

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

LEADER TECHNOLOGIES, INC.,)	
a Delaware corporation,)	
)	
Plaintiff-Counterdefendant,)	Civil Action No. 08-862-LPS
)	
v.)	
)	
FACEBOOK, INC.,)	
a Delaware corporation,)	
)	
Defendant-Counterclaimant.)	

**PLAINTIFF LEADER TECHNOLOGIES, INC.'S OPPOSITION TO DEFENDANT
FACEBOOK, INC.'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF
LAW (JMOL) OF NO INDIRECT INFRINGEMENT [MOTION NO. 3]**

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Dated: September 15, 2010

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I. NATURE AND STAGE OF THE PROCEEDINGS

Leader Technologies, Inc. (“Leader”) filed its Complaint against Facebook, Inc. (“Facebook”) on November 19, 2008. The Complaint accused Facebook of infringing U.S. Patent No. 7,139,761 (the “’761 Patent”). A jury trial commenced on July 19, 2010, and the jury’s verdict was entered on July 28, 2010. D.I. 610. Facebook moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a) on July 27, 2010. D.I. 606. Facebook filed four separate Renewed Motions for Judgment as a Matter of Law (JMOL) pursuant to Fed. R. Civ. P. 50(b) on August 25, 2010. *See* D.I. 628, 629, 630, 631. This Opposition to Facebook’s Renewed Motion for JMOL of No Indirect Infringement [Motion No. 3 of 4] (“Renewed JMOL Motion No. 3”) requests that the motion be denied.

II. SUMMARY OF ARGUMENT

Because the jury issue of indirect infringement was never submitted to the jury, Facebook’s motion for judgment as a matter of law of no indirect infringement is a complete waste of this Court’s and Leader’s time and resources.

III. STATEMENT OF FACTS

Leader’s complaint against Facebook alleged indirect infringement pursuant to 35 U.S.C. § 271(b)-(c). D.I. 1. Leader provided testimony and evidence at trial that third parties directly infringe the ‘761 Patent and that Facebook induces and contributes to that infringement. *See, e.g.,* Tr. 691:3-695:21.¹ However, this Court stated: “I don’t believe there has been evidence from which the jury could find that any third party other than Facebook is the direct infringer, nor do I think there is evidence of Facebook’s knowledge of the ‘761 patent at this trial.” Tr.

¹ All documents cited herein, including citations to PTX trial exhibits, DTX trial exhibits, and trial transcripts, are attached to the Declaration of Ryan Hopkins in Support of Plaintiff Leader Technologies, Inc.’s Oppositions to Defendant Facebook, Inc.’s Renewed Motions for Judgment as a Matter of Law (“Hopkins Decl.”).

1884:19-24. Because the Court rejected a proposed jury instruction on indirect infringement, and did not include a question about indirect infringement in the verdict form, the jury did not render a verdict on this issue. *See* D.I. 610.

Facebook filed its Renewed JMOL Motion No. 3 pursuant to Fed. R. Civ. P. 50(b) on August 25, 2010. D.I. 630. Leader held a meet and confer with Facebook on August 26, 2010 to request that Facebook withdraw three of its Renewed JMOL Motions, including Renewed JMOL Motion No. 3. *See* Aug. 26, 2010 e-mail (Hopkins Decl., Ex. 32). Facebook refused to withdraw the motion.

IV. ARGUMENT

Facebook has repeatedly brought unnecessary issues before this Court and burdened Leader with unwarranted litigation costs.² The present motion is more of the same. Facebook's Renewed Motion No. 3 relates to an issue the Court clearly decided *in Facebook's favor* at trial and never submitted to a jury. *See* D.I. 634; Tr. 1884:12-24; *see also* D.I. 606 at 8. The Court did not instruct the jury on indirect infringement or include a question regarding indirect infringement in the verdict form. *See* D.I. 610. Because the jury did not consider or decide any issue of indirect infringement, there is no verdict on that issue to overturn, and Facebook's Renewed JMOL Motion No. 3 is an improper waste of this Court's and Leader's resources.

Although a JMOL motion is not appropriate on this issue, Leader wishes to make clear that it has not abandoned its indirect infringement claim. The trial record includes sufficient evidence that Facebook indirectly infringes the '761 Patent. *See* Tr. 691:3-703:24. For example, Leader's expert, Dr. Vigna, used Facebook's publicly available wiki and documents to build a third-party application that uses Facebook's application programming interface. Dr. Vigna

² The most egregiously unnecessary motion is Facebook's motion for judgment as a matter of law on claims not even asserted in this case. *See* D.I. 606 at 1.

thereby demonstrated that third-party developers infringe claim 9 of the '761 Patent. *See* Tr. 691:8-693:14. That and other evidence showed that "Facebook is providing the means for third-party application [sic] to perform the steps of the claim." Tr. 703:2-5; *see also* Tr. 695:19-21 ("Facebook allows third party [sic] to actually perform the steps of the claim."). Facebook's motion does not refute Dr. Vigna's testimony.

V. CONCLUSION

Leader respectfully requests that the Court deny Facebook's Renewed JMOL Motion No. 3.

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CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on September 15, 2010, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

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