

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CROSS ATLANTIC CAPITAL PARTNERS, INC.,

Plaintiff,

v.

FACEBOOK, INC. and THEFACEBOOK, LLC,

Defendants.

CIVIL ACTION

NO. 07-CV- 02768-JP

ORAL ARGUMENT REQUESTED

FACEBOOK MOTION NO. 1

**FACEBOOK'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF ITS MOTION
FOR PARTIAL SUMMARY JUDGEMENT OF NON-INFRINGEMENT RE CURRENT
FACEBOOK SYSTEM**

[REDACTED]

(Unredacted version filed separately under seal pursuant to Protective Order)

Defendants Facebook, Inc. and Thefacebook, LLC (collectively, "Facebook") submit the following statement of undisputed material facts in support of their Motion for Summary Judgment of Non-Infringement re Current Facebook System:

1. U.S. Patent No. 6,519,629 entitled "System for Creating a Community for Users with Common Interests to Interact in" (the "'629 patent") issued on February 11, 2003.

Declaration of Craig W. Clark in Support of Facebook's Motion for Partial Summary Judgment of Non-Infringement re Current Facebook System ("Clark Decl.") Ex. A.

2. The '629 patent has 32 claims. Four of the 32 claims, Claims 1, 9, 17, and 25 of the '629 patent, are independent. Of the four independent claims, two are method claims and two are system claims. Clark Decl. Ex. A.

3. Each independent claim of the '629 patent requires a precise sequence whereby the claimed community can be created only after the registered user provides community identification information and a selection of at least one application object. Clark Decl. Ex. A.

4. The '629 patent describes Figure 2 as "a flowchart illustrating steps in creating a community" Clark Decl. Ex. A.

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5. Figure 2 of the '629 patent provides:

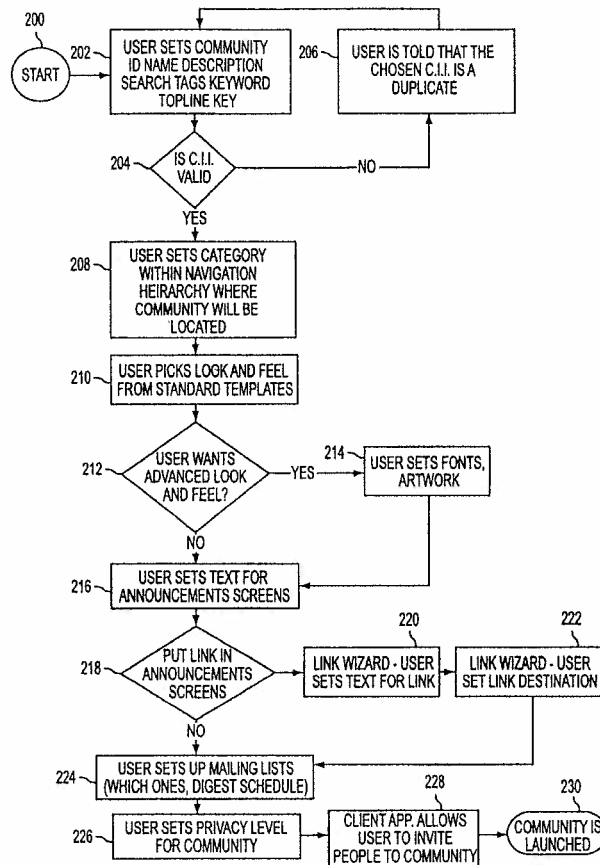


FIG. 2

Clark Decl. Ex. A.

6. In explaining Figure 2 of the '629 patent, the specification goes through the sequence beginning with the provision of community creation information (col. 7, ln. 61 – col. 8, ln. 65) and selection of application objects (col. 8, ln. 66 – col. 9, ln. 35) all prior to creating the community. Clark Decl. Ex. A.

7. The specification of the '629 patent describes an embodiment in which the user begins the creation steps, enters the community identification information and selects mailing list and links applications and only then, “[a]t step 230, a creator may launch a community.” Clark Decl. Ex. A at col. 13, lns. 4-5.

8. The Patent Examiner stated in the Statement of Reasons for Allowability for the '629 Patent that:

None of the prior art of record taken singularly or in combination teaches or suggests receiving a creation transmission from a registered user to indicate that the user desires to create a community, receiving a selection of at least one application object from the registered user, and creating a community based on community identification information received from the registered use and the at least one application object.

Clark Decl. Ex. B at 2.

9. Cross Atlantic Capital Partners, Inc.'s ("XACP") expert, Edward Yourdon, testified:

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Clark Decl. Ex. C at 208:7-209:06.

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Id. Ex. C at 206:22-208:6.

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Id. Ex. C at 206:6-206:21.

10. Facebook's "Groups" feature allows users to create, specialize, maintain and modify on-line groups within Facebook. Declaration of Blake Ross in Support of Facebook's Motion for Partial Summary Judgment of Non-infringement re Current Facebook System ("Ross Decl.") ¶ 2.

11. Facebook's "Events" feature allows users to create gatherings relating to a specific event or occurrence. Ross Decl. ¶ 2.

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13. As of April 2, 2008, to create a Group on the Facebook system, a user need only input information consisting of a "Group Name," a "Description," and a "Group Type" into the online form provided by Facebook. Once the user inputs this information, the user can create a new Group by clicking on the "Create Group" button. Ross Decl. ¶¶ 4-7.

14. When a Facebook user clicks on the “Create Group” button, Facebook creates the new Group on the Facebook system. Ross Decl. ¶¶ 8-11, 14.

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16. Facebook users have the option to customize Groups only after the Group has been created, but customization is optional. Ross Decl. ¶¶ 12-15.

17. Customization or invitation of other users to join a Group can occur immediately after the Group is created or at a later time. Ross Decl. ¶¶ 13, 15.

18. Facebook does not require customization or invitation of other people to a Group. Ross Decl. ¶¶ 13, 15.

19. Facebook Groups are created before the application objects are presented to the user. Ross Decl. ¶¶ 4-15.

20. Facebook Groups are not created based on the selection of an application object. Ross Decl. ¶¶ 4-15.

21. To create an Event on the Facebook system, a Facebook user need only input information consisting of “Event Name,” “Host,” “Event Type,” “Location,” and “City/Town” onto the online form provided by Facebook. Once the user inputs this information, the user can create a new Event by clicking on the “Create Event” button. Ross Decl. ¶¶ 16-18.

22. When the user clicks on the “Create Event” button, Facebook creates the new Event on the Facebook system. Ross Decl. ¶¶ 19-21, 23.

23. Facebook users have the option to customize Events only after the event has been created. Ross Decl. ¶¶ 22-24.

24. Facebook does not require customization or invitation of other people to an Event. Ross Decl. ¶ 24.

25. Customization or invitation of other people to an Event can occur at any time after Event creation. Ross Decl. ¶ 24.

26. Facebook Events are created before the application objects are presented to the user. Ross Decl. ¶¶ 16-24.

27. Facebook Events are not created based on the selection of an application object. Ross Decl. ¶¶ 16-24.

28. Facebook users cannot make a selection of any application object prior to creating a Group or Event. Ross Decl. ¶¶ 4-24.

Dated: June 20, 2008

By: /s/ Heidi L. Keefe

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CERTIFICATE OF SERVICE

This is to hereby certify that on June 20, 2008, I caused a true and correct copy of the foregoing **Facebook's Statement of Material Facts in Support of Its Motion for Partial Summary Judgement of Non-Infringement re Current Facebook System** to be served *via* this Court's Electronic Filing ("ECF") System, upon the following:

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