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

CROSS ATLANTIC CAPITAL PARTNERS, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO.: 07-CV-02768
	:	
vs.	:	
	:	
FACEBOOK, INC. and THEFACEBOOK, LLC	:	
	:	
Defendants.	:	

PLAINTIFF'S RESPONSE TO
DEFENDANTS' STATEMENT OF FACTS
IN SUPPORT OF FACEBOOK'S MOTION
FOR PARTIAL SUMMARY JUDGMENT OF NON-
INFRINGEMENT RE CURRENT FACEBOOK SYSTEM

COMES NOW, the plaintiff, Cross Atlantic Capital Partners, Inc., by and through

its undersigned counsel, and hereby responds to the Statement of Material Facts submitted

by the defendants Facebook, Inc. and Thefacebook, LLC. in support of Defendants'

Motion For Partial 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.

RESPONSE:

        Admitted.

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.

RESPONSE:

Admitted.

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.

RESPONSE:

Denied. By way of further denial, Paragraph 3 states a legal conclusion to which no response is required.

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

RESPONSE:

It is admitted that Figure 2 of the '629 Patent is a flow chart. The remaining allegations of Paragraph 4 are denied.

5.   Figure 2 of the '629 patent provides:

Clark Decl. Ex. A.

RESPONSE:

It is admitted that the referenced flow chart is a partial excerpt of the specification of the '629 Patent.

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.

RESPONSE:

It is admitted that the specification of the '629 Patent discusses Figure 2. By way of further denial, the specification of the '629 Patent speaks for itself.

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.

RESPONSE:

Denied. The specification of the '629 Patent speaks for itself.

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

> None of the prior art of record taken singularly or in combination teaches or suggest 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 lest one application object.

Clark Decl. Ex. B at 2.

RESPONSE:

It is admitted that the referenced quote is a partial excerpt from the file history of the '629 Patent.

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

Q.   Generally speaking, is it your opinion that the – the steps in the '629 patent have to be performed in the order in which they were cited?

THE WITNESS: It's my understanding that they have to be carried out either sequentially or perhaps, in some cases, at – at the same instant . . . But the – the key step in response to your previous questions was the – the – the step in the '629 patent that says creating the community based on the community identification information and the at least one application object. So that, to me, very clearly says that the application object, one or more of those, have to be selected prior to the actual creation of a – a – a community.

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

Q.   If a system were designed that created a community before any selection of application objects was ever allowed, would that system practice the claims in the '629 patent?

THE WITNESS: so the scenario you're describing is – is one in which a system creates a community before it provides the creator of that community the ability to select one or more application objects?

BY MR. WEINSTEIN:

Q.   That's correct.

A.   In that case, in my opinion, it would not satisfy Claim Number 1 of the '629 patent.

Q.   And why is that?

A.   That is because Claim 1 recites a – a sequence of steps, and the sequence of steps requires receiving a selection of at least one application object prior to the step of creating the community based on the community identification object and the at least one application object.

. . .

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BY MR. WEINSTEIN:

Q.   Okay.

A.   So if I understood the scenario that you were posing, it does not meet the sequence of steps described there.

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

Q.   If the Facebook system was designed so the user could never select any of those options, they were simply included in every group being created, would that system be practicing the claims of the '629?

. . .

THE WITNESS: No, I believe it would not.

BY MR. WEINSTEIN:

Q.   And why is that?

A.   Because it would satisfy the step in Claim 1 of receiving a selection of at least one application object from the registered user.

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

RESPONSE:

It is admitted that the referenced quote is a partial excerpt of the deposition of Edward Yourdon. The remaining allegations of Paragraph 9 are denied.

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.

RESPONSE:

Denied. The operation of the Fcebook system is set forth in the March 17, 2008 Expert Report of Edward Yourdon.

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

RESPONSE:

Denied.

12.   In January, February and April 2008, Facebook completed modifications affecting both the Groups and Events applications, which streamlined the system utilized to create new Groups or Events. Ross Decl. ¶ 3.

RESPONSE:

Admitted in part, denied in part. It is admitted that in the first quarter of 2008 Facebook made changes to the behavior of its system. (Yourdon Decl. at ¶¶ 6-14). However, these changes were made to avoid infringement of the claims of the '629 Patent.

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 anew Group by clicking on the "Create Group" button. Ross Decl. ¶¶ 4-7.

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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.

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

15. Even if the Facebook user quits the program after clicking on the "Create Group" button, the Group will continue to exist. Ross Decl. ¶ 9.

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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 anew Event by clicking on the "Create Event" button. Ross Decl. ¶¶ 16-18.

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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

RESPONSE:

Denied. The system as currently configured behaves as set forth in the Yourdon Decl. at ¶¶ 15-28.

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Respectfully submitted,

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Dated: July 14, 2008   /s/ Frederick A. Tecce_____
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                        Counsel for plaintiff,
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CERTIFICATE OF SERVICE

This is to hereby certify that on this 14th day of July, 2008, I caused true and

correct copies of the foregoing Plaintiff's Response to Defendants' Statement of Material

Facts in Support of Facebook's Motion For Partial Summary Judgment of Non-

Infringement Re Current Facebook System to be served *via* this Court's Electronic Filing

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