

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

CROSS ATLANTIC CAPITAL PARTNERS, INC.,      CIVIL ACTION

Plaintiff,

NO. 07-CV- 02768-JP

v.

JURY TRIAL DEMANDED

FACEBOOK, INC. and THEFACEBOOK, LLC,

Defendants.

**DECLARATION OF HEIDI KEEFE IN SUPPORT OF  
DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER AND  
COUNTERCLAIMS**

I, Heidi Keefe, declare:

1. I am an attorney with White & Case LLP, counsel of record in this action for defendants Facebook, Inc. and Thefacebook, LLC (collectively "Facebook"). I make this declaration in support of Facebook's Motion for Leave to Amend Answer and Counterclaim. I have personal knowledge of the facts contained within this declaration, and if called as a witness, could testify competently to the matters contained herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Amended Answer and Counterclaims, which adds an affirmative defense and counterclaim of unenforceability due to inequitable conduct.

3. On September 4, 2007, Facebook filed its Answer and Counterclaims for a declaration of non-infringement and invalidity. Attached hereto as **Exhibit B** is a true and correct of Facebook's Answer and Counterclaims.

4. On September 14, 2007, Facebook served on XACP its First Set of Interrogatories, seeking, among other things, information about the inventors and invention

process leading to the issuance of the '629 patent. On September 28, Facebook served its First Set of Requests for Production of Documents, seeking all documents related to the process leading up to the issuance of the '629 patent. These discovery requests are not attached due to their size, but can be provided at the Court's request.

5. On October 17, 2007, XACP provided a response to Facebook's interrogatories claiming a "lack of personal knowledge" about any aspect of the alleged invention of the '629 patent or the activities leading up to its issuance by the United States Patent and Trademark Office ("PTO"). XACP asserted that it is the assignee of the patent and the "inventors [of the '629 patent] are not and have never been employees or agents of plaintiff."

6. After being told that XACP had no relationship or knowledge concerning the activities of the named inventors of the patent in suit, Facebook began to attempt to locate and contact them. Facebook contacted Jamey Harvey on November 13, 2007 and Andrew Fregly on November 16, 2007. Facebook determined that neither inventor was represented by counsel at that time.

7. After a series of unsuccessful attempts to gain information from the inventors informally, Facebook personally served subpoenas on Mr. Harvey and Mr. Fregly on December 13, 2007. Attached hereto as **Exhibit C** is a true and correct copy of the subpoena and deposition notice for Jamey Harvey and as **Exhibit D** is a true and correct copy of the subpoena and deposition notice for Andrew Fregly.

8. On December 21, 2007 Facebook was informed that all named inventors were being represented by XACP's counsel. Attached hereto as **Exhibit E** is a true and correct copy of a letter from Frederick A. Teece (counsel for XACP) to Heidi Keefe (counsel for Facebook), dated December 21, 2007.

9. Counsel for XACP did not provide documents from Mr. Harvey until January 16, 2008, and from Mr. Fregly until January 22, 2008.

10. Upon reviewing the Harvey and Fregly documents, Facebook discovered documents indicating that one or more of the inventors of the '629 patent had committed

inequitable conduct by withholding material prior art from the PTO during the patent's prosecution. Facebook confirmed its suspicion during the deposition of Mr. Harvey on January 25, 2008.

11. On February 5, 2008, Facebook sent its proposed Amended Answer and Counterclaims to XACP with a request that XACP stipulate to the amendment. As of the date of this motion, Facebook has not received a response from XACP.

12. Attached hereto as **Exhibit F** is a true and correct copy of a document entitled "iKimbo, Inc. Business Plan," dated October 1999, that was produced by counsel for XACP on behalf of Andrew Fregly (AF-00027-AF-00055).

13. Attached hereto as **Exhibit G** is a true and correct copy of a document entitled "Competition," that was produced by counsel for XACP on behalf of Jamey Harvey (JH-00096-JH-000102)(document produced incomplete).

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 12, 2008, at New York, New York.

/s/ Heidi Keefe  
Heidi Keefe