

IN THE UNITED STATES COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware corporation,)	CIVIL ACTION
)	
Plaintiff and Counterdefendant,)	No. 1:08-cv-00862-LPS
)	
v.)	
)	
FACEBOOK, INC., a Delaware corporation,)	PUBLIC VERSION
)	
Defendant and Counterclaimant.)	CONFIDENTIAL
)	FILED UNDER SEAL

**MEMORANDUM IN SUPPORT OF FACEBOOK, INC.'S
RENEWED MOTION FOR JUDGMENT AS A MATTER
OF LAW (JMOL) OF NO INDIRECT INFRINGEMENT**

[MOTION NO. 3 OF 4]

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Dated: August 25, 2010
Public Version: October 1, 2010

TABLE OF CONTENTS

	Page No.
I. NATURE AND STAGE OF THE PROCEEDINGS	1
II. SUMMARY OF THE ARGUMENT	1
III. ARGUMENT.....	1
IV. CONCLUSION.....	3

TABLE OF AUTHORITIES

Page No.

CASES

<i>DSU Med. Corp. v. JMS Co.</i> , 471 F.3d 1293 (Fed. Cir. 2006).....	2
<i>Wordtech Sys., Inc. v. Integrated Networks Solutions, Inc.</i> , 609 F.3d 1308 (Fed. Cir. 2010).....	2

STATUTES

35 U.S.C. § 271	1, 2
Federal Rules of Civil Procedure 50(a)	1
Federal Rules of Civil Procedure 50(b).....	1

I. NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff Leader Technologies, Inc. ("Leader") filed its complaint against defendant Facebook, Inc. ("Facebook") in this patent infringement action on November 19, 2008, accusing Facebook of infringement of U.S. Patent No. 7,139,761 ("761 patent"). A jury trial commenced on July 19, 2010. Prior to the submission of the case to the jury, Facebook moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a). (D.I. 606.) The Court reserved ruling and a jury verdict was entered on July 28, 2010. (D.I. 610.) Facebook respectfully renews its motion for judgment as a matter of law under Fed. R. Civ. P. 50(b).

II. SUMMARY OF THE ARGUMENT

Facebook renews its motion for judgment as a matter of law with respect to Leader's claims for indirect infringement based on alleged inducement and contributory infringement. The Court effectively granted Facebook's pre-verdict motion on this issue when it concluded that Leader did not present sufficient evidence to warrant an instruction to the jury as to those claims or their inclusion on the verdict form. Declaration of Elizabeth Stameshkin in Support of Facebook, Inc.'s Renewed Motions for Judgment as a Matter of Law ("Stameshkin Decl.") Ex. 1 at 1884:19-24. The Court should therefore grant judgment as a matter of law against Leader's indirect infringement claims.

III. ARGUMENT

Leader attempted to assert infringement based on inducement and contributory infringement theories under 35 U.S.C. § 271(b), (c). The Court refused to instruct the jury on either of those theories or include them on the Verdict Form, reasoning that: "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 any evidence of Facebook's knowledge of the '761 patent at this trial." Stameshkin Decl. Ex. 1 at 1884:19-24. The Court should therefore grant Facebook's motion for judgment as a matter of law with respect to Leader's claims for indirect infringement.

The Court correctly recognized that Leader failed to present evidence as to multiple independent requirements of its indirect infringement claims. Most fundamentally, the Federal Circuit has made clear that “[a] defendant’s liability for indirect infringement must relate to the identified instances of direct infringement,” *Wordtech Sys., Inc. v. Integrated Networks Solutions, Inc.*, 609 F.3d 1308, 1317 (Fed. Cir. 2010) (internal quotations and citation omitted), yet Leader did not identify any instance of direct infringement by any third party. With respect to its claims for inducement under § 271(b), Leader was also required to present evidence that Facebook had knowledge of the ’761 patent and that it actively and knowingly aided and abetted another’s direct infringement. *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304-05 (Fed. Cir. 2006) (en banc). Mere knowledge of “the acts alleged to constitute infringement” or of the “possible infringement by others does not amount to inducement.” *Id.* at 1305 (internal quotations and citations omitted). Instead, “specific intent and action to induce infringement must be proven.” *Id.* (internal quotations and citation omitted). But Leader presented no such evidence. Nor did Leader even attempt to prove Facebook made or sold a component of a patented invention “constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use,” as required to show contributory infringement under § 271(c). For all of these reasons, the Court should enter judgment as a matter of law with respect to Leader’s indirect infringement claims.

IV. CONCLUSION

For the reasons stated above, Facebook respectfully requests that this Court grant judgment as a matter of law of no indirect infringement as to all asserted claims of the '761 patent.

Dated: August 25, 2010

By: /s/ Steven L. Caponi

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