THE COURT: Thank you very much.  
18 You can return to the courtroom.

19 I think we should let Mr. Dailey  
20 go.

21 MR. ANDRE: Yes.

22 MR. RHODES: Your Honor, I'm  
23 shocked.

24 THE COURT: We'll let him run for



1 office.

2 Before we bring the next juror in,  
3 I believe there were eight or so jurors that  
4 didn't show up, so I want counsel to know who  
5 they are.

6 MR. RHODES: Thank you, Your  
7 Honor.

8 MR. ANDRE: Do you have a list of  
9 them?

10 THE CLERK: Juror Number 1 is  
11 absent. Juror Number 6 actually has a different  
12 last name, it's actually Polecaro,  
13 P-O-L-E-C-A-R-O.

14 MR. RHODES: I'm sorry, P-O-L-E.

15 THE CLERK: P-O-L-E-C-A-R-O, she  
16 still has the same juror number.

17 MR. RHODES: And she's not here?

18 THE CLERK: She is here, just the  
19 name is different.

20 Juror Number 10 is absent. Juror  
21 Number 13 is absent, Debnam. Juror number 17,  
22 Finnical, absent. Juror Number 30, Juror Number  
23 31, absent. Juror Number 51 and Juror Number  
24 54.

1 THE COURT: Okay. You can bring  
2 the next person in.

3 Good morning.

4 THE JUROR: Good morning.

5 THE COURT: What is your jury  
6 number?

7 THE JUROR: 27.

8 THE COURT: So you are  
9 Ms. Hurling?

10 THE JUROR: Yes.

11 THE COURT: Tell us what questions  
12 you had yes answers to.

13 THE JUROR: I do have a Facebook  
14 online account.

15 THE COURT: Okay. Is that the  
16 only one?

17 THE JUROR: Yeah. I believe I  
18 answered yes to on it every day, but I'm not.

19 THE COURT: About how often do you  
20 use Facebook?

21 THE JUROR: I probably go on it  
22 maybe every other, every couple days or so.  
23 There are some days it's consecutive, but not  
24 every day.

1 THE COURT: Is there anything  
2 about your use of Facebook that you think would  
3 make you unable to be a fair and impartial  
4 juror?

5 THE JUROR: No.

6 THE COURT: Any questions from  
7 Leader?

8 MR. ANDRE: How many photographs  
9 do you have stored on your Facebook account?

10 THE JUROR: Maybe twenty -- oh,  
11 gosh, no more than fifty.

12 MR. ANDRE: What do you primarily  
13 use Facebook for?

14 THE JUROR: I'm like a Facebook  
15 creeper. I'm on my iPod a lot, and it takes so  
16 long to post, so I'll post not often, but I'll  
17 just look on just to see what's going on, family  
18 and friends.

19 MR. ANDRE: Thank you.

20 THE COURT: Mr. Rhodes?

21 MR. RHODES: We have no questions,  
22 Your Honor. Thank you.

23 THE COURT: Thank you. I'll ask  
24 you to return to the courtroom.

1 THE JUROR: Okay.

2 THE COURT: Any motions?

3 MR. ANDRE: No motions, Your  
4 Honor.

5 THE COURT: Any motions?

6 MR. RHODES: No.

7 THE COURT: Bring in the next  
8 juror.

9 Have a seat here, please. Good  
10 morning. What is your jury number?

11 THE JUROR: 12.

12 THE COURT: Mr. Davis.

13 THE JUROR: Yes.

14 THE COURT: And what questions did  
15 you answer yes to?

16 THE JUROR: Facebook.

17 THE COURT: You have an account?

18 THE JUROR: Yes.

19 THE COURT: Is there anything  
20 about the fact that you have an account that  
21 would prevent you from being a fair and  
22 impartial juror in this case?

23 THE JUROR: No.

24 THE COURT: Any questions from

1 you, Mr. Andre?

2 MR. ANDRE: What do you primarily  
3 use Facebook for?

4 THE JUROR: Primarily I use it to  
5 keep in contact with some friends of mine that  
6 are soldiers over in Afghanistan and different  
7 places around the world.

8 MR. ANDRE: Do you use any other  
9 type of account other than Facebook.

10 THE JUROR: Most of the time I use  
11 MySpace and Facebook, but most of my friends  
12 that are overseas, they're all Facebook.

13 MR. ANDRE: I have no further  
14 questions.

15 MR. RHODES: I have no questions.  
16 Thank you.

17 THE COURT: Thank you. You can  
18 return.

19 Any motion with respect to  
20 Mr. Davis?

21 MR. ANDRE: No, Your Honor.

22 THE COURT: Mr. Rhodes?

23 MR. RHODES: No motion, Your  
24 Honor.

1 THE COURT: Okay. Tell us your  
2 juror number.

3 THE JUROR: Sixty-three.

4 THE COURT: Ms. Steele?

5 THE JUROR: Mm-hmm.

6 THE COURT: Which questions did  
7 you answer yes to?

8 THE JUROR: I have a Facebook user  
9 account. And my father when I was probably  
10 three years old tried to patent something  
11 before.

12 THE COURT: Did he get the patent?

13 THE JUROR: No.

14 THE COURT: Okay. And tell us a  
15 little bit about your Facebook use.

16 What do you primarily use Facebook  
17 for?

18 THE JUROR: Socially, not for any  
19 networking or anything like that or business.  
20 Social.

21 THE COURT: Okay. Any questions,  
22 Mr. Andre?

23 MR. ANDRE: How often do you log  
24 on to your Facebook account?

1 THE JUROR: Sometimes every day.  
2 Sometimes once a week. It's very sporadic.

3 MR. ANDRE: Okay. How many  
4 photographs do you have uploaded on your  
5 Facebook account approximately?

6 THE JUROR: Forty maybe.

7 THE COURT: Anything else?

8 MR. ANDRE: No further questions.

9 THE COURT Mr. Rhodes.

10 MR. RHODES: Just one question.  
11 Any understanding as to why your dad didn't get  
12 the patent in the end?

13 THE JUROR: No.

14 MR. RHODES: Got you.

15 THE COURT: I think you said you  
16 were about three years old.

17 MR. RHODES: I'm assuming you  
18 weren't following it daily. But I appreciate  
19 your answer.

20 No further questions. Thank you,  
21 Your Honor.

22 THE COURT: Thank you. You may  
23 return to the courtroom.

24 THE COURT: Any motions, Mr.

1 Andre?

2 MR. ANDRE: Your Honor, I strike  
3 her for cause. I think her reaction when I  
4 asked the question about Facebook was --  
5 appeared that she was a little more married to  
6 it then she led on to in my mind.

7 THE COURT: Mr. Rhodes.

8 MR. RHODES: That's not a basis  
9 for cause, number one. And I was actually going  
10 to suggest to you at a break, I am a little  
11 troubled by some of the questions that are being  
12 asked by Leader about how many photographs are  
13 on the website.

14 I am not sure that would go to a  
15 cause determination and I'm worried this is  
16 going to start to kind of become indoctrination.  
17 But putting that to the side, I don't think the  
18 fact that she has a Facebook account alone  
19 establishes cause.

20 THE COURT: Well, on the  
21 questioning, I think the questioning is fair  
22 because I think we're here to explore, with some  
23 leeway, what the extent of the Facebook use is.

24 Why Leader wants to emphasize



1 photos, I'm sure will become clear. But rather  
2 than have them ask a hundred questions, if they  
3 have only one, I'm happy about that.

4 I did not have the same view that  
5 Mr. Andre did about whether Ms. Steele was in  
6 any way troubled by the questioning. I think  
7 she just was struggling to remember how many  
8 photos she may have had.

9 So I'm going to deny the motion to  
10 strike for cause. Let's bring in the next  
11 juror.

12 Have a seat here, please.

13 THE JUROR: Oh, okay. Thank you.  
14 Hello.

15 THE COURT: Good morning.

16 THE JUROR: Hi. Good morning.

17 THE COURT: What is your juror  
18 number?

19 THE JUROR: Forty-four.

20 THE COURT: So you are Ms.  
21 Melancon?

22 THE JUROR: Yes.

23 THE COURT: Tell us what questions  
24 you had yes answers to, please.

1 THE JUROR: The Facebook. I don't  
2 personally have an account, but my children do  
3 and my family does. And I'm thinking about  
4 starting one.

5 And the other thing was the  
6 lawsuit. I inherited a house that had  
7 structural damage, and my sister and I went  
8 before a binding arbitration with the home  
9 warranting company.

10 And we just did that last year.  
11 And I went through that process.

12 And then I was involved in a car  
13 accident, and I had an injury and I went to  
14 Court with that in March.

15 THE COURT: Okay.

16 THE JUROR: Those are my answers.

17 THE COURT: And generally  
18 speaking, were you satisfied with the outcome in  
19 your case?

20 THE JUROR: Yes.

21 THE COURT: Is that true of both  
22 of your cases?

23 THE JUROR: Yes, both of them.

24 THE COURT: Anything about those

1 experiences that would cause you not to be able  
2 to sit fairly in judgment in this case?

3 THE JUROR: I don't think so.

4 THE COURT: Okay. Mr. Andre, any  
5 questions?

6 MR. ANDRE: You said you're  
7 thinking about opening a Facebook account.

8 THE JUROR: Mm-hmm.

9 MR. ANDRE: For what purpose would  
10 you be doing that?

11 THE JUROR: For socializing.

12 THE COURT: Mr. Rhodes?

13 MR. ROVNER: Your Honor, I have  
14 one question. You mentioned some litigation.  
15 Do you know the firms, the Delaware firms that  
16 were involved?

17 THE JUROR: Seitz and the other  
18 one was -- I'm trying to think. It's in  
19 Wilmington. It was Timothy Lengkeek.

20 I'm --

21 MR. ROVNER: It wasn't either  
22 Potter Anderson or Blank Rome?

23 THE JUROR: No, it wasn't.

24 THE COURT: I think Mr. Lengkeek's

1 at Young Conaway.

2 THE JUROR: Mm-hmm. Yes.

3 THE COURT: Any questions from Mr.  
4 Rhodes?

5 MR. RHODES: Yes. Lawyers always  
6 get nervous when we hear about lawsuits. Can  
7 you just tell us little bit more about -- not  
8 what happened, but how did you feel about, you  
9 know, being in a lawsuit? And do you think that  
10 there's anything about the lawyers, the process  
11 itself that would make you kind of lean one way  
12 or the other?

13 THE JUROR: Well, with the binding  
14 arbitration, I mean, I was satisfied. We won.

15 I felt like we were -- you know,  
16 the house had sunk four inches, and I'm not  
17 sure -- I don't know if I can -- I was satisfied  
18 with the outcome.

19 But I'm not sure I know what  
20 you're saying. It could possibly affect my  
21 decision.

22 MR. RHODES: Let me ask you just  
23 one more and then I'll leave you be.

24 I'm a defense lawyer, and so if

1 you've been a plaintiff a couple of times --

2 THE JUROR: Yeah, twice in this  
3 past year.

4 MR. RHODES: Will you give me the  
5 same fair shake that you give the other side?  
6 You go into it with an open mind.

7 You have to follow the judge's  
8 instruction. He will tell you that.

9 I'm just concerned -- do you look  
10 at defense lawyers differently than plaintiff's  
11 lawyers? That's all I'm asking you.

12 THE JUROR: Possibly, because I  
13 got questioned up and down, you know. So maybe  
14 I could have a slight sympathy for the other  
15 side.

16 MR. RHODES: I really appreciate  
17 your honesty.

18 THE JUROR: Mm-hmm. Yeah.

19 MR. RHODES: Okay.

20 THE COURT: Okay. Thank you very  
21 much.

22 THE COURT: Motion?

23 MR. RHODES: Please.

24 THE COURT: Okay. We'll strike

1 Melancon for cause.

2 MR. RHODES: Thank you, Your  
3 Honor.

4 THE CLERK: What name are you  
5 saying?

6 MR. RHODES: Juror 44.

7 THE CLERK: Oh, Melancon.

8 THE COURT: Vernacular.

9 MR. RHODES: Some of these are  
10 pretty stuff.

11 THE COURT: That's okay. She  
12 didn't hit me at least when I pronounced it that  
13 way.

14 THE CLERK: Yeah. That's why I  
15 was asking.

16 THE COURT: Good morning. Have a  
17 seat here, please.

18 What is your juror number?

19 THE JUROR: Three.

20 THE COURT: Three. That would  
21 make you Ms. Bromels?

22 THE JUROR: That's correct.

23 THE COURT: Okay. And tell us  
24 what questions you had a yes answer to.

1 THE JUROR: Your first question.  
2 I work for DuPont. I'm a patent attorney and I  
3 know some of the attorneys from Potter Anderson.

4 THE COURT: And you know something  
5 about patents, I'm guessing.

6 THE JUROR: Something.

7 THE COURT: Okay. Questions?

8 MR. ANDRE: I have no questions,  
9 Your Honor.

10 THE COURT: Questions?

11 MR. RHODES: I represent the folks  
12 that have been accused of infringing a patent.  
13 Obviously, you're very educated.

14 If you were in my shoes, would you  
15 want me on your panel?

16 THE JUROR: I -- well, actually I  
17 think maybe it's not such a bad thing to have  
18 somebody who knows something about patents on  
19 the panel because it's complicated. And the  
20 issues of infringement are not so easy for  
21 everyone to understand.

22 So, and depending on what the  
23 issues are here, you know, I think I could be  
24 impartial.

1 MR. RHODES: I appreciate your  
2 answer. Thank you.

3 THE COURT: Do you -- you don't  
4 know right now what the issues are or what the  
5 evidence is, but are you confident that you  
6 could be fair and impartial, you know,  
7 regardless of what issues and what evidence come  
8 up?

9 THE JUROR: Yes. I think so. And  
10 since it -- it seems that it was an electronics,  
11 computer sort of case, I don't practice in that  
12 field. I practice in the chemical field.

13 So I certainly wouldn't have a lot  
14 of built-in prejudices because of cases I've  
15 prosecuted myself.

16 THE COURT: Are you going to be  
17 able to follow my instructions even if you think  
18 I got the law wrong?

19 THE JUROR: Yes, I think so. I  
20 also should tell you that I myself have been  
21 involved in patent infringement trials and as  
22 in-house counsel. And I have testified myself  
23 as well.

24 So I'm familiar with that.



1 THE COURT: Anything about that  
2 experience that would make you be anything other  
3 than fair and impartial?

4 THE JUROR: I don't think so. No.  
5 I think I could be impartial.

6 THE COURT: Any follow-up  
7 questions as a result of those answers?

8 MR. ANDRE: No.

9 THE COURT: Mr. Rhodes?

10 MR. RHODES: Just one. If you sat  
11 on the jury, you wouldn't judge Mr. Andre or me  
12 by the standards that you've seen in other cases  
13 I hope.

14 I have nothing further, Your  
15 Honor.

16 THE COURT: Okay. Thank you very  
17 much for your time.

18 You can return to the courtroom.

19 THE COURT: Any motion?

20 MR. ANDRE: For cause. She has  
21 association with Mr. Rovner's law firm. They  
22 worked with DuPont.

23 I think that would be basis alone,  
24 plus the fact that she's a patent attorney.

1 MR. ROVNER: I checked with my  
2 firm. She has a relationship with a number of  
3 attorneys, an ongoing relationship.

4 THE COURT: I think that's enough.  
5 We will strike her for cause.

6 That was Mrs. Bromels.

7 You can bring in the next one.

8 Good morning. What is your juror  
9 number.

10 THE JUROR: Thirty-six.

11 THE COURT: Mr. Kovacs?

12 THE JUROR: Yeah.

13 THE COURT: Tell us what questions  
14 you had yes answers to.

15 THE JUROR: I have a Facebook  
16 account. I'm usually on it almost every day.

17 I have a patent. And you asked a  
18 question about whether or not I had any  
19 immediate family that's ever been part of a  
20 trial. My mother's a paralegal. Whether or not  
21 she's been part of a trial; I don't know.

22 But that's about it.

23 THE COURT: Is your mother a  
24 paralegal here in Delaware?

1 THE JUROR: No, over -- out by  
2 Pittsburgh somewhere.

3 THE COURT: And tell us a little  
4 bit about your patent.

5 THE JUROR: It's a patent with  
6 DuPont. It is for a fungicide.

7 Yeah. I'm a chemist, so there you  
8 go.

9 THE COURT: Did you have  
10 interaction with the Patent Office as you were  
11 prosecuting the patent?

12 THE JUROR: It was -- I don't even  
13 think it's been through prosecution yet. It's  
14 been published and that -- the patent itself has  
15 not yet been issued.

16 But the only interaction -- I  
17 only -- I never had nothing with the Patent  
18 Office, just with the attorneys and the  
19 iteration of the patent.

20 THE COURT: Is there anything  
21 about that experience that would make you unable  
22 to fairly and impartially weigh in evidence?

23 THE JUROR: No. No.

24 It's actually rather thorough, but

1 that's about it.

2 THE COURT: And with your Facebook  
3 account, what do you primarily use your Facebook  
4 account for?

5 THE JUROR: Every once in awhile,  
6 see what a friend is doing or, you know, I play  
7 Mafia Wars or whatever it is. That's about it.

8 THE COURT: Okay. Any questions,  
9 Mr. Andre?

10 MR. ANDRE: How long have you had  
11 a Facebook account?

12 THE JUROR: A year, year and a  
13 half.

14 MR. ANDRE: And do you store a lot  
15 of photographs on the Facebook account?

16 THE JUROR: No. I've only got  
17 three, maybe four. That's about it.

18 MR. ANDRE: That is all I have.

19 THE COURT: Mr. Rhodes?

20 MR. RHODES: Is there -- I  
21 represent the defendant, the party accused of  
22 the infringement. It sounds like you've been  
23 part of the process of trying to get a patent.

24 THE JUROR: Somewhat.

1 MR. RHODES: Is there anything  
2 about the process about trying to get a patent  
3 that makes you really, like the idea of patents,  
4 would you hold any of that against folks at  
5 Facebook?

6 THE JUROR: No. I mean, most of  
7 it is -- you know, was away from me. It was  
8 behind the scene, people, attorneys, patent  
9 liaisons, whatever doing that sort of work. My  
10 job was, you know, I was sitting in the hood  
11 doing my job most of the time.

12 My interaction was just primarily,  
13 you know, this is what I did. Here you go. And  
14 that was it.

15 I mean, that's no big deal.

16 MR. RHODES: All right. I thank  
17 you for your time.

18 THE COURT: Okay. All right.  
19 Thank you. You can return to the  
20 courtroom.

21 Any motion?

22 MR. ANDRE: No motion.

23 THE COURT: Mr. Rhodes?

24 MR. RHODES: No motion, Your

1 Honor.

2 THE COURT: Okay. We're ready for  
3 the next one.

4 Good morning.

5 THE JUROR: Hi.

6 THE COURT: Hi. Please tell us  
7 what your juror number is.

8 THE JUROR: Six.

9 THE COURT: I understand we have  
10 the name incorrect.

11 THE JUROR: Correct.

12 THE COURT: What is your name?

13 THE JUROR: Polecar,

14 P-O-L-E-C-A-R.

15 THE COURT: If we knew that, you'd  
16 be lower down than six because I think we're  
17 alphabetical here.

18 THE JUROR: That is right. I  
19 messed it all up.

20 THE COURT: No. No. No, it was  
21 not.

22 Can you tell us what questions you  
23 had yes answers to?

24 THE JUROR: Just the one about

1 Facebook. I have a Facebook page.

2 THE COURT: Okay. And what do you  
3 primarily use Facebook for?

4 THE JUROR: I don't really. I  
5 really rarely use it.

6 Once in awhile I go on there if  
7 somebody says I put something on there. I don't  
8 use it at all on a regular basis.

9 THE COURT: About how long have  
10 you had the Facebook page?

11 THE JUROR: Maybe a year.

12 THE COURT: Okay. Was there a  
13 time that you used to use it more than you do  
14 now?

15 THE JUROR: No. I just did it  
16 because a friend was like, You should go on. I  
17 didn't just really ever do anything with it.

18 THE COURT: Mr. Andre.

19 MR. ANDRE: I don't have any  
20 questions.

21 THE COURT: Mr. Rhodes?

22 MR. RHODES: What kind of computer  
23 do you have at home?

24 THE JUROR: Windows. You know,

1 not Mac.

2 MR. RHODES: And have you ever  
3 used your Facebook account to promote your yoga  
4 business in any respect?

5 THE JUROR: No.

6 MR. RHODES: Okay. Thank you,  
7 Your Honor.

8 THE COURT: Thank you. You can go  
9 back to the courtroom.

10 Mr. Andre.

11 MR. ANDRE: No motion.

12 THE COURT: Mr. Rhodes.

13 MR. RHODES: No motion.

14 THE COURT: Okay. Good morning.  
15 Have a seat here.

16 THE JUROR: Right here?

17 THE COURT: No over here. Come on  
18 and join us.

19 What is your juror number?

20 THE JUROR: Forty-seven.

21 THE COURT: Mr. Moore?

22 THE JUROR: Right.

23 THE COURT: Okay. Tell us what  
24 questions you had yes answers to, please.



1 THE JUROR: The only one was the  
2 Facebook account. I'm not on it every day, but  
3 I do have a Facebook account.

4 THE COURT: And about how long  
5 have you had a Facebook account?

6 THE JUROR: Say like a year.

7 THE COURT: And when you are on  
8 it, what are you typically doing.

9 THE JUROR: It's networking.  
10 Basically networking, that's all.

11 THE COURT: Okay. Mr. Andre?

12 MR. ANDRE: I have no questions,  
13 Your Honor.

14 THE COURT: Mr. Rhodes, any  
15 questions?

16 MR. RHODES: Do you belong to any  
17 groups on Facebook?

18 THE JUROR: No, no groups.

19 MR. RHODES: Okay. Thank you.

20 THE COURT: That's it. Thank you.  
21 You can go back to the courtroom.  
22 Thank you.

23 MR. ANDRE: No motion.

24 THE COURT: No motion.

1 MR. RHODES: No motion.

2 THE COURT: No motion. Okay.

3 Good morning. What is your juror  
4 number.

5 THE JUROR: Fifty-eight.

6 THE COURT: Fifty-eight. So  
7 you're Mr. Sharp?

8 THE JUROR: Yes.

9 THE COURT: Okay. Tell us what  
10 questions you had a yes answer to, please.

11 THE JUROR: I answered yes to the  
12 relationship question. I've been a client of  
13 Potter, Anderson & Corroon and have known a  
14 number of people there, although not --

15 THE COURT: Not Mr. Rovner.

16 THE JUROR: Not the gentleman  
17 here. And also I have a Facebook account --

18 THE COURT: Okay.

19 THE JUROR: -- for what that's  
20 worth.

21 THE COURT: Well, given your  
22 relationship with Potter, Anderson, I think it's  
23 not worth much, no offense.

24 Any questions, Mr. Andre?

1 MR. ANDRE: No, Your Honor.

2 THE COURT: Mr. Rhodes?

3 MR. RHODES: No.

4 THE COURT: No. Thank you very  
5 much. You can return to the courtroom.

6 We're going to strike Mr. Sharp.

7 Good morning.

8 THE JUROR: Good morning.

9 THE COURT: What is your juror  
10 number?

11 THE JUROR: Sixty-seven.

12 THE COURT: Sixty-seven. Ms.  
13 Watkins?

14 THE JUROR: Yes.

15 THE COURT: Tell us what questions  
16 you had a yes answer to.

17 THE JUROR: I'm Facebook just like  
18 everybody else there. I'm also teaching summer  
19 school.

20 So six days, this is the last week  
21 of summer school. We have a lot of assessments  
22 going on. So that might be kind of hard.

23 I mean, I could get out, but I  
24 would hate to have my kids testing with somebody

1 else.

2 THE COURT: What age kids are you  
3 working with?

4 THE JUROR: Kids going into fifth  
5 grade.

6 THE COURT: All right. Any  
7 questions?

8 MR. ANDRE: How often do you go on  
9 Facebook?

10 THE JUROR: Every day.

11 MR. ANDRE: Every day?

12 THE JUROR: Every morning.

13 MR. ANDRE: Like a morning  
14 routine?

15 THE JUROR: Morning routine.  
16 Right after I get out of the shower, I log on to  
17 Facebook while my hair's drying.

18 THE COURT: Mr. Rhodes?

19 MR. RHODES: Do you ever use your  
20 Facebook for -- my sister is a teacher. Did you  
21 ever use Facebook for the stuff you do at  
22 school?

23 THE JUROR: No. It's just  
24 personal.

1 MR. RHODES: Okay. Thank you.

2 THE COURT: Okay. Thank you.

3 You can go back to the courtroom.

4 I think this is going better than  
5 I anticipated. We're trying to end up with 18.  
6 I think we're on track to do that.

7 So I think given the summer  
8 school, we should let her go.

9 MR. ANDRE: I agree, Your Honor.

10 THE COURT: Okay. We're going to  
11 strike Ms. Watkins then for cause.

12 MR. RHODES: She was 67?

13 THE COURT: Sixty-seven, yes.  
14 Tell us please what your jury number is.

15 THE JUROR: 35.

16 THE COURT: So you are  
17 Ms. Kirchner?

18 THE JUROR: Yes.

19 THE COURT: And then tell us what  
20 questions you had a yes answer to, please.

21 THE JUROR: Yes, I have a Facebook  
22 account. Yes, I am usually on it every day.  
23 And yes, I have a problem because I live so far  
24 away. I'm all the way at the bottom of the

1 state. It takes me about two-and-a-half hours  
2 to get here, five hours a day driving, it's a  
3 lot.

4 THE COURT: So the length of the  
5 trial would pose a problem?

6 THE JUROR: Yes.

7 THE COURT: Tell us what you do on  
8 your Facebook account.

9 THE JUROR: I don't use it that  
10 often. I go on it every day, but usually just  
11 to look at my friends' pictures and chat with  
12 them. I don't do like games or anything.

13 THE COURT: About how long have  
14 you had your Facebook account?

15 THE JUROR: Two years.

16 THE COURT: Any questions,  
17 Mr. Andre?

18 MR. ANDRE: No questions.

19 MR. RHODES: No questions.

20 THE COURT: Thank you.

21 Any motion?

22 MR. ANDRE: I have a motion.

23 Other than the fact that she seems to have a  
24 problem, a two-and-a-half drive is quite a

1       burden, five hours on the road every day, so I  
2       say we should let her go.

3                   THE COURT:   Mr. Rhodes.

4                   MR. RHODES:   I'm not sure how I  
5       feel about that.  That is a burden, but I'm  
6       worried about what we end up with.  We'll just  
7       defer to Your Honor.

8                   THE COURT:   I'm just going to  
9       reserve ruling on her.  It certainly is a  
10      burden.  It's one that I'm willing to impose if  
11      I have to, but if I don't have to, I won't.

12                  MR. ROVNER:   As a personal aside,  
13      the traffic from Bethany to Rehoboth is just  
14      incredible, so I don't doubt that it's  
15      two-and-a-half hours.

16                  THE COURT:   It's hard to go  
17      two-and-a-half hours in our state, but in the  
18      summer with beach traffic you can do it.

19                  MR. ANDRE:   And my issue, Your  
20      Honor, I once had a juror in a similar situation  
21      and we were delayed on trial almost every  
22      morning.

23                  MR. RHODES:   That's a good point.  
24      Why don't we see where we come out.

1 THE COURT: I'm going to reserve,  
2 but if we don't need her, I will strike her.

3 Next one. Good morning.

4 THE JUROR: Hi.

5 THE COURT: Tell us what your  
6 juror number is.

7 THE JUROR: 55.

8 THE COURT: Mr. Schwendeman.

9 THE JUROR: Yes.

10 THE COURT: Tell us what questions  
11 you had a yes answer to, please.

12 THE JUROR: The first one my  
13 mother has an oral surgery on Wednesday,  
14 eighty-nine years old. She's on Coumadin, and I  
15 am her only source of transportation. However,  
16 my problem at this point is she's got problems  
17 in her legs that we have got to get taken care  
18 of between now and Wednesday so she can have  
19 that surgery, but with the Coumadin, it scares  
20 me.

21 THE COURT: Were there other  
22 questions you had a yes answer to?

23 THE JUROR: Yeah. My wife has one  
24 of those damn Facebook accounts and she doesn't



1 get anything done around the house. And I'm  
2 really not happy with that at all.

3 THE COURT: Okay. Mr. Andre.

4 MR. ANDRE: We like him.

5 THE COURT: Mr. Rhodes, any  
6 questions.

7 MR. RHODES: Well,  
8 Mr. Schwendeman, when you use the epithet that  
9 you did with Facebook, since I represent  
10 Facebook, while I sympathize with you, I worry  
11 if you were on the box you might be looking at  
12 me, that's the guy that's responsible for the  
13 fact that my dinner is cold or something is  
14 late.

15 THE JUROR: Yeah, between that and  
16 eBay, I'll tell you.

17 MR. RHODES: I represent them,  
18 too. I have nothing further, Your Honor.

19 THE COURT: All right.  
20 Mr. Schwendeman, you can go back in the  
21 courtroom. Thank you.

22 I'm willing to strike him.

23 MR. RHODES: Please, Your Honor.

24 THE COURT: At least based on the

1 medical reasons.

2 MR. RHODES: Yes, make the record  
3 the medical reasons.

4 MR. ANDRE: I thought he was  
5 great.

6 MR. RHODES: Sorry, Paul.

7 THE COURT: Good morning.

8 THE JUROR: Good morning.

9 THE COURT: Please tell us what  
10 your juror number is.

11 THE JUROR: 52.

12 THE COURT: Ms. Pleasant.

13 THE JUROR: Yes.

14 THE COURT: And what questions did  
15 you have a yes answer to?

16 THE JUROR: I'm having medical  
17 issues with my stomach and I have a colonoscopy  
18 on Thursday, so I know the six days, I can  
19 always reschedule, but I know I have that. And  
20 I sued and I was sued before with car insurance.

21 THE COURT: Car insurance.

22 THE JUROR: For a car accident.

23 THE COURT: Okay. Were you  
24 generally satisfied with how those litigations

1 ended up?

2 THE JUROR: Yes.

3 THE COURT: Were you the plaintiff  
4 in those cases?

5 THE JUROR: One I was the  
6 plaintiff and then I worked with a company that  
7 was sued and I was the driver.

8 THE COURT: Okay. Did you have  
9 any other questions that you answered yes to?

10 THE JUROR: I have an eighteen and  
11 a twenty-three year old and both of them are on  
12 Facebook, so I don't know who they are  
13 associated with.

14 THE COURT: Are you on Facebook  
15 yourself?

16 THE JUROR: No.

17 THE COURT: Do you have any  
18 feelings about Facebook as a result of your kids  
19 having Facebook accounts?

20 THE JUROR: No. And my  
21 twenty-three year old, I know he makes music, so  
22 I don't know if he patented anything. I'm  
23 almost sure he has, but I don't know for sure.

24 THE COURT: All right. Any

1 questions, Mr. Andre?

2 MR. ANDRE: I have no questions,  
3 Your Honor.

4 MR. RHODES: Would it be -- I know  
5 that sometimes when you get these health plans,  
6 you got to go through all this rigamarole to get  
7 reschedule. Is that the problem you face  
8 Thursday?

9 THE JUROR: If I reschedule, it's  
10 going to be a month away probably to get another  
11 appointment.

12 MR. RHODES: The only thing I'll  
13 say is you have my sympathy on having an  
14 eighteen and twenty-three year old. I'm right  
15 there with you.

16 THE JUROR: I'm willing to  
17 reschedule, but I would need to reschedule  
18 tomorrow in order not to be hit for a hundred  
19 dollars because I had to cancel forty-eight  
20 hours before.

21 THE COURT: And you said you have  
22 been experiencing some pain?

23 THE JUROR: Yes, and bleeding.

24 THE COURT: Thank you very much.

1 You can go back into the courtroom.

2 I'm going to strike her for the  
3 colonoscopy issue.

4 Next.

5 Good morning.

6 THE JUROR: Good morning.

7 THE COURT: What is your juror  
8 number?

9 THE JUROR: 60.

10 THE COURT: Ms. Shorb.

11 THE JUROR: Yes.

12 THE COURT: And what questions did  
13 you answer yes to?

14 THE JUROR: That I have a Facebook  
15 account, that I'm on there once a day. And if  
16 there was any issues with being here every day.  
17 It's not during the day, but I go to school at  
18 night and I take two classes down at Dover at  
19 Del Tech, and I don't know if I could get there.

20 THE COURT: You would be leaving  
21 Court -- we would be finishing at 4:30 every  
22 day. What time is your class?

23 THE JUROR: We have to be there by  
24 6:15, so I guess that would be --

1 THE COURT: It's doable. It's  
2 doable. It would depend. And tell us about  
3 your use of Facebook. What do you primarily do  
4 on it?

5 THE JUROR: Connect with family  
6 and friends.

7 THE COURT: About how long have  
8 you had your Facebook account?

9 THE JUROR: I guess it's just been  
10 like since January.

11 THE COURT: Okay. Mr. Andre.

12 MR. ANDRE: How many friends do  
13 you have on Facebook?

14 THE JUROR: I don't know, like  
15 maybe about 150.

16 MR. ANDRE: You say you go on  
17 every day?

18 THE JUROR: Uh-huh.

19 MR. ANDRE: That is your primary  
20 mode of communication with a lot of your  
21 friends?

22 THE JUROR: Yeah.

23 THE COURT: Mr. Rhodes.

24 MR. RHODES: I have no questions.

1 Thank you.

2 THE COURT: Thank you. You can go  
3 back to the courtroom.

4 THE JUROR: Thank you.

5 THE COURT: Mr. Andre.

6 MR. ANDRE: I'll make a motion to  
7 strike for cause. I think the school issue is  
8 one thing obviously and also that her pretty  
9 consistent use of Facebook would also bias her  
10 if it's her primary mode of communication with  
11 friends.

12 MR. RHODES: I don't think the  
13 second issue is a basis for cause because  
14 otherwise just the use of Facebook alone. On  
15 the first issue, I'll defer to the Court's  
16 instinct about whether it's appropriate to  
17 excuse somebody for cause based on the logistics  
18 of getting from Court to school. I don't have a  
19 feel for that, Your Honor.

20 THE COURT: It certainly is a very  
21 tight fit and she's going to be awful busy, but  
22 I'm going to put her in the category of the  
23 earlier one that has a two-hour trip and reserve  
24 ruling. I'm not going to strike her on the

1 basis of her Facebook use, but I am going to  
2 consider striking her based on the schedule.

3 Next.

4 Good morning.

5 THE JUROR: Good morning.

6 THE COURT: Have a seat there,  
7 please. Tell us what your juror number is.

8 THE JUROR: 22.

9 THE COURT: Ms. Gibson.

10 THE JUROR: Yes.

11 THE COURT: And which questions  
12 did you have a yes answer to?

13 THE JUROR: I think -- well, I  
14 know it was do you use Facebook? Yes. Do you  
15 know anybody that's been in a lawsuit? Yes.  
16 And would it be a hardship if you couldn't use  
17 Facebook? I use it for class for my discussions  
18 sometime, so that might be a bit of a problem  
19 because we're coming up on the last week of  
20 class and I want have to --

21 THE COURT: Are you a student or a  
22 teacher?

23 THE JUROR: Student and teacher.

24 THE COURT: And your class is



1 ongoing right now?

2 THE JUROR: Yes. It doesn't end  
3 until Friday. So I would need to use it this  
4 week to finish up the last of my projects  
5 papers.

6 THE COURT: Would you be missing  
7 class if you're here all day?

8 THE JUROR: No, they're online,  
9 that's why I need it to communicate with my  
10 classmates, that's why I had that issue.

11 THE COURT: Mr. Andre.

12 MR. ANDRE: Do you also use  
13 Facebook for social reasons?

14 THE COURT: Yes.

15 MR. ANDRE: I have no further  
16 questions, Your Honor.

17 THE COURT: Mr. Rhodes.

18 MR. RHODES: Are you going to  
19 school online?

20 THE JUROR: Well, I'm taking my  
21 summer classes online. Typically I would be in  
22 the classroom.

23 MR. RHODES: I didn't follow. The  
24 use of Facebook is they post the course stuff on

1 Facebook?

2 THE JUROR: When we have group  
3 projects because I'm in education, we'll  
4 correspond because we have group projects and we  
5 have to submit them online. Everything we do is  
6 computer based. It's easier for people to get  
7 on Facebook, like people are on Facebook all  
8 day, so it's easier for us to correspond with  
9 each other on Facebook because for some reason  
10 e-mail takes too long. We're always on, pop  
11 ups, chats, we do most of our corresponding on  
12 Facebook.

13 MR. RHODES: Are you using the  
14 chat surface or are you writing on people's  
15 walls?

16 THE JUROR: We'll write on  
17 people's walls, send me such and such slide, or  
18 you know, check out this book. We'll be also --  
19 we'll talk on chat, say this is how far I have  
20 gotten, look at it, check your e-mail.

21 MR. RHODES: And the last question  
22 is, did you say you were finishing school this  
23 week, and would be in trial for the week pose  
24 any personal hardship to you, pose any time

1 commitment?

2 THE JUROR: Well, my classes are  
3 online, so I don't have to per se be in class  
4 this week, but I'm finishing up -- classes end  
5 on Friday, so I'm finishing up projects and  
6 papers this week, so not being able to get on my  
7 Facebook would pose a problem with that.

8 MR. RHODES: I see. So if you  
9 were told you couldn't get to Facebook for the  
10 week.

11 THE JUROR: That would be the part  
12 that might cause an issue because I need to  
13 correspond with my team members on projects.

14 MR. RHODES: Thank you for your  
15 time.

16 THE COURT: Thank you very much.  
17 You can return to the courtroom.

18 THE JUROR: Thank you.

19 THE COURT: I'm going to strike  
20 her for cause. I think that's an example of the  
21 use of Facebook that really would impose a  
22 hardship this week.

23 Next. Good morning.

24 THE JUROR: Good morning.

1 THE COURT: What is your juror  
2 number?

3 THE JUROR: 23.

4 THE COURT: Ms. Giles.

5 THE JUROR: Yes.

6 THE COURT: And which questions  
7 did you answer yes to?

8 THE JUROR: Do I have a Facebook  
9 account and I am on it daily.

10 THE COURT: What kind of things do  
11 you do on it?

12 THE JUROR: I play Fishworld, keep  
13 in touch with my friends, that's basically it.

14 THE COURT: How long have you had  
15 your account?

16 THE JUROR: About six months.

17 THE COURT: Is there anything  
18 about not being able to access the account for a  
19 week that would make you unable to be fair?

20 THE JUROR: Yes, I would be.

21 THE COURT: You would be able to  
22 be fair.

23 THE JUROR: I would be able to be  
24 fair.

1 THE COURT: I apologize for the  
2 poorly asked question.

3 Mr. Andre.

4 MR. ANDRE: How many photos do you  
5 have uploaded on your Facebook account?

6 THE JUROR: About three.

7 MR. ANDRE: And what games did you  
8 say you play?

9 THE JUROR: Fishworld.

10 MR. ANDRE: Fishworld, is that it?

11 THE JUROR: That's it.

12 MR. RHODES: And if you can't get  
13 to Facebook this week, none of the fish will  
14 die?

15 THE JUROR: Probably.

16 MR. RHODES: I know the game,  
17 that's why I was worried.

18 THE JUROR: The tank will be  
19 clean, but they wouldn't be able to eat.

20 MR. RHODES: I'm worried that  
21 you're going to be fretting about those fish.

22 THE JUROR: No, not at all.

23 MR. RHODES: Thank you.

24 THE COURT: Thank you. You can go

1 back in the courtroom.

2 MR. RHODES: That's like a virtual  
3 aquarium thing.

4 THE COURT: Any motion?

5 MR. ANDRE: I have no motion, Your  
6 Honor.

7 THE COURT: Any motion?

8 MR. RHODES: No motion, Your  
9 Honor.

10 THE COURT: Good morning.

11 THE JUROR: Good morning.

12 THE COURT: What is your juror  
13 number?

14 THE JUROR: 66.

15 THE COURT: Ms. Vanhorn.

16 THE JUROR: Yes.

17 THE COURT: And which questions  
18 did you answer yes to?

19 THE JUROR: Just the one about  
20 Facebook.

21 THE COURT: You have an account?

22 THE JUROR: Yes.

23 THE COURT: And about how often do  
24 you use it?

1 THE JUROR: Probably just once a  
2 week.

3 THE COURT: What kind of things do  
4 you do on it typically?

5 THE JUROR: Actually just  
6 e-mailing friends back and forth, but nothing  
7 consistently. Sometimes I don't even look at it  
8 for like five minutes.

9 THE COURT: Could you be a fair  
10 and impartial juror in a case involving  
11 Facebook?

12 THE JUROR: I think so, yes.

13 THE COURT: You have some  
14 hesitation about that.

15 THE JUROR: Not really, no, no.

16 THE COURT: Mr. Andre.

17 MR. ANDRE: I have no questions,  
18 Your Honor.

19 THE COURT: Mr. Rhodes.

20 MR. RHODES: On behalf of the  
21 Facebook side of the ledger, has Facebook's  
22 service made you mad or disappointed you in any  
23 respect? I sense a tiny bit of hesitation.  
24 Sometimes people are nervous to actually say it.

1 And you just need to tell us.

2 THE JUROR: No. The only thing I  
3 do have which is my son won't friend me.

4 MR. RHODES: He won't friend you?

5 THE JUROR: No.

6 MR. RHODES: The reason why there  
7 is a cartoon on South Park said never get  
8 friended, and my seventy-eight year old dad  
9 friended me.

10 THE JUROR: My neighbors do it,  
11 but my son won't. Holding out.

12 MR. RHODES: I'm sorry. I have no  
13 further questions.

14 THE COURT: Thank you very much.  
15 You can return to the courtroom.

16 Mr. Andre, any motion.

17 MR. ANDRE: I don't have any  
18 motions for that witness. I am going to ask  
19 Mr. Rhodes, I know he's trying to build a  
20 rapport with the jurors here and a personal  
21 relationship with the jurors, I don't think  
22 that's appropriate. He's a seasoned lawyer. I  
23 would ask that he quit.

24 MR. RHODES: I'm shocked. There



1 is gambling in Vegas I guess, Your Honor.

2 THE COURT: First with  
3 Ms. Vanhorn, any motions?

4 MR. RHODES: No.

5 THE COURT: I will ask all  
6 counsel, particularly Mr. Rhodes, let's try to  
7 tone it down and refrain from so much personal  
8 back and forth, as enjoyable as it may be, we'll  
9 keep focused on the task here.

10 Bring the next one in. Good  
11 morning.

12 THE JUROR: Good morning.

13 THE COURT: What is your juror  
14 number?

15 THE JUROR: 37.

16 THE COURT: Mr. League.

17 THE JUROR: Yes.

18 THE COURT: And tell us which  
19 questions you answered yes to, please.

20 THE JUROR: The Facebook account.

21 THE COURT: You have an account?

22 THE JUROR: Yes.

23 THE COURT: And about how often do  
24 you use it?

1 THE JUROR: We opened it for my  
2 daughter's trip and so we used it quite  
3 frequently for the posting of pictures from that  
4 trip, but not so much since.

5 THE COURT: Is there anything  
6 about that experience that would prevent you  
7 from being a fair juror in a case involving  
8 Facebook?

9 THE JUROR: No.

10 THE COURT: Mr. Andre.

11 MR. ANDRE: No questions, Your  
12 Honor.

13 THE COURT: Mr. Rhodes.

14 MR. RHODES: No questions, Your  
15 Honor.

16 THE COURT: Thank you very much.  
17 You can go back to the courtroom.

18 Any motions?

19 MR. ANDRE: No, Your Honor.

20 MR. RHODES: No, Your Honor.

21 THE COURT: Okay. Good morning.

22 THE JUROR: Good morning.

23 THE COURT: What is your juror  
24 number?

1 THE JUROR: Two.

2 THE COURT: Ms. Botero.

3 THE JUROR: Yes.

4 THE COURT: Tell us which  
5 questions you answered yes to.

6 THE JUROR: The last questions,  
7 and when I use Facebook, but my English is not  
8 really good, that's my point, you know, I think  
9 I no really going to be good enough to be a  
10 judge, that's my point.

11 THE COURT: Did you have any  
12 trouble following the questions that I was  
13 asking?

14 THE JUROR: A little bit.

15 THE COURT: A little bit?

16 THE JUROR: A little bit.

17 THE COURT: You say you have a  
18 Facebook account?

19 THE JUROR: Yeah.

20 THE COURT: How often do you use  
21 your Facebook account?

22 THE JUROR: Like almost every day.

23 THE COURT: What kind of things do  
24 you do on it?

1 THE JUROR: Family, pictures,  
2 friends, everything like that.

3 THE COURT: About how long have  
4 you had the account.

5 THE JUROR: Like a  
6 year-and-a-half.

7 THE COURT: Okay. Mr. Andre.

8 MR. ANDRE: I have no questions,  
9 Your Honor.

10 THE COURT: Mr. Rhodes.

11 MR. RHODES: This is going to be  
12 kind of a technical case. If experts were  
13 testifying in technical terms in English, I  
14 apologize, I mean no disrespect at all, would  
15 you have difficulty following?

16 THE JUROR: The technical things?

17 MR. RHODES: By virtue of the  
18 language is really what I'm saying, would that  
19 be an issue for you?

20 THE JUROR: Yes. If something  
21 really serious, I think you have to be really  
22 clear, understand everything, right, so don't  
23 take the wrong choice, that's my point.

24 THE COURT: Thank you.

1 MR. RHODES: Thank you.

2 THE COURT: You can return to the  
3 courtroom.

4 I'm going to strike her for cause.  
5 I'm a little concerned about her being able to  
6 follow due to the language issues.

7 MR. RHODES: Thank you, Your  
8 Honor.

9 THE COURT: Good morning. What is  
10 your juror number?

11 THE JUROR: 24.

12 THE COURT: Ms. Ginn.

13 THE JUROR: Yes.

14 THE COURT: Which questions did  
15 you answer yes to?

16 THE JUROR: Just that I have a  
17 Facebook account.

18 THE COURT: And about how long  
19 have you had it?

20 THE JUROR: Since November.

21 THE COURT: And what do you  
22 typically use it for?

23 THE JUROR: Social networking,  
24 games, basically.

1 THE COURT: Okay. And you don't  
2 get on it on a daily basis?

3 THE JUROR: Yes, every day.

4 THE COURT: Every day?

5 THE JUROR: Every morning. I have  
6 farms to tend and fields to dig.

7 THE COURT: Is there anything  
8 about your use of Facebook that would prevent  
9 you from fairly weighing the evidence?

10 THE JUROR: Not that I'm aware of.  
11 I'm not involved in it, just play games and talk  
12 back and forth, instant messaging occasionally.

13 THE COURT: Do you understand  
14 Facebook is the defendant here and they're  
15 accused of infringing a patent, so I just want  
16 to be sure that your experience with Facebook  
17 wouldn't make you either favorable or  
18 unfavorable to Facebook as a party.

19 THE JUROR: No, it doesn't.

20 THE COURT: Mr. Andre.

21 MR. ANDRE: So I take it you play  
22 Farmville?

23 THE JUROR: And Frontierville.  
24 And Bejeweled.

1 MR. ANDRE: And I don't -- you  
2 have to play those games on a pretty regular  
3 basis in order to sustain your farms; is that  
4 correct?

5 THE JUROR: It just depends on  
6 what you plant, I mean, honestly, yes.

7 MR. ANDRE: Would it cause you --  
8 would it be difficult for you to not go on  
9 Facebook for a week or so.

10 THE JUROR: I didn't plant  
11 anything this morning. They're plowed fields so  
12 we're good.

13 MR. ANDRE: No further questions.

14 THE COURT: Mr. Rhodes.

15 MR. RHODES: I'll just follow-up  
16 on Mr. Andre's question. If you're playing  
17 daily, if the trial were to last six or seven  
18 days, would it give you any heartburn?

19 THE JUROR: No.

20 MR. RHODES: If you don't get to  
21 it.

22 THE JUROR: No, because I'm good.  
23 I don't have any fields that need to be tended.

24 MR. RHODES: Thank you, Your

1 Honor.

2 THE COURT: Thank you very much.  
3 You can return to the courtroom.

4 THE JUROR: You're welcome.

5 THE COURT: Mr. Andre.

6 MR. ANDRE: No questions.

7 MR. RHODES: No motions, Your  
8 Honor.

9 THE COURT: Next. Good morning.  
10 Right there, please. What is your juror number?

11 THE JUROR: Number 40.

12 THE COURT: Ms. Lewis.

13 THE JUROR: Yes.

14 THE COURT: Tell us what questions  
15 you answered yes to, please.

16 THE JUROR: I answered yes on  
17 number one. I'm a former legal administrator  
18 with a firm that sublets space from Blank Rome,  
19 and I just had some interaction, limited, but  
20 some.

21 THE COURT: With some of the Blank  
22 Rome folks?

23 THE JUROR: Yes, the  
24 administrative people mostly.



1 THE COURT: Is there anything  
2 about that experience that would prevent you  
3 from being a fair juror in a case that involves  
4 Blank Rome?

5 THE JUROR: No.

6 THE COURT: Were there other  
7 questions you had yes answers to?

8 THE JUROR: I think I have a  
9 Facebook account.

10 THE COURT: Tell us about how long  
11 you have had your Facebook account.

12 THE JUROR: My kids made me do it.  
13 It's probably about six months or so.

14 THE COURT: How often do you use  
15 it?

16 THE JUROR: Maybe once, twice a  
17 month.

18 THE COURT: And when you get on  
19 it, what kinds of things are you doing with it?

20 THE JUROR: Just reading, you  
21 know, things that people post.

22 THE COURT: Is there anything  
23 about that experience that would make it hard  
24 for you to be a fair judge of the allegations

1 against Facebook?

2 THE JUROR: No.

3 THE COURT: Mr. Andre.

4 MR. ANDRE: You said you had some  
5 interaction with Blank Rome. Was it with any of  
6 the lawyers or just the administrative staff?

7 THE JUROR: The administrative  
8 staff.

9 MR. ANDRE: Was that a favorable  
10 or unfavorable interaction you had with them?  
11 Was it neutral?

12 THE JUROR: I mean, just cordial,  
13 professional.

14 THE COURT: Mr. Rhodes.

15 MR. RHODES: Just to follow-up on  
16 that, do you still have that interaction?

17 THE JUROR: No, I'm no longer  
18 employed with the firm as an administrator.

19 MR. RHODES: Just give us a time  
20 period, when was that interaction? A while ago?

21 THE JUROR: Yes. I left that, the  
22 firm that I was year-and-a-half ago, so probably  
23 for two years prior to that, two or three years.

24 MR. RHODES: But nothing right

1 now?

2 THE JUROR: No.

3 MR. RHODES: Thank you.

4 MR. ROVNER: What firm were you  
5 with?

6 THE JUROR: Maron, Marvel, Bradley  
7 & Arronsohn.

8 THE COURT: Thank you. You can  
9 return to the courtroom.

10 Any motion?

11 MR. ANDRE: No motion.

12 MR. RHODES: No.

13 THE COURT: Okay. Fine.

14 Good morning. What is your juror  
15 number?

16 THE JUROR: 32.

17 THE COURT: Mr. Jones.

18 THE JUROR: Yes, sir.

19 THE COURT: Tell us what questions  
20 you had yes answers to.

21 THE JUROR: I have a Facebook  
22 account.

23 THE COURT: And about how often do  
24 you use it?

1 THE JUROR: Probably once a day.

2 THE COURT: Okay. And what kind  
3 of things do you do on it?

4 THE JUROR: Just with my friends  
5 and that's it.

6 THE COURT: Okay. And do you  
7 think you could be a fair and impartial juror in  
8 a case involving Facebook?

9 THE JUROR: Yeah.

10 THE COURT: Mr. Andre.

11 MR. ANDRE: How many photos do you  
12 have uploaded on your Facebook account?

13 THE JUROR: Right now I have  
14 thirty-seven.

15 MR. ANDRE: How many friends do  
16 you have on your Facebook account?

17 THE JUROR: Like fifty-three.

18 MR. ANDRE: That's all I have.

19 THE COURT: Mr. Rhodes.

20 MR. RHODES: I have no questions.

21 Thank you.

22 THE COURT: Thank you very much.

23 Mr. Andre.

24 MR. ANDRE: No objection, Your

1 Honor.

2 THE COURT: Mr. Rhodes.

3 MR. RHODES: No motion.

4 THE COURT: Okay. Good morning.

5 THE JUROR: Good morning.

6 THE COURT: What is your jury  
7 number?

8 THE JUROR: 38.

9 THE COURT: Mr. Lecompte. And  
10 which questions did you answer yes to?

11 THE JUROR: My questions is about  
12 the patent, I had been in a deposition before in  
13 Playtex.

14 THE COURT: You dealt with  
15 patents?

16 THE JUROR: Before. The other  
17 questions.

18 THE COURT: Tell us more about  
19 that. What kind of experience did you have with  
20 patents while you were at Playtex?

21 THE JUROR: Basically I had been  
22 deposition a couple of times with our attorney  
23 regarding patent infringement with other cases.

24 THE COURT: I'm not sure what you

1 mean by this position.

2 THE JUROR: Meaning lawyers  
3 deposition me for a case.

4 THE COURT: Have you been deposed?

5 THE JUROR: Yes, deposed.

6 THE COURT: Somebody has taken  
7 testimony from you?

8 THE JUROR: Yes.

9 THE COURT: They put you under  
10 oath and asked you questions?

11 THE JUROR: Yes.

12 THE COURT: About patent issues?

13 THE JUROR: Yes. We were being  
14 sued or suing.

15 THE COURT: What's your position  
16 at Playtex.

17 THE JUROR: I'm QA manager in the  
18 R & D group.

19 THE COURT: What is that?

20 THE JUROR: Quality assurance  
21 within the company's research and development  
22 group.

23 THE COURT: Is there anything  
24 about that experience that would make it hard

1 for you to be a fair and impartial juror?

2 THE JUROR: I don't think so.

3 THE COURT: Were there other  
4 questions that you answered yes to?

5 THE JUROR: Only I had a planned  
6 trip to Malaysia on the 2nd of August. You  
7 mentioned it being longer than six days, that's  
8 greater than six days. I just need to  
9 understand that. And the Facebook question also  
10 was the other one, I am on Facebook.

11 THE COURT: We certainly expect to  
12 be done before August 2nd. And tell us about  
13 your Facebook use.

14 THE JUROR: It's -- I have only  
15 had an account for two months, basically to  
16 monitor my daughter's account. I don't use it a  
17 lot, but I do have one.

18 THE COURT: And is there anything  
19 about your interaction with Facebook over the  
20 last couple of months that would make it hard  
21 for you to be a fair and impartial juror?

22 THE JUROR: No, I don't think so.

23 THE COURT: Mr. Andre.

24 MR. ANDRE: Just a couple of

1 questions about the deposition you went through.  
2 Were you on the plaintiff's side or the  
3 defendant's side, do you know?

4 THE JUROR: I believe we were  
5 being sued, so I was on the defendant's side.  
6 It's been a while.

7 MR. ANDRE: Was it only one  
8 deposition?

9 THE JUROR: Yes, for me.

10 MR. ANDRE: And during that  
11 experience, did you interact with Playtex's  
12 counsel.

13 THE JUROR: Yes.

14 MR. ANDRE: And how did that  
15 lawsuit turn out?

16 THE JUROR: I believe we won.

17 MR. ANDRE: And did that leave any  
18 kind of an impression on you one way or the  
19 other about patent litigation?

20 THE JUROR: No, just be careful  
21 what you write.

22 MR. ANDRE: No further questions.

23 THE COURT: Mr. Rhodes.

24 MR. RHODES: No questions, Your



1 Honor. Thank you.

2 THE JUROR: You and I know each  
3 other. Once I saw your face.

4 THE COURT: Well, if you know how  
5 we know each other, you can tell us. I  
6 apologize, you look familiar.

7 THE JUROR: That's okay,  
8 University of Delaware, Dickinson, freshman  
9 year.

10 THE COURT: How about that, 1987.

11 THE JUROR: That's right.

12 THE COURT: Anything about that  
13 experience.

14 THE JUROR: No, until I saw your  
15 face.

16 THE COURT: But you could still be  
17 a fair and impartial juror and follow my  
18 instructions?

19 THE JUROR: Obviously.

20 THE COURT: Not withstanding your  
21 memory of me your freshman year.

22 THE JUROR: Twenty-five years is  
23 twenty-five years.

24 THE COURT: Thank you for

1 disclosing that. I did think he looked  
2 familiar, but...

3 MR. CAPONI: It took courage to  
4 ask the question.

5 THE COURT: I don't know what he  
6 was going to say. But Mr. Andre, any questions,  
7 or any motion?

8 MR. ANDRE: No on motion, Your  
9 Honor.

10 MR. RHODES: No motion, but I had  
11 a lot more questions for him. Those can be  
12 deferred. We're not going to strike him.

13 THE COURT: Good morning. Have a  
14 seat there, please. And what is your jury  
15 number?

16 THE JUROR: 29.

17 THE COURT: Ms. Hypolite.

18 THE JUROR: That's correct.

19 THE COURT: I apologize if I  
20 mispronounced your name. What questions did you  
21 have a yes answer to?

22 THE JUROR: Only that I do have a  
23 user account with Facebook.

24 THE COURT: Okay. And about how

1 long have you had it?

2 THE JUROR: Probably about ten  
3 months or so.

4 THE COURT: And what kinds of  
5 things do you do when you're on it?

6 THE JUROR: I play mostly like the  
7 game applications and talk with family, friends.

8 THE COURT: And about how often  
9 would you say you use it.

10 THE JUROR: Currently, mostly on  
11 the weekends, probably like twice a week.

12 THE COURT: And would you be able  
13 to be a fair and impartial judge of issues  
14 relating to Facebook?

15 THE JUROR: Yes.

16 THE COURT: Mr. Andre.

17 MR. ANDRE: I have had no  
18 questions, Your Honor.

19 THE COURT: Mr. Rhodes.

20 MR. RHODES: I have no questions,  
21 Your Honor.

22 THE COURT: Thank you very much.  
23 You can return to the courtroom.

24 No motions?

1 MR. ANDRE: No.

2 THE COURT: Mr. Rhodes.

3 MR. RHODES: No motions. I'm  
4 sorry, Your Honor.

5 THE COURT: Okay. Good morning.  
6 What is your juror number?

7 THE JUROR: 16. The lovely number  
8 16.

9 THE COURT: Ms. Ferm.

10 THE JUROR: Yes.

11 THE COURT: Which questions did  
12 you have yes answers to?

13 THE JUROR: Well number one  
14 hardship on my time for this week. I would love  
15 to come next week, but I have a staff person who  
16 is on vacation this week. Generally I cover for  
17 her.

18 I have been involved in litigation  
19 beforehand. My ex-husband was involved in an  
20 accident, breaking ribs. That was not that big  
21 of a deal.

22 THE COURT: Tell us about, it's  
23 your employment would be a hardship?

24 THE JUROR: Yes. I manage a

1 pharmacy department. I have two pharmacists  
2 underneath of me, one is on vacation for the  
3 rest of the week. I would normally call in  
4 someone else, because twelve hour days for one  
5 sixty-year-old pharmacist is a long time without  
6 having backup help, so generally I work with him  
7 at least eight hours a day, but my limited  
8 part-time staff are all on vacation this week,  
9 too.

10 I'm a little stuck for help. If  
11 you would like to do it another time, I would  
12 love to come and help, but this is not my week.

13 THE COURT: And the litigation  
14 experience of your ex-husband, was he a  
15 plaintiff or a defendant.

16 THE JUROR: He was a plaintiff.

17 THE COURT: He was the injured  
18 party?

19 THE JUROR: He was the injured  
20 party, yes.

21 THE COURT: And how did that  
22 litigation end up? Were you happy with the  
23 result?

24 THE JUROR: I actually tried not

1 to get involved. His attorney tried to get me  
2 involved with loss of consortium or something.  
3 Apparently it was a hardship for me to put his  
4 socks on when he broke six ribs. But fighting  
5 with the attorneys not to be involved.

6 MR. ANDRE: Did you say you had a  
7 Facebook account?

8 THE COURT: I don't. Probably one  
9 of the few people that doesn't. My children do.

10 MR. ANDRE: When you had the  
11 involvement with the attorneys, it sounds like  
12 you weren't particularly happy to interact with  
13 them. Is that a correct analysis?

14 THE JUROR: That's correct,  
15 uh-huh.

16 MR. ANDRE: Do you generally have  
17 a negative impression of any particular type of  
18 attorney, plaintiff versus defendant attorney,  
19 or anything like that?

20 THE JUROR: I would probably say  
21 it's equal on both sides.

22 MR. ANDRE: I have no further  
23 questions.

24 THE COURT: Mr. Rhodes.

1 MR. RHODES: I don't mean to  
2 insinuate, but it sounds like if the feelings  
3 about attorneys and the facts that you will be  
4 stressed of what's happening at work this  
5 particular week would mean you would be  
6 distracted this particular week if you had to  
7 serve?

8 THE JUROR: Yes. Right now my  
9 boss, yes, it would make me very distracted to  
10 not be there. I had two people that wanted to  
11 take vacation this week already and I had to  
12 deny one, so yes, I would be distracted.

13 MR. RHODES: Thank you.

14 THE COURT: Thank you very much.  
15 You can return to the courtroom.

16 I'm going to strike Ms. Ferm based  
17 on the hardship at work. I'm not sure that I  
18 would strike everyone who has negative feelings  
19 about all lawyers.

20 MR. RHODES: That's a pretty big  
21 group.

22 THE COURT: Good morning. What is  
23 your juror number.

24 THE JUROR: Forty-two.

1 THE COURT: Ms. Martin?

2 THE JUROR: Yes.

3 THE COURT: Tell us which  
4 questions you had a yes answer to.

5 THE JUROR: If I had a Facebook  
6 account.

7 THE COURT: So you do have one?

8 THE JUROR: Yes.

9 THE COURT: And about how long  
10 have you had it?

11 THE JUROR: About a year and a  
12 half. I seldom use it, though.

13 THE COURT: Seldom. Okay.

14 THE JUROR: Mm-hmm.

15 THE COURT: When you are on it,  
16 what do you do on it typically?

17 THE JUROR: Email my good friends,  
18 and yeah, that's it. Not very long.

19 THE COURT: Do you have any  
20 feelings about Facebook that would make it hard  
21 for you to be a fair --

22 THE JUROR: No.

23 THE COURT: Mr. Andre?

24 MR. ANDRE: I have no questions,



1 Your Honor.

2 MR. RHODES: No questions. Thank  
3 you.

4 THE COURT: Thank you for your  
5 time. You can go back to the courtroom.

6 THE JUROR: I have one more thing.  
7 At the end, if there was anything.

8 THE COURT: Right.

9 THE JUROR: I have a sinus  
10 infection right now. Right now I have a  
11 pounding headache.

12 THE COURT: Okay.

13 THE JUROR: I am on antibiotics.  
14 I don't know how the rest of the week could  
15 affect this, but --

16 THE COURT: You're concerned that  
17 the infection might become worse or distract  
18 you?

19 THE JUROR: Well, it's just the  
20 headaches.

21 THE COURT: The headaches.

22 THE JUROR: So, you know, --

23 THE COURT: Okay.

24 THE JUROR: -- it's time for me to

1 make an Advil right now, but you know, because I  
2 have that.

3 THE COURT: I appreciate you  
4 sharing that. You should have time to go take  
5 your medication right now.

6 Okay?

7 THE JUROR: Okay. Thank you.

8 MR. ANDRE: Maybe reserve. I  
9 don't have a motion per se.

10 MR. RHODES: I will move. I mean,  
11 we're all kind of uncomfortable when someone's  
12 telling you they have a headache. I worry  
13 because the case is technical.

14 They need to -- I mean it's hard  
15 enough to keep people awake.

16 THE COURT: Yeah. I will grant  
17 the defense's motion.

18 MR. RHODES: Thank you. And I'm  
19 sorry, was that 42?

20 THE COURT: Yes. That was Ms.  
21 Martin.

22 I think just given the way she  
23 raised that concern and evidently she's in some  
24 pain with her headache, so I am striking her for

1 cause.

2 Good morning.

3 THE JUROR: Good morning, Judge.

4 THE COURT: How are you doing?

5 Have a seat there, please.

6 THE JUROR: Thank you, Your Honor.

7 THE COURT: What is your juror

8 number?

9 THE JUROR: Fifty-nine. Winthrop  
10 Shaw.

11 THE COURT: Mr. Shaw. Great.

12 Tell us which questions you

13 answered yes to.

14 THE JUROR: The very last one. I  
15 have health problems.

16 THE COURT: Health problems.

17 THE JUROR: I have severe asthma.  
18 I wanted to -- I came in today so I could do my  
19 civic duty, but it's not doing good. I even  
20 bought my machine, which I'm about ready to use.  
21 But it's up to you what you guys do.

22 THE COURT: Is this type of  
23 weather --

24 THE JUROR: It literally kills me.

1       Yeah.

2                       THE COURT:   Okay.   All right.

3                       Any questions, Mr. Andre?

4                       MR. ANDRE:   No questions, Your

5       Honor.

6                       MR. RHODES:   No questions, Your

7       Honor.

8                       THE COURT:   We will be striking  
9       you, but I need you to return to the courtroom  
10       and stick around for a bit.   We'll let you know  
11       when you can go.

12                      THE JUROR:   Is there a way I can  
13       step outside to use the machine in the meantime?

14                      THE COURT:   Certainly.   You can do  
15       that.

16                      THE JUROR:   Thank you very much.

17                      THE COURT:   All right.   So we've  
18       stricken Mr. Shaw, Number 59.

19                      Good morning.

20                      THE JUROR:   Good morning.

21                      THE COURT:   What is your juror  
22       number?

23                      THE JUROR:   Forty-three.

24                      THE COURT:   Ms. McCabe?

1 THE JUROR: Yes.

2 THE COURT: Tell us which  
3 questions you answered yes to.

4 THE JUROR: Any -- on Facebook. I  
5 just signed up maybe a month ago.

6 THE COURT: Okay. And about how  
7 often have you used it over the last month?

8 THE JUROR: Maybe three.

9 THE COURT: Three times. And what  
10 kinds of things do you do on it?

11 THE JUROR: I found an old  
12 classmate. That's it.

13 THE COURT: Okay. Anything about  
14 that experience that would make you either too  
15 favorable or too unfavorable towards Facebook?

16 THE JUROR: I don't think so.

17 THE COURT: Okay. Any other  
18 questions you answered yes to?

19 THE JUROR: No, that was it.

20 THE COURT: Mr. Andre?

21 MR. ANDRE: Why did you join  
22 Facebook?

23 THE COURT: Curiosity.

24 MR. ANDRE: Have you uploaded

1 photographs on the site?

2 THE JUROR: No. I don't even  
3 think I put my profile up there.

4 MR. ANDRE: I have no questions.

5 THE COURT: Mr. Rhodes?

6 MR. RHODES: I have no questions.

7 THE COURT: Okay. Thank you.

8 You can return to the courtroom.

9 THE COURT: Mr. Andre, any motion?

10 MR. ANDRE: No motion.

11 THE COURT: Mr. Rhodes, any  
12 motion?

13 MR. RHODES: No motion.

14 THE COURT: Okay.

15 Good morning.

16 THE JUROR: Good morning.

17 THE COURT: What is your juror  
18 number?

19 THE JUROR: Twenty-one.

20 THE COURT: That would make you  
21 Ms. Giambi?

22 THE JUROR: Yes.

23 THE COURT: Tell us which  
24 questions you had yes answers to.

1 THE JUROR: Just the one about  
2 Facebook. I do have an account.

3 THE COURT: And about how long  
4 have you had it?

5 THE JUROR: A year.

6 THE COURT: And what about -- how  
7 often do you get on it?

8 THE JUROR: At least once a day  
9 during the workday.

10 THE COURT: We won't tell anyone.  
11 And what kind of things do you do on it?

12 THE JUROR: Mostly to keep up with  
13 family and friends. I find out things about my  
14 younger relatives that I am surprised at at  
15 times. Nice surprises.

16 THE COURT: Nice surprises. Good.

17 THE JUROR: Mm-hmm.

18 THE COURT: Anything about that  
19 that would make you feel favorably or  
20 unfavorably towards Facebook?

21 THE JUROR: No. I don't think so.

22 THE COURT: Okay. Mr. Andre?

23 MR. ANDRE: When you say you get  
24 on at least once a day, are there days you go on

1 multiple times a day?

2 THE JUROR: There may be, yes. I  
3 mean, if it's -- as an example, yesterday we had  
4 a family gathering and my younger cousins, and  
5 nieces and nephews were joking about the fact  
6 that I was actually on Facebook. And you have  
7 to put your picture up there, which I don't have  
8 yet. And those kinds of discussion.

9 And I said, That's how I found out  
10 Cousin X got engaged and, you know, so it's on  
11 that level. But I don't use it professionally,  
12 at least not yet.

13 MR. ANDRE: No further questions.

14 THE COURT: Mr. Rhodes?

15 MR. RHODES: If you had to be off  
16 of it for a week, would you survive?

17 THE JUROR: Absolutely.

18 MR. RHODES: Okay. Thank you.

19 THE COURT: Okay. We have no  
20 other questions.

21 Thank you. You can go back to the  
22 courtroom.

23 Any motion?

24 MR. ANDRE: No motion.



1 THE COURT: Mr. Rhodes, any  
2 motion?

3 MR. RHODES: No motion, Your  
4 Honor.

5 THE COURT: Good morning.

6 THE JUROR: Good morning.

7 THE COURT: What is your juror  
8 number?

9 THE JUROR: Four.

10 THE COURT: Ms. Brown?

11 THE JUROR: Yeah.

12 THE COURT: Okay. Tell us what  
13 questions you answered yes to.

14 THE JUROR: The only ones I  
15 answered yes to is I have a Facebook and I do go  
16 on it every day.

17 THE COURT: Okay. About how long  
18 have you had your account?

19 THE JUROR: Like three years.

20 THE COURT: And what kinds of  
21 things do you do when you get on it?

22 THE JUROR: Just socializing on  
23 it. That's it.

24 THE COURT: Do you think you could

1 be a fair judge of issues related to Facebook?

2 THE JUROR: Yeah.

3 THE COURT: Okay. Any questions,  
4 Mr. Andre?

5 MR. ANDRE: You said you go on  
6 every day. Do you go on multiple times per day?

7 THE JUROR: No. I don't have  
8 time, but I would if I could.

9 MR. ANDRE: How many friends do  
10 you have on your Facebook account?

11 THE JUROR: A lot.

12 MR. ANDRE: Approximately?

13 THE JUROR: I don't even know. I  
14 really don't.

15 Like a lot.

16 MR. ANDRE: Do you play the games  
17 on Facebook?

18 THE JUROR: No.

19 MR. ANDRE: Do you just post  
20 photographs on Facebook?

21 THE JUROR: Yeah.

22 MR. ANDRE: How many photographs  
23 do you have on Facebook?

24 THE JUROR: Like six.

1 MR. ANDRE: Okay.

2 THE COURT: When you say "a lot"  
3 of friends, more than 500?

4 THE JUROR: Probably.

5 THE COURT: Probably. Mr. Rhodes?

6 MR. RHODES: Do you ever use  
7 Facebook on like an iPhone or mobile phone?

8 THE JUROR: No. I don't have  
9 internet on my phone.

10 MR. RHODES: Okay. And if you  
11 were told by His Honor that you can't access  
12 Facebook for a week, would you survive?

13 THE JUROR: Yeah.

14 MR. RHODES: Okay. Thank you.

15 THE COURT: Do you have any  
16 concerns about not being able to access it for a  
17 week?

18 THE JUROR: No.

19 THE COURT: All right. Thank you.  
20 You can wait in the courtroom.

21 Any motion?

22 MR. ANDRE: I am going to move to  
23 strike for cause. I think she's too committed  
24 to Facebook use.

1                   She's been using it since she's 16  
2                   years old. She's 19 now.

3                   And she has more friends than she  
4                   can count on it. So I think it's a primary mode  
5                   of communication for her and it would be -- even  
6                   though she says she doesn't have leanings one  
7                   way or another, I think it would be very  
8                   difficult for her to be impartial.

9                   MR. RHODES: I oppose. I think  
10                  she's just a typical Facebook user.

11                  I think she said, unless I'm  
12                  mistaken, she only had six photos up.

13                  THE COURT: Yes.

14                  MR. RHODES: So that part of the  
15                  use is very small. I don't think that's either  
16                  here nor there.

17                  THE COURT: I'm going to deny the  
18                  motion. I think I'm persuaded by her responses  
19                  that she can be fair and impartial, that she  
20                  won't find it an undue burden to not be on  
21                  Facebook for a week. So she's not stricken.

22                  Good morning.

23                  THE JUROR: Good morning.

24                  THE COURT: What is your juror

1 number?

2 THE JUROR: Sixty-five.

3 THE COURT: Ms. Turner?

4 THE JUROR: Yes.

5 THE COURT: Okay. Which questions  
6 did you answer yes to?

7 THE JUROR: I do have a Facebook  
8 account. I use it roughly once a day, and it  
9 would be hard for me to miss if it goes into  
10 next week.

11 THE COURT: What do you have going  
12 on next week?

13 THE JUROR: Our church vacation of  
14 Bible school and I'm one of the leaders for  
15 that.

16 THE COURT: What day does that  
17 start, Monday?

18 THE JUROR: Next Monday, yes.

19 THE COURT: All right. With  
20 respect to your Facebook use, what types of  
21 things do you do on it?

22 THE JUROR: Not very much. I  
23 don't have any pictures on it yet.

24 It's just basically communication

1 with family and friends that I don't see often.

2 THE COURT: Okay. And about how  
3 often do you use it?

4 THE JUROR: Maybe once a day.

5 THE COURT: Mr. Andre?

6 MR. ANDRE: I have no questions.

7 Thank you.

8 MR. RHODES: No questions. Thank  
9 you.

10 THE COURT: Thank you.

11 THE JUROR: Thank you.

12 THE COURT: I don't need to make  
13 her miss the church vacation. I'm going to  
14 strike her.

15 Good morning.

16 THE JUROR: Good morning.

17 THE COURT: What is your juror  
18 number?

19 THE JUROR: Nineteen.

20 THE COURT: Mr. Frank?

21 THE JUROR: Yes.

22 THE COURT: Okay. Which questions  
23 did you answer yes to?

24 THE JUROR: Four questions. I

1 have a good friend who started a company based  
2 on a patent. He had to defend that.

3 His company had to defend that  
4 patent. They prevailed. He sold the company  
5 and retired.

6 I have another good friend who  
7 holds over a hundred patents.

8 I do have a Facebook account, and  
9 I do look at that just about every day.

10 THE COURT: Let's start with the  
11 Facebook account. About how long have you had  
12 it?

13 THE JUROR: Less than a year.

14 THE COURT: And what kinds of  
15 things do you do when you're on it?

16 THE JUROR: Very little. I'm up  
17 there.

18 I have a few friends I correspond  
19 with. I'm in the -- and new people find me and  
20 we friend each other. I guess that's the word.

21 So --

22 THE COURT: Okay.

23 THE JUROR: -- I would not call  
24 myself an active user.

1 THE COURT: And anything about  
2 that experience that would make it hard for you  
3 to be a fair judge of issues related to  
4 Facebook?

5 THE JUROR: I don't think so. No.

6 THE COURT: And the friends who  
7 have patents and that experience, anything about  
8 that that would make it hard for you to be an  
9 impartial juror in a patent-related case?

10 THE JUROR: Possibly. Especially  
11 the good friend who had to defend his patent and  
12 prevailed. I'm on his side.

13 So, I mean, by virtue of the fact  
14 that he's my friend. So I can't say for certain  
15 that that would make it difficult for me, but I  
16 suspect it might.

17 THE COURT: And again, he was the  
18 patent holder?

19 THE JUROR: Yes. Yes. It was his  
20 invention.

21 THE COURT: And he was -- do you  
22 know whether he was the plaintiff or the  
23 defendant in the lawsuit?

24 THE JUROR: He was the defendant.



1 I think so.

2 Well, no. I don't know that for a  
3 fact. I really don't know.

4 THE COURT: You do know that he  
5 won the lawsuit?

6 THE JUROR: Yes.

7 THE COURT: Okay. Mr. Andre?

8 MR. ANDRE: With respect to your  
9 friend who had the patent, you said it may make  
10 it difficult for you to be a fair juror in this  
11 case?

12 THE JUROR: It is difficult to  
13 say. It's a close friendship.

14 I don't know. To whatever extent  
15 I might identify with any party in this action.  
16 I hope I would be above that, but it would be a  
17 question in my mind at least.

18 MR. ANDRE: I have no further  
19 questions, Your Honor.

20 THE COURT: Mr. Rhoades?

21 MR. RHODES: Was there -- your  
22 friend, did he go through litigation over the  
23 patent?

24 THE JUROR: I believe so. Yes.

1 MR. RHODES: And were you  
2 communicating with him kind of, you know, what's  
3 happening and he was telling you?

4 THE JUROR: No. Only that it was  
5 happening. That -- as a matter of fact, some  
6 parts of it took place in Europe.

7 And I only know that because he  
8 says, Hey, I'm going here to do this, but he  
9 didn't tell me the details.

10 MR. RHODES: Was there something  
11 about that experience that gave you feelings  
12 about the patent system or people who bring  
13 patent suits or people who defend them?

14 THE JUROR: No.

15 MR. RHODES: When you -- and I  
16 appreciate your candor. When you said that  
17 there was an open question in your mind, what  
18 did you mean by that?

19 THE JUROR: Well, if I try to  
20 analyze it, I would say here's a close friend  
21 who was involved in one side of a patent  
22 litigation.

23 And one, he's my good friend. We  
24 have a good relationship.

1                   Here's an action between two  
2 parties who have an issue, I assume, related to  
3 a patent. I think I've been told that.

4                   There is some commonality of  
5 experience there. Logic would tell me that  
6 there are some circumstances under which my  
7 previous experience might have an influence on  
8 how I view those proceedings.

9                   I don't know that. I can't say  
10 that.

11                   I would trust myself to be fair  
12 and objective in my dealings, but I can't say  
13 that. I cannot say that that experience would  
14 not influence me.

15                   MR. RHODES: The Court in this  
16 case will instruct you on the law. Whatever  
17 that experience was, would you be able to put  
18 that to the side and follow what His Honor tells  
19 you the law is on patents?

20                   THE JUROR: I would certainly hope  
21 so. Yes.

22                   THE COURT: Let me make sure I  
23 heard you. You said you would trust yourself to  
24 put aside --

1 THE JUROR: Yes.

2 THE COURT: -- your prior  
3 experience?

4 THE JUROR: I would -- I would --  
5 we're human. I cannot say with perfect  
6 certainty that I would be able to completely  
7 distance myself from my personal experience in  
8 this matter.

9 However, I would assure you that I  
10 would do everything in my power to do so.

11 THE COURT: Okay. Thank you very  
12 much.

13 You can return to the courtroom.

14 THE JUROR: Thank you.

15 THE COURT: Any motion?

16 MR. ANDRE: No motion, Your Honor.

17 THE COURT: No.

18 MR. RHODES: I'll defer to you on  
19 this one. I'm trying to -- I was trying to  
20 create a record that he would be neutral, but he  
21 kept introducing into his discussion his own  
22 angst or gestalt over this process.

23 So I'll defer to you. I just  
24 don't know.

1 THE COURT: I'm not going to  
2 strike him. The way I viewed it as he's being  
3 excessively thoughtful and sharing his inner  
4 concerns, which I appreciate and understand.  
5 But he's going to do everything he can to put  
6 those concerns aside.

7 Good morning.

8 THE JUROR: Good morning.

9 THE COURT: Have a seat there.  
10 What's your juror number?

11 THE JUROR: Eight.

12 THE COURT: Could you pronounce  
13 your last name for me?

14 THE JUROR: Ciszkowski.

15 THE COURT: Ciszkowski.

16 THE JUROR: Mm-hmm. Thank you.

17 Tell us which questions you  
18 answered yes to.

19 THE JUROR: The one pertaining to  
20 the lawsuit. You know, something about this  
21 lawsuit.

22 THE JUROR: No.

23 THE COURT: You've been involved  
24 in some other lawsuit?

1 THE JUROR: Yes.

2 THE COURT: Tell us a little bit  
3 about that.

4 THE JUROR: It was workmen's comp  
5 for my husband. He fell on ice at work.

6 THE COURT: And were you satisfied  
7 with the outcome of that litigation?

8 THE JUROR: Yes. It didn't go to  
9 Court or anything. It just --

10 THE COURT: It settled?

11 THE JUROR: Well, it was -- I am  
12 not going to say -- I don't think it was  
13 mediation.

14 I don't remember.

15 THE COURT: Maybe arbitration?

16 THE JUROR: Exactly. Mm-hmm.

17 THE COURT: Was there anything  
18 about that experience that would make it hard  
19 for you to be a fair and impartial judge of what  
20 you hear in this Court?

21 THE JUROR: No. It was pretty  
22 straight forward.

23 THE COURT: Okay. Were there any  
24 other questions you answered yes to?

1 THE JUROR: No.

2 THE COURT: No. Mr. Andre?

3 MR. ANDRE: I have no questions,  
4 Mr. Rhodes.

5 MR. RHODES: No questions.

6 THE COURT: Okay. Thank you.

7 THE JUROR: Thank you.

8 Mr. Andre, any motion?

9 MR. ANDRE: No motion.

10 THE COURT: Mr. Rhodes?

11 MR. RHODES: No motion.

12 THE COURT: Okay.

13 THE JUROR: Hello, all.

14 THE COURT: Good morning. Have a  
15 seats, please.

16 What is your juror number?

17 THE JUROR: Nine.

18 THE COURT: Mr. Conte?

19 THE JUROR: Yes.

20 THE COURT: Which questions did  
21 you answer yes to?

22 THE JUROR: The questions  
23 pertaining to patents. I do own one patent.

24 I've had patent education at work,

1 that kind of thing.

2 THE COURT: What kind of patent do  
3 you have?

4 THE JUROR: Design patent through  
5 my previous company. I'm a mechanical engineer,  
6 so it was called Box Launch.

7 THE COURT: Okay. And were you  
8 ever involved in any litigation or dispute over  
9 your patent?

10 THE JUROR: No.

11 THE COURT: And who do you work  
12 for now?

13 THE JUROR: Right now I work for  
14 Portacap. It's a motor company in West Chester.

15 THE COURT: What's your position  
16 there?

17 THE JUROR: Mechanical engineer.

18 THE COURT: You are involved with  
19 patents in that job?

20 THE JUROR: If one would arise,  
21 yes. But they're hard --

22 THE COURT: Anything about your  
23 experience with patents that would make it hard  
24 for you to be fair and impartial?



1 THE JUROR: No. No.

2 THE COURT: No. Did you answer  
3 yes to any other question?

4 THE JUROR: Facebook account. I  
5 may have one, I'm not really sure.

6 I don't really use it if I do.

7 THE COURT: Okay. All right.

8 The lawyers may have some  
9 questions for you.

10 THE JUROR: Sure.

11 THE COURT: Mr. Andre?

12 MR. ANDRE: I have no questions.

13 Thank you.

14 THE COURT: Mr. Rhodes?

15 MR. RHODES: The patent that you  
16 got, were you named as one of the inventors?

17 THE JUROR: There was a head  
18 designer. Mostly to him.

19 I was part of the -- yes, I think  
20 to answer your question, yes, I was.

21 MR. RHODES: Were you part of a  
22 team of people?

23 THE JUROR: A team of people.

24 Exactly.

1 MR. RHODES: And did that patent  
2 then get assigned or transferred as a piece of  
3 property to the company that you worked for?

4 THE JUROR: I believe it did, yes.  
5 I had left the company after everything was  
6 finalized. So I believe it would have, yeah.

7 MR. RHODES: I represent the party  
8 accused of infringing a patent.

9 THE JUROR: Okay.

10 MR. RHODES: Is there anything  
11 about the experience that you went through to  
12 get that patent that would make you more  
13 inclined to want to protect the patent?

14 THE JUROR: No. I don't think so.  
15 I mean, everything was handled  
16 through our corporate office. I was in more of  
17 the manufacturing factory floor.

18 So I didn't see a lot of the  
19 day-to-day stuff that went through other than  
20 every now and again, Sign these forms. So I  
21 don't think there was any disputes or I don't  
22 know of any, let's put it that way.

23 MR. RHODES: You anticipated my  
24 next question. Was there any lawsuits filed

1 that involved that patent?

2 THE JUROR: Not that I know of.

3 MR. RHODES: Just is there  
4 anything that would make you more inclined to  
5 protect people who get patents then people who  
6 are accused of infringing them?

7 THE JUROR: I suppose. I mean,  
8 I'm not really sure.

9 You know, it would be interesting  
10 to hear this, see how this plays out. But I'm  
11 not really sure, to be honest.

12 I mean, being on -- being an  
13 engineer, I would guess, you know -- I don't  
14 know. I'm not really sure how to answer your  
15 question.

16 I don't really have a feel either  
17 way.

18 MR. RHODES: We all bring things  
19 to any process. Would you be able to set aside  
20 whatever it is you know about patents and the  
21 process and defer completely to what His Honor  
22 would instruct you on the law --

23 THE JUROR: Sure.

24 MR. RHODES: -- and be fair to both

1 sides?

2 THE JUROR: Absolutely.

3 THE COURT: And the patent holder,  
4 as maybe somebody who aspires to have more  
5 patents in the future, would you go into this  
6 case sort of rooting for the patent holder?

7 THE JUROR: No, not necessarily.  
8 No. Sorry.

9 THE COURT: I'm just looking for  
10 the truthful answer.

11 THE JUROR: No.

12 THE COURT: No?

13 THE JUROR: No, I would not.

14 THE COURT: Okay. Thank you.  
15 You can return to the courtroom.

16 Mr. Andre?

17 MR. ANDRE: No motion.

18 THE COURT: Mr. Rhodes?

19 MR. RHODES: I don't think it's  
20 enough for cause, Your Honor, but his answers  
21 troubled me.

22 THE COURT: I'm not going to  
23 strike him for cause. It's similar to the  
24 previous individual.

1                   Maybe I don't want to say less  
2 articulate, but in a different way saying the  
3 same thing. So, and I trust he would put aside  
4 his prior experience and be a fair judge of the  
5 fact.

6                   Take the next person.

7                   Good morning.

8                   THE JUROR: Hi. Good morning.

9                   THE COURT: What is your juror  
10 number?

11                  THE JUROR: Thirty-three.

12                  THE COURT: Mr. Keene?

13                  THE JUROR: Yes.

14                  THE COURT: Okay. Which questions  
15 did you answer yes to?

16                  THE JUROR: The last one. I  
17 believe it's the last one about is there any  
18 other reason.

19                         I've got severe health problems.  
20 I have a pacemaker for afib.

21                         And I have varicose veins that I  
22 have to wear a support stocking up to here. I  
23 have it on now, but I can't sit or stand for  
24 very long.

1           And in the last four months, I've  
2           been in the hospital twice for falls, because I  
3           have low blood pressure. It drops 40 points  
4           when I stand up if I've been sitting down for a  
5           long time or laying down.

6           And another thing is I'm being  
7           treated with antidepressants for post-traumatic  
8           stress syndrome disorder by the VA. So I just  
9           felt like, you know, I don't know if I could sit  
10          there through the trial and --

11          THE COURT: Right. I appreciate  
12          you sharing all of that with us. I am going to  
13          excuse you from --

14          THE JUROR: Okay.

15          THE COURT: -- serving.

16          But you'll have to go back into  
17          the courtroom for now. We will let you know  
18          when you can leave.

19          THE JUROR: Okay. Thank you very  
20          much.

21          Thank you.

22          That was Mr. Keene; right?

23          THE CLERK: Mm-hmm.

24          THE COURT: Good morning. Have a

1 seat here, please.

2 What's your juror number?

3 THE JUROR: Twenty-six.

4 THE COURT: Mr. Grubb?

5 THE JUROR: Yes.

6 THE COURT: Okay. Which questions  
7 did you answer yes to?

8 THE JUROR: I was on two civil  
9 jurors in Maryland probably 25 years ago.

10 THE COURT: Okay. What kind of  
11 cases were they; do you recall?

12 THE JUROR: One was a rental case  
13 between a builder and the tenant that he had.

14 The other one was an accident case  
15 in Ocean City where a lady had been injured and  
16 the driver of the car was there. They were  
17 seeking damages.

18 THE COURT: And did the jury  
19 ultimately reach a verdict in both of those  
20 cases?

21 THE JUROR: Oh, yeah.

22 THE COURT: Do you remember if the  
23 plaintiff or the defendant won in each of them?

24 THE JUROR: I think the defendant

1 won in the first one and the plaintiff won in  
2 the second one.

3 THE COURT: Was there anything  
4 about that experience that would make it hard  
5 for you to be a fair and impartial juror a third  
6 time here?

7 THE JUROR: I don't think so.

8 THE COURT: Okay. Did you answer  
9 yes to any other questions?

10 THE JUROR: No.

11 THE COURT: No? Okay.

12 Mr. Andre?

13 MR. ANDRE: It's noted here on the  
14 jury list that you're from Milford.

15 THE JUROR: Yes, sir.

16 MR. ANDRE: Is that a hardship to  
17 get to court every morning on time from that  
18 distance?

19 THE JUROR: Well, being retired,  
20 it's a little tough to get up that early, but I  
21 can do it.

22 MR. ANDRE: But it wouldn't impose  
23 any such hardship on you?

24 THE JUROR: No. No.



1 MR. ANDRE: I have no further  
2 questions.

3 MR. RHODES: I have no questions.

4 THE COURT: Okay. Thank you very  
5 much.

6 Any motion?

7 MR. ANDRE: No.

8 THE COURT: Mr. Rhodes?

9 MR. RHODES: No. Okay.

10 THE COURT: Good morning.

11 THE JUROR: Hi.

12 THE COURT: What is your juror  
13 number?

14 THE JUROR: Forty-eight.

15 THE COURT: Forty-eight. You can  
16 have a seat.

17 Thank you. Ms. Nathanson.

18 THE JUROR: That's me.

19 THE COURT: Which questions did  
20 you answer yes to.

21 THE JUROR: Number five.

22 THE COURT: You will have to  
23 remind me what that is.

24 THE JUROR: It is time.

1 THE COURT: Oh, the length of the  
2 trial, six days.

3 THE JUROR: Six days is not a  
4 problem, but I will be out of town for the 25th  
5 for the whole week. And there's other  
6 questions, too, but that was the one I  
7 remembered.

8 THE COURT: The 25th is next  
9 Monday?

10 THE JUROR: Next Sunday.

11 THE COURT: So you're leaving next  
12 Sunday for --

13 THE JUROR: New York.

14 THE COURT: For vacation?

15 THE JUROR: No my daughters have  
16 appointments there.

17 THE COURT: Up in New York. And  
18 you expect it to be much of the week?

19 THE JUROR: All week.

20 THE COURT: All week. And there  
21 were other questions, too?

22 THE JUROR: Opinion, I believe. I  
23 think there's an opinion question.

24 THE COURT: Do you have any

1 opinions about Facebook?

2 THE JUROR: I only know that  
3 preachers advise using anything like that.  
4 You're not supposed to be on the computers by  
5 ourselves, stuff like that.

6 It's just -- it's a dangerous  
7 place. That's what they say.

8 THE COURT: So you haven't used  
9 Facebook?

10 THE JUROR: I've never been on it.  
11 I have no interest.

12 THE COURT: Right. Okay.

13 Mr. Andre, any questions?

14 MR. ANDRE: I have no questions.  
15 Thank you.

16 THE COURT: Mr. Rhodes, any  
17 questions?

18 MR. RHODES: No, Your Honor.

19 THE COURT: Okay. Thank you.

20 You can return to the courtroom.

21 THE JUROR: Thank you.

22 THE COURT: I'm going to strike  
23 for cause. What was her -- I lost track of her  
24 name.

1 MR. RHODES: Number 48.

2 THE COURT: I'm going to strike  
3 miss Nathanson for cause.

4 Good morning. Have a seat,  
5 please. What is your juror number?

6 THE JUROR: Eighteen.

7 THE COURT: Eighteen. Mr.  
8 Foraker?

9 THE JUROR: Yes.

10 THE COURT: Okay. Which questions  
11 did you answer yes to?

12 THE JUROR: I have a Facebook  
13 account.

14 THE COURT: About how long have  
15 you had it?

16 THE JUROR: A year or two.

17 THE COURT: And about how often do  
18 you get on it?

19 THE JUROR: More frequently now  
20 because where I work they've actually encouraged  
21 us to do that, so...

22 THE COURT: So you use it for work  
23 as well as personal use?

24 THE JUROR: Yeah, for keeping in

1 contact with my students.

2 THE COURT: You're a teacher?

3 THE JUROR: At the college level.

4 THE COURT: Okay. And is there  
5 anything about your experience with Facebook  
6 that would make it hard for you to be impartial  
7 in judging issues related to Facebook?

8 THE JUROR: Not that I can think  
9 of.

10 THE COURT: Did you answer yes to  
11 other questions?

12 THE JUROR: Maybe an issue with  
13 the length of the trial. I have a seminar group  
14 coming that I'm supposed to host Monday.

15 THE COURT: That's a week from  
16 today?

17 THE JUROR: Yeah.

18 THE COURT: And is that during the  
19 day?

20 THE JUROR: Yes.

21 THE COURT: Okay. And where is it  
22 that you do that?

23 THE JUROR: At Delaware Technical  
24 Community College.

1 THE COURT: Okay. Mr. Andre?

2 MR. ANDRE: You stated that you  
3 used Facebook for your work. Is it required  
4 that you go on a certain amount of times a day  
5 or week?

6 THE JUROR: No. We were strongly  
7 encouraged to use Facebook and other  
8 applications of that nature in order to keep in  
9 contact with our newer students, with the older  
10 students.

11 MR. ANDRE: Would it cause a  
12 hardship on you if you couldn't communicate with  
13 the students for a week or so through Facebook?

14 THE JUROR: Give me a reason not  
15 to do it.

16 MR. ANDRE: Fair enough. Do you  
17 use it for any personal reasons outside of work,  
18 Facebook?

19 THE JUROR: Primarily work.

20 MR. ANDRE: Okay. That's all I  
21 have.

22 THE COURT: Mr. Rhodes.

23 MR. RHODES: No questions.

24 THE COURT: No. Okay.

1                   Thank you. You can return to the  
2 courtroom.

3                   Mr. Andre?

4                   MR. ANDRE: Other than his  
5 conflict that he may have to show up on Monday,  
6 I know the trial will go Monday. We were  
7 talking earlier that we think probably rest our  
8 case on Tuesday the way it's setting up. So,  
9 that may be a problem, I think.

10                  So --

11                  THE COURT: I am concerned about  
12 it, especially if it's -- if they're  
13 deliberating, he might try to rush through to  
14 get to his seminar.

15                  MR. RHODES: That's what I'm  
16 worried about. I see us closing a week from  
17 today and then they're deliberating Tuesday,  
18 maybe Wednesday.

19                  So I don't know. I don't have a  
20 motion, though.

21                  THE COURT: I'm going to strike  
22 him for cause. I'm concerned about the schedule  
23 conflict.

24                  Good morning.

1 THE JUROR: Good morning.

2 THE COURT: What is your juror  
3 number?

4 THE JUROR: Sixty-eight.

5 THE COURT: Ms. Willey?

6 THE JUROR: Yes.

7 THE COURT: Tell us which  
8 questions you said yes to, please.

9 THE JUROR: The six days and an  
10 account.

11 THE COURT: Okay. Tell us what  
12 your conflict is with the length of the trial.

13 THE JUROR: I work in the office  
14 at the school, The Charter School, and we're  
15 preparing for the next year. It's me and  
16 another girl.

17 She's actually trained for  
18 financing, so it's pretty much me and the  
19 principal.

20 THE COURT: The other person is in  
21 training this week?

22 THE JUROR: Yes, with financing.  
23 She's on medical leave, our main person. And  
24 she has a doctor's note to come in half days



1 this week to train her.

2 THE COURT: So there wouldn't be  
3 anybody there?

4 THE JUROR: Just me and the  
5 principal.

6 THE COURT: Okay.

7 THE JUROR: Yeah.

8 THE COURT: And you say you have a  
9 Facebook account, also?

10 THE JUROR: I do, but I activate  
11 and deactivate it. I can't remember the last  
12 time I posted on there.

13 I just get on there, look at  
14 things and then get off.

15 THE COURT: Okay. Mr. Andre?

16 MR. ANDRE: I have no questions.  
17 Thank you.

18 MR. RHODES: No questions.

19 THE COURT: Okay. You can return  
20 to the courtroom.

21 MR. ANDRE: No motion.

22 THE COURT: No motion?

23 MR. RHODES: No motion.

24 THE COURT: I'm not going to

1 strike her at this time. I think if need be,  
2 she could get here, but we'll see.

3 All right. The next juror.

4 Good morning.

5 THE JUROR: Good morning.

6 Impressive crowd.

7 THE COURT: What is your juror  
8 number, please?

9 THE JUROR: Thirty-nine.

10 THE COURT: Mr. Lewandowski?

11 THE JUROR: Yes, sir.

12 THE COURT: And it is 39. What  
13 questions did you answer yes to?

14 THE JUROR: The six days is a  
15 problem for me.

16 THE COURT: How is it a problem?

17 THE JUROR: Well, I work for a  
18 small company. I lead the department in  
19 construction.

20 And it will set me back on my bids  
21 and project management. Give an example, we're  
22 doing one of the renovations upstairs and --

23 THE COURT: In this building?

24 THE JUROR: In this building and

1 I'm in constant conversation with the electrical  
2 contractor on the job. And they need my support  
3 and getting material quickly.

4 So I'd love to do it. Six days is  
5 a problem.

6 I'm flying out to Ohio Friday  
7 afternoon.

8 THE COURT: Job related?

9 THE JUROR: Stepson is getting  
10 married.

11 THE COURT: Okay.

12 THE JUROR: I mean, like I'd love  
13 to do it.

14 THE COURT: He's not planning to  
15 reschedule?

16 THE JUROR: Well, I don't know.  
17 It would be a problem, so...

18 THE COURT: Okay. Any questions?

19 MR. ANDRE: No questions.

20 MR. RHODES: No.

21 THE COURT: All right. Thank you.

22 THE JUROR: Thanks, everybody.

23 THE COURT: I'm going to strike  
24 based on the wedding in Ohio this weekend.

1 Good morning.

2 THE JUROR: Hi.

3 THE COURT: Have a seat here,  
4 please. What is your juror number?

5 THE JUROR: Five.

6 THE COURT: Ms. Carisch?

7 THE JUROR: Carisch.

8 THE COURT: Tell us which  
9 questions you answered yes to.

10 THE JUROR: Five. I think it was  
11 the --

12 THE COURT: The length of the  
13 trial?

14 THE JUROR: Of the trial.

15 THE COURT: Anything else?

16 THE JUROR: No.

17 THE COURT: Okay. What's the  
18 concern about the length of the trial?

19 THE JUROR: Well, the main reason  
20 is I have a eight-year-old son that my husband  
21 stayed home to watch today. And I also have a  
22 Court appearance on Wednesday that I'm due for.

23 THE COURT: In Family Court?

24 THE JUROR: Yes.

1 THE COURT: It's your lucky week.

2 THE JUROR: Yeah. So I didn't  
3 know whether I would be required to be at this  
4 as well.

5 THE COURT: Certainly you can't be  
6 in two places at once.

7 THE JUROR: Right.

8 THE COURT: But the -- putting  
9 aside the Family Court obligation, your concern  
10 is care of your eight-year-old son?

11 THE JUROR: He's taking off today  
12 and Wednesday so I can do this. And we're out  
13 of vacation days, so I don't have anybody else  
14 to watch him.

15 THE COURT: Okay. Any questions?

16 MR. ANDRE: No questions, Your  
17 Honor.

18 MR. RHODES: Would it impose a  
19 financial hardship if you had to have your  
20 husband stay home and watch your son?

21 THE JUROR: Yes, it would.

22 THE COURT: Okay. Thank you.  
23 You can go back to the courtroom.

24 THE COURT: Mr. Andre?

1 MR. ANDRE: Motion to strike for  
2 cause.

3 THE COURT: Okay.

4 MR. RHODES: Join.

5 THE COURT: Okay. I will grant  
6 it.

7 Good morning.

8 THE JUROR: Good morning.

9 THE COURT: You can have a seat  
10 here. Please tell us what your juror number is.

11 THE JUROR: Sixty-one.

12 THE COURT: Mr. Spicer?

13 THE JUROR: Mm-hmm.

14 THE COURT: Okay. Tell us which  
15 questions you answered yes to, please.

16 THE JUROR: Six. I believe that  
17 was the Facebook account.

18 THE COURT: Yes. You have a  
19 Facebook account?

20 THE JUROR: Yes.

21 THE COURT: About how long have  
22 you had it?

23 THE JUROR: Less than a year.

24 THE COURT: And about how often do

1 you use it?

2 THE JUROR: Maybe four to five  
3 times a week.

4 THE COURT: And what kinds of  
5 things do you typically do on it?

6 THE JUROR: Just social networking  
7 with friends.

8 THE COURT: Anything about that  
9 that would make it hard for you to be a fair  
10 judge of issues related to Facebook?

11 THE JUROR: No.

12 THE COURT: Okay. Did you have  
13 any other yes answers?

14 THE JUROR: No.

15 THE COURT: Okay. Mr. Andre?

16 MR. ANDRE: I have no questions.

17 Thank you.

18 MR. RHODES: Thank you. I have no  
19 questions, either.

20 THE JUROR: Thank you.

21 THE COURT: Thank you. Any  
22 motion?

23 MR. ANDRE: No motion.

24 THE COURT: Mr. Rhodes?

1 MR. RHODES: No motion.

2 THE COURT: Okay. Good morning.

3 THE JUROR: Hello. Good morning.

4 THE COURT: You can have a seat  
5 there. What's your juror number?

6 THE JUROR: Fifty-six.

7 THE COURT: That would make you  
8 Ms. Sentman?

9 THE JUROR: You've got it.

10 THE COURT: Which questions did  
11 you answer yes to?

12 THE JUROR: Facebook account.

13 THE COURT: You have one?

14 THE JUROR: I do.

15 THE COURT: About how long have  
16 you had it?

17 THE JUROR: November last year.

18 THE COURT: And about how often do  
19 you use it?

20 THE JUROR: Twice a week.

21 THE COURT: What kind of things do  
22 you usually do?

23 THE JUROR: Look up old friends.

24 THE COURT: Look up old friends?



1 THE JUROR: Mm-hmm.

2 THE COURT: And do you remember  
3 what caused you to get an account last November?

4 THE JUROR: School. I go to Del  
5 Tech, so...

6 THE COURT: And what about school  
7 led you to do it?

8 THE JUROR: Classmates. To get on  
9 there to actually talk about homework, what  
10 we've missed, notes, stuff like that.

11 THE COURT: And would you be --  
12 other than this trial, would you be using it  
13 this week for school?

14 THE JUROR: No.

15 THE COURT: You're not in school  
16 this week?

17 THE JUROR: Well, I am, but we're  
18 actually only on tests this week. So...

19 THE COURT: Okay. And would it  
20 pose a hardship for you to stay off of Facebook  
21 this week --

22 THE JUROR: No.

23 THE COURT: -- and into next week?

24 THE JUROR: No.

1 THE COURT: Any questions,  
2 Mr. Andre?  
3 MR. ANDRE: No.  
4 THE COURT: Mr. Rhodes?  
5 MR. RHODES: No.  
6 THE COURT: Okay. Any motion, Mr.  
7 Andre?  
8 MR. ANDRE: No motion.  
9 THE COURT: Mr. Rhodes?  
10 MR. RHODES: No.  
11 THE CLERK: Just take a seat by  
12 the Judge, please.  
13 THE COURT: Good morning.  
14 THE JUROR: Good morning, Your  
15 Honor.  
16 THE COURT: You can have a seat  
17 there.  
18 THE JUROR: Ladies and gentlemen.  
19 THE COURT: What is your juror  
20 number?  
21 THE JUROR: Sixty-four.  
22 THE COURT: Mr. Sullivan?  
23 THE JUROR: Yes, sir.  
24 THE COURT: Tell us what questions

1 you answered yes to.

2 THE JUROR: Your Honor, I've been  
3 trying to remember the name of the question.  
4 I'm very sorry.

5 THE COURT: That's fine.

6 THE JUROR: It was do I have any  
7 prejudice or anything against Facebook or the  
8 plaintiff. And my only problem, and I want to  
9 be totally honest is that my stepson's daughter,  
10 so my step-granddaughter was approached by a  
11 older man on Facebook. And luckily my stepson  
12 got wind of it and got the police involved and  
13 put an end to it.

14 So I just wanted to be honest  
15 about it.

16 THE COURT: That was certainly a  
17 traumatic family experience.

18 THE JUROR: Yes, sir. But --

19 THE COURT: Do you think you  
20 could put aside that experience and judge  
21 Facebook fairly in this case?

22 THE JUROR: Yes, I could. I just  
23 thought that you should know.

24 THE COURT: I appreciate you

1 letting us know. Certainly.

2 Were there any other concerns or  
3 questions that you had?

4 THE JUROR: No, sir.

5 THE COURT: No. Okay.

6 Mr. Andre?

7 MR. ANDRE: I have no questions.

8 Thank you.

9 THE COURT: Mr. Rhodes?

10 MR. RHODES: No questions. Thank  
11 you.

12 THE COURT: Thank you. You can  
13 return to the Court.

14 MR. ANDRE: No motions.

15 MR. RHODES: I would move -- he  
16 felt strongly enough to disclose the story, to  
17 come in here, relay it and obviously it was a  
18 traumatic event in the family. I worry it's a  
19 prejudice he wouldn't be able to overcome.

20 THE COURT: I'm going to grant  
21 that motion. It's just the nature of that type  
22 of experience, while he says he can put it  
23 aside, I know he will do his best.

24 I am concerned.

1 So we'll strike Number 64.

2 THE CLERK: They tell me that's  
3 all of them.

4 THE COURT: Okay. Let's take a  
5 moment and make sure we're all on the same page  
6 as to who's in and who's out.

7 Do you need some time?

8 THE CLERK: No. I'm good.

9 I'll just mention the ones that  
10 are out or do you --

11 THE COURT: Whatever is easiest  
12 for you.

13 THE CLERK: I'll just go through  
14 the whole list. And one is absent. Two is  
15 stricken.

16 Three is stricken. Four is in.

17 Five is stricken. Six through  
18 nine are in.

19 Ten is absent. Eleven is  
20 stricken.

21 Twelve is in. Thirteen is absent.

22 Fourteen and 15 are in. Sixteen  
23 is stricken.

24 Seventeen is absent.

1                   Eighteen stricken. Nineteen  
2 through 21 are in.

3                   Twenty-two is stricken.

4                   Twenty-three through 29 are in.

5                   Thirty and 31 are absent.

6                   Thirty-two is in. Thirty-three is  
7 stricken.

8                   Thirty-four through 38 are in.

9                   Thirty-nine is stricken. Forty  
10 and 41 are in.

11                  Forty-two is stricken.

12                  Forty-three is in.

13                  Forty-four is stricken.

14                  Forty-five through 47 are in.

15                  Forty-eight is stricken.

16                  Forty-nine and 50 are in.

17                  Fifty-one is absent. Fifty-two is  
18 stricken.

19                  Fifty-three is in. Fifty-four is  
20 absents.

21                  Fifty-five is stricken. Fifty-six  
22 and 57 are in.

23                  Fifty-eight and 59 are stricken.

24                  Sixty through 63 are in.

1 Sixty-four and 65 are stricken.

2 Sixty-six is in. Sixty-seven is  
3 stricken. And 68 is in.

4 THE COURT: How many are still in  
5 by your count, please.

6 THE CLERK: I believe I have 40.

7 THE COURT: It looks like 40 to me  
8 as well.

9 MR. CAPONI: Your Honor, do you  
10 have one or two reserved?

11 THE COURT: Thirty-five and 60 is  
12 reserved on my list.

13 MS. KEEFE: An 68.

14 THE CLERK: I have 68 as well.

15 THE COURT: Sixty-eight was  
16 reserved as well.

17 THE CLERK: That was the teacher  
18 lady with the blond hair at the end.  
19 Thirty-five, 60 and 68 as reserved.

20 I think given that we have 40, I'm  
21 comfortable taking it down to 37. I had  
22 concerns with each of them with scheduling, so  
23 we will strike 35, 60 and 61.

24 Neal, anything else before I send

1 counsel back into the courtroom?

2 THE CLERK: No. I don't think so.

3 THE COURT: Okay. You all can  
4 return to the courtroom. We'll be in shortly to  
5 complete jury selection.

6 (A brief recess was taken.)

7 THE CLERK: All rise. Please be  
8 seated.

9 THE COURT: I appreciate your  
10 patience and we'll ask your continued indulgence  
11 and patience as we move into the next and near  
12 final stages of jury selection.

13 What's going to happen next is  
14 that one of my deputies is going to randomly  
15 select 18 jury numbers. If you hear your number  
16 called, I'll need you to come forward and the  
17 deputy will direct you where to sit in or around  
18 the jury box.

19 After we have randomly selected 18  
20 of you, the parties are entitled to what is  
21 called preemptory challenges where they can each  
22 strike up to five of you. That will be a  
23 process that will take a little bit of time and  
24 it will be silent.



1           You might see a clipboard being  
2           passed back and forth between the parties and my  
3           staff. And I'll just need to again ask for your  
4           indulgence to sit there quietly and be patient  
5           as counsel is doing the work that they have to  
6           do on behalf of their clients.

7           After they're done with that, we  
8           will read off the numbers of the eight of you  
9           who are going to be on the jury. And at that  
10          point, we'll be able to excuse the rest of you.

11          So I'll now call on my deputy to  
12          select 18 numbers randomly, please.

13          THE CLERK: Juror Number 20,  
14          please take the first seat in the first row of  
15          the jury box.

16          Juror Number 50, second seat in  
17          the first row.

18          Juror Number 45, third seat in the  
19          first row.

20          Juror Number 4, fourth seat in the  
21          first row.

22          Juror Number 41.

23          Juror Number 57.

24          Juror Number 6.

1 Juror Number 63, first seat in the  
2 second row, please.

3 Juror Number 14, second seat in  
4 the second row.

5 Juror Number 38.

6 Juror Number 23.

7 Juror Number 25.

8 Juror Number 29.

9 Juror Number 21.

10 Juror Number 43, please take one  
11 of the seats in the front.

12 Juror Number 12.

13 Juror Number 24.

14 Juror Number 46.

15 THE COURT: Counsel, are there any  
16 objections to the striking process?

17 MR. ANDRE: No, Your Honor, there  
18 is no objection.

19 THE COURT: Okay.

20 MR. RHODES: No, Your Honor. We  
21 thank you.

22 THE COURT: Thank you.

23 THE CLERK: The following jurors  
24 return to the back of the courtroom, please.

1 Juror Number 20.

2 Juror Number 50.

3 Juror Number 45.

4 Juror Number 4.

5 Juror Number 41.

6 Juror Number 6.

7 Juror Number 63.

8 Juror Number 25.

9 Juror Number 23. Ma'am, stay  
10 there, sorry.

11 Juror Number 29.

12 Juror Number 43.

13 THE COURT: All right. Those of  
14 you who are not in the jury box are now excused  
15 and free to go. I appreciate you for being here  
16 and doing your civic duty and thank you for your  
17 time and your patience.

18 We're now going to swear our  
19 jurors and then I'll have a few comments for you  
20 and then we'll take a break for lunch.

21 THE CLERK: Can you stand and  
22 place your right hands on the bible. Do you  
23 swear or affirm that you will well and truly try  
24 the issue joined wherein Leader Technologies,

1 Inc., is plaintiff and Facebook, Inc., is  
2 defendant and that you will a true verdict  
3 render according to the evidence, so help you  
4 God, those of you who swear, and those of you  
5 who affirm, you do so affirm.

6 THE JUROR: I do.

7 THE COURT: Ladies and gentlemen  
8 of the jury, welcome again. I will have plenty  
9 of instructions for you over the course of the  
10 trial, beginning very briefly now.

11 Now that you have been sworn as  
12 jurors, it's important that you understand you  
13 are not to deliberate or talk about this case  
14 until the evidence is closed, and we'll tell you  
15 when that time is. So even now as we're getting  
16 ready for your first lunch break at which you  
17 really don't know anything about the case, you  
18 still should not be talking about the case.

19 You need to keep a fair and open  
20 mind until the case is given to you at the end  
21 of the evidence.

22 We will be taking a break for  
23 lunch. We'll start up again at 1:30. You will  
24 have to go through security again, so keep that

1 in mind and please get back to the building in  
2 time that you can be back in the jury room in  
3 time to start promptly at 1:30.

4 It is also important that you keep  
5 those jury stickers on that you have on now,  
6 that's so that everybody in the building knows  
7 that you're a juror. None of us who are  
8 involved in the case should be talking to you  
9 during the course of the case and your stickers  
10 help us to identify you and keep track of you.

11 So with that, my deputy will show  
12 you where the jury room is and get you settled  
13 there and then you'll be free to go, but be back  
14 in time to start at 1:30. So I ask you now to  
15 show the jury out, please.

16 (Jury leaving the courtroom at  
17 12:22 p.m.)

18 THE COURT: Are there any matters  
19 that counsel need to address before we break for  
20 lunch?

21 MR. ANDRE: None for the  
22 plaintiff, Your Honor.

23 THE COURT: Okay.

24 MR. RHODES: No, Your Honor.

1 THE COURT: When we get back,  
2 we'll start with the preliminary instructions,  
3 including play the video, and then we'll do the  
4 openings and see if we get any further than the  
5 openings this afternoon.

6 We'll take a break.

7 (A luncheon recess was taken.)

8 THE COURT: Good afternoon.  
9 Please be seated. I think you all should have  
10 some deposition designations for me. Do you  
11 have that? Pass it up.

12 MR. RHODES: May I approach, Your  
13 Honor.

14 THE COURT: You may. This gives  
15 me information for both parties for Wednesday;  
16 is that correct?

17 MR. ANDRE: That's correct.

18 THE COURT: Anything else before  
19 we bring the jury in?

20 MR. ANDRE: Nothing.

21 MR. RHODES: No.

22 THE COURT: We'll bring the jury  
23 in, please.

24 (Jury entering the courtroom at

1 1:35 p.m.)

2 THE CLERK: You may be seated.

3 THE COURT: Good afternoon, ladies  
4 and gentlemen of the jury. Welcome back. It's  
5 time now for me to read you some preliminary  
6 instructions.

7 Now that you have been sworn, I am  
8 going to give you some preliminary instructions  
9 to guide you in your participation in the trial.  
10 These instructions will give you some of the  
11 general rules and guidance that might apply to  
12 any civil case. Also because this is a patent  
13 trial, which will deal with subject matter that  
14 is not within the everyday experience of most of  
15 us, I will additionally give you some  
16 preliminary instructions regarding patents to  
17 assist you in discharging your duties.

18 Before I begin with those  
19 instructions, however, allow me to give you an  
20 overview of who the parties are and what each  
21 contends.

22 You may recall that during the  
23 process this morning that led to your selection  
24 as jurors, I advised you that this is a civil

1 action for patent infringement arising under the  
2 patent laws of the United States. The plaintiff  
3 is Leader Technologies, Inc., which I will refer  
4 to as Leader. The defendant is Facebook, Inc.,  
5 which I will refer to as Facebook.

6 Leader owns one United States  
7 patent which it alleges that Facebook infringes.  
8 U.S. Patent Number 7,139,761. Because these  
9 numbers are so long, patents are usually  
10 referred to by their last three digits. For  
11 example, U.S. Patent Number 7,139,761 is simply  
12 called the '761 patent.

13 Leader contends that Facebook  
14 infringes the '761 patent. The '761 patent  
15 issued on November 21st, 2006. Leader is the  
16 assignee of all ownership rights, title and  
17 interest in the '761 patent.

18 Facebook owns and operates the  
19 Facebook website which is currently located at  
20 [www.facebook.com](http://www.facebook.com) and was formally located at  
21 [www.thefacebook.com](http://www.thefacebook.com). Facebook provides a  
22 developer wiki at  
23 [http://wiki.developers.facebook.com/index.php/](http://wiki.developers.facebook.com/index.php/Main_Page)  
24 [Main\\_Page](http://wiki.developers.facebook.com/index.php/Main_Page) and



1 <http://developers.facebook.com/docs/>.

2           Leader does not contend that all  
3 of the claims of the patent are infringed by  
4 Facebook. Instead, Leader asserts that only  
5 certain claims are infringed. They may be  
6 called asserted claims. I and the attorneys and  
7 witnesses may refer to the product accused of  
8 infringement as an accused product.

9           You, of course, will determine  
10 whether or not the accused product infringes the  
11 asserted claims of Leader's patent. Persons or  
12 companies sued for allegedly infringing a patent  
13 can deny infringement. They can also defend  
14 a charge of infringement by proving the patent  
15 is invalid.

16           In this case, Facebook denies that  
17 it infringes Leader's patent and asserts that  
18 the patent is invalid. I will tell you more  
19 about infringements in a few minutes. I will  
20 also instruct you as to invalidity in my  
21 instructions to you at the close of the  
22 evidence.

23           So let me begin with general rules  
24 that will govern the discharge of your duty as

1 jurors in this case.

2 It will be your duty to find from  
3 the evidence what the facts are. You and you  
4 alone will be the judges of the facts. You will  
5 then have to apply those facts to the law as I  
6 give it to you both during these preliminary  
7 instructions and at the close of the evidence.  
8 You must follow that law whether you agree with  
9 it or not.

10 In addition to instructing you  
11 about the law, at the close of the evidence I  
12 will provide you with instructions as to what  
13 the claims of the patents mean. Again, of  
14 course, you are bound by your oath as jurors to  
15 follow these and all the instructions that I  
16 give you, even if you personally disagree with  
17 them.

18 All the instructions are  
19 important, and you should consider them as a  
20 whole.

21 Perform these duties fairly. Do  
22 not let any bias, sympathy or prejudice that you  
23 may feel toward one side or the other influence  
24 your decision in any way.

1           Also, do not let anything that I  
2 may say or do during the trial influence you.  
3 Nothing that I may say or do is intended to  
4 indicate or should be taken by you as indicating  
5 what your verdict should be.

6           The evidence from which you will  
7 find the facts will consist of the testimony of  
8 witnesses. The testimony of witnesses consist  
9 of the answers -- of the witnesses to questions  
10 posed by the attorneys or by the Court, you may  
11 not ask questions.

12           Evidence will also consist of  
13 documents and other things received into the  
14 record as exhibits, and any facts that the  
15 lawyers agree to or stipulate to or that I may  
16 instruct you to find. Certain things are not  
17 evidence and must not be considered by you. I  
18 will list them for you now.

19           Statements, arguments and  
20 questions by lawyers are not evidence.  
21 Objections to questions are not evidence.  
22 Lawyers have an obligation to their clients to  
23 make objections when they believe evidence being  
24 offered is improper under the rules, under the

1 rules of evidence.

2 You should not be influenced by  
3 the objection or by the Court's ruling on it.  
4 If the objection is sustained, ignore the  
5 question. If it is overruled, treat the answer  
6 like any other.

7 If you are instructed that some  
8 item of evidence is received for a limited  
9 purpose only, you must follow that instruction.

10 Testimony that the Court has  
11 excluded or told you to disregard is not  
12 evidence and must not be considered.

13 Anything that you may have seen or  
14 heard outside the courtroom is not evidence and  
15 must be disregarded. You are to decide the case  
16 solely on the evidence presented here in the  
17 courtroom.

18 There are two kinds of evidence,  
19 direct and circumstantial. Direct evidence is  
20 direct proof of a fact such as testimony of an  
21 eye witness. Circumstantial evidence is proof  
22 of facts from which you may infer or conclude  
23 that other facts exist.

24 As a rule, the law makes no

1 distinction between these two types of evidence,  
2 but simply requires that you find facts from all  
3 of the evidence in the case whether direct or  
4 circumstantial, or a combination of the two.

5 You are the sole judges of each  
6 witness's credibility. You should consider each  
7 witness's means of knowledge, strength of  
8 memory, opportunity to observe, how reasonable  
9 or unreasonable the testimony is, whether it is  
10 consistent or inconsistent, whether it has been  
11 contradicted, the witness's bias, prejudices or  
12 interest, the witness's manner or demeanor on  
13 the witness stand and all circumstances that  
14 according to the evidence could affect the  
15 credibility of the testimony.

16 If you find the testimony to be  
17 contradictory, you must try to reconcile it if  
18 reasonably possible so as to make one harmonious  
19 story of it all, but if you can't do that, then  
20 it is your duty and privilege to believe the  
21 testimony that you in your judgment believe is  
22 most believable and disregard any testimony that  
23 in your judgment is not believable.

24 This instruction applies to the

1 testimony of all witnesses, including expert  
2 witnesses.

3 As I have already told you in this  
4 case, Leader is the owner of one patent, which  
5 it contends Facebook infringes. Leader,  
6 therefore, has the burden of proving  
7 infringement by what is called a preponderance  
8 of the evidence.

9 This means that Leader has to  
10 produce evidence which considered in the light  
11 of all the facts leads you to believe that what  
12 the patent owner alleges is more likely true  
13 than not.

14 To put it differently, if you were  
15 to put Leader's and Facebook's evidence on  
16 opposite sides of the scale, the evidence  
17 supporting Leader's allegations would have to  
18 make it tip somewhat on its side. If Leader  
19 fails to meet this burden, the verdict must be  
20 for Facebook.

21 In this case, Facebook asserts  
22 that Leader's patent is invalid. The patent,  
23 however, is presumed to be valid. Accordingly,  
24 the party challenging the patent has the burden

1 of proving by clear and convincing evidence that  
2 the patent is invalid. Clear and convincing  
3 evidence is evidence that produces an abiding  
4 conviction that the truth of a factual  
5 contention is highly probable.

6 Proof by clear and convincing  
7 evidence is thus a higher burden of proof than  
8 proof by a preponderance of the evidence of the  
9 evidence.

10 Q. These of you who have sat on  
11 criminal cases will have heard of proof beyond a  
12 reasonable doubt. That requirement does not  
13 apply to civil cases, therefore, you can put it  
14 out of your mind.

15 At this time we'll move on to some  
16 general guidance regarding patents and patent  
17 litigation and we'll begin by showing you a  
18 video that has been produced by the Federal  
19 Judicial Center.

20 (Videotape:)

21 As you probably know by now, this  
22 is a patent case. So you may be wondering how  
23 can I sit in judgment on a case like this when  
24 I'm not entirely sure what a patent is.

1                   We hope to answer that concern  
2 with this brief video which will give you some  
3 of the background needed to do your job.

4                   This case will involve some  
5 special issues that the judge and lawyers will  
6 explain to you, but all patent cases involve  
7 some basics that you will learn about.

8                   This video will discuss what  
9 patents are, why we have them, how people get  
10 them, and why there are disputes that require us  
11 to call in a jury like you.

12                   We'll also show you what patents  
13 look like.

14                   The United States Constitution  
15 gives congress the power to pass laws relating  
16 to patents. It allows congress to promote the  
17 progress of science and useful arts by securing  
18 for limited times to authors and inventors the  
19 exclusive right to their respective writings and  
20 discoveries.

21                   A patent, then, is an official  
22 grant by the United States government that gives  
23 its owner certain rights to an invention. Those  
24 include the right to keep others from making,



1 using, selling, or offering for sale the  
2 invention that is described in the patent.

3 A patent last for a specific  
4 period of time, usually twenty years, and  
5 represents a bargain made between the government  
6 and the inventor.

7 In return for the right to keep  
8 others from using the invention, the inventor  
9 must enhance the public knowledge of what we  
10 sometimes call the state of the art by adding  
11 something new and useful to it.

12 An example is Thomas Edison's  
13 invention of the lightbulb. During the lifetime  
14 of the patent, its disclosure may inspire new  
15 inventions, and after it expires the invention  
16 is free for anyone to use. It is this giving of  
17 something new and valuable to the public that  
18 justifies giving a patent to the inventor.

19 A patent is in many ways like a  
20 deed to a piece of property. It grants the  
21 owner the right to keep people off the property  
22 or to charge them a fee like rent for using it.  
23 Just as a deed indicates limitations on the  
24 rights of a landowner, a patent sets limits on

1 the rights of an inventor.

2 The patent system works because  
3 the inventor is required to describe the  
4 invention in clear and specific terms so that  
5 the public knows what the boundaries of the  
6 invention are.

7 Once a patent is issued by the  
8 government, it becomes available for public  
9 inspection. And that way anyone who learns of  
10 the patent and is interested can read it and  
11 understand exactly what the inventor has claimed  
12 to have invented.

13 Now that we understand what a  
14 patent is, let's take a closer look at the term  
15 invention. An invention is a new way of solving  
16 a problem.

17 The patent process begins in the  
18 mind of the inventor, and in particular, when  
19 the invention is formulated in the mind of the  
20 inventor. Patent lawyers call this conception.

21 This is when the idea occurs to  
22 the inventor clearly enough that he or she can  
23 write it down and explain it to someone. To  
24 qualify for a patent, the invention needs to be

1 new and useful.

2 Also, it must not be obvious to  
3 one of ordinary skill in the field. If the  
4 inventor believes these requirements are met, he  
5 or she will prepare an application for filing  
6 with the United States Patent & Trademark Office  
7 in Washington D.C.

8 The Patent and Trademark Office,  
9 often called the PTO, is the agency of the  
10 federal government whose job it is to examine  
11 patent applications to make sure they are in  
12 proper form and comply with the requirements of  
13 the law.

14 The inventor can prepare the  
15 application for filing with the PTO, but usually  
16 it's drafted by an attorney who specializes in  
17 this work or by a patent agent who is not an  
18 attorney.

19 The attorney or agent works with  
20 the inventor to be sure the invention is  
21 described and claimed in a way that complies  
22 with the law and the regulations of the PTO.

23 As you can see, the application is  
24 basically a typewritten document in which the

1 inventor describes the invention he or she is  
2 trying to protect.

3 When the PTO receives the  
4 inventor's application, it assigns a patent  
5 examiner, a staff person with a background in  
6 the field or art the invention falls within to  
7 examine the application and decides whether a  
8 patent can be granted.

9 You've been given a sample patent  
10 to refer to as you watch this video, so you  
11 already have a sense of what a patent looks  
12 like. But now let's take a closer look at the  
13 three main parts to a patent.

14 To begin with, there's some basic  
15 identifying information on the first page. This  
16 material is highlighted in your handout.

17 On the upper right side of the  
18 page is the number assigned to the patent by the  
19 government. And on the left side is a title  
20 that describes the invention, the names of the  
21 inventors and sometimes the company they have  
22 assigned the patent to, and the date when the  
23 patent application was filed.

24 There is also more detailed

1 information on the first page, including a list  
2 of numbers following the caption Field of  
3 Search. These numbers identify previously  
4 issued patents the examiner looked at or  
5 searched to make sure the applicant's claimed  
6 invention really is something new, not obvious,  
7 and thus patentable.

8 Also listed on the first page are  
9 what we call references. That is, previous  
10 patents or articles that describe the technology  
11 or prior art known at the time the application  
12 was filed.

13 It may seem strange to you that we  
14 call this preexisting technology prior art even  
15 though it has nothing to do with artists. We  
16 use the word art in the broadest sense to  
17 include inventions and other subject matter  
18 reasonably related to the claimed invention.

19 We also refer to the latest  
20 technology as state of the art. And we say of  
21 someone who can understand and apply the  
22 technology, that he or she is skilled in the  
23 art.

24 The second major part of the

1 patent is what we call the specification or  
2 written description. As is the case in your  
3 sample, it's usually the longest part of the  
4 patent. It includes an abstract, which is a  
5 brief summary of the invention, a background  
6 section that describes the nature of the problem  
7 the invention is supposed to solve, one or more  
8 drawings called figures that illustrate various  
9 aspects of the invention, and a detailed  
10 description of one or more embodiments of the  
11 invention.

12 An embodiment is a specific device  
13 or method that uses the invention such as a  
14 particular form of light bulb.

15 The third and most important part  
16 of the patent is the claims. These are the  
17 numbered paragraphs that appear at the end.

18 The claims are what give the  
19 public notice of the boundaries of the  
20 invention. They are similar to the description  
21 of property you may have seen in a deed  
22 referring to precise measurements taken on the  
23 ground.

24 Now that we've discussed the main

1 parts of a patent, let's take a look at how the  
2 PTO processes patent applications. This  
3 process, which is called prosecution of the  
4 patent application, begins when the inventor's  
5 application arrives at the PTO mailroom.

6 There it receives a stamp that  
7 establishes its filing date. Every year the PTO  
8 receives over 300,000 applications and issues  
9 more than 150,000 patents. Applications go from  
10 the mailroom to the office of initial patent  
11 examination, which looks them over to make sure  
12 all the required parts are there.

13 This office also decides what  
14 field of technology an application relates to  
15 and assigns it to the appropriate examining  
16 room. Soon it is assigned to an individual  
17 patent examiner for handling.

18 It then gets put in a stack to  
19 wait its turn for examination. The reason is  
20 that examiners have to review the applications  
21 assigned to them in the order in which they have  
22 been filed.

23 In time, the examiner turns to our  
24 inventor's application and begins by reading it,

1 especially the specification and claims, in  
2 order to come to a conclusion about whether the  
3 invention described in the claims are  
4 patentable.

5 A patent might contain one claim  
6 or many claims, and the examiner must make this  
7 conclusion about each individual claim. In  
8 order to make that decision, the patent examiner  
9 usually looks at patents that have been issued  
10 previously in the same or very closely related  
11 fields of art.

12 In most areas of technology, the  
13 examiner also has computer databases that  
14 contain limited additional information. Another  
15 part of the job is to decide if the inventor's  
16 description of the invention is complete and  
17 clear enough to meet the requirements for a  
18 patent, including the requirement that the  
19 description enables someone of ordinary skill in  
20 the field to actually make and use it.

21 It's important to note that the  
22 process of patent examination is private. That  
23 is, the public does not know that someone has  
24 applied for a patent on an invention until the



1 patent issues or in some cases until the  
2 application has been pending for at least 18  
3 months.

4 The reason for this secrecy is to  
5 give the inventor a chance to get the examiner's  
6 reaction to the application and decide whether  
7 to withdraw it for whatever reason and keep the  
8 invention as confidential information. However,  
9 because the process occurs mostly in private and  
10 because the job of examining so many  
11 applications is very challenging, the law  
12 requires the applicant to tell the examiner  
13 whatever he or she knows about the prior art  
14 that might be important to the examiner's  
15 decision on whether to allow the patent.

16 We call this the applicant's duty  
17 of candor. One way the applicant can satisfy  
18 this duty is by bringing certain prior art to  
19 the attention of the examiner, either in the  
20 original application or in other submissions  
21 called information disclosure statements.

22 In this way, the decisions of the  
23 examiner are based on both the information  
24 provided by the applicant and on the information

1 the examiner is able to find during the  
2 examination process.

3 Sometimes the examiner concludes  
4 the application meets all the requirements we've  
5 discussed and allows the patent to issue at this  
6 first stage.

7 But more frequently, the examiner  
8 will reject the application as deficient in some  
9 respect. At that point, the applicant usually  
10 prepares a written response, either agreeing or  
11 disagreeing with the examiner.

12 An applicant who agrees with the  
13 examiner can submit amendments to the  
14 application designed to overcome the examiner's  
15 objection. And an applicant that disagrees with  
16 the examiner can explain the reasons for the  
17 disagreement.

18 This exchange of office actions  
19 and responses goes on until the examiner issues  
20 a final office action, which may reject or allow  
21 some or all of the applicant's claims. Once a  
22 final PTO office action has occurred and one or  
23 more claims have been allowed, the applicant is  
24 required to pay an issuance fee, and the patent

1 is granted.

2 Then on the date shown in the  
3 upper right corner of the first page of the  
4 patent, it is issued by the PTO. The inventor  
5 receives all the rights of a patent. That date  
6 is highlighted on your sample.

7 By the time a patent issues and  
8 the public can take a look at it, the record of  
9 what the examiner did is also made public. This  
10 is the patent's file, which we call the  
11 prosecution history.

12 The file history contains the  
13 original application and all the communications  
14 between the applicant and the patent examiner,  
15 including a record of any rejections, the  
16 applicant's responses and any amendments.

17 Once the patent has issued, the  
18 inventor or the person or company the inventor  
19 has assigned a patent to can enforce the patent  
20 against anyone who uses the invention without  
21 permission.

22 We call such unlawful use  
23 infringement. But the PTO, the examiners do not  
24 decide infringement issues. If there is a

1       dispute about infringement, it is brought to the  
2       Court to decide.

3                 Sometimes in a court case, you are  
4       also asked to decide about validity. That is,  
5       whether the patent should have been allowed at  
6       all by the PTO.

7                 A party accused of infringement is  
8       entitled to challenge whether the asserted  
9       patent claims are sufficiently new or  
10      non-obvious in light of the prior art or whether  
11      other requirements of patentability have been  
12      met. In other words, a defense to an  
13      infringement lawsuit is that the patent in  
14      question is invalid.

15                You may wonder why it is that you  
16      would be asked to consider such things when the  
17      patent has already been reviewed by a government  
18      examiner. There are several reasons for this.

19                First, there may be facts or  
20      arguments that the examiner did not consider  
21      such as prior art that was not located by the  
22      PTO or provided by the applicant. Another  
23      reason may be the failure by the applicant to  
24      disclose the best way of making or using the

1 invention, which is another requirement for  
2 getting a patent.

3 In addition, there is, of course,  
4 the possibility that mistakes were made or  
5 important information overlooked. Examiners  
6 have a lot of work to do and no process is  
7 perfect.

8 Also, unlike a Court proceeding,  
9 prosecution of a patent application takes place  
10 in private without input from people who might  
11 later be accused of infringement. So it is  
12 important that we provide a chance for someone  
13 who is accused of infringement to challenge the  
14 patent in Court.

15 In deciding issues of infringement  
16 and validity, it is your job to decide the facts  
17 of the case. The judge will instruct you about  
18 the law which may include the meaning of certain  
19 words or phrases contained in the patent.

20 But it is up to you as exclusive  
21 judges of the facts to apply the facts as you  
22 find them to the law and decide the questions of  
23 infringement and validity in the case before  
24 you.

1           To prove infringement, the patent  
2 holder must persuade you that it is more likely  
3 than not that the patent has been infringed. To  
4 prove that a patent is invalid, the law requires  
5 a higher standard of proof since the PTO is  
6 presumed to have done its job correctly.

7           The party accused of infringement  
8 must persuade you that it is highly probable  
9 that the patent is invalid. Good luck with your  
10 task and thank you for your service.

11           (Conclusion of patent video.)

12           THE COURT: Now that you have seen  
13 the video, I'm going to give you, nonetheless, a  
14 general overview of what a patent is and how one  
15 is obtained. A lot of what I say you will have  
16 just heard and you'll hear it again from me at  
17 the close of the trial.

18           But it's important and I want to  
19 make sure that you get to hear it. So with  
20 that, let me give you a general overview of what  
21 a patent is and how one is obtained.

22           The United States Constitution  
23 Article 1, Section 8 grants the Congress of the  
24 United States the power to enact laws to promote

1 the progress of science and the useful arts by  
2 securing for limited times to authors and  
3 inventors the exclusive right to their  
4 respective writings and discoveries.

5 The United States Patent and  
6 Trademark Office is responsible for reviewing  
7 patent applications and granting patents. Once  
8 the Patent Office or PTO has issued a patent,  
9 the patent owner has the right to exclude others  
10 from making, using, selling, or offering for  
11 sale the invention throughout the United States  
12 for the length of the patent term. If the  
13 invention covered by the patent is a method, the  
14 patent law gives the patent owner the right to  
15 exclude others from using the method throughout  
16 the United States or making or selling  
17 throughout the United States any product made by  
18 the patented method anywhere in the world.

19 A person who without the patent  
20 owner's authority makes, uses, sells, or offers  
21 to sell a product or employs a method that is  
22 covered by one or more claims of a valid patent  
23 infringes the patent.

24 The person can also induce others

1 to infringe a patent by suggesting to other  
2 persons or companies that they undertake acts  
3 that constitute infringement. This is called  
4 inducing infringement.

5 I will next briefly describe the  
6 parts of a patent and some of the procedures  
7 followed by those attempting to obtain patents.  
8 Many of the terms I will use in this description  
9 are contained in a glossary of patent terms  
10 which I will give to you along with the copy of  
11 these preliminary instructions. Feel free to  
12 refer to the glossary throughout the trial.

13 For an invention to be patentable,  
14 it must be new, useful and at the time the  
15 invention was made must not have been obvious to  
16 a person having ordinary skill in the art to  
17 which the subject matter pertains.

18 Under the patent laws, the patent  
19 office examines patent applications and issues  
20 patents. A person applying for a patent must  
21 include a number of items in his or her  
22 application, including one, a detailed  
23 description of the invention in terms  
24 sufficiently clear, full, concise and exact to



1 enable any person skilled in the art to which  
2 the invention pertains to make and use the  
3 invention.

4 Two, the disclosure of the best  
5 mode of carrying out the invention known to the  
6 inventor at the time of filing. And three, one  
7 or more claims.

8 The application includes a written  
9 description of the invention called a  
10 specification. It may include drawings that  
11 illustrate the invention. The specification  
12 concludes with one or more claims that  
13 particularly and distinctly define the subject  
14 matter that the inventor regards as his or her  
15 invention.

16 When a patent application is  
17 received at the patent office, it is assigned to  
18 an examiner who examines the application,  
19 including the claims, to determine whether the  
20 application complies with the requirements of  
21 the U.S. patent laws.

22 The examiner reviews the prior  
23 work of others in the form of voluminous files  
24 of patents and publications. This type of

1 material is called prior art. Prior art is  
2 generally technical information and knowledge  
3 that was known to the public either before the  
4 invention by the applicant or more than one year  
5 before the filing day of the application.

6 Documents found in the search of  
7 prior art are called references. In concluding  
8 the search of prior art, the examiner notes in  
9 writing on the file the classes or subclasses of  
10 art searched.

11 The compilation of the papers  
12 concerning the proceedings before the patent  
13 office is called the prosecution history, file  
14 wrapper, or file history. The patent office  
15 does not have its own laboratories or testing  
16 facilities.

17 The examiner may reject the patent  
18 application claims if he or she believes that  
19 their applications for inventions that are not  
20 patentability in light of the prior art or  
21 because the patent specification does not  
22 adequately describe the claimed inventions. The  
23 applicant may then amend the claims to respond  
24 to the examiner's rejections.

1           If after reviewing the prior art  
2 maintained at the patent office the examiner  
3 concludes that the claims presented by the  
4 applicant define the applicant's claimed  
5 invention over the most relevant known prior art  
6 in a manner that is patentable, and that the  
7 patent meets the other requirements for  
8 patentability, the application is granted as a  
9 U.S. patent.

10           In this case, you must decide  
11 several things according to the instructions  
12 that I will give to you at the end of the trial.  
13 Those instructions will repeat this summary and  
14 will provide more detail.

15           One thing you will not need to  
16 decide is the meaning of the patent claims.  
17 That is one of my jobs, to explain to you what  
18 the patent claims mean.

19           By the way, the word claims is a  
20 term of art. And I will instruct you on its  
21 meaning at the end of the trial. Meanwhile, you  
22 will find a definition in the glossary attached  
23 to these preliminary instructions. In essence  
24 what you must decide is one, whether Leader has

1 proven by a preponderance of the evidence that  
2 Facebook infringes one or more of the asserted  
3 claims of the '761 patent. And two, whether  
4 Facebook has proven by clear and convincing  
5 evidence that the asserted claims of the '761  
6 patent are invalid.

7 Now, a few words about your  
8 conduct as jurors. First, I instruct you that  
9 during the trial you are not to discuss the case  
10 with anyone or permit anyone to discuss it with  
11 you. Until you have retired to the jury room at  
12 the end of the case to deliberate on your  
13 verdict, you simply are not to talk about this  
14 case. If any lawyer, party or witness does not  
15 speak to you when you pass in the hall or ride  
16 the elevator or the like, remember, it is  
17 because they are not supposed to talk to you,  
18 nor you with them.

19 In this way any unwarranted or  
20 unnecessary suspicion about your fairness can be  
21 avoided. If anyone should try to talk to you  
22 about the case, please bring it to my attention  
23 promptly.

24 Second, do not read or listen to

1 anything touching on this case in any way.

2 Third, do not try to do any research or make any  
3 investigation about the case on your own, hence,  
4 in this case, you are not to use or access  
5 Facebook at any time during this trial.

6 Finally, do not form any opinion until all the  
7 evidence is in. Keep an open mind until you  
8 start your deliberations at the end of the case.

9           During the trial, you may, but are  
10 not required to take notes regarding testimony,  
11 for example, exhibit numbers, impressions of  
12 witnesses or other things related to  
13 proceedings, but word of caution, however, is  
14 that in order there is generally a tendency to  
15 attach undue importance to matters which one has  
16 written down. Some testimony which is  
17 considered unimportant at the time presented and  
18 thus not written down takes greater importance  
19 later in the trial in light of all of the  
20 evidence presented.

21           Therefore, you are instructed that  
22 your notes are only a tool to aid your own  
23 individual memory, and you should not compare  
24 your notes with other jurors in determining the

1 content of any testimony or in evaluating the  
2 importance of any evidence. Your notes are not  
3 evidence and by no means are a completed outline  
4 of the proceedings or a list of the highlights  
5 of the trial.

6 Also, keep in mind that you will  
7 not have a transcript of the testimony to  
8 review, so above all, your memory will be your  
9 greatest asset when it comes time to deliberate  
10 and render a decision in this case.

11 If you do take notes, you must  
12 leave them in the jury deliberation room which  
13 is secured at the end of the day. And remember,  
14 they are for your own personal use. I will give  
15 you detailed instructions on the law at the end  
16 of the case and those instructions will control  
17 your deliberation and decision.

18 This trial, like most jury trials,  
19 comes in seven stages or phases. We have  
20 already been through the first phase which is to  
21 select you as jurors. The remaining stages are  
22 two, read these preliminary instructions to you.  
23 Three, opening statements which are intended to  
24 explain to you what each side intends to prove

1 and are offered to help you follow the accident.  
2 The lawyers are not required to make opening  
3 statements, but they may do so either at this  
4 time or at a later time when it is their turn to  
5 present evidence.

6 Four, the presentation of the  
7 evidence, which will include live witnesses and  
8 may also include previously recorded testimony  
9 as well as documents and things.

10 Five, my final instructions on the  
11 law to you. Six, the closing arguments of the  
12 lawyers which will be offered to help you make  
13 your determination. And finally, seven, your  
14 deliberations, where you will evaluate and  
15 discuss the evidence among yourselves and  
16 determine the outcome of the case.

17 Please keep in mind that evidence  
18 is often introduced somewhat piecemeal, so as  
19 the evidence comes in, you as jurors need to  
20 keep an open mind. We will begin shortly, but  
21 first I want to outline the anticipated schedule  
22 of the trial.

23 You may have heard me say this  
24 earlier today. I want to again outline the

1 schedule that I expect to maintain. I'm not  
2 sure that I told you earlier today. But the  
3 case is expected to take about six days to try.  
4 We will normally begin the day at 9:00 a.m.  
5 promptly. We will go until around 12:30 p.m.  
6 and after a one-hour break for lunch, from 1:30  
7 to about 4:30. There will be a fifteen-minute  
8 break around 11:00 a.m., and another  
9 fifteen-minute break around 3:00 p.m.

10 The only significant exception to  
11 this schedule may occur when the case is  
12 submitted to you for deliberations. On that  
13 day, the proceedings might last beyond 5:00 p.m.

14 We will post a copy of this  
15 schedule for your convenience in the jury  
16 deliberation room.

17 The final thing for me before we  
18 ask for opening statements is I want to read to  
19 you a glossary of patent terms which again will  
20 be provided to you and which you can refer to  
21 during the trial.

22 The glossary of patent terms  
23 begins with the definition of applicants. The  
24 named inventors who are applying for the patent.



1           Assignment is defined as transfer  
2 of ownership rights in a patent or patent  
3 application from one person or company to  
4 another.

5           Claims. Claims are the part of  
6 the patent that defines the limits of the  
7 invention. These are found at the end of the  
8 patent specification in the form of numbered  
9 paragraphs.

10           Disclosure of invention is the  
11 part of the patent specification that explains  
12 how the invention works and usually includes a  
13 drawing.

14           The file wrapper, also known as  
15 the file history, also known as prosecution  
16 history, is the written record of proceedings  
17 between the applicant and the United States  
18 Patent and Trademark Office, also known as the  
19 patent office or the PTO, which includes the  
20 original patent application and later  
21 rejections, responses to the rejections, and  
22 other communications between the patent office  
23 and the applicant.

24           The patent application is the

1 papers filed in the patent office by in order to  
2 obtain a patent. These papers typically include  
3 a specification, drawings, claims and the oath  
4 or declaration of the applicant. This  
5 application is also called a nonprovisional  
6 patent application.

7 The patent examiner is personnel  
8 employed by the patent office having expertise  
9 in various technical areas who review or examine  
10 patent applications to determine whether the  
11 claims of a patent application are patentable  
12 and whether the disclosure adequately describes  
13 the invention.

14 Prior art is any information which  
15 is used to describe public technical knowledge  
16 prior to the invention by the applicant or more  
17 than one year prior to his or her application.

18 Prior art references are any item  
19 of prior art, a publication or patent, used to  
20 determine patentability.

21 A provisional patent application  
22 is a document filed with the patent office by an  
23 applicant. It is not examined by the patent  
24 office and will not lead to the issuance of a

1 patent. It may be filed up to one year before  
2 the filing of a patent application. A patent  
3 that issues from a patent application is only  
4 entitled to the date of filing of a provisional  
5 patent application if every element of the  
6 issued claims of a patent is fully disclosed in  
7 the provisional patent application as originally  
8 submitted.

9 Finally, the specification is  
10 defined as the part of the patent application or  
11 patent that describes the invention which  
12 includes drawings and concludes with one or more  
13 claims. The specification does not define the  
14 invention, only the claims do.

15 And that concludes the preliminary  
16 instructions. The Court will now call on  
17 Leader. You have an opportunity to make an  
18 opening statement if you wish.

19 MR. ANDRE: Thank you, Your Honor.  
20 May it please the Court.

21 Ladies and gentlemen of the jury,  
22 my name is Paul Andre. I met you a little bit  
23 earlier when we were selecting the jury. My  
24 colleagues and I represent Leader technologies.

1 Leader Technologies is a small  
2 software company located in Columbus, Ohio.  
3 They've been doing business the last 13 years.

4 Our client representatives will be  
5 here every day during the trial. Ms. Deb  
6 Weckerly. Deb is the financial officer and the  
7 controller of Leader.

8 I also want to introduce Mr. Mike  
9 McKibben. Mike is actually the founder and CEO  
10 and chairman of Leader technologies.

11 And Mike is going to be a witness  
12 a couple times in this case. So he can't sit  
13 here during the case, so he's going to have to  
14 leave after I do my statement.

15 And finally, Steve Nester is our  
16 chief engineer. You are going to see him quite  
17 a bit as well.

18 I want to start off by saying  
19 thank you on behalf of my team and Leader as  
20 well for your service here today. The next week  
21 is going to be an important week to Leader, and  
22 we appreciate your attention and the time you  
23 put into it.

24 As the judge has stated, this is a

1 patent case. And you've seen the video of what  
2 a patent is, the parts of the patent. And the  
3 judge has also told you, so I'm not going to  
4 tell you that again.

5 But what I do want to talk about  
6 is the '761 patent. The '761 patent is a  
7 culmination of years and years of hard work by  
8 the team at Leader. This patent is about the  
9 architecture or the platform that websites use  
10 in collaborating and networking.

11 Now, I'm not going to sugarcoat  
12 things here. The technology involved in these  
13 type of patents is very complex.

14 The terminology sometimes sounds  
15 like a foreign language. We're going to do our  
16 best to try to explain that to you.

17 We'll have experts on the stand  
18 who will also explain that to you as well. But  
19 while the technology is complex, the facts of  
20 this case are really simple.

21 And we're going to go through  
22 those facts and tell you how this all happened,  
23 how it all began. And one thing that we're  
24 going to show you about this case is that the

1 evidence is overwhelmingly in favor of Leader.

2 Now, I am -- in my opening  
3 statement here, I'm going to show you the actual  
4 evidence we're going to use. This stack of  
5 documents sitting on the table here is just some  
6 of the documents we're going to be using  
7 throughout the case. And we will be handing  
8 those out to you in jury binders as well.

9 But before I get into much of the  
10 technology, I do want to start with a little bit  
11 of a time line to give you some perspective of  
12 when things happened. Now, I am also going to  
13 put a board up over here as well so you can look  
14 at that, if you can't see the screen as well.

15 So back in the 1994 to 1997 time  
16 period, Mike McKibben and his team of people  
17 were working with AT&T, and they were putting in  
18 the AT&T email systems in their -- one of their  
19 first websites ever.

20 While he was working at AT&T doing  
21 that work, that cutting-edge technology back in  
22 the mid-'90s, he saw a lot of the common  
23 problems that companies were having with  
24 networking and collaborating. And the more he

1 saw of it, the more he started thinking about  
2 solutions for it.

3 So in 1997, he founded Leader to  
4 try to address these problems. Now, what was  
5 the overriding concern here, what was the  
6 overriding issue was the collaborations were  
7 done in a very inefficient way. And what Mike  
8 saw back in 1997 was that the internet was going  
9 to be the answer.

10 Now, you've got to put things in  
11 some time context here. The internet in 1997,  
12 we all take it for granted today, but if you  
13 look at growth of the internet from 1995 to  
14 1997, 15 years, in 1995 there was approximately  
15 nine million users of the internet. Today  
16 there's over 1.8 billion. That's over a 20,000  
17 percent increase in 15 years.

18 In 1997, when Mike founded Leader,  
19 email was cutting edge. It was the rage.

20 In fact, there was a movie that  
21 came out in 1998 starring Tom Hanks and Meg Ryan  
22 called, You've got mail. And it was all about  
23 how people got excited when they get mail.

24 Now, today when we get mail, it's

1 too much. We're getting spammed all the time.  
2 It's just the opposite. That's where the  
3 technology was.

4 In 1997, when Leader was founded,  
5 you couldn't Google somebody. Google wasn't  
6 found in 1998. The defendant, Facebook, they  
7 didn't come around until seven years later in  
8 2004.

9 So under that backdrop, Mr.  
10 McKibben and his team that he put together  
11 started trying to solve the problems that he saw  
12 in networking and collaboration. And at the  
13 same time he was doing some fundraising like all  
14 start-up companies have to do. You have to get  
15 the money to pay the salaries and do the  
16 research.

17 After about two years of trying to  
18 figure out solutions to the problem, in the  
19 summer of 1999, he and another one of his  
20 colleagues, Jeff Lamb, came up with the  
21 solution. The uh-huh moment occurred when they  
22 put all the pieces of the puzzle together and  
23 figured out how to build a network, an  
24 architecture for a website that would allow



1 people to network and collaborate with complete  
2 efficiency.

3           They evidenced that conception  
4 with Exhibit 768. This is the what's called the  
5 Leader Project Functional Specification. You  
6 can see on the right-hand side, it's the  
7 roughest of drafts. This is a draft of a  
8 document where they were coming up with the  
9 ideas and this was attached to an email. And  
10 this email is dated August 19th, 1999.

11           So on this time line, we have the  
12 invention date listed as 1999. That's when  
13 Leader Technologies came up with the invention  
14 that resulted in the '761 patent.

15           So now they have the idea in their  
16 mind. They've written it down on a piece of  
17 paper. Now, they have to build it.

18           Well, back in that time period,  
19 building something for the internet was not that  
20 easy. There was not a lot of internet software.  
21 In fact, there was hardly any.

22           But Leader, nonetheless, started  
23 plowing through it. And for the next three  
24 years, up through 2002, the team worked on

1 building the product.

2 From 1997, from the founding of  
3 the company, to 2002, the people at Leader spent  
4 145,000 man hours, over \$10 million. And it had  
5 a team of over 20 people working on finding the  
6 solution.

7 Now, in 2002, they're getting  
8 close to getting it done. They got close a  
9 couple of times in the summer of 2002, then they  
10 ran into road blocks.

11 But by the end of 2002, they got  
12 it. And late 2002, they had it built and the  
13 product was working at their facilities.

14 The first thing they did was they  
15 knew they had to protect the invention. They  
16 had to do it as soon as possible.

17 The technology was evolving at  
18 lightning speed. So they put together a  
19 provisional patent application and you're going  
20 to see that as Exhibit 3.

21 Now, as Judge Stark said,  
22 provisional patent application is a patent  
23 application you can file with the Patent Office  
24 to get that priority date. Now, in this

1 application, because they had to do it so  
2 quickly, they took about nine or ten pages of  
3 writing and text and tried to describe their  
4 invention. But they wanted to make sure they  
5 actually had the invention covered.

6 So what they did, they actually  
7 took the computer code that they wrote when they  
8 built the product and they submitted it along  
9 with the provisional application. And you can  
10 see the code here.

11 This was drafted over all those  
12 years. And there's several pages of this code.  
13 It's called -- it's a version of pseudo code.  
14 It's written in a way that people can actually  
15 understand it.

16 So they filed this with the patent  
17 office to make sure they had their invention  
18 protected. And there's about nine or ten pages  
19 of this pseudo code that's here. Software  
20 engineers can look at it. To me, it looks like  
21 Greek. But an engineer can look at it and build  
22 something.

23 Now, evidencing the fact that they  
24 actually had built this in 2002, they went out

1 to the public with their invention. And they  
2 published papers on this technology that they  
3 were so excited about.

4 The first paper that published,  
5 Exhibit 771, was a paper that described the  
6 concept that -- what they had done here. And  
7 this is kind of a user friendly document, one  
8 that you could actually get marketing people to  
9 look at. They were very excited about this.

10 The second paper, they published  
11 in 2003 was more of a technical paper. If you  
12 look at the figure on the front page of this,  
13 you see that's actually a figure from the patent  
14 itself.

15 They actually made it into the  
16 final patent application. And then if you look  
17 to what -- the back of this paper, they actually  
18 put in the platform requirements to build this.

19 And you look at the platform  
20 requirement, you see things like it needs a  
21 Linksys. So server a Tomcat web server, the  
22 different type of server hardware that is  
23 required.

24 And they also put forward the

1 platform standards. Platform standards are  
2 being JAVA, XML markup language, various SQL  
3 data. Because all this type of stuff was put  
4 into these papers to evidence the fact that they  
5 did, in fact, build the invention.

6 Well, after nearly four years of  
7 going back and forth with the Patent Office on  
8 these patent applications, the Patent Office  
9 granted the '761 patent. If you look at the  
10 '761 patent, the cover of it, you'll see that  
11 Mike McKibben and Jeff Lamb are the two  
12 inventors. And the patent is assigned to Leader  
13 Technologies.

14 You will hear from Mike. I don't  
15 know if we're going to get to him today, because  
16 we're running late but you will hear from him  
17 for sure tomorrow.

18 And Jeff as well. Both of the  
19 inventors are going to be here to talk about  
20 their invention.

21 Now, from this patent, we are  
22 asserting four independent claims and a few  
23 dependent claims from those.

24 Claim 1 is what we call a system

1 claim. This is on a computer system.

2 The server is sitting and  
3 someone's at someone's facilities. And if you  
4 look at Claim 1, you'll see that it has two  
5 elements. A computer-implemented context  
6 component and computer-implemented tracking  
7 component. Those are the two components of  
8 Claim 1.

9 We're also asserting Claim 9.  
10 Claim 9 is a method claim. And this claim has  
11 four elements, as you can see here.

12 Creating data, dynamically  
13 associating metadata. They have some tracking  
14 here and some more updating on the fourth  
15 element.

16 Claim 21 is the third type of  
17 claim called computer readable media. And  
18 that's just speaking for some type of code that  
19 machines can read.

20 And this element -- this patent,  
21 excuse me. This claim has five elements.

22 You can see here creating the  
23 data, the dynamically associating metadata,  
24 tracking, dynamically associating the data and

1 then indexing. Those are the five elements of  
2 Claim 21.

3 And then the last independent  
4 claim we're asserting, Claim 23, which is  
5 another system claim. And it has two claim  
6 elements as well. A context component and  
7 tracking component.

8 And these claims are what brings  
9 us here today. We're asserting that Facebook's  
10 website infringes these claims along with their  
11 dependent claims.

12 And that they are using this  
13 technology without our permission or even asking  
14 us for it. So those are the simple facts. The  
15 timeline I talked about, the patent issuing and  
16 all this.

17 Now, for the complex technology.  
18 Computer science is very difficult and the  
19 terminology that's used especially in the fast  
20 evolving world of the internet, computer  
21 science, it changes constantly. We're going to  
22 do everything we can to explain it and we'll  
23 have experts on the stand to walk you through  
24 it.

1                   One thing that's going to be very  
2                   certain is that when we're done next week,  
3                   you're going to see overwhelming evidence of  
4                   Facebook's infringement. We're going to go  
5                   through seven sources of information to prove  
6                   our infringement cases, seven different sources.

7                   The first one is going to be their  
8                   confidential documents. These are documents  
9                   that are kept confidential within Facebook, most  
10                  of them what they call their wiki, internal  
11                  wiki. I didn't know what a wiki was about a  
12                  year-and-a-half ago. That's an internal space  
13                  where developers write their notes to.

14                  You're also going to see the  
15                  public documents, the ones they make available  
16                  to the public on their website and also what  
17                  they use for marketing and such.

18                  You're going to see a third type  
19                  of documents. It's called the developers  
20                  platform documents. One of the things that  
21                  Facebook has been very successful in is putting  
22                  in applications and letting outside developers  
23                  use their platform to put on things. You may  
24                  have heard of Farmville or Mafia Wars. If you



1 ever used Facebook, that's what that is about.

2 You're going to see those  
3 developer platform documents. The fourth source  
4 of information is going to be the actual  
5 application that our expert developed based on  
6 those instructions.

7 The fifth part or the fifth source  
8 of information is going to be a website in  
9 action. We're going to show you Facebook's  
10 website, but we're going to show you behind the  
11 curtain, not what you see on the front. You're  
12 going to see how it operates on the back side.  
13 You're going to see it in action.

14 And finally, not finally, one more  
15 thing, the sixth source is the testimony.  
16 You're going to hear from four of Facebook's  
17 engineers and you're going to hear from the  
18 horse's mouth how that website works and you're  
19 going to hear it ticks right along the claims.

20 And finally, you're going to see  
21 the source code, this is like the DNA of  
22 computer science. You're going to see Facebook  
23 source code. We're going to show you it and how  
24 it operates and how it includes files and how it

1 performs the functions that it does.

2 Now, I want to walk through some  
3 of this evidence. I want to use Claim 1 as an  
4 example. We are going to use a lot of this for  
5 a lot of different claims. If you go back up to  
6 Claim 1, you'll see the first elements that I  
7 talked about, this context component.

8 If you look at patent claims, you  
9 can tell they're written by lawyers who are  
10 engineers as well. Both of them write in  
11 legales and engineer speak. It's almost hard to  
12 read these things. But what this element is  
13 talking about is capturing context information  
14 about user defined data and storing it in  
15 metadata. You capture context information,  
16 that's just environmental information. You hear  
17 people say it depends on the context, it depends  
18 on the environment you're in. You capture the  
19 context information about user defined data and  
20 then store it in metadata. User defined data  
21 can be anything, can be photos, it can be  
22 videos, any kind of image files.

23 In this particular case we're  
24 going to focus on photos. Facebook uploads a

1 lot of photos so they're going to use say the  
2 user defined, you can pick what photos you want  
3 to upload, that user defined data. The context  
4 about those photos are stored in metadata.

5 What is metadata? Metadata is  
6 just data about data. You're going to see how  
7 that transpires and why that's important  
8 throughout this case. And you're going to here  
9 Facebook engineers talk about how they store the  
10 user defined data and that the context  
11 information about that is stored from metadata.

12 Now one of the documents you're  
13 going to see is Exhibit 208. 208 is a Facebook  
14 document in which they talk about photo storage.  
15 It talks about each photo uploaded by a user  
16 stored on disks as several different files of  
17 several different sizes. They talk about  
18 storing these photos on a storage component.

19 If you look at Exhibit 904, this  
20 talks about that what you actually do to the  
21 photos, it returns metadata about all the photos  
22 and is uploaded by the specified user. Once  
23 again, metadata specified by the year, that's  
24 user defined data, and the metadata is a return

1 for it.

2                   And then finally when you see  
3 Exhibit 907, this is a document that talks about  
4 tables of how the metadata is kept about photos.  
5 If you look, so if you query this table to  
6 return information about a photo, and what type  
7 of information can you get, well, you can get  
8 the I.D. of the photo being talked about, you  
9 can talk about the I.D. of the album containing  
10 the photo, the user I.D. of the owner of the  
11 photo, the date when the photo was being added,  
12 and date when the photo was modified. That's  
13 the type of metadata that we're going to show  
14 you.

15                   And at the end of the day, the  
16 first element concerning context of updating the  
17 metadata, there isn't going to be much of a  
18 contest there. There isn't much of a dispute  
19 between the parties. You won't see much of a  
20 dispute.

21                   The second component, the tracking  
22 component, this calls for tracking a user's  
23 movement from one page to another, and then  
24 updating that metadata when a user accesses data

1 from his previous page.

2 You're going to see this in PTX  
3 1001 -- Exhibit Number 1001. This is a Facebook  
4 privacy policy. And you see when they tell you  
5 on the second page, they're pretty upfront about  
6 it, we keep track of the actions taken on  
7 Facebook such as adding a friend, becoming a fan  
8 of a page, joining a page or a group or creating  
9 a photo.

10 Facebook will admit they track  
11 their users. That's not going to be a point of  
12 issue. You can also see that in Exhibit 300,  
13 here they talk about you'll be able to see how  
14 many comments fans make on your posts and you'll  
15 also be able to track how many Facebook users  
16 start and stop viewing your posts in News Feed.  
17 Once again, telling the world that they're going  
18 to track.

19 What the issue about the tracking  
20 components is going to come up, though, is their  
21 experts are going to say that part of the  
22 tracking component should not be read, it should  
23 be ignored, that's what the evidence that's  
24 going to be put forward.

1 All you have to do is just read  
2 the claim. But what happens in this case, what  
3 you're going to see in this case is that  
4 Facebook experts who are going to testify that  
5 they don't infringe, they just don't respond to  
6 this part of the claim. The big issue in this  
7 case is when does metadata get updated and  
8 tracked. That's the old -- that's where the  
9 rubber meets the road.

10 It's our position you have to read  
11 the entire claim. And metadata gets updated  
12 when a user accesses information from the second  
13 page.

14 Facebook is going to say that a  
15 metadata is automatically updated when a user  
16 goes from one page to another page, one context  
17 to another context, and that's all.

18 Well, there are several problems  
19 with this position. And probably the clearest  
20 problem with the position is what you see in the  
21 prosecution history, or the file history, the  
22 discussion that went back and forth with the  
23 patent office.

24 Now, with this process you're

1 going to see this is the kind of communication  
2 that goes back and forth between the patent  
3 office. And at the end of this document, you'll  
4 see a notice of allowance, or notice of  
5 allowability, that's where the examiner says  
6 okay we're going to allow your patent, you have  
7 proven that you have an invention.

8 But, the examiner says there has  
9 to be an amendment to the claims. It's called  
10 an examiner's amendment. The examiner herself  
11 went in and amended the claims. And what she  
12 did was she put in that tracking a change of the  
13 user from the first context or the first website  
14 page to a second context of a network based  
15 system and dynamically updating the stored  
16 metadata based on the change wherein the user  
17 accesses the data from the second context.

18 She added the second part, the  
19 dynamic and wherein the user accesses the data  
20 from the second context and that was required.  
21 How the claim originally looked was tracking a  
22 change of the user from the first context to the  
23 second context of a network based system and  
24 updating the stored metadata based on the

1 change. The examiner didn't allow that  
2 language. But that's exactly the same language  
3 that Facebook is trying to say the claim says  
4 now. They're saying that this is the language  
5 that should be used.

6 The fact of the matter is the  
7 examiner did make the change. And you cannot  
8 ignore what the examiner put in.

9 Another problem with that type of  
10 -- this position Facebook has if you look at  
11 Claim 9, Claim 9 actually takes the tracking  
12 aspect and breaks into two different elements.  
13 You talk about tracking movement of a user from  
14 the user environment of the web-based system and  
15 then on the second element, you dynamically  
16 update the metadata when you access the files  
17 from the second page. That is the claim  
18 interpretation that is in the actual claim  
19 itself.

20 Facebook experts will say that  
21 dynamically update the stored metadata when you  
22 track movement up here. Now, Facebook experts  
23 are also going to say that all the independent  
24 claims have three elements. Exhibit 1105 is an



1 example of how they break out the elements.  
2 This is their expert's handwriting, one, two,  
3 three.

4 As I just showed you, none of the  
5 claims have three elements. Claim 1 has two  
6 elements. Claim 9 has four. Claim 21 has five.  
7 Claim 23 has two. So none of them have three  
8 elements. But this is their position, this is  
9 how they think the claim should be read.

10 Because that is the position they  
11 have, they're not going to challenge the  
12 technology, what the technology does or doesn't  
13 do, it's taking the claims and contorting them,  
14 the noninfringement case is nonexistent.

15 So they're going to come after the  
16 patent on validity grounds. They're going to  
17 say the patent is invalid. The evidence that  
18 they're going to put forward, they are going to  
19 throw everything but the kitchen sink at us to  
20 try to show that the patent is invalid.

21 If you look at the timing of the  
22 patent once again, the invention date, 1999.  
23 Provisional patent was filed in 2002. Most of  
24 the references that they're going to cite, I

1 don't know what references they're going to put  
2 forward on the prior art, it's going to be  
3 anywhere from two to ten references. Most of  
4 them come after the invention date.

5 A few don't. But of the ten we  
6 saw, most of them do, so therefore, they're not  
7 really even prior art.

8 Some of the prior art that they're  
9 going to show you have similar words, but the  
10 concepts are completely different. In fact, the  
11 prior art, the evidence is going to show in this  
12 case is that the prior art that they're putting  
13 forward were the exact problems that Mike  
14 McKibben and his team solved that they wanted to  
15 fix, and that's what they did. I would say it's  
16 apples to oranges, it's more like apples to  
17 pineapples. There are some similar words, the  
18 concepts are completely different.

19 Now, it may get to the point, I'm  
20 not sure once again on the invalidity case, they  
21 may try to show that the invention was sold or  
22 demonstrated more than one year prior to the  
23 patent application.

24 That would have been a nice trick

1 because it wasn't done until he filed the patent  
2 application here in 2002. As soon as they got  
3 it done, they ran to the patent office. But  
4 nonetheless, they're going to try to show that  
5 the invention was made or sold or demonstrated  
6 even prior to that date.

7 One of the things that you're  
8 going to hear from Facebook is that they ignore  
9 the provisional application, PTX 3 that I showed  
10 you. This Exhibit 3 that has the computer code  
11 in it, they're going to claim it doesn't cover  
12 the invention.

13 So in one sense they're saying  
14 that we filed our patent application in 2002  
15 with our code in it, that didn't cover our  
16 invention today. But they're going to try to  
17 say back in 1999 we had the invention and we  
18 were demonstrating to other folks, we were  
19 trying to sell it before that, there is no  
20 logical sense there.

21 The fact is in this case none of  
22 the patent technology were sold or offered for  
23 sale until 2003. The evidence is going to show  
24 the very first sale of this technology was July

1 2003 to Boston Scientific so they could do some  
2 clinical trials. And even then it was  
3 experimental. It was called beta testing.

4 So in 2003 when they actually sold  
5 the second technology that's in the '761 patent  
6 it was for beta testing. As I said, they also  
7 might try to make claims that the invention or  
8 the technology was publicly demonstrated as  
9 well.

10 One thing that I'll say about  
11 Mr. McKibben is that he's paranoid. He wasn't  
12 going to do anything public. He knew what he  
13 had. He signed -- had everyone sign NDAs. If  
14 you had any confidential information about the  
15 company you're going to sign a nondisclosure  
16 agreement. Nothing was going to be publicly  
17 disclosed.

18 You're going to hear he had over  
19 2,000 NDAs signed. He has his wife, his wife  
20 signed an NDA. He had his kids sign NDAs. He  
21 didn't want this invention to be going public.

22 If you look at Exhibit 1051, this  
23 is an example of the nondisclosure agreement  
24 with Boston Scientific. You see November 2002.

1 That's when they first started getting their  
2 product ready. And they finally got it to sale  
3 in July 2003 to that very company.

4 Facebook is going to try to say  
5 that a product or actually it's product suite  
6 branded Leader2Leader, was the product that had  
7 the technology in it. The fact of the matter is  
8 that product suite did not have the technology  
9 in it until 2003. They started branding some of  
10 their products Leader2Leader back in 1998. Now,  
11 it's a great brand name, Leader2Leader. It's  
12 like having a brand Corvette or Ford Mustang. I  
13 don't think if you said a Corvette infringed my  
14 patent you could say that a 1957 Corvette is the  
15 same thing as a 2010 Corvette. They're just  
16 different. It evolves over time. Leader2Leader  
17 evolves over time as well. The product that was  
18 in 1998 and the product that is in 2010 is very,  
19 very different.

20 What you won't hear from any  
21 witnesses in this case, not a single witness and  
22 you won't see a single shred of evidence is that  
23 the claimed technology that's in the '761  
24 patent, you know, the context component, the

1 tracking components, the updating the metadata,  
2 that was never disclosed. The technology was  
3 never disclosed, demonstrated, sold, offered for  
4 sale, nothing, until they got the patent filed  
5 in 2002. No one will say otherwise. It's all  
6 innuendo and twisting the facts.

7 I want to thank you again for your  
8 time. We're going to have a lot of stuff coming  
9 at you in the next week. I appreciate your  
10 attention, and we'll be talking to you soon.

11 Thank you.

12 MR. ANDRE: Thank you, Your Honor.

13 THE COURT: We'll take our  
14 15-minute afternoon break at this time and then  
15 get back to continue.

16 THE CLERK: All rise.

17 (A brief recess was taken.)

18 THE CLERK: All rise. Court is  
19 now in session.

20 THE COURT: Bring the jury in.

21 (Jury entering the courtroom at  
22 3:08 p.m.)

23 THE CLERK: You may be seated.

24 THE COURT: Mr. Rhodes, do you

1 wish to make an opening statement?

2 MR. RHODES: With the Court's  
3 permission, I do, Your Honor.

4 THE COURT: You may.

5 MR. RHOADES: Good afternoon. May  
6 I proceed?

7 THE COURT: You may.

8 MR. RHODES: Welcome. I am sure  
9 when you woke up this morning, this is not what  
10 you thought you'd be spending your afternoon  
11 doing. I'm Michael Rhodes. I am a lawyer for  
12 Facebook.

13 Let me make a couple of brief  
14 introductions and then I'll get to the meat of  
15 my remarks. Something we did this morning, but  
16 I'd like to refamiliarize yourself.

17 This is my partner, Heidi Keefe.  
18 Heidi Keefe is going to be putting on a number  
19 of our witnesses during the course of the trial.

20 So at various points in time, I  
21 will be getting up and talking to you. At  
22 various points in time, Ms. Keefe will talk to  
23 you and examine a witness.

24 In the back is my partner, Mark

1 Weinstein. Mr. Weinstein will also be handling  
2 some of the witnesses. So we're going to divide  
3 the case up among the three of us.

4 This is Ted Ulllyot. Ted is a  
5 senior executive with Facebook.

6 MR. ULLYOT: Good afternoon.

7 MR. RHODES: Sam O'Rourke. He's  
8 also an executive with Facebook.

9 They're going to be with us during  
10 the course of the trial, so you may see us  
11 talking with each other. I have members of my  
12 staff as well in the audience and you may see us  
13 commencing with them.

14 This is Steve Caponi, who's a  
15 lawyer from Delaware.

16 Now, during Mr. Andre's remarks,  
17 you might have been left thinking, Well, why are  
18 we here then? To overwhelming evidence is what  
19 he said.

20 And we picked you out of all those  
21 people that came in this morning. You're going  
22 to decide this.

23 Not Mr. Andre and not me. Because  
24 you know what, everything I'm about to tell you



1 is not evidence.

2 Remember the judge said that in  
3 the opening remarks that His Honor gave to you.  
4 What lawyers say in the courtroom is not  
5 evidence.

6 So as much as I want you to  
7 believe what I'm going to say to you now, I want  
8 you to know that what I say to you now is really  
9 not evidence. Evidence is what you're going to  
10 hear from the witness stand in the form of  
11 documents that His Honor let in. You're going  
12 to be the deciders of this case.

13 And I'm lucky enough to have kids  
14 that are somewhat out of the house and adults.  
15 I've spent much of my job as a parent  
16 arbitrating disputes between two parties. One  
17 kid says one thing, one kid says the other.

18 There's always two sides of the  
19 story. So I have to ask you a favor, because  
20 you took an oath this morning, a solemn oath.

21 You promised both of us. You  
22 promised Mr. Andre's client. You promised the  
23 Court and you promised me that you would listen  
24 to all of the evidence, and you would give us

1 both a fair shake.

2 And I know you can do it. I have  
3 every confidence in you.

4 I represent Facebook. I'm  
5 assuming that you know what Facebook is.

6 Facebook is a social network. And  
7 the evidence is going to show you that  
8 Leader-to-Leader is a business and enterprise  
9 software company. Social networking, business  
10 and enterprise software.

11 During the entirety of the trial,  
12 it's going to be one version and another  
13 version. I'll give you two simple ideas. You  
14 can adopt them if you want, if you don't come up  
15 with your own.

16 Generalities, specifics.  
17 Confusion, clarity. You choose.

18 As you listen to the arguments of  
19 the lawyers and this overwhelming evidence,  
20 think for yourself, listen to what I say.  
21 Please take it into consideration, but you think  
22 for yourself.

23 You make up your own minds about  
24 what that patent covers, what Facebook does and

1       whether that patent is valid.  Because we  
2       believe and we will attempt to show you that  
3       Facebook does not infringe the patent.

4                 Remember the video they showed you  
5       where the man expressed the idea of a patent  
6       being like a deed.  We sometimes use a surveying  
7       term, the metes and the bounds of the patent.

8                 Well, if you have a corner lot and  
9       kids run over the corner of your lot all the  
10      time, you have a right, as the property owner,  
11      to control that.  But the deed confines your  
12      property rights to the deed.  That's what a  
13      patent is like.

14                And everything Mr. Andre said  
15      could be true about the inventive process on  
16      their side of the house.  But it could be just  
17      as true that we do not trespass on that  
18      property.

19                So the question you're going to  
20      have to be grappling with is, not listening to a  
21      bunch of snippets of things thrown at you:  What  
22      does the patent cover?  What does Facebook do?

23                And are you satisfied at the end  
24      of the day that they have carried their burden

1 to show that Facebook practices the invention?  
2 The power of the patent holder is to exclude  
3 anyone from using it. That's a weighty  
4 decision. That's a weighty decision.

5 If Facebook infringes the patent,  
6 it cannot use that invention. Please give us  
7 your full, and fair and undivided attention.

8 I think it's going to be an  
9 interesting week for you. This is the patent.  
10 I know you've seen it, but I want to actually  
11 take some time to go through it.

12 That's a big number. You know  
13 what that number means? Seven million other  
14 patents out there.

15 Remember the video where you saw  
16 the guy run it through the mail room of the  
17 patent office, stuff was everywhere. It's a  
18 busy office. There's a lot of things that have  
19 been invented.

20 This is the title of the patent.  
21 And as I was listening to the tape, I wrote this  
22 down. The man on the tape said a title that  
23 describes the invention.

24 Look at the title. Nothing about

1 networking. It refers to the Dynamic  
2 Association of Electronically Stored Information  
3 with Iterative Workflow Changes.

4 That describes what this invention  
5 is about. It says nothing about social  
6 networking.

7 There are the two inventors, Mr.  
8 McKibben and Mr. Lamb. There are these figures  
9 in the patent, and they are intended to show you  
10 the logic, if you will, of the invention or the  
11 way you could put together a system or a method.

12 And as you listen to the evidence  
13 come in, think about when you go deliberate  
14 looking back at this evidence and looking at  
15 these figures for yourself and looking for  
16 things.

17 As the Court has instructed you,  
18 the next section of the patent is called a  
19 specification. Now, this is where they describe  
20 what was leading to the invention, what the  
21 background is, how they got there, what they  
22 were trying to accomplish, another good place to  
23 look.

24 And then as you heard, there are

1 these things called claims. You see the numbers  
2 at the top, the 21 and the 22, we call those  
3 columns. And sometimes you'll hear witnesses  
4 from the box talk about Column 4, Column 5.  
5 That's what they're referring to if you want to  
6 follow along, the columns.

7 And the claims start at the top  
8 of -- actually the prior page. They go the  
9 entirety of Columns 21 and 22.

10 But those are the claims that are  
11 actually being asserted in this claim. And I  
12 put the numbers up for you. You don't have to  
13 write it down. We'll give it to you later in  
14 the case.

15 Like Mr. Andre, I want to look for  
16 a minute at Claim Number 1. Now, he said to you  
17 that there were only two elements. He said  
18 everything from there to there was one and  
19 everything from there to there was two.

20 Well, whether it's two or it's 20  
21 when you break it into the pieces, the bottom  
22 line is every element, every element of every  
23 claim being asserted has to be infringed. Now,  
24 I use kind of a silly analogy to explain this.

1           Think about the bowling pins and I  
2           want you to think as you go through the case, if  
3           I could get you to take every phrase of those  
4           patented claims and affix them in your mind to  
5           one of those pins, they have the burden of proof  
6           to show that every one of those pins went down.

7           I'm not a very good bowler. If I  
8           bowled and I get eight or nine of them, I'm  
9           usually pretty happy. To win a patent  
10          infringement case, all ten have to go down.  
11          They've got to roll a strike.

12          So you're going to see evidence  
13          around certain central issues. And the fact  
14          that we may not talk about certain elements of  
15          the claim themselves doesn't mean that they're  
16          irrelevant. You have to find every element of  
17          each claim is present. All of the pins have to  
18          get knocked down.

19          And if one pin is standing, even  
20          if it's wobbling, I have to have your verdict.  
21          Now, His Honor instructed you a few hours or an  
22          hour ago, I suppose, that he tells you what the  
23          claim language means.

24          Remember that? I don't get to do

1 that. That's a function of the Court.

2 And he did that and he issued an  
3 order in writing. And what he did was he took  
4 certain words of the claims and he said, Here's  
5 what they mean. I'm going to give you a couple  
6 examples of those.

7 Now, what are we talking about?  
8 Facebook is a social networking site. It's  
9 free.

10 You start at your own computer at  
11 your house. Sometimes you have -- you can do it  
12 now on your mobile phone, your iPhone, your --  
13 you know, your Smart Phones, I guess they call  
14 them.

15 You access the website through the  
16 internet using something called a web browser  
17 and you go to Facebook. And you don't have to  
18 join.

19 You can search it. There's some  
20 publicly-facing information.

21 You can join as a user. So you  
22 typically would give an email, come up with a  
23 password and then you're in.

24 Once you're in, you can go



1        wherever you want. Facebook, the evidence will  
2        show doesn't tell you where you have to go, what  
3        you have to do, whether you want to put a  
4        picture up, whether you want to email somebody  
5        overseas, whether you want to send an IM.

6                    You can do what you want. It's up  
7        to you at that point. The service is free.

8                    The question in this case will be:  
9        What does that patent claim and does Facebook  
10       practice it? And you're going to hear  
11       generalities.

12                   I want you to be thinking  
13       specifics, because we said that that patent is  
14       like a deed. You can only infringe it if it and  
15       every element in it on every claim asserted is  
16       found. It's not just tracking and context and  
17       some of these computer terms. It's more  
18       specific than that.

19                   So, for example, I think Mr. Andre  
20       actually highlighted this word dynamically for  
21       you and he highlighted this language. This is  
22       what the Court tells us. And you have to follow  
23       this, what dynamically means. It means two  
24       things. I'm pointing at myself. Automatically

1 and you see where it says and in response to the  
2 preceding events.

3 Not the subsequent event, the  
4 preceding event. Preceding is before, right.

5 So if we take that claim language  
6 just of Claim 1 and we hunt for dynamically, we  
7 see it in two places. Do you see that?

8 That's what it means according to  
9 the Judge. The word dynamically means  
10 automatically and in response to the prior  
11 event, preceding event. So if you take that  
12 dynamically word, you could put that in its  
13 place.

14 And as you think about what this  
15 patent covers, you're going to have to do that  
16 with a number of different concepts here. What  
17 do those words mean?

18 Mr. Andre was very general, ran  
19 through a bunch of exhibits. This is specific  
20 stuff. This is not web browsing and tracking.  
21 The evidence is going to show you that  
22 Mr. McKibben, he didn't invent the internet. He  
23 didn't invent web browsers. He didn't invent  
24 tracking. The evidence is going to show you

1 that he didn't invent a lot of things. There  
2 were companies like eBay, Yahoo out there way  
3 before, and the question then becomes what does  
4 this language mean.

5 His Honor will tell you the claim  
6 language, what it means, and then you have to  
7 apply that to the Facebook system. And I know  
8 this is not the easiest stuff, but we're going  
9 to try to explain to you why when you look for  
10 each and every bowling pin in that language  
11 there are things missing.

12 Let me show you another piece of  
13 language. Remember Mr. Andre just got up and  
14 told you that we were going to try to pull the  
15 wool over your eyes with this language because  
16 this is was something to do with how the Patent  
17 and Trademark Office ended up with the language.

18 Tracking a change of the user from  
19 the first context to a second context. The  
20 evidence will show you that change is modifying  
21 a context to context movement of something  
22 called a user.

23 The second context of the  
24 network-based system. And then what happens,

1 dynamically, automatically, remember that, and  
2 in response to the preceding event, what  
3 happens? Updating occurs to what? The stored  
4 metadata. The stored metadata. Keep your eye  
5 on that bowling pin. The stored metadata.

6 There will be lots of evidence  
7 about lots of metadata, but what's in stored  
8 metadata?

9 The stored metadata is the  
10 metadata that was created by virtue,  
11 user-defined data, that's like content, created  
12 by the user interaction of a user in a first  
13 context. This context component dynamically,  
14 automatically, and in response to the prior  
15 event, the interaction of the user created  
16 content stores that information, stores that  
17 information. Not any information.

18 The stored metadata. What Leader  
19 will argue to you is when the word dynamically  
20 appears, which means automatically and in  
21 response to the last event, a change of the user  
22 from context to context, the automatically  
23 updating occurs based on the change, the change  
24 in context to context, wherein, so that, the

1 user can access the data. They will argue up  
2 and down that the word "wherein" means when and  
3 "dynamically" means subsequently, not preceding.

4 And that in a nutshell is one of  
5 the hearts of the disagreement. Don't rely on  
6 me, you're smart enough, you're capable enough,  
7 you figure it out for us. There is the  
8 language. A change of the user based on the  
9 change.

10 Component. There is another word  
11 that was asked by the parties to be construed by  
12 His Honor, and he did. This is what the Court  
13 will instruct you that word means. A  
14 computer-related entity, hardware, software,  
15 software in execution, that means it's running.

16 Where do we see that language?  
17 Here is the storage component, the word  
18 component was the one I just showed you that the  
19 Judge interpreted for us. Okay. What goes on  
20 the storage component? User-defined data and  
21 metadata. User-defined data and, not or, and  
22 metadata is stored on a storage component.

23 The evidence will show you that  
24 Facebook stores the content, the metadata, the

1 logs, throughout a disparate system, and I'm  
2 going to illustrate that for you in a second.

3 I emphasized this point before,  
4 the stored metadata. What metadata? Any  
5 metadata, or a particular metadata that in the  
6 terms of the patent we call the stored metadata?  
7 What is it? Well, you have to decide. I want  
8 you to hunt for it.

9 There is the patent again. There  
10 is a section of the invention called the  
11 background of the invention. We will show you  
12 testimony from Mr. McKibben where he says that's  
13 a pretty good summary. A summary of what? Read  
14 that first sentence. Digital communications  
15 presently supply solutions to users in ways that  
16 are completely divorced from their business  
17 context. Leader2Leader is a business and  
18 enterprise software company. Facebook is a  
19 social utility, social networking. The words of  
20 the patent do not include social networking.  
21 They're not there.

22 I showed you these figures. Now,  
23 let me tell you what we think the evidence will  
24 show through our experts. We're going to start

1 with Dr. Kearns who is a professor at Penn,  
2 computer science professor. We believe the  
3 evidence will show you that the invention of the  
4 patent works like this. And this is my crude  
5 way to draw an illustration to demonstrate it.

6 We start in the first context, we  
7 have a person up there, we'll call that person  
8 the user.

9 That user creates data in context.  
10 I know it's silly, but there is the happy face.  
11 That happy face is content, and the language of  
12 the patent, that's the user created data. Where  
13 does it go? It gets stored on a server. Well,  
14 what's a server? A fancy word for a computer,  
15 just a big one. We represent these in these  
16 drawings, they look like drums. And whenever  
17 you see server, think big computer, business  
18 computer.

19 It gets stored there, and remember  
20 the dynamically updating the metadata about the  
21 user defined data. What does the computer do?  
22 It creates metadata and associates it with the  
23 context.

24 What's metadata? Mr. Rhodes

1 updated a piece of text, he created a word  
2 document, he created a word document at home on  
3 his PC on such and such a date with such and  
4 such a title. Information about the word  
5 document, about my text, that cataloging  
6 information is metadata, the content is what  
7 it's describing.

8 The invention of the '761 wraps  
9 the content with the metadata. They stay  
10 together. Now, I go to a different context.  
11 Now, I did that at home, I'm at my work office  
12 and I'm now doing work on a different computer  
13 that I pull up my old document. I'm at a second  
14 context. The computer system tracks that I  
15 moved from context A to context B. That's the  
16 tracking component that we're talking about.

17 And the system knows I'm in a  
18 different context and says it would be useful  
19 for Mr. Rhodes to know that his green created  
20 content is now associated with the second  
21 context. And that's the heart of what the '761  
22 invents.

23 It didn't invent tracking. It  
24 didn't invent metadata. You'll hear testimony



1 from that. The very first expert you'll hear on  
2 cross-examination, I think that he will admit  
3 that none of these things were invented in this  
4 patent. The patent is a very specific way of  
5 handling metadata.

6 Now, this is the Facebook system  
7 I'm talking about. What I just showed you is  
8 what the invention of the patent is. This is  
9 how Facebook works. You're going to have to  
10 find whether there are these multiple context of  
11 Facebook. You'll get instruction on that.  
12 They're going to tell you what it is. I'm going  
13 to let you find it for yourself. They're going  
14 to argue that looking at pages is a different  
15 context.

16 Do you know how many pages of  
17 Facebook get viewed every day, all around the  
18 world? Twenty billion, every single day. And I  
19 want you to be thinking as you listen to the  
20 evidence, if Facebook implements this invention  
21 of the patent, are they really creating all of  
22 this metadata every time somebody moves from one  
23 context to another within Facebook? Do they  
24 really do that?

1 Chris Cox who actually is one of  
2 the senior engineers who wrote the code is going  
3 to get up on the stand in the next day or two  
4 and is going to tell you no, and he's going to  
5 explain why we would never do that. Twenty  
6 billion individual page views per day. Two  
7 billion photographs are uploaded a month.

8 The first context of Facebook. I  
9 create a photograph of this handsome lad.  
10 You'll notice that this is the picture of me  
11 when I'm much younger. What happens when I  
12 upload that photograph on Facebook. It gets  
13 stuck in one of these big computers we call a  
14 server. Does metadata get created about the  
15 photograph? Sure.

16 We have one, a separate computer,  
17 creates what's called a recent activity log.  
18 You'll notice that it's not unique to me. I'm  
19 not that important where I get my own computer.  
20 No offense, neither are you. We all go into a  
21 big computer. And you'll see different users  
22 have different entries. This is mine.

23 I uploaded a profile photo. In  
24 yet another computer system there is a photos

1 table. They log how big the photo is, who the  
2 user was. There is me. And then they give it a  
3 number. 537 is the number we're going to use  
4 for this example.

5 But again, that table is not  
6 unique to me, those are just photos that get  
7 updated all the time, billions during the year.

8 I go to a different context within  
9 Facebook. Remember they have to explain to you  
10 what that means. Assume for sake of argument  
11 that I go to a different context in Facebook. I  
12 started in one context, went to another one.

13 Remember the language of the  
14 claim? I moved from context one to context two,  
15 and the metadata was automatically updated based  
16 on the change, the change in context movement.

17 In the Facebook system, the stored  
18 metadata, the stored metadata doesn't change. I  
19 go over there, nothing happens to it. What  
20 they're going to do is they're going to say oh  
21 well, it's something else.

22 A bunch of metadata and something  
23 changes and something gets written, they're  
24 going to lump it altogether. Generalities,

1       specifics, confusion and clarity.

2                       So let's look at Facebook.   This  
3       is what it looks like when you create -- you  
4       join, this is your profile page, and you'll see  
5       that there is this here.   You'll see down here,  
6       I'm listed as having only one friend.   I have  
7       more than that, but for purposes of this  
8       illustration, we're going to have only one.   You  
9       see who it is.   I picked somebody that you might  
10      know.

11                      So let's say I want to upload a  
12      photograph for my profile.   What would I do?

13                      There's -- you move your mouse  
14      over to that shaded area where the photograph  
15      would go.   And then it asks you:   Do you want to  
16      upload a photograph?   You get this box.

17                      It says you choose a file.   That  
18      means:   Now, where are you going to get the  
19      photograph?

20                      I choose a file, and then stuff  
21      that's in my hard drive on my personal computer  
22      comes up.   There's a photograph.

23                      Now, I'm going to pick this one  
24      here because as a die-hard Chargers fan, that

1 one gives me bad memories. We're going to go  
2 over this one and pick this one.

3 And there it is. It's uploaded.  
4 User defined data. Get a first  
5 context.

6 Where does that photograph go? It  
7 goes on the server as I showed you.

8 Photo table is another log in a  
9 different computer. It writes that information  
10 down. Now, my I.D. profile dimension is 537.

11 Now, I go to my friend's profile  
12 page. Remember I said I had one friend.

13 So now I go over there. Second  
14 context, second context.

15 The user moved from the first  
16 context to the second context. A change of  
17 context to context, remember that language based  
18 on the change, the metadata about the user  
19 defined content did what? Absolutely nothing.

20 There was no automatically and in  
21 response to the prior event, me going there,  
22 change in that stored metadata.

23 20 billion page views a day.  
24 Imagine having tables that are constantly

1 saying, Now, he's over here. Now, he's over  
2 there. Now, he's over there.

3 These stored metadata stay  
4 constant. That's why it's important to know  
5 what the stored metadata in the patent is.

6 Now, you'll see in this area up  
7 here, we see this box right here. This is  
8 called the wall. And it's just sort of like  
9 where you can put content for the people.

10 And you see how there's this open  
11 area here, this dialogue box. I can write  
12 comments on Heidi's wall. And if I type  
13 something, it will go there.

14 So you can see I started typing  
15 in, Can't wait till Friday. In this case, I  
16 mean it literally.

17 I push share and now you see that  
18 that comment there, I uploaded my uploaded  
19 photograph, Can't wait till Friday. I'm a user.  
20 I'm in a second context. I'm interacting with  
21 the website.

22 I created content. See that text.  
23 And what happened to metadata that was created  
24 from the first context? The stored metadata

1 about the content created in the first context,  
2 nothing changed. Even though my photograph is  
3 there now, nothing changed.

4 Now, I go back to my profile,  
5 complete the loop. You with me? Started with  
6 mine, went to Heidi's. Now I'm back to my site.

7 Does the stored metadata about my  
8 photograph change because I've gone back to  
9 mine? No.

10 Stays the same. Data is stored  
11 separately from metadata in the Facebook system.  
12 They're not in the same place. They're not in  
13 the same place.

14 Easier, this is called co-location  
15 architecture. It's a fancy way of saying put  
16 all the pictures in one place. Put the logs  
17 about the pictures in a different place. Put  
18 the activity about the users in yet a different  
19 place.

20 Server one is called a filer.  
21 You'll hear some of the engineers talk about  
22 filers. It's a computer where they stick the  
23 photographs.

24 Logs user activity logs. It goes

1 in a different computer. And then these tables,  
2 photo tables, a different computer.

3 And you can see here that this  
4 represents other people are uploading  
5 photographs. And this table is not unique to  
6 me.

7 So what the evidence is going to  
8 show you is that Facebook never automatically  
9 updates the stored metadata. You, the user,  
10 have to do something.

11 Automatically means the system is  
12 doing it without more. You have to do something  
13 to that content to create additional data.

14 And secondly, Facebook never  
15 automatically updates the stored metadata based  
16 on user movement between first and second  
17 context, based on the change of the user from  
18 one context to another in the language of the  
19 patent.

20 Now, that's the case, from our  
21 perspective, on infringement. Up to now,  
22 everything I've been talking about, the burden  
23 rests over here. They have the burden on all  
24 this.



1 I don't have any burden to show  
2 that we do not infringe. I'm going to try to  
3 convince you through our evidence that we don't.  
4 But they have the burden on that. We don't.

5 Now, I'm going to talk about  
6 validity. On validity, I have a burden. And  
7 guess what, it's higher than theirs. My burden  
8 is tougher than theirs.

9 So I want you to be clear that  
10 when we talk about validity, you've got to put  
11 the burden on my back over here. And it's more  
12 of a burden than what's on their back.

13 The patent can be invalidated by a  
14 jury. Remember that from the tape? Somewhat  
15 counterintuitive, goes through the whole Patent  
16 and Trademark Office.

17 And as counsel in this case,  
18 they'll show you the red ribbon on it. The  
19 patent bears a presumption of validity.

20 So I have to convince you to a  
21 slightly higher standard that it should be  
22 invalidated.

23 There are three ways we say the  
24 patent is invalid. Number one, we're going to

1 try to prove that Leader was offering to sell a  
2 product covered by the invention more than one  
3 year before the patent application was filed.

4 Two separate and independent  
5 grounds. We're going to try to show you that  
6 they publicly demonstrated the product covered  
7 by the patent without confidentiality.

8 You remember when Mr. Andre showed  
9 you the Boston Scientific non-disclosure  
10 agreement, and it was dated, I believe, November  
11 26th of a given year? It turns out that the  
12 facts are going to show you that they actually  
13 demonstrated the product the day before. There  
14 was no confidentiality agreement in place then.

15 And the same thing happened with  
16 regard to the Wright Patterson Air Force Base.  
17 They went up there and demonstrated there and  
18 got a confidentiality agreement after the fact.

19 The evidence will show you that  
20 when they made the demonstrations, there was no  
21 confidentiality agreement in writing in place.

22 The last basis is that the  
23 invention is described in what was explained to  
24 you as called prior art. Prior art consists of

1 earlier patents and earlier publications.

2 Earlier patents, earlier publications.

3 Now, you remember the time line  
4 that they showed you? Remember that time line  
5 they showed you during the opening?

6 I don't know if you noticed this,  
7 that time line never stated when the patent  
8 application was filed. They showed you  
9 something called a provisional patent  
10 application. The provisional was filed on  
11 December 11, 2002.

12 They never showed you when the  
13 final patent application was filed. It's not on  
14 his chart. I can turn around. They won't  
15 disagree with me. It's not on there. The  
16 actual application was filed December 10, 2003.

17 The reason we're talking about the  
18 provisional is the rules all key off of a date  
19 that is one year before the patent application.  
20 You with me?

21 You file a patent application and  
22 then there's this one-year grace period. I've  
23 got to get behind the one year on my invalidity  
24 case in terms of offers to sell, public

1 demonstrations and prior art.

2 So they will want to try to  
3 convince you that the date that starts the  
4 one-year clock is the provisional application,  
5 not the final.

6 Can they do it? Here's what the  
7 judge read to you a little while ago about a  
8 provisional. There's the language. Look at  
9 this.

10 If the patent tries to claim  
11 priority back to that provisional, it can only  
12 do it -- see that word only if every element,  
13 not some, not most, every element of the issued  
14 claims of the patent, what ultimately came out  
15 of the Patent Office, is fully disclosed. Not  
16 partially disclosed, not mostly disclosed, but  
17 fully disclosed.

18 We're going to put an expert up to  
19 walk you through this, but let me give you a  
20 preview. Let's just put them side by side.

21 Mr. Andre was talking about  
22 something called pseudo code and all. We had  
23 the pseudo code.

24 This is what he didn't tell you.

1 How long is the provisional versus the final?

2 There are 22 figures in the final.  
3 Zip in the provisional.

4 The provisional has no mention of  
5 storing context data or metadata. Those two  
6 terms are in every single claim of the final.

7 There's no mention of updating  
8 metadata in response to tracking user movement.

9 That's in every single claim of  
10 the final patent. That provisional is only  
11 operative if every element of the issued claims  
12 of a patent is fully disclosed.

13 Every element fully disclosed.

14 You will have to decide whether  
15 every element is fully disclosed. Here's a time  
16 line.

17 If you took the final actual  
18 operative patent application December 10, 2003,  
19 go back one year, you get to December 11th,  
20 2002. That's what that red line, that big red  
21 line is.

22 So for my invalidity case, I have  
23 to talk to you about stuff that's older than  
24 that. You follow?

1                   One year before the patent  
2 application is that red line. These are  
3 examples of offers to sell the product.

4                   And I'm going to ask Mr. McKibben  
5 up here to explain what he said in writing to  
6 the Air Force and have him explain to you  
7 whether or not he made an offer to sell. And I  
8 want you to listen to that testimony very  
9 carefully when you consider his credibility in  
10 this case, what he said then and what he says  
11 now.

12                   These are examples. We're going  
13 to go through them.

14                   I'll give you a few right now.  
15 This is a sales document that they prepare and  
16 they submitted to the government, Wright  
17 Patterson Air Force Base almost two years before  
18 the date of the patent application.

19                   What was the objective? To  
20 implement a new Leader2Leader enterprise-wide  
21 collaboration environment at the Air Force Base.

22                   And I will present evidence to you  
23 where they state under oath that Leader2Leader  
24 practices the invention of the patent. And this

1 is what they're proposing to sell to the air  
2 force base January 2002.

3 You know what they're going to  
4 say? Not an offer to sell. Just talk. Just  
5 talking.

6 Sales is a spectrum. It's a  
7 spectrum.

8 He offered a particular price,  
9 \$8.4 million. The product is -- licenses to the  
10 product. That's how you sell software.

11 Another company called The  
12 Limited, retail outfit, more than one year  
13 before the date of the final patent application.

14 Did Leader2Leader make an offer to  
15 sell? "I'd like to offer the following  
16 sweetheart deal:"

17 These are rhetorical questions.  
18 Do not answer them.

19 Do you see the word offer? Do you  
20 see the word deal? And what does a sweetheart  
21 deal mean? Is that an offer to sell? You'll  
22 have to decide.

23 A price was provided. A product  
24 was provided. Number of units. Period of time.

1 The evidence will show you that these are offers  
2 to sell and you will be instructed that if the  
3 owner of the patent tries to sell it more than  
4 one year before the patent application, the  
5 patent is invalid.

6 Work it down to \$20.83 a month.

7 Mr. McKibben will testify that this is a  
8 spectrum, we're just not at the end of the  
9 spectrum yet. You will decide whether that's  
10 credible.

11 Public demonstrations are another  
12 way you can invalidate your patent. The red  
13 line is one year before the date of the final  
14 patent application. These are examples of  
15 demonstrations of the product and we will try to  
16 prove, we will try to prove that there was a  
17 public demonstration of the product in this time  
18 period and that renders the patent invalid.

19 Last, let's talk about prior art.

20 The red line represents one year before the  
21 patent application was filed more than one year  
22 are a variety of prior art references. If you  
23 look at the face of the patent, remember when  
24 the guy in the video was showing you where you



1 could look to see what the examiner considered,  
2 the list of prior art references on the face of  
3 the patent, you won't see these there. He  
4 didn't consider these.

5 The first one is iManage. iManage  
6 was a business that was involved with  
7 information management. They were a product,  
8 they were a system, they were a business.

9 They date from a period more than  
10 one year before the patent application. And  
11 this is from their product materials that we'll  
12 show you. And we'll show you that when you talk  
13 about users, using applications with metadata in  
14 a context that iManage had a system in the  
15 market before they ever filed for a patent  
16 application trying to do the same thing, trying  
17 to solve the same problem. Our expert will  
18 testify to that.

19 Swartz is a -- remember the guy in  
20 the video said you can actually use prior  
21 patents to invalidate a patent. He filed this  
22 in June 29th, 1998. He filed the patent before  
23 they claimed to have ever invented. Remember he  
24 said '99 was the aha moment. Swartz is behind

1 that. His patent issued before they filed  
2 anything in 2001.

3 How similar is what Swartz  
4 invented to how similar it is to what McKibben  
5 invented?

6 I just, I'm not going to give you  
7 everything, but here is an example.  
8 Side-by-side. Look at the language.  
9 Dynamically storing context, metadata, metadata  
10 stored, data, context, tracking, tracking,  
11 context, context. Just putting the documents  
12 side-by-side.

13 Here is more. Dynamically,  
14 dynamic, same word, different conjugations.  
15 User accesses data context. Access user data  
16 context. Our expert will tell you that this is  
17 spot on, same thing that McKibben was trying to  
18 invent. It was not cited in the references on  
19 the face of the patent, not considered, and it  
20 predates it. This is invalidating prior art,  
21 ladies and gentlemen.

22 Another patent, Hubert, this one  
23 published overseas but publicly. There is the  
24 date from 2001. Here is a diagram, and what you

1 have is in the same storage component, you got  
2 the data information, processing, the metadata,  
3 the tool or the application that created it all  
4 within the same field.

5 And our expert will explain to you  
6 why that is also a separate and distinct piece  
7 of prior art that invalidates.

8 Remember, it's not all these  
9 pieces together, it's any one of them is enough.  
10 Anyone offering to sell, anyone offering to  
11 sell, any public demonstration and any piece of  
12 prior art. They don't have to be combined, it's  
13 any single instance.

14 I guess you're glad to see that.

15 I have concluded my remarks. I  
16 know I have worn you out. I appreciate your  
17 attention. I look forward to your decision in  
18 this case. As I said at the outset, we believe  
19 in you. I'm not going to tell you what to do or  
20 what to decide. My faith is in you, but listen  
21 carefully. Confusion, clarity. Generality,  
22 specificity.

23 Thank you.

24 Thank you, Your Honor.

1 THE COURT: Thank you.

2 Mr. Andre, you can call your first  
3 witness.

4 MR. ANDRE: Your Honor, Leader  
5 Technology calls as its first witness Dr. James  
6 Herbsleb.

7  
8 JAMES HERBSLEB, Ph.D.,  
9 the deponent herein, having first  
10 been duly sworn on oath, was  
11 examined and testified as follows:

12 THE COURT: Good afternoon,  
13 Dr. Herbsleb.

14 THE WITNESS: Good afternoon.

15 THE COURT: You may proceed,  
16 Mr. Andre.

17 MR. ANDRE: Thank you, Your Honor

18 DIRECT EXAMINATION.

19 BY MR. ANDRE:

20 Q. Dr. Herbsleb, would you please  
21 tell us about your educational background?

22 A. Yes. I have a bachelors degree in  
23 psychology and economic application from  
24 Monmouth College, about 1976. I have a JD

1 degree, University of Nebraska about 1980. I  
2 have a Ph.D. in cognitive social psychology,  
3 University of Nebraska 1984. And I have a  
4 masters degree in computer science from the  
5 University of Michigan which I got in 1991.

6 Q. What exactly is -- a lot of  
7 equipment here, Your Honor.

8 What exactly is cognitive social  
9 psychology?

10 A. Well, cognitive social psychology  
11 is basically understanding how people think  
12 about, you know, social things, relationships,  
13 social situations and so on.

14 Q. And what did you do immediately  
15 after you received your degree in computer  
16 science?

17 A. After I received my degree in  
18 computer science, I took a position as a post  
19 doctoral research fellow at the University of  
20 Michigan. That was about two-and-a-half years.

21 Q. And what kind of research were you  
22 doing at the University of Michigan at that  
23 time?

24 A. Well, I was doing research on

1 collaborative software engineering. We were  
2 trying to understand what kind of collaboration  
3 technologies software engineering teams needed  
4 and observed them using technologies, that sort  
5 of thing.

6 Q. What did you do after that?

7 A. So after University of Michigan, I  
8 took a position at the Software Engineering  
9 Institute at Carnegie Mellon University, where I  
10 did research. The Software Engineering  
11 Institute has developed a model for software  
12 which describes how software companies should  
13 organize their processes and develop software.  
14 I was doing research on that model.

15 Q. And after you finished your stint  
16 at Carnegie Mellon, what did you do next?

17 A. After Software Engineering  
18 Institute I joined Bell Labs which is a part of  
19 Lucent Technologies. I led what we call the  
20 Bell Labs collaborative research program. We  
21 were trying to address the problems of  
22 geographically distributed software development  
23 teams. Lucent had teams that were spread all  
24 over the world. We were developing, designing,

1       deploying technologies to sort of help these  
2       teams communicate, coordinate more effectively.

3               Q.    And after that what did you do?

4               A.    So after Bell Labs, I took my  
5       current position as a professor in the School of  
6       Computer Science at the Carnegie Mellon  
7       University.

8               Q.    How long have you been there?

9               A.    I have been there since 2002, so  
10      about eight years.

11              Q.    And did you say what position you  
12      hold at this time?

13              A.    Professor.

14              Q.    And what does that involve being  
15      professor at Carnegie Mellon?

16              A.    Well, my main responsibilities are  
17      teaching. I teach courses in computer science,  
18      mainly software engineering, computer sorted  
19      cooperative work. I perform research in those  
20      areas. Software engineering and collaboration,  
21      collaboration technologies. I supervise and  
22      direct the research of my Ph.D. students and  
23      postdoctoral research fellows who work with me.  
24      Those are the main responsibilities.

1 Q. And how is Carnegie Mellon rated  
2 for its program?

3 A. Well, I'm very happy to say that  
4 U.S. News & World Report recently rated us as  
5 having the number one graduate program in  
6 computer science in the country. Although I  
7 have to admit we tied with MIT and Berkley and  
8 Stanford.

9 Q. None the less nice to be number  
10 one?

11 A. Yes.

12 Q. What are your areas of  
13 specialization?

14 A. I specialize in the collaboration  
15 technology in how it's used, in sort of new  
16 directions, trying to devise new kinds of  
17 technology to solve new problems and support  
18 interaction on larger scales with more facility  
19 and so on.

20 Q. We're talking about collaboration.  
21 Is that another word for networking and  
22 communicating with each other?

23 A. Yeah, more or less, except that it  
24 often provides specific support for things that



1 people want to do, so it connects them together,  
2 allows them to communicate, share things, work  
3 together more effectively, share documents and  
4 so on.

5 Q. And have you authored any  
6 publications regarding that type of  
7 collaborative technology?

8 A. Yes, depending on how you want to  
9 count, it's about sixty or seventy peer reviewed  
10 publications in this area.

11 Q. Can you give us an example of one  
12 such publication?

13 A. Yeah, just this last year with a  
14 postdoctoral research fellow and a graduate  
15 student we published a paper at the  
16 International Conference of Software Engineering  
17 describing a tool that we called Tesseract,  
18 which provides a view of the coordination and  
19 collaboration on a research project to sort of  
20 facilitate people working together more  
21 effectively.

22 Q. Have you received any awards for  
23 your work?

24 A. I would say I have received about

1 a half a dozen or so.

2 Q. And anything recently?

3 A. Well, the most recent one was in  
4 May of this year, my coauthors and I received  
5 what's called The Most Influential Paper Award.  
6 That's awarded at the International Conference  
7 on Software Engineering. They look back to ten  
8 years before and pick the paper that was the  
9 most influential over the last decade and they  
10 awarded that to me and my coauthors.

11 MR. ANDRE: Your Honor, at this  
12 time I would like to proffer Dr. Herbsleb as an  
13 expert in computer science.

14 THE COURT: Any objection?

15 MR. RHODES: No, Your Honor.

16 THE COURT: Okay. You may  
17 continue.

18 MR. ANDRE: Thank you.

19 BY MR. ANDRE:

20 Q. Dr. Herbsleb, would you tell us  
21 why you're here today?

22 A. Well, I was asked to describe the  
23 technology in the '761 patent and to provide any  
24 background that would be sort of necessary for

1 understanding what that technology is.

2 Q. I'm going to show you what is  
3 marked as the Exhibit 1 in this case, the '761  
4 patent. It will show up on the screen in front  
5 of you there. Is this the Leader patent you  
6 were referring to?

7 A. Yes, it is. Uh-huh.

8 MR. ANDRE: Your Honor, at this  
9 point I would like to move Exhibit 1 into  
10 evidence.

11 THE COURT: Any objection?

12 MR. RHODES: No objection.

13 THE COURT: It's admitted.

14 MR. ANDRE: Thank you.

15 BY MR. ANDRE:

16 Q. Dr. Herbsleb, are you familiar  
17 with the collaboration and networking technology  
18 that's taught in the '761 patent?

19 A. Yes, I am. I have been  
20 encountering these kind of technologies in my  
21 own research as well as teaching courses,  
22 graduate and undergraduate courses that involve  
23 technology such as this.

24 Q. Generally speaking, not getting

1 too far in the weeds here, but generally  
2 speaking what is the technology of the '761  
3 patent?

4 A. Well, the technology is designed  
5 to sort of help people share things, share  
6 electronic documents, pictures, all sorts of  
7 electronic things. To communicate, coordinate  
8 and do the work in a very sort of simple natural  
9 way. That's kind of the goal of the technology.

10 Q. And is all that done on the  
11 internet?

12 A. Yes. That all is done on the  
13 internet.

14 Q. And before we get in too deep into  
15 the specifics of the '761 patent, let's discuss  
16 some of the general background of the  
17 technology. And I believe we have some slides  
18 you've prepared?

19 A. Yes. Yes.

20 Yeah. This first slide is just  
21 showing, you know, just -- I assume everyone has  
22 seen a computer like this.

23 And in the days when this was at  
24 the forefront of technology, sharing was, you

1 know, a little bit painful. If you were  
2 familiar with floppy disks, you had to take a  
3 floppy disk and put it into the CPU and save  
4 your work to the floppy disk. And then take  
5 that floppy disk and walk down the hall and hand  
6 it to someone.

7 We used to call that sneaker net.

8 Q. Sneaker net like shoes?

9 A. Like shoes. Put on shoes and walk  
10 down the hallway.

11 Q. And back in the early days, PC  
12 life, how was data organized on the computer?

13 A. Well, I think if you go to the  
14 next slide, we have a picture of that. So as  
15 you can see over here in the top left-hand side,  
16 these are just old-fashioned manilla file  
17 folders.

18 Those are the sort of folders that  
19 people have used for a long time to organize  
20 paper documents. Right.

21 So to organize your paper  
22 documents into folders, you have to pick, you  
23 know, what do we want to name these folders?  
24 You have to pick some name that makes sense to

1       you.

2                       Then after you pick the names for  
3       the folders, when you have various items that  
4       you want to file away, you have to decide, you  
5       know, which folder each item goes into.

6                       Well, the organization in most  
7       computer systems of data, as you can see on the  
8       right-hand side, is, you know, very much based  
9       on that analogy. It works in a very similar  
10      way.

11                      So we have files here like Item  
12      Number 3121 and that has been placed into a  
13      folder called Item Number 3120. I usually find  
14      better names than this for my folders, but  
15      that's included in folder Item Number 3100 and  
16      so on.

17                      So you can have a hierarchy of  
18      folders. The point is much like the old manilla  
19      folders, I, as the user, have to figure out what  
20      I want to call my folders. I have to have some,  
21      you know, set of folders that I name.

22                      And then I have to decide, you  
23      know, which folder each item goes into. And so  
24      the organization is sort of similar to the old

1 paper-based item.

2 Q. Now as computers evolved, did the  
3 collaboration of computers get better?

4 A. Yeah. I think we can go to the  
5 next slide here.

6 As network technology improved,  
7 you know, as it became easier to set up  
8 networks, which allowed you to move data from  
9 one computer to another, we can see that a lot  
10 of offices and universities and other  
11 organizations began to adopt computer networks.  
12 As you can see around the outside here, if I can  
13 find the right button, there you go, these are,  
14 you know, different users computers that are all  
15 now linked up to a network.

16 On the network, as showing here in  
17 the middle by this cube, you can have special  
18 computers. They're just computers, but they're  
19 set up with special software to kind of provide  
20 services to the other computers on the network.  
21 One common example would be something that we  
22 might call a file server.

23 And the point of the file server  
24 is I can take -- if I'm on one of these

1 individual computers in my office, I could  
2 either save a file on my own computer there or I  
3 could use the network and save that file on file  
4 server.

5 Okay. Now, if I put it on the  
6 file server, then other people on other  
7 computers can come over the network and get that  
8 file and perhaps use it. We can share it that  
9 way.

10 So that makes it a little bit  
11 easier, more convenient than, you know, just  
12 having to run floppy disks all around the  
13 office. So this is a big improvement in  
14 sharing.

15 Q. And how is data organized on these  
16 types of local networks?

17 A. If we can go to the next slide.  
18 You can see here, this looks familiar over here  
19 because data is typically organized in the same  
20 kind of way by these file servers in a  
21 hierarchial structure of folders.

22 And as you can imagine, now as you  
23 start to get a lot of users, creating a lot of  
24 folders and a lot of files, different users have



1 different ways that they think about, you know,  
2 their categories of things that they want to  
3 file away. So if I'm filing my correspondence,  
4 for example, letters I get in, I might want to  
5 file them, you know, month by month. So I have  
6 a folder for January, folder for February and so  
7 on.

8 And I put the letters that I get  
9 each of those months into that folder. But  
10 maybe you find it more useful to file things by  
11 the sender. Right.

12 So you have folders this person A  
13 sent me, this person B sent me, this business Z  
14 sent me that, and you put your correspondence  
15 into those folders. And someone else might  
16 organize them around projects or something else.  
17 Different people have different ways they think  
18 about their documents and their other electronic  
19 materials.

20 So what you find is that with a  
21 whole bunch of people putting things on a file  
22 server, typically what you get is a confusing  
23 variety of folders all organized in different  
24 kinds of ways. And so it becomes kind of

1       difficult if you want to share a document or put  
2       a document out there that might be useful to  
3       someone else. They have to kind of figure out.  
4       Well, how does this set of, you know, folders  
5       work? Where is it going to be? How do I find  
6       something?

7                     It can all be rather confusing.  
8       So it does run into those kinds of problems.

9                     Q. Now, earlier you mentioned that  
10       the '761 patent was an on-line collaboration or  
11       internet collaboration tool. What did you mean  
12       by that?

13                    A. So it's a collaboration tool that;  
14       lives on the internet. The internet, as I think  
15       we can see on the next slide.

16                    So you can think of the internet  
17       as just a collection of all those networks we  
18       saw earlier. The earlier network was just in  
19       one office.

20                    The internet is basically a  
21       collection of a whole bunch of different  
22       networks sort of combined together into one  
23       network that spans the whole world basically.  
24       There are hundreds of millions or possibly

1 billions of computers connected to the internet.

2 So what we're seeing here, this is  
3 a very, very simplified diagram, obviously. But  
4 what we're trying to illustrate here is that you  
5 cannot only get to some kind of local server via  
6 the internet, but because all these things are  
7 hooked together from any of these computers, you  
8 can get to any of these servers. So that  
9 creates the capability of making something that  
10 you put on a server much more widely available.  
11 Basically any place in the world, it's on line  
12 or hooked up to the internet.

13 Q. And we will go to the next slide.  
14 If you could just show what you're seeing when  
15 you're actually on your computer looking at the  
16 internet?

17 A. Sure. So what I'm going to show  
18 here now, this is just illustrating a static  
19 website. This is kind of the simplest case.  
20 Right.

21 You think of it as a little bit  
22 like watching TV. You know, on TV you select a  
23 channel and then you get a particular channel or  
24 some information that comes into your TV. Your

1 TV displays it and you can look at it.

2 You can't really do anything with  
3 it, interact with it. You can just watch it.

4 A static web page, you can think  
5 of as a little bit like that. I picked the web  
6 page that I want to look at. All right.

7 I request that page from the  
8 server. The server provides it to my computer,  
9 which they display the information on the page.

10 And that's all I can do. I just  
11 sort of look at that page and see what's there.

12 Q. Now, are all websites static?

13 A. No. On the next slide, we're  
14 showing a more interactive website, as  
15 technology is improved, to allow some kinds of  
16 interactivity.

17 The notion here -- we're trying to  
18 illustrate here is imagine that this is a person  
19 who wants to conduct some business with the Bank  
20 of America website. So the person then goes to  
21 the website and the website probably asks the  
22 person to log in. Provide your user name and a  
23 password.

24 And that kind of assures the

1 server that, Gee, this really is this person.

2 Okay.

3 So it then gives you access to  
4 your web page, your information. And that  
5 starts what we call a session.

6 All right. You have now started a  
7 session with this interactive website. You've  
8 been authenticated.

9 In other words, it believes you  
10 are who you say you are because you had the  
11 password. And now that you started a session,  
12 you can interact with this website.

13 You can, if you want, transfer  
14 money between accounts, for example. You can  
15 pay your bills. You can do a number of things.

16 And then when you're done,  
17 typically you would log out and that would end  
18 the session. And you're no longer kind of  
19 interacting.

20 Q. Let's talk a little bit about the  
21 technology of the '761 patent.

22 A. Sure.

23 Q. You stated earlier that the '761  
24 patent utilizes the internet to permit the user

1 to organize data and collaborate network content  
2 that they want to share. How does it do that?

3 A. Well, this slide is an  
4 illustration of that. So we can see here that we  
5 have several work spaces, as we're calling them.  
6 Now, think of a workspace, imagine your desk at  
7 work or at home. Okay.

8 Okay. On your desk, you have  
9 probably a bunch of different things that you  
10 need to get something done.

11 You might have some, you know,  
12 pencil, paper, some books, some notebooks. You  
13 know, a calender, a telephone, a variety of  
14 things that you need right there. And that's  
15 kind of your workspace.

16 Well, what we're -- think of one  
17 of these workspaces as sort of like that, except  
18 on-line on your computer. So on your computer,  
19 on your computer screen it will show you an  
20 example of how this looks in a moment.

21 You have a whole set of things  
22 that you need, you know, to get something done.  
23 A set of different tools all there together.  
24 It's your workspace.

1           So what we're seeing here is five  
2 workspaces like that and a couple things to  
3 notice.

4           One is that all these work spaces  
5 are stored on a web server. So they're stored  
6 on a server on the internet.

7           Okay. That's important, because  
8 they can be accessed then over the internet.

9           And we're showing also that these  
10 workspaces can be linked together. So if I am  
11 in Jim's work space, I might want to have Alice  
12 as one of my contacts.

13           So I might create a link to  
14 Alice's workspace in my workspace, sort of  
15 joining them together. So that's what these  
16 lines are attempting to show.

17           Q. Now, these workspaces reside on  
18 these web servers are on the left; correct?

19           A. That is correct. They all reside  
20 on a web server over there.

21           Q. And the '761 patent, does it  
22 permit those workspaces to be distributed to  
23 several of the servers?

24           A. Yes. Of course, it does.

1                    Say that storage -- the storage  
2                    component can consist of one or more computers,  
3                    sort of would often be built as a distributor  
4                    system. So you often have more than one server  
5                    in that role.

6                    Q. Go to the next slide.

7                    With this type of arrangement,  
8                    what does it permit you to do as far as  
9                    networking collaborating?

10                   A. Mm-hmm. Okay.

11                   So here in the middle, we see the  
12                   same five workspaces we had in the slide before.

13                   And what this is trying to show is  
14                   that all around the outside here, we have a  
15                   bunch of different computers that are all hooked  
16                   up to the internet. They're all on-line.

17                   So what I'm trying to show here is  
18                   that suppose this is my office computer down in  
19                   the lower left-hand corner, I could access my  
20                   workspace over the internet.

21                   In my office computer, I can  
22                   upload things. I can download things. I can  
23                   engage my tools and do work.

24                   I also can do that from my home



1 computer, access the same work space, you know,  
2 upload things, download things, do work there.  
3 Or maybe I'm traveling, you know, and I have my  
4 laptop, I upload in a hotel or somewhere.

5 If I'm hooked up to the internet,  
6 I can access my workspace. I can upload things  
7 to my workspace and download things and do  
8 whatever I can do in my workspace.

9 That's what this is intending to  
10 show is you can access it from essentially any  
11 computer that is hooked up to the internet.

12 Q. And do you have -- in order to  
13 have this type of networking collaboration in  
14 these workspaces, they reside on a system  
15 server; correct, web servers?

16 A. Right.

17 Q. Do you have to have any type of  
18 special applications on the computers? Do they  
19 all have to have the same application on the  
20 outside?

21 A. Typically for the '761 technology,  
22 all you need on the computer is some kind of a  
23 web browser. And these days almost any  
24 computer, including our mobile phone or, you

1 know, any sort of device like that that is  
2 hooked up to the internet typically has some  
3 kind of a browser.

4 Q. Now, what are we looking at at  
5 this level?

6 A. Okay. So what I'm trying to show  
7 here is over on the left hand we have that same  
8 set of five workspaces.

9 And we're trying to sort of drill  
10 down a little bit on Jim's workspace in the  
11 middle here. So this is what's on the server,  
12 and we're focusing on Jim's workspace.

13 Over here on the right-hand side,  
14 this is what it looks like to Jim. This is what  
15 it looks like to the user when the user accesses  
16 this workspace. This is one way it could look.

17 So this is Jim's kind of profile  
18 page. It has some tools that could be,  
19 obviously, many kinds of tools here, but this  
20 just shows, you know, the way that Jim could  
21 access messages.

22 He could access his calender. He  
23 could access notes that he's made. He could  
24 access files and upload files.

1                   And down here it shows Jim's  
2                   contacts. As we saw before, they're Alice.  
3                   Bob, Steve and Betty. And so this has that  
4                   workspace, looks like, you know, when Jim's  
5                   actually using it.

6                   This is what it shows, him on his  
7                   computer.

8                   Q. And how is the data organized on  
9                   it with the '761 patented technology?

10                  A. Okay. So I think the easiest way  
11                  to show that is by contrasting it with what we  
12                  saw over here.

13                  Of course, what we saw over here,  
14                  the traditional hierarchial system where you  
15                  have to name folders. Then you have to decide  
16                  what folder each item goes into.

17                  And we have all these problems we  
18                  talked about of, you know, different people  
19                  having different sets of folders and being --  
20                  how somebody else thinks about their stuff, so  
21                  it's hard to find it.

22                  In contrast to that, over here the  
23                  '761 technology organizes things very  
24                  differently. Here when you create an account on

1 server, it establishes for you metadata. So  
2 metadata is -- I know it's sort of a confusing  
3 sounding term, when the explanation is also  
4 confusion as well.

5 Metadata is sort of data about  
6 data, if you will. But, it's really not that  
7 confusing if you think about uploading  
8 something, say a document, or a picture, for  
9 example.

10 Okay. If I upload a picture, then  
11 that's data.

12 And I might want to have some  
13 descriptions of that picture. All right.

14 So I want -- I might want, for  
15 example, to store the fact that I was the one  
16 who uploaded that picture, not somebody else.  
17 And I might want to store the fact that it was  
18 uploaded at 10 o'clock Sunday morning, not some  
19 other time. And there might be other things  
20 that might be useful to store about that  
21 picture.

22 So those kind of descriptions of  
23 the data are what we call metadata. And in the  
24 '761 technology when I upload something,

1 automatically this sort of information about who  
2 uploaded it, when it was uploaded, that's what  
3 we call context information. And that updates  
4 the metadata that was established when I started  
5 my account.

6 That's one of the ways that  
7 metadata gets updated. According to this  
8 technology, also, there's also a tracking  
9 component.

10 So I can also move from my page to  
11 other people's pages. If I have a link to  
12 Alice, I might want to move over to Alice's  
13 page.

14 And since my system kind of has to  
15 know where I am, so it kind of tracks my  
16 movements, I can also go over from my page to  
17 Alice's page and access my data from Alice's  
18 page. When I do that, this tracking information  
19 is then used also to update the metadata.

20 Q. Can you walk through an example  
21 how one can share data using the on-line  
22 networking in collaboration invention of the  
23 '761 patent?

24 A. Sure. Sure.

1 All right. So here's sort of the  
2 starting point.

3 Let's just say that I have kind of  
4 a manilla profile page. I haven't put much up  
5 there yet, so it just says profile page and has  
6 a few tools. And I'd like to upload a photo to  
7 it.

8 So I might go down here to where  
9 it says file if that's the place that I upload  
10 files. I could click on that and select the  
11 option to upload a photo.

12 And then it would let me sort of  
13 look around on my computer and find the photo I  
14 wanted to upload. When I found it, excuse me --  
15 when I found it, I would select it. Push a  
16 button that would probably say something like  
17 upload.

18 And at that point, the picture  
19 would go from my computer. The data would be  
20 copied. Right.

21 It would be data now on the server  
22 that would represent that picture. Okay. And  
23 it would be in my workspace.

24 And so that would show up like

1 this on my on-line workspace. But this is now  
2 really data on the server. This is the copy o  
3 the server as opposed to the one that's on my  
4 local machine. So that's the way I can upload a  
5 photo.

6 Okay. And as I do that, the  
7 context information, as I mentioned concerning  
8 the picture updates, is used to update the  
9 metadata. So things like, you know, it was I  
10 who uploaded it, and maybe the size of the  
11 picture, and perhaps the time it was uploaded  
12 and other kinds of information are automatically  
13 added over here in the system and metadata is  
14 updated.

15 So at this point, the picture that  
16 I'm observing and the metadata about that  
17 picture are all on the server.

18 Q. What's this slide representing?

19 A. This is another kind of  
20 interaction that I could have in this system.  
21 So here let's assume I am Jim, I might want to  
22 navigate over to Alice's workspace.

23 So I click on the Alice link here  
24 and it takes me over to Alice's workspace, and

1 now that I'm at Alice's workspace I might  
2 actually want to access some of my own data over  
3 there.

4 So here is one reason I might want  
5 to do that. I might want to say leave a message  
6 for Alice, say hey, Alice, check out my new  
7 picture and I could place my picture accessing  
8 data from my workspace. I'm getting a little  
9 carried away, I'm afraid, accessing data from my  
10 workspace and placing it here on Alice's page.

11 Now at this point, when I actually  
12 place data here, access data from my workspace  
13 while I'm in Alice's workspace, that triggers  
14 the change in metadata that this tracking  
15 information that I am accessing my data from a  
16 different work space, that information is used  
17 to update the metadata. And that's how that  
18 transaction happens.

19 Q. And all this, the metadata itself  
20 and the context information and the tracking  
21 information, that's all stored on the back end;  
22 correct?

23 A. That's all stored to the back end.  
24 That's all on the storage component of the



1 system on this server or some set of servers.

2 MR. ANDRE: That's all we have,  
3 Your Honor. Thank you.

4 THE COURT: That's the end of the  
5 direct?

6 MR. ANDRE: Yes.

7 THE COURT: Okay. I think that  
8 will be a good place to stop for the day since  
9 we're letting the jury go at 4:30.

10 Dr. Herbsleb, you can step down at this point.

11 We'll excuse the jury at this  
12 point. One second, bear with me. There are a  
13 few things I need to tell the jury before I let  
14 you go.

15 First off, we're starting at nine  
16 o'clock tomorrow morning, so please arrive at  
17 the building in time so that you can be up here  
18 in your seats at nine o'clock.

19 Also, as I told you before, you're  
20 not to discuss the case with anybody, amongst  
21 yourselves or with anybody else at this point.

22 I don't know if there will be any  
23 media coverage of this case, but if there is,  
24 you're not to read it or view it. Also, you're

1 to refrain from using Facebook as we said for  
2 the length of the trial.

3 And also, temperature control in  
4 this building leaves a lot to be desired as you  
5 may have already figured out. It can range from  
6 too hot to too cold in the course of one day.  
7 So my only suggestion, I see some of you have  
8 already figured it out, is bring layers and you  
9 may find over the course of the day that you  
10 want to put a jacket or sweater on and then  
11 later take one off. I wish I had control over  
12 it, but I don't, and that's it.

13 With that, I will now at this  
14 point excuse the jury for the day.

15 (Jury leaving the courtroom at  
16 4:28 p.m.)

17 THE COURT: You can have a seat.  
18 I just want to talk with counsel about the  
19 designations that you provided earlier with  
20 respect to the depositions. Unless I'm  
21 misreading it, I don't see where the objections  
22 are. I need for you to specifically flag for me  
23 the pages at which I can find objections that I  
24 need to rule on. Perhaps I'm misreading.

1 MR. HANNAH: Your Honor, it's in  
2 the highlighted copy, but we're glad to note  
3 those objections as well in another document.

4 THE COURT: I have multiple  
5 copies, one of those that's highlights on it.

6 MR. HANNAH: The version that was  
7 sent to Your Honor had this yellow highlighting  
8 and the blue highlighting and had the written  
9 margin.

10 THE COURT: Right. Okay. I  
11 understand that. I need you to put on the list  
12 telling me which pages to go look to in there to  
13 find the objections. So just file something  
14 later, say by six o'clock today just giving me  
15 that guidance.

16 All right. We'll see counsel at  
17 nine o'clock tomorrow morning.

18 (Court recessed at 4:30 p.m.)  
19  
20  
21  
22  
23  
24

1 State of Delaware )  
2 New Castle County )

3  
4  
5 CERTIFICATE OF REPORTER

6  
7 I, Heather M. Triozzi, Registered  
8 Professional Reporter, Certified Shorthand Reporter,  
9 and Notary Public, do hereby certify that the  
10 foregoing record, Pages 1 to 308 inclusive, is a true  
11 and accurate transcript of my stenographic notes  
12 taken on July 19, 2010, in the above-captioned  
13 matter.

14  
15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand and seal this 19th day of July, 2010, at  
17 Wilmington.

18  
19  
20 \_\_\_\_\_  
21 Heather M. Triozzi, RPR, CSR