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BY E-FILE AND HAND DELIVERY

The Honorable Leonard P. Stark
U.S. District Court for the District of Delaware
U.S. Courthouse
844 N. King Street
Wilmington, DE 19801-3556

Re: Leader Technologies, Inc. v. Facebook, Inc., C. A. No. 08-862-LPS

Dear Judge Stark:

Leader Technologies writes in response to Facebook's February 23, 2011 letter which mischaracterizes the applicability of *In re Katz Interactive Call Processing Patent Litig.*, Nos. 2009-1450, -1451, -1452, -1468, -1469, 2010-1017, Slip Op. at 10-15 (Fed. Cir. Feb. 18, 2011) and *IPXL Holdings, LLC v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005).

In *Katz*, the Federal Circuit merely reaffirmed the narrow applicability of its holding in *IPXL*. Specifically, the Federal Circuit stated:

In *IPXL*, this court addressed a claim that covered a system with "an input means" and required a user to use the input means. This court held that the claim was indefinite because it was unclear "whether infringement ... occurs when one creates a system that allows the user to [use the input means], or whether the infringement occurs when the user actually uses the input means." *Katz* at *24. (emphasis added)

Similarly, the claims in *Katz* require a system that has an "interface means" and a "digital input means" while requiring the user to use those means.

Neither *Katz* nor *IPXL* is applicable to this case. The claims in *Katz* and *IPXL* are directed to front-end components that are accessible to a user, and are defective because they require a user to use the front-end components. The asserted claims in the patent-in-suit in this case, U.S. Patent No. 7,139,761 (the "'761 Patent"), are quite different. The claims in the '761 patent are directed to back-end components that are not accessible to a user. Since they are

directed to back-end components, it is impossible for a user to “use” these components as required by *Katz* and *IPXL* because they do not exist from the user’s perspective. Thus, *Katz* and *IPXL* do not apply to this case because the claims in this case are directed toward fundamentally different aspects of a system. *See also Convolv, Inc. v. Dell, Inc.*, 2011 WL 31792, at *17-18 (E.D.Tex. Jan 05, 2011) (“Unlike *IPXL Holdings*, where an accused infringer would have no knowledge of infringement of the method limitations at the time a device meeting the apparatus claim limitations was sold, an accused infringer would know whether it met the limitations at the time its device was sold because the accused infringer would know whether the device stored code that met the remaining limitations of the patent.”)

Contrary to the contention in Facebook’s letter, the “wherein” clause in Leader’s patent claims is not a method step. The claims in this case are directed to a reactionary system that performs certain functions in response to user action. In other words, the system is “dynamic.” As construed by this Court, “dynamically” in the ‘761 Patent means “automatically and in response to the preceding event.” The “wherein” clause in these claims simply provides the preceding event for the claimed dynamic system. This is confirmed by the prosecution history where the Examiner simultaneously added “dynamically” and the preceding event, i.e. “wherein the user accesses the data from the second context,” to the claims in order to put them in a condition for allowance. Thus, the “wherein” clause in Leader’s claims explains the type of tracking component by describing the triggering event for its dynamic features, not a method of using the tracking component.

As it is impossible for a user to “use” the back-end components as claimed, and because the wherein clause describes the dynamic features of the tracking component, *Katz* and *IPXL* are inapplicable to this case. *See also* Leader’s Opposition to Facebook’s Motion for Summary Judgment of Invalidity of Claims 1, 4, 7, 21, 23, 25, 31, and 32 of the U.S. Patent No. 7,139,761 (D.I. 513). For at least these reasons, the Court should disregard the case cited by Facebook in its February 23, 2011 letter.

Respectfully,

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